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Questioning Justice: Kenyan Ethnopolitical Violence and Truth, Justice, and Reconciliation Commission

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Transitional Justice

The end of bi-polar power politics saw the emergence of a new global challenge— the proliferation of intrastate and ethno-political conflicts characterized by unspeakable atrocities in which nation states face multiple challenges of coming to terms with their violent past and healing and rebuilding their societies (Hayner, 2001). This has led to the emergence of transitional justice mechanisms which respond to legacies of collective violence, severe and systematic human rights violations in a bid to establish the truth about the past, determine accountability, and offer some form of redress (Van Der Merwe et al., 2009). Establishing the truth about past human rights violations and patterns of violence is a central dimension of transitional justice processes. There are different mechanisms of transitional justice including retributive, restorative, procedural, and distributive justices (Maiese, 2003).

Distributive justice advocates for fair allocation of resources in terms of amount of target goods to be distributed, the procedures of distribution, and patterns of distribution among and across community members (Maiese, 2003). However, the question of a "fair allocation" is contentious especially in the dawn of scarce resources and diversity of needs which

necessitates the focus on distribution principles based on need, equality, and equity (Buttram et al. 1995: 261). Equality means equal distribution of goods among all members of a community, equity means that the benefits are distributed according to the ratio of an individual's productivity or contribution where equal opportunities to compete are provided while distribution according to needs assumes that those who needs more benefits receives more and vice versa (Maiese, 2003). Distributive justice facilitates justice through fair allocation of benefits, services, goods and resources across the community thereby bridging the gap of relative deprivation — that sense of injustice relative to others — and creating stability in the society (Deutsch, 2000).

Procedural justice advocates that fairness, respect, and dignity for all people in the community should be entrenched in the processes of making and implementing decisions thereby facilitating the ownership of the outcomes (Deutsch, 2000). Fair procedures accommodates consistency in making and implementing decisions (Buttram, 1995: 272), in facilitating impartiality, neutrality and focus on expressed needs of the beneficiaries (Ibid: 273), and in the representation and participation of the target communities towards nurturing trust, transparency and accountability (Maiese, 2003). However, while fair procedures nurtures ownership, they must translate to fair outcomes (Nelson, 1980: 506). Procedural justice is pivotal in conflict resolution and management procedures such as mediation, arbitration, adjudication, and negotiation (Maiese, 2003).

Retributive justice is a retroactive approach that advocates for punishment to those who violate human rights law and commits crimes against humanity such as rape, ethnic cleansing, and genocide (Maiese, 2003). Trial in the aftermath of mass atrocity marks an effort between vengeance and forgiveness by transferring the individual's desire for revenge to state bodies, creating an aura of fairness, establishing a public record, and producing some sense of accountability (Minow, 1998: 26). By holding accountable the offenders of mass

atrocities through justice and law, trials facilitate accountability and acknowledgement of harms done and the consequent reconstruction of impaired relationships, enabling others to learn from the past and warning those in the future (Maiese, 2003). However, in a critical perspective, the failure of trials of the superiors who gave orders, inducements, and threats, as well as the selectivity, arbitrariness and creation of martyrs out of a few who are subject to punishment, discredits the courts and threatens any sense of fairness or rationality (Minow, 1998: 40-50). Therefore, trials should not be pursued where there is no chance or perception of fairness, political will, resources and capacities of lawyers and judges (Ibid).

Restorative justices facilitate mutual healing of the victims and survivors of atrocities; access to social, financial, material, and emotional needs; rehabilitation and restoration of impaired social relationships between the victims and the perpetrators; and renewed dignity, respect, and reintegration of both the victims and the perpetrators into the community (Zehr and Mika, 1998). Restorative justice provides public spaces for active participation of both the victims and the perpetrators in finding truth through dialogue thereby facilitating informed understanding of the root causes of past atrocities and creating opportunities to break the cycle of violence and facilitate mutual healing (Hutchison and Wray, 2003). Victims' testimonies facilitate recognition, empowerment, humanization, respect, and dignity while the offenders acknowledge responsibilities for the harms they committed and bridge the gap through agreed upon reparations, apologies, seeking forgiveness towards renewed social relationships (Marshall and Gurr, 2003). Truth telling exposes structural injustices that cause structural and physical violence thereby enabling informed intervention and sustainable reconciliation and peacebuilding (Hutchison and Wray, 2003). To facilitate effective transitional justice in Kenya, it is important to understand the root causes of ethnopolitical violence in the country. This is discussed in the following section.

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The Genesis and Progression of Kenyan Ethnopolitical Violence

Ethnic Relations in Pre-colonial and Colonial Kenya

Before colonialism, Kenyan communities led a mutually beneficial and interdependent communal life characterized by inter-ethnic interactions, marriage, barter-trade, and patronage (Lonsdale, 1989; Oyugi, 1998). Ethnic mutual antagonism in Kenya can partially be attributed to colonialism (Berg-Schlosser, 1984). The settlement of the British in Kenya led to the grabbing of about 7.5 million acres of land, approximately 25 percent of high potential land (white highlands) across Kenya thereby displacing millions of Kenyans from their ancestral homes and confining them to squatter settlements (Berg-Schlosser, 1984). The divide and rule administrative structure of the British colonial government created a homogeneous politico-administrative centre which broke independent tribal authorities and confined natives to prescribed administrative enclaves. The colonial administration introduced taxation which was earned through forced labour in the white highlands. The worst affected were the Kikuyu ethnic group whose 10 percent of the population were squatters by the end of World War I (Oyugi, 1998). The creation of the money economy by the colonial government led to rural-urban migrations that made the distinct pre-colonial ethnic boundaries porous. The industrious Kikuyu traversed the whole country as petty traders to the disgruntlement of other local communities (Ibid). Competition for limited opportunities led to the invocation of blood brotherhood, based on ethnic ideologies and consciousness (Oyugi, 1998).

The colonial education policies were discriminative, with the missionary led education concentrated among the Kikuyu, Luo, and Luhya ethnic groups and denied to nomadic communities such as the Maasai, Turkana, Samburu and the Kalenjins (Ibid). This preferential education system affected the marginalized communities in terms of job accessibility. Similarly, the colonial administration adopted preferential recruitment policies in favour of some ethnic groups (Oyugi,

1998). The Kalenjins were recruited to join the police and the army, while the Luo joined state corporations. The afore-mentioned developments nurtured a sense of consciousness about "us versus them" (Mamdani, 1996).

Racialization and Deracialization of the Structures of Privilege

Kenya's ethnic situation was also aggravated by immigrant communities such as the Indians who had earlier been contracted by the British to build the Kenya-Uganda rail-way (Oyugi, 1998). In the provision of social services such as education, health care and housing, race became a factor in determining the structure and quality of access. The "deracialization" of the structures of privilege on the eve of independence which involved the incorporation of Africans into the public service generated rivalry and conflict because it was ethnic oriented (Ibid). The structure of access to employment both in public and private sectors continues to generate ethnic-conflict in post-colonial Kenya (Nnoli, 1998). Africanization of public service meant that expatriates would be replaced by the Kikuyu, Luo and Luhya ethnic groups who were the benefactors of the preferential colonial education (Ibid).

Land Ownership and Post Colonial Settlements

Land ownership is a key catalyst of ethnic conflicts in Kenya. The colonial land displacement and consolidation led to the proliferation of squatter farming and porousness of ethnic boundaries leading to the encroachment of ancestral land of some ethnic groups by other ethnic groups. The Presidential Commission of Inquiry into Illegal Allocations of Public Land observes that 50 percent of Kenyans live under poverty line with majority of them residing in the slums (Republic of Kenya, 2004). The colonial and post-colonial preferential settlement of the landless Kikuyu, Luo, Kisii, Embu, Meru, Kamba, and Luhya in areas dominated by minority ethnic groups such as the Maasai and the Kalenjin in the Rift-valley province generated antipathy, resistance, and animosity and

was interpreted as relative deprivation (Haberson, 1973). These grievances constitute historical injustices and have nurtured protracted mistrust, resentment, and animosity among ethnic groups in Kenya.

The Role of Pre-Independence Colonial-engineered Political Alignments

The pre-independence colonial engineered political alignments played a great role in structuring the Kenyan ethnic map (Oyugi, 1998). The white settlers actively strived to determine the context of transition and the shape of future governance in Kenya. This was intended to nurture political allies in the post-independent regime to ensure the security of the whites' interests and investments in the country. An indigenous middle class was adopted as the best bet. Ironically, the buffer class constituted the colonial loyalists and sympathisers during the struggle for independence. This class was to be used as a buffer between the white elites and the African masses (Blundel, 1964). This buffer class was later to invoke the inherited colonial constitution to promote its interests and marginalize the Kenyan masses in postcolonial Kenya (Berg-Schlosser, 1992).

In the quest to divide and rule, the political parties' structures engineered by the colonial authorities also played a role in ethnic politics in Kenya (Oyugi, 1998). In the 1950s, Kenya African Union (KAU), the only national political party in Kenya was banned by the colonial government to prevent national unity and was replaced by ethnic-based political associations such as the Baluhya Political Union, Kalenjin Political Alliance, and Maasai United Front (Ibid). This nurtured ethnicisation of politics in which national political parties became a source of suspicion among minority ethnic groups who could not control them. Proliferation of ethnic parties facilitated peripheral bargaining frameworks when competing at the centre was deemed impossible. In 1960 Kenyan African National Union (KANU) and Kenya African Democratic Union (KADU) were formed with the former consti-

tuting of the Kikuyu and the Luo while the latter served the minority ethnic groups including the Kalenjin, Maasai, and the Luhya (Oyugi, 1998). KANU advocated for centralization of administrative structures while KADU pushed for decentralization of administrative structures (Majimboism) to protect the interests of minority ethnic groups especially against land encroachment by the dominant groups.

Post-Colonial Ethnic Politics

Jomo Kenyatta, the first Kenya's president and the chair of KANU, marginalized KADU's interests until it broke up in 1961 making Kenya a de-facto one party dominated by Kikuyu. Marginalization of other ethnic groups and their demands for equal representation led to defections to ethnic political parties including African Peoples Party (APP) of the Kamba; Luo United Movement (LUM) of Luo and a splinter group from KANU namely Kenya Peoples Union (KPU) of Luo (Oyugi, 1998). The massive suppression of other tribes by the Kenyatta regime dominated by Gikuyu, Embu, Meru, and Akamba (GEMA) nurtured mistrust and resentment between GEMA communities and the minority tribes in Kenya. This was Kenya's scenario when former President Moi, a Kipsigis from the Kalenjin bloc of minority ethnic group took over leadership after Kenyatta's death in August 1978.

The Moi Nyayoism and "Corrective Justice"

Moi's new regime adopted a philosophy coined "Nyayoism" meaning "following the footsteps." This meant that his new regime was to follow Kenyatta's "footsteps." Ironically, this actually meant that ethnic favouritism would be entrenched as in Kenyatta regime, but this time, the previously marginalized minority ethnic groups and specifically his own people, the Kalenjins, would be the new beneficiaries (Oyugi, 1998). To be precise, the Moi Nyayoism pursued what could be interpreted as "corrective justice" – tit-for-tat, which saw the replacement of Kikuyus from their structures of privilege by the semi-educated minority Kalenjins (Ibid). Moi entrenched

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Majimboism as opposed to Kenyatta's centralization, in a bid to broaden his power base and strengthen the political clout of minority groups. To decentralize the Kikuyu hegemony rooted in GEMA, he dissolved all "tribal" associations thereby dismantling GEMA's vast economic empire and Kikuyu's entrepreneurial interests (Nnoli, 1998). The new wave of multipartyism and political alliances between 1980s and 1990s were met with brutality, propaganda and suppression but finally Moi gave in to the change of constitution demand by the grand coalition – Forum for the Restoration of Democracy (FORD) to accommodate multipartyism (Oyugi, 1998). But the survival of the grand coalition depended on the ethnic factor, a weakness that Moi was sure to manipulate.

The Ethnic Factor in Political Alliances and Multiparty Politics

The grand ethnic coalition, FORD, disintegrated due to ethnic-based factions jostling for power, representation, and control. Ethnic affiliations to political parties and political alliances based on mistrust, fear, and propaganda continues to characterise multiparty politics in Kenya. Despite giving in to multipartyism in 1991, Moi labeled the new wave as being against the interests of minority ethnic groups and advocated for majimboism. The Kenya Human Rights Commission (KHRC) (1998) observes that the birth of multiparty politics in Kenya was a threat to the political survival of former president Moi, a staunch one party advocate. Therefore, the "foreign" ethnic groups which were sympathetic to multipartyism and living in the Rift valley province, his home turf, had to be chased away leading to 1992 and 1997 ethnic conflicts (Ibid). The Politicians linked to the de-facto Moi regime invoked hate speech and called the minority groups to unite and flush out the "enemy" (Kikuyu, Luo, Luhya, and the Kisii) from their ancestral land. The former victims had become the aggressors (Mamdani, 2001). The Kikuyu supremacy during Kenyatta's era was being replicated by the minority ethnic bloc under Moi's Nyayoism. This was the genesis of the ethnic-clashes that began in 1991 culminating in the near genocide ethnopolitical violence in 2007.

The Report of the Parliamentary Select Committee to Investigate Ethnic Clashes in Western and other parts of Kenya estimates that 779 "invaders" were killed during the first wave of ethnic clashes from 1991 to 1992 (Republic of Kenya, 1992). To preserve ethnopolitical constituencies, it became the tendency of the affected political elites to organize local militias to scare away the "outsiders" during general elections leading to violent conflicts (Africa Watch, 1993). The Republic of Kenya ethnic violence reports (1992; 1999; 2004; 2008) indicates that the 2007 post election violence of Kenya was the peak of a growing tide of disgruntlement among various ethnic groups backed by their ethnic politicians.

The 2008 Post Election Violence in Kenya and the Birth of TJRC

While Kenya has a history of ethnic violence since 1992, the 2008 disputed presidential elections could have sunk the country into genocide (Republic of Kenya, 2008). Approximately 1,500 Kenyans were killed, 500,000 were displaced, pillaging was extreme, and crimes against humanity committed (Ibid). Fortunately, Kenya was salvaged from the verge of collapse by the international community through the auspice of African Union's (AU) Panel of Eminent African Personalities chaired by the former UN Secretary-General Kofi Annan (United States Institute of Peace (USIP), 2009). This led to a power-sharing pact and a coalition Government between the Party of National Unity (PNU) of the incumbent President Mwai Kibaki and opposition's Orange Democratic Movement (ODM) led by the leader of the opposition, Raila Odinga (Ibid).

The coalition Government agreed to establish several commissions of inquiry including the Commission of Inquiry into Post Election Violence in Kenya (CIPEV), the Independent Review Commission on the General Elections, a National Ethnic and Race Relations Commission, and a Truth, Justice and Reconciliation Commission (TJRC) (USIP, 2009). The mandate of CIPEV was to investigate the facts and circumstances surrounding the violence, the conduct of state security agencies, and to make recommendations for the

way forward (Republic of Kenya, 2008). Reports from these commissions indicate that the 2007 post election violence in Kenya constituted ethno-politically instigated systematic attacks. The reports recommended the establishment of a Truth, Justice, and Reconciliation Commission to pursue accountability for those responsible for the post-election violence and crimes against humanity. In October 2008, the Kenyan parliament enacted the TJRC bill mandated to establish an accurate, complete, and historical record of gross human rights violations and economic crimes committed between December 12, 1963, when Kenya gained independence, and February 28, 2008, when the power sharing pact was signed (International Centre for Transitional Justice (ICTJ), 2010). However, TJRC has been dismissed by the civil society and the legal fraternity for inconsistencies such as providing amnesties for human rights violations, exclusion of victims from the process, and failure to offer sufficient protection for witnesses. TJRC is conceived as a process that will perpetuate the culture of impunity (USIP, 2009). The merits and demerits of TJRC are discussed below.

Demerits of TJRC in Facilitating Reconciliation and Peacebuilding in Kenya

Top-down Approach and Political Unwillingness

The implementation of a truth and reconciliation committee (TRC) depends on the initial mandate which determines the nature and breadth of investigations (Hayner, 2001). In South Africa, the expressed needs of victims who resisted amnesty were ignored while their refusal to forgive was met with ridicule, shaming and intimidation (Ibid). To achieve sustainable reconciliation, it is necessary that the truth about gross violations of human rights be established through official investigation, using fair procedures, fully acknowledged by the perpetrators, victims and bystanders (Minow, 1998:55). This is unlike in the Kenyan context where the chairperson of TJRC was allegedly a perpetrator of past atrocities (ICTJ, 2010). Lack of political will has also compromised the Ken-

yan TJRC thereby casting doubt about the sincerity and commitment of the Kenyan leadership in facilitating sustainable reconciliation and peacebuilding in Kenya (USIP, 2009).

Amnesty Trades Justice for Truth

Through granting of amnesty, TRCs trade justice for truth (Wilson, 2001). The concept of amnesty is criticized for its inability to facilitate reconciliation, especially in cases where the perpetrators grant themselves immunity. In El Salvador, for example, the parliament enacted an amnesty law to shield senior military leaders (Hayner, 2001) while in South Africa, amnesties focused on salvaging the nation-building project (Wilson, 2001). In South Africa, survivors of murdered activists dismissed amnesty as a violation of their rights to seek judicial redress for the murders of their loved ones and argued that reconciliation must come with justice (Minow, 1998; Woolford, 2009). The Kenyan TJRC has been blamed for allowing amnesty for human rights violations (ICTJ, 2008). It is feared that TJRC commissioners are instruments of power politics with an aim of unfairly granting amnesty to senior politicians who were perpetrators of mass atrocities (USIP, 2009).

Who has the Power to Forgive?

Closely linked to amnesty is the concept of forgiveness. Proponents of the redemptive model, such as Tutu of South Africa, have evoked the slogan *No future without forgiveness* (1999). Tutu argued that "letting go" of the desire for retribution is important for transition from apartheid to democracy. He evoked the concept of *Ubuntu* – the principle of interconnectedness, the notion that a person is a person through other people and that whatever hurts one of us, hurts all of us (Tutu, 1999; Woolford, 2009). TJRC has faced stiff resistance from many Kenyans who feel that the power to forgive lies with the victims and survivors of mass atrocities. Critics of amnesty argue that no one has the right to prevail on others to forgive (ICTJ, 2010). This is echoed by sentiments of vic-

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tims in South Africa's TRC (SATRC) who argue that forgiveness should be voluntary and not imposed by the government (Brudholm, 2008: 33).

Non-Forgiveness as a Virtue is Dismissed

Critics of TRC are sceptical about the blanket forgiveness and justify non-forgiveness by arguing that negative emotions have a moral component, that there is a moral significance of expression of anger in the face of evil, which does not necessarily reflect a thirst for revenge or personal deficiency (Brudholm, 2008). Precisely, non-forgiveness as a moral protest is permissible and admirable because negative emotions in transitional justice facilitate mourning and sustainable healing. According to Kenya National Commission on Human Rights (KNCHR) (2008), this reality is a challenge to the Kenyan TJRC which borrows heavily from the SATRC model.

Lack of Authority to Punish

Another demerit of TRC is the lack of authority to punish or to facilitate the implementation of institutional reforms as stipulated in the final report (Hayner, 2001; Minow, 1998). While the goal of TRC is the facilitation of transitional justice, victims often feel that justice has been compromised. More so, there is no guarantee that justice would be met in cases where the legal system is weak, corrupt or simply overwhelmed by the number of cases (Ibid). This justifies the fear among Kenyans who maintain that comprehensive institutional reforms must precede the TJRC to facilitate effective address to impunity (KNCHR, 2008).

Lack of Resources

The success of TJRC is mostly determined by political will and resources from official authorities. Young democracies in transition have limited resources, which hinders the potential success of TRCs in these locations. For example, while South Africa's TRC had an annual budget of $18 million and a staff

of approximately 300, Chad's TRC had neither an office nor other necessary resources (Hayner, 2001:41, 57). In Kenya, the government has either delayed or failed to release salaries and resources required by the commissioners for their normal operations (ICTJ, 2010).

TRC Process Re-opens the Wounds of the Victims and Survivors

The cathartic effect of TRC is highly contested (Brudholm, 2008; Hayner, 2001; Minow, 1998). While proponents indicate that addressing the past would lead to hurting the healed wounds of victims of mass atrocities (Minow, 1998), critics argue that it is absurd to even think that such wounds have ever been healed (Hayner, 2001). Healing is conceived as an irrational notion for those who have died or the survivors of mass atrocities who still live in the reality of death (Ibid). Endurance and not healing is conceived as what survivors can at best seek (Minow, 1998). TRC is a source of wide dissatisfaction and a catalyst for post-traumatic disorders in South Africa (Hayner, 2001; Tepperman, 2002). Reparations are criticized on the basis that it is difficult to cost human emotional and psychological suffering. For many Kenyans, no amount of truth telling can bring back their loved ones or make whole their bodies again (Republic of Kenya, 2008).

Security of Witnesses

Within the operation of TRC are the concepts of public hearings and the fear of revenge as witnessed in South Africa (Wilson, 2008). While public hearing facilitate legitimacy of the process and the authenticity of the final report, it compromises the security of witnesses. In Kenya, victims of post election violence have shied away from giving testimonies for fear of reprisals (KNCHR, 2008). More so, powerful figures in the corridors of power have continued to threaten those who wish to give testimony. There is unwillingness on the part of the government to offer security to those who give testimony while some of those who have given testi-

mony have been compromised to withdraw their statements (Ibid).

Lack of Power to Implement the Final Report

While the TRC often concludes with a final report recommending institutional reforms, research indicates that implementation is often compromised by lack of political will (Hayner, 2001). The history of Kenya indicates that while commissions have been formed in the past, reports have always been shelved without implementation. The implementation of the new constitution in Kenya and especially institutional reforms is pivotal in promoting a transparent TJRC in Kenya (KNCHR, 2008).

Discrediting Former Regimes and Legitimizing New Governments

The success of TRC depends heavily on political will and genuine need for transitional justice. Many TRC's have been dismissed as avenues for discrediting former regimes and legitimizing new governments (Hayner, 2001). Precisely, TRCs are not immune from political manipulation and their reports may be dismissed if they are found to be critical of new regimes while decisions to grant amnesty is aimed to protect newly formed, or fragile democratic regimes (Minow 1998: 28). For example, the Haitian and Zimbabwean TRC reports were termed as too critical of the ruling regimes and were never published while the Bolivian and Ecuadorian TRCs were regarded as too sensitive and disbanded prematurely. The Chadian and Ugandan TRCs were masked efforts to discredit former regimes while legitimizing the ruling regimes (Hayner, 2001). This revelation worries majority of Kenyans whose desire is to have a genuine, sincere, and transparent transitional justice for the welfare of the current and future generations (ICTJ, 2010).

Reconciliation for Whom

The success of TRC is an uphill task. The expressed needs of

the victims may often be irreconcilable with the national or political goals. SATRC's redemptive model is criticized for sacrificing justice and delegitimizing the popular notion of retribution (Wilson, 2001). SATRC compromised the victims hunger for justice with Africa National Congress (ANC) nation-building project. The nation-building project inhibited the promotion of a culture of human rights and the very goal of reconciliation. As Wilson asks, "Reconciliation for whom?" (2001:153). While reconciliation should facilitate the contact between perpetrators and victims, SATRC was designed to legitimize the post-apartheid state's power and construct a new political identity. This creates a conflict of what should precede what— individual reconciliation or nation building. SATRC prioritization of nation-building was based on the fact that the Apartheid regime still controlled state institutions and resources and therefore any revenge would have led to a civil war (Ibid). In Kenya, the former president and powerful political figures allied to him still control a huge part of the Kenyan economy and resources (KNCHR, 2008). The Kenyan legislature, judiciary and the executive have senior and powerful politicians who are loyal to former regimes. This makes it challenging for TJRC to make any meaningful impact in fighting impunity (KNCHR, 2008).

Merits of TJRC in Facilitating Reconciliation and Peacebuilding in Kenya

TRCs Facilitate Public Spaces, Humanization, and Dignity

Despite of the numerous demerits, TRC has its merits too, that makes it a powerful form of transitional justice. TRC creates an authoritative record of what happened, provides a platform for the victims to tell their stories and acquire some form of redress, recommends legislative, structural or other changes to mitigate past abuses, and facilitates responsibility and accountability for atrocities committed (Popkin & Arriaza, 2000). This is important for reconciliation and peacebuilding among adversaries living in the same community (Tutu, 2000). By addressing collective denials through truth

telling, the TRC process deters the relapse of injustices, impunity, and human rights abuses in the future. TRC denunciation of past injustices and those associated with them empowers the formerly marginalized, humanizing them and giving them a sense of dignity and respect (Hayner, 2001).

TRC Facilitates a Cathartic Effect

TRC facilitates the exposure of factors that nurtured impunity while at the same time facilitating restorative justice. TRC's formal acknowledgement of past atrocities is said to facilitate a cathartic effect, a feeling of recognition and a restoration of dignity whereby the story of trauma becomes a testimony (Minow, 1998). TRC has widely been acclaimed as a success story in El Salvador (Popkin and Arriaza, 1995). Truth telling illuminates and acknowledges historical injustices and structural violence, thereby enabling a foundation for structural reconstruction, democratization, and rule of law, as well as equality, social justice, and social transformation (Tutu, 2001).

TRC Facilitates Breaking of the Cycle of Impunity

TRC facilitates the breaking of the cycle of impunity, national healing, and deterrence of the relapse of violence and revenge (Hayner, 2001). TRC also facilitates empowerment of those formerly marginalized by the structures of power and the humbling of the perpetrators (Brody, 2001). Key to such empowerment is the revelation of information about the past atrocities which facilitates forgiveness and reconciliation. While individuals who want to forgive may lack information about whom to forgive, TRC seeks to establish a baseline of right and wrong, to humanize the perpetrators and to obtain and disclose previously hidden information about what happened, who gave orders, and where the missing persons ended (Minow, 1998:78). Ethnic politics and lack of political will in Kenya has hampered the efforts to fight impunity while TJRC has remained a smokescreen to cover up injustices (ICTJ, 2010).

TRC Addresses Structural Violence

TRC addresses structural violence by facilitating institutional reforms, economic reparations, and land reforms, rehabilitation of medical and educational systems thereby laying a foundation for socioeconomic and political development (Minow, 1998: 83). Collective reparations such as funds for gravestones, monuments, parks, medical and therapeutic stipends and schools named after victims and survivors are key to sustainable national healing, humanization, and dignity (Hayner, 2001).

Discussion and Conclusion

This paper has discussed "truth" as a contemporary and principal societal response to collective violence. However, the main focus of this paper is to question TRC as a mechanism of transition justice by focusing on its merits and demerits in the lens of the Kenyan context. In a bid to understand, analyse and connect the effectiveness of TRC in the Kenyan context, the history of ethnopolitical conflicts in Kenya has been discussed. The Kenyan ethnopolitical profile indicates deep rooted cleavages based on colonial divide and rule, racialized and ethinicized structures of privilege, land distribution, political alignments and alliances. Consequently, contextualized approach and complimentary transitional justice mechanisms are important in addressing the expressed needs of the victims, survivors, perpetrators, and bystanders in the Kenyan ethnopolitical violence towards facilitating sustainable reconciliation and peacebuilding.

This discussion indicates that TRC has some significant disadvantages. The process has been described as overly top-down administration and characterised by political unwillingness, as well as focused on discrediting former regimes and legitimizing new governments (Hayner, 2001; ICTJ, 2010; Minow 1998). The TRC's idea and emphasis on amnesty is highly challenged noting that it compromises justice and ignores the fact that it is the victims who have the power to forgive. It is argued that indeed non-forgiveness is also a

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virtue and that victims and survivors have the free will either to forgive or not to forgive (Wilson, 2001; Woolford, 2009). The TRC process has also been challenged for lack of authority and power to punish or even to implement the final report or finance its operations (Hayner, 2001; ICTJ, 2010; KNCHR, 2008).The TRC process is also believed to re-open the wounds of the victims and Survivors thereby re-traumatizing them (Hayner, 2001; Tepperman, 2002). Furthermore, the TRC process of public testimonies may compromise the security of the witnesses (Wilson, 2008).

The TRC process also has some advantages. The process has been described as a form of transitional justice that facilitates reconciliation among the perpetrators, victims and bystanders by digging into the past in search for truth (Brody, 2001; Hayner, 2001). It constitutes an alternative to vengeance and challenges the notion that prosecutions are the best form of response to mass atrocities (Minow, 1998). Vengeance begets vengeance; it nurtures retaliation, a notion of equivalence that animates justice. The TRC process institutes an alternative to vengeance that nurtures forgiveness, acknowledgement of past atrocities, and commitment to building new relationships (Tutu, 2001). The TRC process focuses on the victims and survivors thereby giving them a voice and empowering them. The process is said to nurture a cathartic effect, a healing and reconciliation of the past to the present in a bid to build a new future (Minow, 1998; Popkin and Arriaza, 1995). The TRC process also addresses the structural conditions and inequalities that nurture protracted violence (Hayner, 2001). This facilitates breaking the culture of impunity and creating a foundation for sustainable reconciliation and peacebuilding.

This discussion indicates that the TRC process is a necessary evil, it has advantages and disadvantages. Therefore, a TRC by itself is not a panacea for justice. Other mechanisms of transitional justice such as indigenous approaches should be used for complementary purposes. From the aforementioned, justice based on the TRC process is questionable and this

presents a challenge for the future of the Kenyan ethnopolitical violence and transitional justice. This challenge is perhaps best described by Minow (1998:87): "what is the point of knowledge without justice? Should justice or truth be the guiding aim of accountability? Is punishment through the criminal justice system a suitable means of arriving at knowledge?" Minow's assertion indicates that both truth and justice are significant in enhancing sustainable reconciliation and peacebuilding. Her slogan is, "all the truth and as much justice as possible" (Ibid). Precisely, justice requires truth and truth cannot be implemented without justice.

In sum, this discussion has indicated that while the TRC process has merits and demerits, it is an important form of transitional justice. To bridge the gaps of demerits, it is important to complement TRC with other mechanisms of transitional justice. For example, in East Timor and Sierra Leone, truth commissions have successfully been complimented by tribunals (Hayner, 2001). Brudholm (2008:7) reiterates the incompleteness and inescapable inadequacy of each possible response to collective atrocities and advocates the importance of finding an all inclusive stance where victims, bystanders and perpetrators actively participate and are actively involved in united efforts to create sustainable reconciliation and peacebuilding. This should be the way forward in addressing the Kenyan ethnopolitical violence. The TRC process is just but one track of peacebuilding and may not facilitate sustainable conflict resolution in isolation of other complementary transitional justice mechanisms. But it is also important to establish which other transitional justice mechanisms would best compliment TJRC in the Kenyan context. Therefore, contextualized and comparative research is important in establishing the impact of TJRC and the existing gaps that need to be bridged in order to facilitate sustainable reconciliation and peacebuilding (Gibson, 2004; Gibson and Gouws, 2003).

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