Restorative role of Truth Justice and Reconciliation Commission in Peacebuilding in Uasin Gishu County, Kenya

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Abstract: The study investigated the role of the Kenyan Truth Justice and Reconciliation Commission(TJRC) in as a restorative justice measure in promoting peacebuilding in Uasin Gishu County, Kenya. The Truth and Reconciliation Commission was established after the National Accord and Reconciliation Agreement(NARA) peace agreement following the 2007 post-election violence that resulted in massive human rights violations. The study assumed the Social Justice Theory as the underpinning theory. The study adopted mixed methods research design with a sample size of 590 respondents drawn from the 6 sub-counties. Data was collected using questionnaires, interview guides and focus group discussion guides. Quantitative data was analysed using the descriptive and inferential statistical tools while content and interpretive techniques were used to analyse qualitative data. The study findings revealed that despite successfully investigating and documenting the human rights violations there was no goodwill to implement the recommendations. The study recommended that the government should work towards implementing the recommendations of TJRC in addition to promoting social inclusion and participatory processes. The research findings are useful to stakeholders and policy formulators in the field of restorative transitional justice as a peacebuilding mechanism in post conflict environments.

Keywords: truth and reconciliation commission, restorative justice, peace building

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I.   LITERATURE REVIEW

A truth and reconciliation commission (TRC) is a body created by a state to probe human rights violations committed in a certain era of its history. Freeman (2006) defines a TRC as a commission of enquiry formed by the state to investigate atrocious crimes committed during armed conflict or in the reign of a dictatorial regime with the aim of unveiling the truth and recommending a way forward with the goal of rectifying the wrongs and building broken relationships. Truth finding endeavours at giving a wider picture of past human rights abuses, their nature and circumstances leading to the violations. What comes out in the various definitions of Truth and Reconciliation commissions is that TRCs are keen on ensuring that victims' are given a hearing and their grievances addressed in a structured manner.

The adoption of truth commissions as a restorative transitional justice approach has taken root in many countries that are coming out of violent conflicts particularly after a successful negotiated peace agreement (Hayner, 2001). This is because truth commissions are seen as viable tools of bringing out the ills of a past era while at the same time promoting social healing, reconciliation and national unity. This goal can be attained by recommending appropriate measures that takes care of the wounded victims as well as encouraging the perpetrators to come out publicly and apologize for their wrong doings.

According to Rosa and Philippe truth and reconciliation commissions 'are official, temporary, and non-judicial commissions in charge of establishing the facts' (2010:372). After the establishment of the facts normally carried out in tandem with the guidelines of international humanitarian and human rights laws, official reports are prepared with a clear way forward. Recommendations and remedial measures are well brought out and the truth is documented as history of a given era which cannot be distorted (Rosa and Philippe 2010).

Reconciliation as an outcome of truth and reconciliation commissions is difficult to define and even more difficult to attain thus leading to a general lack of consensual and understanding in its use and application. Donna Pankhurst (1999) is among the earliest researchers to points out at this lack of clarity in its definition. Early scholars in the field of religion viewed reconciliation as a simply forgiving and moving on (Philpott,

2012) however; this simplistic view does not take into account the serious issues that comes with gross human rights violations. Initially this seemed to contradict restorative transitional justice approaches that emphasized on the search of sustainable peace through digging back the painful past with the aim of addressing lingering historical injustices for the sake of restoring relationships and building sustainable peace.

Scholars such as Paul Lederach, define reconciliation as a "dynamic, adaptive processes aimed at building and healing" (2001: 842). Similarly, Assefa (2004) views reconciliation as a process of improving social relations by removing the injustices and restoring a just society. It is worth noting that the question of justice is closely linked to reconciliation. Bennink and Bar-Tal (2004) opine that reconciliation is a psychological process which is outcome oriented. It aims at repairing broken relationships, building mutual trust and taking care of each party's needs. This can only be achieved if both parties are cognizant of the background of the conflict and therefore participate in joint problem solving. One of the goals of transitional processes is creating the right conditions to encourage reconciliation between opposing groups, in order to promote a functioning society and prevent future conflict.

Reconciliation can have several objectives, but in the context of post-conflict peace building, a key goal is the restoration of relationships and trust among victims and perpetrators as individuals and among society as a whole (Chandra *et al*, 2009). As pointed out by Lambourne (2004) reconciliation is a critical component of restorative transitional justice and there is need to ensure that the victims feel that justice has been served to pave way for genuine reconciliation efforts.

Research on reconciliation in Sierra Leone by Stovel (2003) shows that the Truth and Reconciliation Commission (RTC) contributed to reconciliation by; one, creating an impartial and detailed historical record that humanizes the conflict, exposes and destroys myths and empowers the population, and two, affirming values and standards of democracy and human rights. Three, the TRC recommended the use of social structures and laws that enabled violence or hindered reintegration on just terms. These are useful findings but may not necessarily explain the performance of the reconciliation process in Kenya because of differences in contextual dynamics.

According to Sooka (2006), there are two levels of reconciliation which are national and community level reconciliation. At the national level, it may include the cessation of hostilities and the restoration of a peace, which allows citizens to live without fear that they will be the subject of attack or harm. At the community level, the restoration of one's status and the clarification of the truth relating to the conflict also foster reconciliation. Mobekk (2014) proposes that traditional mechanisms have a significant role to play in reconciliation and peacebuilding efforts. A good example here is the case of Mozambique which was to a large extent successful based on that particular context and the nature of the conflict in addition to a people's culture. Nonetheless, it is worth noting that the employment of traditional methods should not go against international human rights laws.

Though the Kenyan Truth Justice and Reconciliation Commission (TJRC) Amendment Act, 2013 does not have any substantive provisions on how national and community reconciliation can be enhanced, originally the mandate of the TJRC identifies healing and reconciliation as one of its key objectives (IPSTC, 2010; KHRC. 2010). It was expected that reconciliation would be achieved at two levels, individual and national (Ngari, 2013). However, it remains unclear if such reconciliation especially at the individual or community is enough to bring positive peace especially among the known conflict hotspot areas in Kenya such as the present Uasin Gishu County.

Reconciliation constitutes a holistic transitional package that contributes to rebuilding democracy (Sooka, 2006). The most significant reconciliatory intervention creates conditions of harmony in which former enemies live side by side in the certainty that the other will not harm one side. While people living together do not necessarily have to like each other, reconciliation promotes mutual respect among them as a basis for future interaction and builds social cohesion (Sooka, 2006). In this conceptual precinct, the study sought to investigate the role of reconciliation in peace building.

1.1 Theoretical Framework
The study adopted the social Justice Theory as the underpinning theory.

Social Justice Theory
The Social Justice Theory has its background in the writings of John Rawls (2001). It underscores the importance of equality and the respect of human rights and dignity as paramount to a peaceful society (Moellendorf, 2002). According to Rawls (2003), injustices, social and economic inequalities if not addressed can result in perennial conflicts and negate unity and reconciliation efforts within a state.

In this regard, the need to re-build and restore relationships among individual citizens, different communities and between the citizens and the state is critical in long term peacebuilding efforts. This theory puts forward the notion that social justice is a critical element of a cohesive society noting that violations of

fundamental rights of the citizenry can result in social conflicts. In such an environment, social cohesion, reconciliation and restoration of previously wounded relationships is likely to be achieved through acknowledging the wrongs committed and compensating those who suffered the human rights abuses. The establishment of truth commissions in post war environments is part of the wider restorative processes for building sustainable peace.

II. RESEARCH METHODOLOGY

Research Design

This study adopted mixed methodology design. According to Creswell (2007), mixed methodology involves collection and analysis of data using both quantitatively and qualitatively techniques. Data was collected using questionnaires, focus group discussion guides as well as interview schedules.

Area of Study

The study was conducted in Uasin Gishu County, named after the Ilwuasinkishu Maasai clan who initially used the area for grazing. The county is situated in the mid-west of Rift Valley Kenya, some 330 km North West of Nairobi, the Capital City of Kenya. The County lies approximately 30^0N, 4.5^0 S and 35^0 E and 20^0 W. Uasin Gishu County borders Kericho county to the South, Nandi to the South west, Bungoma to the West, and Trans Nzoia to the North. Other counties sharing borders with Uasin Gishu are Elgeyo Marakwet to the East and Baringo to the South East (Soft Kenya, 2011). Uasin Gishu is a relatively expansive county, covering an area of 3345.2 square kilometres. The County is divided into six sub-counties namely: Turbo, Soy, Ainabkoi, Moiben, Kessess and Kapseret. The major towns in Uasin Gishu County include Eldoret, Moi's Bridge, Burnt Forest, and Turbo with Eldoret town being the county capital (UGCG, 2013)**.** The county is targeted for the field survey since it has been one of the conflict hotspot areas in Kenya.

Study Population

The target adult population indicated above was such a big number to mobilise for the field survey across the county. Consequently, the study focused on an accessible population comprising of the following sub-groups: 202291 household heads, 50 chiefs, 97 assistants chiefs, 50 religious leaders and 47 council of elders for the eventual selection of a representative sample of the target population. These sub-sets comprised of informants who were perceived to be experienced and knowledgeable about the issues under study.

Sampling Strategies, Sample Size and Data Collection Methods

Target Population	Sample size	Distribution	Sampling Strategy	Data collection methods
Household heads	384	64 participants per sub-county	Simple Random Sampling	Questionnaire
Chiefs	44	7 participants per sub-county	Homogeneous Purposive Sampling	Questionnaire
Assistant chiefs	76	13 participants per sub-county	Homogeneous Purposive Sampling	Questionnaire
Religious Leaders	44	6 Muslims 16 Catholics 22 Protestants	Stratified Random Sampling	Focus Group Discussion
Council of Elders	42	6 participants per sub-county	Maximum Variation Purposive Sampling	Interview Guide

Source: Researcher, 2016

Sampling Strategy and Sample Size

For purposes of selecting a representative study sample for each subgroup, simple random sampling, purposive sampling and stratified random sampling methods were employed. Simple random sampling was used to identify 64 household heads in each of the 6 counties; the choice of this method was informed by the need to ensure that any head of a household had an equal chance of being selected as part of the study sample thus avoiding biases (Sturgis, 2016). Purposive sampling was used to identify chiefs and their while stratified random sampling was employed to select representatives from the various religious groups.

Data Collection and analysis

In this study triangulation method which is the use of different methods to obtain different but complementary data on the same topic of study. Primary data was collected through the questionnaires, interview schedules, FGD guides and interview schedules. Quantitative analysis was used for responses (data) on closed ended items of the questionnaire and the interview guide. As part of the analysis procedure, data was processed using the Scientific Package for Social Scientists (SPSS) version 16.0. The SPSS was used to generate descriptive and inferential statistics. The descriptive analysis tools generated included percentages, frequencies, arithmetic mean, mode and standard deviation.

III.   RESULTS AND DISCUSSION

Perceptions on whether TJRC promoted reconciliation and peace building initiatives The results show that 22 (4.5%) of the 486 respondents strongly agreed 33 (6.8%), agreed, 109 (22.4%) were neutral while 152 (31.3%0 disagreed and 170 (35%) strongly disagreed that TJRC promoted reconciliation and peace building initiatives in the county. The computed perception mean ($\overline{x}$ = 2.19) implies that the TJRC was largely considered ineffective in building peace in the county. The standard deviation of s = 1.145 indicates that respondents' perceptions did not spread much from the mean. This therefore confirms that TJRC's role in building peace in the county of study was largely ineffective. Perceptions on the role of TJRC are shown in table 1.1 below.

	Frequency (Percent) of n= 486
	TJRC promoted reconciliation and peace building initiatives
Strongly Agree	22 (4.5%)
Agree	33 (6.8%)
Neutral	109 (22.4%)
Disagree	152 (31.3%)
Strongly Disagree	170 (35.0%)
Mean	2.19
Standard Deviation	1.143

From the interview reports, the council of elders observed that the Truth, Justice and Reconciliation Commission (TJRC) was a good initiative though it did not bear any fruits in peace building efforts in the county. Majority of the elders expressed lack of a clear understanding of exactly what the roles and mandates of TJRC entailed. In addition, they felt that communities were not fully involved during the investigations and truth finding mission of the commission. One of the informants posed the following questions. "If you are investigating something, don't you need to call upon those who were affected or have a historical background about the issue to get the real facts?" Avruch (2010) puts forward the view that truth commissions are to a great extent victim oriented as they give them an opportunity to narrate their personal experiences. As such, truth commissions can be viewed as transformative tools whose aim is to promote healing, reconciliation and deal with the past human rights violations in a structured manner.

Majority of the focus group discussants supported the findings from the interviews with regards to lack of adequate stakeholder representation. Nonetheless, they commended the TJRC team for delivering a comprehensive report and took issue with the government for its failure in implementing the recommendations of the TJRC report. Without the completion of the process, the clergy felt that this exercise was a mere waste of scarce public resources that could otherwise have been used to compensate desperate cases of various human rights violations. One of the bishops raised the following concerns:

I can remember the TJRC team presenting the report to president in 2015 after a lot of public pressure to have it made public. Despite his promise to implement the recommendations thereafter, nothing has happened to date. This makes us think that it was just another public relations exercise bearing in mind that in Kenya, we have a history of instituting commissions of enquiries whose findings are never brought to the lime light.

Almost all the discussants agreed that reconciliation and lasting relationships between victims and perpetrators depended primarily on government redress of past injustices including the full implementation of the TJRC report. Evidently, close follow-up of TRCs processes is critical in post conflict peacebuilding initiatives; states must therefore make deliberate efforts to ensure that effective mechanisms are put in place to guarantee the execution of TRCs recommendation as part of the restoration agenda (OHCHR, 2006).

These findings reveal that JRCs was largely perceived to be ineffective in promoting sustainable peace building efforts in the county of study. This was mainly attributed to lack of inclusivity of key stakeholders during its fact finding assignments particularly at the grassroots level. Further, lack of goodwill from the government to implement the given recommendations and prosecute those accused of having participated in the human rights violations was perceived as a denial of justice to the victims. This therefore draws sentiments of lack of commitment and accountability on the part of the government in addressing historical injustices and human rights abuses necessary for durable peace.

Unlike in the study, Avruch (2010) underscores the notable outcome of the South Africa's, TRC in the country's transitional history. The remarkable success in the South African context is largely attributed to the emphasis on reconciliation. This element was however lacking or not very clear in the Kenyan TJRC resulting in the fear of retribution through the justice component among perpetrators.

Reconciliation Challenge in Peace Building
Findings on reconciliation challenges covered in this section include, stakeholders involvement in the restorative processes, government's will and negative ethnicity.
Involvement of Stakeholders in the reconciliation process
The findings cover perceptions on the involvement of key stakeholders and the local community in reconciling victims. The questionnaire survey responses are summarized in Table 1.2

Table 1.2 Perceptions on involvement of key stakeholders and the local community in reconciliation

	Frequency (Percent) of n= 486	
	Key stakeholders involved in the reconciling process	The local community involved in the reconciliation process
Strongly Agree	48 (9.9%)	44 (9.1%)
Agree	81 (16.7%)	105 (21.6%)
Neutral	111 (22.8%)	94 (19.3%)
Disagree	148 (30.5%)	130 (26.7%)
Strongly Disagree	98 (20.2%)	113 (23.3%)
Mode	4	4

Source: Field survey (2016)

The findings on key stakeholder involvement indicate that 9.9% of the respondents strongly agreed, 16.7% agreed, 22.8% were neutral, whereas 30.5% disagreed and 20.2% strongly disagreed. Majority (50.4%) of the respondents felt that key stakeholders' were not involved in the reconciliation of victims. The modal value (Mo= 4) on the same challenge was high and thus connotes that the challenge was common among respondents in the County of study.

From both the FDGs and interview schedules, the findings revealed that the level of involvement of key stakeholders was low. They reported that initially there seemed to have been a keen interest on promoting peace building efforts particular from government, however; there was no follow up and institutions had to use their own internal mechanisms in aiding restoration of relationships at the communal level. The clerics also reported that government agencies mandated to spearhead reconciliation and promote social cohesion had not effectively supported local players who already were involved in reconciling individuals and communities. Both groups however reported taking their own initiatives to bring communities together using either traditional peace building structures for the council of elders or religious principles for the clergy.

A reasonable level of representation and inclusivity in governance and decision making are essential elements of a restorative justice process; the lack of which promotes feeling of hatred towards those ethnic groups perceived to be the beneficiaries of state resources (Lambourne, 2004).

The results on community involvement show that 9.1% of 486 respondents strongly agreed, 21.6% agreed, 19.3% were neutral while 26.7% disagreed, 23.3% strongly disagreed. Evidently, majority (50%) of the respondents felt that the local community was not sufficiently involved in the communal reconciliation efforts. The related modal value (Mo = 4) precisely show the challenge was common among respondents of research. Thus, in the sampled population of study, the locals were not sufficiently involved in the reconciliation process. According to both the interview findings and FDGs, challenges over grassroot involvement were largely evident in the reconciliation process, however; individual entitles played an active role in the entire process. This corresponds with Brown and Zahar's study (2015) on the importance of social cohesion as a significant element of the peacebuilding process. Devoid of meaningful stakeholder engagement and participation, there is an obvious lack of ownership which can derail the process and the gains thereof.
Government's will to promote reconciliation
The findings in this section cover the government's commitment in reconciliation efforts. The responses from the questionnaire survey are summarized in Table 1.3.

Table 1.3 Perceptions on government's will to promote reconciliation

	Frequency (Percent) of n= 486
Strongly Agree	40 (8.2%)
Agree	129 (26.5%)
Neutral	101 (20.8%)
Disagree	132 (27.2%)
Strongly Disagree	84 (17.3%)

	Frequency (Percent) of n= 486
Strongly Agree	40 (8.2%)
Agree	129 (26.5%)
Neutral	101 (20.8%)
Disagree	132 (27.2%)
Strongly Disagree	84 (17.3%)
Mode	4

Source: Field survey (2016)

Table 6.4 shows that 8.2% of 486 respondents strongly agreed, 26.5% agreed, 20.8% were neutral, while 27.2% disagreed and 17.3% strongly disagreed that the government showed willingness to promote reconciliation efforts in the county of study. As such (44.5%) of the respondents expressed dissatisfaction with the government's efforts in promoting reconciliation efforts within the county. Only (24.7%) of the respondents believed that the government had demonstrated willingness to support reconciliation efforts in the county. The computed modal value (*Mo* = 4) suggests that government will was widely perceived as lacking.

The FGDs revealed that there lacked commitment from the successive governments to address issues of historical injustices. In particular they singled out the belated implementation of the Truth Justice and Reconciliation Commission report (TJRC). It also emerged that credibility concerns over the initial challenges the commission faced with regards to the integrity and composition of its commissioners and particularly the chair whose role in the Wagalla massacre was questioned. Even though truth commissions are applauded for giving a voice to the voiceless, Mobekk (2007) concurs with this study's findings; using the example of the Haitian National Truth and Reconciling commission, he argues that on many occasions, recommendations from truth commissions have largely been ignored resulting in disappointment within the populace who were hopeful for justice from this process.

Most of the Clerics were also concerned about the lukewarm attempts to restrain those accused of committing various human rights violations from holding public offices. They attributed this to lack of political goodwill since some of the perpetrators were still very powerful and influential in government. The analysis above implies that there seems be lack of goodwill from the successive governments in addressing past human rights violations conclusively. This can be pegged on the fact that recommendations from various commissions of enquiry on this subject still remain largely unaddressed. The fact that some of the persons mentioned in these reports as having taken part in the violations being high ranking government officials could be the reason behind the inaction from the government. Consequently the public consider these exercises a waste of tax payers' money that would have been used in service delivery to the people.

IV.   CONCLUSION

Reconciliation of the various communities in the post conflict peace building process required the participation of all the stakeholders ranging from the government, civil society, religious leaders, community members as well as the private sector. However, the level of participation showed that community leaders such as religious leaders and council of elders were visibly involved in the reconciliation efforts in the communities of study while national and community level dialogues initiatives registered low adoption rates as reconciliation strategies among the affected communities.

V.   RECOMMENDATION

The government should conclusively address historical injustices by implementing the recommendations from the various commissions that have been mandated to investigate past human rights abuses. Specifically, recommendations of the Ndungu Land Commission and the Truth Justice and Reconciliation Commission (TJRC) should be addressed conclusively. In addition, the government should fully implement the item number 4 of the National Accord and Reconciliation agreement (NARA) which dwells on reforming key governing institutions.

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