



The Kenyan Truth Justice and Reconciliation Commission (TJRC) and Redress for the violations experienced by victims

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ABSTRACT

This study presents the context of the Kenyan transitional justice process and scrutinises its objectives, the processes put in place to undertake TJRCs mandate, the political interference and controversies surrounding the TJRC Process, the submission of its final report to the President, and the implementation of the recommendations made in the report. The research findings demonstrate that victims and other stakeholders who were interviewed by the researcher felt that the commission's work did not effectively address the violations experienced by victims due to, among other reasons, structural limitations of the commission and political interferences, with the latter also relating to the final stage—implementation of the commission's recommendations—which has not been carried out. The article also presents the views of victims and other stakeholders concerning the inconsistencies in President Kenyatta's apology and the TJRC's recommendation for official apologies vis a vis the overall implementation of the TJRC report. The article then discusses how redress for the violations experienced by victims directly affects the socio-political stability of Kenya with adverse consequences for the success of the transitional justice system. Finally, the article presents a summary of the findings of the data collected through field research and discusses both the statistical and analytical presentation of the findings according to the research questions provided.

Keywords: *Transitional Justice; truth commissions; Victims violations; political apologies.*

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INTRODUCTION

It is claimed that the transitional justice approaches a society employs in dealing with past crimes play a critical role in determining the success or otherwise of the transition from conflict to peace or from a repressive regime to a liberal one [1; 2]. The Kenyan Truth, Justice and Reconciliation Commission (hereafter just TJRC) is considered a product of political negotiations and the professed aim of putting victims at the centre of the process [3; 4]. The challenges, limitations, inactions and, utter disregard concerning reparations, psychosocial support needs and land injustices for victims not only violate the principles of the transitional processes but also betray the spirit of the political negotiations which created such a commission[5; 6]. In addition, symbolic mechanisms like apologies, although recommended by the commission and later issued by the President, have been criticised as vague and insincere, with claims of hypocrisy and a failure to take genuine responsibility on the part of the apologisers, considering the way in which redress for victims' violations have been stalled through non implementation of the TJRC report and cases of delayed or ignored reparations [7; 8; 9; 10]. Even though these problems serve to question the effectiveness of truth commissions regarding redress for past human rights violations, these are not new gaps. However, the ongoing popularity and consideration of truth commissions as preferred mechanisms for dealing with past human rights abuses within transitional states [11] require critical analysis from the standpoint of victims' violations. In undertaking these discussions, therefore, this research problematises the popularity and continued establishment of truth commissions in transitional societies by presenting findings of an empirical and descriptive study of the Kenyan TJRC in relation to redress for violations suffered by victims. Thus, this study identifies and explores the following research questions in an attempt to address the research problem.

- 1 How effective was the Kenyan TJRC in addressing violations suffered by victims of historical injustices?
- 2 How significant was President Kenyatta's official apology to the victims and the Kenyan people?
- 3 What effects does lack of redress for victims' historical violations have on the socio-political stability of Kenya?

To put these research questions in context, first, the study strived to explore how the TJRC addressed the subject of victim's violations – including the identification of victims, listening to their stories, their needs, and their opinions concerning what delivery of justice would mean for them, and lastly whether the agreed goals relating to historical violation of victims human rights were achieved. Therefore, in evaluating the effectiveness of the TJRC, the study

examined the opinions of victims both at the inception of the truth commission and after the conclusion of the commission's work in relations to redress for victims' historical violations.

Secondly, part of the objectives of a truth commission is the subject of accountability both of the perpetrators of historical human rights violations as well as that of the leaders who are tasked with responding to the needs of victims and guaranteeing non-repetition of such violations. Therefore, this research examined the role President Kenyatta's apology played in relation to the objectives of the TJRC. It examines the significance of apologies to victims in the context of their evaluation of the effectiveness of a truth commission. This is because, the role official apologies play in contributing to redress for historical injustices remain a contentious issue. Many scholars who have analysed demands for apologies by victims and other stakeholders in post-conflict societies associate them with the goal of reconstructing damaged relations and creating a morally sound foundation for societal reconciliation and sustainable peace [12; 13]. Even though official apologies have gained significant popularity in the past several decades [14], their value in contributing to societal reconciliation and peace in transitional societies remain debatable. On one side, victims see apologies as necessary in helping them find closure for the violations suffered and also as a show of responsibility from the perpetrators and or the authorities, while on the other hand some political leaders and other people in positions of authority have been accused of using apologies as a way to put the past behind quickly and move on [13]. This study in particular, sought to examine the expectations of the recipients of official apologies in the Kenyan case.

The TJRC as a mirage of hope

Kenya's Truth, Justice and Reconciliation Commission (TJRC) was a classic example of a transitional realist approach to dealing with historical human rights violations [1]. The TJRC was established following the horrors of the 2007/8 Post-Election Violence (PEV) that erupted from a disputed presidential election [4]. The TJRC was thus, a negotiated transitional mechanism having evolved from the process of mediation led by former UN Secretary-General Kofi Annan and the panel of Eminent African Personalities [15]. The mediation process had been created under the framework of the Kenya National Dialogue and Reconciliation Committee (KNDRC), and had all the characteristics of transitional realism, since the mediation team decided to address the root causes of historical conflicts in Kenya by giving room to local ideas, political opinions, and cultural traditions [16; 1]. The creation of a truth justice and reconciliation commission (TJRC) presented an opportunity to investigate and address historical violations, and a coalition government from the two warring political parties was agreed [17].

According to Teitel [1], compromise policies fall within considered mechanisms for transitional realism, whose proponents give precedence to the prevailing circumstances of the transition, as opposed to the transitional idealists who emphasise accountability for past crimes through the provisions of international human rights law, without regard for the effects such legal processes can have on fragile states. The confusion, bloodshed and destruction that had been caused by the PEV led to the realisation that Kenyan society remained ethnically and politically divided with an urgent need to reconcile past injustices—characterised by gross violations of human rights, abuse of power and misuse of public office—if the country's future was to be stable [18]. By recommending a truth commission approach, therefore, the mediation team had taken into consideration key transitional realist principles like investigating the root causes of historical conflicts and giving room for local ideas and traditional ways of dealing with such issues. In so doing, the mediation team hoped that the local conflict resolution mechanisms would promote local ownership and that the resolution processes would also become inclusive of both the victims and the offenders [3].

Soon after the mediation team had made their recommendations to the two parties—the government and the opposition—the National Assembly moved swiftly to enact the Truth, Justice and Reconciliation Act – TJRC Act of Kenya 2008 – on 23 October 2008. The Act received Presidential assent on 28 November 2008 and came into operation on 17 March 2009. The TJRC was inaugurated on 9 August 2009 with a two-year operating period and an initial three-month grace period as an establishment phase for the commission [19]. The broad mandate of the Commission was to: inquire into any gross violations of human rights and historical injustices that occurred in Kenya from 12 December 1963, when Kenya became independent, to 28 February 2008, when the coalition agreement was signed; determine means of redress for victims; and, lastly, to recommend appropriate resolution of such violations including reparations for victims [19]. According to the commission's own report, its mandate of investigating human rights violations between 1963 and 2008 was one of the least contentious issues because there was a general acknowledgement among Kenyans that effectively addressing violations within the mandate period would place the country back on a recovery path and facilitate necessary reforms in the government [20].

Before the TJRC could embark on what became a lengthy and bumpy process of executing their mandate, however, fierce infighting emerged within the ranks of the commission, alongside objections from various stakeholders about the roadmap for the process, and even confusion from the victims and Kenyans in general about the real benefits of a truth-telling process. Soon after the commission was established, reports of funding delays, critical media coverage and lack of support from key local and international partners rocked the TJRC [17]. The commission also faced a number of

crippling credibility issues, which according to Bosire [21], pointed to some behind the scenes schemes to disrupt the operations of the TJRC. For instance, Bosire [21] asked how, despite a meticulous selection process, allegations of credibility issues could emerge against key commissioners immediately after their appointment. The first commissioner to face a credibility question was the chairman, Ambassador Bethwel Kiplaga, who was accused of having played a prominent role in the previous regime under President Moi to the extent that he should have been a subject of investigation and not the investigator of human rights abuses [17]. The Chairman fought fiercely to clear his name but was soon compelled to step aside in order to allow for investigations as to his culpability. Interestingly, the vice-chair, Mss Betty Murungi, who was a prominent human rights and transitional justice expert having worked for the Sierra Leone TRC, also resigned from the commission, leaving the TJRC with people whose backgrounds were unknown and resulting in a number of civil society groups demanding that the entire TJRC be disbanded [22]. Despite all these challenges, the commission eventually got their act together and embarked on the task of addressing historical human rights violations in the country. Questions are whether they were able to address the challenge of historical injustices as per their mandate and what implications the stalling of the final phase of the process – implementation of the TJRC report – is on the interests and needs of victims of historical injustices.

The TJRC recommendations have not been acted upon nearly ten years since the report was submitted to the President, and no substantial progress has followed to ensure implementation of the recommendations made in the report. It is interesting to note that an eventuality of this nature, where the findings of the truth commission would be ignored, or its implementation frustrated, was foreseen by the drafters of the TJR Act of Kenya 2008. Guided by past experiences of similar commissions around the world, where the task of realising the gains anticipated from such commissions was entrusted to other actors who often failed to follow through with the recommendations made, the Act was drafted in such a way as to attempt to seal this loophole [4]. The Act clearly spelt out measures that would be undertaken by various bodies and institutions in furtherance of the gains made by the truth commission [4]. Section 48 subsection 1 of the (TJR) Act of Kenya 2008 states that; the TJRC “shall present the final report of its work to the president” and formally publish the report in the gazette and at least three local dailies with significant national circulation to ensure public access to its content [23]. Procedurally, the term of the commission was envisaged to end at this stage—with the publication of the report—so that it would now be up to the other institutions of government to further the objectives of the transition. To avoid a situation where recommendations were shelved or ignored by government agencies tasked with the responsibility of implementing them, however, the Act created further safeguards to ensure that the recommendations were implemented, by crafting a roadmap for its next phase.

Signs of negativity towards the report and its recommendations were seen just days after the report was presented to the President, with the International Centre for Transitional Justice (ICTJ) attributing its stalled implementation stage to the fact that “some of the perpetrators named in the report still hold public office” [24]. Subsequently, the provisions of the TJR Act were not observed and the issue was shelved by the government. A consortium of civil society groups under the umbrella name of the Kenya Transitional Justice Network (KTJN) gave a press statement on 21 June 2013 urging the attorney general to “immediately table the TJRC report before parliament” so that it could begin its journey towards implementation [25]. The advocacy by the KTJN group was echoed by several other political leaders from the opposition, as well as a section of the religious community. As a result, the TJRC report was presented to parliament and formally tabled on 24 July 2013. An important note here, though, is that the tabling of the report in parliament was done five weeks past the timeline set in the TJR Act of Kenya 2008 [18].

Even after tabling the report in parliament, the government has ignored calls to present the report for discussion and subsequent adoption by parliament, as is required by law before other mechanisms of implementation can begin. Instead, there has been sustained campaign by individuals and some government-friendly institutions to discourage the implementation of the TJRC recommendations, citing fears of a witch-hunt and possible re-emergence of conflict [26].

Research philosophy

This study adopted pragmatism – a non paradigmatic philosophy, a position that assumes an independence of methods [27], embraces pluralistic approaches to consolidate knowledge about the research problem and focuses on the actions, situations and consequences of that problem [28]. Instead of concentrating on the methodological context of data collection, therefore, this approach lays emphasis on the research problem and applies all perspectives to understand that.

Research Design: Mixed Methods Research

By applying the pragmatic approach, this study rejected the contrast between different research paradigms and the supposed dualist approach to research, by committing to uncertainty and an acknowledgement that any knowledge produced through research is relative and not absolute. Committing to uncertainty in this context is an appreciation that relationships, structures and events in the social world are vulnerable to changes depending on unpredictable circumstances [27]. Mixed methods research was therefore adopted because it allows the use of both the quantitative and qualitative data collection methods [28]. Pragmatism is relevant to mixed methods research because it offers a chance to

produce a properly integrated methodology for a social inquiry that appreciates the knowledge produced in furthering our understanding of society and the social world. Furthermore, by acknowledging the dynamisms of human nature, pragmatic researchers become more adaptable and open to the emergence of unforeseen data, which reminds researchers of their responsibility to stay curious while undertaking social research. For example, conducting research in and/or about a conflict situation may present both the researcher and respondents with challenges they must practically address in relation to physical or social realities [29]. Mixed methods research addresses such circumstances by being flexible and by scrutinising applicable methods, physical and social needs, as well the social issues affecting the society and potential research participants and what such issues mean to the research and for that society.

Data Collection

Since this research involved primary data collection as the main approach for the inquiry, data collection for this study involved four data collection methods, namely: documentary method, structured questionnaires – which were used to collect empirical data on the views and opinions of the Kenyan public, Key Informant Interviews (KIIs) – which were used to collect the opinions and views of government, political, private sector civil society and even religious leaders, and lastly, Focus Group Discussions (FGDs) – used to collect the views of victims. Field work data was considered to be the most applicable for this research for two main reasons. First, the Kenyan truth commission is quite recent and therefore literature about its evaluation and discussion are minimal. Secondly, the fact that the researcher is a Kenyan provided an opportunity to conduct field data collection with minimal challenges.

SAMPLING METHODS

Being a mixed methods research, sampling strategies employed both probability and purposive sampling techniques. The probability sampling method was applied for data collection where members of the public were targeted through structured questionnaires. Probability sampling techniques are mostly applied in quantitative data collection processes where the probability of inclusion for every member of the population can be ascertained [30]. Probability samples, therefore, aim to achieve representativeness of the wider population. But, since the objective of employing probability sampling was to investigate public opinions in a national context, multiple probability sampling, which involved three probability sampling techniques were combined, to generate target respondents for the research [30]. In this technique, the first stage involved cluster sampling to define specific geographical locations where data collection would be conducted in Kenya. Three out of the forty-seven counties in Kenya were targeted, namely: Uasin Gishu in the greater Rift valley, Kisumu in the western part of Kenya, and Nairobi which is the capital of Kenya. The choice of these counties was based on the history of conflict and violence in those counties, while Nairobi was chosen based on its proximity to the political and government leaders targeted.

The second stage of sampling involved identifying units of interest. The researcher was keen to ensure that the sections identified for random sampling of respondents for structured questionnaires would be representative of the entire region based on the population density and the most cosmopolitan areas of the region. The final stage involved randomly sampling the members of the public from the units identified in stage two in order to identify the research respondents for structured interviews. Each of the two counties – Kisumu and Uasin Gishu – where structured questionnaires were administered, were divided into two units namely, town and rural areas where respondents were identified. In Kisumu, structured interviews were done in Kisumu town itself between the 2nd of February and 4th of February 2017, and in a rural community called Kopere in Muhoroni Constituency on the border of Kisumu and Nandi counties where interviews were conducted between 6th February and 8th February 2017. In Uasin Gishu, the structured interviews were conducted in Eldoret town from 13th February to 15th February 2017, and Turbo which borders Trans-Nzoia county from the 20th to 22nd February 2017.

A purposive sampling technique was employed for the qualitative component of the research. Through this technique, the unique case sampling method was used since, the research questions are political and targeted specific respondents [30]. Key personalities—political, religious, civil society leaders and government officials—were targeted with the key informant interviews (KIIs), while the victims of historical injustices—purposely mobilised through their networks and groups—were engaged through focus group discussions (FGDs).

Sample population

Two counties—Kisumu and Uasin Gishu—were targeted for quantitative data collection administered through structured questionnaires. The sample population was therefore calculated by summing up the total population of the residents in the two counties as per the record of the Kenya Populations and Housing Census of 2009. Kisumu County has a population of 968, 909 while Uasin Gishu county had 894, 179 [31]. The total sample population was therefore 1,863,088.

Sample size

A formula by Yamane was used to calculate sample size for quantitative data.

$$n = \frac{N}{1 + N(e)^2}$$

$$\begin{aligned} n &= 1,863,088 / (1 + 1,863,088 (0.05)^2) \\ &= 1,863,088 / 4,658.7 \\ &= 399.9 \\ &= 400 \text{ respondents} \end{aligned}$$

Where:

- **n** is the sample size,
- **N** is the population size, and
- **e** is the level of precision/ margin of error.

DATA PROCESSING AND ANALYSIS

When applying mixed methods to the processing and analysis of the collected data, the researcher began by examining the research questions and considering what strand of data would help answer the respective questions.

Through the use of the concurrent or parallel mixed methods data analysis, data analysis involved two separate processes, namely quantitative analysis of the structured questionnaire data using descriptive statistics for the appropriate variables and qualitative analysis of the interview and focus group data using thematic analysis related to corresponding narrative data. In the parallel mixed methods model, both strands of data are analysed independently to answer confirmatory and exploratory questions respectively [32]. Therefore, it is not necessary that the data from both strands should be integrated before or during analysis. Even though the two sets of analysis are independent, however, each contributes to answering all or particular research questions. Since this study employed four different data collection methods (structured questionnaires as a quantitative strand of data and key informant interviews, focus group discussions and documentary research methods, as qualitative data) each one of the four methods was applied independently throughout the research because they each targeted specific respondents. After data analysis was concluded for each method, however, the inferences generated from the findings were integrated to create meta-inferences at the end of the study. Data collection and analysis for this study involved innovative techniques at all levels, since the researcher developed knowledge of reality through distinct yet interrelated assumptions. Since this study used documentary data collection as one of the methods.

Presenting Results from the Field Research

As already outlined above, the field research applied the mixed methods research design. Thus, both quantitative and qualitative data was collected and analysed. Quantitative data collection was done in Kisumu and Uasin Gishu counties of Kenya, where a total of 400 people were interviewed through structured questionnaires. Qualitative data collection was done through Focus Group Discussions (FGDs) in Kisumu and Eldoret towns, and Key Informant Interviews (KII) in Kisumu town (Kisumu County), Eldoret town (Uasin Gishu County) and in Nairobi (the capital of Kenya). Two FGDs were conducted, one in each town, composed of those who considered themselves as victims of past human rights violations in Kenya. They represented those whose relatives were victims of police killings, victims of ethnic and/or political violence, land evictions and dispossessions, and 2007/8 post-election violence victims. The Kisumu focus group had 11 participants and was conducted on the 10th February 2017 at St. Stephens cathedral grounds in Kisumu while the Eldoret one had 12 participants and was conducted on 24th February 2017 at the St. John the Baptist Pastoral Centre. A total number of 23 victim respondents were therefore directly interviewed. Twenty-five Key Informant Interviews were conducted with political leaders, government officials, religious leaders, academics and civil society leaders (see table 2). All the data collection tools were designed in such a way that the data collected would contribute to answering the research questions of the study. Findings of this research are presented chronologically based on the research questions. First, the socio-demographic characteristics of respondents interviewed through structured questionnaires and Key Informant Interviews are presented and discussed. Thereafter, findings for each of the research questions are analysed and relevant data answering the questions presented.

Table 1: Socio-Demographic Characteristics of respondents

Socio-Demographic Characteristics	Frequency (n)	Percentage (%)
Gender		
Male	230	57.6
Female	170	42.4

Religion		
Anglican	110	27.5
Catholic	170	42.5
Muslim	46	11.5
ATR	32	8
Others	42	10.5
Marital Status		
Married	184	46
Single	104	26
Separated	37	9.25
Widowed	46	11.5
Divorced	29	7.25
Level of Education		
No Education	20	5
Some Primary	24	6
Finished Primary	60	15
Some Secondary	64	16
Finished Secondary	132	33
Tertiary	54	13.5
University	46	11.5
Occupation		
Farming	92	23
Teacher	35	8.75
Civil servant	20	5
Business	196	49
Others	57	14.25
Approximated Monthly Income		
KES 500 or Less		
KES 600 – 1500	36	9
KES 2000 – 5000	67	16.75
KES 6000 – 10000	73	18.25
Above 10000	104	26
	120	30

Table 2: Category distribution for Key Informant Interview Respondents

Category	Frequency (n)	Percentage (%)
Religious leaders	4	16
Non-Government Organisations	8	32
Political leaders	7	28
Government officials	4	16
Academicians	2	8
Total	25	100

The demographics of the questionnaire respondents was a randomly sampled one. The researcher had hoped for a possible equal representation in terms of gender, though the difference was influenced by the willingness of sampled respondents to accept to be interviewed. 57.6% male and 42.4 female respondents were interviewed. In terms of religious representation, respondents were from all the major religions in Kenya. Other characteristics like education level, occupation and income levels were also considered as proportional to a random sample of members of the public in an urban setting. Even though the research cannot authenticate that the demographic information given by the respondents was accurate, especially their religions, occupations, education or income levels, the accuracy or otherwise of such information was considered as having no effect on the research, since such information did not directly relate to the research problem.

The accuracy of the demographic information for the key informants was significant to the research because, sampling for the key informants was purposive. Specific members of Kenyan society whose knowledge, skills, positions, or roles made them relevant to the research problem were the target audience. Furthermore, the distribution of the Key informants in terms of their roles in society was also of significance. As a result, out of the 25 Key informants, their distribution (see Table 2 above) was considered proportional and adequate to address the research questions.

On the effectiveness of the Kenyan TJRC in addressing the violations experienced by victims from historical injustices.

Pursuant to the Truth Justice and Reconciliation Commission (TJRC) was expected to facilitate sensitisation and education to the public about its purpose, mandate and objectives [33]. The commission was also expected to enact such procedures and mechanisms necessary to guarantee the integrity, credibility and effectiveness of its work [33]. Out of the 400 respondents interviewed, 70.0% said they considered themselves victims of past atrocities, while 30% considered themselves as non-victims (see Figure 1). This was not anticipated since the 400 interviewees were sampled randomly to gather public opinion about the TJRC. However, the fact that all 70% of the respondents regarded themselves as victims can be attributed to a number of reasons. First, since the clusters targeted for data collection were from the most affected regions of the country, it is possible that most residents were affected in one way or another. Secondly, since a number of victims, especially victims of the 2007/8 PEV, migrated to their native regions, a number of those reached by the research may have been such people. Since the researcher did not have any way of verifying this, data was recorded as per the respondents’ answers.

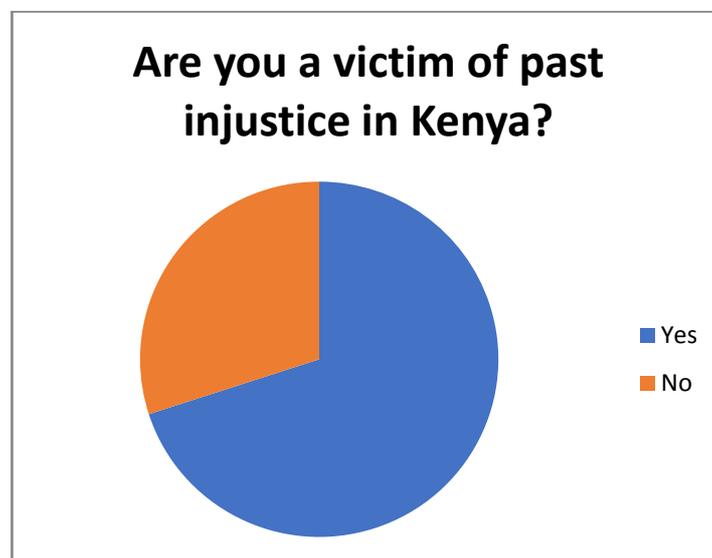


Figure 1: Victims of past injustices in Kenya

Only 28.5% of the respondents interviewed through structured questionnaires had knowledge of the TJRC while 71.5% reported having no knowledge of the TJRC. This presented an interesting dynamic because knowledge of TJRC was key to the respondent’s subsequent answers to the questionnaire questions. Therefore, the researcher resorted to giving a description of the activities undertaken by the TJRC in order to gauge whether the respondent knew of TJRC through their roles. Ultimately, it was established that the respondents did know about the TJRC and their activities but some of them could not relate with the name of the commissions, that is, Truth Justice and Reconciliation Commissions. Indeed, some of the respondents referred to it as “Kiplagat commission”, as a way of association with the embattled chairman, Mr. Kiplagat. The majority of respondents in this study stated that the transitional justice system in Kenya, that is the TJRC process, was ineffective in dealing with historical atrocities. Only 41.5% of the respondents interviewed agreed that TJRC process was effective in addressing the historical atrocities in the country while 58.5% of the respondents said that the TJRC was ineffective (see Table 3. As can be noted here, the number of respondents who reported having no knowledge of the TJRC contrasts with the number who reported that it was ineffective. I argued that this may have been caused by the limited outreach programmes conducted by the TJRC.

Table 3: Effectiveness of TJRC in Kenya

	Yes		No	
	N	%	N	%
Knowledge of TJRC	114	28.5	286	71.5

Effectiveness of TJRC for historical injustices	166	41.5	234	58.5
Knowledge of recommendation in TJRC report	165	41.25	235	58.75
Heard of President's official apology	172	43	228	57
The apology accepted	148	37	252	63
Significance of official apology	167	41.75	233	58.25
Support emergence of Victim-Identity groups	270	67.5	130	32.5
MCAs representing the interest of Victims	134	33.5	266	66.5
MPs representation of the interest of Victims	165	41.25	235	58.75
Senators representing the interest of Victims	156	39	244	61
County Government addressing the needs of Victims	136	34	264	66

While responding to an interview question about whether the TJRC was the best approach for addressing historical injustices in Kenya, one of the respondents in Kisumu who heads a governance Non-Governmental Organisation (NGO) could not give a yes or no answer but questioned the relevance of instituting a system of truth telling without absolute assurance that redress will be delivered after the investigations are concluded. An excerpt from an interview transcript with a leader of a local under code K25

“...when you make Kenyans speak, you spend their taxpayers’ money, some people had forgotten these things but you reminded them of their horrific pastwe have actually done more harm to these people, and after spending all the millions of shillings then we come back to say we are sorry without any form of restitution?... I don’t think that is something that is acceptable...”

The truth commission in Kenya may have been seen as ineffective because of the credibility issues which rocked the commission at inception and failure by the government to institute mechanisms for implementing the TJRC recommendations. Furthermore, there are widespread allegations in Kenya that some chapters of the report were expunged from the final document. A women’s rights organisation leader code K21, asked why the commissioners had to tamper with the chapter on land, said.

“We are aware that a very significant part of the chapter on land injustices was deliberately removed from the final report TJRC presented to the President. Given the Kenyan history on conflicts and killings, Land has always played a significant role in fuelling such conflicts. So, if TJRC was really interested in dealing with historical problems in Kenya, they shouldn’t have interfered with the chapter on land. That alone killed any image of effectiveness TJRC may have created during the process...”

Similar sentiments were recorded from the victims interviewed through the FGD based in Kisumu. The majority of the participants questioned how effective the TJRC could be when they are still living in camps, their issues remain unresolved, including those whose family members were killed and those who were evicted from their residences. The stalled implementation of the TJRC recommendations also featured prominently in the focus group discussions and it became a painful and emotional issue. An FGD participant with code F25 posed a question:

“What is effectiveness.....? I thought something is effective if it addresses the issue at hand.have past violations and root causes of conflicts been addressed? I have not been resettled in my husband’s land which he bought in my presence and whose title deed I have even today.....so what was the function of that TJRC?”

Another FGD participant of code F13 questioned why the government established the TJRC if they did not want to implement its recommendations. She gave this observation:

“You know some of these NGOs mobilised us here to go and give our views in a public hearing in Kericho. We thought we were going to be helped. We were very motivated, and we decided to go and give our views. But seven years later, we haven’t even heard from those who gave us microphones to talk about how we suffered.....the only thing I was given is a bottle of water and soda, I will never accept to be used by such people again...let me just live my life the way God wants it to be.....”. (She was shedding tears and sobbing, she stopped talking)

The dominant finding regarded the perceived effectiveness of the TJRC in addressing the violations experienced by victims was that it was ineffective and had failed to deal with such violations in Kenya. A number of other factors may

have led to this finding. First, the fact that the TJRC recommendations have not been implemented, and that the actual findings of the report are still not summarised and disseminated to Kenyans so that the public can actually know what the TJRC found. Secondly, the credibility issues the commission faced and the fact that those who ended up running the commission were people whose backgrounds were not very clearly known by most Kenyans may have generated some form of pessimism in so far as its achievements could be. In the Eldoret FGD, a participant with code F16, who was evicted from her home because she came from a minority tribe in the area asked how she can even know what the TJRC found when she cannot read or comprehend the English language, yet the TJRC newspaper supplement was done in English. She asked in Kiswahili:

“...mimihatasiwezi soma kizungu...nitajuavipikama mambo waliandikahaponimaboyao ama nivitutuliwaambia?”

The direct translation of this is, “I can’t even read English...how will I know what they have written in those reports are their own issues or they are the things we told them?”

It should be noted that the Kenyan transitional justice process in general is incomplete given the fact that the recommendations have not been opened up for implementation [17]. Whether or not the TJRC was effective in addressing the violations experienced by victims could not therefore realistically be evaluated from this field data since the victims are yet to experience the actual recommendations the TJRC made concerning their violations. One of the senior politicians in Kenya who was interviewed under code K13 said on the issue of the effectiveness of TJRC:

“my brother...these are political initiatives whose effectiveness cannot be quantified. You want to tell me that TJRC was supposed to be effective? In addressing what?”

I interjected and said, “the violations of victims, especially those whose loved ones were killed, or those who were injured or those whose properties were destroyed!”. He, grinned, sank back on the chair and said:

“I don’t think even the identification of those victims can be effectively done.... leave alone addressing their violations. There are already claims of ethnic favouritisms on resettlement of IDPs who were displaced during the 2007/8 post-election violence...if that alone is becoming a challenge to deal with, how can the government effectively address the victims sufferings...yet that government is also led by politicians ...some of them even rumoured to have been behind such historical violations?..... I think something will be done but I don’t think it will be effective.”

The views of that politician were very consistent with some of the political challenges that truth commissions and the South African TRC in particular faced during the implementation of their recommendations [5]. There were claims that the post-Apartheid ANC government drastically reduced the reparations which had been recommended for individual victims [34; 5], and, as we will see in the next chapter, most victims of apartheid still feel that the TRC gave them a raw deal. The effectiveness of the south African TRC in addressing the violations experienced by victims is presented in the next chapter.

On victims’ perceptions of President Kenyatta’s apology for historical violations

Even though official apologies were recommended by the TJRC in their final report, this was a new concept in Kenya. Official apologies are not regularly used by Kenyan leaders and so the research set out to investigate the socio-cultural and political significance of President Kenyatta’s apology, both to the victims and Kenyans in general. The majority of the respondents, 57%, did not know about the apology made by the president and only 41.75% agreed that the apology had significance in addressing historical injustices in Kenya while 58.25% felt the apology was insignificant. The same feeling was reflected in the question as to whether or not the respondents accepted the president’s apology. 37% said they accepted the president’s apology made on behalf of the government, while 63% rejected the apology, some terming it as inconsequential, a public relations exercise and a mockery to the victims whose plights remain unaddressed (See table 3).

Key Informant Interviews with senior political and religious leaders in Kenya even implied that the apology was more hypocritical than genuine. A senior religious leader from a popular religious institution in Western Kenya—informant code K07—when asked his opinion about the President’s official apology, responded as follows:

After a long pause he said, “.....it was okay... It was fine... To me it was fine, but you see it was just words.... It was just words but... No action.....No action (chuckles)...because from the time he gave the apology,...there has been nothing to follow it up,...or to even support the victims... a terrible precedent”.

From the response, one can clearly note that the informant was struggling to relate the objective of an apology and perhaps the expectations of society. This, of course, is a situation and society specific phenomenon. Given the history of the issue in question, however, the informant did not say that the apology was insignificant but, found the apology incomplete. That was an interesting twist because it implied that had the president followed up the apology with some practical response, then maybe the apology would have had some significance for him. Once again that poses more questions about what exactly the role of such apologies is, and at what level they should be issued.

An academic with informant code K16 was more categorical in his answer, however. He said that the president's apology was not significant given the circumstances through which it was issued. According to him, apology or no apology the most important factor should be that leaders commit to addressing the historical violations in order to free the country from such retrogressive memories. He said:

"...you know the context in which an apology is given also defines the seriousness or how the public are supposed to receive that apology.....while that particular apology might have been seen as a step in the right direction, it was not consistent with an elaborate or progressive process of implementing the Truth Justices and Reconciliation Commission (TJRC) report. Why was it given? It was more or less a political statement and not in line with the intention to comprehensively deal with the ugly past...what is the justification? The president and his MPs are sitting on the TJRC report, the victim groups are all over advocating for the TJRC recommendations to be implemented then the President apologises just like that? ...".

His views emphasise the arguments the researcher made earlier while examining President Kenyatta's apology by asking whether the apology was meant to facilitate closure or act as a cover up in order to ignore the TJRC's recommendations. Such positions were consistent with the views of the participants of the focus groups who were emphatic and unanimous in their rejection of the president's apology. No single participant said or showed any form of positivity while commenting about the apology. As an example, the participant with code F08 in the Kisumu FGD reacted as follows concerning the president's apology:

"That apology was just for getting political favours, so that it may look like he has asked for forgiveness.... yet since he became president, so many victims of the 2007/8 post-election violence have died because of trauma. The president and politicians from his party are still saying things that continue to divide the country, incite ethnic hatred... they have continued to destroy Kenya.... both the opposition and the government are carelessly throwing inciting and irresponsible words even before children. What was he sorry about? Why was he apologising if he was to continue running the country through ethnic division?"

Another victim participant of the FGD under code F02 just started talking impulsively (without seeking an opportunity to speak as was the norm in the discussion):

"Maybe he wanted to be like other people, ... I mean other people are apologising...I saw the TV guy saying how apology is an important thing and that leaders should apologise so that people can live in peace..... I just don't know how that apology will make me live in peace with those people who chased us like dogs from Kipkelion (a small town in Rift valley region of Kenya)".

The significance of official apologies was also argued to be culture specific, so much so that their political appropriateness is seen as dependent on cultural variability. One of the opposition Members of Parliament interviewed under code K19 questioned the need for an apology to people who are dead or those who lost loved ones:

"Will that apology by President Uhuru bring back the dead or provide for the children whose parents were killed? The President should know that in an African culture, apology follows material restitution. You can only say sorry once the land which was stolen has been returned to the rightful owner or when the bereaved have been given something to compensate for their loss".

This opinion, among many others that question the significance of an apology as an isolated speech act, exposes the contradictions of apologies whereby on one side they are seen as necessary in helping victims find closure for their suffering and also as a show of responsibility from the perpetrators and/or the authorities, while on the other hand some political leaders and other people in positions of authority use apologies as a way to put the past behind them quickly and move on [13]. This controversy then questions the use of apology, in Goffman's [35] description, as a corrective measure employed to restore an already damaged relationship. While the use of apology as a reparatory measure within a transitional justice system grounded on a transitional realist philosophy would question the contextual relevance of an apology which is issued without some form of negotiation between the parties involved.

Not all the descriptive data reported negative opinions about President Kenyatta's apology, however. A government officer interviewed under code K05 was very pleased with the step the president took to offer an "open and heartfelt apology" on behalf of the nation. According to the respondent, Kenya needed to start somewhere in order to make steps towards resolving historical ills. She said:

"the truth commission recommended that the president among other key government officers should offer apologies in order to give victims and Kenyans the acknowledgement they need to move on....that is exactly what the president did, and it is unfortunate that some politicians are criticising this on the media and confusing the victims. What did they want the president to do"?

It should be noted that, according to informant code K05, the apology was the first step and that the government was in the process of setting up mechanisms to respond to victims' needs through reparations. She said Kenyans should be patient and give the new government a chance to deal with the historical injustices.

A religious leader was also positive about the president's apology. He said:

"... when you have a President who knows God then it's very easy for him to lower himself in order to embrace everybody....we thank God for President Kenyatta because he wants to work for all Kenyans.....Am sure Kenyans will forgive him because he has a god heart...a forgiving heart deserves forgiveness. I was very happy with that apology and you will see how God will bless Kenya."

It was quite a challenge interrogating the religious leader about his strong beliefs on President Kenyatta's apology, partly because he had very strong religious attachments to his views. When asked why he thought the President chose to apologise without establishing the implementation process for the TJRC, he said:

"He will do it my brother...where God is, everything will work".

As already mentioned, not a single victim out of the 28 interviewed through the FGDs said that the president's apology was significant, yet out of the 25 key informants, six felt the president's apology was significant, a step in the right direction, an indication that he wants to work with all Kenyans, and other related terms. As was stated earlier, key informant interviews targeted political leaders, government officials, religious, academics and civil society leaders. Out of this mix, two religious' leaders, three politicians aligned to the president's party and one government official said the apology was significant. The remaining 19 key informants said the president's apology was insignificant, was insincere, a public relations exercise, political opportunist and a cover up. It should be noted that none of the NGO leaders and an academic thought the apology was significant.

A professor from a local university said the Presidents apology was nothing but:

"..... purely for political expediency. If you analyse the current political undertones, you will realise that not only is the president non-apologetic for anything, he does not intend to be any different from past tribal, corrupt and irresponsible leaders this country has had. On that note alone, whoever told him to apologise failed to share with him what it means to offer that kind of apology..."

A number of other informants were more or less concerned with the form or nature of the president's apology, with some saying that apology or no apology "we should concern ourselves with whether or not the TJRC findings are going to be implemented" (Informant code K18). The informant actually felt that Kenyans and people like "me"—the researcher—are reading too much into some of the "political trick being thrown around by politicians and activists". Referring to the apology as "a political gimmick", the informant felt that it would be more useful to scrutinise the government's efforts in respect to setting up the implementation mechanisms for the TJRC report instead of concerning ourselves "with what politicians say or do to survive in politics". The president's apology was by and large regarded as insignificant by the respondents, however. The responses alluded to the fact that the president's apology should be complemented by some material compensation to the victims. Other respondents also stated that the president should only apologise when he can guarantee that his administration is committed to dealing with social, political and economic ills that make Kenyans want to fight each other (Informants K01, K21 and Participants F07,12,23,28). Ethnic discrimination and corruption were cited as issues that the president should deal with before a real apology can be issued or before any form of an apology can have meaning.

On the effects from lack of redress for victims' historical violations have on the socio-political stability of a State.

Lack of redress for historical atrocities in Kenya over the years has led to the emergence of victim-based identity groups where the direct and indirect victims of particular episodes of violence or violations coalesce under some

organised groupings. The research sought to explore the impact these victim-based identity groups have on the victims themselves and on the country in general. Some of these victim-identity groups in Kenya are the National IDP Network, National Victims and Survivors Network, Nyanza Region IDPs Network Society, the Mombasa Republican Council (MRC), Mungiki sect and Bagdad boys' group [36]. According to the findings from the structured interviews, 67.5% of the respondents said they supported the emergence of Victim-Identity groups while 32.5% said they did not support them, (see Table 3 above). Asked why they thought of coming up with such organised groupings, the leader of one of the groups interviewed under Informant code K04 stated that it is through such organisations that they get to speak with one voice on behalf of all their members to advocate for their rights and to demand support from the government. He said in an interview;

"...the mission of our group was to help our people (victims), to reach the government by spreading what we underwent during that time of violence and also to help each other when somebody dies, we can donate some money to support the funeral and help the family....so basically the group helps us put pressure on the government to assist the vulnerable victims and also to implement the TJRC recommendations which they are sitting on".

The emergence of victim-identity groups and the prominence they are having can also be associated with the reaction from the majority of Kenyans in response to what is perceived as lack of effective response by the elected political officials concerning the interests of victims of historical violations. The majority of those interviewed felt that legislatures at all levels are not effectively responding to the interests of the victims. 66.5%, 58.75%, and 61% of the respondents felt that Members of the County Assemblies (MCAs), Members of the National Assembly (MPs) and Members of the Senate Assembly (Senators) respectively are not effectively responding to the interests of victims. The report also shows that 66% of the respondents further stated that the newly created devolved governments at the county level have not addressed the needs of the victims (See Table 3). Failure by county governments to respond to the plight of victims was seen as immoral and a reflection that all political leaders do not care about victims of historical injustices. The counties run by governors from the opposition were accused of going against the promise of the leader of the opposition to engage the victims and address their needs.

When asked during FGDs if the victims of the past injustices in Kenya have received sufficient support from the state, the participants' responses were emphatic that the state support had been minimal. A participant code F29 stated:

"We have been neglected by the state, the county government, the political leadership and everybody....ohhh even our relatives have abandoned us. We have been neglected because there is nothing that has been done to us since we were affected. Because for example according to me, we had camped at the police station for three months after the post-election violence in 2008.... we were chased away forcefully with transport money of 10,000 shillings each. It was dubbed 'Operation Rudi Nyumbani' (operation return home). For me, who had four children, the money could not even pay our travel costs to our rural village...no livelihood support, no nothing up to now ten years later. So what can we do? We have to support ourselves through our groups...."

A coordinator of one of the civil society organisations in Kisumu interviewed as Informant code K21 had a different opinion on the emergence of the "Victim-identity networks" as he called them. He started by asking a question;

"..do you know of the history of these victim-based networks in this country? They emerge as noble, support groups for victims, empowerment initiatives, advocacy groups then, vested interests penetrate them after failing to achieve much through their advocacy activities. Look at Mungiki sect....these were the so called descendants of the MAU MAU¹ freedom fighters who came together to demand recognition and support from the government. Later they transformed into a criminal gang that terrorised people and led to very many murders in Central Kenya....look at the Baghdad group and the many atrocities they are accused of having committed I Kisumu and its environs... and such groups are all over the country...so what's so special about these newly created ones?..... Without addressing historical injustices, and even as the Kenyan government frustrates the implementation of the TJRC report, they must be responsible for what such new emerging victims' networks will do".

According to Informant code 21, victim identity groups are products of ineffective redress of historical injustices as well as high unemployment rates in the country. They cannot be credible support networks for victims or even communities but can only pose a social problem for their communities and the country. His views were consistent with those from government officers interviewed, who were unanimous that the government is strongly advising victims to avoid forming groups which can be taken advantage of by criminal elements in society. All senior government officials interviewed also stated their inability to stop the registration of such groups because the leaders of such groups align their

¹MAU MAU refers to the Nationalist independence movement which spearheaded Kenya's struggle for independence from the British colonial regime.

objectives within government regulations, and they never declare that they are a victim-identity group. An official from the office of the Social services Informant code K25 said;

“The Constitution safeguards freedom of association, so it is not possible to stop people from forming welfare, development or self-help groups. We can only deregister groups which are proven to engage in criminal operations. Yet sometimes these groups engage security agencies in court battles supported by human rights groups. So it’s a very challenging issue trying to regulate the emergence or even the operations of such groupings.”

The issue of the victim-identity groups remains a delicate one. The public supports their emergence and victims themselves claim to need them as advocacy groups and for peer support from fellow victims. Opinions are divided about whether they are beneficial or counterproductive to the Kenyan society. Without implementing the TJRC report and comprehensively dealing with the historical injustices, it may be impossible to manage those groups. That further complicates the efforts of reconciling the Kenyan society from histories of conflict.

OBSERVATIONS AND CONCLUSION

There is an interesting twist in how public opinion concerning the role of truth commissions has changed in Kenya. As stated earlier, the task force investigating the utility of a Kenyan truth commission reported that an overwhelming 90 percent of Kenyans interviewed wanted a truth commission to address past human right abuses [17]. The findings from this study, however, show that only 41.5 percent of those interviewed through structured questionnaires felt that the Kenyan TJRC was effective in addressing past injustices, while all the victims interviewed said that the TJRC did not respond to their needs or addressed violations they suffered. It is argued, therefore, that even though this change of opinion can be linked to the inadequacies of the Kenyan TJRC, the overwhelming approval for a truth commission recorded by the taskforce may have been based on skewed public information and expectations. This then calls for objective debate and public information about the real impact of truth commissions to victims.

The finding that popular approaches like truth commissions have failed to redress the violations experienced by victims challenge the universal claims of transitional justice systems like the recovery of truth, healing of both individuals and the nation, providing justice for victims, reforming institutions, strengthening the rule of law and promoting reconciliation and sustainable peace [11; 5]. To tackle this, I recommend the inclusion of micro-level transitional structures as complementary to the national-level truth commissions to increase the number of victims whose violations can be addressed. I also recommend further research on how truth commissions can create mechanisms which ensure that recommendations made are implemented without interference by governments or those in positions of authority.

The other peculiar observation relates to the manner in which the political elite in Kenya, and the government remain reluctant in facilitating implementation of the report nine years on, implies the futility of the transitional justice process in Kenya, and portrays its outcome as predetermined by the political class, further challenging claims about the victim centeredness of truth commissions.

The study set out to explore the effectiveness of the transitional justice system in Kenya, especially the TJRC’s approach in addressing the violations experienced by victims. It has found that the respondents interviewed felt that the TJRC process has been ineffective since it has not been concluded and it is not clear whether the recommendations will ever be implemented or not. Several issues can be argued to have directly influenced the limitations of the Kenyan TJRC in effectively dealing with the violations experienced by victims. First, being a national level framework, it is practically impossible for it to address most of the violations experienced by victims. This informs the recommendation that alternative micro-local level mechanisms would complement the efforts of such truth commissions. Second, the fact that the implementation phase of the Kenyan TJRC work appears to have stalled due to lack of interest within the government, affirms the assertions by the researcher earlier in this article that the government was not committed in the first place to addressing historical injustices in Kenya, since the consequent process of redress would directly implicate powerful social, economic and political elites in the country. And as the country prepares for the August 2022 general elections, the effects of the inconclusive TJRC process and the fact that victims of past injustices feel that the process did not respond to their needs pose a challenge especially given the “established pattern of electoral violence” since the reintroduction of multiparty democracy in Kenya [37]. This calls into question the actual relevance of such transitional justice systems in relation to offering redress for violations experienced by victims. The research was unable to determine, however, whether the people interviewed preferred alternative approaches to dealing with the problem of historical injustices in Kenya. On this, a separate study is recommended to examine further whether alternative mechanisms could be more effective in addressing the problem.

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