

## THE EVALUATION OF SOME TYPES OF JUSTICES AS MEANS OF RECONCILIATION AFTER VIOLENT CONFLICT

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### *Abstract*

*The need for justice after atrocities have been committed is the highest aspiration of the masses globally. Hence the need to evaluate of some types of justices as means of reconciliation after any violent conflict episode becomes imperative. The purpose of justice in post - conflict situations is to create sustainable peace. The method of prosecuting justice in the aftermath of mass atrocities is difficult and the process has to be carried out with much caution. Among the many methods and process to procure justice the paper support the Truth-Telling Commission has proved to be more beneficial and lasting. The paper is multi-disciplinary, which include Peace and Conflict Studies and theology. The sources will include: internet, and library resources, personal observations.*

**Keywords:** Evaluation, Justice, Trial, Reconciliation, Violent Conflict

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### INTRODUCTION

Justice and reconciliation are twin ideas (Huyse, 2003: 97). Most people support the idea of the quest for trust, empathy, democratic power sharing and peaceful coexistence. This requires that 'justice be done' by identifying the crimes of the past and punishing the perpetrators (ibid). One of the most difficult situations in post conflict resolution is dealing with the cruelty in which innocent people were tortured, raped and or murdered (Minow, 1998: IX). However, for a country that has survived a violent conflict, there is a need to deal with the past in order to lay a base of enduring peace. This may be through accountability where the perpetrators can be brought to answer for their evil actions and where the victims' trauma can be addressed (ibid p. X). It has not been easy for either national or international bodies to formulate a successful approach to dealing with the continuing threats to peace, in the post conflict phase (ibid p.2).

Since the end of the cold war, African states have become the home of violent conflict that breaches the United Nations charter for Human Rights. The atrocities committed in some of the crises could have been prevented, however, if the UN non-intervention

policy in the internal affairs of sovereign states were not enforced. Perhaps, in some situations the international communities or neighbouring states should have intervened in some of the dreadful violence that had been perpetrated by evil people. For instance, the "Liberian Civil War, which was one of Africa's bloodiest, claimed the lives of more than 200,000 Liberians and further displaced a million others into refugee camps in neighbouring countries (Liberia - First Civil War access 2016). Another is the Rwanda genocide of 1994 just to mention two (Olonisakin, 2000: 41). It is indeed difficult to come to terms with the legacy of the past abuses, criminal acts and atrocities that have been perpetrated by evil person(s). This raises the question of how the injuries inflicted upon the victims can be healed. Can permanent peace be possible for a nation or a community that has fallen victim of violence? If permanent peace is a possibility, what are the steps that need to be taken to ensure lasting reconciliation (Rigby, 2001: 1)? The need for justice as a means of reconciliation becomes imperative.

### THE PARADOX OF JUSTICE BEFORE FORGIVENESS

The concept of justice, as an antecedent of forgiveness and reconciliation, argues that injustice has to be removed before forgiveness and reconciliation will take place. However, this concept produces problematic nuances in the pursuit of peace. The question is how plausible is this notion of first justice, then forgiveness and reconciliation? Volf has outlined three critical reasons that make the pursuit of justice before forgiveness a paradox:

*Firstly* and fundamentally, justice then forgiveness and reconciliation is impossible to carry out. The concept of what is just, to a large extent, is relative because what is considered as 'just' to one person or group of persons can be contested by other persons or groups of persons as injustice. This is to suggest that peace is impossible within the overarching framework of strict justice because strict justice is impossible. Therefore, the demand at interpersonal or political levels is often not for justice, but for "as much justice as possible".

*Secondly*, if strict justice were possible, then it would be questionable whether such strict justice would be desirable. It is a very familiar saying today that the punishment be commensurate with the crime. In the Hebrew Bible, the law of "an eye for an eye, a tooth for a tooth" (Exodus 21: 24) seems to most people too severe. Volf argued that the purpose of this law was to restrict the excesses of vengeance. However, the law demands more than equal retribution than is strictly just. The truth is that when people demand justice they often demand something less than strict justice, which means that people are indirectly willing to forgive part of the offence.

*Thirdly*, if justice could be satisfied, there is no possibility of peace because the conflicting parties would continue to be at odds with each other. The enforcement of justice would correct past wrongs, but would not create communion between the perpetrators and the

victims. However, some sort of communion and positive relationship needs establishing, if the victims and the perpetrators are to be fully healed (Volf, 2001: 39, 40).

As strange as it may be, forgiveness after justice is almost the same as forgiveness outside justice. To forgive outside justice means to treat the offender as if he never committed the wrong. To forgive after justice has been satisfied would have the same effect as the wronged would treat the wrongdoer as if he never committed the wrong. However, in the first case, forgiveness is the attitude of a heroic individual, who is noble and strong enough to be unconcerned with the offence, but in the second case, forgiveness is the position of a strictly moral individual, who shows enough integrity, so that after injustices have been redressed she or he refuses to act or feel vindictive. The bottom line here is the treatment of the offender as if he never committed the crime (Volf, 2001: 40, 41).

The first justice stance suggests that if justice is impossible, forgiveness will never take place. Again, if forgiveness is granted only when strict justice is carried out, then one would not be going beyond one's duty in rendering forgiveness; one would definitely wrong the original wrongdoer if one did not offer forgiveness and, if not, the offended will owe the offender forgiveness (Volf, 2001: 41).

Another perspective of justice is argued by Vice. Vice (2004), cited Plato, who offers different perspectives on *justice* as follows:

- i. *Justice* is telling the truth and paying one's debts. This definition fits into the Anglo-American legal system.
- ii. *Justice* is harming one's enemies and helping one's friends. This is in common use throughout the world, and is even found on university campuses. It may find expression in the different form, "my group" or "faction".
- iii. *Justice* is the will of the powerful. This seems to express the thoughts of a number of modern interpreters. This is to say that *justice* is not uniform; but it varies from culture to culture or even from community to community. That is the dominant people in each community pass laws which express justice for that community, but in the favour of the dominants.
- iv. *Justice* is a sort of negotiation between the many weak and the few powerful (Vice, 2004).

These perspectives reveal some of the many meanings of justice and seem to tell us that what we call "justice" may not be accountable or impartial. However, the method(s) employed to achieve justice become relevant only if it delivers the desired purpose which is effective accountability. Claassen points out that accountability or justice is successful if the following objectives are met:

- (1) The offender does not re-offend;
- (2) The offender learns his/her "lesson" on how to live in the community without violating other people's rights;

## Ayuba Gimba Mavalla

- (3) The accountability plan/agreement/decision has a positive, healing effect on those who have been violated by the offences (victim, community, family);
- (4) The offender emerges from the accountability process with greater respect for officials, community, and self;
- (5) The accountability process creates stronger community and a safer environment;
- (6) The accountability process is viewed as respectful, reasonable, and restorative by all parties (victim, community, family, offender, officials, etc.) (Claassen, 2004)

Therefore, an examination of the use of justice as a means of post-conflict peace building in the current landscape engage with the types of justice employed as a means of reconciliation in a post-conflict situation. In the words of Colson, "ending hostilities is indeed only the first step towards peace, and leaves the way open for a transitional period in which conflicting parties are no longer fighting, [and] might even have reached a formal agreement, but nevertheless still do not acknowledge that peace is secured" (Colson, 2000: 51). Therefore, it is imperative to briefly examine the different types of justice so as to determine which has the best capacity to usher in a lasting peace to a war torn area. This judgement will of course be subjective (ibid p.51).

In the context of South Africa, Archbishop Desmond Tutu certainly considers that the absence of peace is a result of the denial of justice. He argues that genuine peace and security can only be achieved when justice is clearly established (Marek, 1995), hence the reason why the investigation of the types of justice is imperative.

### **Amnesty-Forgive and Forget**

One of the easiest ways to deal with the evil past is the offer of an amnesty. We shall examine two types of amnesty namely: absolute amnesty and restricted amnesty

#### ***A. Absolute Amnesty***

Absolute amnesty is an unconditional pardon. It is mostly a self-imposed amnesty. The perpetrator, because of the powers in his hand, writes off the evil he or she has perpetrated. This type of amnesty (self-amnesty) is mostly found among some powerful aristocrats or political or military dictatorships that unilaterally award themselves an amnesty before the change of regime. Uruguay is an excellent example of an absolute amnesty, where the civilian government that took over power from the military dictatorship enacted, under military pressure, an amnesty law in 1986. Another example of absolute amnesty can be seen in the case of post-Franco and Spain conflict; where the majority of the democratic forces agreed to grant immunity to those who committed human rights crimes while defending or opposing the Franco regime (Huyse, 2001: 322-23). This type of amnesty neither heals the offender nor the victims. It may only encourage others to struggle for

power at all cost and by any means, since the acquisition of power confers invulnerable to accountability.

### *B. Restricted Amnesty*

A restricted amnesty is a type of amnesty that falls within the category of group crimes, which excludes the perpetrator from benefiting from the general amnesty. In the case of post apartheid South Africa, restricted amnesty was based on some stipulated conditions that must be satisfied which included a detailed statement of individual involvements followed by a confession in the presence of the Truth Commission. This has to be done before the offer of the amnesty can be given. (Huysse, 2001: 323).

Another example of restricted amnesty is the case of the Niger Delta militants in Nigeria. The federal government, through the late President Umaru Musa Yar'adua, granted the Niger Delta a military amnesty on June 25th, 2009, which brought peace, thus promoting the economic boom of the nation through oil extraction to its full capacity. The integration of the militias to civil community is crucial for enduring peace in the Niger Delta region of Nigeria (Mavalla, 2014). It seems to me that some people would only be driven by the fear of discovery or the punishment for their misdemeanours. Hence, the consequences of their action(s) may lead them to make confessions, which they hope may excuse them from paying for their evil acts. But what are the parameters to judge the sincerity of confessions when they arise in this way?

### **TRIALS AND THE PURSUIT OF JUSTICE**

One of the oldest forms of addressing grievances is the pursuit of justice through legal proceedings under the rule of law. It is advocated that "no one is above or outside the law, and no one should be legally condemned or sanctioned outside the legal procedures. The rule of law creates a community, which each member is both fenced in and protected by the law and its institutions (Minow, 1998: 25). Therefore, a trial which has been an existing norm has the potential, to some extent, to ease existing tensions and fear. Trial, because of its inherent commitment to fairness, provides an assurance that both the accused and the aggrieved will receive a fair hearing to vent their grievances or to defend themselves. In addition, a trial can help to redress any violation of human rights carried out during war or civil unrest. It can and helps to ameliorate between the options of forgiveness and vengeance (Minow, 1998: 25, 26). Trial does not totally exclude pardon because "at the end of the trial process, after facts are found and convictions are secured, there might be forgiveness of some legal sort: a suspended sentence or executive pardon or clemency in the light of humanitarian concerns" (Minow, 1998: 26).

However, criminal trial, as Minow states, is not the best method for reconciliation. Neither does this legal process help in healing the traumatised community that has gone through mass violence, nor the perpetrators to get over the stigma of evil placed over them. Trial, among other purposes, serves simply as the key to formal justice (ibid). The

## Ayuba Gimba Mavalla

trial of mass atrocities as a transitional justice has been criticised and a brief examination of the criticism may enhance our understanding of whether or not it is desirable. Legal trial does not offer the needed peace. Mavalla 2016 argued that when we talk of peace we understand it in two ways. First we have positive peace. Positive peace implies reconciliation and restoration of relationship through creative transformation of the conflict through addressing the cause of the conflict. The second way of understanding peace is negative. Negative peace means the absence of physical violence however; coercion, manipulation or suppression is used to achieve peace rather than cooperation. At best the civil justice system renders a fair and impartial decision, which does not address relationship making the outcome just a decision not a resolution or transformation of the conflict. Upon the pronouncement of the judgement the judges expect the disputants to carry on with their normal lives but the crucial issue relationship is not address this is negative peace (Mavalla 2016: 44, 45).

### *A Critique of Trial*

In responding to the trial of mass atrocities, there seems to be a close proximity between pessimism and optimism surrounding the entire project. The criticism levelled against trial is made in three distinct areas (Minow, 1998: 31)<sup>1</sup> as follows:

Retroactivity is where defendants are sometimes made to face trial on charges under standards that have not been previously made public. Judges sometimes employ the use of strange proceedings that have not previously existed.

Politicization is the second aspect of criticism against trial. It relates to allegations that the jury, who should operate as an independent body, removed from any political influence is seen to endorse politics, hence undermining the idea of neutrality and impartiality and the universal rule.

The third criticism is selectivity. It seems that although a large number of people are often charged with perpetrating atrocities, only very few are actually prosecuted for their actions. The difficulty here must be appreciated, because some escape arrest or die, some become immune to arrest because they still remain attached to power. Others may have altered their identity, thus making identification and arrest difficult (Minow, 1998: 30-31). Besides, the enormities of the atrocities committed in some of the conflicts are such that trial becomes a very difficult task to accomplish, as in the cases of Yugoslavia, Rwanda, Cambodia, South Africa and Kurdistan (ibid).

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<sup>1</sup>These areas include selectivity, politicization and retroactivity which critics have raised as an objection right from the time of Nuremberg and Tokyo trials. Martha Minow assumed that these objections would be likely to be repeated in the International Criminal Tribunals for the former Yugoslavia and for Rwanda, and in domestic prosecutions for human rights abuse.

But one of the most disturbing of all the critiques of trial is the miscarriage of justice. This occurs where the innocent are made guilty due to either their ignorance or false accusation levelled against them. John J. Eddleston critically examines fifty cases of victims who were unlawfully sentenced for various crimes. Some of these victims were sentenced to life imprisonment, while others were hanged. The sad thing about this is that such sentences were imposed by mistake. For instance, Jonny Walker, Billy Power, Gerry Hunter, Richard McKenny, Hughie Callaghan and Paddy Hill, came to be known as the 'Birmingham Six' because they were charged with the murder of twenty-one people in Birmingham in United Kingdom (UK). Their trial commenced on June 9<sup>th</sup>, 1974 in Lancaster. Eddleston says "the verdict came on the August 14<sup>th</sup>. The Birmingham Six were found guilty of twenty-one murders and sentenced to life imprisonment" (Eddleston 2000: 385). They all appealed and were finally successful on March 14<sup>th</sup>, 1991 when the six men who had served more than fifteen years were declared innocent and set free (ibid). What about those who were hanged by mistake? Is trial the way forward? Furthermore, scholars have argued that peace procured during the process of criminal or social trial is considered as negative peace as earlier mentioned. This is because in negative peace the underlying causes of the conflict are not addressed, but determined by a third party, excluding mutual participations of the disputants (Mavalla, 2014).

### TRUTH-TELLING COMMISSION

The establishment of truth-telling commission as a means of post conflict justice-seeking is a recent development, whose potential contribution has received wide publicity to the extent that most transitional societies are proposing to establish them. Guatemala and South Africa are examples of Truth Commissions which have drawn considerable attention to official truth-seeking. Other commissions that concluded in mid-2002 took place such as in Peru, East Timor, Nigeria, Yugoslavia, Panama and Uruguay their results were not as satisfactorily as that of South Africa (ibid).

Truth Commission is an ad hoc committee whose tenure usually runs for one to two years, and has the official approval and authority conferred by the state and, in some instances, by the armed opposition, as well as in a peace accord. It is a non-judicial body that enjoys some privileges of *de jure* independence and is usually created at a time of a political transition, either from the despotic rule of democracy or from war to peace. Its main task is to investigate the past pattern of abuses and specific violations committed over a period of time and on completion a report with recommendations is submitted. This focuses not only on human rights violations, but also on humanitarian norms (Eddleston, 2000: 125).

Since 1974, about twenty five official Truth Commissions have been established around the world. However, they have been known by a variety of different names, such as the "Commission on the Disappeared" in Sri Lanka, Uganda and Argentina; the "Truth and Justice Commission" in Ecuador and Haiti; "Truth and Reconciliation Commission" in

## Ayuba Gimba Mavalla

South Africa, Chile, Sierra Leone and Yugoslavia; "Human Right Violations Investigation Commission" in Nigeria and finally the "Commission for Reception, Truth and Reconciliation" in East Timor. These gatherings, however, did not perceive themselves neither did the public see them as the Truth Commission in some of the countries mentioned (Ibid).

Regaining a stable and peaceful coexistence in a society that has been divided by violent conflict may require confronting the past in a reconciliatory way. This could be carried out through historical accounting using truth-telling as one of the important steps in the mediation process. Freeman and Hayner ask what is the relevance of seeking accuracy about the past to help a society to move from a divided past to a harmonious future (Freeman, 2003: 122)? It is very significant for the past ills to be reconciled because it will help to set a solid foundation for durable peace.

Truth telling commission seems to address conflicts that are of national or international scope more effectively than interpersonal conflict. This is because individual reconciliation at the individual level is more complex and possibly more difficult to accomplish by means of the truth telling commission. "Forgiveness, healing and reconciliation are deeply personal processes, and each person's needs and reactions to peacemaking and truth-telling may be different" (Freeman, 2003: 122).

The benefits of a Truth Commission can be summarized as follows;

The commission can help establish the accurate, detailed, official and impartial truth about the past. Truth commission can aid in bringing the perpetrators to accountability for human rights violations. They can also help to create a public platform for victims that have been ignored and forgotten in the transition process. The commission can promote public debate on complex moral, legal and political issues that need to be addressed in the course of the transition programme. It helps in recommending victims that merit reparation or compensation for past abuses. It is also the responsibility of the commission to recommend necessary legal and institutional reforms in cases where institutions have failed to uphold human rights protection (Freeman, 2003: 125-26). "Truth commission can promote reconciliation by providing a safe and impartial forum for direct restorative justice processes... [and the] commission can help to consolidate a democratic transition" (Freeman, 2003: 126).

There is no doubt about the enormous benefits to be derived from Truth Commissions. However, it cannot be denied that some potential menaces also exist. For example, a Truth Commission could be set up from improper motives, where a government wishes to pursue political vendettas. It could also be used as a means of handing over difficult task to others which the government is unwilling to do. Also, cynical governments may also establish Truth Commissions to insulate themselves against criticism from victims that little has been done to redress the past atrocities against. Others reasons may include



biased and unrealistic expectations (Freeman, 2003: 127–28). It is difficult to find set out parameters that scientifically judge the sincerity of each confession from those driven by fear of the consequences of their deeds or hypocritical confession.

### **Compensation and Reparations:**

It is now increasingly acceptable that when addressing past injustice, compensation and reparation play a crucial part of the process of healing and reconciliation. In order to move towards a peaceful future, governments must acknowledge and respond to the wrongs and injuries of the past, especially human rights abuses. This could take the form of compensation programs and recompense for the victims of injustice (Majese, 2004). There seems to be growing agreement that victims of human rights abuses have the right to be compensated. This idea is reflected in a number of international human rights documents, including the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. In a situation where the status quo cannot be restored, for instance, when abuse has led to death, compensation has to be calculated carefully. For instance, the Inter-American Court of Human Rights has suggested that compensation following death as “being worth the victim’s projected income, multiplied by the time left in earning potential, minus 25 percent to account for what might have been spent, then adding the court’s subjective estimate of moral damages, with the court rulings requiring payments ranging from US\$150,000:00 to US\$200,000 (Meltzer, 2004). This poses an enormous challenge when the numbers of victims become very much; compensation may drain the entire national budget and may even leave an economically strong state into a state collapse.

### **CONCLUSION / RECOMMENDATION:**

The whole desire of justice in post – conflict situations is to create sustainable peace. The method of prosecuting justice in the aftermath of mass atrocities is difficult and the process has to be carried out with much caution. Truth is beyond word of mouth, it is the issue of heart and mind. Innocents have been humiliated in the past, possibly because of their legal ignorance or due to malicious witnesses which may have incriminated them. While some who may be guilty, for one reason or the other are acquitted in spite of their guilt. It seems to that there is no one perfect method of dealing with deeply divided societies caused by war and human rights abuses. Because each method of justice used has its merits and demerits. For whichever method is chosen, the evaluation system set out by Ron Claassen should be carefully followed. Even though, the assessment of any of the methods of justice may not indicate an immediate outcome. This is because it cannot be immediately proved, for instance, that the offender will not re-offend time is required to prove this.

However, I may support the Truth Commission methods of justice, not because it is faultless, but because it seems to have more merits than the other types of justices examined in this essay. The conflicting parties must be encouraged to make the choice of

the methods of justice that would bring healing and reconciliation, to both victims and the offender, to the greatest possible extent. I wish to recommend that whatever type of judicial process devised to achieve permanent reconciliation after violent conflict might be further enhanced by a serious consideration of the following.

1. The government should make use of both national and local journalists, to help in portraying the evil of violence as contrasted with the merits of peace in their writings as well throughout the media.
2. The governments, all religious bodies, ethnic/community, private and public sectors, should make heroes or heroines of peace makers.
3. The country should, if possible, make their own version of the Guinness Book of Records to reward good virtues at the end of each year; hence making national heroes of people who have noticeably exhibited peace qualities or people who are peace mediators.
4. Peace museums should be erected at strategic points as a means of educating the public on the efficacy of peace and the evils of war or of communal clashes.
5. The appearance of conflict should be consistently denounced in all its forms.
6. Finally, in all gatherings, whether political, social or religious, there should be a slot for a message on the efficacy of peace. The government should buy the prime air times for special programme on the value of peace.

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