

Managing Transitional Justice in Africa: A legal implication

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Abstract: *This work examines the managing of transnational justice in Africa with special emphasis on the legal implication. Transnational justice is a traditional method of reconciliation of disputes within the African Society, which is deeply rooted in the atrocities and gross human rights violation committed by authoritarian regimes in Africa. Using the primary and secondary sources of data collection, data shall be collected and analyzed. The method of analysis in this article is going to be descriptive. The scope of analysis is limited to South Africa, Sudan, Sierra Leone, Liberia, Democratic Republic of Congo, Ivory Coast and Nigeria. The main objective includes: (a) criminal prosecution process (b) The truth and reconciliation commission (c) Granting of amnesty (d) Reformation of the Security system (e) setting up of reparation program. The key question/research problem this article seeks to address is how better these mechanisms can be managed in Africa in compliance with international law standards. Transnational justice is important within the African context, because it gives the people within the community the opportunity to participate in the enforcement of justice in society there by promoting peace and stability. The paper concludes that though the truth and reconciliation commission is one of the best mechanism of managing transnational justice, but there is the need for the entire African society to implement transnational justice in compliance with international Law and the new world order.*

Keywords: *Transnational justice, peace, international Law, reconciliation, amnesty, security, criminal prosecution*

1. INTRODUCTION

The United Nations Secretary General in his report on the rule of law and Transnational justice in conflict and post - conflict societies defines transitional justice as *'' Process and mechanisms associated with a society's attempt to come to terms with a legacy of large- scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation''* (Viccencio, 2004). Transnational justice is a traditional means of reconciliation of disputes in society. This concept surfaced around 1980s and 1990s in Europe and Latin America. What triggered transitional justice is the atrocities and gross violation of human rights committed by authoritarian regimes in Africa and the rest of the world. Africa has been marked with war and dictatorship. This article discusses mechanisms and legal dimensions of Transitional justice in Africa. Sierra Leone, Liberia, South Africa, Sudan, Democratic Republic of Congo, Rwanda, Nigeria, Ivory Coast, Libya and Niger Republic have established truth and reconciliation commission a mechanism of resolving disputes. The objective of this article is to explain how these mechanisms and the legal dimension. These mechanisms includes (a) Criminal prosecution (b) Truth and Reconciliation Commission (c) Setting up of Reparation Programs (D) Granting of Amnesty (e) Reformation of the Security Sector. The key question this article seeks to address is whether transnational justice system in Africa is in compliance modern international law and ICC? One basic legal challenge facing transitional justice in Africa is the issue of "Universality". What legal measures can be used to determine the conflicts with transitional justice and the ICC? Transitional justice uses holistic approach in finding solutions to African nations that have passed through all forms of human atrocities. Local community members participate in the enforcement of justice giving them the advantage of dealing directly with the perpetrators that have committed atrocities. We have divided this article into four sections. Section one is the introductory section. Section two, literature review with the various mechanisms of transitional justice. In section three, the legal dimension. In the last section the conclusion and the recommendations were provided. The article conclude that transitional justice is very important in Africa though with limited legal obstacles.

2. RESEARCH PROBLEM

Following the end of Conflict and the brutal regimes of some African rulers Transitional justice mechanisms have been employed to render justice within Africa. The truth and reconciliation Commissions in particular have been employed in most African Countries like Nigeria, Sierra Leone, Liberia, South Africa and Rwanda. The research Problem is how “ *Better can these mechanism of transitional justice be managed in Africa in compliance with international law standards*” There is the need for transnational Justice not to be only procedural in Africa. It has to employ more robust prosecutorial mechanisms that will bring perpetrators to justice. They reinforces the dynamics that not only returns the country to a sustainable peace, but division amongst groups. The research argues which of the mechanisms are preferred and what can be used in determining the usefulness of a given mechanism? The point of departure in this article is the connection of international human rights principles and the International Criminal Court to Transitional Justice in Africa. What is the best mechanism for transitional justice in Africa?

3. RESEARCH AIM

“*Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These abuses include criminal prosecution, truth commissions, reparations programs, and various kinds of institutional reforms*” (ICTJ Justice Truth Dignity , 2015) the research aim is to discuss the best mechanisms for informal justice in Africa that “*victims an opportunity for others to hear their stories of what really happened, compensating the victims, strengthening the rule of law, institutional reforms and holding victims responsible*” (ICTJ Justice Truth Dignity , 2015) The aim is to investigate crimes committed during conflict, identify the perpetrators, impose sanctions on them, provide reparations for the victims and prevent future abuses in Africa

4. RESEARCH METHODOLOGY

The work in this article is primarily descriptive and based on secondary sources of data. Substantive literature to be used will include, Class materials provided by the two Professors that taught this course, Journals, conference papers, Newspaper reports, articles and legal reports. The research methodology is to describe some key mechanisms (Criminal prosecutions, Reparations, Institutional reforms and Truth Commissions) that will help manage Transitional justice and its connection with international human rights standards.

5. SCOPE OF STUDY

The scope analyzes Transitional Justice in Africa, restricted to African Countries that have witnessed conflicts with Truth Commissions. Sierra Leon, South Africa, Rwanda, Congo and Liberia. One important issue is the role of ICC and its connection to Transitional justice in Africa and the need for African States to employ local human rights values in dealing with perpetrators.

6. JUSTIFICATION OF STUDY

Certain solutions have been found in human abuses in Africa (Nigeria, DRC Congo, South Africa, Liberia, Sierra Leone and Sudan) Peace has been restored and the promotion of human dignity increased. Accountability, development and progress is on the increase. The nature of justice open and inclusive of all in society. Everyone has got a voice and say what happened and compensations and amnesty given if necessary.

7. LITERATURE REVIEW

7.1. Truth and Reconciliation Commission

This is one of the best mechanism used by transitional justice in Africa. An institution created to reconcile the brutal past of a regime to the present one. It is a justice system where victims that have been grossly abused are given the opportunity to narrate their experiences of this ordeal to the public to enable the perpetrators are “*identified and brought to justice*”¹(restorative justice). The public

¹ Restorative justice an approach to justice where victims play a major role and the offenders giving the opportunity to apologize for the crimes committed against their victims. It is based on dialogue to with the victims to avoid future occurrence of the atrocities

hearing and testimonies is meant to grant amnesty to perpetrators. We have 18 countries in Africa that have introduced the Truth and reconciliation Commission on the 54 countries. The aim at this commission is to find out the truth. The Truth and reconciliation commission is a good mechanism for transitional justice. In South Africa much has been done with the Truth and reconciliation Commission on the brutal apartheid regime. The Commission was broadly based on all groups represented. Though the commission was accused of having a political interest and diverting the people's interest in main issues affecting governance. In Zimbabwe the truth and reconciliation commissions to look into the "dissidents" in the Matabele region in 1983 refused to bring out the finding for fear of "another outbreak of violence" (Charles, 2008) the problem of qualified trained personnel affects transition justice of Africa. Some of these personnel is not qualified. Sierra Leone, Liberia, and the Democratic Republic of have been facing the challenge to enough funds of compensating victims, it is noticed that victims are bribed instead of being compensated. Another issue is the mandate in which the Truth and reconciliation commission is set up. The role of African indigenous dispute system in Rwanda and Uganda seems to be controversial. Those sentenced in Rwanda by the Gacaca Courts during the conflict cannot turn back and heal others. The Truth Commission was created in 1993, to heal the wounds of the conflict, civil education and community transformation. Through the Gacaca Courts was to employ the local communities in solving their own disputes, revive traditional justice system and put an end to the culture of impunity. Adequate publicity is not done in some of this commission. Truth commission may be one of the best mechanisms for transitional justice in Africa. Accountability, forgiveness about revenge and the need to build a new society based on peace, progress and development emerges. This process covers the whole society, we appeal to government to come with a legislation that will promote the stability of Transitional justice. This commission should get into the remote and immediate cause of a given conflict to make sure the perpetrators are brought to justice.

7.2. Criminal Prosecutions

This is another form of Transitional justice mechanism in Africa. This mechanism in Africa has provided a direct form of accountability for perpetrators. "Criminal prosecutions also help to avoid lawless revenge and retaliation, and to maintain or restore the rule of law" (United States Institute of Peace, 2008). There are many African leaders that have committed atrocities bringing them to face trial is a difficult task. Financial resources are involved in some of these prosecutions. Most African countries do not have the political will of bringing these perpetrators to justice. Former Ivorian President Laurent Gbagbo is a typical example of a criminal prosecution. The prosecution was politically motivated by his opponents. His wife was also hunted down and jailed for 20 years by the current Ivorian President. The case of the former President of Chad Hissene Habre and Mr. Charles Taylor of Liberia fall within this group. Some of these prosecution that has succeeded to bring perpetrators to justice shows how Africans are ready to fight against impunity.

7.3. Security Reformation

In the Democratic Republic of Congo, Sierra Leon and Liberia the security sectors were reformed to accommodate those forces that have participated in the hostilities. These rebels are being re-integrated in the national armies of these countries to guide against another outbreak of conflict in the future. In Nigeria re-integrated Biafra soldiers into the Nigerian national army after the 1967- 1970 civil war.

7.4. Vetting

This is done to restore public trust in governmental structures and institutions by removing perpetrators from high offices. Those who have committed atrocities in the past must be prevented from holding any office in subsequent administrations. There is no court proceeding with vetting. It is only an administrative procedure to exclude a perpetrator from office. In 2003, President Charles Taylor was asked by Economic Community of West African States (Ecowas) to step down. This was only an administrative strategy for him to be free from any criminal prosecution in future. A few years later the situation changed. Mr. Taylor was subsequently arrested and brought before the ICC.

7.5. Compensations and Reparation

This is one of the most important mechanism for transitional justice of Africa. Victims are supposed to be compensated for conflict. Sierra Leone and Congo (DRC) it is a huge task for compensations and reparations to be made. The resources might not be there for government to fulfil its requirements.

To facilitate compensation a strong truth and reconciliation commissions have been established. These commissions have the responsibility for identifying victims that have been grossly abused after a public hearing. This is through educational assistance, health, housing, financial rewards and open apology. This mechanism helps victims to recover from the past abuses.

7.6. Amnesty

Child soldiers in Sierra Leone, Liberia, and Congo (DRC) were given amnesty. In Nigeria after the 1967- 70 civil war amnesty was given to Colonel Ojukwu. President Good luck Jonathan gave amnesty to the Niger Delta rebels. In Rwanda Gacaca courts gave amnesty to those that testified. It is also difficult to grant amnesties in Africa. A lot of politics is involved and manipulations.

8. INSTITUTIONAL REFORMATION

Formal and informal institution need to be reformed after conflict. Informal institutions like the radio and media contributed to the conflict in Rwanda. The radio and the Television through their information dissemination triggered the ethnic hostilities. The three arms of government were no longer no longer nationalistic. The members represented ethnic cleavages. New institutions with a national identity should be created to re-educate the people on national values and prevention of conflict

8.1. Legal Implications of Transitional Justice in Africa

Transitional Justice all over the world including Africa must have a legal backing. It is apparently obvious that the success of any transitional system or mechanism depend on its legal basis. Most of the mechanism of Transitional justice system have failed in Africa because of the absence of a legal basis. By legal basis we mean that their actions in the process of applying any of the mechanisms must be backed by due legal procedures. Whether it is the truth and the reconciliation mechanism, Amnesty, reparations, Criminal prosecutions and institutional reforms strict adherence must be given to what the laws demands. One of the legal implications and legal basis of Transitional justice in Article 1 ACHR implies that: ‘‘ States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reason of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition’’². Another legal basis and implication that affects Transitional justice in Africa has to do with the states inability to carry out two basic obligations. The first obligation according to Article 1 ACHR : ‘‘respect’’: ‘‘The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the state’’³ The second obligation and legal basis for states during Transitional justice according to Article 1 ACHR: ‘‘ensure’’: the states must prevent, investigate and punish any violation of the rights of recognized by the Convention and , moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from violation’’⁴

Another legal implication and basis of transitional justice is if this justice system does not violate fundamental human rights of individuals. This case appeared toward the end of the brutal regime of

² American Convention on Human Rights (ACHR) 1: All states parties to this Convention and for the purpose of this Convention in the process of Transitional justice must respect ‘‘persons’’ as human beings. Persons should be treated accordingly during the implementation of any of the mechanism of Transitional justice. The Truth and reconciliation Commission in Sierra Leone, South Africa and Nigeria depicted that there some form of discrimination especially on political and economic status

³ American Convention on Human Rights(ACHR)1 :TO ‘‘respect’’: ‘‘ Pact of San Jose, Costa Rica’’(B-32) The rights of an individual is not only from where he comes from, all individuals rights are based on their personality which justify protection in the form of a Convention. During transitional justice procedures in Africa and the world the American Convention of the Human Rights is provided and to make sure that ‘‘respect’’ the convention

⁴ American Convention on Human Rights (ACHR) 1: To ‘‘ensure’’ During Transitional justice states are required by this Convention to proper investigate those individuals who are victims during the any form of conflict or atrocities. In Sierra Leon after the truth and reconciliation Committee individuals whose legs and hands were amputated by the rebels were compensated. In Liberia after the brutal civil war the truth and reconciliation Committee had a difficult way in compensating victims.

Honduras in 1990 – 1084. The case the need for transitional justice to look into the issue of legal implications and the gross violations of fundamental human rights. April 24, 1986, Angel Manfredo Velasquez Rodriguez submitted a case to the American Commission on Human Rights invoking articles 50 and 51 of the Convention, he requested the state to intervene in his violation of the ‘right of the right to life (Article 4). Article 4 (right to human treatment) and Article 7(right to personal liberty)’ (Velasquez Rodriguez Case,, 1988). Rodriguez Velasquez Manfredo a student then at the University of Honduras was detained without a warrant for his arrest by members of the national office of Investigations. During the arrest he was tortured and accused of gross political crimes. The Inter American Human Rights Commission asked the government of Honduras to compensate the victim because their action constituted a gross violation of his freedom. The Commission stated that such rights as the violation to the rights to life (Article 4) the right to personal liberty (Article 7) of the American Convention. This case indicted not only the National police of Honduras but the army as well. It opened up cases of those who been arrested without warrant tortured and disappeared in Honduras. The reports of this case depicts further the ineffective legal system of Honduras. The essence of this case on Transitional justice is the obligation of Article 1(1) of the Convention to respect rights and ensure the protection of citizens. The case also requires that the court has to examine the conditions in which rights are violated as recognized by the convention. This must be done to ensure that states are made to carry out their international responsibility.

Rome statue Article 53 is another legal implication and basis of Transitional justice in Africa. The Article questions the implementation of transitional justice of Africa if relevant rules binding the conduct and obligations to states in procedural laws are duly followed. Article 53 of the Rome statue stipulates how international crimes should be prosecuted. These provisions do not accommodate ‘truth and reconciliation commission and amnesties the hallmark of Transitional justice in Africa’ (Dukic, 2007) Accordingly the case of the Joseph Kony the leader of the Lord’s Resistance in Uganda who committed grossed human rights violation of rape, torture and recruited child soldiers in an attempt to overthrow the Ugandan government was later given an amnesty in 2000 by President Museveni in a peace deal to stop the rebel war⁵ A legal conflict arose between the ICC and the Uganda government when the Rome statue was ratified on the 14th of June 2002 after the amnesty has been granted since on the 26th of January 1986. The case was later taken to the ICC in December 2003 after amending the amnesty act “ so as to exclude the leadership of the LRA, ensuring that those bear the greatest responsibility for the crimes against Humanity committed in the Northern Uganda is brought to Justice” (Dukic, 2007) President Museveni decision was questioned by the traditional rulers. They wanted peace first to be put in place instead of justice. There was the need to put the ICC out of this context and forget about the issue of referring Joseph Kony and the rest that had committed gross human atrocities to the ICC. The legal implication once shows the conflict between the ICC and Transitional justice of Africa and its limitations. The ICC is attaching more responsibilities and international policies in the way in which transitional justice is supposed to operate in Africa and the World in general. The amnesty that was granted to Joseph Kony was in accordance with international law procedures? Another legality was the question of any law in international law that is granting amnesty to perpetrators of gross human right violators. We can see from the additional protocol 11 Of the Geneva Convention that crimes against genocide and humanity should have been granted amnesty in some cases all over the world. The conflict generated by Article 53 of the Rome statue also raise the question whether justice can be guaranteed through political stability and if their investigation carried against the wishes of the Uganda people can serve the interest of justice.

Another legal implication has to do with Article 17 of the Rome Statue. There is the problem of understanding Transitional justice in Africa and which of the mechanisms can be best applied? The Article question which of the mechanisms are admissible and why? Article 16 of the Rome statue questions the role of the Security Council in carrying out investigations of criminal atrocities into Africa. The independence of the prosecutor during investigations had also raised some doubts about the legal experience we see from Africa.

Truth Commission was established in chad to bring Hissene Habre to justice for atrocities committed during his brutal regime. Because of the legal implication involved ‘The *Chadian government decided to support the international cases filed against Hissene Habre , giving full cooperation to the*

⁵ The Amnesty Act 2000, Article 3(1) and 2 , Available at [https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/7d2430f8f3cc16b6c125767e00493668/\\$FILE/Ugandan+Amnesty+Act+2000.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/7d2430f8f3cc16b6c125767e00493668/$FILE/Ugandan+Amnesty+Act+2000.pdf)

Belgian judge when he visited Chad, granting the victims access to the Documentation and Security Directorate archives, and lifting Hissène Habré's immunity from the jurisdiction of the Belgian courts" (Human Rights Watch, 2005). Colonel Mengistu of Ethiopia and other defendants were charged with "Genocide and war crimes, faced alternative charges of having committed aggravated homicide and willful injury" (Human Rights Watch, 1999) the Ethiopian government wanted him to be extradited from South Africa to come and face trial. The question is if he was going to get a fair trial. Legal implication of Transitional justice in Africa is also attributed to the lack of resources given to some of the committees to complete their assignment as some of them end up in achieving nothing. Our experiences in Sierra Leone, South Africa, Uganda, Ghana, Nigeria, Rwanda and Congo (DRC) demonstrate that even the state institutions are too weak to implement transitional justice. What also creates a legal issue in Transitional justice in Africa stands for. Normally in Latin America Transitional justice clearly stands for regime change and gross Human rights abuses. But in Africa Transitional justice methods are being implemented differently in most African Countries.

9. CONCLUSION

We started this Paper by discussing "what Transitional justice in Africa is". The truth and reconciliation is the best mechanism of Transitional justice in Africa. It has strengthened peace, justice, development and good governance. The traditional justice system has been strengthened with locals participating. Accountability is brought into society and respect to human values. Those who have been tried for atrocities committed serve as a deterrence to others. Though it has some problems. Legal observations include:

- a) Article (1) ACHR "States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reason of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition"
- b) American Commission on Human Rights invoking articles 50 and 51 of the Convention, must be respected internationally in transitional justice period by all states. Citing the case of Rodrigues V Honduras the commission intervened when he requested the state to intervene in his violation of the "right of the right to life (Article 4). Article 4 (right to human treatment) and Article 7(right to personal liberty"
- c) Rome statute Article 53 questions the legal basis of the Transitional justice in Africa. The article wants the implementation of Transitional justice with relevant rules that binds the conduct and obligation of states
- d) Article 17 of the Rome statute identifies that there is the problem of understanding Transitional justice in Africa and which of the mechanism can be applied
- e) Article 16 of the Rome statute questions the Security of the UN carting out and stopping of investigations of atrocities in Africa.
- f) A conflict between the ICC and African countries has always ensured citing the case of Joseph Kony and President Museveni of Uganda. ICC wants to intervene even when not invited. They come out with international policies that changes the scope of transitional justice in Africa

REFERENCES

- Charles, M. F. (2008, May/June). *Transitional Justice in Africa: The Experience with Truth Commissions*. Retrieved from Hauser Global Law School Program: http://www.nyulawglobal.org/globalex/Africa_Truth_Commissions.htm
- Dukic, D. (2007). International Justice and the International Criminal Court-in "the Interest for Peace"? *International Review of the Red Cross* Volume 89 NUMBER 867, 1-28.
- Human Rights Watch*. (1999, November 24). Retrieved from Ethiopian Dictator Mengistu Haile Mariam: <http://www.hrw.org/news/1999/11/24/ethiopian-dictator-mengistu-haile-mariam>
- Human Rights Watch*. (2005, JULY 12). Retrieved from Chad: The Victims of Hissène Habré Still Awaiting Justice: <http://www.hrw.org/reports/2005/07/11/chad-victims-hiss-ne-habr-still-awaiting-justice>

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ICTJ Justice Truth Dignity . (2015, April Accessed on the 1/5/2015). Retrieved from International Center for Transitional Justice(ICTJ) : <https://www.ictj.org/about/transitional-justice>

(2008). *United States Institute of Peace*. United States: United States Institute for Peace.

Velasquez Rodriguez Case,, (Ser. C) No. 4 (The Inter-American Court of Human Rights July 29, 1988).

Viccencio, C. v. (2004). *Transitional justice and human rights in Africa1*. United Nations.

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