

Interrogating Policy Formulation Processes of Recent Truth and Reconciliation Commissions (TRCs) in Africa

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Abstract

There is no doubt that the truth and reconciliation commission (TRC) approach to political memory has occupied the center stage of transitional justice discourse in recent years. While the literature on transitional justice has grown rapidly, enriching our understanding of the normative and explanatory logic behind TRCs, how the policy formulation process of TRCs is constructed within domestic politics has received little attention. In addition, the mode of proliferation of the TRC approach across borders has been understudied. What accounts for the interest in, and replication of, the TRC model across borders? In this paper, I interrogate concepts, such as ‘Ideas’, ‘Agency’ and ‘Structure’, and their role in the reproduction of TRCs. Drawing from field research in Nigeria, Ghana and South Africa, I argue that the dynamics of domestic policy formulation of this approach in Africa is the result of emulation from the South Africa TRC, which has become the best known and an international model for replication. This emulation is generated by the filtration of ‘ideas’ from one region to another and facilitated by transnational agencies. The extent to which this policy ‘ideas’ from external jurisdiction succeeds depends on how they are processed within the domestic structures.

“Truth Commissions have become routine; it has become a standard practice. You have a transition and everybody immediately says we have to have a truth commission” (Kritz, 2002).

Introduction

The quotation above amply depicts the extent to which Truth and Reconciliation Commission (TRC) mechanism has gradually become an instrument of memorializing painful political past. There is no doubt that a TRC approach has become the centerpiece of a transitional justice policy. By 2003, over 25 TRCs had been established globally (Bloomfield et al, 2003). In the Global South, in particular, from post-apartheid South Africa to post-conflict Timor-Leste, TRCs have become familiar tools for taking stock of crimes, particularly human rights abuses of the past, promoting accountability and redress in the wake of state violence.

In Africa, TRC creations, since the famous South African Truth and Reconciliation Commission (SATRC) in 1996, have included Nigeria in 1999, Ghana in 2002, Sierra Leone in 2002, Morocco in 2004, Liberia in 2006, and recently (2009) in Togo and in Kenya where the law enacted in 2008 to establish the TRC is almost a replica of the

SATRC version. Discussions for similar approaches in Uganda, Burundi, Democratic Republic of Congo, and in some of the recent emerging post-conflict states on the continent are ongoing. The appeal of TRCs in Africa appears to be unyielding.

While the emergence of TRCs is generally traced to the developing world, it is significant to note that the current spread of this mechanism has caught up with the established democracies as exemplified in Canada with the creation of a TRC to investigate the Indian Residential School debacle. The unofficial TRC established in Greensboro in North Carolina, the United States of America (USA), to investigate the 1979 shooting incidence of a racially mixed gathering of political activists and labour organizations that involved the American Nazi Party and Ku Klux Klan can also be cited. And of course the recent call by some members of the US Legislature (the Congress) for a TRC to be established regarding torture policy under the previous Bush Administration.

The critical question is: how is this TRC approach to transitional justice policy being formulated in domestic politics? In other words, what are the reasons and/or forces that determine the policy establishment of TRCs, shape their mandate and condition their success or failure; and what account for the prominence of TRCs as a point of reference for memory and accountability in transitional post-conflict societies? In short, what is the politics behind the replication of this type of historical memory project in Africa?

This paper examines these questions in relation to TRC creations in Nigeria and Ghana. Drawing from research findings, I suggest that the dynamics of domestic policy formulation of the TRC approach in these two countries is as a result of emulation from the SATRC experience, which has become the best international model for reference and adaptation. This emulation is occasioned by domestic institutional challenges that facilitate the filtration of 'ideas' borrowed from an external region and promoted by transnational networks and agencies. The extent to which this policy 'ideas' from one jurisdiction to another succeeds depends on how they are processed within the domestic political and social structures.

Defining the Research Problem

During the early years of the nurturing of the transitional justice field, the discourse was daunted with the debate over whether to remember and acknowledge the past or not (Kritz, 1995). The TRC approach, since the formation of the SATRC, dominated the discourse and various positions were articulated in the literature. While, the literature continues to engage and ask questions as to the extent TRCs contribute to memory, establish the truth, promote healing and advance reconciliation (Mendeloff, 2004; Hayner, 2001; Mamdani, 2000), it is also the case that the normative and explanatory logic behind TRCs have become issues of less contestation in the discourse. Coming to terms with the past is acknowledged to be critical for any society that is emerging from violent conflict. Remembering and acknowledging the past, it is argued, helps to prevent the re-occurrence of such atrocities and put the new transitional society in a pedestal of social rebuilding, democracy, rule of law and good governance.

This notwithstanding, the development of public memorialization projects, such as TRCs, is also fraught with policy formulation challenges that are political, eschew inclusiveness and are devoid of contextual relevance. These challenges become pronounced when the formulation of TRCs as a transitional justice policy in recent post-conflict societies in Africa defies prevailing theoretical underpinnings and appears to be influenced more by political exigencies, reducing the policy formulation conversation to copying the South Africa model. The resulting effect is that memory projects are devised with little political and social relevance. In addition, the process is rarely informed by societal needs and inputs.

The literature identifies three basic analytical frameworks for explaining the formulation of a transitional justice policy. There is the jurisprudence of Human Rights School, mostly associated with scholars from the legal community. They emphasize on the doctrine of universalism of human rights, obligations to international human rights statuses, the need to account and punish for past crimes (Henkin, 2002; Teitel, 2003; Orienticher, 2007). Thus this framework advocates for criminal justice mode of transitional justice as a memory project. There is also the transitology framework that assigned the choice of a particular approach to transitional justice to the nature of democratic transition. This framework suggests that the type of democratic transition-- transformation, transplacement and replacement-- determines the type of transitional justice approach, either the criminal justice or the quasi-judicial method, such as the TRC approach, to adopt in any society (O' Donnell and Schmitter, 1986; Huntington, 1991; Skaar, 1999). And finally, the elite pact model has also been used to explain the choice of a particular approach. Some scholars have attempted to apply this framework to explain the choice of the South African TRC (Bond, 2000).

Currently, approaches to transitional justice of which TRC has become popular in Africa suggest that none of the above existing frameworks apply. For instance, Nigeria which had a political transition in 1999 after several years of military dictatorship (with the most notorious being the rule of General Sani Abacha from 1993 to 1998) opted for a TRC with the establishment of the Human Rights Violations Investigations Commission (HRVIC), popularly known as the Oputa Commission to investigate human rights abuses of all past military regimes since independence. Ghana also, in 2002, established a National Reconciliation Commission (NRC) to investigate and document record of human rights violations from independence to 1993. In both cases, the opportunity to adopt the criminal justice approach was sidestepped for a TRC model. Furthermore, the nature and type of the political transitions in 1999 in Nigeria and 2001 in Ghana respectively could be described as replacement model of the transitology discourse which allowed the new regimes to choose the judicial approach. The nature of the transition in these two countries also did not warrant a situation that could be described as an elite pact. So what might have explained the choice of TRC in these two countries as a historical memory project?

Research Design

This is a qualitative research project. Data in the form of individual interviews and focus group discussions as well as other secondary sources have been gathered in Nigeria,

Ghana and South Africa. Among the stakeholders interviewed were local politicians, policy-makers and bureaucrats, civil society representatives, architects of these commissions, commissioners and staff who worked with these TRCs, victims' of human rights abuses who appeared before these TRCs. Other sources have included interviews with academics and policy practitioners in these countries. Additional data were collected from interviews with practitioners working with the South Africa based Center for the Study of Violence and Reconciliation (CSV) and the Institute of Justice and Reconciliation (IJR) as well as with some individuals who were connected to the South African process. Further interviews were conducted with officials of some Northern-based think-tanks such as the New-York based International Center for Transitional Justice (ICTJ) and the Washington DC based United States Institute of Peace (USIP) who worked with and advised the TRCs in these countries or have been working on transitional justice programs globally.

Preliminary Findings

In both the Nigerian and Ghanaian cases, there was the urgency for some form of memorialization and accountability for past wrongs. Victims of these wrongs and citizens, in general, were advocating for some form of memory, justice and recognition of the dark past of the countries' political history. Clear evidence on the ground during the transitioning period in these two countries suggested a general preference for a criminal justice approach to transitional justice.¹ Yet the political realities and constraints (institutional and legal barriers) made it difficult for the new regimes that emerged in these countries to apply the existing preferred judicial mechanism to confront the dark past. In the case of Nigeria, the argument was that several years of military rule had weakened and compromised key governance institutions, including the judiciary, limiting the application of this approach. In Ghana, the existence of entrenched indemnity clauses in its 1992 constitution, which gave blanket amnesty to all previous military regimes and their leaders, was a hindrance to choosing the judicial model.

The effects of these institutional obstacles necessitated the need for these regimes to look for alternative ideas to address the existing problem-confronting the realities of historical memory. While victims and societal demand for this confrontation exercise required a rationale response by the new regimes, the regimes own political interest in meeting national obligations and international acceptance forced them to hasten this search for ideas. In other words, the regimes of General Olusegun Obasanjo in Nigeria in 1999 and Mr. John Kufuor in Ghana in 2001 voluntarily engaged in the search for new ideas to respond to acknowledged widespread violation of human rights of the past and also in doing so attempted to build a new pro-human rights image in the international community. The search for ideas in both countries was championed by domestic actors, including elected politicians, human rights non-governmental organizations (NGOs), think tanks and complemented by transnational organizations whose business is to promote these types of memory projects globally.

¹ Findings from existing documentary survey evidence, research interviews and focus groups discussion in Nigeria and Ghana

In both cases, the South African experience became the source of ideas for the local politics. The policy discourse during the transitions that resulted in the setting of a TRC model was influenced by the SATRC perceived success regarding the ability of South Africa to overcome the legacies of apartheid. Architects of the TRC approach in both countries confirmed that they drew significant lessons from the South African experience, travelled to South Africa to learn at first hand how the policy was formulated and worked and also invited some of its leading figures to advise them during the policy formulation stages. Other international agencies also contributed significantly in shaping the domestic discourse in these two countries, serving as resource persons in several preparatory workshops that took place, sharing best practices, providing literature and documentation on TRCs around the world, and providing financial support for these commissions.² For instance, the Ford Foundation in the USA bankrolled the Nigerian Oputa Commission. Furthermore, several officials associated with ICTJ and CSVR advised the Oputa Commission and the NRC as well as supporting local CSOs to engage with the process.

That, ‘Agency’, both domestic and international, was instrumental in constructing ideas around the TRC model in both countries was perceptible. It is important to note, however, that the TRCs in both Nigeria and Ghana were largely driven by domestic actors but not imposed by external agencies. The latter’s contribution was limited to the spread of ideas, content issues and that in essence gave credibility and legitimacy to this approach. In effect the idea of TRC approach as a memory project in Nigeria and Ghana was an act of policy learning and transfer, with the source being the SATRC.

The question of how policy ideas borrowed from elsewhere succeeds or fails is informed by several factors, including the appropriateness of the ‘idea’ within the social and political contexts of the destination society. This is where the two cases differ. In Nigeria, the Oputa Commission has been described as a complete failure (Yusuf, 2007).³ The Commission was duly set up, collected statements from victims and organized several public hearings but the outcomes were no better. Not only did three former military leaders refuse to appear before the Commission upon invitation, but the final report, including the findings and recommendations, was never officially made public. None of the recommendations, such as reparations, human rights education and memorialisation has been implemented so far. On the contrary, an argument can be made for a modest success in the Ghanaian experience. The NRC final report was made public and acknowledged. Further, some of the recommendations, including reparations to victims, were implemented.⁴ Notwithstanding, there are sections of the populace who strongly believe that the NRC exercise was politically motivated as a witch-hunt project to demonize the regime of the former president, Jerry Rawlings.⁵

A fundamental variable to account for the difference in these two cases is the level of appropriateness of the policy idea being borrowed. Irrespective of how informed the

² Interviews and Field Notes from field research

³ Interviews and Field Notes from research in Nigeria

⁴ Interviews and Field Notes from research in Ghana

⁵ Ibid. These views were mostly shared by members of the National Democratic Congress, the party of the former military turned civilian leader, Jerry Rawlings

domestic actors are with respect to the idea, if it is not subjected to the appropriate local social and political context, the policy is bound to fail. In Nigeria, a major reason for the problems that faced the Oputa Commission could be traced to the policy formulation phase. The operational framework for the Commission was the result of a presidential decree, other than legislative process. Consequently, the policy formulation phase lacked inputs from ordinary citizens, and more importantly from the direct beneficiaries (victims). The idea of the Oputa Commission was driven, largely, by the new Nigerian political elite, under General Obasanjo, and citizens' inputs were weak, if not completely absent. The Ghana example was through a legislative process, allowing key stakeholders, including the victims, to make relevant inputs into the final policy outcome. In short, the public deliberations of the policy generated ideas that resulted in the formulation of a TRC model in Ghana were better and encompassing than in Nigeria.

Conclusion

To conclude, this paper has tried to suggest new ways of understanding the current appreciation of a TRC approach as a memory project in recent post-conflict/authoritarian societies in Africa. First, viewed from a policy analysis discourse, this paper is suggesting that what is happening in Africa, with TRCs, can be understood as a policy transfer. It is a reflection of a reproduction of the South African experience in African countries. In part, it fits into a south-south policy dialogue but also the recent attraction of this approach in Northern-based societies may be a pointer to south-north policy learning when it comes to a TRC approach.

Second and from a comparative perspective, this paper attempts to make the argument that a plausible explanation for recent reproduction of TRCs across borders in Africa lies in the social constructivism analytical framework. Using the Nigerian and Ghanaian cases and juxtaposing them with experiences of other African cases, past, ongoing and impending ones, the process of TRC policy formulation in Africa characterises a situation of interactions between 'Ideas' and 'Agency' processed within the domestic political and social structures. Thus, the critical role of individuals and institutions (both domestic and external) interacting with domestic social needs and structures provides a probable framework for understanding and explaining the domestic discourse around the formulation of current TRCs in Africa. This interaction is dialectical involving structure and agency resulting in the construction of the TRC model deemed to be appropriate and necessary.

Finally, for any memory project to succeed and serve the public good, its construction and design phases are significant. The more responsive existing social and political structures are in the formulating stage, the potential such projects are in advancing reconciliation and national unity. This becomes critical if the idea behind the project is borrowed from a different jurisdiction.

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