

TRANSITIONAL JUSTICE DESTINED TO BE CRITICIZED AS FAILURE: UNDERSTANDING ITS UNIQUENESS FROM AFRICAN CASES

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ABSTRACT African countries such as South Africa, Sierra Leone, Rwanda, Liberia, Ghana, and Nigeria share post-conflict policies known as transitional justice (TJ) to achieve accountability for conflicts, victimhood, and wrongdoing. This paper provides an assessment of the previous critical discourse on TJ, identifies the issues critics have focused on, examines why the assessments of TJ programs have been critical, and discusses whether the criticisms reflect essential conditions under which the TJ programs were conducted. The paper also examines the criticisms of the Truth and Reconciliation Commission (TRC) in South Africa and traces the development of similar criticism aimed at Sierra Leonean and Rwandan programs. In so doing, it attempts to uncover the social conditions that affect TJ outcomes and induce repetitive choruses of criticisms. Finally, the author introduces a sociological framework based primarily on social movement theory to explore the contributions and potential of TJ for post-conflict societies.

Key Words: Transitional justice; Social movement; Mobilization; Post-conflict society; Double contingency.

INTRODUCTION

Since the end of the Cold War, the African continent has been the focus of international attention because of frequent armed conflicts and its unique and progressive post-conflict policies. Countries such as South Africa, Sierra Leone, Rwanda, Liberia, Ghana, and Nigeria share post-conflict policies known as transitional justice (TJ) that attempt to achieve accountability for conflicts, victimhood, and wrongdoing.

The definition of TJ differs among scholars. Some describe TJ as “trials, truth commissions, vetting, institutional reform, security sector reform, and reparations.”⁽¹⁾ Ruti Teitel, a leading scholar in this field, defined TJ as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Teitel, 2003: 69). This definition excludes the truth commission. On the other hand, a 2004 United Nations (UN) report defined TJ, including the truth commission, as:

Full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice, and achieve reconciliation. These may

include judicial and non-judicial mechanisms with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof (United Nations Security Council, 2004).

However, a theoretical argument related to the definition of TJ is not the focus of the present article. Hence, the conventionally accepted UN definition of TJ will be used in the following sections.

As the number of TJ programs has increased, so too have critical comments and analyses of TJ. For instance, since the South African Truth and Reconciliation Commission (TRC) completed its work, most scholarly evaluations of the commission have been critical. However, this negative tendency has not been restricted to research on South African programs.

A negative report on the Serbian transition stated that “Today, eight years on, we witness the failure of this transition” (Dimitrijevic, 2008: 11). Similarly, the Nigerian program has been described as “fundamentally flawed from the outset by a deliberate ploy on the part of the government” (Yusuf, 2007: 269). In Sri Lanka, several attempts by post-war governmental commissions to disseminate the findings of their inquiries have failed because of internal political conflict. As a result, the nation has become indifferent to the inquiries (Anonymous, 2011: 39). One scholar lamented that no previous TJ program has achieved its goals:

... [W]e have focused entirely too much on the notions of closure and reconciliation. Member states of the UN and European Union have expended considerable amounts of money and human resources on chasing a will-o'-the-wisp, adopting buzzwords that have no consistent definition or conceptual clarity and promoting mechanisms to achieve these obscure outcomes with little evidence that they will make a difference (Weinstein, 2011: 3).

In another study, the author wondered, “Whether there is anything we can do to lessen the disappointments and frustrations that often result from our attempts to pursue transitional justice” (McAdams, 2011), echoing these critical choruses. Reviewing the preceding works on TJ gives this author the sense as if TJ is destined to be criticized as failure by scholars or locals of the concerned society. But why? Do such critical discourses on the previous TJs have any blind spot in terms of the social context in which TJs are inevitably or alternatively settled?

This paper begins with an assessment of previous critical discourse on TJ. It identifies the issues critics have focused on, examines why the assessments of TJ programs have been critical, and discusses whether the criticisms reflect essential conditions under which the TJ programs were conducted. The following section examines the criticisms of the TRC in South Africa and traces the development of similar criticism aimed at Sierra Leonean and Rwandan programs. Then, this paper examines the societal conditions in which these TJ programs

were conducted. In so doing, it attempts to uncover the social conditions that affect TJ outcomes and induce repetitive choruses of criticisms. Finally, the author uses the sociological framework based primarily on social movement theory to explore the contributions and potential of TJ from a new angle.

CRITICAL DISCOURSE ON SOUTH AFRICAN AND OTHER AFRICAN TJ PROGRAMS

I. Criticism of South African Cases

The post-apartheid South African government chose to establish the TRC rather than a war tribunal or providing full immunity to perpetrators of past atrocities. The primary mandate of the TRC was to gather testimony from a wide variety of victims and perpetrators, hold public hearings⁽²⁾ of selected cases, examine applications by former perpetrators for amnesty, recommend desirable means of reparation for victims,⁽³⁾ and to edit and publish an official report. Based on the Promotion of National Unity and Reconciliation Act of 1995, the TRC commenced nationwide public hearings in April 1996, gathered testimony from 22,000 victims, accepted amnesty applications from 7,100 former perpetrators, and published a five-volume interim report in 1998 (Truth and Reconciliation Commission, 1998). Reviews of amnesty applications continued until 2000, and the final two reports were published in March 2003. Although more than 10 years have passed since the TRC completed its work, a variety of criticisms of the TRC have appeared. A rough overview of these criticisms is provided below.

Several scholarly assessments of the TRC favorably evaluated the clause that permitted the provision of amnesty in exchange for full-range testimonies and widely organized public hearings. These elements were significant in comparison with similar attempts made in other countries, such as El Salvador, in which army officers responsible for atrocities were offered immunity in exchange for the publication of official reports (Hayner, 2001: 40). In the case of truth commission of Sri Lanka, public hearings had to end because witnesses received threats (Hayner, 2001: 74).

Although expectations were high in the early stages of the program, the TRC was criticized for a variety of reasons during the course of its activities, some of which were directed at the image expected of the TRC. Several of the criticisms addressed shortcomings of the mandate and the commission's inability to involve the perspectives of all citizens.

With respect to the framework of the TRC process, Mahmood Mamdani's criticism (Mamdani, 2009) of the responsibility of the beneficiaries is crucial. Mamdani focused on the definition of "perpetration" during the TRC. He argued that only actual criminal deeds were addressed and the systematic perpetration of the apartheid regime was ignored (Mamdani, 2009: 472–473). Similarly,

Carranza (2008) noted that the TRC could not address the corruption that occurred during the apartheid era simply because “corruption fell outside its mandate” (Carranza, 2008: 313). Undoubtedly, most types of corruption involved white public service personnel, thus showing impunity of beneficiaries.

Criticism of the political discourse during the public hearings stemmed from the TRC commissioners’ concluding remarks when victims finished their testimonies, “Your hardship was necessary to give birth to the new South Africa,” perceived as negative by individuals who did not believe that their experiences should be integrated into the nationalistic “master narrative” (Chidester, 1999). This criticism highlights the impact of the exclusive discourse on victims who did not identify victimhood with the rise of the new nation. Consistent with the narrow limits of the mandate, the victim category was criticized because it did not include violations of the past laws. A mandate omitting such a point was deemed to have failed to address widespread basic violations of human rights by the institution of apartheid.

Although the victim-centered orientation of the TRC framework was a positive aspect of the program, victims generally only had the opportunity to testify once, and the witnesses selected for the public hearings did not receive sufficient psychological care. Thus, it is doubtful that the opportunity to testify led to psychological healing. Worse, the lack of sufficient attention or follow-up mechanisms has been found to trigger re-traumatization in witnesses.⁽⁴⁾ At the collective level, this phenomenon has been expressed as the post circus syndrome:

... Lapsley saw that the hearings often left the townspeople at a loss; “The circus comes to town and the circus leaves—and then what?” they would ask him (Hayner, 2001: 142).

Furthermore, a number of criticisms arose from the statistical data on testimonies collected by the commission. Foremost among them was the concern that the statements were not collected equally among population groups. There was little doubt that the TRC collected many statements from Africans, particularly those who supported the African National Congress (ANC). This issue was statistically borne out in the TRC report (Table 1).

In fact, even the ANC failed to maintain a unified position with regard to the TRC. Politicians such as Thabo Mbeki, who were younger than some others, including the then-president Nelson Mandela, adopted adversarial positions that demanded the deletion of certain ANC past activities from the official report. Furthermore, they boycotted the ceremony for the publication of the TRC report in October 1998. Later, when Mbeki assumed political power, he did not implement the recommended reparation policies suggested by the TRC. Conversely, the white nationalists and supporters of the Inkatha Freedom Party (IFP) refused to commit to the TRC process because they believed its activities were politically biased. Nor did the process involve many individuals who were perpetrators in the black on black violence in the 1990s, during the last stages of the apartheid regime. Moreover, the TRC was further criticized for not

Table 1. Number of statements collected from each population group

Population group	Number of statements	Statements from each group (%)	Total population in each group (%)
African	19,144	89.9	76.1
Colored	354	1.7	8.5
Asian	45	0.2	2.6
White	231	1.1	12.8
Total*	21,297	100.0	100.0

Source: Truth and Reconciliation Commission, 1998: 168.

*1,523 statements were from deponents whose population group was unknown; thus, the total number differs from the sum of each population group.

summoning the ex-president of the apartheid era, P. W. Botha. These facts were considered failures of the TRC.

Other critics have observed that several South African non-government organizations (NGOs), including churches, offer a good foundation for local cooperation and criticized the TRC for not mobilizing local stakeholders and developing close relationships and lasting cooperation with these local NGOs (van der Merwe, 2003: 110–112; van der Merwe & Chapman, 2008). With respect to individuals who may have been involved, some critics questioned the concept of reconciliation solely in the national context (Mine, 2010). Conflicts during apartheid did not occur solely within South African borders. Rather, these conflicts also occurred in neighboring countries, and individuals residing in those countries did not consider apartheid just another country's business; apartheid was a matter in which they were directly involved as stakeholders. In this context, the TRC, which failed to address victimhood in neighboring countries, was criticized for not including the ideal of liberation and, as a result, missing an opportunity to improve relationships with these countries.

By highlighting the shortcomings of the process, these criticisms reveal that the TRC failed to reach and include many individuals and organizations. In other words, these criticisms clearly indicate that the TRC should have attempted to develop a mechanism by which the maximum number of people interested in the work of the commission could have joined the process on their own initiative.

II. Criticisms of Other African TJs: Cases in Sierra Leone and Rwanda

The criticism that the South African TRC failed to capture the interest and promote the participation of local people and organizations was echoed in the Sierra Leone cases. The hybrid Special Court for Sierra Leone (SCSL) and the Sierra Leonean TRC were criticized for failing to correspond to local values and worldviews.

For example, Rosalind Shaw noted from her interviews with locals that more people were focused on the importance of forgetting than on the merits of speaking the truth:

Instead of the expectation of “forgive and forget,” which normally accompanies the truth-telling project, they argued that healing and reconciliation depend on forgetting. [Therefore, i]n some communities, survivors and witnesses of the violence agreed together that they would not give statements telling of what they had suffered during the war (Shaw, 2007: 184).

Shaw described the negative reaction of the locals to the TRC as follows:

The TRC is too public. I have forgotten and have forgiven, so no need for the TRC. ... We don't want the TRC because the TRC is only word of mouth. But if you will give me what I've lost, then the TRC will hold water. How will I go and talk on the radio about what they've done to me, when I get no [material] benefit from that? I'll feel shame. I don't want to let the public know what they've done to me. We all decided not to talk to them. The president talked to us—“forgive and forget.” Then they [the TRC] said they come to take statements, but no [material] benefit! We discussed this before they came. We decided to avoid them. When you talk about what happened, you feel worse, not better (Shaw, 2007: 198).

These negative reactions to the TRC revealed that the locals clearly disagreed with the TRC framework. They did not believe that public retelling of traumatic experiences helped them achieve healing and reconciliation. In other words, the basic methodology and value system of the TRC did not reflect the local value system and, thus, failed to match the locals' sense of justice and reconciliation. Criticisms similar to those of the TRC are reflected in the following quotation drawn from the SCSL case:

... US involvement in the SCSL and the Taylor trial was particularly damaging to the legitimacy of the process because the SCSL could with some credibility be portrayed as the Americans' plaything, with American funding and American prosecutors leveling “American accusations of terrorism” (Glasius & Meijersy, 2012: 251).

The lack of sufficient local involvement in the process lead to the criticism that the TRC was “foreigners' games.”

Distrust in foreign experts is usually paralleled by local expectations that may make the foreign experts feel uncomfortable. As demonstrated by Shaw's description, when locals hear the foreigners state, “We want to help you,” locals may think fiscal opportunities will be provided.⁽⁵⁾ Thus, when locals realize they may not receive remuneration for their participation, their motivation to take part in the TRC process is likely to decrease. Also, “the TRC and the SCSL failed to reach out to and include the majority of Sierra Leoneans” (Iliff, 2012: 261–262), who lived in rural areas and were illiterate. The local people were

unable to follow the operation of the two institutions in newspapers and media reports. The failure to popularize the TRC process, in particular, was exacerbated by the Commission's failure to rebroadcast its hearings in popular media (Iloff, 2012).

Iloff focused on the work and role of Fambul Tok, a local NGO led by a former TRC staff member, which was to promote dialogue and reconciliation at the community level to achieve "total community participation" (Iloff, 2012: 264). Undoubtedly, "total community participation" is a concept that the TRC was unable to embody, even though that was the direction it was expected to take.

Although local participation is an essential factor for TJ, the Rwandan case described below reveals the drawbacks of the "total community participation" ideal. The Rwandan *gacaca*, originally meaning to sit down and discuss an issue at the community level, was applied by the Rwandan government to deal with the past atrocities in an alternate local judiciary system. It is a well-known example of using a local "traditional" mechanism to achieve conflict resolution on a mass level that has been widely described in TJ studies. However, qualitative studies that focused on the actual *gacaca* process revealed difficulty in drawing local individuals into the conflict resolution process. Thomson & Nagy (2011) reported the negative comments of locals with regard to becoming involved in *gacaca*:

... [A] Hutu peasant and former prisoner ... said "*Gacaca* is just for show. We are told how to tell our truth about what we did during the genocide at *gacaca*. Me, I killed, and I even went through *ingando* [citizenship reeducation camps]. I have done everything this new government told me to do to get reconciled (Thomson & Nagy, 2011: 22).

Biased participation standards were also reported by Human Rights Watch:

Hutu often stayed away from *gacaca*, afraid of being publicly denounced or concerned they might not be given an opportunity to defend themselves. ... Hutu whose relatives were killed and had property destroyed by RPF soldiers were unable to raise these cases, which left them frustrated and disappointed with the process (Human Rights Watch, 2011: 84).

Even when the participation of locals was relatively consistent, external and internal control of the testimonies prevented locals from speaking the truth:

Both genocide survivors and genocide perpetrators worried that speaking about what they knew in *gacaca* would lead to social ostracism or repercussions from relatives and neighbors or would create problems with local government officials. As a result, the practice of "*ceceka*" (meaning "to keep silent") emerged, with local residents attending *gacaca* but deliberately choosing not to speak (Human Rights Watch 2011: 84–85).

Furthermore, as locals lost interest in the *gacaca* process, local officials and judges reportedly made forceful attempts to gather audiences:

When persuasion [to come to *gacaca*] failed, they closed shops on the day of *gacaca* hearings and threatened to fine residents who failed to attend the sessions. One individual told Human Rights Watch that fines ranged from 1,000 to 2,000 Rwandan francs (up to 3.30 USD). In certain areas, the local defense forces went house to house, rounding up community members and bringing them to *gacaca*. *Gacaca* judges occasionally used local defense forces to prevent people from leaving *gacaca* sessions early (Human Rights Watch, 2011: 85).

Thus, the issue of participation cannot be measured solely by the number of participants involved in the process, despite the fact that participation is the primary factor used to infer the social effectiveness of TJ program. As demonstrated by the Rwandan case, the number of locals involved and the manner in which they were involved are crucial to the success of TJ programs.

III. A Common Motive of These Criticisms

The South African, Sierra Leonean, and Rwandan cases share certain shortcomings of the TRC process. Even though they have their own problems stemming from the contexts of their historical and societal uniqueness, each case was criticized because it failed to develop sufficient mechanisms to promote participation. Criticisms ranged from questions of bias toward members of certain social groups to complaints of insufficient preparation for victim participation. The South African TRC failed to incorporate non-African individuals and non-ANC supporters. The Sierra Leonean TRC was unable to reach individuals who lived in remote areas far from the capital. Moreover, many individuals distrusted foreigners in positions of authority. The Rwandan *gacaca* failed to invite non-Tutsi individuals to become legitimate stakeholders in the process. Although non-Tutsi victims were allowed to participate, the conditions required for their participation were often formal and they perceived hidden agenda. Opportunities to commitment were limited and various restrictions were imposed on the victims' provision of statements. These criticisms all contain a common motive: *The need to create means to ensure that the greatest number of individuals can engage in the TJ process on their own initiative.*

When a TJ program mobilizes one particular social group over others, its activities lose legitimacy because the process is associated with previous patterns of politicized injustice that relied on the justice system to eliminate political opposition (Dimitrijevic, 2008). Further, as illustrated by the Rwandan case, restricted participation in the process generates a new sense of alienation. If (foreign) experts express (legal) authority in a society that fails to secure the (sense of) rule of law, individuals may view the TJ programs as the playthings of foreigners/experts, as seen in the above Sierra Leonean case. In a society

where judicial authority is generally considered to be unfair, opportunities to publicly recognize victimhood are arguably implemented in the forms that may not be legally protected. *The means to ensure that the greatest number of people can engage in the process on their own initiative* is officially reflected in the principles of the International Criminal Court (ICC). Currently, outreach and the preparation of means for participation are considered essential elements of justice activities performed by the organization (International Criminal Court, 2006; Vinck & Pham, 2010: 423).

Yet, *the means to ensure that the greatest number of people can engage in the process on their own initiative* is a challenging matter even in a non-post-conflict society focused on issues other than TJ. The processes involved in elections and religious practice in any country require mobilization. Robert Putnam's notion of "social capital," which is thought of as one of the social conditions for such mobilization, has declined in most countries (Putnam, 2000). As a matter of course, requests for local participation in TJ programs are met with reluctance in post-conflict countries, with people wondering, "What's in it for us?"

However, organizations that manage TJ programs are not omnipotent. Facing scarce resources, limited time, and restricted mandates, the organizations are forced to prioritize their operations. Will victims agree with or will they be satisfied with the services/programmes provided in situations with scarce resources? Opportunities for locals to participate, rather than only to follow official decisions made by authoritative institutions, such as the courts, might answer that question. These opportunities can also be embodied in the manner in which a significant number of people share information in the public search for past truths. Thus, this author will submit that *the mechanism to ensure that the greatest number of people can engage in the process based on their own initiative* is a logical viewpoint for further argument on the possible role and legitimacy of TJ, when it is negatively identified with less than optimum conditions.

WHY HAVE TJS CONSISTENTLY RECEIVED CRITICISM AND COMPLAINTS? THE SOCIAL CONDITIONS UNDER WHICH TJS ARE ESTABLISHED

An examination of why TJ programs have received so much criticism must consider the reasons why a society would establish a TJ program, such as that of an UN-led tribunal or the Truth Commission. The most likely answer is because domestic courts and national assemblies are unsuitable in light of neutrality, resource, and competence. Many societies lack the resources and experts to run their judicial system. Alternatively, citizens frequently distrust the judicial institutions and norms imposed by their country. Law was the primary tool used by the South African apartheid government to oppress Africans and create an unequal society. In Sierra Leone, although international judiciary was

used, some critics suspected the hybrid tribunal to be an American political process that reflected American needs. Thus, TJs are chosen, in part because the judicial systems in those societies are dysfunctional. However, the TJs themselves ultimately receive criticism, as discussed in previous section, that TJs do not bring justice. Both scholars and citizens have judged TJ programs as failures. Based on the African cases shown above, the criticisms are often related to problems with participation/mobilization such as, (1) insufficient attempts in contacting citizens during the process, (2) the TJ program not receiving the expected amount of attention, (3) frequent failure to include all social groups, and (4) the over-restriction in means of participation. These criticisms are persuasive because TJ programs were established to substitute for domestic judicial options in countries previously shown to lack legitimacy when addressing victimhood and wrongdoing. When the TJ program was not sufficiently publicized nor as accessible as the locals had expected, it was placed in the same disappointing category as prior unfair judicial courts or other official mechanisms.

Here “expectation” is the point of contention. A TJ is often criticized if it fails to mobilize local citizens as widely as expected. This said, what is the nature of “expectation” in this context? In other words, what is the best measure of expected mobilization?

Perhaps the most desirable simulation would include the following scenario. Regardless of position, all members of the society would understand why the TJ program had been established. They would support the process and participate to the best of their ability in all activities. The call for participation would be viewed positively, and result in the birth of a new national identity. Only then would reconciliation occur among enemies through dialogue and mutual understanding among democratic citizens capable of seeking justice through judicial procedure. However, as Weinstein (2011: 3) pointed out, many of us presume that these expectations are hardly realized.

Without doubt, TJ is a policy. A policy is normally proposed, discussed, and institutionalized through a scenario such as the one posed above. Any policy in a modern democratic society officially needs a logical/scientific ground and a perspective for the future outcome from implementing the policy. Therefore, when a government adopts a TJ option, the donors naturally demand a desirable cause-effect scenario. However, to understand the reason why past TJ projects have been described as failures that did not reach their expected goals, as exemplified by the South Africa and Sierra Leone cases, we must create an argument that can be developed outside the official explanations provided by TJ authorities.

We must focus on the nature of the expectations expressed during the first stage of any TJ program. Although the discourse of expectation reflects, to a certain extent, the government’s self-legitimization, expectation involves a fundamental paradox, because at the same time, expectations reflect the ideas of citizens and individuals who enjoy public services in a relatively stable society. The views of a relatively stable society are shaped by indices such as the rule of law, governmental authority, and perceived legitimacy of policies, that the

countries that opt for TJ do not enjoy, which is why they adopt TJ programs. Political scholars, such as James Gibson, measure indices of TJ achievements such as “the strict application of the rule of law and commitment to legal universalism,” (Gibson, 2009: 176) and the recognition and acceptance of the authority of the major institutions of the new state (Gibson, 2004: 16–17) because those societies do not necessarily guarantee these factors. In other words, TJs are adopted because they operate in a special context that contains certain social and political conditions. However, citizen expectations of TJ outcomes are created by conditions that do not exist in post-conflict societies. Thus, the TJ program falls short of the expected goals. Under these circumstances, expectations of outcome may not be a suitable assessment for TJ effectiveness, and other approaches may better reflect the unique aspects of TJ.

SHOULD TJS BE EVALUATED BY THE EXTENT TO WHICH THEY ACHIEVE THEIR EXPECTED SCENARIO?

Here we consider the case of the South African TRC. The TRC offered the ideal of reconciliation. Thus, many scholars, journalists, and South African citizens questioned whether it had achieved or promoted the expected goal during or following completion of the project. As shown in previous section, the responses were primarily negative.

However, this author proposes viewing the principles involved in reconciliation from another perspective. According to political philosophy scholars, the theoretical approach to reconciliation does not necessarily assume a logical cause-effect relationship. These scholars suggest that reconciliation may not be a planned goal but, rather, it may serve as a catalyst for new social effectiveness, such as the promotion of deliberative democracy. Erik Doxtader summed up this position quite simply:

I do not answer the question of whether reconciliation in South Africa ‘worked’ ... I suggest that this persistent question is very much the wrong question (Doxtader, 2009: 24).

Rather than measuring the extent to which the TRC meets the expected goal, proponents of this theoretical approach focus on the new social relationships forged among former enemies and the rise of social reality. Doxtader has described a scenario in which “the words of reconciliation” served as a trigger to change the character of a relationship of conflict:

Appeals for reconciliation employed speech to create a time for speaking ... a process of rhetorical invention that turned justifications for enmity into the potential for productive opposition (Doxtader, 2009: 288–289).

In such a situation, “reconciliation provides a common vocabulary within which

citizens may contest the terms and possibility of their political association” (Schaap, 2005: 13). Here, we recognize a reversal of the usual usage of the word, “reconciliation.”

The South African TRC, as well as previous and subsequent TJ programs in other countries, did not set down a core definition of reconciliation, which allowed a diverse and continuing debate over the meaning and possible outcomes of reconciliation. Doxtader stated that “calls for reconciliation set language into the motion of speech” (Doxtader, 2009: 286), and even the lack of a shared understanding of reconciliation can create a space for “individual and collective (inter)action and productive (dis)agreements” (Doxtader, 2009: 20).

Most people have a tacit understanding of reconciliation or its ultimate outcome. Thus, they are likely to have a low expectation for projects in which the concept of reconciliation has not been formally defined (van der Merwe & Chapman, 2008: 254) or, they criticize that the definition was incorrectly omitted (Duffy, 2010: 34). Alternatively, others may focus on specific outcomes of a reconciliation program and disapprove of the program if it fails to achieve those goals (Weinstein, 2011: 3).

The theoretical approach that examines how reconciliation dialogues and programs may change social circumstances assumes that social devices and assumptions for reconciliation function as catalysts for social change. Theorists who adhere to this catalyst approach evaluate the appearance of contestation around reconciliation as forming the deliberative democracy or democratic agon where the people are assumed to be a democratic subject (Norval, 2007: 200).

Furthermore, the social nature of information sharing, particularly the coverage provided by the media, can prepare people for productive contestation. South African Broadcasting Corporation (SABC) radio conducted on-the-spot broadcasting between 11 a.m. and 4 p.m. every day of the TRC public hearings. On-the-spot broadcasting with no editing or comment made the listeners feel as if they were present at the hearings. The SABC aired the programs in Zulu, Xhosa, Afrikaans, and English. SABC television aired daily news spots and the TRC Special Report, which ran on Sunday evenings from April 1996 to June 1998. The producer explained the objective of the program as providing contextual understanding of each case, reflecting the local background in the footage, and critically examining the activities of the TRC. The TRC guaranteed SABC full editorial independence (Truth and Reconciliation Commission, 1998: 356). In all likelihood, the continuous and intense media coverage of TRC activities created an arena for individuals to engage in prolonged discussion. Given that the media tended to provide critical reports, it is likely that this agenda encouraged individuals to discuss controversial issues. Moreover, this social condition supported the assumption of the catalyst approach.

APOLICYTHATOPERATESINTHECONTEXTOFDOUBLECONTINGENCY: APPLYING THE SOCIAL MOVEMENT FRAMEWORK

I. Incorporating Unpredicted and Contingent Factors into Argument

Although proponents of the catalyst approach evaluate the success of TJ by the potential for social change generated by the process, critics who view TJ as a policy argue that the results should be assessed using concrete statistical standards. Thus, strict definitions of goals and key terms, such as justice and reconciliation, are required. The following quotation reflects this position:

... [T]ransitional justice mechanisms often lack clearly defined goals, which throws up obstacles for development evaluation. ... Being clear about what a transitional justice process is trying to achieve and how—what in evaluation theory and practice is known as a theory of change and in social science as a hypothesis—is the point of departure of any development evaluation (Duggan, 2010: 320).

However, these viewpoints do not consider the fact that the outcome of any policy may be affected by unknown, unpredicted, or unintended factors. In fact, the effect of unknown factors may be greater in post-conflict than in non-post-conflict societies. Duggan (2010) described the features of TJ policy based on unavoidable contingencies rather than features of the programs:

Interviews with those involved in such commissions—commissioners, staff, witnesses, and victims—all attest to the fact that these processes never follow a linear pathway. They elicit unexpected and unanticipated divergences and upheavals, and they involve a high degree of creativity and constant adaptation of general principles from previous truth commissions to fit the new context (Duggan, 2010: 327).

The sociologist, Talcott Parsons, discussed the term, “double contingency,” in his social system theory (Parsons & Shils, 1951; Parsons, 1968). He explained that a fundamental contingency exists between actions and reactions in all relationships because the initial action expects a reaction. This said, the reaction cannot be foreseen. On the other hand, the reaction is contingent upon the action and yet, the reaction is theoretically open to several possible options. Therefore, the reaction occurs under contingent conditions. In his social system theory, Parsons stated that individuals rely on social norms when they make logical attempts to remedy this unstable condition (Parsons, 1968: 437). Social norms prevent people from becoming trapped in endless vacillation before they take action.

The TJ position, as well as individual reactions to TJ, can be compared to the so-called double contingency argument. The efficacy of a TJ program is

based on the anticipated achievement of outcomes, in the same manner as other policies. However, those expectations contain uncertainties (or more clearly, false logic) from the outset. False logic arises because TJ expectations are based on societies that have sufficient resources, satisfactory rule of law and social norms, and functional public services. In contrast, no shared codes/standards are available to moderate the reactions of locals in a new post-conflict society, because TJ is a new institution. According to Parsons, there are no social norms to guide the individual reactions to TJ and the values and goals of the process. Consequently, each person that is affected can only react based on his/her subjective interests. An individual who expects monetary reparations may be disappointed. People who believe that their victimization should be publicly addressed by the program may feel alienated. Victims who anticipate the perpetrators to show remorse may feel betrayed. Thus, in circumstances in which double contingency is relatively high, defining TJ goals according to the standards of a stable society undermines the unique contribution the TJ could make to a newly post-conflict society.

Now the author will discuss why TJ, conducted as a government policy, is often considered a failure, and the factors that make TJ unique in a post-conflict society. The following argument presents a new framework in which the author proposes that TJ be compared with social movements rather than classified as a policy, as used in non-post-conflict societies.

II. Using the Term, “Social Movement” in Our Model

Although various definitions of social movements exist, the widely accepted is, for instance, that of Tarrow (1998), who stated that social movements consist of “collective challenges, based on common purposes and social solidarities, in sustained interaction with elites, opponents, and authorities” (Tarrow, 1998: 4). However, there are more accommodating views of social movements that do not require the acquisition of social resources as a primary goal. In his study of ecology and peace movements, Alberto Melucci focused on “a transformation of the relations between society and its survival” (Melucci, 1996: 165). Movements should not be categorized primarily by the distribution of social resources or political or institutional reflections of the protesters’ appeals for rights. Melucci expressed these motives in the following manner:

The problem raised by contemporary movements rather concerns a redefinition of what democracy is, can be, and ought to be in a world ... where individuals and groups are offered the possibility of themselves constructing their identities instead of remaining simply recipients assigned them from the outside (Melucci, 1996: 203).

This approach to a better understanding of contemporary social movements was extended by Koichi Hasegawa, who defined a social movement as “a transformation-oriented collective action, which derives from people’s discontent with the present conditions or certain prospective situations” (Hasegawa &

Machimura, 2004: 19). Although he emphasized three key terms, e.g., orientation toward transformation, collective actions, and discontent, Hasegawa omitted the terms contention, protest, and collective identity, from his definition.

The vector that extends the concept of social movement appears to parallel the changing status of authorities that are unstable in respect to mandate, legitimacy, durability, and the power to control social members in a rapidly changing world. Even though the context of each society is quite different from each other, unstable authority in the so-called postmodern world has some similarities to a post-conflict society. TJ is frequently adopted because it offers an alternative to *de facto* public services such as the provision of domestic courts in societies where governmental/public authority is unstable and does not yet enjoy local legitimacy.

However, social movements and TJ may be compared from another perspective. A social movement is roughly composed of two elements: (1) the desire to change a society through channels other than the institutional (e.g., a domestic judiciary or parliament) and (2) the effort to mobilize the greatest number of people. If a collective action lacks the former element, it will be subsumed in the normal work performed by political parties. If a collective action lacks the latter element, the movement is likely to only involve elite bureaucrats. In summary, although several definitions of social movements have been offered, our working definition has to be that a social movement is a “transformation-oriented collective action” (Hasegawa & Machimura, 2004: 19) that includes a “redefinition of democracy” (Melucci, 1996: 203) through channels that differ from *de facto* judiciary and parliamentary channels that attempts to mobilize and involve the greatest number of people. This definition incorporates the elements that the African TJ programs have been accused of missing or of insufficiently including.

III. What Merit Can Be Derived from Comparing TJ and Social Movements?

The Campbell & Connolly’s study (2012) of Northern Ireland provides one of the few examples of research using social movement theory to analyze TJ. They applied the three main analytical frameworks of social movement theory, i.e., political opportunity structures, framing processes, and mobilizing theory, to interactions that occurred between Northern Ireland authorities and anti-governmental forces. Political opportunity structure is a conceptual device used to identify structural factors that prepare and promote social movements. The framing process approach focuses on the ways social movement bodies assign meaning to their activities. The primary concerns of mobilizing theory are social movement leadership and the use of resources, including material resources such as fiscal and human networks that involve social capital.

Because TJ activities start without enough legitimate authority or lack acknowledgement by most citizens, the need to mobilize the greatest number of participants is similar to that of social movements. Therefore, the framing analysis approach and use of mobilizing theory are appropriate for assessing TJ. These

approaches weigh the dynamism of each program, mobilization procedure, and interaction that occurs between the TJ program and locals. TJ objectives, such as reconciliation and the achievement of mutual understanding among former enemies, are difficult to achieve within the short period of each TJ mandate. Approaches that use social movement theory are appropriate in these situations. If we focus on the negative political contexts that often affect TJ outcomes, political opportunity structures could serve as conceptual devices that may help researchers compare TJ projects based on well-defined measures.

Further, when we consider the aspects of social movements that attempt to change public meaning or negotiation procedures as shown in Melucci's argument, changing spheres can be identified in the dissemination of collective actions among various actors. The South African Khulumani Support Group and Fambul Tok in Sierra Leone are examples of this point.

The South African TRC offered a space where participants could autonomously engage in the process because it used a loose definition of truth and reconciliation. The TRC did not serve as a repository for people's memories. Shared memories and the provision of mutual assistance by survivors followed a path that neither the TRC nor the government could anticipate or control. For example, the Khulumani Support Group (*khulumani*, meaning to "speak out" in Zulu) began its work when the TRC was established and became the largest victims' association in South Africa with more than 5,000 members. Initially, the Khulumani Support Group activities were aligned with the core agenda of the TRC, with activities including accessing information from the commission, creating proposals for victim reparations, and making public appeals related to amnesty judgments. However, their activities were not restricted to the framework of a lobbying organization for the TRC. The Khulumani Support Group was based on a strong bond with local communities and developed a role of its own. They staged a play that focused on the tension and contradiction in the TRC process and visited many townships. The Khulumani continued to follow the way the TRC related to its members, at the same time, they held symbolic funeral ceremonies for those who had died, whose remains had not been exhumed.

In Daveyton, Reverend S. K. Mbande stated:

The founders of Khulumani realize that the group never would have formed without the truth commission, though it has now taken on a life of its own (Hayner, 2001: 148).

Furthermore, the Reverend stated that these support groups were:

... one of the fruits of the commission. People coming together and healing themselves—that never would have happened before. Fear was the order of the day. Since the truth commission, things have come out, and it's made people come together (Hayner, 2001: 148).

The TRC was an official body and, as such, it was required to be open to

all political groups, including groups engaged in conflicts with one another. Thus, the commission could not be expected to embody a space that was relatively closed and safe, or guarantee that communications would be secure. However, once the TRC was identified as an incomplete space, the need for an opposing space became clear. The Khulumani Support Group understood the people's need for this type of space and developed its unique contribution. If the TRC had met all expectations and had been sufficiently helpful, organizations such as the Khulumani Support Group would not have emerged from the TRC's process. The Khulumani case demonstrates that a TJ project may lay the groundwork for interactions among other groups and individuals who otherwise may not have become involved. Put another way, the TJ framework as a catalyst guarantees the recapture of data and facts that may have been categorized as nonessential in the official path to the publicly expected goal.

In sum, what merit can be derived from comparing TJ with social movements? The author proposes three possible directions for further argument. Firstly, TJ should not be identified as a policy. An expected goal will not be the ultimate standard for evaluation. Rather, the implementation process of TJ becomes the point of assessment particularly in terms of mobilizing locals and publishing program information. The analytical approaches in social movement theories are useful as practical analytical tools. How the TRC program can involve the politically opposing party will be a crucial question along this line. Secondly, recognizing TJ is an insufficient and powerless organization from the beginning would further the argument that the deployment of connection, cooperation and networking with other organization becomes the next point to be assessed. The simple expressions, such as "the TRC failed" or "The court didn't bring justice" are not persuasive from this viewpoint because TJ should rather be understood as a catalyst in a series of related issues. The author submits the case of the Khulumani Support Group in South Africa as an example of this viewpoint. Thirdly, this proposal requires new standards for evaluating the effectiveness of a TJ program. With the above definition of a social movement by Melucci (1996), a social movement seeks to nurture and change the public meaning of certain issues such as democracy, social justice and national identity. How can we recognize change in these aspects in a post-conflict society? How the effectiveness of TJ is properly evaluated is the very question for the current African societies whether each have or have not adopted TJ after political transitions.

Scholars who study TJ frequently assert that TJ programs are not one-size-fits-all. Consideration of the by-products of the mobilization process within the framework of social movement theory will enable researchers to recognize the unique aspects and complications of individual TJ cases. The author proposes a search for new measurement indices that are compatible with the societies concerned so that the analyses of critical discourses related to previous African TJ cases will lead to fresh potential directions for understanding post conflict societies.

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NOTES

- (1) In Mani (2007) cited by Colvin (2008: 415). Others proposed TJ as eight “separate but interrelated processes, of which some, if not all, are necessary to account for past wrongs: official acknowledgement of harms done; official apologies and other gestures; the promotion of public fact-finding or truth-telling fora, including a platform for victims and reparations or restitutions; justice in the form of trials or lustrations; the establishment of rule of law; public gestures of commemoration through the creation of monuments, memorials, and holidays, and other educational and cultural activities; institutional reform and long-term development; and public deliberation” (Crocker, 1999: 60). Additionally, some scholars include impunity and grassroots conflict resolution in their definition of TJ (Thoms et al., 2010: 330–331).
- (2) Public hearings comprised victim hearings, amnesty hearings, event hearings, special hearings, and institutional hearings. The two predominant hearings were the victim and amnesty hearings. Typically, there was no opportunity for dialogue between victim and perpetrator in the victim hearings. Each witness was allowed a 30-minute testimony in a question-answer format in hearings led by TRC commissioners. Victim hearings were held at 63 venues around the country for three or four days at each venue.
- (3) For more on insufficient implementation of TRC recommendations for reparation, see Backer (2010: 447) and Truth and Reconciliation Commission (1998: 184–187).
- (4) However, Thulani Grenville-Gray, a South African psychologist, insists that re-traumatization itself is not necessarily fatal or completely wrong for mental recovery (Hayner, 2001: 144).
- (5) When members of the local non-elite heard that the TRC was coming to help them, they expected no less than the provision of money and resources, not sometime in the future but right now. Most of the local non-elite believed that the TRC would provide money in direct exchange for the telling of victim or witness stories. Fanta, a 60-year-old Limba woman I met at the Panlap amputee camp outside Makeni, stated plainly that ‘they said if we go and talk, they will help us.’ Fanta was one of two people I interviewed who had told their stories at the TRC hearing in Makeni. She had done so only because, as she said, ‘I thought they will help me for daily bread and medical’ (Millar, 2010: 491).

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