

**Commissions of Truth And national reconciliation As a tool to
achieve transitional justice:
A study On South Africa’s experiment**

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Abstract:

This paper aims to highlight the history of South Africa's experience, which was marked by numerous crises, most notably the apartheid regime. However, mechanisms for achieving transitional justice, embodied by Truth and Reconciliation Committees, contributed to ensuring accountability and achieving justice as a manifestation of peace and national stability. The descriptive and historical method was employed to highlight the developments and challenges of the crisis trajectory.

key words: : National Reconciliation, Transitional Justice, Peace, Committees, South Africa.

Introduction:

The most apparent interests and challenges that faces countries in the period of post internal conflicts, Arabic and African countries among them, are the matters of the national reconciliation and the arrival to the transitional justice. And how to deal with the past after a period of suffering, oppression, corruption and the absence of freedoms. Along with the deterioration of living conditions due to the absence of social justice.

And wasting of natural and economic resources, these multiple conflicts especially in African countries. It has received a wide interest by the end of the

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twentieth century internationally and regionally. Because of the strategic importance of Africa. And numerous conflicts and disputes between forces and international vital interests from the other hand. And the appearance of internal conflicts, social and political violence, political coup d'états. Distribution crises and political sharing, the uprising of violent protests and other.

Which led researchers to identify the most important factors to these conflicts and the nature of its causes and how to deal with the circumstances of those countries, which they got out of disputes. And the proper method to deal with the past's legacy and putting the foundations to build the future.

The goal of this study is the research on the subject of reality and reconciliation commissions as a tool to transitional justice in appliance on the South African Experience.

SECTION I : The theoretical frame of the study

We tackle in this research the meaning of the commissions of reality and reconciliation. And other similar meanings.

First Requirement: commissions of reality and reconciliation

We tackle the definition of commissions of reality and reconciliation which are considered as a mean to achieve peace. And then we tackle the ways to help achieve the latter.

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The first branch: The definition of commissions of reality and reconciliation

They are known as non-judicial parties that has some kind of legal independence.(Nahima, 2005p 108).

And they are mostly formed at a stage of the political transition stages from war to peace. Which focuses on the personal violations committed during a period of time.

Also known as temporary official parties. Received its authority from the tasks the government has assigned to it. And it is established during the transitional periods in order to investigate human rights violations in a specific period of time and in a specific country with specific conflicts, and then issues future recommendations

They are known to some researchers as committee were established to investigate the crimes and violations committed in a certain country that

contradicts to human rights law. Its purpose is to investigate what is happening and apply justice in the post conflict, post oppressive regimes periods.

Reality commissions are characterized by :

- Focusing on past events.
- Investigate all violations that happened in a specific period of time.
- Temporal committee .
- Performs its duties in a peaceful way.

Second branch : Concepts related to the commissions of reality and reconciliation

We tackle some related concepts as follows:

First: The definition of The National Reconciliation

It is reconstructing wide social relations between societies. Aiming to build a new environment, representing common social and political reality, and it has three main components:

-The process of justice : which prevents acts of violence from accruing again in the future. And fixing justice that was built on human rights principals, democracy practice and international laws.

-The process of confession: it is revealing unknown events, and giving the floor to the perpetrator to speak the truth

- The process of compensation:

Through real or symbolic compensation to the victims

These elements represent a tight connection with each other and contribute all in the reconciliation process, and to make it work, economic development must be supported.(Bloomfield, 2006;p 12)

We could say that reconciliation is retrieving trust in just public institutions and respect equality of rights, and dealing with matters of justice and victim interests.

Second: Transitional Justice

It is a collaboration between the idea of transition and justice. The idea of transition has spread because it represents the situation of the societies that are going through a stage of transition to a more form of peace after an oppressive intended regime. The transitional context could very much differ

It includes all the connected mechanisms that society is achieving to investigate on past trespasses. And that is by achieving reconciliation and justice.

Second Request: concepts related to transitional justice

We tackle some concepts similar to the transitional justice, and the different mechanisms to achieve transitional justice

First Branch: Transitional Justice and Peace Making

Peace Making is a wide concept including a group of activities and processes related to creating the necessary conditions to achieve sustained peace

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in societies of conflict. And selecting the infrastructures that contributes in reinforcing social peace, in order to prevent going back to a state of conflict. Some of the most important measures are: resettling refugees and homeless and remerging old fighters. And supporting the process of democratic development and reinforcing social and economical development

Second Branch: Transitional Justice and Peace Making: It represents a form of interference to score conflicts and it is known as contamination, conciliation between conflicted parties. Where it joins military and civilian forces to restore Peace.(Chaaban, 2013, p. 103)

The missions of peace making has witnessed a huge development and it role is no longer limited to military aspects only. Rather it has humanitarian missions especially in conflict zones as it happened in Rwanda, Burundi, Somalia and Liberia.

Third Branch: The helping mechanisms to achieve transitional justice
-Victim compensation

Facing the wide spread of human rights violation it became a must on governments to guarantee victim rights and provide the appropriate conditions to maintain their dignity and to achieve justice by compensating their damage and suffering.(Chennan, 2015, p. 96)

There is not a single way that could satisfy the victims, and the best options is to choose multiple means to achieve to purpose from the compensations. And that they are to show justice and show interest in the victim such as criminal procedures and reality commissions.

If we seek to achieve justice that it does not exclude forgiveness, so the society and the victims must know the whole truth, and then face the reality. They are stages we must pass before we decide willingly clemency. And the international law decides clearly victim and survives rights in knowing dangerous violations circumstances to human rights to put a just historical register to what happened. To restore global memory.

-Institutions fixing:

The fixing of institutions is a process done to review country institutions and reforming them, where it respects human rights and undergoes to accountancy and preserves the power of law.

We tackle three important points which are: The circumstances of applying transitional justice in South Africa, then speaking about the commission of truth and reconciliation, then the file of clemency demand, concrete

compensations and the challenges that faces the way of transitional justice as follows:

SECTIONII : The second research : The role of reality commission and reconciliation in the way of transitional justicein

South Africa

We tackle three important points which are: The circumstances of applying transitional justice in South Africa, then speaking about the commission of truth and reconciliation, then the file of clemency demand, concrete compensations and the challenges that faces the way of transitional justice as follows:

The first request: The historical background to the South African experience

We tackle the history and the emergence of the idea of commissions of truth and national reconciliation in South Africa and its functions.

Request: The historical background to the South African experience

The republic of South Africa is situated south of equator dawn to the far south of the African Continent, it is from the east and south border to The Indian ocean, and from the west the Atlantic Ocean, and from the north all of Namibia, Botswana, Zimbabwe, Mozambique, Swaziland. It has an internal pocket in the east representing the country of Lesotho.

The space of South Africa is roughly 1.219.050 km² and according to official statistics it has reach the population of 49.320.500 in 2009. South Africa has two official languages, Africana and English. The African society consists of many ethnic groups spread as follows :(Hania bekdech, p. 03)

Other nationalities	Asians and Indians	White people	Black African	Ethnic groups
09.4 %	02.5 %	% 08.9	% 79.2	Percentage from the total number of people

The Source: The table is made by the researcher based on the statistics of Mouhamed Sadek, The South African Experience, Nielson Mandela and the national reconciliation. Book 2 Egypt. The Arabian for publishing and distribution, 2014.

South Africa is considered among the few countries in Africa that is not familiar with the phenomenon of coup d'etat. Since it got its independence from The UK in 1961

It has entered a new political era of racial segregation. And after thirty years of armed conflict (1991-1990) which led by the national congress party against racial

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segregation or known as The Apartheid, the country has entered a democratic transition in 1990, and that is after the leader of the white minority Dou Clirck reached power, he set back on blocking the activity of the national congress And release his chief Neilson Mandela after twenty-seven years in prison

Dou Clirck and Mandela had prepared a transitional plan. The international penalties had been lifted on South Africa, a transitional constitution has been set in 1993, and multiracial vote had been organized by 1994. The national African Congress had won the elections, and Mandela became president and chose clemency instead of holding grudges and revenge inside the community. Aiming for peace and justice, from here the idea of reconciliation came to life. The commission of truth and reconciliation had appeared led by bishop

Desmond Toto, its goal is to achieve a national unity to the country, as a result of the previous racist rolling and what it had resulted in many ethnic cleansing.

Second Branch: The formation of the truth and reconciliation committee

Truth and Reconciliation Committee was to restore justice in a form of a court after the end of the apartheid, and the witnesses whom they were victims to violations had traveled to The UN to give their statement on their experience, some were chosen as general sessions. Radioed

The committee of Truth and Reconciliation had been formed applying to the law of the national unity and reconciliation in 1995, its headquarters were in Cape Town to listen to victims and record testimonies. The national committee of Truth And Reconciliation had the following tasks:

- Demanding explanation on the reason of the drastic human rights violations, including the ones who were a part of a regular pattern of misbehavior

- Investigating the identity of every person, institution and organization responsible for these violations. (Sadi, 2014, p. 12)

Questioning whether these violations were a result of an intended planning from the government or any of its departments or any political party. And the starting of data gathering and receiving evidence from anyone including the ones claiming to be victims, and identifying them and the nature of the damage they were exposed to.

- Simplifying clemency in what is related to actions with political goals, through meeting with those who want to look for facts related to these actions and send requests to clemency commission to issue their decisions and publish them on the official newspaper

- Preparing a full report of the committee's activities and the results it reached, based on real subjective intel and evidence. And presenting recommendations to the president about the precautions that should be

takes concerning victim compensation, rehabilitation and restoring of human dignity.

The Second Request : pillars of the truth and reconciliation committee file.

We talk about demand of clemency file and the matter of material compensation as they are completing matters to the committee of Truth and national Reconciliation, then the deficiencies in this experiment in general

First Branch: Demanding Clemency File:

The committee of Truth and Reconciliation was founded by South African Parliament in 1995, after a huge participation from the civil society, and after self-nomination and selecting processes, that happened publicly and seventeen member were appointed.

The law gave to this committee the right to grant individual clemency and inspection authority, embargo and bringing witnesses besides running a developed witness protection program. The Committee of Truth and Reconciliation was wide and big and could not be compared to any other committee.

- According to the law of reinforcing the national unity and reconciliation, the committee has been designed to work through three connected committees.
- The first committee: The Committee of human rights violation, it was responsible for gathering testimonies from victims and witnesses
- The Second Committee: Clemency Committee: was responsible for individual clemency demands and deciding on them.

The Third Committee: The Committee of Compensations and Rehabilitation.

It was asked from those committees to study cases that happened throughout 34 years from March 1960-10 May 1994. Those committees had faced 50000 case of drastic human right violation, and it did its best to widely investigate and analyze data and hold hearing sessions.(MensouriMilani, 2010.p105)

As for The hearing sessions they were divided into five hearings, and are as follows:

- Listening to victims hearing
- The special hearing session for facts and events
- The special hearing session for fragile parties .
- The special hearing session for institutions .
- The hearing session for political parties .

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The commission had published its report in 1998, and the deadline of demands had been prolonged till the year 2000. And from 7116 full clemency demand, 1312 had been accepted, which confirms that the trial is important on its own, but the most important thing is presenting testimonies and confessions on what violations were committed during the racist ruling.

Second Branch : The matter of material compensation

One of the most apparent countries that applied material compensation, we find South Africa, where some perpetrator had given official apologies whether spoken or written, in public hearing sessions, and forgiveness for victims, which was organized by the commission of truth and conciliation.

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The third branch: Transitional Justice in South Africa

The commission of truth and reconciliation points out that from March 1960 to May 1994 that there were violations that had not been treated under the transitional justice umbrella, which resulted in the resurfacing of the past's pains

and griefs. Also connecting the apartheid to individual acts of violence from the prison and torture does not seem convincing to eliminate those who suffered other kinds of violations like the mass home kick out, solitary, and forced immigration. The scrimpy compensation file representing a phase to narrow the path of the transitional justice in this country, and the drastic damages had not been recognized. Where the commission had recommended on spending 23000 Rand every year over six years for every victim. The government had not given the compensations until 2003, and declared after a long wait a 30000 rand (about 5000\$), which sets the mocking of the victims who considered themselves being deceived.

The limited politics of adjustment and the effect of truth on psychological well-being in spite of the economical government failing, where victims of the apartheid are still stuck in the same place they were before the transitional period, because of high poverty indicators internationally, where more than 55% of the population are below destitution, and more than 27% jobless.

Racial segregation is still standing in this African country that is exhausted by conflicts, and the hole is getting deeper though salary and wealth distribution, and natural resources are monopolized by 10% of the population. Also a lot of towns and villages are suffering from the lack of minimum services, in other words, the apartheid has been abolished politically, but still stands in the daily life of a black citizen and his social reality. Starting from its cultural, religious and linguistic tools.(Salmi, 2018p94)

The black citizen up until today is exposed to a wide number of rights in the laws and legislations texts, but it did not affect his real living world, in a decent life equal between black and white people.

Comparing crime rates as a result of the apartheid, and reality policies in controlling, South Africa still suffers from violence in all sorts. Police statistics show that from 1 of January to 31st of march 2021, 24 policemen were killed, 11 in service. Some of them got trapped or ambushed during police petrol, and got their official firearms stolen.

Also 4976 were killed in the first three months of 2021, 387 kill extra, compared to the same period of the previous year. Some of the crimes were the remains of the apartheid.

Conclusion :

The national Truth and Reconciliation Commission is considered among the most important commissions in The South African Experience, because it

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contributed in rehabilitation and damage control to a lot of victims. Also authorities had all the means to investigate, from calling witnesses to arriving to data and documents, taking into consideration the nature of the violation for the group or the region. And the kind of violation and the responsible for it.

With supporting this commission by parties and civil society and the majority of groups in the society is considered a win for the commission of truth and reconciliation, formally. Because the key issues in the old political regime still exist in the social mind of South Africa, and segregation is still today, and the concept of social justice has not been applied. Wealth distribution on all society groups, yet there is preferring a group over an other in job opportunities for the white minority over the black majority that lives on the margin. And that is according to the confirmed statistics. That is why future transitional periods are a must to see all society groups together under the law regardless their side, and according to citizenship norms.

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