'New wine, old wineskins': a comparative study of interfaith engagement and transitional justice in Kenya and South Africa

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Abstract: Transitional justice (TJ) is an approach that has been used by states to bring hope and renaissance in addressing past injustices. Unfortunately, transitional justice mechanisms have been ambiguous and often yield underwhelming results. While various components that constitute human societies have been incorporated in Africa's journey towards resolving historical injustices, religion has been casually utilised, if not altogether ignored. An interfaith approach to addressing a violent past has not been exploited, yet religion played a significant role in South Africa's (SA) post-apartheid era and Kenya's second liberation from KANU's single-party rule. This article will highlight the insufficiencies and gains made by past TJ mechanisms in Kenya and SA. The article will also discuss the place of interfaith engagement in confronting structural violence. Lastly, improving on SA's TJ model, it will suggest an interfaith agenda for TJ that mitigates the horrors of historical injustices for reconciliation, peace, and stability in Kenya.

Keywords: Transitional justice, violence, (multi)interfaith, injustices, religion.

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Introduction

Legal processes are important in transitional justice (TJ), but they need to be supplemented with various accountability structures for checking and balancing the (mis)use of power in revisiting and recovering the past. This calls for the inclusion of religious stakeholders who play a crucial role in society. Since TJ is an important instrument for reclaiming societies which are experiencing political and societal imbalance dysfunction,[1] the morality of the process ought to be duly represented by the religious leadership in the country. Past TJ initiatives have sidelined if not ignored the contribution of religion in peacebuilding. While TJ may be a one-time project, peacebuilding is not. Rather, peacebuilding is a lifetime activity that needs the presence of religious leaders to sustain peaceful communities. Transitional justice refers to the different programmes a country puts in place to deal with past crimes against humanity, impunity, etc. in a truthful and just way. Therefore, various faith leaders are critical to the TJ processes from the start to the end to champion and promote truth-bearing and justice for the victims.

Yet there might be a reason why religion has been sidelined in peacebuilding processes in the past. Even though the current trend is now moving to recognise the role of religion in peacebuilding, that has not been the case in past decades. Historically, international conflict theorists have held that 'organised religion is primarily if not essentially, an instigator of violence'.[2] While there may be pockets of religiously instigated violence, religion generally embodies peace, and peacebuilding among communities is its main agenda. Consequently, international conflict resolution theorists have tended to exclude religion as a force for peacebuilding.[3] Conversely, if organised religion is an instigator of violence, then the same force can be used for peacebuilding. It means that peacebuilding initiatives have to include religion and religious conversations. At the same time, the postcolonial mindset in Africa is laced with the Western and colonial perception that there needs to be a separation between the fields of religion and politics.

> The formal separation between the fields of religion and politics has been the hallmark of Western democracies for centuries and has been introduced to other parts of the world, notably those which were colonized by Europe, and, more generally, countries that have undergone the influence of Europe and North America.[4]

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[1] Mutua (2015: 2).
[2] Tan (2011: 443).
[3] Tan (2011: 444).
[4] Haar (2004: 6).

Current research[5] on decoloniality has emphasised various aspects of human life in Africa but not so much religion. Decolonising the African mind as far as religion and peacebuilding are concerned is critical as it goes back to colonial history to reconnect with the past. If TJ is going to incorporate religion, then it must debunk two existing myths. The two myths have been raised by Haar (2004). One is that 'religion by its very nature is an obstacle to peace',[6] a myth for which there is evidence in the world today. Second is that 'when religion becomes a significant factor in a particular conflict it is being used contrary to its essential nature, which is often deemed to be intrinsically good'.[7] According to Haar, these two positions stand in contradiction with one another. The two positions which seem to be incompatible are both subjectively biased depending on who is interpreting them. The thought that religion is a negative force, and that it is intrinsically good are opposing views from biased quarters. These opposing positions reveal the wide gap and discrepancy between theory and practice in peacebuilding work. Positively interpreted, if religion is a cause of conflicts, then it leads to the conclusion that it can be used as a resource for peacebuilding, especially as a component of TJ.

The false dichotomy between the fields of religion and politics marginalised religion, denying it the opportunity to offer moral accountability and course direction to public life. Contrary to the intention of the said dichotomy, religion is a resource for peacebuilding.

> If religion played a part in fueling the conflict, then when resolving the conflict, religion must be at least taken into account, for without this consideration, peacekeepers, diplomats, and mediators not only fail to deal with the fundamentals of the conflict but also miss potential peacebuilding resources in the religious traditions themselves.[8]

African societies are very religious. In fact, in most non-Western and post-colonial societies, such as Africa, religion is resuming its central place in public life, including politics. The role of religion was not entirely lost, it was just not a point of reference in peacebuilding processes. For the most part, political engagements such as campaign rallies, fundraisers, and community mobilisations invoke the name of God. The promise of good governance and leadership by the political elite is attached to one's allegiance to religious groups. Similarly, the invocation of God is also common with communities that have suffered historical injustices and need reparations. The prevalence of religious talk not only shakes the political status quo but also reawakens

[5] Öhlmann *et al.* (2020).
[6] Haar (2004: 7).
[7] Haar (2004: 7).
[8] Tan (2011: 444).

aspects of the society that have long been repressed by oppressive political regimes. 'Religion is one such power now increasingly seen as challenging the basis of the secular state.'[9] For example, in South Africa (SA), Christianity in particular played a significant role in the Truth and Reconciliation Commission (TRC) that facilitated reconciliation and peacebuilding in post-apartheid SA.

In Kenya, religion has for the most part either praised or criticised both sides of the political divide. In some eras, it has been accused of being in cahoots with the political powers, while other times it has fought the incumbent regime as an opposing power. But, as for participation in TJ processes, religion in Kenya has rather been distant. Religious participation in TJ processes in the past has been denominational and perhaps in partnership with civil society groups. There has been little interfaith engagement in TJ initiatives. For example, the mainstream Christian church operated separately from the Muslim faith during the late President Moi's regime compared to today's regime. There was not much collaboration between Christians and Muslims in addressing governance under Moi's regime. In Kenya's history, rarely have interfaith initiatives been engaged to participate in revisiting and resolving historical injustices. This paper contends that interfaith engagement is highly needed in mounting and fostering TJ processes.

Defining transitional justice

Attempts to define 'transitional justice' in Africa have yielded different results depending on which region or country is under study due to several reasons. One is that the emergence of TJ as a field of policy, practice, and scholarship is a relatively recent phenomenon.[10] As a policy issue, TJ tends to focus on theories that promise stability and the sustainability of peace in the post-conflict period. As a matter of practice, others have focused on larger goals, such as truth, justice, and peace for areas with recurring conflict. Two, conflict can either be intra-state or inter-state; hence the choice and complexity of the TJ mechanism vary. Therefore, a proper definition of TJ that cuts across various periods of historical injustices in the continent, the scope of interest, and geographical settings is elusive. Wambua conceptualises TJ as 'the restorative and retributive judicial and nonjudicial measures initiated within a state to address historical injustices to contrive peace'.[11] That definition captures the reparative element of TJ processes. It also brings about the legal or non-legal pathways of

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[9] Haar (2004*:* 6).
[10] Backer & Kulkarni (2016).
[11] Wambua (2019: 55).

achieving TJ. For Kenya, there has been an over-preoccupation with the legal component in achieving TJ, which ends up missing out on the main objective of TJ. This is difficult because some of Africa's past and present regimes were characterised by despotic leadership with little or no regard for legal accountability.

Unfortunately, transitional justice mechanisms in Africa, such as special court tribunals in Kenya, the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, and the International Criminal Court (ICC) in The Hague, that try African leaders have focused more on legal accountability of individuals and less on the transformation of structures of power. Such traditional mechanisms focus on trials, vetting, and restitution that does not address the underlying community issues. For Kenya, the state has delegated the role of questioning structures of power to commissions that are appointed by the same state that has abused power. Such an approach renders the 'independent' commissions powerless to confront oppressive structures of power and past regimes. In the recent past, TJ has included 'non-judicial instruments such as apologies, truth commissions, healing circles, or forms of remembrance and commemoration'.[12] This is the direction in which most African societies have moved in the last two decades or so; forming truth commissions to lead in TJ. The most compelling definition for TJ is that of Moscati, who understands TJ as 'a set of practices, mechanisms, and concerns that arise following a period of conflict, civil strife, or repression, and that is aimed directly at confronting and dealing with past violations of human rights and humanitarian law'.[13] This definition goes a step further to suggest that TJ processes include mitigation of 'potential sources of future conflicts and violations'.[14] This endeavour on TJ processes anticipates either a recurrence of violence in a certain area or even a fresh eruption of violence.

Transitional justice comprises a broad set of responses to violence committed during periods of conflict, repressive rule, or occupation.[15] This definition expands on various forms of violence and atrocities committed against the people. Violence does not have to be necessarily bloody. It can be political, economic, and even spiritual. The bottom line is that TJ seeks to deal with violence occasioned by transition or transfer of power. As the word 'transition' suggests, 'transit' indicates a change of guard, in between eras, or better still the sunset of one era as well as the dawn of another. When a democratically elected government is installed, there is an opportunity to deal with past atrocities. For Kenya, this means revisiting past gross human rights violations after each successive political regime since independence in 1963.

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[12] Gal-Or & Schwelling (2015: 8).
[13] Moscati (2015, 8).
[14] Moscati (2015: 8).
[15] Palmer *et al.* (2015: 173).

Religion has played a vital role in witnessing peaceful transitions and religious leaders are even called upon to pray for the new leadership. Mutua opines that 'transitions to functional post-despotic societies are difficult and challenging. The old order and their entrenched elites reside in the sinews of society and are nearly impossible to uproot'.[16] In the meantime, the populace is hungrily longing for justice and peace.

Setting the historical context of TJ in Kenya and South Africa

Conflict and post-conflict Kenya and South Africa have four things in common. One is that in both Kenya and South Africa, conflict and violence have roots in colonialism. When colonial powers were in operation, they fragmented African communities along tribal and racial lines for purposes of assimilation, and easy administration and control. Apartheid, as it is known, 'is an Afrikaans word for separation, it denotes 'apart-hood' or 'apartness'.[17] This was a term used to validate racial separation in SA from the arrival of the Dutch, until the 20th century. Thus, Kenya and SA share a colonial heritage. Secondly, the nature of violence and historical injustices that TJ seeks to resolve are both physical and structural. Physical in the sense that the violence meted on both Kenyans and South Africans largely involved physical, social, and economic violence. For these structural injustices to continue unchecked, they had to be systemic and state-sanctioned. Thirdly, both countries have adopted commissions as TJ mechanisms. Truth, Justice and Reconciliation Commissions (TJRC) and Truth and Reconciliation Commission (TRC) for Kenya and South Africa, respectively, were appointed to carry out the task of TJ. Lastly, in both countries, religion plays a significant role in social and public life, and hence is an important component worth incorporating in various truth, justice, and reconciliation commissions.

While in the SA Truth and Reconciliation Commission religion was involved from beginning to the end of the TJ process, the religious voice in Kenya started as lone voices of advocacy for human rights. These lone voices over time gained momentum and developed into a great force under the banner of various religious institutions. Such an example in Kenya was the *Ufungamano* initiative which 'emerged with a great promise, epitomizing a countermovement of multi-ethnic, religious, generational, and class power politics that generated widespread support'.[18] This initiative was largely driven by an interfaith movement housed under various national council organs such as the National Council of Churches of Kenya (NCCK) and the Supreme Council of

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[16] Mutua (2015: 2).
[17] Shore (2009: 36).
[18] Mati (2012: 65).

Kenya Muslims (SUPKEM). Though successful in challenging the state's handling of human and constitutional rights in Kenya, the interfaith-led *Ufungamano* initiative remained vulnerable to a coerced merger with the state-led constitutional reform process in 2001 which deflated its potency.[19] The initiative finally succumbed to 'multiple ethnic, inter-class, and religious cleavages'.[20] The same interreligious diversity that led the initiative was party to the death of the first-ever interfaith-led shot at TJ in Kenya.

Institutionalisation of transitional justice in the Republic of South Africa

In South Africa, the infamous racial contract was necessitated by European expansion in that they conquered lands, exploited resources, and dominated the people they found.[21] While racial segregation denied blacks access to the economic gains in the country, land grabbing, on the other hand, dislocated people from their social and economic base. To cement the social contract, the idea was segregation. The racial contract linked space to race and race to personhood and as a result the white raced space of polity is in a sense the geographical locus of the polity proper.[22] That is why in apartheid South Africa, there were places designated WHITES ONLY and those for others. Not only was apartheid a system of racial discrimination, it was also an imposed separation of blacks and whites in the areas of government, the labour market, and residency.[23] Throughout much of the 20th century, controversial legislation on landownership was passed to ensure that the majority of land would remain in the hands of white farmers.[24] In the post-apartheid regime, these injustices needed to be resolved. The Truth and Reconciliation Commission (TRC) which had a religious representation was established to revisit these injustices against humanity.

In 1995, President Nelson Mandela appointed seventeen commissioners to the TRC.[25] The commission comprised mainly religious leaders with a heavy representation of Christian leaders from a cross-section of the country. Approximately one-third of the commissioners were faith-based coming from faith communities. Archbishop Desmond Tutu was appointed the Chairman of the commission. On the commission was a religious actor by the name of Ms Yasmin Sooka, a Hindu human rights lawyer

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[19] Mati (2012: 65).
[20] Mati (2012: 65).
[21] Mhlauli *et al.* (2015: 211).
[22] Mhlauli *et al.* (2015: 216).
[23] Mhlauli *et al.* (2015: 216).
[24] Piotrowski (2019: 58).
[25] Shore (2009: 61).

and South African leader of the multi-faith World Conference on Religion and Peace.[26] The other members of the commission had legal and health backgrounds. But overall, most commissioners came from faith communities which influenced their view of human rights.

Non-governmental organisations (NGOs) and church organisations that were represented through their leaders in the commission participated by giving office space to the TRC to conduct its work. The TRC conducted interviews and took testimonials from 21,000 victims and witnesses.[27] The media covered, televised, and published most of the public hearings with the *Truth Commission Special* report becoming the most-watched programme on the television.

To deal with institutional injustices that participated in the apartheid period, the commission held hearings focused on such institutions. These included the religious, legal, and business communities, labour, health sector, media, prison, and armed forces.[28] Much effort was laid on fact-finding on how these institutions and the people running them facilitated apartheid policies in SA. However, the commission was also criticised for not using the strong powers at its disposal to indict perpetrators of violence against black South Africans. Instead, it promoted the mission of reconciliation above truth-finding.[29] This is why Christianity's overbearing presence in the commission was later accused of being too soft and lenient on the perpetrators rather than truth-finding for justice to the victims.

As an achievement, the commission is remembered for using its powers and religious language and processes to give amnesty to politically motivated crimes between 1960 and April 1994.[30] Most of the applications were declined as they did not bear political motivation in the way they were committed. In total, about 1,167 people were given amnesty. Amnesty was also granted to thirty-seven ANC leaders who made a joint application. But largely that was a controversial move by the commission to invoke the law as well as religious values of forgiveness. It made all the difference to have the religious leaders dominate the TRC as they tapped into the religious doctrines of social justice that were initially violated if not altogether ignored. The truth and reconciliation of the country across the racial divide was the commission's greatest motivation. Trials of some of the perpetrators of violence were also executed, which saw the imprisonment of pro-apartheid leaders.

A dimension that was, however, missed in the TRC is that of justice. This does not mean that retributive justice was not achieved; there were judicial consequences for

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[26] Shore (2009: 61).
[27] Hayner (2011: 28).
[28] Hayner (2011: 28)
[29] Hayner (2011: 28).
[30] Hayner (2011: 29).

the perpetrators of crimes against humanity during apartheid. The justice dimension that did not gain a lot of traction is that of distributive justice. Remember that apartheid lasted for decades and thus instituted socio-economic inequalities that have impacted black South Africans to the present. Most farmland is still owned by white settlers while blacks occupy most of the urban informal settlements.

Historical injustices in Kenya and South Africa

The history of socio-political and economic injustices in both Kenya and South Africa dates back to the colonial era. In both countries, land and race were at the centre of the injustices meted out to people. In Kenya, the institutionalisation of the colonial government in the 1940s and 1950s led to forceful land grabbing that pushed the natives off their land, and subsequent human rights violations. After independence in 1963, the first Kenyan government was formed on the foundations of institutional and systemic injustices. Forceful land grabbing was extended from the colonial regime to the first African-led government. 'Similarly, the distribution of political resources, especially in the personalization of power during the Kenyatta administration, established genuine resource distribution grievances that entrenched political divisions in the country.'[31] The constitution that was inherited from the colonial powers further entrenched the ethnicisation of political power and marginalisation of communities that were not represented in the political system. The increased marginalisation ended up becoming the main cause of ethnic violence in some sections of the country, as communities fought for limited resources such as land. The government's response to tribal clashes exacerbated the situation further. State-sanctioned military operations against communities led to gruesome mass murders that the country has yet to come to terms with. For example, the Shifta war (1964–7)[32] led to mass killings of innocent people, gender-based violence, and the torture of thousands of people as national security agencies responded to the insecurities. During President Jomo Kenyatta's regime, institutions such as the police, media, and parliament were compromised and weakened under the immense authoritarian rule.

In Kenya, voices of dissent against the first and second presidential regimes were met with sporadic political assassinations and torture.[33] The impunity that led to abuse of power by security authorities tried to squash any budding civil society groups. Religious leadership in the country seized the moment to lead a protest against

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[31] Wambua (2017: 12).
[32] Wambua (2019: 57).
[33] Karanja (2006); Tarus & Gathongo (2016).

violations of human rights. Clergymen such as Henry Okullu, Manasses Kuria, and David Gitari became relentless crusaders for fundamental human rights and freedoms which, in their view, arise from God-given human dignity.[34] For these religious leaders, freedom of expression and human rights were fundamental to human dignity. At the time, mainstream religion was not yet recognised as having any authority over the civil affairs of the country. Nonetheless, the religious leaders persisted in agitating for constitutional review that would pave way for the institutionalisation of TJ mechanisms in place. The moral obligation for human rights protection rightfully rested with the religious leadership. For example, Okullu strongly believed that a multiparty system of government has a greater chance of promoting democracy as it provides alternative governance.[35] It is important to note that, at the time, Christianity, for example, still had the face of the missionary church which had tolerated the colonial government. The said religious leaders at the time were pushing for a constitutional review that would allow for mainstreaming and institutionalisation of TJ so that historical injustices would be revisited.

Religion and social change in Kenya

After the first president of Kenya died in 1978, his Vice President, Daniel Toroitich arap Moi took over the presidency. 'President Moi's administration (1978–2002) heightened the unfettered accumulation of state resources.'[36] Due to ethnic strife at the leadership level on succession politics, Moi strengthened his camp against tribal affiliations that were opposed to his presidency. Moi's leadership enhanced the ethnic and religious marginalisation of communities as he employed a divide-and-rule leadership style.[37] This led to an attempted and failed coup d'état in 1982 which forced Moi to transform the country into a one-party state.[38] Former President Moi's regime was from that time on marked by a series of state-sanctioned crimes[39] against humanity, murders, and repression of masses who did not subscribe to his politics. A task force put together by KANU confirmed what the National Christian Council of Kenya (NCCK) had affirmed: that the state was involved in ethnic cleansing and tribal clashes in the Rift Valley and Coastal provinces.

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[34] Karanja (2006: 594).
[35] Karanja (2006: 594).
[36] Wambua (2017:12).
[37] Wambua (2017: 12).
[38] Wambua (2019: 58).
[39] Detainment without trial of his political critics (Willy Mutunga, Katama Mukangi, Raila Odinga, Kenneth Matiba, etc.), the Wagalla massacre, Molo clashes, and Likoni clashes.

As an individual, the late President Moi presented a religious bearing that caused a large section of the church leadership to develop a softness for him and his leadership. However, opposition from sections of the church maintained their criticism against Moi's rule. Individual efforts from some notable religious leaders such as bishops and pastoral leaders like Bishop Manasses Kuria, the late Bishop Alexander Muge, the Reverend Timothy Njoya, and Father John Kaiser, amongst others, acted on their agency without involving the institutional church. Through sermon preaching and publishing editorial comments in the media, they became lone voices of dissent against President Moi. Some of them lost their lives while others were beaten and tortured in the infamous Nyayo House torture chambers.[40] By the time Kenya held the first multiparty elections in 1992, Moi's government had presided over years of massive corruption, bad governance, and human rights violations.[41] Each election cycle since 1992 was marked by pre- and post-election violence, loss of lives, destruction of property, and forced displacement of people. Each time these forms of violence are meted out to people, religious leaders come out to condemn the acts of violence in the strongest terms. The interfaith group dubbed the *Ufungamano* initiative led the campaign demanding reparations in the case of unresolved historical injustices.

The 2007/8 post-election violence and institutionalisation of transitional justice in Kenya

The botched election of 2007 and consequent post-election violence of 2008 was the turnaround for TJ in Kenya. First, this was a very polarising election whose campaign involved the balkanisation of Kenyans along ethnic lines. As mentioned earlier, this was the first time in Kenya's history that a TJRC specifically addressed historical injustices in Kenya. This was seen by political analysts and various stakeholders as a strategy by the political class to avoid taking political responsibility for the crimes against human rights because of their irresponsible conduct during and after the election.[42] Before that, there had been numerous accounts of the government's unwillingness to compensate victims of police brutality and state-sanctioned violence.[43] Several commissions were set up consecutively. One of the ground-shaking commissions was the Commission of Inquiry into Post-Election Violence (CIPEV) led by the retired Justice Philip Waki. Waki viciously zeroed in on the key masterminds of what

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[40] These were torture cells at the basement of Nyayo House in Nairobi where the government detained and tortured Moi's political dissidents without trial.
[41] Wambua (2017: 13).
[42] Ghoshal (2011: 4).
[43] Ghoshal (2011: 4).

seemed like attempts at ethnic cleansing or genocidal operations against some members of one community by the other. This commission produced a list of six named individuals who must have participated in the murder and destruction of property of thousands of people.

The famous Waki report suggested the names of people who were very senior in the government. The parliament's indecision on which TJ mechanism to adopt was a clear sign that 'There was a lack of political will to address post-election violence which was further demonstrated by the government's failure to adequately compensate the victims.'[44] The parliament could not decide whether to try the perpetrators locally or at the International Criminal Court (ICC) in The Hague. Hence the ICC became the last resort. The indictment of the leaders of these atrocities would have meant a restoration of peace in Kenya's hotspot areas. But, as is expected in most TJ processes in Africa, political leaders leveraged their powerful influence to compromise state organs. The move to the ICC could have involved religious leaders who would have provided the needed moral compass by the country on what should happen to the indicted perpetrators. Not only was the government unwilling to indict suspects who were of significant political influence, but it also was not ready to compensate the internally displaced peoples (IDPs).

In the quest for post-election justice in Kenya, the ICC was considered the TJ mechanism in March 2010. This was an effort to pursue retributive and restorative justice for victims and perpetrators of the 2007 post-election violence.[45] Consequently, the ICC sent the ICC prosecutor Mr Luis Moreno Ocampo to carry out his independent investigations in Kenya to indict the perpetrators. This he did by interviewing various stakeholders including victims of the post-election violence.

The threats to transitional justice in Kenya

One of the threats to TJ in any political system is the demands and interests of powerful people, including politicians in the past as well as the present regime. Since TJ promises to bring justice to both victims and perpetrators, those in power might attempt to obstruct justice. It took decades of debate as to whether or not Kenya should have a truth commission. Finally, after President Moi retired in 2002, and a new government was set up under President Mwai Kibaki, a task force was set up to decide on instituting a truth commission for Kenya.[46] After public hearings were

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[44] Ghoshal (2011: 4).
[45] Wambua (2019: 62).
[46] Hayner (2011: 73).

conducted across the country, a Truth, Justice and Reconciliation Committee was set up with a mandate to go back to 1963 during independence and up to the present day.[47] The mandate involved economic crimes amongst other forms of human rights violations.

Unfortunately, setting up the TJRC was faced with challenges from its formation. The TJRC chairman, Ambassador Bethuel Kiplagat had worked with the former president Daniel arap Moi, who was at the centre of a controversy regarding some of the worst human rights violations and economic crimes. The chairman, Ambassador Kiplagat himself was accused of having participated in the planning of the Wagalla massacre[48] of 1984.[49] The commission largely failed to investigate the 2007/8 post-election violence, claiming that CIPEV had already dealt with and concluded on the matter.[50] In the end, the commission failed to deliver TJ to Kenyans.

Following the post-election violence of 2007/8, a Truth, Justice, and Reconciliation Commission (TJRC) was inaugurated to inquire into the country's historical injustices and violations of human rights.[51] This was occasioned by an election stalemate in the 2007/8 general elections where the Party of National Unity (PNU) led by former President Mwai Kibaki and former Prime Minister Raila Odinga's Orange Democratic Movement (ODM) were deadlocked following a rigged election.[52] This stalemate led to an eruption of countrywide violence that led to the killing of hundreds of people and the forceful displacement of thousands. There were massive and gross violations of human rights and crimes against humanity. Interestingly, it was not until then that a truth commission was deemed necessary to revisit past atrocities on Kenyan citizens. The task of the commission was to look into the historical injustices perpetrated by Kenya's political activity. The Kofi-Annan-led African Union Panel of Eminent African Personalities (AUPEAP) presided over peace negotiations and the consequent signing of the National Accord paved the way for temporal peace and partial stability of the country. To prevent a recurrence of similar violence during successive elections, a truth commission, the Truth, Justice, and Reconciliation Commission, was formed and instituted in 2009 as a TJ mechanism in Kenya's historical and unresolved atrocities.

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[47] Hayner (2011: 73).

[48] On February 1984, following a clan-related conflict in Wajir, the Kenya Army conducted a military operation that led to the indiscriminate massacre of thousands of people. This has been considered as a systematic targetting of a civilian population that was orchestrated by government security agencies.

[49] Wambua (2019: 60).

[50] Wambua (2019: 60).

[51] Wambua (2019: 59).

[52] Wambua (2019: 55).

The place of interfaith engagement in confronting structural violence

One of the reasons there are historical injustices in the world today is because of past violence. As has been mentioned earlier in this article, violence does not have to be physical to be destructive to human life; it could also be structural. Structural violence is the kind of violence arising from repressive and oppressive national political, economic, and social structures in which the system generates suffering, torture, marginalisation, and abject poverty to communities. In this article, it has already been argued that the religious leadership has the moral obligation to lead the country towards a peaceable society by confronting repressive structures. It does this by both unearthing and dealing with historical injustices as well as ensuring that structures that allow for gross violations of human rights are done away with. But the approach is that of an interfaith engagement, whereby various religious groups come together for the common good. It is evident from the past section that various religious groups have collectively and individually been engaging with rogue political leaders and governments. This has had an impact on the history of TJ in Kenya, making it unsustainable, and hence referenced as old wineskins. For the wineskin to hold new wine without spilling, the wineskin must be new (Matthew 9: 14–17). The wineskin is the TJ mechanism while wine is the interfaith engagement in sustainable peacebuilding across the country. The new wine which is interpreted as the contribution of the interfaith organisations to TJ processes must work within new interfaith structures without any undue influence by the state.

Religion should not divide the people in a country. Rather than dividing people, 'religion can be the force empowering people from around the world to work together and build cultures of peace, justice, and healing'.[53] How can various religious groups harness a united force for justice and peace? The answer to that question is based on the fact that all religious traditions promote values of peace, harmony, love, and selflessness.[54] Each religious tradition has its way of transmitting values of justice and peace from one generation to another. These beautiful values are packaged in the various religious liturgies in the form of songs, myths, stories, dirges, public calls to prayers, sermons, etc. This understanding is important for justice and peace by which communities aim to gain stability in the country. This involves audacity on the religious leaders' part to push the government to revisit past atrocities against humanity.

It is correct to say that every faith tradition advocates healing, forgiveness, and reconciliation. Every religion has its set of religious rituals which are a resource for healing. However, more than healing, religious rituals practised in a safe space can be

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[53] Abu-Nimer *et al.* (2004: 107).
[54] Abu-Nimer *et al.* (2004: 107).

a force for good in revisiting the past atrocities committed by states. It is proven that 'Religious rituals for reconciliation are powerful acts that often invoke strong emotions and can easily mobilize crowds into unexpected gestures of reconciliation and forgiveness.'[55] The diversity of religious traditions and their rituals provide a rich resource for revisiting the historical past and dealing with it. It also provides an opportunity to deliver a fair representation of all communities in the country. When community representation is backed up by various religious groups, it prevents the political leader from offering blanket forgiveness on behalf of her/his community during a national prayer day.[56] It is hard for victim communities to accept and move on based on leader-driven blanket forgiveness which does not show a promise of taking responsibility for the atrocities committed. This discredits forgiveness and reparation initiatives. Religious leaders present should have been able to see and confront impunity, corruption, and crimes against humanity in a truthful and just way. Faith traditions should show the resolve to challenge and remove structures that have perpetrated systemic injustices against the people. For Kenya, this has been a long journey for the interfaith groups facilitated by external groups to arrive at a common goal.

Both the TJRC and ICC sidelined religion and its role in offering a voice for the oppressed in TJ matters in Kenya. Upon the naming of the perpetrators of the 2007/8 post-election violence by the ICC prosecutor, Luis Ocampo, a section of the church leadership rose to pray for the perpetrators that justice would be found for them.[57] This was a premature move long before the suspects who were charged with committing crimes against humanity were even arraigned in court. In addition, the state made calls for prayer rallies across the country as the clergy were used to intercede for the infamous Ocampo Six, in the weeks leading to their appearance at The Hague where they were indicted by the ICC[58] Besides the Christian church, some African traditional religious leaders were also involved in praying for the suspected perpetrators who were answerable to charges against humanity in The Hague. The Meru traditional religious group, the *Njuri Ncheke* prayed for Mr Francis Muthaura, one of their tribal kingpins and former secretary to the cabinet who was among the Ocampo Six. Sections of Muslim leaders too held prayers for one of their adherents, the former police chief Mr Mohammed Hussein Ali who had been accused of abetting crimes against humanity. These are just a few examples of how religion has been misused to obstruct TJ. Religion is, however, the mainstay of justice. Religion cannot be separated from

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[55] Abu-Nimer *et al.* (2004: 183).

[56] On 31 May 2018, President Uhuru Kenyatta and the opposition leader Raila Odinga as representatives of their communities offered forgiveness to each other at the Safari Park Hotel during a National Prayer Day for past insults which might have triggered violence during the 2017 disputed elections.

[57] Kimutai (2011).

[58] Maruko (2011).

the conversation around justice issues as it speaks to the moral obligation of each person who seeks community peace for the common good.

Both Kenya and South Africa have had religious groups working together to pursue social justice. The approach of religious engagement has been two-pronged. On the one hand, religious groups have focused on peacebuilding initiatives that address existing cases of violent conflicts. On the other hand, various religious groups have worked only with their communities. The challenge with this approach is that the country as a whole does not see the graveness of past atrocities committed against fellow citizens; hence there is a lack of synergy in agitating for TJ. However, human rights groups see these atrocities and fight for the TJ mechanism to be put in place for justice, healing, and reconciliation of communities. For the success of TJ in Kenya, religious leaders from all religious traditions ought to unite and work alongside civil society groups.

From the recent past to the present, various religious groups have been engaged in social action in peacebuilding projects. This has involved working with communities across the religious divide to stop violence and develop peace amongst warring communities. Civil society groups such as the Coast Interfaith Council of Clerics (CICC), the Center for Human Rights and Policy Studies, the Life and Peace Institute, Search for Common Ground, the Africa Voices Foundation, and Muslims for Human Rights (MUHURI) are good examples. Their agenda is to work for the common good of justice in communities that are ravaged by violence and conflict. These efforts, while small, activate the government's responsibility in laying down a strong foundation for TJ in the country. This is because one of the reasons communities are up in arms against each other is because of diminishing resources such as land. There is no better comparison to make than that of Kenya and the success story of post-apartheid South Africa.

Interfaith engagement and transitional justice in Kenya and South Africa

Having established that religion is the mainstay of justice, a case is made that TJ in Kenya has so far appeared as 'new wine served in an old wineskin'. New wine is refreshing, and so is the promise of justice to the oppressed masses. A TJ mechanism that is devoid of the contribution of religious leadership is subject to interference by powerful political influence. But worse is a TJ mechanism that is devoid of an interfaith component, not just religious. All voices in the religious front need to be heard as they represent a cross-section of communities in the country. In SA, religion played a key role in the post-apartheid period. This section is going to study what gains were

made, and what it could have done better had it incorporated a multifaith aspect into this effort. This section will also discuss what Kenya's TJ mechanism can borrow from SA's TJ processes.

In her book *Religion and Conflict Resolution* Shore premises in the underlying argument that 'the Christian influence in the TRC helped shape the post-conflict reconstruction stage of South Africa's transition through an emphasis on truth-telling and reconciliation'.[59] This is even though TRC did not incorporate the justice aspect at first. This does not mean, however, that the commission did not address justice issues resulting from racism and apartheid. Therefore, the religious presence shaped and directed talks around post-conflict reconstruction. This is essentially the goal of TJ. The work of TJ is incomplete if it does not end in healing and community reconciliation. It is also important to note that the religious presence also had its limitations. Shore observes that Christianity's presence in the talks undermined aspects of the TRC and South Africa's ongoing social and political transition.[60] This could have been due to the relationship between Christianity and the colonial enterprise that subtly perpetuated apartheid. But more significantly, Christianity prescribed a formula that consisted of three vital components of the TJ process: truth-telling, healing, and reconciliation.[61] Not all of the Christian churches were in favour of the apartheid policy.

Similarly, in Kenya, not all the church was in favour of colonialism. African Independent Churches (AICs) were born out resistance against the imperialists' continued presence in Kenya's post-independence religious, socio-economic, and political recovery.[62] Just as some sections of the Christian church challenged British imperialism in Kenya, so did some churches in SA challenge the apartheid policy based on the premise that all men are created equal. A prime example of Christian involvement in the struggle was a sentiment from an African National Congress (ANC) congressman, Albert Luthuli, who believed that his political role in agitating for justice was inspired by his religious faith.[63] He felt that his compulsion to be in the struggle for justice was his Christian duty. The same was true of several Christian leaders in post-independence Kenya who felt that their primary call was to be in politics to help fellow countrymen restore human dignity that had been lost during colonialism and struggle for independence. Likewise, the religious leaders' involvement in fighting for TJ during the successive regimes of Jomo Kenyatta, Daniel arap Moi, and Mwai Kibaki has been in response to the call for the restoration of human dignity lost in past atrocities.

[59] Shore (2009: 3).
[60] Shore (2009: 3).
[61] Shore (2009: 49).
[62] Mwaura (2014: 250).
[63] Shore, (2009: 50).

Truth commissions in both Kenya and South Africa

The South African TRC was in many ways an unconventional modern political mechanism.[64] In the constitution of the commission, there were numerous calls for religion to be included in the process. Christianity was vouched for and incorporated in the process which influenced how the commission values truth-telling as a key component of the TJ process. By incorporating religion as an important component in the TJ process, the TRC was flagged as a model prototype that could be adapted by other African states. One of the major limitations is that choosing Christianity in essence sidelined other religions that were assuredly present in SA. Christianity was factored in as the 'authorized and legitimate method of truth-telling'.[65] This was in utter disregard of the principles of international conflict resolution theory that discourages the inclusion of a single religion on matters of peacebuilding.

   Would the inclusion of other religions represented in SA have hindered truth-telling? To respond to that question, a look at other religions is recommended to determine their values. This article will not attempt to go in that direction. It is, however, important to underscore that most religions hold common cardinal values, like truth and justice for all of humanity. Therefore, Islam, Hinduism, Buddhism, and African Traditional Religions hold truth-telling as a sacred virtue that needs to be upheld by all human beings.

Religion and transitional justice in Kenya
and the Republic of South Africa

In Kenya, most if not all political leaders subscribe to and are committed to a religious tradition and therefore might hold to their religious values, including truth-telling. In Kenya, and largely in Africa, religion is still relevant in informing political functions and decisions. Including religion in political processes might be considered to be undermining the liberal views of a country. However, SA still went ahead and made the religious dimension important to the entire process. In terms of religious representation in the political space, Kenya has a great opportunity to practise religious tolerance with secular entities. Civil society groups such as CICC and MUHURI, as discussed earlier, have promoted tolerance in their engagement. Religion plays an important role in civil society to promote truth-telling during inquiry commissions. Truth commissions are avenues used for fact-finding as well as telling stories of past

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[64] Shore (2009: 9).
[65] Shore (2009: 9).

human rights violations.[66] The fact-finding is by way of spending time with the victims, listening to them with empathy to know what happened.

> Truth commissions in most countries are usually concerned with similar goals.
>
> To discover, clarify, and formally acknowledge past abuses; to address the needs of victims; to counter impunity and advance individual accountability; to outline institutional responsibility and recommend reforms, and to promote reconciliation and reduce conflict over the past.[67]

The goal of fact-finding does not mean that the victims discover new truths. No! rather, they testify before a hearing of what they already know. It can be predicted that when victims are subjected to a truth commission that is representative of their religious subscription, then they will unreservedly pour out their hearts with the hope that healing as promised in their respective faith tradition is guaranteed. Therefore, truth commissions are not about finding out new truths, but therapeutic mechanisms that offer the victims the chance to speak their hearts out. During testimonials before truth commissions, the truth that is long-held but is hard to talk about is made known. For example, 'Anti-apartheid activists in South Africa insist that it was impossible not to know that torture and killing were commonplace under apartheid, but that some South Africans chose to ignore the truth.'[68] This has been the case for Kenya's long-held stories of immense torture and suffering under past regimes and their dictators. For example, victims of the infamous Nyayo House torture chambers where suspects of political dissent against former president Moi were detained have never had a platform for truth-telling. During the twenty-four years of President Moi's reign, people could not speak about the torture chamber and therefore chose to ignore the truth. Only after President Moi's retirement did victims start to speak up in isolated interviews with human rights groups.

A truth commission that is representative of the interfaith leadership can provide a safe environment for truth-telling. In religious conflict resolution, the common understanding in a multifaith context is that truth is supreme and sacred across all religions. Therefore, the object and subject of truth itself deserve attention and protection because it is a noble thing. This is to recommend a multifaith-laced truth commission as a TJ mechanism because of the advantages it has for witness and victim protection over state machinery. One of several objectives of the truth commission is, as Hayner calls it, 'sanctioned fact-finding'.[69] This means 'to establish an accurate record of a country's past, clarify uncertain events, and lift the lid of silence

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[66] Shore (2009: 28).
[67] Hayner (2011: 20).
[68] Hayner (2011: 20).
[69] Hayner (2011: 20).

and denial from a contentious and painful period of history'.[70] Lifting the lid of silence is therapeutic in itself to the victims and family members of the victims of oppression. Stopping the denial of past atrocities also has a national healing aspect. For a conflict of a religious nature,[71] a truth commission with the interfaith leadership incorporated in it creates an environment of vulnerability. This vulnerability in an open and safe space is required for truth and fact-finding. If facts are not achieved, then truth will not suffice in the interviews, without which the regaining of peace and stability is difficult for a country. The 'Official acknowledgment can be powerful precisely because official denial can be so pervasive.'[72] Most if not all religious traditions have rituals that can deal with the skeletons of the past and provide the chance to regain a fresh start in reconciliation.

Even though religious leaders in Kenya have been successful in calling rogue governments and regimes to account, they have not followed up with a clamour for retributive and distributive justice. Instead, the commissions that had been set up focused on the perpetrators who were already well protected by the prevailing powers. On the contrary, the pain suffered by victims at the grass-roots level was not redressed. Thousands of internally displaced people (IDPs) had been returned to their homes, but the scars and horrors of violence against them remained fresh in their minds. The country has since failed to reconcile the communities at the centre of post-election violence. Therefore, from that time on, successive election cycles have been marked with a lot of tension, sparks of violence, and election malpractices that deny Kenyans their democratic right to free and fair elections.

Without reconciliation, there is no lasting peace. Kenyans are always on edge, before, during, and after a general election. Consequently, the country is set to an election mode from one election to another, with talks about the next election from the moment a president is sworn into office. This trend has not helped establish peace and deliver TJ. The country is usually preoccupied with succession politics, such that the people do not have a chance to remember and talk about their pain and loss. Only the religious leadership can address this as it bears the moral capacity to trace back injustices and recompense for those afflicted by it.

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[70] Hayner (2011: 20).
[71] Some forms of conflict in Africa are caused by religion. For example, when political leaders of a certain religion incite their communities to attack another community of a different religious affiliation.
[72] Hayner (2011: 21).

Conclusion

Transitional justice is essential for the peace and stability of any country. Religious leaders and groups have in the past participated in pushing for the institutionalisation of transitional justice in both Kenya and the Republic of South Africa. However, interfaith bodies as religious institutions have remained in the margins of conversations about TJ. Instead, it has been suspected to be a party to or cause of conflict in the past. While this could be true, experts believe that religion has been at the forefront of peacebuilding initiatives. This acknowledgment gives the religious leadership in Kenya more ground and basis to offer leadership in peacebuilding. This is because religious groups are influencers of societies. Religion-led peacebuilding efforts cannot be achieved by various religious leaders and groups working in isolation from each other. An interfaith synergy is thus required to deal with TJ as religious leaders have a massive influence in the country across the political divide.

Numerous TJ mechanisms have failed to yield good results due to the nature of their constitution and agenda. Truth commissions have been set up that do not meet the religious representation required to drive change through TJ. Thus, truth commissions are constituted in old wineskins. The Truth and Reconciliation Commission in the Republic of South Africa that helped reconcile a divided post-apartheid country is a success story.

Conversely in Kenya, religious institutions have in the past pushed for space and inclusion in the TJ processes. While religion has been incorporated in truth commissions, they stand alone as individual entities that have little capacity to influence values of truth-finding, healing, and reconciliation in Kenya. Perhaps a mainstreaming of interfaith institutions in TJ processes will enable Kenya to develop and put new TJ mechanisms in place. An interfaith composition of the truth commission can be leveraged to yield healing and reconciliation for sustainable peace in Kenya as it did with the Republic of South Africa.

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