

DEBRIEFING THE ROLE OF TRUTH, RECONCILIATION AND REPARATIONS COMMISSION IN THE GAMBIA'S HUMAN RIGHTS VIOLATIONS AND QUEST FOR JUSTICE

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Abstract: *The study examined the human rights violations under Yahya Jammeh and the Adama Barrow government's quest for justice through the recently established Gambian Truth, Reconciliation and Reparations Commission (TRRC) in the Gambia. It relied on secondary sources of data collection and adopted restorative and reparative justice as its conceptual framework for the overall understanding of the subject matter. It contented that categorising the Jammeh-led government as one of the worst regimes characterised by deliberate human-rights abuses is like stating the obvious. It further argued that establishing the TRRC and assigning it the role of healing the nation via searching for the truth in order to reconcile, restore justice and compensate victims of human rights abuse under Jammeh government is a welcome development. However, the findings of the study revealed that this is not an easy task given the likely impediments that have bedevilled similar commissions in South Africa, Sierra Leone, Ghana, Nigeria, among others in the past. It identified inter alia the challenge of funding, dilemma of bias accusation and politicisation, refusal to accept responsibility or demand for forgiveness by main perpetrators, inadequate publicity and absence of total community participation and delays or failure to fulfil reparation promises by the sitting government as major challenges that may prevent the TRRC from achieving its mandate. It therefore recommended Barrow government should be sincere and allow TRCC to work without any interference while it is imperative for all forms of media practitioners in Gambia to mobilise for total community participation in the exercise. Also, the donor countries and institutions should not leave any stone unturned to ensure that government immediately fulfil reparation promises at the end of the exercise.*

Keywords: *human rights, justice, democracy, Gambia, truth commission*

INTRODUCTION

Truth commission, which is one of the foremost policy instruments aimed at grappling with past human rights violations as once pervasive in the Gambia, has attracted wide interest among scholars (Usami, 2016). The Gambia remains one of the smallest and most heavily populated countries in Africa. After gaining independence from Britain in

1965, its borders were created alongside the banks of Gambia River. The country had once become the epitome of workable democratic governance and the continent's longest multi-party democracy after its independence (D'Aiello, 2018).

However, this democratic continuum was truncated in 1994 when the nation's first president, Sir Dauda Jawara, was toppled in a military coup commanded by Lieutenant Yahya Jammeh (D'Aiello, 2018). The period the former president, Yahya Jammeh, seized power in 1994 and his forced departure in 2017, the Gambia witnessed turbulent period in terms of violations and human rights abuse in various dimensions and the citizens' prosperity was at bay (Tambadou, 2018). The coerced exit of the maximum ruler gave the country another rare opportunity for a new beginning put Gambia back on the path of responsive and responsible democratic state. However, the legacy of Jammeh's despotic rule, typified by deprivation, disgusting human rights violations, impunity, political and ethnic divisions (Media Foundation for West Africa, 2014) remains a challenge to the new government of President Adama Barrow to consolidate the Gambian democracy.

In a frantic effort to erase the stigmas of unceasing human violations, ensure justice and fulfil its electoral promise, Barrow's government in December 2017, inaugurated the Truth, Reconciliation and Reparations Commission (TRRC). Hence, "the TRRC is part of a broader transitional-justice process aimed at addressing past human-rights abuses and building a stable democratic future through justice moored to respect for the rule of law and human rights" (Jaw, 2018).

Thus, the major objective of the TRRC is to unravel the truth surrounding the violations and abuse of human rights suffered under Jammeh government, ensure justice probably through reparations and forestall in the future such similar human rights abuses. No wonder the Commission is promoting a "never again" campaign to transform the political culture in order to make it "hard for gross human rights violations and impossible for dictatorship to prevail" in the country again (Davies, 2019).

However, the establishment of the TRRC has been controversial. Under the new Gambia, there is a general belief that the inauguration of the TRRC is a welcome development towards calming the frail nerves and allowing communities' wounds to heal. This is in tandem with Freeman and Hayner's thought while stressing the indispensability of truth commissions (Freeman & Hayner, 2003). Others believe that it is a witch hunting exercise and it is politically motivated claimed by Jammeh's supporters championed by Yankuba Colley (Bah, 2018). Colley's position cannot also be entirely wished away given the fact that in a situation whereby truth commission is established with improper motives, achieving its many potential benefits may be a herculean task (Davies, 2019).

From the foregoing and given the TRRC's contested nature and the quest for justice in Gambia, to what extent can the Commission achieve its mandate? What are the lessons that can be learned based on the experiences of other countries? What are the likely impediments preventing the TRCC from achieving this onerous task? How can these impediments be mitigated? These are the informed questions that this article intends to answer.

CONCEPTUAL ISSUES

HUMAN RIGHTS VIOLATIONS

Based on the United States Human Rights Office of the High Commission (OHCHR), “human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status” (United States Human Rights Office of the High Commission (OHCHR), n.d.). In essence, human rights are the basic rights and freedoms being possessed by every person in the globe, commencing from birth to death. Thus, human rights are the “basic rights and freedoms to which all human beings are entitled” and these include civil and political rights, such as the right to life, liberty, and property, freedom of expression, pursuit of happiness and equality before; and social, cultural and economic rights such as the right to participate in science and culture, the right to work, and the right to education (OHCHR, n.d.). These rights and freedoms are enshrined in the constitution of many countries in West Africa. For instance, chapter IV of the 1997 Gambian Constitution, chapter IV of the Nigerian Constitution (as amended), chapter V of the 1992 Ghanaian Constitution, title II of the 2011 Senegalese Constitution (as amended), title II of Togo’s Constitution (as amended) among others emphasise the freedoms and protection of these rights

Human rights violations occur when any state or non-state actor breaches any of the already stated rights or a situation whereby basic human rights are trampled upon by dictators and political systems (Onwuazombe, 2017). Also, a human right violation can be committed by the state agents such as government employees at local and state levels, the police and other security forces, prosecutors, judges, among others and their conduct is then regarded as the conduct of the state (Onwuazombe, 2017). Thus, to violate the most of basic human rights is to deny individuals their fundamental entitlements and maltreat them as if they are less than human deserving no respect and dignity (Maiese, 2004). Instances of human rights violations are abound in many countries in Africa and across the globe whereby threats and torture, modern slavery, rape, deliberate starvation, unlawful arrests and detention, summary execution of those in custody, denial of free press, among others, are the order of the day.

CONCEPTUALISING TRUTH COMMISSION

Despite the avalanche growing of literature on the subject, there has been surprisingly no agreed meaning of truth commission or its variant. It is unassailable that many observers concur that a truth commission probes and reports immense violence occurring in an era of political repression or armed conflict. However, they differ on some of its characteristics and functions (Usami, 2016). As conceived by Hayner, truth commission:

...is focused on past, rather than ongoing, events...investigates a pattern of events that took place over a period of time...engages directly and broadly with the affected population, gathering information on their experiences...is a temporary body, with the aim of concluding with a final report...is officially authorised or empowered by the state under review (Hayner 2001 cited in Usami, 2016, pp. 56-57).

In a similar manner, a truth commission according to Freeman is:
An ad hoc, autonomous, and victim-centred commission of inquiry set up in and authorised by a state for the primary purposes of “...investigating and reporting on the principal

causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict and...making recommendations for their redress and future prevention (Freeman 2006 cited in Usami, 2016, p. 57).

Usami (2016, p. 58) also averred that:

A truth commission is a temporary, independent commission of inquiry established for the primary purposes of...investigating and reporting broad patterns of violations of physical integrity rights that occurred in the society under review...covering a determinate period of the past oppressive regime or armed conflict...gathering information on sufferings of the affected population, and...making policy recommendations for redress and future prevention.

Similarly, Teitel (2003) viewed truth commission as an official body, often created by a national government, to investigate, document, and report upon human rights abuses within a country over a specified period. Thus, the commencement of a truth commission may indicate an official discontinuation with the past, and giving opportunity of transiting to a new open, nonviolent and democratic prospect (Bloomfield, Barnes & Huyse, 2005) as being envisaged in the Gambian situation within the context of the TRRC's challenging task. As maintained, truth commissions are to avert further occurrence of imminent violence and human rights abuses. (Hayner 2001 cited in Usami, 2016).

However, a better conception of truth commission, which appears to be all encompassing and most appropriate for this article, is offered by Bronkhorst as pointed out by Dancy, Kim and Wiebelhaus-Brahm (2010, p.48), when he described truth commissions as:

A temporary body set up by an official authority (president, parliament) to investigate a pattern of gross human rights violations committed over a period of time in the past, with a view to issuing a public report, which includes victims' data and recommendations for justice and reconciliation.

Thus, mandate given to some truth commissions, like the TRRC set up by Barrow government in the Gambia, is not only to probe past human rights abuse but also to announce recommendations regarding victims' reparation and necessary legal and institutional reforms undertaken including proposal for reconciliation process (Fombad, 2012). Meanwhile, truth commissions cannot be viewed as an alternative for judicial trials, but non-judicial bodies having considerably narrow scope of action; either primarily set up in transitional societies, transiting from war to peace or from undemocratic system to democracy. Nowadays, they are also utilised in historical events by investigating state cruelty, which ensued several years back and followed up with hindsight at present time (Fombad, 2012).

RESTORATIVE AND REPARATIVE JUSTICE: A CONCEPTUAL FRAMEWORK OF ANALYSIS

The adoption of restorative and reparative justice as our framework of analysis is based on their utility to strengthen our discourse. The concepts are not only appealing, but also have the capacity to calm the frail nerves of those who have experienced injustice in form of human rights violations and suggests succour if necessary. Thus, for victims, restorative justice provides persons a more formalised role and a momentous right to be

heard in the process, and lend credence to numerous decisive human needs, not leaving out the necessity to be consulted and to be empathised (Latimer & Kleinknecht, 2000). On the other hand, reparative justice has the material and moral advantages (Roht-Arriaza, 2004). It acts in response to the effects of repression via compensation of material things including land, and/or money (Quinn, 2013) and provides emblematic gains and acceptance of acts of violence through formal requests for forgiveness and remembrance (Minow, 1998).

As indicated by Dorne (2008), Howard Zehr is credited with being a pioneer and one of the first advocates of theory of restorative justice in his book, *Changing Lenses- A New Focus for Crime and Justice*, published in 1990. Aside this, Braithwaite (1997) asserted that restorative justice has been the dominant model of criminal justice throughout most human history. Thus, restorative justice is a theory of justice that emphasises mending the harm and damages caused or exposed by unlawful or criminal acts such as human rights violations, which transpired either between groups, communities or between citizens and the state. Basically, restorative justice focuses first and foremost on revealing what transpired and why, and prioritises the transformation of social bonds between injured parties, wrongdoers, and communities (Llewellyn & Howse, 1999).

Restorative justice lays claim to individual responsibility as it relates to community proceedings positioned it to tackle multifaceted networks of connivance and wider precedents of oppression (Minow, 1998). As Llewellyn and Howse (1999) have argued, the proceedings of restorative justice permit the investigation of agency and choice, upholding the prospect of free will in circumstances of apparently deterministic group evil. Therefore, “restorative justice encourages interrogation of the methods by which systems themselves produce evil citizens by avoiding diminutive framing that portrays individual acts as aberrations on otherwise just societies” (Howsam, 2015, p.11).

Reparative justice also puts forward a robust theoretical framework for structural responsibility, connecting definite ill-treatments including cruel land capture, to extensive chronicles of economic denial (Howsam, 2015). As conceived by de Greiff (2004), there exist possibilities rationalising what makes up justice in reparations, what is fair and what is unfair. Within the context of international law and cognate areas, given the fact the model emanates from tort law, the measure of justice is the actual well-known one of full restitution or otherwise refers to as restitution in *integrum*. The idea behind this is to enable victims “whole,” whereby the victim is compensated in proportion to the harm suffered.

Arguments among justice theorists have also arisen regarding the most suitable way to take care of survivors of mass cruelty and human rights abuse and violations in various dimensions. Restorative justice scholars have maintained that it is necessary for the victims to provide with sufficient platform, like inauguration of a commission, for sharing anguish so as to reclaim self-confidence and respect (Nino, 1996), including reconciling with the past with a sense of peace (Tutu, 2012). Thus, restorative mechanisms bring about respect for their action and establish the fact that survivors are the connoisseurs of their own ill-treatment, instead of requesting participation from victims (Howsam, 2015). Minow (1998) further claimed that restorative justice offers more edifying approach to justice; surpassing schisms and laying the foundation of a new status quo via rehabilitation of offenders and setting up again dealings found on trust and respect (Govier, 2002). Problematising the truth/justice divide within the context of the restorative justice paradigm, Hayner (2003) also insisted that, on specific occasions, truth inquiries have absolutely given a boost to ensuing prosecutions and leveraged other accountability instruments. That is why

Llewellyn and Howse (1999) rationalised that restorative justice presents more factual and useful insights regarding the dispositions of justice.

As regards reparative justice theory, it is believed that immediate material claims are a more fundamental method via restitution whereby survivor needs are necessarily addressed, even though it may be an inadequate response to the root causes of economic oppression (Fraser & Honneth, 2003). However, as attractive as reparative justice approaches appear, in practical terms, it has also steadily been unsuccessful to generate the needed gains for victims, as “governments have been slow to act on their proposals” (Roht-Arriaza, 2004). Nevertheless, reparative justice rejuvenates both the sufferers and offenders via resource compensation, and offers them another opportunity in the country’s revival (Roht-Arriaza, 2004). However, if for anything, restorative and reparative justice models offer at any rate a theoretical direction toward a future with limited disagreements.

As a corollary from the foregoing theoretical discourse, it is to be noted that no measure of justice as espoused by the two models appears to be sufficient to really quantify, qualify and indemnify the victims especially in the context of human rights abuse violations as in the Gambian case under Jammeh government. That is why Minow (1998) essentially remarked that no response is enough in recompensing loss. Hayner (2001) also cautioned with a note of restraint that victims in different contexts would express wide-ranging wishes and needs in spite of limited available resources; it is up to the concerned truth commission to study the situation and act accordingly.

Given the doubt of accomplishing the onerous tasks before truth commissions, some scholars have advanced a context-dependent approach that rely on a combination of “prosecutions, truth-telling, restitution, and reform of abusive state institutions;” (Arthur, 2009) or a holistic approach combining varied techniques as the most effectual mechanism to bolster democracy and diminish human rights abuse and violations (Olsen, Payne & Reiter, 2010). Thus, there exists a nexus among human rights violation, truth cum reconciliation commission, restorative and reparative justice. Atrocities committed by individuals, communities or governments, for instance, in form of human rights violations (as in Jammeh’s Gambia or Apartheid South Africa), typically resort to the inauguration of truth commission and it is expected to lead to reconciliation of victims with estranged parties and this may also bring about reparation in form of material or moral gains.

AN OVERVIEW OF STATE OF HUMAN RIGHTS ABUSE AND VIOLATIONS IN THE GAMBIA, 1994-2016

Gambia once functioned as the Africa’s longest multi-party democracy after gaining independence from Britain in February 18, 1965. Sir Dawda Kairaba Jawara led the country since independence and his People’s Progressive Party (PPP) dominated electoral like colossus (Darboe, 2010). Thus, long before its removal in 1994, Jawara government had ruled for too long, had metamorphosed into ineptness, and went out of touch with Gambia’s common citizens’ struggles (Darboe, 2010). The International Monetary Fund (IMF) and World Bank’s induced Structural Adjustment Programme (SAP) intensified job losses, unemployment and frustrations among Gambians. This emboldened the political opposition and its resonation and the overthrow of Jawara government by Yahya Jammeh and his junta on July 22, 1994 leading to street jubulations

and hoping that this was the much-awaited revolution that the people had been yearning for (Darboe, 2010).

However, after Jammeh's led military coup, a Provisional Ruling Council was inaugurated to return the nation to democratic path after two years in 1996 and the military leadership led Jammeh himself formed a political party name Alliance for Patriotic Reorientation and Reconstruction (APRC) and participated in the 1996 elections. The outcome of the elections which was highly controversial and marred by irregularities and rigging as stated by the opposition groups and international observers gave the military leadership victory (Darboe, 2010). After the purported electoral success of 1996, it was sooner than later, that the Gambians realised that Jammeh was an authoritarian, erratic and insincere leader who rudely curtailed civil liberties and stifled opposition and he eventually became increasingly unpopular.

Though the government's human rights violations and abuse tendencies were first noticed when Jammeh government banned some politicians and political parties from election participation before the 1996 election. It became aggravated after 1996 elections whereby haphazard arrests, press suppression, appropriation of private properties devoid of required court orders, persecution of former public servants and average citizens (Darboe, 2010) continued unabated and numerous to mention. Due to these poor human rights records of Jammeh government, the Gambia was treated as a pariah state in the global arena and had poor diplomatic relations other countries and international bodies. For instance, Gambia-United States (US) bilateral ties were formerly damaged owing to U.S. disapproval of Gambia's poor human rights record and the participation of U.S. nationals in an aborted coup attempt against Jammeh in 2014 (Husted & Arieff, 2018). Jammeh also severed ties with the Commonwealth in 2013, and estranged donors through his spurious claims that he had discovered a cure for AIDS. In 2014, the European Union immobilise development aid to Gambia owing to concerns over anti-lesbian, gay, bisexual, transgender, and intersex (LGBT) legislation. The Jammeh administration also had strained ties with Senegal because of Jammeh's suspected backing of Senegalese separatist rebels (Husted & Arieff, 2018).

Thus, these human rights abuse and violations have metamorphosed into different dimensions and these included arbitrary or unlawful deprivation of life, disappearance, torture and other cruel, inhuman, or degrading treatment or punishment, harsh and life threatening prison and detention centre conditions, arbitrary arrest or detention, compromised role of the police and security apparatus, warped arrest procedures and bad treatment of detainees, denial of fair public trial, unfair trial procedures, bad treatment of political prisoners and detainees, arbitrary interference with privacy, family, home, or correspondence, curtailed internet freedom, absence of academic freedom and cultural events, inadequate to freedom of peaceful assembly and association, curtailed freedom to participate in the political process, corruption and lack of transparency in government, uncooperative governmental attitude regarding international and nongovernmental investigation of alleged violations of human rights, discrimination, and societal abuses, acts of violence, discrimination, and other abuses based on sexual orientation and gender identity (US Department of State, n.d).

Few instances of Jammeh atrocities suffice here. Part of the intolerance and human rights abuses and violations under Jammeh regime is the violent crushing of a peaceful student demonstration in April 2000 leading to the deaths and maiming of several students

by the country's police and military (Darboe, 2010). In 2005, 56 African migrants, who were bound for Europe, were captured and summarily executed in Gambia on the suspicion that they were mercenaries and 44 of these, were Ghanaian migrants. In spite of this violation, the Gambian security authorities refused to probe the murders until the Government of Ghana formally lodged a complaint and requested for an investigation (Oduro, 2018). After a combined United Nations (UN) and Economic Community of West African States (ECOWAS) team investigation, there was a report issued in 2009 which concluded that the Gambian government was not in any way connected to the migrants' deaths and disappearances, however that undisciplined and criminal elements in Gambia's security services were responsible (Oduro, 2018). However, it was later revealed by Reed Brody, counsel at Human Rights Watch (HRW, 2018a), that the witnesses identified the "Junglers," an infamous paramilitary death squad who received its orders directly from Jammeh, as those who carried out the killings; and that Jammeh's aides went on to destroy vital evidence to inhibit international investigators from discovering the truth. In spite of this, there emerged recently the campaign tagged "#Jammeh2JusticeCampaign" being advocated and championed by the sole Ghanaian survivor of the mayhem, Martin Kyere and the families of the victims. They are not only seeking to institute the case against Jammeh and his cohorts who were involved in the massacre, but also demanding the Ghanaian government's support to transfer Jammeh's from Equatorial Guinea so as to face trial for the immoral act (US Department of State, n.d).

Jammeh's complicit was established in the murder of The Point Editor, Deyda Hydara in 2004. In one of his national broadcasts on state owned stations on 21 September, 2009 he threatened to exterminate human rights defenders (La Rue, 2010). According to him, "If you think that you can collaborate with the so-called human rights defenders, and get away with it, you must be living in a dream world. I will kill you, and nothing will come out of it..." (*The Guardian*, 2009, para 4). In one of his usual speeches at Faraba Banta Village, on 27 June 2013, Jammeh repeated his government's disdain for homosexuality which he portrayed as 'evil, anti-human, and anti-Allah' in a speech delivered at the United Nations General Assembly on September 27, 2013 (Centre for Democracy and Development (CDD), 2017).

In addition, the backlash of a 2014 aborted coup plot led to the arrest of an estimated 36 persons along with their family members, three of the arrested persons were executed, while a former army officer was shot and wounded (US Department of State, n.d). Some part the detained persons were women, the elderly and innocent children and they were eventually released after six months incarceration. Other detainees were punished with torture and severe beatings, electric shocks and water boarding carried out by the National Intelligence Agency (NIA) (Amnesty International, 2016).

In 2014, the abuses perpetrated included torture, capricious arrest, elongated pre-trial, forced disappearance and secluded detention among others (US Department of State, n.d). Moreover, the NIA officers were reported to have arrested and incarcerated about six people associated with the #Gambiahasdecided T-Shirts following the December 2016 elections (HRW, 2017). There was also discrimination against LGBTI community in The Gambia whose members experienced homophobic repression. Jammeh later terrorised the homosexuals that their throats would be slit in one of his usual speech as in May 2015 at Farafeni market (Ruble, 2015).

Muslims and non-Muslims also experienced threats to freedom of religion, in spite of the Gambian Constitution which guarantees the freedom of worship devoid of infringement on the rights of others (See section 25/1 (c)). Thus, the declaration of the country as the Islamic Republic of the Gambia and the subsequent outlaw of the Christian festivals celebration in the country in December 2015 by Jammeh came to mind here (*British Broadcasting Corporation (BBC)*, 2015). Under his government, it was reported that three Imams were incarcerated without trial or explanation from October 2015 (Bureau of Democracy, Human Rights and Labour, United States Department of State, 2015). This was in contrary to the Constitution, which stipulated that the maximum time for detention without trial is 72 hours. In the same vein, the Supreme Islamic Council (SIC) in conjunction with Jammeh government had referred to the Ahmadiyya Muslims as ‘non-Muslims’ and afterwards deprived them of access to the media (Bureau of Democracy, Human Rights and Labour, United States Department of State, 2015). It was reported by Freedom Newspaper that on 6 January 2016, how the so-called witches and wizards in Kamfenda and Foni villages were arrested en masse and tortured by a killer squad (Jungullars) under the direct order of Jammeh. The said village residents had no option other than to flee to the neighbouring Casamance in Senegal owing to fear of being victimised and killed by the killer squad (*Freedom Newspaper*, 2016).

According to Afrobarometer survey (2018), human rights abuse under Jammeh regime, more than one-quarter (28%) of Gambians say they or a member of their families suffered at least one form of human-rights violation under the regime, including arbitrary arrest or detention without trial (14%); torture, rape, and other brutalities by agents of the state (14%); intimidation by agents of the state (13%); and wrongful dismissal from work (13%), disappearance after arrest by security agencies of the state (8%), destruction or confiscation of property or assets by the state (7%), state-sponsored murder (5%) while (28%) suffered at least one of these human-rights abuses (Jaw, 2018).

From the above, it is safe to state that Jammeh’s rule from 1994 to 2017 was characterised by blatant human-rights abuses (Amnesty International, 2018; *Media Foundation for West Africa*, 2014). Stating what could be regarded as the Jammeh administration’s epitaph, the administration:

...had been notorious for operating a closed political space, incidents of corruption, human rights abuses, threats to religious freedom, weakened judiciary and legislature, nebulous electoral processes, socioeconomic challenges, undermining of the rights of women and girls, and an enforced ethnic cohabitation (CDD, 2017, p.5).

IN SEARCH OF TRUTH AND JUSTICE IN THE GAMBIA: THE ESTABLISHMENT OF TRRC

On 13 December 2017 in the Gambia, National Assembly adopted Truth, Reconciliation and Reparations Commission (TRRC) Act and assented to by the President on 13 January 2018. The TRRC Act provides for the establishment of the historical record of the nature, causes and extent of violations and abuses of human rights perpetrated during the Yahya Jammeh’s rule i.e. between July 1994 and January 2017. It is also to contemplate

the granting of reparation to victims while the Commission comprised eleven members and chaired by Dr. Lamin Sise (Law Hub Gambia, n.d).

The Attorney General Ba Tambadou led the process of founding the TRRC. President Adama Barrow eventually appointed Baba Galleh Jallow, an academic as Executive Secretary of the Commission with effect from 1 February 2018 (Shaban, 2018). A request was also made for nominations to the TRRC laying emphasis on the fact that individuals to be nominated should be of sound moral rectitude and integrity, absence of criminal record or participation in previous human rights abuses, no political party activity, and residency in either the Greater Banjul Area or in the Diaspora (*Freedom Newspaper*, 2018). In August 2018, Baba Jallow appointed Alagie Barrow as the Director of Research and Investigation for the Commission (*The Point*, 2018).

According to the TRRC Act, the Commission is expected to operate for a period of two years, and the President may extend this for such further period as he or she determines by publication in the gazette. All the members of TRRC shall be citizens of The Gambia from amongst persons of high moral character and integrity who have distinguished themselves in their respective fields of vocation or communities (Truth, Reconciliation and Reparations Commission (TRRC) Act, 2017).

Regarding the independence, it is stipulated that the Commission is required to (a) be impartial and fair in the performance of its functions; and (b) not be subject to the direction or control of any person or authority. Thus, TRRC in its bid to search for justice for victims is empowered to investigate human-rights violations and abuses perpetrated during Jammeh's reign, dealing with possible prosecution, promoting social unity and national appeasement, valuing the rights and dignity of victims via the stipulation of suitable reparations, and learning appropriate lessons so as to engender valuable mechanisms to avert a re-emergence (Tambadou, 2018). This is a welcome development as far as the majority of Gambians are concerned. However, based on the available extant literature, the assigned role of the TRRC in search for the truth in its bid to reconcile, restore justice and compensate victims of human rights abuse under Jammeh government is not an easy task. There are anticipated impediments that may likely prevent the TRRC from achieving its mandate. This will be the focus of the next section.

THE LIKELY IMPEDIMENTS TO POSITIVE IMPACT OF TRUTH COMMISSIONS WITHIN THE CONTEXT OF OTHER COUNTRIES' EXPERIENCES: LESSONS FOR TRRC IN THE QUEST FOR JUSTICE IN GAMBIA

Some of the identified impediments which may have far-reaching effects on the operations and final outcomes of the TRCC in Gambia are discussed below.

CHALLENGE OF FUNDING

Gambia has already been overstretched economically largely due to mismanagement and corruption that characterised the Jammeh regime. Thus, critics usually question the necessity for a truth commission from an economic standpoint, contending that funds expended on a truth commission should be redirected in the face of competing and more pressing budgetary priorities; especially, in country like Gambia, whereby poverty is a great challenge and its survival depends on external borrowings. Available evidence shows that TRCC is being funded through foreign aid from the UN, Qatar and

other countries (*The Gambia Radio*, 2018) while there is general conviction among the enlightened Gambian populace championed by Victims' Centre Chairperson Sheriff Kijera who contended that justice cannot be provided to the victims via dependence on foreign aid (Kijera, 2019).

NEGATIVE IMPLICATION OF LEGALISTIC APPROACH TO THE COMMISSION'S PROCEEDINGS

It has been discovered that conducting the proceedings of truth commissions in a legalistic manner may be counter-productive. Despite the fact that these commissions may possess some of the powers and functions of a legal body, they are inaugurated as quasi-judicial instruments focused on acknowledging and where feasible ensure truth for victims. However, the preponderance of an openly legal disposition can detract commissions from achieving their primary mandate. Hence, establishing a safe space for victims to narrate their testimonies cannot be over-emphasised, thus, the physical layout of the hearings plays an important function in setting the atmosphere. For instance, in South Africa, victims who gave evidence before the TRC were further asked about the lessons to be shared with prospective countries establishing truth commissions. Part of the most significant issues raised revolved around the requirement for compassion and uprightness when dealing with victims (Picker, 2005).

It was noted that owing to the kind of evidence and the preceding experiences of ill-treatment and subjugation visited on the victims, caution should be sought in the way the witnesses are handled during the hearings, and that threatening locations that may reawaken memories of debriefings need to be carefully shunned (Picker, 2005). Thus, informal settings were created in South Africa and Timor-Leste to hearten survivors to feel relaxed. In Peru, commissioners and participants were made to sit together at a common table during the proceedings; whereas in Ghana, the layout and tone of the public proceedings were of great concern as expressed by many of the participants (Picker, 2005). As observed by Professor Gyimah-Boadi, former Executive Director of CDD-Ghana, the Ghana's TRC's set up of the public hearings was "exceedingly legalistic" whereby the public hearing room was designated a courtroom while lawyers and commissioners were addressed as "my Lord"; also lawyers were extremely involved in the hearings; and at times witnesses were pressed to be time conscious and stick to facts (Picker, 2005). In essence, public hearings of truth commissions are at variance with proceedings amid judicial effect, even though principles of natural justice and fairness cannot be ruled out, however, they unintended to be knotted by the similar usual of rules of evidence and *audi alteram partem* contemplation (Picker, 2005).

DILEMMA OF BIAS ACCUSATION AND POLITICISATION

The truth commissions are always faced with the accusation of bias and reprimands. This was the case in Ghana's National Reconciliation Commission (NRC) where the Chairperson and commissioners were accused of bias. For instance, the chairperson of the Commission, Justice Kwaku Etrewhire Amua-Sekyi, faced serious criticism for purportedly displaying bias in his treatment of witnesses. Some concluded that this might not be far away from his political background and his personal grudges against former regimes; especially the unfair treatment meted out to those he thought to be supporters of the former

Ghanaian's president, J. J. Rawlings. Richard Quashigah, Senior Editor with Radio Ghana and a member of the Ghana Journalists Association (GJA) also corroborated this, when he stated that the chairperson's bearing towards perceived supporters of Rawlings was awkward and exuded confirmation of bias (Valji, 2006).

Some scholars have also argued that in spite of the fact that truth commissions have been viewed as the "second best" alternative right past abuses, others have claimed that in some cases, because of their propensity for political manipulations, truth commissions merely function to manage the balance of power in transitional situations (Leebaw, 2010) and on some occasions become politicised and controversial. Hence, considering past misdeeds can be politically delicate, contentious, even undermining (Bakiner, 2015). That is why Bakiner argued that truth commissions may arise from, and engender influence via complex socio-political processes, but the sponsors, in most cases, that is, the sitting governments, parliaments, courts or international institutions "follow a parochial, if not completely selfish, set of political ends. Thus, the willingness of incoming governments to establish commissions has emboldened the critics to tag these bodies as channel of political legitimisation (Bakiner, 2015). Part of such infused political innuendoes and controversies is the campaign of calumny and repulsion embarked upon by Jammeh's supporters in the print and on social media (International Centre for Transitional Justice, 2018). For instance, national mobiliser for Jammeh's party, Alliance for Patriotic Reorientation and Construction (APRC) and the ex-Mayor of the Kanifing Municipal Council (KMC), Yankuba Colley, has portrayed the TRRC as a witch-hunt targeted at the former president (Bah, 2018).

REFUSAL TO ACCEPT RESPONSIBILITY OR DEMAND FOR FORGIVENESS

It has been noted that there is possibility of truth commissions via their own probe being successful in obtaining some new truth in favour of victims devoid of perpetrator's cooperation. However, it is more dignifying and substantial value is added to the national reconciliation project when perpetrators freely accept their misdemeanour, especially when they make an apology to those wounded by their actions (Cuevas, Rojas, & Baeza, 2002). Acknowledgement is part of re-establishing a moral code in society and boosting healing and reconciliation, especially where retributive justice is ruled out. Equally, obtaining reconciliation is seriously hindered in situations where substantial part of perpetrators refuses to acknowledge responsibility or ask for forgiveness (Valji, 2006). This was a case with a Chilean victim who stated that reconciliation was impossible "while those men keep justifying their crimes ... while they remain loyal to their pact of silence" (Cuevas et al., 2002, p.47). Thus, looking for ways through which past violators of human rights can be encouraged to appear and voluntary participation are a major predicament for all truth commissions.

Numerous reasons can be advanced for this. Part of these is a continued belief and justification of past actions and worry over public shaming, including potential legal implications of a confession (Valji, 2006). Though, it has been argued using a stick approach, that is prosecution threat for wrong doers who refuse to appear, or a carrot approach, that is the possibility of official pardon for those who show up may be ineffective as it happened in the South African case during which perpetrators were to admit wrongdoing was largely unsuccessful, 2006) (Valji, 2006).

Aside this, dealing with a former head of state presents a dangerous direction for a truth commission to traverse (Valji, 2006). Ordinarily, inviting a country's former ruler to testify is a perceptible stance regarding the application of the rule of law to all citizens, notwithstanding the rank or position. This situation has two contrasting implications; it can leverage the opponents of the commission's standpoint by labelling it as a mere tool for shaming political rivals of the sitting government; or promote reconciliation by suiting the victims' frail nerves if the former ruler acknowledges wrongdoing, accepts responsibility for systematic human rights violations. However, further damage can be wrecked if a former ruler or high-profile witnesses refuse to accept the legitimacy of the commission and disregard requests to appear before or accept responsibility or persistently renouncing wrongdoing. Thus, the TRCC should realise that making a major *dramatis personae* in the past human rights violations, especially the past presidents or heads of state, like Yahya Jammeh, to appear before the TRCC may prove abortive. This was the case in Nigeria, Sierra Leone and South Africa. For instance, in Nigeria, three important former military rulers, Generals Muhammadu Buhari, Ibrahim Babangida, and Abdulsalam Abubakar persistently disregarded summons to appear before the Oputa Panel (Nigeria's truth commission) to answer allegations of human rights abuses (Valji, 2006).

INADEQUATE PUBLICITY AND ABSENCE OF TOTAL COMMUNITY PARTICIPATION

Based on the African truth commissions experiences in Ghana, Rwanda, South Africa and Sierra Leone, inadequate publicity which led to limited participation of the relevant communities negatively affected the successful outcomes of the commissions. Thus, as espoused by Abe (2014), it has been established through the submissions of scholars on transnational justice programmes that negative comments often trail truth commissions in terms of participation/mobilisation related problems within the context of inadequate efforts in calling citizens during the process, not getting enough expected attention, recurrent failure to incorporate all social groups and the over- control in methods of participation (Abe, 2014). For instance, the South African and the Sierra Leonean TRCs were reported to have achieved marginal successes because of their failures to reach out to and incorporate the majority of the populace who lived in the countryside and predominantly illiterate. The failure to popularise the process of the South African TRC, in particular, was intensified by the Commission's inability to rebroadcast its hearings in popular media (Iiff, 2012). Thus, the local people were unable to monitor the operation of these two commissions in newspapers and media reports.

DELAYS OR FAILURE TO FULFIL REPARATION PROMISES

Recommending redress remains an integral part of truth commissions' functions, though a far-reaching reparation strategy cannot fully rehabilitate the suffered, but it can play a massive role in healing victims' wounds, promoting reconciliation and affirming the value of citizens earlier left out from the countrywide project. However, delays or failure to fulfil major reparation promises has been the bane of successful output of truth commissions. It has been observed that needless delays in instituting a reparation policy at the end of a truth commission's assignment can reinforce victims' feelings of abandonment, devaluation and marginalisation by the state. Such has been the situation of victims in several countries where the state either did not respond to a commission's

recommendations for some years, as in South Africa and Sierra Leone; or where the state discarded the recommendations or failed to respond, as has been the situation in Guatemala (Valji, 2004). Also, in a study carried out by Bakiner, (2015), out of twelve truth commissions who demanded reparation for victims, only one government initiated a reparations programme without any hesitation while governments in El Salvador, Haiti, Nigeria and Liberia completely ignored the recommendations for reparations.

CONCLUSION AND RECOMMENDATIONS

It is contended in this study within the context of its framework that establishing a truth and reconciliation commission as if that of TRRC signifies a kind of restorative and reparative justice which seek to undertake the task of healing a community damaged by cruelty and human rights abuse. The Gambia under Jammeh, as already discussed above, for twenty-two years was a shadow of its real self where tyranny and human rights violations knew no bounds. Thus, the exit of Jammeh signifies a new beginning for Gambians with great expectations, especially when the TRRC was established by Barrow administration with a definite mandate seeking justice for those that their rights have been violated. It therefore, admitted that the establishment of TRRC indeed signifies a secure space where past human rights violators and their victims in Gambia can convene safely and converse about the vicious actions that had occurred; so that, the sufferers and the perpetrators can begin to be reinstated peacefully in the society. Hence, the establishing of TRRC could promote a belief that the truth will free us all (Metta Centre, n.d).

However, in spite of the purportedly successful rate of truth commissions, serious doubts have arisen concerning the heartfelt effects of TRRC on seeking the truth, reconciliatory capability and reparative narratives (Allan & Allan, 2000). That is why it has been argued that advocates of truth-seeking commissions usually exaggerate their substance (Mendeloff, 2004) and that they often fail to attain their stated objectives of achieving justice, documenting a truthful historical narrative, and promoting reconciliation. Thus, with the advantage of hindsight, not every truth commission proposal is successful (Bakiner, 2015).

From the foregoing and beyond any deft political manoeuvre by Barrow government or surreptitious intentions, there is no doubt that the establishment of the Gambian TRRC is a right step in the right direction. Only with full accountability and transparency of the TRRC can the Gambia acknowledge its past errors in order to re-establish confidence in its institutions and ensures that these violations do not reoccur.

However, efforts should be made not to allow the TRRC to go the way of other truth commissions with marginal success. Therefore, first, solid funding arrangement should be intensified for the sustenance of the TRRC while the Commission's proceedings should be devoid of legal encumbrances. Second, the Barrow government should strive be seen to be promoting true reconciliation for peace devoid of bias and politicisation including frequent pronouncements towards reiterating its commitment to the independence of the commission. Third, the main actors in the Jammeh regime should be encouraged by the TRRC to appear before it by demonstrating openness, fairness, transparent proceedings devoid of bias to pave way for accepting responsibility and proper demand for forgiveness when necessary. Fourth, it is imperative for the news, electronic, print and social media, human rights organisations and victims' associations to publicise

TRRC daily proceedings and mobilise for total community participation. Lastly, according Afrobarometer survey (Jaw, 2018), the Gambians expectations from the TRRC are diverse.

Gambians' preferences for definite antidotes and reparations for victims, which altogether formed bulk of the responses, were 43% based on the survey should be looked into. Therefore, national and international human rights organisations like International Centre for Transitional Justice and host of others including the donors should exert sustained pressure on Barrow government to fully implement the TRRC's recommendations, especially in the area of victims' reparations, which had been the major bane of most past truth commissions in Africa.

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