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The Role of *Ubuntu* in South African Truth and Reconciliation Commission and Nigeria's Oputa Panel Revisited

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Abstract

This paper laid out a limited summary of the history of South Africa's Truth and Reconciliation Commission (TRC) and engaged in a re-visitation of the Nigeria's Judicial Commission for the Investigation of Human Rights Violations (Oputa Panel) in the light of the cultural approach found in *Ubuntu*. In the review, it sought to re-examine the South African Truth Commission, its implications as a political and cultural instrument for mending a fractured society. It sought to understand the cultural leadership role played by Archbishop Tutu using the traditional African principle of *Ubuntu*, which affirms an organic wholeness of humanity, as the driving philosophy behind the TRC as posited by Du Boulay. It reviewed the limitations of the Justice Oputa Panel and examined how it attempted to address the same fractures that have continued to present itself in Nigeria's governance and how the renewing of the truth and reconciliation process with some emphasis on the traditional African notion of *Ubuntu* can enhance the democratic culture and resolve some age long conflicts. The relative success of the South African transition process, rooted in Ubuntu in its modelling to other commissions invited a comparison with the Oputa Panel. The paper also raised the possibility of re-instituting another commission in Nigeria better patterned after South Africa's. How could a better use of it lead to an improved process which addressed issues arising out of a country that appears to have a distorted but legalised distribution of power brought about by a fractured society? Are there lessons we can draw from the significant implementation of the truth and reconciliation process in South Africa? The paper goes on to highlight areas of departure between the two Commissions. It reflected the South African template within the Nigerian context and concluded by making policy recommendations that may be applied to it in the face of the particular fractures it faces.

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Introduction

The world has been overturned with political change in recent years since the end of the Cold War in 1989, as many repressive regimes have been replaced with democratic or semi-democratic governments, and a number of horrific wars have been brought to an end. In these moments of transition when a state and its people stand at a crossroads, what should be done with a recent history full of victims, perpetrators, secretly buried bodies, pervasive fear, and official denial? Should this past be exhumed, preserved, acknowledged and apologised for? How can a nation of enemies be reunited, former opponents reconciled, in the context of such a violent history and often bitter, festering wounds? What should be done with hundreds or thousands of perpetrators still walking free? And how can a new government prevent such atrocities from being repeated in the future? While individual survivors struggle to rebuild shattered lives, to ease the burning memory of torture suffered or massacres witnessed, society as a whole must find a way to move on, to recreate a livable space of national peace, build some form of reconciliation between former enemies, and secure these events in the past (Hayner, 2011). This paper examines South Africa's use of the truth and reconciliation commission process and the unique injection of the traditional notion of *Ubuntu*, a cultural tool, to address, heal and navigate a path forward in a fractured society and lays the basis for a more harmonious society.

It observed through the leadership provided by Archbishop Desmond Tutu, that South Africa was able to use the traditional concept of *Ubuntu* to achieve relative success in its truth and reconciliation process. The establishment of the South African Truth and Reconciliation Commission in 1995 was enabled by the Promotion of National Unity and Reconciliation Act 1995 and was part of the transition and constitutional settlement that ended apartheid (Du Boulay, 1988). The South African 1996 Constitution made no express mention of *Ubuntu* but it did recognise customary law subject to the Constitution (Section 211(3) of the Constitution of the Republic of South Africa, 1996). Also the preamble of the Promotion of National Unity and Reconciliation Act 1995 captured the essence of *Ubuntu* in the constitution: ". . . the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation."

The Truth and Reconciliation Commission in South Africa, formed in 1995, was the third truth commission established in Africa, and the first one on the continent to explicitly include the objective of reconciliation (Freeman, 2006). It was the sixteenth out of the number of truth commissions that had previously been established around the world (Ojedokun, 2006). Since then, several other commissions have been established bringing the total number as at 2009 to forty (Hayner, 2010:93). It is observed that implications of the truth commissions have continued beyond the 1990s into the 2000s.

The study of the South African process demonstrated some relative success that could be found through the concept of *Ubuntu*,

which the commission used as an effective tool to address fractures in South African society (Verwood, 1997). It is the relative success of the South Africa Truth and Reconciliation Commission that inspired the setting up of a Nigerian version of the process by President Olusegun Obasanjo (Freeman, 2006, Obasanjo, 2003). The Human Rights Violations Investigation Commission established by the government of President Olusegun Obasanjo on 4 June, 1999 encapsulated the Nigerian version of the truth and reconciliation process. Justice Chukwudifu Oputa was appointed to head the panel. Oputa in articulating the approach of the Nigerian process stated that, "Our approach to our mandate is pertinent here in searching for the truth about our past, we adhere scrupulously to the requirements of due process and fair hearing and to the canons of historical and cultural scholarship" (Oputa, 2002:5). He further stated:

> . . . to sum up the remote causes: the establishment of the Commission must be seen in the broader historical compass of social forces, cultural and political practices that run historically deep in the social fabric of the country, providing an underlying stream from which flowed current practices that continue to pose a threat to good governance and sustainable development in the country and to the promotion and protection of the fundamental human rights of Nigerians" (Oputa, 2002:22).

It is the possibility of cultural leadership and the opportunity to embed cultural practices evinced here that has been explored within the Nigerian process. It has further addressed the utility and concept of Ubuntu to the Nigeria situation.

Ubuntu

Ubuntu is the traditional African notion which affirmed an organic wholeness of humanity, a wholeness realised in and through other people. *Ubuntu* is inclusive and best realised and manifested in deeds of kindness, compassion, caring, sharing, solidarity and sacrifice. These acts produce positive results for both individuals and community. They make it possible for an individual to count on and expect the meaningful support of fellow human beings. People are enabled to share resources with which they are blessed. These values furthermore maintain and preserve the community together, because they contribute positively to those in need (Biko, 1978:42). It is, perhaps, this aspect of *Ubuntu* which prompted the Senegalese ex-President, Leopold Senghor, when he wrote: emotion is African; '. . . *ubuntu* is primarily emotionally or feelingly humane' (Murove, 2009).

Truth and Reconciliation Commissions

Hayner explains that:

> A truth commission (1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; Confronting Past Crimes 11 (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorised or empowered by the state under review. Thus, a truth commission can easily be distinguished from a governmental standing human rights body, or from a judicial commission of inquiry that aims to clarify the facts of one narrow event. On the other hand, there are truth

commissions that are established, may work for some time, but fail to accomplish their objectives – ending before completing their report, or failing even to begin to collect information from victims and others. This may be due to financial or political constraints, or a lack of know-how or commitment on the part of the commissioners, given the extraordinary challenge and the evident risks and resistance they may meet (Hayner, 2011:33).

The Oputa Panel (Nigeria's Judicial Commission for the Investigation of Human Rights Violations)

The Oputa Panel was Nigeria's attempt to implement a truth and reconciliation process. It was established on 4 June, 1999 with the following remit:

(1) To ascertain or establish, to whatever extent the evidence and circumstances may permit, the causes, nature and extent of human rights violation or abuses and in particular all known or suspected cases of mysterious deaths and assassinations or attempted assassinations committed in Nigeria since the last democratic dispensation;

(2) To identify the person or persons, authorities, institutions or organisations which may be held accountable for such mysterious deaths, assassinations or attempted assassinations or other violations or abuses of human rights and to determine the motives for the violations or abuses, the victims and circumstance thereof and effect on such victims or the society generally;

(3) To determine whether such abuses or violations were the product of deliberate state policy or the policy of any of its organs or institutions or individual or their office or whether they were the acts of any political organisation, liberation movement or other group or individual; and

(4) To recommend measures which may be taken, whether judicial, administrative, legislative or institutional to redress past injustices and to prevent or forestall future violations or abuses of human rights.

The report was never officially released by the state, negating one of the broad requirements of a truth commission (United States Institute of Peace Library: Truth Commission Nigeria, 1999; Hayner, 2011).

The Mandate and Work of South Africa's Truth and Reconciliation Commission

The Truth and Reconciliation Commission of South Africa offered a useful point of comparison to others. It has remained one of the most significant bodies of our time. It was compiled from the evidence of over 20,000 witnesses. The report represented the record of thirty-four years under apartheid and breaks the terrible silence that surrounded so many gross violations of human rights committed during those years.

The Truth and Reconciliation Commission (TRC) was established after South Africa's transition to democracy by a bill introduced in the parliament in 1994 (The Promotion of National Unity and Reconciliation Bill, 1994). This model of truth

recovery was first implemented in Argentina in 1983 and adopted by fifteen countries with partial success recorded (United States Institute of Peace, 1983; Hayner, 201:31). Its primary purpose was to investigate acts of violence and discrimination committed by the apartheid regime. One of its objectives was to obtain as complete a record as possible of abuses inflicted by individuals and organisations during the apartheid era, including abuses by exiles' groups like the ANC and the Pan-Africanist Congress. It hoped that these would foster a climate of reconciliation and that those who confessed to human rights violations could apply for amnesty. The Minister of Justice Mr. Dullah Omar, provided an insight in his paper on the TRC's creation. He identified the final clause of the Interim Constitution which saw itself as providing a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold sufferings and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex (Omar, 1997).

Gibson also describes the creation of the Commission as an effort of South Africa to put its past firmly behind. His argument was related to a number of presuppositions about political psychology, the foremost is the assumption that knowledge promotes forgiveness and reconciliation flows from truth (Gibson *et al*, 1999:501-16). The Truth Commission, ultimately named the Truth and Reconciliation Commission, was designed in broad consultation between political parties, human rights NGOs, church groups, trauma centres, and others who had been involved in the struggle against apartheid. Hundreds of proposals and submissions were put before the design commission, and numerous public hearings were held. After months of discussions the form of the commission was determined and referred to the Promotion of National Unity and Reconciliation Act 1995. Seventeen Commissioners were appointed to oversee the three Committees. Commissioners were selected as a deliberate political attempt to constitute a high representation of the South African society with: seven black members, six white members, two coloured members, and two Indian members. The Anglican Archbishop Desmond Tutu, was selected to act as the Commission's Chairperson (TRC). At the height of its work the South African TRC had approximately 400 staff members, significantly more than any of the previous Truth Commissions (Hayner, 1974: 597-655). Its annual budget also exceeded that of other Truth Commissions at about $9 million per year (for comparisons *see* Strategic Choices in the Design of Truth Commissions, 2002). The work of the Commission lasted for almost three years.

In the Commission's work, we argued that Archbishop Tutu was the driving force that provided cultural leadership by the creation of the framework through which the work of the TRC was understood. He made little attempt to separate his work on the Commission from his spiritual beliefs, often referred to as *Ubuntu* theology (Tutu, 1976:16). Some conceptual clarifications of *Ubuntu* has been discussed in the earlier section

of this paper, but it could be added that it means living in relation with others and also directly involves a person in social and moral rules, duties, obligations, and commitments, wherein the individual person must fulfill. That the natural relationality of the person thus immediately plunges him/her into a moral universe, making morality an essentially social and trans-individual phenomenon focused in the well being of others. That our natural sociality then prescribes or mandates a morality that, clearly, should be weighted on the side of duty, i.e. on that which one has to do for others (Coetzee and Roux, 1998: 332).

It has been suggested that the embedding and exploration of Ubuntu into and throughout the South African process certainly created a departure from the Nigerian version, which appeared limited to legal processes despite the avowed intentions of its chairman (Yusuf, 2013: 160-165).

It is thought that in order to cater for the negative influences mentioned above, Desmond Tutu merged this traditional thought with Christian values of forgiveness, repentance and reconciliation. This merger was confirmed in the subtle pressure placed on those who testified at the Commission to forgive those who had committed crimes against them. According to the *Ubuntu* ideology, it was only through forgiveness and the recognition of the humanity of the wrongdoer that testifiers could fully reclaim their own humanity (Du Boulay, 1988: 264). The driving philosophy behind the TRC was the idea that: Reconciliation is only possible if we build on the foundation of truth. Amnesia may be comforting, but in the end it will prevent reconciliation rather than promoting it (Tutu, 1997).

Whilst we have established that the South African TRC was not the first, it can certainly be argued that it is through the notion of *Ubuntu* that Tutu was first able to project the TRC process as culturally African and to ensure that it became a model for repairing fractures in fragmented societies.

South Africa's Truth and Reconciliation Commission's Objectives

The TRC's objectives were covered extensively in the establishing Act, but its main aim was to promote national unity and reconciliation in a spirit of understanding, which transcends the conflicts and divisions of the past (The Promotion of National Unity and Reconciliation Act 1995).

The application of the Act's amnesty provisions refers to an "act, omission or offence associated with a political objective committed in the course of the conflicts of the past". To both sides the liberation movements and the apartheid state encapsulated both its compromise in its origins and its significance, as a step toward the establishment of the Rule of Law. The question is whether the neutral, impartial process of the Commission, in its statutory application, could have reflected the historical truth. This challenge is posited in the context of an Act which was replete with contradictions in its goals, subject matter, means and remedies. How can the goals of national unity and reconciliation address the issues of individual redress, especially with a mandate to establish a picture of the system of apartheid through investigations and

hearings on individual human rights violations? How can the complicity of other state apparati, the media, judiciary, education, health, business be acknowledged and made part of compensation to victims? Will victims within South Africa and in the front-line countries be individually or collectively restored? Are truth and justice in opposition in this process, or can the possibility of amnesty and threat of criminal prosecution be used tactically in tandem for both the state's interest and those of victims? Finally and perhaps most fundamentally, is the process of reconciliation between victim and perpetrator a private, individual matter or are reconciliation and reparation steps towards levelling the economic playing field and challenging the existing, glaring disparities in wealth and the relations of power?

While these considerations have been germane to most of the fifteen other Truth Commissions to 2006, South Africa's emphasis on transparency and the use of *Ubuntu* (the traditional African notion) distinguishes its approach from many of its international predecessors (Hayner, 1974; Du Boulay, 1988: 264).

Some Unique Features in the South African Model

There are other features that we identified apart from the driving force of *Ubuntu* that provided cultural leadership, which facilitated the creation of the framework through which the work of the TRC was understood (Tutu, 1976:16). The Promotion of National Unity and Reconciliation Act 1995, which brought the Truth and Reconciliation Commission into existence made it very different from any other commission that had existed. In most instances, the President or Prime Minister appointed the Commission and its members who had to work out their own procedures, objectives, methodologies, etc. The benefit of a Commission being based on an Act of Parliament is that there is a democratically elected group of people participating in the debate and finalising the content of the Commission. The objectives were clearly set out, limitations were laid down and the commissioners had to abide by the Act. The Act provided for 17 commissioners to serve full-time and the Commission had a time limit of two years to complete its task. It also had an additional three months allowed in order for the final report to be completed. The Act also provided for the three separate committees mentioned earlier.

In the course of the life of the Commission a critical decision was made relating to the hearings of the Commission, both in terms of human rights violations and the stories of victims, as well as the amnesty hearings. Despite the risk and the additional complications, it decided that these hearings should be open to the media and to the general public. This placed an enormous burden on the commissioners who travelled throughout South Africa conducting hearings. They did not have the benefit of working quietly and in private, but were constantly under the scrutiny of the media and of the public. On the other hand, there was the enormous advantage of the nation participating in the hearings and the work of the Commission from the very beginning through radio, television and the print media and the right of anyone to attend any of the hearings. This

may have enabled transparency and also a strong educative opportunity so that healing and reconciliation was not confined to a small group but available to all (Truth and Reconciliation Commission of South Africa Report 1998).

Another departure from the norm was the decision to publish the names not only of the victims and some details of the human rights violations suffered by them, but also of perpetrators (Truth and Reconciliation Commission of South Africa Report, 1998). A major problem was the need to ensure that due process and a fairly elaborate system was worked out so that people who were named by victims are alerted ahead of time and are invited to make either written representation or, if desired, could appear at a subsequent hearing. These names were not only mentioned during the hearings but once the Investigative Unit had the opportunity to recommend its findings to the Commission, it published the names on the balance of probabilities in its final report and in the Government Gazette (Truth and Reconciliation Commission of South Africa Report, 1998).

A further difference from most Commissions was the powers, which were vested in the Commission. The Commission had powers of subpoena and of search and seizure. This enabled the Commission to invite alleged perpetrators or those who may have had critical information to come to the Commission and share that information. And it had the power, when the invitation was spurned to proceed to subpoena those concerned. It also meant that the Commission could secure files and documents, which had been secreted away by the previous government and its agents. This resulted in an agreement by political parties, military and security institutions to make public submissions to the Commission.

A further point is that the Truth and Reconciliation Commission was not a substitute for criminal justice. The fact that 17 former military generals (including the former Minister of Defence) were put on trial for murder by the South African judicial system illustrates this fact (Harman, 2001:280). The combination of judicial stick and TRC carrot emerged as a potent force in flushing out former operatives who have adopted a "wait-and-see" approach.

Nevertheless, problems arose relating to the amnesty provisions as laid down in the Act. There were those in South Africa, some organisations and individual families, who had suffered very grievously from human rights violations, who believed that there ought to have been no amnesty provisions whatsoever. They wanted nothing more and nothing less than trials, prosecutions and punishment. More especially they were concerned that in terms of the Act those who applied for amnesty and were successful, will never again be liable, either criminally or civilly. Some were even prepared to accept that even if amnesty had to be granted as the price for peace and stability in South Africa, there still ought to be an opportunity to bring civil action against the organisation, the state or the individual. There were those who felt so strongly about this that they brought a case against the Act before the Constitutional Court, which is the highest court in the land and even has sovereignty over Parliament. The

details of the case can be obtained from *Azanian Peoples Organisation [AZAPO] and others v. President of the Republic of South Africa* (1996).

The constitutionality of the section was upheld and the Court conceded that the section limited the applicants' right to have justiciable disputes settled by a court of law, or other independent or impartial forum. However, it considered that the epilogue to the interim Constitution, Promotion of National Unity and Reconciliation Act (No. 34, 1995) which sanctioned the limitation on the right of access to the court. The dilemma faced was simply that if people were encouraged to apply for amnesty but remained liable in a criminal court or in a civil court, what was the incentive for their coming forward? The application did not succeed in court.

Boraine, the Vice Chairman of the South African Truth and Reconciliation Commission argued that within the restraints of a negotiated settlement, major compromises had to be made and he believed that South Africa's Truth and Reconciliation Commission achieved the best possible outcome (Strategic Choices in the Design of Truth Commissions [2002] and Boraine [1996]). South Africa had decided to say no to amnesia and yes to remembrance; to say no to full-scale prosecutions and yes to forgiveness. Those who have committed violations of human rights will, if they applied for amnesty, in most instances go free. In the South African circumstance where there was neither victor nor vanquished, it really had no other alternative but to follow this route. It should be borne in mind however, that while the administration of the justice process continued already there had been prosecutions and there will obviously have been more to come. If perpetrators declined to apply for amnesty, they faced the possibility of prosecution at some future date. But they raised the question of how many such trials could South Africa afford, not merely in financial terms but in the damage that this can do when skeletons constantly fall out of the cupboard, bringing with them further divisions and recriminations (Ojedokun, 2006: 306, when he interviewed Judge Albie Sachs of the South African Constitutional Court).

The Oputa Panel did not adopt the concept of *Ubuntu* during the Nigerian process, limiting its sphere of activities to the legal approach, it therefore excluded the cultural approach, which would have provided a trajectory towards the healing of a fractured society. The Oputa Panel had limited powers compared to the South African TRC and there was the absence of the cultural leadership provided by Archbishop Tutu in the process. It is therefore advocated that in view of the present fractures in the Nigerian society, another panel or commission be established adopting the model of *Ubuntu* as applied in South Africa. This will help bring about healing, address political cleavages and engender nation building, which cannot be achieved by simply relying on a strictly legalistic approach.

The Oputa Panel: Nigeria's Judicial Commission for the Investigation of Human Rights Violations In Perspective

The paper proceeds with a brief summary of the process. On 4 June, 1999, President

Olusegun Obasanjo through the Statutory Instrument 8 of June 1999 pursuant to the Tribunals of Inquiry Act of 1990 (and later amended by Statutory Instrument 13 of 1999) established a Commission to investigate incidents of Transitional Justice Institutions and Organisations, gross violations of human rights committed in Nigeria between 15 January, 1966, until taking office on May 29, 1999. The mandate according to Yusuf, has already been covered in the preceding paragraph (United States Institute of Peace Library: Truth Commission Nigeria, 1999; Yusuf, 2013:160-165).

It was also noted that Oputa Panel in the final report indicated that the Commission received about 10,000 testimonies of human rights violations and conducted public hearings across Nigeria. Out of this number, about 150 cases were heard, while most others had been sent to a ministerial commission for adjudication. It concluded that the Nigerian military was responsible for gross human rights violations. It also mentioned the collaboration of powerful and rich civilians in preparation for numerous coups. The Commission's Report also stated that some State Counsels in the Ministries of Justice violated fundamental rights of due process in attempts to protect perpetrators in specific, named cases (Oputa, 2002: 58).

The Panel's recommendations were to combat corruption, drastic reduction of the armed forces, a review of security forces internal disciplinary procedures, and reform of the military intelligence, police and academic institutions. Victims of human rights abuses were recommended to receive compensation. The panel further recommended a broad consultation of civil society about Nigeria's constitutional structure, improved human rights education, a moratorium on the creation of further states, more local governments to avoid corruption and the fragmentation of the political system. In conclusion, that funds be provided for the Ministry of Women Affairs, that the Report be disseminated widely and that the government closely monitors the social, political and environmental conditions in the Niger Delta and elsewhere. Today, many of the recommendations remain germane because of the simmering insurgency of the Boko Haram, the Ijaw, MASSOB and the Fulani herdsmen which would have addressed their grievances, but it has lacked implementation with the continued fracturing of society and the attendant costs.

Earlier in the process, its perceived limitation was exposed in the very narrow scope of the Panel's powers (Oputa Panel) and its investigatory role (United States Institute of Peace Library: Truth Commission Nigeria, 1999). It was restricted to the investigation of human rights abuses committed from 15 January, 1966 to 29 May, 1999. However, a suit initiated by Generals Ibrahim Babangida, Ajibola Togun and Halilu Akilu at the high court and concluded at the Supreme Court established that the National Assembly had no power to legislate General Law such as setting up the Tribunal (*Oputa v Babangida* (2003)1 SC. pt.111 pp. 86-158). Therefore, even though it used a legal approach for its work it never acquired the legal powers of subpoena and was therefore unable to compel the attendance of vital witnesses or secure vital documents (Okenwa, 2003; Yusuf, 2010:160-

165). However, its chairman was clear about the role the panel should play when he argued that while justice for victims of human rights abuses is essential for reconciliation, it ought also to be justice for the perpetrators of those abuses. But most importantly, it will be justice for the nation at large . . . an eye for an eye may be retributive, and will end up leaving all blind by sparkling off a whirlwind of revenge (Munu, 2004).

It is observed that even at this stage of the process more emphasis was drawn towards the legal framework rather than investing in the cultural leadership that an exposure to the concept of *Ubuntu* could have provided and this created a lacuna.

The next section proceeds with an examination of a summary of the South African model to allow it to explore how the use of the concept of Ubuntu has opened up a basis for comparison and of departure from the Nigerian process.

Towards a New Nigerian Truth and Reconciliation Process

Oputa attempted to contextualise the establishment of the first Nigerian process by stating:

> . . . the establishment of the Commission must be seen in the broader historical compass of social forces and cultural and political practices that run historically deep in the social fabric of the country, providing an underlying stream from which flowed current practices that continue to pose a threat to good governance and sustainable development in the country and to the promotion and protection of the fundamental human rights of Nigerians (Oputa, 1999).

He clearly prioritised the cultural and political practices as having a fundamental role in the successes of the process. However, this was a process dominated by legal procedures, which constituted challenges and the absence of a concerted attempt to publicly articulate the cultural leadership of the process.

It is further argued that Nigeria's democracy currently, through the insurgency of Boko Haram, the simmering militant crises in the Delta, the rampaging Fulani presents the picture of a distorted but legalised distribution of power brought about by current fractures in society (Davenport, 1977: 312-69). It is therefore suggested that a careful consideration of the option of a new truth and reconciliation process could address potential cleavages brought about by the *status quo* described above and address the lacuna of the cultural leadership that an *Ubuntu* based concept could provide (Murove, 2009).

To achieve this end, it is argued that Nigeria needs to move towards a more complete adaptation of the template of the South African Truth and Reconciliation Commission including its emphasis on the notion of *Ubuntu*, in order to move forward to deal with some of the fractures the current society presents. Such fractures as they relate either to the Boko Haram, MASSOB, etc. will need to be addressed. However, to initiate such a process will require a constitutional amendment, which moves the setting up of Tribunals into the concurrent legislative list, allowing the National Assembly to legislate accordingly. The new process should be free of government control and have a remit that allows it to revisit the1914 Amalgamation of Nigeria up to the present time and examine

the legitimacy of the transaction. This raises the question of how we move from a transactional relationship towards building a nation of shared ideals. Is it still possible?

Oputa attempted to answer the question by arguing in his report that:

> In effect, there were in pre-colonial Nigeria migrations from one part of the country to the other. These migrations led to the development of vibrant embryonic cultural, economic and political networks, marked as much by cooperation as by competition and conflict among the various peoples and communities in the country (Oputa, 2002:57).

We have recognised that whilst *Ubuntu* has its origins in South Africa that the possibility of fruitful outcomes existed even in a multi-cultural society like Nigeria because a basis for common cultural affinity emerged from the sustained interactions described above and laid the basis for the evolution of some ethical *Ubuntu* (Sebidi, 1988:5). Akanle also notes it, when he stated that Nigerian culture is mainly founded on collectivity, which provided the basis upon which *Ubuntu* can be applied, (Akanle, 2012). To buttress Akanle's position, further reference is made to the argument of the Senegalese ex-President who states the values of *Ubuntu* to be to maintain and preserve the community together because they contribute positively to those in need, and concludes that the emotion contained in *Ubuntu* is African. There is also the general Yoruba saying that '*Eniyan l'aso*' (People are each others' covering), which captures the culture of Nigerians towards each other, in other words *Ubuntu* with another name.

Therefore, the acceptance of Tutu's hypothesis of '*Ubuntu*' as an African one is that the entire society is an aggregation of individuals, and this may offer possibilities in this respect even for Nigeria (Tutu, 1976). Therefore, the main remit of any such new Truth Commission would be to explore these questions and adapt some of the objectives from the South African TRC.

The Truth and Reconciliation Commission Report of South Africa 1998 provides for the:

> The establishment of national shared ideals, unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past", the Commission's objectives being to: (1) Establish the legitimacy of the transactional relationship that led to the establishment of Nigeria; (2) establish as complete a picture as possible of gross human rights violations and corrupt practices perpetrated between 1914-2012 by conducting investigations and hearings; (3) facilitate granting of amnesty in exchange for full disclosure of truth for acts with a political objective within guidelines of an Act and on condition in the cases of corruption that appropriate restitution is made to their respective local government areas; (4) make known the fate of victims and restore their human and civil dignity, and allow them to give accounts and recommend reparations; (5) make a report of findings and recommendations to prevent future human rights violations. (6) make provision to exclude all those who have admitted to gross human rights violations and corrupted practices from any future political dispensation in return for their amnesty and on condition that appropriate restitution is made.

Besides adopting some of the objectives of the South African TRC Report it should report to a convocation of the Nigerian people which is *Ubuntu* relevant, freely chosen

through a democratic process and the results of the deliberations confirmed by such. This would mean that traumatic events that occurred during the colonial era, are covered, ancient myths unravelled, hidden truths exposed. It would also address the issue of the legitimacy of the amalgamation of North and South and the subsequent creation of States.

In adapting some of the objectives, some may argue that by granting amnesty, we will be letting historical crimes go unpunished in order to aid political expediency, however, they are drawn to the quote from South African's Kadar Asmal who states that:

> I therefore say to those who wear legalistic blinkers, who argue that immunity would be an affront to justice, that they simply do not understand the nature of the negotiated revolution that we have lived through, we must deliberately sacrifice the formal trappings of justice, the courts and trials, for an even greater good: Truth. We sacrifice justice for truth so as to consolidate democracy, to close the Chapter of the past and to avoid confrontation (Asmal, 1995:1382).

We have suggested that this process could address the commencement of the healing process of fractures present in Nigeria. Some concerns may be raised that this is an advocacy for a process where truth might be compromised. However, within the South African context Judge Albie Sachs did not agree that truth itself was compromised, he conceded depending on the definition of justice, it may have been partially compromised, Sachs is of the position that:

> If people say that justice was compromised . . . but I don't think any truth was compromised whatever your standards. If justice is understood strictly in terms of accountability and punishment, by deprivation, then one might say it was affected. But to my mind justice is a much richer concept than that, accountability yes, there was accountability in the sense of having to publicly acknowledge what you have done that was accepting responsibility. Accountability to shame, imagine a person goes home and the child asks Daddy did you do what you said on television? It is not an easy thing, its not getting away scot-free, it is not the same as impunity. The fact it was individualised, personalised created a direct link with individual responsibility, which is at the heart of accountability. There were pragmatic reasons as well, we just did not have the evidence, we could have had cases dragging on for years, placing burdens on the already overburdened law courts (Sachs, 2003).

It is suggested that the Nigerian process must have an irreducible minimum and that is a commitment to truth. As Roberto Canas of El Salvador puts it: "Unless a society exposes itself to the truth it can harbour no possibility of reconciliation, reunification and trust. For a peace settlement to be solid and durable it must be based on truth" (Boraine, 1996).

We already considered that in the definition and practice of *Ubuntu* lies an African universality and concluded by arguing that nothing can be closer to the truth than the words of Broodryk (1997: 6) and Murove (2009) that 'if people could become more *Ubuntu* conscious, it should lead to a more ordered, caring society based on humanity'. *Ubuntu* would be what Biko referred to as a special contribution to the world in the field of human relations, a great gift of 'giving the world a more human face'

...ko, 1978:47).

...It can be argued that due to the legal ...vention mentioned above in the Nigerian ...ocess, the role of *Ubuntu* was never allowed ...flourish nor allowed to provide cultural ...adership. We will therefore require a new ...ocess which allows reclamation of an ethical ...undation rooted in *Botho/Ubuntu* which ...an integral part of African ethics steeped in ...ues of liberation, development, identity ...ading to a recapturing of the values and ...inciples enshrined in the philosophy. If this ...curs then it would ensure that Nigerians ...ve the opportunity to enjoy the dignity that ...ey deserve in a full-fledged process.

Furthermore as Biko argues, since *Ubuntu* is still in the hearts and blood of most black people highlighting the role of political leadership will be of help to Nigeria in navigating its governance (Dalamo, 2013:7) argued that:

> On the macro level, political leaders such as Julius Nyerere, Kenneth Kaunda and Jomo Kenyata have experimented politically, adopting some of the basic tenets of botho/ubuntu for their programmes and propounding ideas that were based on an African understanding of the family as a building block. Julius Nyerere's Ujamaa, for example, was based on the concept of family as a basis for a successful nation. It has to do with "community development and community upliftment" (Mcunu, 2004:38). Ujamaa wanted to recapture and "spread the values of human dignity, equality, solidarity and human rights that traditionally existed in the family" (Ng'weshemi, 2002:73) and religion was the cornerstone. Ujamaa is an ethic based on ubuntu. Kenneth Kaunda's 'African Humanism' is a humanist communitarian ethic that "exists in an African traditional society where community needs take precedence over individual self-gratification (Murove, 2008:105).

In conclusion, we suggest that it is possible for Nigerian leaders and people to rise to this challenge, and retrace the path back to those of the African leaders past gone as evidenced above. This will restore the concept of *Ubuntu* as the ethical basis of relationship in the country and embed it with a new Truth and Reconciliation process with all the attendant recommendations made above. In addition, this must include an open and transparent process underpinned by our *Ubuntu* like culture (*Eniyan l'aso*), reparations to the marginalised, a process that is accountable, and the rectifying of historic wrongs. In other words, we have drawn from Hayner who said and concluded that the process must include the following: be focused on past, rather than ongoing, events; investigate a pattern of events that took place over a period of time; confronting past crimes, 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; and is officially authorised or empowered by the state under review (Hayner, 2011:33).

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