Chapter 9

The Importance of Truth Commission Leadership: The Cautionary Tale of Kenya’s Truth Justice and Reconciliation Commission

Kimberly Lanegran
Coe College, USA

ABSTRACT

Kenya’s Truth Justice and Reconciliation Commission was undermined and nearly destroyed by a scandal surrounding its chairman, Bethuel Kiplagat. This case demonstrates that hostile political leadership and illegitimate institutional leaders can severely damage a truth commission. It also highlights the need for greater investigation into appropriate selection processes and leadership skills for commissioners. This chapter surveys that state of the field concerning best practices for appointing truth commissioners and evaluates the degree to which Kenya’s TJRC complied. It tests the popular perception that Kiplagat was appointed to co-opt the truth-seeking project and concludes that the government took advantage of a poorly conducted selection process to approve the appointment of a controversial chairman so as to weaken the truth commission.

INTRODUCTION

In May 2013, Kenya’s Truth, Justice and Reconciliation Commission (TJRC) released its long-delayed final report on decades of gross human rights violations and historical injustices in Kenya from independence in 1963 through the violent aftermath of the 2007 national elections. However, grievously flawed political and institutional leadership nearly made these revelations impossible. A scandal surrounding Chairman Ambassador Bethuel Kiplagat tainted the truth commission’s birth, almost destroyed it before work began, plagued its operations, and still tarnishes its legacy. This cautionary tale highlights how damaging hostile political leadership and illegitimate institutional leaders can be to a truth commission.

Truth commissions and other structures of transitional justice by definition must operate within the fraught political contexts of regime changes. Investigations into past human rights violations, anywhere

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they are undertaken, will have adversaries who fear that they, or their allies, will be condemned as perpetrators of crimes and atrocities. At the same time, victims’ groups and their backers potentially supportive of a commission may become hostile to inadequate or apparently co-opted truth-seeking bodies. Furthermore, in many countries, truth commissions are mandated to investigate alleged violations by individuals with considerable wealth, political power and/or influence. Truth commissions must navigate choppy waters, which they themselves roil. Consequently, unflagging political support from government and skilled institutional leadership within commissions is essential for success.

Unfortunately for Kenya’s TJRC, it lacked both strong political backing and credible leadership. Few Kenyan politicians wanted a powerful truth commission and rigorous investigations; they reluctantly approved of the enterprise as part of negotiations to end the 2007/08 violence. Chaos followed the appointment of Chairman Kiplagat who himself was linked to human rights violations that the truth commission was expected to investigate. As a result, the TJRC lacked support and legitimacy and was largely incapacitated for the entire first year of its mandate. Eventually, Kiplagat stepped aside for a time; but just as the report writing phase began, he claimed he had no obligation to recuse himself and surprised the commission staff by returning to office. Eventually, an uneasy accommodation was reached. Ambassador Kiplagat returned as chairman, but he agreed to not participate in writing the final report and would not review sections of the report in which he had an alleged conflict of interest (Truth Justice and Reconciliation Commission Kenya, 2013, Vol. I, p. 139). The controversy had been so prominent that the final report contains a lengthy section on the “credibility and suitability of the chairperson” (Truth Justice and Reconciliation Commission Kenya, 2013, Vol. I, pp.124-44). Furthermore, as many predicted, the TJRC found sufficient evidence against Ambassador Kiplagat to include him in the list of those who should be investigated for prosecution. This drew attention away from victims of atrocities in Kenya whose stories were conveyed in the Report and gave fuel to those seeking to delegitimize the commission’s conclusions and recommendations.

Very little research has been conducted on ideal leadership skills and selection processes for truth commissioners. Some scholars have considered the importance of international leaders in structures of transitional justice (Clark 2005; Skaar & Wiebelhaus-Brahm, 2013) while others lament the inadequacy of current considerations of leadership needs (Campbell, 2016; Teital, 2008). On the more practical side, there is very little research on selection processes for commissioners. As a foray into this research agenda, this project analyzes the process through which Bethuel Kiplagat became the chairperson of Kenya’s truth commission to provide lessons to people designing future truth commissions.

First, this chapter surveys the state of the field concerning best practices for appointing truth commissioners and evaluates the degree to which Kenya’s TJRC complied with them. Second, it tests the popular perception that Bethuel Kiplagat was appointed by the Kenyan government to undermine the truth-seeking agenda. However, it concludes that a generally well-designed commissioner selection process was followed yet still failed to promote an appropriate slate of candidates for the commission. Here the inadequate political leadership in support of the TJRC exacerbated the error. The evidence does not demonstrate that Kiplagat’s nomination and appointment were part of a concerted government effort to sabotage the truth commission. Rather, government’s role was subtle; it had opportunity to ensure that individuals with strong human rights credentials became commissioners but lacked the desire to do so. The main theoretical conclusion is that technical dynamics, such as commissioners’ selection processes, are secondary in importance to the political will of government officials in determining the success of truth-seeking projects.
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