



Cloak-And-Dagger Intrigues: An Insider's Account of Why the TJRC Report Was Delayed

By Rasna Warah



Sometime in June 2012, I got a call from the Kenyan Truth, Justice and Reconciliation Commission (TJRC) asking if I would be willing to edit the commission's report, which the caller said was around 1,000 pages long and needed to be edited within a tight deadline of ten days. I told the caller that an important report of that size and significance would require a minimum of one month to edit, if not two months, and that it was impossible for me to edit it in under two weeks. (For those who may not know, editing is not simply a matter of correcting spelling and grammar; it often involves consultation with the author(s) to ensure logic and consistency, and in some cases, to verify facts.) I did not think I could do a professional editing job in such a short period, so I declined the offer.

A few days later, I happened to be in Mombasa when two members of the TJRC's staff approached me and pleaded with me to take on the editing assignment. I told them that I would, but only on the condition that another editor work with me on the report. They agreed and so I was quickly booked into the Serena Hotel in Mombasa where the TJRC team was temporarily based to put the final touches to the commission's report.

Upon arrival at the hotel, I was immediately struck by how youthful the TJRC staff were. The

majority were born and raised during the Daniel arap Moi era, and I remember wondering if they had the experience and knowledge to understand the extent of the horrors of the injustices and human rights violations that had occurred in Kenya during both Jomo Kenyatta's and Moi's regimes.

But what became obvious to me within the first days of my arrival was the cloak-and-dagger atmosphere of the commission. It was clear that many of the commissioners who were staying at the Serena were not comfortable in each other's presence, and while there was a shared camaraderie between the staff of the commission, there was an air of suspicion about who could or could not be trusted. For example, I was told that every document that I would edit would be password-protected and that I should not leave my computer without logging out as even the waiters and the cleaners in the hotel could not be trusted.

At first I thought that the tense atmosphere was the result of the controversy surrounding the chair of the TJRC, Ambassador Bethuel Kiplagat, who refused to resign despite questions being raised about whether he could be an impartial chairman given that he had been a witness to some of the human rights violations committed during the Moi regime, in which he had held important positions in various capacities. His failure to withdraw from the commission had even led one of the commissioners, Betty Murungi, to resign.

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However, having read Prof. Ronald C. Slye's book, *The Kenyan TJRC: An Outsider's View from the Inside*, it is now clear to me that something much more sinister was afoot. I had entered the commission at precisely the time when a plot was being hatched to not release the report in 2012, as per the TJRC's mandate, but the following year - after the 2013 elections to be precise. Indeed, during my stay at the Serena, I was told that what I and my co-editor were editing may not be the final report after all, as the commission would be asking for an extension to complete it. At the time, I thought that asking for a delay in the release of the report was probably a good idea; while many sections of the report were well written, some chapters clearly needed more work, and probably needed to be redrafted.

Prof. Slye's book shows that the request for an extension was not so much due to the staff needing more time to finish the report, but because the political establishment did not want the findings of the report to influence the outcome of the March 2013 presidential elections. Given the nature of the TJRC report - which sought to gather evidence and make public all the human rights violations and historical injustices committed by Kenya's ruling elite since independence - it was understandable that many prominent people would not be happy with its contents, and would prefer that the report not be made public. For instance, Uhuru Kenyatta, whose father has been associated with various land-related injustices, would not want such a report to influence his chances of becoming president in 2013, particularly and especially because he was at that time also indicted by the International Criminal Court (ICC) for crimes against humanity committed after the disputed 2007 election.

However, that commissioners appointed to the TJRC (all of whom have impeccable professional credentials) would succumb to political pressure and agree to delete some sections of the report that adversely mentioned the Kenyatta family is something that I did not expect. Slye - a professor of law at Seattle University and one of three foreign commissioners at the TJRC - shows in his book that by the time the commission was finalising its report, several commissioners had already been

compromised or had been coerced into taking political sides, and that by the time the report was released in May 2013, chances of the report's recommendations being implemented were virtually nil. In addition, some of the commissioners were actively colluding with the new government of Uhuru Kenyatta to delay the release of the report.

Prof. Slye says that when he asked some of the other commissioners why they had asked for such a long extension, even though the report was nearly complete by mid-2012, he was told that it was not the commissioners who wanted an extension, but the government of Mwai Kibaki, presumably so that the report would not be released before the 2013 election (which suggests that Kibaki and his cronies did not want the report's contents to influence that election). Slye believed that this would be counterproductive because "if our report had been released in a timely manner before the [presidential] debates, it would have provided an opportunity for the voices of the thousands of Kenyans we had heard throughout the country to be included in this important national discussion". In other words, if Kenyans had had a chance to debate and discuss the contents of the report prior to the 2013 election, they might not have been so eager to support an Uhuru presidency.

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In his book, which was published last year, the law professor reveals the intrigues that intensified near the date of the report's release in May 2013 and how various top State House mandarins sought to influence the contents of the report, in particular, references to land grabs by Kenya's first president, Jomo Kenyatta. The Office of the President seemed particularly perturbed by the testimony of a man from Kwale named Toza who claimed that he and his community had lost 250 acres of prime beach land to President Jomo Kenyatta. "The owners of the land were offered the equivalent of US\$84 per acre of land, far below the then market value," writes Slye. "Toza's father refused the payment and, with other dispossessed residents, unsuccessfully fought to keep the land in the hands of the local community."

According to Slye, "The government of Jomo Kenyatta's son, Uhuru, used his powers to cajole, bribe and threaten commissioners and senior staff of the TJRC to have this and other references to his father's land grabbing removed from the report, including the testimony of Toza."

Why would Uhuru Kenyatta's government go to such extraordinary lengths to doctor the report? After all, it is common knowledge that the Kenyatta family became the richest family in the country within just one generation because the patriarch Jomo went on a land-grabbing spree shortly after independence and used his enormous political influence to dispossess people of their land. This narrative is well-documented in various reports, inquiries, books and articles, and as our recent history has shown, has had little impact on the Kenyan electorate, which went on to elect Jomo's son in the controversial 2013 and 2017 elections, even though the latter was at that time facing charges at the ICC. So why fear the obvious?

Alliance of the Accused

Slye's book suggests that while the delay in the report's release probably had to do with the fact that Kibaki did not want the report's contents to influence the 2013 election, the behind-the-scenes machinations to change the report after Uhuru became president were motivated by a desire to whitewash the new Kenyan presidency. The combined "Alliance of the Accused" between the two ICC indictees, Uhuru Kenyatta and William Ruto, was viewed as "a shift away from accountability

and a further entrenchment of impunity in Kenyan politics”. Both Uhuru and Ruto portrayed the election as a “referendum against the ICC”, and so probably did not want the report’s findings and recommendations to influence the ICC’s case against them. (Both cases eventually collapsed due to various reasons.)

This shift in accountability, whereby the electorate voted for candidates not *despite* the fact that they were indicted by the ICC, but *because* they were indicted, dramatically changed the political landscape in Kenya. Slye believes that it had a direct effect on the final days of the commission:

“My first indication that something was seriously amiss occurred on May 6 [2013] when I happened to visit our printer’s office to check on the status of the production of the report. When I arrived, I found commissioners [Margaret] Shava and [Ahmed Sheikh] Farah standing over our staff and directing which parts of the report to remove concerning the Kenyatta family. When I asked them under what authority they were changing the content of the report, they replied that we had to remove references to Kenyatta, as the matters were considered sub judice.”

This assertion was clearly false as none of the testimonies referring to Kenyatta were before a Kenyan court. In fact, few, if any, of the over 40,000 statements and testimonies gathered by the TJRC, including from families of the victims of the Wagalla massacre and those who were tortured by the state’s security forces, were cases that were being tried by Kenya’s justice system.

All three of the foreign commissioners – Ronald C. Slye from the USA, Berhanu Dinka (now deceased) from Ethiopia, and Gertrude Chawatama from Zambia – then signed a dissent opinion on the land chapter of the 2,000-plus pages of the final report. Part of the dissent statement reads: “With much regret, and after many tireless days of trying to reach a reasonable compromise, we are obligated by our conscience and the oath we took when we joined this Commission, to dissent completely from the amendments made after 3 May 2013 to this chapter in this Volume devoted to Land – Chapter 2 of this Volume B.”

The TJRC website, which carried the final edition of the report, has since been dismantled. The only available online version of the report, including the dissent and other related documents, can be found on Seattle University’s website.

Neither Prof. Slye nor most of the other seven commissioners were present when Ambassador Kiplagat handed over the report to President Uhuru Kenyatta on 21 May 2013. The ceremony was a hurried, low-key affair, which was surprising given that much time and many resources had gone into the commission and its work.

In March 2015, nearly two years after the TJRC report was published, President Uhuru Kenyatta, in his State of the Nation address, made a public apology to all those who had suffered human rights violations and injustices under previous regimes, and promised to establish a 10-billion-shilling fund for those affected. To date it is not clear if these funds have been disbursed to victims or their families.

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Kenyans, and ensure that its recommendations are fully implemented.

Which goes to show that this government would prefer to erase the report and its findings not just from Kenyans' memories, but from the public domain as well. This is unfortunate because it was lack of acknowledgement of the atrocities committed by various regimes that had led to the bloodletting of 2007 and 2008. The recognition that historical injustices needed to be addressed eventually resulted in the establishment of the TJRC. By suppressing the TJRC report, and failing to implement its recommendations, the Uhuru Kenyatta government may be laying the foundations for similar violence in the future.

Wounds may heal, but painful memories and resentments can simmer for generations. As part of his legacy, Uhuru Kenyatta must claim the TJRC report on behalf of all Kenyans, and ensure that its recommendations are fully implemented.

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