

ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND
GOVERNANCE STUDIES
SCHOOL OF LAW



The Ethiopian Reconciliation Commission: Lessons
from International Experiences

By: Makda Mebratu

February 2020

ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
STUDIES
SCHOOL OF LAW

**The Ethiopian Reconciliation Commission: Lessons from
International Experience**

**A Thesis submitted to Addis Ababa University, the School of Law: in Partial
Fulfillment of the Requirements for the Degree of Master of Laws (LL.M) in
Constitutional and Public Law**

By: Makda Mebratu

Advisor: Wondemagegn Tadesse. (PhD)

February 2020

Approval Sheet by the Board of Examiners:

**The Ethiopian Reconciliation Commission: Lessons from
International Experience**

By: Makda Mebratu

Approved by Board of Examiners signature

Advisor

Wondemagegn Tadesse. -----

Examiners

1. _____

2. _____

Declaration

I, the undersigned, declare that this thesis is my original work, has not been presented for a degree in any other University and that all sources of materials used have been duly acknowledged.

Declared by

Makda Mebratu

Signature _____

Addis Ababa University

February 2020

Confirmed by

Wondemagegn Tadesse.

Signature _____

February 2020

ABSTRACT

It is a well-established lesson that a constitutionally established normal justice system of a certain state may not afford to be effective in times of post conflict transitional periods. Several international experiences have re-affirmed this condition. In transitional justice, in turn, it is a common practice to establish a truth and reconciliation commission as a transitional institution to help the transition process.

Ethiopia, currently, has established a reconciliation commission by proclamation which seems to presuppose that the state is in transition. The establishment of the commission triggers discourse and studies, one of which might be exploring on how it should operate and contribute for the successful reconciliation process. Therefore, the paper reviewed 8 commissions out of more than 50 commissions that the world has ever seen. Through reviewing the international experiences, the present study recommended potential lessons for the Ethiopian reconciliation commission.

Acknowledgments

First and foremost I would like to glorify my almighty God. Then I like to extend my deepest gratitude to my advisor Dr. Wondemagegn Tadesse for his diligent and constructive comments and suggestions that helped me very much to realize this paper.

Next thank goes to Addis Ababa University for giving me this opportunity to further education in my career. Last but not least I would like to thank my friends for their support.

ACRONYMS

CFLA/ FCAB	Canadian Federation of Library Association
ECOWAS	Economic Community of West African States
EPRDF	Ethiopian People Revolutionary Democratic Front
HPR	House of Peoples Representatives
IHL	International Humanitarian Law
IRS	Indian residential school
ICTR	International Criminal Tribunal for Rwanda
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-Governmental Organizations
NCSA	National Commission for Social Action
RRC	Reparations and Rehabilitation Committee
TRC	Truth and Reconciliation Commission
UN	United Nations
UNMIL	United Nations Mission in Liberia

TABLE OF CONTENTS

Contents

ABSTRACT.....	i
Acknowledgments.....	ii
ACRONYMS.....	iii
TABLE OF CONTENTS.....	iv
CHAPTER ONE.....	1
1 Introduction.....	1
1.1 Background of the study	1
1.2 Statement of the problem	2
1.3 Research objective.....	3
1.3.1 General objective	3
1.3.2 Specific objective	3
1.4 Methodology	3
1.5 Truth Commissions: Introduction	4
1.5.1 Establishment of a Truth and Reconciliation Commission	4
1.5.2 Transitional justice and truth commissions	5
1.5.3 National Reconciliation	6
CHAPTER TWO	7
2 Comparison of selected commissions regarding truth-finding and reporting.....	7
2.1 Introduction.....	7
2.2 A law regulating temporal jurisdiction of a commission	7
2.2.1 Temporal jurisdiction	7
2.2.2 Violations of human rights	9
2.3 The process of truth-finding and public hearing	12
2.3.1 The duty to cooperate with the commission.....	12
2.3.2 Special hearing process	13
2.3.3 Forum to be heard.....	14
2.4 Truth finding and public hearing techniques.....	15
2.5 The mandate to publish a report and implement recommendation	17

CHAPTER THREE	22
3 Comparison of selected commissions regarding Justice and TRC	22
3.1 Introduction	22
3.2 Laws regulating TRC Justice Administration	23
3.2.1 Measures taken by the commission	23
3.3 Justice regarding prosecution	26
3.3.1 The prohibition of amnesty under international law	26
3.3.2 The commission and ordinary courts.....	26
3.4 Laws regulating amnesty.....	28
3.4.1 Amnesty mechanisms and procedures.....	28
3.5 Laws regulating reparation and rehabilitation.....	30
3.5.1 Forms of reparation	33
3.6 Informal justice mechanisms.....	34
3.7 Institutional reform.....	35
3.8 Liability of the commission.....	36
CHAPTER FOUR.....	38
4 Comparison of selected commissions regarding Pillars of Reconciliation.....	38
4.1 Introduction	38
4.2 National dialogue	38
4.3 Independence.....	40
4.3.1 Composition of the commission	40
4.4 Budget	41
4.5 Full-time commissioners	42
4.6 Additional laws	42
4.7 Essential provisions of Ethiopian proclamation.....	43
4.7.1 Impediments in the task of the commission	43
CHAPTER FIVE	47
5 Conclusion and Recommendation	47
5.1 Conclusion.....	47
5.2 Recommendations	48
6 Bibliography	50

CHAPTER ONE

1 Introduction

1.1 Background of the study

Several countries in the world have established reconciliation commissions in post-conflict, colonial, slavery, anarchical and genocidal periods, tasked with investigating, revealing, responding and reporting patterns of past human rights violations in the hope of resolving conflict.¹ Out of more than 50 truth commissions in the world,² most of the commissions examine and present the cause of the violation to answer important transitional justice questions that could contribute to the national reconciliation.³

Human rights violations are the most claimed problem in Ethiopia that influences the day to day activity of peoples. Ethiopia currently has established a Reconciliation Commission (hereinafter called the Ethiopian Commission) by a proclamation as a temporary institution to maintain peace, justice, national unity, consensus and reconciliation among Ethiopian peoples.⁴ This seems to presuppose that the state is in transition, though the transitional process is not clear because the incumbent party in the country is not changed and the roadmap regulating the transition is not distributed. Thus, people residing in different parts of the country might have doubts in the process.

The experience demonstrates that successful commissions focus on legitimacy starting from the planning phase to establish the commission.⁵ The legitimate and credible commission then provides a mechanism to engage the public and non-governmental organizations through

¹ Professor Bishnu Pathak, 'A Comparative Study of World's Truth Commissions—From Madness to Hope', (2017), Vol. 4, (No. 3), World Journal of Social Science Research, 192-193.

² *ibid*

³ Bogdan Ivanisevic, 'Comparative Study on the Impact of Truth Commissions', (International Center for Transitional Justice, May 2009), 3. <<http://recom.link/wp-content/uploads/2014/12/Comparative-Study-on-the-Impact-of-Truth-Commissions.pdf>>, accessed 8 April 2019.

⁴ Reconciliation commission establishment proclamation, (Proclamation No. 1102/2018), *Federal Negarit Gazeta*, No. 27, Article 4

⁵ Anna Triponel and Stephen Pearson, 'What Do You Think Should Happen? Public Participation in Transitional Justice', (2010) Vol. 22, Issue 1, *Pace International Law Review*, 107.

workshops, seminars, and open forums.⁶ Finally, the commission should address its objective as well as the interests of victims.

1.2 Statement of the problem

A constitutionally established normal justice system of a certain state may not afford to be effective in times of transition. In transitional justice, it is a common practice to establish a truth and reconciliation commission as a temporary institution to help the transition process. Article 5 of the Ethiopian proclamation mandated the commission to investigate and to identify the basic reason for disputes and violations of human rights by taking into consideration the social and economic circumstances and the view of victims and offenders. This provision does not specifically provide special attention for some human rights violations and the concrete limit of time (temporary jurisdiction) covered under the task of the commission. Another gap is the silence of the proclamation about the responsibility of the commission and commissioners on the ground of misbehavior, incapacity, incompetence or in case any victim may hinder to present his/her complaint. Furthermore, the proclamation is also silent about the victim's reparation. Hence, without reparation, it may be difficult for the victims to accept reconciliation.

Certain provisions of the proclamation are not clearly provided. For instance, Article 14 stipulates the duty to cooperate; however, it is silent about the consequence of failure to cooperate. Additionally, Article 15 of the proclamation does not stipulate either the federal or regional government will cover the budget of the commission especially for the branch offices of the commission. Another problem in the proclamation is with regard to the mandate of publishing the report and implementing recommendations timely. Hence, the responsible body that publishes the report, as well as implements recommendations within a specified period, is not written.

Concerning the relationship between ordinary courts and the commission, the proclamation provided nothing. The proclamation was not also dealing with amnesty mechanisms and customary practices of reconciliation. The proclamation, in article 12 states that the commission is independent. In contrary, article 2(4) stipulates that the commission shall be accountable for the prime minister. Thus, the independence of the commission might not be secured. Generally,

⁶ibid

it is worthy to review the core elements of truth and reconciliation commissions by analyzing different international experiences to better construct the provisions.

1.3 Research objective

1.3.1 General objective

The central concern of this study is to take lessons from international experiences of truth and reconciliation commissions in relevant to the national framework.

1.3.2 Specific objective

In particular, the study addresses the following;

- By assessing the laws, reports, and experiences of selected countries, the study recommends best practices in truth-finding, public hearing process, reporting and implementing recommendations.
- Identify countries' choices regarding the administration of justice: prosecution, amnesty, and reparation in the reconciliation process of selected countries.
- By reviewing important TRC related issues from various countries, compare and evaluate the Ethiopian commission concerning national dialogue, budget independence and etc.

1.4 Methodology

This research was conducted using a doctrinal approach and involving primary and secondary sources of data. Ethiopian reconciliation proclamation and minutes of HPR (background documents) were considered as primary sources; while books, acts, journals, articles, reports, recommendations, etc. regarding TRC were considered as secondary sources to be reviewed.

The present study was done by a comparative analysis of the primary and secondary sources. This approach has opted for the fact that the research has focused on truth and reconciliation commissions of international experiences that would help for the better performance of the Ethiopian reconciliation commission.

Basically, the study assesses South Africa, Rwanda, Solomon Island, Liberia, Kenya, Sierra Leone, Uganda, and Canada commissions. Uganda's, Solomon Island's and Rwanda's commissions were selected considering ethnic diversity of the countries. These Commissions were also mandated to investigate gross human rights violations. Commissions of Liberia, Kenya, Sierra Leone, and South Africa had a clear aim of promoting peace, justice, national

unity and reconciliation which is similar to the aim of the Ethiopian commission. Like Ethiopia, Canada's commission was established without a regime change. Since the Ethiopian TRC shares certain similar features with various countries, it is important to take a lesson for its operational effectiveness. Therefore, the study reviews the theoretical underpinnings of TRCs as well as their practical approach.

1.5 Truth Commissions: Introduction

1.5.1 Establishment of a Truth and Reconciliation Commission

Since the early 1980s, the establishment of the Truth and Reconciliation Commission is a common practice to address human rights violations.⁷ Under various names, the following list of countries in the world established a commission with the task of discovering and revealing past wrongdoings to contribute to national reconciliation.

- Truth and Reconciliation Commission; Yugoslavia, South Africa, Solomon Islands, United States, Sierra Leone, South Korea, Congo, Brazil, Chile, Ecuador, Peru, Haiti, Honduras, Liberia, Nepal, Panama, El Salvador, Ghana, and Philippine,
- Truth, Justice, and Reconciliation Commission; Kenya and Togo,
- Ad Hoc Inquiry Commission in Charge of the Question of Disappearances; Algeria,
- National Commission on the Disappearance of Persons; Argentina and Bolivia,
- War Crimes Fact Finding Committee; Bangladesh,
- The Residential Schools Truth and Reconciliation Commission; Canada
- The Commission of Inquiry into Crimes and Misappropriations committed by president Hissene Habre; Chad,
- The National Commission for Reparation and Reconciliation; Colombia,
- The Office for the Documentation and the Investigation of the Crimes of Communism; Czech Republic,
- Reconciliation and Unity Commission; Fiji,
- Truth, Reconciliation and Reparations Commission; Gambia,
- Commission of inquiry into crimes of the SED; Germany,
- Historical Clarification Commission; Guatemala,

⁷ Eric Brahm, 'What is a Truth Commission and Why Does it Matter?', (2009) Volume 3,(Issue 2), Peace & Conflict Review, 1.

- Truth and Justice Commission; Mauritius and Paraguay
- Equity and Reconciliation Commission; Morocco,
- Human Rights Violations Investigation Commission; Nigeria,
- Institute of National Remembrance; Poland,
- National Unity and Reconciliation Commission; Rwanda,
- Lessons Learnt and Reconciliation Commission; Sri Lanka,
- The Commission for Reception, Truth, and Reconciliation; Timor-Leste,
- Truth and Dignity Commission; Tunisia,
- The Commission of Inquiry into Violations of Human Rights; Uganda,
- Institute of National Remembrance; Ukraine and
- New Peace Commission; Uruguay.

1.5.2 Transitional justice and truth commissions

Truth and reconciliation bodies are considered as transitional justice bodies with pillar policies: truth, amnesty, justice, healing, prosecution, reconciliation, and reparation. However, most of the commissions operate with lack of officials and experts, inadequate laws and policies regulating the mandate of the commission, lack of public support and insufficient infrastructure.⁸ For a smooth transition, countries follow different approaches: the first approach is to ‘let’s forget the victims to forgive the perpetrator’; it means letting go the past human wrong doings. The second is let’s not forget the victims to forgive the perpetrator: means providing justice for victims not only letting go of the perpetrators. The third one is to let’s not forget the victim and not forgive the perpetrators too: means that not letting go past human rights violators, ensuring justice by prosecuting perpetrators and providing justice for victims through reparation⁹

Due to operational difficulty and lack of experts, an international organization like UN and other NGOs such as Human Rights Watch and Amnesty International have been actively involved in

⁸Professor Bishnu Pathak (n 1) 193

⁹ ibid

specific cases of Truth and Reconciliation commissions through initiating the process, developing recommendations and guidelines.¹⁰

1.5.3 National Reconciliation

The contribution of truth commissions to serve national reconciliation through accountability or impunity is a controversial issue in the world.¹¹ Almost all truth commissions are blamed for their failure to follow a victim-centric approach and grant amnesty. This kind of practice was seen in different praised commissions such as South Africa's and Liberia's.¹² Many of the commissions did neither mention nor explicitly provide clear guidelines in their policies and legislations.¹³

¹⁰ Michal Ben-Josef Hirsch, Megan MacKenzie, and Mohamed Sesay, 'Measuring the Impacts of Truth and Reconciliation Commissions: Placing the global success of TRCs in local perspective', (2012) *Cooperation and Conflict* 47(3), 389-390.

¹¹ Onur Bakiner, 'Truth Commission Impact: An Assessment of How Commissions influence Politics and Society', (2013) Vol. 8, *The International Journal of Transitional Justice*, 7.

¹² Professor Bishnu Pathak (n 1) 216

¹³ *ibid*

CHAPTER TWO

2 Comparison of selected commissions regarding truth-finding and reporting

2.1 Introduction

Truth Commissions are officially established temporary bodies with the mandate to investigate patterns of human rights violations through truth-finding processes.¹⁴ These bodies often investigate the events as well as the nature, causes, impacts, and dimensions of repeated gross violations of human rights. Truth Commissions often receive extensive and detailed information from the public, thus allowing the victims, survivors and other witnesses to engage in the process of collecting individual statements, undertaking case investigations and public hearings before the final report was released.¹⁵

One of the primary purposes of the truth commission is issuing a public report regarding the principal cause of human rights violations and making recommendations. The recommendation may include monetary or symbolic reparation, institutional reform advises, criminal trials and law reforms (human right policies) to create conducive framework for future peace.¹⁶ Identifying what happened in the past and implementing policies in line with the commission's recommendation might make it easier to achieve national reconciliation.¹⁷

2.2 A law regulating temporal jurisdiction of a commission

Well-crafted mandates will enable a Commission to undertake its tasks effectively. Several countries in the world tried to specify the temporal jurisdiction and gross human rights violations that should be mainly assessed under the task of the commission.

2.2.1 Temporal jurisdiction

Well-defined temporal jurisdiction helps to identify the period that the commission should cover and assess under the task of reconciliation. Several countries established a commission for a

¹⁴Bogdan Ivanisevic (n 3) 193

¹⁵ Priscilla B. Hayner, 'Truth commissions: a schematic overview', (June 2006) Vol. 88, (No. 862), International Review of the Red Cross, 295.

¹⁶ Lisa J. Laplante, 'On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development, (2007) Vol. 10, (Issue 1), Yale Human Rights and Development Law Journal, 144-145.

¹⁷Onur Bakiner (n 12) 20

temporary period to examine and present the cause of violation and contribute to the national reconciliation.

Almost all commissions were mandated to investigate violations that had taken place within a limited period. These commissions were mandated for a minimum of 4 years,¹⁸ 5 years,¹⁹ 8 years,²⁰ 24 years,²¹ 34 years²² and a maximum of 45 years²³ of violations that had taken place in the countries. Exceptionally, the Liberia commission, which was mandated to investigate violations from January 1979 to 14 October 2003 for 24 years, was also mandated to explore the period before 1979.²⁴ The temporal jurisdiction of these commissions was arranged based on the countries' specific situation particularly to investigate gross human rights violations, violations of international criminal and humanitarian laws violated during the atrocity in the country.

Ethiopian Reconciliation Commission Establishment Proclamation No 1102/2018 (hereinafter called the Proclamation) mandated the commission to make inquiries about the basic reasons for disputes and violations of human rights taking into consideration political, social and economic circumstances as well as the view of victims and offenders.²⁵ However, the Proclamation doesn't stipulate the temporal jurisdiction of the commission. The HPR had a meeting involving the Permanent Committee of Foreign Affairs and Peace, Permanent Committee of Law, Justice and Democracy and other Stakeholders.²⁶ Representing the Permanent Committee of Foreign Affairs and Peace, Mr. Tesfaye Daba was the chairperson and respondents were Mr. Essayas Kassa and Mr. Solomon Emiru from the Prime Minister Office Deputy Executive organ and the Director of

¹⁸Gacaca Jurisdictions and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed between October 1, 1990 and December 31, Organic Law NO 40/2000 Of 26/01/2001, art 3.

¹⁹ Solomon Islands Truth and Reconciliation Commission Act 2008, No. 5, art 5(3)

²⁰ The Truth and Reconciliation Commission Act 2000, <<http://www.sierra-leone.org/trcact2000.html>>art 6

²¹ The Commission of Inquiry Act, Uganda: Legal Notice Creating the Commission of Inquiry into Violations of Human Rights, Legal Notice No. 5, (May 16, 1986), 255-256; An Act to Establish the Truth and Reconciliation Commission of Liberia 2005, art 4.

²² Promotion of National Unity and Reconciliation Act 1995, No. 34, art 14

²³ The Truth, Justice and reconciliation commission Act 2008, No. 6, art 5(a and d)

²⁴ An Act to Establish the Truth and Reconciliation Commission Of Liberia 2005 (n 21) art 4

²⁵ Reconciliation commission establishment proclamation, (n 4) art 5(4)

²⁶ Federal Democratic Republic of Ethiopia Government HPR minutes, back ground document of the proclamation, 2011, 1

Legal Officer (herein after called respondents).²⁷ In the meeting two persons were required to explain about the proclamation concerning temporary jurisdiction.²⁸ The respondents responded that for the current conflict the reason might be the past disagreements; hence, to make the reconciliation process effective, it is good to make the period open for both the victims as well as perpetrators.²⁹

Generally, the Ethiopian commission was established without a regime change as well as yet the conflicts and disagreements are continuing. Therefore, the commission should investigate the basic reasons for disputes and human rights violations up to the time of the democratically elected Ethiopian government came to power. Regarding temporal jurisdiction, the Ethiopian commission, taking a lesson from Liberia's commission, should first limit the tasks but it could also explore the past when it deems necessary. The Special Prosecutor Office that was established during the EPRDF period was mandated to conduct investigation and institute proceedings against perpetrators during the Dergue regime between 1974 and 1991.³⁰ Thus, it might not be necessary to investigate violations committed and already investigated under EPRDF period. Therefore, the temporal jurisdiction of the commission should consider the specific situation of the country and limit the time period that the mandate of the commission covers. Additionally, the work of the commission could also consider the period that available evidence and information could be easily found.

2.2.2 Violations of human rights

In 1974, Uganda's Commission of Inquiry was established focusing on the investigation of the disappearance of Peoples in Uganda.³¹ Most of the previous TRCs are mandated to investigate gross violations of human rights,³² historical record of violations, human rights abuses, international humanitarian law related to armed conflicts,³³ crimes against humanity and

²⁷ *ibid* 2

²⁸ *ibid* 6 and 9

²⁹ *Ibid* 12

³⁰ Proclamation establishing Special public prosecutor's office, proclamation No. 22/1992, art 6

³¹ Report of the Au Panel of the Wise Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity, (2013), 21

³² Promotion Of National Unity And Reconciliation Act 1995 (n 22) art 14

³³ The Truth and Reconciliation Commission Act 2000 (n 20) art 6

genocide³⁴ with the aim to establish a historical record of violations and abuses,³⁵ to sensitize the people about reconciliation and unity as well as to foster tolerance,³⁶ and to address people's traumatic experiences.³⁷ The mandate of commissions was further elaborated through specific lists of violations. Most of the commissions were mandated to investigate mass murders, arbitrary deprivation of liberty and human life, arbitrary arrests and detention, forced displacements, enforced disappearances, torture and killings, massacres, persecution of any identifiable group, sexual violations, extra-judicial killings and economic crimes such as the exploitation of natural or public resources to perpetuate armed conflicts and destruction of any property including personal or public property.

In addition to the aforementioned specific lists of violations, Solomon Island guarantees violations of other rights and freedoms which are guaranteed under the constitution. The Kenya commission was mandated to investigate cases of politically motivated violence, assassinations, cause of ethnic tensions, displacements and major economic crimes such as grand corruption and irregular acquisition of land. Broadly, the South Africa act defines gross human rights violations as any violations, attempt, conspiracy, incitement, instigation, command or procurement to commit violations of human rights through abductions, killings, torture, and severe ill-treatment committed by any person acting with a political motive.³⁸

In Sierra Leone and Rwanda, special courts were integrated into the established TRCs, to speed up the trial. In Sierra Leone, there have been two processes namely a Truth Commission³⁹ and a Special Court.⁴⁰ Sierra Leone truth commission was established under the Truth and Reconciliation Commission Act 2000. Its mandate was to establish a historical record of violations, human rights abuses and international humanitarian law related to armed conflicts.⁴¹ On the other hand, Sierra Leon Special Court was established for the trial of persons with great

³⁴ The Truth, Justice and reconciliation commission Act 2008 (n 23) Pt. 1 definition part

³⁵ The Truth and Reconciliation Commission Act 2000 (n 20) art 6

³⁶ Rwanda: Law establishing the National Unity and Reconciliation Commission 1999, No. 03/99 of 1999, art 3(2), <<https://www.refworld.org/docid/3ae6b59a18.html>>accessed 7 May 2019

³⁷ Solomon Islands Truth And Reconciliation Commission Act 2008 (n 19)

³⁸ Promotion Of National Unity And Reconciliation Act 1995 (n 22) art 14

³⁹ The Truth and Reconciliation Commission Act 2000 (n 20)

⁴⁰ Statute of the special court for Sierra Leone 2000, art 2-5

⁴¹ The Truth and Reconciliation Commission Act 2000 (n 20) art 6

responsibility for inhuman acts, war crimes and other serious violations of international law.⁴² The statute provides a clear definition for human rights violations under its articles 2, 3, 4 and 5.

Similar to Sierra Leone, Rwanda established Gacaca Courts by the Gacaca Law in March 2001. The mandate of the court was to reveal the truth, to speed up trials, to end up the culture of impunity, to reconcile the people of Rwanda, to revive traditional forms of justice, to demonstrate the ability of local communities to resolve their problems and to solve problems caused by genocide.⁴³ Basically, the court was responsible for holding trials regarding crimes of genocide and crimes against humanity.⁴⁴

The Transitional Government of Ethiopia, in 1992, established a Special Prosecutor Office with the mandate to conduct investigation and institute proceedings against any person who is responsible for an offense by abusing an official position.⁴⁵

Unlike other commissions, the Ethiopian Reconciliation commission was not observed to put lists of committed human rights violations. Several commissions were established taking into consideration the situations and violations happening in the countries. Thus, human rights violations that demand the role of the commissions were determined. Therefore, the Ethiopian commission needs to consider the principal subject matter concerning human rights violations. In the HPR meeting, the respondents have mentioned that the main task of the commission is to facilitate reconciliation among societies rather than dealing with individual cases particularly reparation is not a concern of the Commission.⁴⁶

The main concern and tasks of the commission should emanate from the lessons taken via reviewing past experiences. As to Press releases and the HPR background documents, it seems that ethnic conflicts, disagreements, historical grievances and grudge feelings between societies will be the main task of the commission rather than violations of human rights. Therefore, the conflicts, violations and other problems that are scattered in the country should first be assessed and specific problems should be provided in the regulation or directive. Accordingly, a sub-

⁴² Statute of the special court for Sierra Leone 2000 (n 40) art 1

⁴³ Gacaca Jurisdictions And Organizing Prosecutions For Offences Constituting The Crime Of Genocide Or Crimes Against Humanity Committed Between October 1, 1990 And December 31 (n 18) art 3

⁴⁴ *ibid*

⁴⁵ Proclamation establishing Special public prosecutor's office (n 30) art 6

⁴⁶ Federal Democratic Republic of Ethiopia Government HPR minute (n 26) p. 6 – 7.

committee or team might be established to undertake each of the identified problems deeply and to come up with fruitful outcomes.

2.3 The process of truth-finding and public hearing

One objective of establishing TRC is to investigate and establish the truth from the public about past violations. Thus, the commission should work in cooperation with the society by arranging special hearing procedures for a vulnerable group of peoples and covering all geographical areas in the country.

2.3.1 The duty to cooperate with the commission

Some scholars believe that the subpoena power of the commission may compel to cooperate and confess.⁴⁷ However, it may be difficult for the commission to take measures without clear guidelines of the proclamation. Several countries stipulate not only the duty of cooperation with the tasks of the commissions but also provide liability for the failure to cooperate.

Several Commissions have used a wide array of investigative tools such as search, seizure, summon and subpoena powers.⁴⁸ Broad-mandated commissions have unrestricted access⁴⁹ with the power to compel the attendance of victims, perpetrators, witnesses, petitioners, informants or other persons needed by the TRC in pursuit of its work.⁵⁰

The duty of cooperation is well recognized in the law of a country. For implementation purposes, most of the wide-powered commissions had the power to make guilty of an offence and liable on conviction for any person who fails to cooperate. For instance, South Africa act under Article 39, Sierra Leone act under article 8(2), Liberia act under section 28 and Solomon Island Act under article 9 Sub-article 2 stipulates that any person who fails to respond to a summons or subpoena issued by the Commission without sufficient reason, fails to truly or faithfully answer questions of the Commission after responding to a summons or subpoena, or intentionally providing misleading or false information to the Commission shall be liable on conviction or fine or to both such fine and such imprisonment.

⁴⁷Tricia D. Olsen, Leigh A. Payne, Andrew G. Reiter and Eric Wiebelhaus-Brahm, 'When Truth Commissions Improve Human Rights', (2010) Vol. 4, The International Journal of Transitional Justice, 460.

⁴⁸ Promotion of national unity and reconciliation act 1995 (n 26) art 32.

⁴⁹ Solomon Islands Truth and Reconciliation Commission Act 2008 (n 19) art 9

⁵⁰ An Act To Establish The Truth And Reconciliation Commission Of Liberia 2005 (n 21) s 27(a-e).

The Ethiopian proclamation designated the commission to inquire and disclose the truth about the sources, causes, and extent of conflicts, to make every concerned person or body to present an idea, to provide a forum to be heard for victims of gross human rights abuses in a different time and historical events. Furthermore, the commission orders the presence of anyone through summon, perpetrators to disclose and confess their action as a way of reconciliation. Article 14 of the proclamation also stipulates that any person shall have an obligation to cooperate with the commission when any legal questions are requested. However, the proclamation is silent on the consequence of failure to cooperate. Broad mandated commissions such as South Africa and Liberia provide the consequence of refusal to cooperate with the work of the commission. Therefore, it is important to have a clear provision either in the regulation or directive of the commission to govern the one who fails to cooperate with the commission.

2.3.2 Special hearing process

Special hearing processes are adopted to address the vulnerable group of peoples. The vulnerable groups may not make an open discussion to present their ideas in public due to different societal factors such as influences and shame. Therefore, unless a special procedure is adopted, ideas of vulnerable groups might be omitted. To encompass such groups of people, several countries gave special attention through a special hearing process.

Article 6(3(b) of Sierra Leon act, article 27 of Kenya act, article 5(2(c) of Solomon Island act and section 27(n and o) of Liberia act adopt special arrangements, specific mechanisms, and procedures to give a special attention and to address the experiences of vulnerable groups. These mechanisms are adopted to address the experiences of women, children, persons with disabilities and other vulnerable groups who suffered abductions, subjects of sexual abuses and exploitation at the hands of perpetrators. This will enable women and children to provide testimony to TRC, while at the same time it protects their safety, social reintegration, and psychological recovery both as perpetrators and victims.⁵¹ Additionally, the report of Sierra Leone commission devoted a chapter for violence against women by all armed groups. Another chapter also devoted to children who suffered the cruelest and inhumane experiences at the hands of the armed factions.⁵²

⁵¹ ibid

⁵² Truth and Reconciliation Working Group, TRC report, A Senior Secondary School Version, (2005), 76 and 89<http://www.sierra-leone.org/Text_book_Sierra_Leone.pdf> accessed 7 august 2019

The Ethiopian Proclamation is silent about special hearing processes for women, children, disabled persons, and other vulnerable groups. Therefore, the Ethiopian Commission should provide a special arrangement and mechanism either in the directive or in the process of truth-finding and a public hearing to enhance its accessibility and to address vulnerable groups.

2.3.3 Forum to be heard

The forum of the commission should cover all geographical areas; otherwise, victims of violence who lived in remote areas might not be considered. It is not easy for peoples to travel from one place to another to attend the forum. Hence, it is difficult for such people to be part of the reconciliation process.

The South African commissions tried to set regional offices to cover all geographical areas in the country. The commission decided to set up four regional offices, further offices of the amnesty committee, human rights violations committee and Reparation and Rehabilitation Committee have been also established in different regions.⁵³ Nevertheless, it had been unsuccessful in finding all truths as it could not cover all geographical areas.⁵⁴ The commissioners are responsible for the commissions in branch offices.⁵⁵ Those regional offices connected through the database using a wide-area network that helps to ensure that each data processing unit followed a standardized approach.⁵⁶

One of the unique features of the Liberian Commission was that it involved the active participation of the Liberian Diaspora. Statement taking activities were conducted in all counties of the country as well as in other countries where Liberians were living with the purpose of participating diaspora.⁵⁷ Diaspora hearings and outreach activities of the Commission took place in 11 US cities, Ghana, Nigeria, and Sierra Leone, and all places where a significant number of Liberian refugees reside.⁵⁸ However, the Liberian consolidated final report emphasized that some victims of violence were felt ill, fearful and intimidated, others lived in remote areas were not

⁵³ Truth and Reconciliation Commission of South Africa report, (October 1998), Vol. 1, 45

⁵⁴ Professor Bishnu Pathak (n 1) 216

⁵⁵ Truth and Reconciliation Commission of South Africa report (n 53) 48.

⁵⁶ *ibid*, p. 145

⁵⁷ Republic of Liberia Truth and Reconciliation Commission: Consolidated Final report, Vol. II, June 30, (2009), 39

⁵⁸ *ibid*, 68

engaged and make contact with the commission. Therefore, all violence that occurred in Liberia was not documented.⁵⁹

The forum provided by the Ethiopian commission is to hear victims of gross human rights abuses in different time and historical events and perpetrators to disclose and confess their actions to reconcile and achieve lasting peace. The gap in the proclamation is that, even though the commission was mandated to provide an open forum, article 9(3) of the proclamation is not a mandatory provision to establish branch offices in other regions of the country. This may result in difficulty in providing an open forum in remote areas of the country. Therefore, the Ethiopian commission should establish branch offices at least in all regions of the country. Besides, the establishment of branch offices in different Zone and Woreda is necessary to cover all geographical areas. Branch offices play a significant role in accessing peoples living in remote areas to engage in the forums to be heard. Thus, everyone could take part in the process of reconciliation for lasting peace.

2.4 Truth finding and public hearing techniques

Various countries experienced a truth-seeking process and public hearing. Some of them tried to meet perpetrators and victims face to face,⁶⁰ while others just present victims confession privately and released the information only with the final report.⁶¹ Countries used different operational techniques in truth-finding and public hearing process.

South African truth commission was the first on the continent to explicitly include the objective of reconciliation. Amongst its other innovations, it allowed broad public participation in the formulation of the mandate of the commission. In order to achieve its objective, the South African TRC act under article 3 established three committees; human rights violations committee, which collected statements and recorded evidence; amnesty committee, which processed individual amnesty applications, and the reparations and rehabilitation committee, which designed and submitted recommendations for reparation program. Other units and sub-committees had performed and carryout some duties assigned to them by the commission. The committees are also obliged by the act under article 14(2), 25(2) and 37 to submit a comprehensive report to the Commission. These committees and sub-committees are necessary

⁵⁹ *ibid*, 184

⁶⁰ Truth and Reconciliation Commission of South Africa report (n 53) 112.

⁶¹ *ibid*, 54

for the operational effectiveness of the commission. The commission also had the power to include the names of perpetrators in its final report.⁶²

After two years delay, the Liberian commission started its public hearings in January 2008. Hearings fell into three categories: individual hearings based on statements or interviews, thematic hearings that looked at the trends and causes of the conflict and institutional hearings that examined how national institutions (such as the judiciary and education system) have been affected by the conflict.⁶³ Thematic and Institutional hearings featured specific categories such as; women, children, religious, historical review, media, education, youth, religion, culture and tradition, law enforcement, and security.⁶⁴ Both public and in-camera hearings were conducted in all 15 counties and representing diaspora.⁶⁵ Liberian TRC programs were communicated and carried out through music, drama, town hall meetings and workshops, visitations to churches and mosques, presentations to a targeted audience, radio programs, and media reports to reach out to the community.⁶⁶

Unlike other commissions that have been established due to regime change, Canada truth and reconciliation commission arose as a result of protracted litigation by survivors of the Indian residential school (IRS) system against the government and churches that ran schools in Canada.⁶⁷ The commission established with a vision to reveal the truth about residential -schools, and to establish a renewed sense of Canada that is inclusive, respectful and that enables reconciliation.⁶⁸ To fulfill its responsibility, a committee formed and divided into four teams with the following responsibilities: the black team was mandated to highlight best practices already in existence related to indigenous peoples of Canada. Yellow team responsibilities included creating relationships with existing organizations and developed a contact database. The white team provided a gap analysis on the Truth and Reconciliation Commission (TRC) to

⁶² Promotion of national unity and reconciliation act 1995 (n 26) art 20(3(6) and 47b(6)

⁶³ Republic of Liberia Truth and Reconciliation Commission: Consolidated Final report (n 57) 37-39

⁶⁴ *ibid* 73

⁶⁵ *ibid*

⁶⁶ *ibid* 182

⁶⁷ Kim Stanton, 'Canada's Truth and Reconciliation Commission: Settling the Past?', (August 2011) Vol. 2, Issue 3, *The International Indigenous Policy Journal*, 1

⁶⁸ Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Interim Report*, (2012) Para 2 <<https://www.falconers.ca/wp-content/uploads/2015/07/TRC-Interim-Report.pdf>>

advance reconciliation and to promote initiatives in all types of libraries. Finally, the red team envisioned the future by reviewing and looking at access and classification, indigenous knowledge protection, outreach and service, and decolonizing libraries and space.⁶⁹

Countries devised various techniques to achieve the objective of the commission. Certain established committees and subcommittees; while others divide the committee into teams with a different mandate. Each of these committees and teams organize their report to the commission which had a great value. Therefore, establishing committees and subcommittees with the different mandate under the Ethiopian commission may contribute to the operational effectiveness of the commission.

2.5 The mandate to publish a report and implement recommendation

The experience of several countries entrusts a body with the mandate to publish the report of the commission and also to implement recommendations. Let alone a clear mandate is not stipulated; experiences showed that even the mandated body was too late to publish the reports and implement recommendations. This implies that the silence of the law might result in delaying or ignoring to publish the report as well as implement the recommendations of the commission.

The act of Uganda was silent regarding the reports and recommendations of the commission. Hence, the recommendations in the final report were completely ignored due to political interference and intimidation. Though the commission documented various evidence, the report was published eight years after it was established;⁷⁰ hence the public had already lost interest in its work.

Regarding publishing a report and implementing a recommendation, on one hand, TRCs were mandated to publish, to bring the final report of the commission to the notice of the nation and implement the recommendation. On the other hand, commissions were mandated to submit the report to the concerned responsible body of a government. Furthermore, a commission gives

⁶⁹ Canadian Federation of Library Associations, Truth and Reconciliation Report and Recommendations, (February 2017) 5 <<http://cfla-fcab.ca/wp-content/uploads/2017/04/Truth-and-Reconciliation-Committee-Report-and-Recommendations.pdf>> accessed 6 September 2019

⁷⁰ Prudence Acirokop, 'A truth commission for Uganda? Opportunities and challenges', (2012) Vol. 12, African Human Rights Law Journal, 426

direction to the state bodies as well as encourages or facilitates the implementation of any recommendations.⁷¹

South Africa act under Article 14(2), 25(2) and 37 stipulated that each committee should submit interim reports and a final comprehensive report at the conclusion of their function to the commission. Article 4(e) mandated the commission to prepare a comprehensive report which sets out its activities and findings based on factual and objective information and evidence collected or received by it or placed at its disposal. In addition, Article 43(b) also stipulated that, the Commission at the completion of its work within three months after 31 July 1998 to submit a report to the President. Article 44 mandated the president to bring the final report of the Commission to the notice of the Nation, among others, by laying such a report, within two months after having received it, upon the tabled in Parliament.

Concerning a recommendation, Article 27 of the South Africa act provides that the recommendations shall be considered by the joint committee and the decisions of the said joint committee shall, when approved by Parliament, be implemented by the President by making regulations. The joint committee is defined in the act as a joint committee of the Houses of Parliament appointed in accordance with the Standing Orders of Parliament to consider matters referred to it in terms of this Act.

South Africa report was made public. In 2006 TRC unit was established to oversee the implementation of the commission's recommendations, including the issues around reparations and exhumations. The payment of reparations began only in 2003; five years after the commission submitted its report and the amount paid to victims fell far short of what the commission had recommended. Thus, due to the gap between the declaration and the implementation, the commission lost its credibility⁷²

Article 17 of the Sierra Leone act stipulated that the government shall faithfully and timeously implement the recommendations of the report that are directed to state bodies and encourage or facilitate the implementation of any recommendations. The subsequent provision also stipulated that the Government shall, upon the publication of the report of the Commission, establish a committee or other body ("the follow-up Committee") to monitor the implementation of the

⁷¹ The Truth and Reconciliation Commission Act 2000 (n 39) art 17

⁷² Truth and Reconciliation Commission of South Africa report (n 53) 355

recommendations of the Commission and to facilitate their implementation. The TRC committee recommends the National Commission for Social Action (NCSA) to be designated by the government to implement the recommendations of the commission, particularly for reparations.⁷³ However, many civil societies have criticized the government for too long delays in the implementation of the commission's recommendation.⁷⁴ By the end of 2007, the government had engaged in serious discussions with civil society organizations to increase public awareness about the commission's report and to examine ways of implementing its recommendations. Then after in early 2009, the government has made substantial progress in implementing recommendations to date, particularly with the establishment of a reparations program.⁷⁵

Section 48 of the Liberian TRC act required the president to report to the parliament on the implementation of the recommendations three months after the delivery of the report and then after on a quarterly basis as to the implementation of the commission's report. Section 46 of the act also seized independent national human rights commission and other civil societies the responsibility to ensure that all the recommendations of the TRC are implemented. After releasing the report, probably due to this authoritative and binding law, there has been little progress in implementing the Commission's recommendations especially in ensuring justice for victims.⁷⁶

Kenyan Commission was empowered to recommend policies with regard to reparations for victims, prosecutions and the creation of institutions conducive to a stable and fair society under Article 5 and 6 of the act. Kenya act under article 48(3) stipulated that immediately upon submitting the report to the President, the Commission shall publish the report in the Gazette. However, Criticism has also been leveled against the government for its much delayed to disseminate the final report⁷⁷ and as to the accuracy of some of the contents of the report.

⁷³ Truth and Reconciliation Working Group (n 52) 117

⁷⁴ Report of the Au Panel of the Wise peace (n 31) P.36

⁷⁵ *ibid.*37

⁷⁶ Republic of Liberia Truth and Reconciliation Commission: Consolidated Final report (n 57) 348

⁷⁷ The Truth, Justice and Reconciliation Commission of Kenya, "The Final Report of the TJRC" (2013), <www.tjrkenya.org/index.php?option=com_content&view=article&id=573&Itemid=238>

Canada TRC charter under the title of report and recommendation stipulated that the Committee recommendations and reports will be submitted in writing to the CFLA/FCAB Board.⁷⁸ Each team provides specific recommendations in the report.⁷⁹ The commission also calls for action upon the federal government bodies, provinces, and territories for various mandates.⁸⁰ To address the TRC calls to action different bodies work in partnership with a two-year mandate.⁸¹

Generally, most of the commission's report was delayed to publish as well as to implement the recommendations. Due to such reasons, the public lost its interest in the work of the commission. But, countries that specifically provided an official to publish and implement were observed to function better than others. For example, Sierra Leone's recommendations had a bind on all parties; hence, politicians enjoyed a high degree of discretion on the reform proposals adopting.⁸² On the other hand, the silence of Uganda's commission resulted in ignorance. Therefore, it is very useful to identify bodies responsible to publish the report and implement the recommendation of the commission.

Ethiopian Special Prosecutor office report was released in 1994.⁸³ It has recommended the establishment of a Public Defender Office to provide legal aid.⁸⁴ Then, there were 13 public defenders at the federal level and additional regional public defenders' offices.⁸⁵

The Inquiry Commission, established in Ethiopia after the 2005 election, has spent a considerable amount of time investigating killings and gathering evidence. However, the chairman and deputy chairman of the Commission had been repeatedly harassed and threatened

⁷⁸ Truth and reconciliation committee charter 2015, 2

⁷⁹ Canadian Federation of Library Associations (n 69) 6

⁸⁰ Truth and Reconciliation Commission of Canada, Truth and Reconciliation Commission of Canada: Calls to Action, (2012), 1-11

⁸¹ Canadian Federation of Library Associations (n 69) 8

⁸² Onur Bakiner (n11) 20

⁸³ United States Institute of Peace, Ethiopia: Report Of The Office Of The Special Prosecutor, (February 1994), 5

⁸⁴ *ibid*, 15

⁸⁵ Charles Manga Fombad, 'Update: Transitional Justice in Africa: the Experience with Truth Commissions', February 2017, 10 <https://www.nyulawglobal.org/globalex/Africa_Truth_Commissions1.html> accessed 11 July 2019

to hide the extent of casualties and alter the conclusion of the report particularly regarding the security forces that had used excessive force against unarmed civilians.⁸⁶

The Ethiopian proclamation under Article 5(2) mandated the commission to make its work accessible and participatory. Additionally, sub-article 9 of the same provision obliged the Commission to notify the public and concerned government organs about the conclusion reached through its inquiry. However, the concerned responsible government body to publish the report, as well as the time bound to publish, is not stipulated. In addition, the proclamation in its preamble entrusted the commission to initiate recommendations; thus, the report shall include recommendations. Nevertheless, it is silent about its implementation. This may result in a delay to publish the report as well as in implementing the recommendation.

Therefore a concerned responsible government body to publish the report and implement recommendations should be explicitly provided in the regulation. Taking lessons from Liberia and South Africa the mandate of publishing reports should be bounded within three months after finalizing the task of the commission. Regarding recommendation, the Ethiopian commission should bind all parties, civil societies, and politicians for the implementation of the report based on the power, ability, and responsibility of a responsible organ.

⁸⁶Engidu Woldie, Ethiopian Satellite Television (ESAT) News, (January 21, 2019)

CHAPTER THREE

3 Comparison of selected commissions regarding Justice and TRC

3.1 Introduction

In this chapter, the paper emphasized the function of TRCs regarding the components of justice; prosecution, amnesty, reparation, institutional reform and traditional conflict resolution mechanisms. Reconciliation is the main and end goal of post-conflict society; thus, justice should not be understood only as holding accountable all perpetrators rather a holistic approach is more suitable to deal with post-conflict societies.⁸⁷

United Nations has identified five core components of transitional justice namely, prosecution initiatives, truth and reconciliation processes, reparations, institutional reform, and national consultations.⁸⁸ Each of the components considered complementary to one another.⁸⁹

Criminal courts formed on the national or international level are the main instruments of the retributive approach. In the past years, an international consensus has been reached on the necessity to prosecute the most severe war crimes.⁹⁰ Restorative justice seeks to address issues through a different logic. For instance, truth commissions are described as the mid-way between trial and amnesty. Non-legal punishments could be taken via truth commissions such as, not retaining power in a democratic state, public confession and forgiveness with the condition as part of restorative justice.⁹¹ Distributive justice focuses on property restitution. If the new government fails to compensate, victims may destabilize the peace process.⁹² The first two justice types focus on the consequence of the conflict while the third seeks to tackle the roots of unrest.⁹³

⁸⁷ George Kasapas, An Introduction To The Concept Of Transitional Justice: Western Balkans And EU Conditionality, UNISCI Discussion Papers, No. 18, ISSN 1696-2206, (October 2008), 60

⁸⁸ Herbert Rubasha and Isaac Bizumuremyi, 'Lessons from Rwanda's National and International Transitional Justice: The Case to Improve Regional and International Perspectives of Justice', <<https://asf.be/wp-content/uploads/2012/10/Rwanda-Situation-Analysis.pdf>> accessed 7 august 2019, 9.

⁸⁹ *ibid*

⁹⁰ George Kasapas (n 87) 61

⁹¹ *ibid* 64-65

⁹² *ibid* p.66

⁹³ *ibid*

Therefore, the maintenance of justice in truth commission is directly linked with recommending trials for international crimes, amnesty with certain requirements, reparation, rehabilitation, and additional measures.⁹⁴ Truth Commissions cannot be considered as an adequate substitute for the judicial process rather it complements the role of national and international courts concerning clarifying facts about past human rights violations.⁹⁵

3.2 Laws regulating TRC Justice Administration

Regarding justice administration, certain numbers of truth commissions have failed to amend and promulgate additional laws for the effective implementation of the task of the commission such as transitional punishment law, reparation law and victim and witness protection law.⁹⁶ This makes difficult the operation of the commission.

The preamble of the Ethiopian proclamation states that the commission is necessary to reconcile the disagreement among peoples of Ethiopia based on truth and justice. The commission also has the discretionary power to take appropriate measures to maintain lasting peace and prevent the future occurrence of such conflict. However, the proclamation does not provide visible mechanisms of administering the justice process as well as the liability of the commission. Thus, it is necessary to be aware of the policy choice that the justice administration of TRC should follow to deal with the atrocity.⁹⁷ Lack of clear criteria and procedural transparency in-laws may undermine the sustainable exit from a violent state to a democratic state. Several countries provide clear guidelines and procedures for the measures taken by the commission regarding prosecution, amnesty, and reparation.

3.2.1 Measures taken by the commission

Several countries provide terms and conditions regarding the general measures that should be taken by the commission. There are different conditions provided for facilitating amnesty and prosecution. For facilitating amnesty and prosecution, certain number of countries promulgate

⁹⁴ Tricia D. Olsen, Leigh A. Payne, Andrew G. Reiter and Eric Wiebelhaus-Brahm (n 47) 462

⁹⁵ Amnesty International, Truth, justice and reparation Establishing an effective truth commission, June 2007, AI Index: POL 30/009/2007, 7 and 8

⁹⁶ ID, 218

⁹⁷ Ronald Slye and Mark Freeman, 'The Limits of Punishment', framework paper, ISBN: 978-92-808-9042-6, (May 2018) 6

two acts of parliament; the act for granting amnesty⁹⁸ and criminal prosecution.⁹⁹ Others provide a clear procedure for both amnesty and prosecution in the TRC establishment law.

Several commissions have provided the process of justice with regard to both amnesty and prosecution. Most of them were observed to facilitate amnesty rather than prosecution. These commissions mandated to address impunity, to respond to the needs of the victims, to promote healing and reconciliation, to prevent a repetition of violations and abuses,¹⁰⁰ to recommend amnesty¹⁰¹ and to grant amnesty with conditions. Conditions to grant amnesty; persons who make full disclosure of all the relevant facts relating to acts committed with a political objective,¹⁰² upon application of individual persons making full disclosures of their wrongs and thereby expressing remorse for their acts and/or omissions.¹⁰³ The objective of this provision is to advance reconciliation and reconstruct amnesty. Certain countries exclude amnesty for violations of international humanitarian law and crimes against humanity in conformity with international laws and standards.¹⁰⁴ The committee of human rights violations that established under the commission of South Africa was mandated to take into account the gross violations of human rights for which indemnity has been granted, prisoners were released or had their sentences remitted until the date of commencement of the Act.¹⁰⁵

Regarding prosecution, TRCs are mandated to provide in the recommendation part of the commission's report, the need to help the prosecution.¹⁰⁶ The Kenya commission, by conducting an investigation, mandated to make a recommendation under Article 5(d), 6(k (ii), 39, and 48 (2(b). Solomon Island amnesty act provides a ground for prosecution when any person who refuses or fails to surrender such weapons and ammunition or stolen property.¹⁰⁷ The criminal

⁹⁸ The Amnesty Act 2000, Solomon Island Sessional legislation, No. 3

⁹⁹ The Constitution Amendment Act 2001, Solomon Island Sessional legislation, No. 2

¹⁰⁰ The Truth and Reconciliation Commission Act 2000 (n 39) art 6.1

¹⁰¹ An Act to Establish the Truth and Reconciliation Commission of Liberia 2005 (n 21) art VII s. 26(g)

¹⁰² Promotion of national unity and reconciliation act 1995 (n 26) art 3(1(b)

¹⁰³ An Act to Establish the Truth and Reconciliation Commission of Liberia, (n 21), art VII, s. 26(g)

¹⁰⁴ Ibid; The Truth, Justice and reconciliation commission Act 2008 (n 23) art 34(3)

¹⁰⁵ Promotion of national unity and reconciliation act 1995 (n 26) art 14(a(iv)

¹⁰⁶ An Act to Establish the Truth and Reconciliation Commission of Liberia 2005 (n 21) art VII s. 26(j)

¹⁰⁷ The Amnesty Act 2000 (n 98) art 3(3)

prosecution act also governs the liability of criminal prosecution¹⁰⁸ by amending the constitutional provision about public prosecution.

Furthermore, TRCs are mandated to recommend reparation and rehabilitation of victims, Legal, institutional and other reforms.¹⁰⁹ Other measures such as legal, political, administrative are also needed to achieve the object of the Commission.¹¹⁰ Even the committee of human rights violations established under the South Africa commission was mandated to refer matters to the Committee of amnesty or Reparation and Rehabilitation to facilitate the reconciliation process.

Unlike others, the TRC of Canada calls the government for action to advance the process of reconciliation. The call holds different measures; calls to reduce number of aboriginal children, to publish annual report regarding aboriginal children, to repeal laws, to draft new Aboriginal education legislation, to appoint an aboriginal languages commissioner, to provide sufficient and stable funding, to develop national action plan and strategies, to fund the establishment of indigenous law institutes, to work with churches, Aboriginal communities, and former residential school students, to replace the oath of citizenship and etc.¹¹¹ These bunches of measures were recommended by the commission to the government of Canada.

The 1992 Ethiopian special prosecution office proclamation in its preamble 5th paragraph stipulated that the office mainly focuses on recording brutal offenses and prosecutions rather than amnesty. The power of the office, stated under article 6, was to conduct investigation and institute proceedings against any person committed an offense by abusing his/her position in the party, the government or mass organization during the Dergue regime. The focus of the office was prosecuting the perpetrators and finally institute proceedings. The proclamation provides the applicability of the existing criminal substantive and procedural law of the country under article 7(1). The subsequent sub-article 7(2) and (3) exclude some provisions of the existing law concerning limitation of criminal action, the submission of charges, evidence, pleadings and the provision of habeas corpus.

¹⁰⁸ The Constitution Amendment Act 2001 (n 99) art 1

¹⁰⁹ An Act to Establish the Truth and Reconciliation Commission of Liberia 2005 (n 21) art 26(j)

¹¹⁰ The Truth and Reconciliation Commission Act 2000 (n 39) art 15(2)

¹¹¹ Truth and Reconciliation Commission of Canada (n 80) 1-20

The Ethiopian proclamation does not provide a guideline for the measures to be taken by the commission. Neither prosecution nor amnesty mechanisms incorporated in the proclamation. On the other hand, the proclamation is also silent with regard to reparation and rehabilitation measures. Generally, it is very important to give discretion power for the commission to deal with society and to provide appropriate measures. However, full desecration may result in an arbitrary decision. Providing general principles to guide the work of the commission might play an important role in the legitimacy of the measures taken by the commission. Measures such as the prosecution of international crimes, amnesty mechanisms and procedures, reparation and rehabilitation, and other recommended measures are important for the maintenance of justice.

3.3 Justice regarding prosecution

3.3.1 The prohibition of amnesty under international law

Transitional justice should incorporate accountability mechanisms. International criminal law prohibits certain categories of conduct deemed to be serious crimes.¹¹² International crimes cannot be statutorily barred from prosecution and cannot be subject to amnesty, as they deny the right of victims to justice.¹¹³ All states have an obligation to prosecute and punish perpetrators of serious crimes such as genocide, crimes against humanity, war crimes and other crimes under international law.

3.3.2 The commission and ordinary courts

In the process of prosecution, a commission should have a direct relationship with ordinary or special courts to prosecute culpable perpetrators. A commission also has a relation with the government regarding reparation. For amnesty, mostly a commission provides recommendations based on the guideline provided in the law to grant amnesty.

Two countries have established a special court to speed up trial and selecting a restorative justice rather than retributive justice.

Gacaca court and truth commission of Rwanda was formally instituted by the post-genocide government by the spirit of embracing a complementary restorative justice rather than retributive

¹¹² Rome Statute of International Criminal Court, 1 July 2002, art 5-8

¹¹³ Min Reuchamps, What Justice for Rwanda? Gacaca versus Truth Commission?, Working Papers in African Studies No. 259, (2008), 16

justice.¹¹⁴ The court tried more than 130,000 people accused of genocide, war crimes, and crimes against humanity which were recorded at the time.¹¹⁵ Thus, by the ordinary judicial system, it was not feasible to deliver justice to the survivors of genocide.¹¹⁶

Gacaca court as a remote institution plays an important role in the participation of peasants and women's in the proceeding and also it allocates compensation to victims.¹¹⁷ On the other hand, the court was criticized for lightening the seriousness of these crimes under international law, masks social and ethnic differences among Rwandans without sufficiently delving into the complex truths of violence and reconciliation.¹¹⁸ As opposed to a restorative Gacaca justice court, in November 1994, the United Nations Security Council established International Criminal Tribunal for Rwanda (ICTR) sounds to be retributive justice.¹¹⁹

In Sierra Leone TRC was established to grant unconditional amnesty for perpetrators. In October 1999, the Security Council established the UN mission in Sierra Leone due to the commission's task of granting unconditional amnesty including international crimes.¹²⁰ In 2000, the government of Sierra Leone reassessed its stance towards full amnesty.¹²¹ By the time Sierra Leone requested by the UN to establish an independent Special court to address the violations committed during the war,¹²² Sierra Leone established both TRC and Special Court which shared an overlapped jurisdiction. However, the special court jurisdiction was limited to serious violations of international humanitarian law and crimes.¹²³ Unless a clearly defined relationship is available, it is obvious that their work overlaps and they lost credibility.¹²⁴ Unlike Sierra

¹¹⁴ *ibid*, P.2

¹¹⁵ *ibid*, p.7

¹¹⁶ *ibid*

¹¹⁷ *ibid*, p. 11

¹¹⁸ Caelin King, *Truth, Justice, and Reconciliation: A Comparison of the South African Truth and Reconciliation Commission and the Rwandan Gacaca Court System*, (Thesis paper, University of British Columbia, 2011), 38

¹¹⁹ Min Reuchamps (115) 3, 7-8

¹²⁰ Abdul Tejan-Cole, 'The Complementary and Conflicting Relationship Between the Special Court for Sierra Leone and the Truth and Reconciliation Commission', (2003) Vol. 6, Issue 1, art 5, *Yale Human Rights and Development Journal*, 142- 143

¹²¹ *ibid*

¹²² *ibid*

¹²³ *ibid* 146

¹²⁴ *ibid* 150

Leone, Uganda was considering prosecutions and a truth-telling process as complementary measures and their work was not overlap as they have similar objectives.¹²⁵

The 1992 Ethiopian special prosecution office proclamation Article 9 stipulated that cases outside the jurisdiction of the Special Prosecution Office shall transfer to the regular public prosecutor office.

The Ethiopian Proclamation does not provide the relation between the commission and the ordinary courts regarding prosecution. Thus, it is very difficult for the commission to operate effectively. Taking a lesson from Sierra Leone and Rwanda, establishing a special restorative court is crucial to deliver justice. The restorative court and task of the commission should have a similar objective considering the reconciliation process. Regarding international crimes retributive justice mechanism is also necessary; therefore, identifying a clear list of violations that should be tried under the special court or the ordinary court is necessary for the administration of justice.

3.4 Laws regulating amnesty

3.4.1 Amnesty mechanisms and procedures

Various countries stipulate amnesty mechanisms and procedures. Their act mandated the commission to grant amnesty in fulfilling certain requirements provided in the act. Conditions attached to amnesty; disarmament, truth-telling, participation in other justice processes, reparations, non-recidivism and, etc.¹²⁶ principled amnesty mechanisms can aid conflict prevention and resolution.¹²⁷

Countries define the word amnesty as a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State.¹²⁸ Amnesty mechanisms and procedures are mostly provided in the establishment act of TRC. These laws stipulated a condition for granting amnesty; however, several countries violated principles of international criminal law. Uganda stipulated that a person declared a report to the nearest Army or Police Unit, renounces and abandons involvement in the war and surrenders any weapons in his or her

¹²⁵ Prudence Acirokop (n 70) 432

¹²⁶ Ronald Slye and Mark Freeman (n 97) 4

¹²⁷ *ibid* 11

¹²⁸ The Uganda Amnesty Act 2000, Pt. 1

possession is issued with a Certificate of Amnesty.¹²⁹ In Uganda, the Ministry of Internal Affairs declared the lapse of operation of declaring an amnesty, in response to pressure from donor countries.¹³⁰ The pressure was about the incompatibility of the mechanism of granting amnesty with the norms of international justice.

The amnesty committee in South Africa receives an application of amnesty and considers it based on the act.¹³¹ If the committee satisfied, the applicant made full disclosure of all relevant facts. Amnesty or immunity from prosecution in Solomon Island shall be on condition of surrendering and returning all weapons, ammunition, and stolen property in possession and in the custody of the militant groups in the manner and within the periods specified.¹³² The subsequent sub-provisions clearly define those criminal acts the way the amnesty act should be applied or not applied.

Kenya act governs amnesty mechanisms. The act allows conditional amnesty and prohibits amnesty for crimes listed under Article 34(3). After considering the application, the commission recommends for amnesty based on Article 36 of the act. On one hand, commissions should investigate allegations on violations of international criminal law and prosecute those most responsible for violations committed. On the other hand, alternative measures taken by the commission have a significant role in the process of reconciliation including conditional forgiveness.

In Ethiopia, before the establishment of TRC, Proclamation No 1096/2010 was proclaimed for the purpose of giving pardon for a person who participated and committed a criminal act. The proclamation aimed at giving pardon for a person accused based on the Criminal Code Art 238-241, 247-249, 251, 252, 256, 257, 286, 288, Anti-Terrorist Proclamation no 652/2001 and Emergency Proclamation 1/2009 and 2/2010. This proclamation is applied only for criminal acts committed before June 30/2010EC. As per this proclamation article 7(4&5), a person should report about the remission within six months after the approval of the proclamation by HPR. Therefore, the person who applied and reports in accordance with proclamation 1096/2010 may

¹²⁹ Ibid art 4(1)

¹³⁰ Prudence Acirokop (n 70) 430

¹³¹ A Promotion of national unity and reconciliation act 1995 (n 26) art 19

¹³² The Amnesty act 2000 (n 98) art 3(2(3))

not be part of the TRC process. However, the Ethiopian Reconciliation proclamation doesn't stipulate any provision concerning the applicants as per the proclamation 1096/2010.

As the Ethiopian proclamation does not stipulate mechanisms of granting amnesty, the most crucial question of how to deal with the culpable perpetrators was not responded. In the proclamation, the word amnesty is only incorporated while defining the word reconciliation. The definition involves three main elements; identify the truth of past disagreements and revenge, impunity for the past and keeping lasting peace for the future. On one hand, the proclamation wants to brook up the past sense of trouble based on truth and justice. However, it does not stipulate any mechanism for prosecution, granting amnesty and reparation. Therefore, taking a lesson from the above-experienced countries the commission should incorporate amnesty mechanisms and procedures, prosecution mechanisms and procedures while regulating directive and regulation. Principled amnesty mechanisms assist conflict prevention and resolution process.¹³³

3.5 Laws regulating reparation and rehabilitation

Currently, the victim's reparation initiatives are dealt with the enhancement of the right to remedy. Reparation has important implications to construct and heal the victim's society.¹³⁴ Reparation may not be always monetary especially for reconciliation purposes. Rehabilitation, satisfaction, and guaranty for the non-repetition of such violation have importance in addition to restitution and compensation.¹³⁵ Therefore, reparation should be understood as a way of addressing the needs and demands of victims to redress those who suffered from violence and human rights violations. This is what is commonly referred to as restorative justice.¹³⁶

UN General Assembly resolution on the right to remedy and reparation¹³⁷ starting from Articles 15 to 23 which stipulates basic principles of the right to reparation. Article 15 explains that

¹³³ Ronald Slye and Mark Freeman (n 97) 11

¹³⁴ Jemima García-Godos, 'Victim Reparations in Transitional Justice– What Is at Stake and Why', (Vol. 26), NR2, S. 111–130. ISSN 1503-6480, (07 August 2014), 4

¹³⁵ *ibid* 8

¹³⁶ *ibid* 10

¹³⁷ UN General Assembly resolution 60/147, Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of

“adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law.” Article 15 also identifies States in accordance with their domestic laws and international legal obligations, as the duty-bearer of the obligation should provide adequate, effective and prompt reparation.

Several countries stipulate reparation and rehabilitation measures and mandated the commission to recommend reparation measures. However, most of them failed to implement the recommendation of the commission regarding reparation and rehabilitation.

South Africa act defines the word reparation to include any form of compensation, ex gratia payment, restitution, rehabilitation or recognition. The Committee on Reparation and Rehabilitation consider matters referred by any person and other committees. As stipulated under Article 25 and 26 of the act, after considering the application, the committee makes a recommendation that includes urgent interim measures. Although in South Africa, the Reparations and Rehabilitation Committee (RRC) noted that reconciliation was not possible without reparation but they did not have an independent budget, except for a small amount used as urgent interim measures like medical attention.¹³⁸

In Rwanda, the government indeed recognized the need to repair in some way the physical and moral damage suffered by the victims.¹³⁹ Reparation included the construction of destroyed residential homes, restitution of other property rooted and financial compensation, construct and repair public roads, public buildings, institutions, and other public amenities.¹⁴⁰ However, the issue of reparations to the victims of genocide remains a serious challenge in Rwanda.¹⁴¹

Liberia act under section 26(j(i)) mandated the commission to make a recommendation concerning Reparations and Rehabilitation of victims and perpetrators in need of specialized

international humanitarian law (Basic principles on the right to a remedy and reparation UN Doc. A/RES/60/147, (16 December 2005)

¹³⁸ Prudence Acirokop (n 70) 436

¹³⁹ Herbert Rubasha and Isaac Bizumuremyi (n88) 5

¹⁴⁰ *ibid*

¹⁴¹ *ibid*

psycho-social and other rehabilitative services. Thus, implementing the recommendations could progressively strengthen the works of the commission.¹⁴²

In Sierra Leone, the commission recommends both material and symbolic reparations for some of the groups who had suffered most during the conflict.¹⁴³ The reparations recommended by the TRC include free health care, monthly pensions, free education, exhumation, proper burials, national memorial services, traditional ceremonies, the creation of appropriate memorials training skills to match the needs of the market and micro-credit projects for groups and associations.¹⁴⁴ Reparation includes rehabilitation, monetary compensation, the establishment of the truth, restoration of dignity, and improving the quality of life.¹⁴⁵

Kenya's act defines reparation as dignifying the victims by measures that will alleviate their suffering, compensate their social, moral and material losses, and reconstitute their rights. The act governs the application of reparation mechanisms¹⁴⁶ and the commission was mandated to recommend reparation measures.¹⁴⁷ Thus, the commission recommends both monetary and non-monetary reparation measures. The recommendation Prioritize violations that are eligible for reparation based on the category. This helps to make the reparation process to be manageable through a program recommended by the Commission. Though the monetary compensation was not provided for victims under the priority, the implementation committee has tried to deliver a standardized five-year pension scheme.¹⁴⁸

The Ethiopian proclamation is silent regarding reparation even though the HPR minutes stated that three persons have raised such issue. They said that, many peoples lost their lives, injured and lost their property due to conflicts and disagreements, thus how victims and survivors could accept reconciliation without reparation? The respondent replied that, victims can claim reparation personally in a court of law and the issue of reparation is not the center of interest of the commission. However, several countries consider reparation and rehabilitation measures

¹⁴² Charles Manga Fombad (n 85) 12-13

¹⁴³ Truth and Reconciliation Working Group, (n 52) p. 116

¹⁴⁴ *ibid* 117

¹⁴⁵ *ibid* 116

¹⁴⁶ The Truth, Justice and reconciliation commission Act 2008 (n 23) art 42 -46

¹⁴⁷ *ibid* art 6(t) and 48(2)(c)

¹⁴⁸ Kituo Cha Sheria, Summary Of The Truth, Justice, And Reconciliation Commission (TJRC) Report, (2014) 82-88

either monetary or non-monetary measures to redress justice for victims and to facilitate reconciliation. Based on other countries' experience, monetary reparations were mostly failed to be executed due to financial constraints. However, non-monetary reparations are necessary and may help the process of reconciliation. Thus, reparation does not necessarily mean always monetary compensation.

3.5.1 Forms of reparation

Reparation is not always monetary. As laid out in UN General Assembly Resolution No. 60/147 Article 19 up to 23, reparation includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁴⁹

- Restitution means restore the victim to the original situation before the gross violations of human rights occurred
- Compensation provided for any economically assessable damage in proportion to the gravity of the violation.
- Rehabilitation should include medical and psychological care as well as legal and social services.
- Satisfaction includes Effective measures aimed at the cessation of continuing violations, Verification of the facts and full and public disclosure of the truth, the search for the whereabouts of victims or their cultural practices, restoring the dignity, the reputation and the rights of the victims or their survivors, public apology, Judicial and administrative sanctions against perpetrators, and Commemorations and tributes to the victims.
- Guarantees of non-repetition include ensuring effective civilian control of military and security forces, ensuring all civilian and military proceedings abide by international standards of due process, fairness and impartiality, Strengthening the independence of the judiciary, Protecting persons in legal, medical and health-care professions, the media and other related professions, and human rights defenders, Providing international humanitarian law education on a priority and continued basis to all sectors of society and law enforcement officials, human rights, Promoting the observance of codes of conduct and ethical norms, in

¹⁴⁹ International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations, A Practitioner Guide*, Revised Ed, (2018) 302

particular international standards, Promoting mechanisms for preventing and monitoring social conflicts and their resolution and Reviewing and reforming laws contributing or allowing gross violations of international human rights law and serious violations of international humanitarian law.

Generally, reparation is not the main concern of the Ethiopian commission. However, the commission could work on the non-monetary reparation mechanisms such as rehabilitation, satisfaction, and guarantees of non-repetition.

3.6 Informal justice mechanisms

Policymakers in conflict-affected societies have used creative alternatives, such as conditional amnesties, hybrid plea bargaining schemes, customary practices, and quasi-judicial processes.¹⁵⁰ Several countries, in addition to the formal domestic and international court trial, recognize the application of informal justice mechanisms in the reconciliation process.

Gacaca in Rwanda was an alternative to the formal international and domestic court trial. The court was used as a traditional-based justice system for low-level offenders.¹⁵¹

Informal mechanisms for the resolution of disputes including mediation, arbitration and any procedure provided by customary law and practice were applied in South Africa, where appropriate to facilitate reconciliation and redress for victims.¹⁵² Both Liberian¹⁵³ and Sierra Leone¹⁵⁴ commissions when deems necessary seek assistance from traditional and religious leaders to facilitate the public sessions and in resolving local conflicts arising from past violations or abuses in support of healing and reconciliation.

Various countries adapt the traditional justice system as part of a post-conflict society.¹⁵⁵ And most traditional institutions are reliable in resolving conflict.¹⁵⁶ The support from the traditional

¹⁵⁰ Ronald Slye and Mark Freeman (n 97) 13

¹⁵¹ *ibid*

¹⁵² A Promotion of national unity and reconciliation act 1995 (n 26) art 11(g)

¹⁵³ An Act to Establish the Truth and Reconciliation Commission of Liberia 2005 (n 21) art 26(Q)

¹⁵⁴ The Truth and Reconciliation Commission Act 2000 (n 39) art 7.2

¹⁵⁵ Tim Allen and Anna Macdonald, Post-Conflict Traditional Justice: A Critical Overview, The Justice and Security Research Programme, JSRP paper 3, ISSN 2051- 0926, (February 2013), 1

¹⁵⁶ *ibid* 3

community conflict resolution system is much required in a country with a diversity context.¹⁵⁷ The Ethiopian proclamation did not stipulate the assistance of traditional and religious leaders to facilitate the process of reconciliation. However, in the HPR debate, the necessity of traditional based justice system was raised. Therefore, supplementing traditional justice systems in addition to the formal justice system could facilitate the reconciliation process. In doing so, the commission should respect international standards.

3.7 Institutional reform

Justice administration is not a mere matter of prosecution or impunity. One of the core components of justice in TRC is institutional reform. Sometimes the reform could be initiated by the government or recommended by TRC.

Cairo conference¹⁵⁸ recommended 5 pillars for the transitional justice process. These are;

- Taking necessary measures to pass legislation, adopting programs and mechanisms of transitional justice according to fair guarantees based on accountability and non-recurrence of gross violations of human rights.
- The need for agreement between the law of transitional justice and the international principles and standards for Transitional Justice.
- Speeding up the establishment of an independent civilian body for fact-finding and accountability composed of judicial elements.
- The need to take immediate and urgent action at all levels of state institutions whether governmental or non-governmental organizations to adopt standards of tolerance, national reconciliation and rebuilding the political, social and human rights structure to protect society from chaos and desire for revenge.
- Developing media, human rights strategy and build a culture of dialogue.

Certain commissions came up with a recommendation for institutional reform. South African commission recommended reformation of the security forces such as human rights training for

¹⁵⁷ ibid 4

¹⁵⁸ Arab Center for the Independence of Judiciary and the Legal Profession (ACIJLP), "Transitional Justice and Institutional Reform", Recommendation on the Conference, Cairo, (3rd November 2013), 1-3

the security forces and human rights education in schools and universities.¹⁵⁹ The post-genocide government in Rwanda established institutions which largely decentralized to the lowest administrative unit of the country for better dispensation of justice and to protect citizens from human right abuses including, the National Fund for the support of Genocide survivors, National Unity and Reconciliation Commission, National Commission for Human Rights, the Office of the Ombudsman, the National Commission to fight against Genocide, Gender Observatory Monitoring Office, National Council for Women.¹⁶⁰

Generally, institutional reform plays an important role in reestablishing the profound mistrust of public institutions. Institutional reform includes the establishment of independent and accountable TRC for fact-finding, justice, and reconciliation process. If the public lacks trust in the commission, it will be difficult to operate its function and to contribute to a smooth transitional process. Therefore, the Ethiopian commission is expected to recommend important institutional reforms and establish new independent democratic institutions.

3.8 Liability of the commission

Several countries provide a condition to appropriately administer the work of the commission and the commissioners. The member of the commission and the staff are expected to serve in accordance with the regulations on which their appointment was based. Thus, any member or staff of the commission who contravenes or fails to execute¹⁶¹ based on the criteria for the reason such as misbehavior, incapacity, and incompetence¹⁶² shall be removed or dismissed from the commission. The set of regulations provided to the commission is expected to enforce individuals to serve with the maximum capacity, independent of any political party, government or other organizational interests. Individuals shall avoid taking any action which could create an appearance of partiality or otherwise harm the credibility or integrity of the Commission that made the commission to be guilty of misconduct and should be liable to be dismissed from the Commission.¹⁶³

¹⁵⁹ Truth and Reconciliation Commission of South Africa report (n 53) 122

¹⁶⁰ Herbert Rubasha and Isaac Bizumuremyi (n 88) 6-7

¹⁶¹ Rwanda: Law establishing the National Unity and Reconciliation Commission 1999 (n 36) art 12

¹⁶² A Promotion of national unity and reconciliation act 1995 (n 26), Art 7(7); An Act to Establish the Truth and Reconciliation Commission of Liberia 2005, (n 21), section 14

¹⁶³ The Truth and Reconciliation Commission Act 2000 (n 39), ss. 2

In several countries, the power to determine the removal or dismissal of the commission is designated for the president of the country.¹⁶⁴ The president removed as determined by the joint committee, upon receipt of an address from the National Assembly and Senate¹⁶⁵ or within the Justices of the Supreme Court.¹⁶⁶

The Ethiopian proclamation under article 5(7) mandated the commission to subpoena power without stipulating the responsibility of the commission. It is silent concerning the commission's accountability and liability. In order to perform its function efficiently, the commission should be held liable for its misconduct, incompetence and any other act or omission that harms the credibility of the commission as well as the rights of peoples.

¹⁶⁴ Rwanda: Law establishing the National Unity and Reconciliation Commission 1999 (n 36) art 12

¹⁶⁵ A Promotion of national unity and reconciliation act 1995 (n 26) art 7(7)

¹⁶⁶ An Act to Establish the Truth and Reconciliation Commission of Liberia 2005, (n 21), s. 14

CHAPTER FOUR

4 Comparison of selected commissions regarding Pillars of Reconciliation

4.1 Introduction

Reconciliation is considered as a requirement for lasting peace. Postwar regenerations have participated in the process of reconciliation to build enjoyable relationships in the future between peoples of the country.¹⁶⁷ Reconciliation is also regarded as a necessary instrument to prevent revenge.¹⁶⁸ In the process of reconciliation, several unresolved issues regarding perpetrators and victims have to be addressed. Hence, the process of reconciliation could try to rebuild trust and confidence.¹⁶⁹

Several countries in the transition process of a regime decided to have TRC which are envisaged or might set up to confront serious crimes of the past regime. However, countries such as Morocco and Canada had an exceptional situation which enforced to establish TRC without a regime change. Therefore, TRC could be established without a regime change if there is a conflict, disagreement, violation or any other problem in the country to be assisted through the reconciliation process.

There are crucial and pillar elements in the establishment process of the commission and the process of reconciliation that one country should consider.

4.2 National dialogue

International Covenant on Civil and Political Rights (ICCPR), in article 25, guarantees the right of every citizen to take part in the conduct of public affairs.¹⁷⁰ National consultations and dialogues are an important tool to design specific aspects of transitional justice programs.¹⁷¹

¹⁶⁷ Martina Fischer, *Transitional Justice and Reconciliation: Theory and Practice*, 2011, 415 <<http://www.operationspaix.net/DATA/DOCUMENT/4036~v~Transitional Justice and Reconciliation Theory and Practice.pdf>> accessed 6 September 2019.

¹⁶⁸ Ibid

¹⁶⁹ Ibid 416

¹⁷⁰ Office of the United Nations High Commissioner for Human Rights, *The Core International Human Rights Treaties*, 2006, ICCPR, 34, art 25

¹⁷¹ Office of the United Nations High Commissioner for Human Rights, *National Consultation on Transitional Justice*, 2009, 2

Consulted parties should be given a space to express themselves freely to shape or enhance the design of comprehensive transitional justice programs.¹⁷² This would help to take in to account the particular needs of the national situation.¹⁷³

Sierra Leone and Liberia, before the enactment of the TRC establishment law, a process of national dialogue, consultation and consensus have ensued. Various initiatives were considered from various bodies to build the legitimacy and legality of the process.¹⁷⁴ In Liberia, a county assessment research was conducted in five accessible counties to determine the acceptance level of a TRC process then after the TRC Act was drafted to represent the aspirations of Liberian people.¹⁷⁵ In Sierra Leone, despite the pressures of NGOs and human rights activists, ordinary peoples prefer to forgive and forget approach.¹⁷⁶

The establishment of the Ethiopian commission has raised a debate among certain groups. The debate was between EPRDF and other politicians. On one hand, EPRDF expresses that without having a conflict between recognized nation, nationality and peoples, it is unnecessary to establish the commission. On the other hand, other politicians support the establishment of the commission in order to resolve the political problems in the country.¹⁷⁷ Finally, in the same regime, the current prime minister office initiated the establishment of the commission claiming that in every part of the country people feel as they are victims of somebody else. The office further supports its argument stating that the situation of the country shows the revenge of the people is not only intuitive feeling rather it involves serious trouble of harming one another.¹⁷⁸

Generally, before initiating the establishment of TRC, support is not only required from political leaders and civic organizations but also the public. In Ethiopia, the national dialogue, consultation and consensus to build the legitimacy and legality of the process were not strong

¹⁷² *ibid* 3

¹⁷³ *ibid* 2

¹⁷⁴ Republic of Liberia Truth and Reconciliation Commission: Consolidated Final report (n 57), 174

¹⁷⁵ *ibid* 175

¹⁷⁶ United States Institute of Peace, lessons from sierra Leone, (February 2005), 1-2

¹⁷⁷ A declaration given for the members of HPR about the background debate on the establishment of reconciliation commission

¹⁷⁸ *ibid*

since the debate was in between political parties and the ruling party. The majority of the peoples have not participated in the consultation process.

4.3 Independence

The issue of independence of the commission should play an important role in the acceptance of the commission's work as well as for the reconciliation process. The Ethiopian proclamation under Article 12 stipulated that the commission shall perform its activities freely and independently. On the other hand, Article 2(4) of the proclamation stated that the commission shall be accountable to the prime minister.

4.3.1 Composition of the commission

In several countries, the composition of the commission was from both the citizen of the country and non-citizens which are from international institutions. To guarantee the independence of the commissions, some countries also established a selection committee or panel for the election of the commission members'.

Liberia, Kenya and Solomon Island established a selection panel to select¹⁷⁹ persons to be appointed as members of the Commission and recommend them to the Prime Minister.¹⁸⁰ The selection panel in Liberia constitutes three representatives from civil society, two from political parties, one from ECOWAS, and one from UNMIL.¹⁸¹

South Africa¹⁸², Sierra Leone¹⁸³ and Kenya¹⁸⁴ commissioners are appointed from both citizens of the country and non- citizens. Furthermore, countries put criteria to be appointed as a commissioner; a person who should be fit and proper, who are impartial and who do not have a high political profile. In Solomon Island, the nomination of non-national commissioners is selected from a list provided to the Committee by the United Nations High Commission for Human Rights as per Schedule one Section two Article 3(2) of the act.

¹⁷⁹ The Truth, Justice and reconciliation commission Act 2008 (n 23) art 9

¹⁸⁰ Solomon Islands Truth And Reconciliation Commission Act 2008 (n 19), Sch. 1 s. 2; A Promotion of national unity and reconciliation act 1995 (n 26) art (7(2(b)

¹⁸¹ Republic of Liberia Truth and Reconciliation Commission: Consolidated Final report (n 57) p. 176

¹⁸² A Promotion of national unity and reconciliation act 1995 (n 26) art 7(2(b)

¹⁸³ The Truth and Reconciliation Commission Act 2000 (n 39), art 3.1

¹⁸⁴ The Truth, Justice and reconciliation commission Act 2008 (n 23) art 9

The Ethiopian commission is composed of nominated persons by the prime minister of the country. Regarding the appointment, Article 3(2) of the proclamation stipulated that chairperson, deputy chairperson and other members of the commission shall be, upon recommendation by the prime minister, appointed by the HPR. However, the chairperson and deputy chairperson of the commission started to run the task of the commission before appointed by the HPR. This kind of issue may lead to a lack of trust in the commission as well as its final result. Though representatives from international bodies would contribute to the neutral work of the commission and further offer assistance, support and guidance for the work of the commission, the Ethiopian commission is composed of only citizens of the country.

4.4 Budget

Most of the previous commissions' task was delayed due to financial constraints. However, various countries' act stipulated that the financial source of the commission should be from the government of the country and other international financial institutions as well as non-governmental institutions.

Most of the commissions such as Liberia¹⁸⁵, Sierra Leon¹⁸⁶, South Africa¹⁸⁷ and Kenya¹⁸⁸ stipulated that the work of TRC shall be financed by the Government, Parliament, individual citizens, non-citizens, gift or donation from foreign governments, international financial institutions, specialized agencies of the United Nations Organization, intergovernmental organizations, foundations, and non-governmental organizations, all money donated or contributed to the fund from any source, technical assistance, grants and/or loans. The money provided from any source should be used to exercise the commission's powers and functions and should be payable to the victims by way of reparation or rehabilitation. However, commissioners of various countries were failed to perform some of their mandates due to a shortage of budgets such as reparation.

The Ethiopian proclamation under article 2(2) stated that the commission shall have a budget allocated by the government as per Article 15. On the other hand, the proclamation under its definition part defines government as it includes either federal or regional government. This may

¹⁸⁵ An Act to Establish the Truth and Reconciliation Commission of Liberia 2005 (n 21) art 36

¹⁸⁶ The Truth and Reconciliation Commission Act 2000 (n 39) art 12(1)

¹⁸⁷ A Promotion of national unity and reconciliation act 1995 (n 26) art 42(1)

¹⁸⁸ The Truth, Justice and reconciliation commission Act 2008 (n 23) art 43

result in operational difficulty because the commission may have its branch office in different regions. Thus, it is not stipulated either the federal or regional government will fund the branch offices. The announcement given by Ethiopian deputy commissioner M's Yetnebersh Niguse has pointed out the budget problem about office rent and other equipment. This showed that from the very beginning the commission may face budget constraints in the operation of its tasks. Certain countries stipulated about the budget issue at the beginning of their work even though most of the previous commissions finally faced budgetary problems. Thus, taking such a lesson budget is crucial since it demands special attention.

4.5 Full-time commissioners

Commissions in various countries are obliged to work in a full-time base. Section 12 of Liberia act, article 36 (5(b) of South Africa act and article 3.4 of Sierra Leone act stipulated that members of the TRC, every commissioner and member of a committee, shall be mandated to render services on a full-time basis with maximum capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of another office.

The Ethiopian proclamation did not mandate the commission to render services on a full-time basis. This huge responsibility is expected to be exercised in a full-time base otherwise it may fail to achieve its goals. Therefore, the commissioners who are engaged in the process of finding the truth and national reconciliation should work thoroughly in a full-time base.

4.6 Additional laws

Several commissions made effective work through repealing or promulgating additional laws. To list instances; Solomon Island promulgates criminal prosecution and amnesty act, South Africa repealed several laws regarding amnesty acts, Uganda promulgates amnesty act and Rwanda court (Gacaca) established with a jurisdiction concerning prosecution. While other countries govern the issue of reparation, amnesty, victim and witness protection through incorporating some provisions in the establishment act of the commission. For instance, Kenya, Liberia and, South Africa act regulate reparation and amnesty mechanisms. The 1992 Ethiopia special prosecution proclamation was also regulated prosecution.

Ethiopian proclamation under Article 17 governs victim and witness protection. This would help to disclose information and to give testimony in front of a truth commission with no fear that the information that has been given will be used as evidence against them. However, the

proclamation is silent regarding amnesty, prosecution, and reparation mechanisms. Thus, it may hinder the effective operation of the justice process. Therefore, taking a lesson from others, the Ethiopian commission should promulgate or repeal additional laws to incorporate reparation, criminal prosecution, and amnesty procedures. Additional laws are proper for the effective implementation of the task of the commission and the achievement of lasting peace.

4.7 Essential provisions of Ethiopian proclamation

Though there are so many bottlenecks on the Ethiopian proclamation as it is aforementioned, the proclamation raised several elements that would help the commission to perform its tasks effectively and achieve reconciliation. Thus, the commission has the power to take or order provision of any document or information from government organs excluding some documents and information that are legally protected as confidential for the sake of national security, to visit premise of any institution, to order the provision of anyone through summon, to make interview either individually or in a group in secret or in an open way to the public, to get support from federal or regional state polices. Furthermore, the proclamation protects witnesses and whistleblowers.

4.7.1 Impediments in the task of the commission

Most of the commissions are established to achieve national reconciliation, unity and lasting peace. To achieve the objectives, the commissions are mandated to find the truth, grant amnesty or prosecute, recommend reparation and rehabilitation measures. By doing so, various commissions satisfy their society and achieve their objectives while others failed to perform certain mandates due to different reasons such as legal gap, budget, an act of revenge, full amnesty, and, etc.

In Uganda, perpetrators and witnesses were deterred from giving testimony in front of a truth commission with no fear that such information will be used to prosecute them or others.¹⁸⁹ Regarding reparation, the government was not effective in procuring the necessary financial resources for reparations.¹⁹⁰ The process of reconciliation in Uganda largely depends on political will and readiness to overcome social, political, ethnic and regional divisions.¹⁹¹ However, the president failed to achieve its ambitious programs regarding the promised fundamental change in

¹⁸⁹ Prudence Acirokop (n 70) 433

¹⁹⁰ *ibid* 436

¹⁹¹ *ibid* 444

politics and the democratic transition.¹⁹² The majority of the population displaced from Northern Uganda returned to their original homesteads, while others have settled in originally-unoccupied land. However, many scattered groups of vulnerable people especially children and many youths lacked their agricultural skills, which is the main way of life in the villages.¹⁹³ This led to an increase in the number of street children in the larger towns and an increase in the number of robberies, alcohol and drug abuse.¹⁹⁴

South African commission concerned about granting amnesty for perpetrators and in addition providing reparation and rehabilitation to the victims.¹⁹⁵ There were arguments with the justice process of the South African commission. On the one hand, some say it is a legal duty to prosecute certain high offenders, on the other hand, some argues it is a political judgment to excuse.¹⁹⁶ The amnesty process in South Africa was made after bringing the victim and the perpetrator together.¹⁹⁷ Although the Reparations and Rehabilitation Committee (RRC) of South Africa noted that reconciliation was not possible without reparation. However, they had not an independent budget, except little amount used for an urgent interim measure such as medical attention.¹⁹⁸

In Sierra Leone, as the government is obliged to implement recommendations of TRC, it must make serious efforts to improve human development.¹⁹⁹ Regarding reparation, both material and symbolic reparations were part of the reconciliation process. However, the commission failed to

¹⁹² *ibid* 442

¹⁹³ *ibid* 440

¹⁹⁴ *ibid*

¹⁹⁵ Kader Asmal, 'Truth, Reconciliation and Justice; The South African Experience in Perspective', (January 2000) Vol. 63, (No 1), *The Modern Law Review*, 1

¹⁹⁶ *ibid* 7

¹⁹⁷ Associate Professor Renée Jeffery, *The Solomon Islands Truth and Reconciliation Commission Report: Forgiving the Perpetrators, Forgetting the Victims?*, Australian National University, (January 2015), 22

¹⁹⁸ Prudence Acirokop (n 70) 436

¹⁹⁹ Truth and Reconciliation Working Group, (n 52) 117

use traditional reconciliation mechanisms, failed to govern the relationship between TRC and the special court and also the statement taking period was too short.²⁰⁰

Like Uganda, in Liberia witnesses were not protected. Finally, the commission comes with a recommendation to protect them.²⁰¹ Liberia commission largely works on children's and sexual violence.²⁰² The commission came up with detail recommendations thus, through implementing the recommendations the work of the commission progressively strengthens.

Solomon Island commission paid extensive attention to custom and gender aspects.²⁰³ In contrast to the case of South Africa, commissioners of the Solomon Island TRC did not ask victims if they forgave their assailants.²⁰⁴ Due to such reason, victims and critics were completely against the idea of forgiving the perpetrators of human rights violations.²⁰⁵

The broad objective of the Rwandan national unity and reconciliation commission was to sensitize the Rwandan people about reconciliation and unity as well as foster tolerance.²⁰⁶ The commission promotes tolerance among all members of the population. Strong and useful social values and components were also communicated.²⁰⁷ However, the issue of reparations to the victims of genocide remains a serious challenge in Rwanda.²⁰⁸ The commission now works as a permanent institution being provided under the constitution.²⁰⁹

To the Canadian commission, reconciliation is about establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in the church-run

²⁰⁰ The Sierra Leone Working Group on Truth and Reconciliation, Searching for Truth And Reconciliation in Sierra Leone; An Initial Study of the Performance and Impact of the Truth and Reconciliation Commission, (February 2006), 8

²⁰¹ Republic of Liberia Truth and Reconciliation Commission: Consolidated Final report (n 57) 389

²⁰² *ibid* 346

²⁰³ David Webster, Truth and Reconciliation in Southeast Asia and the Melanesian Pacific: Potential Canadian Contributions and Potential lessons for Canada, (2017) Vol. 72(1), International Journal, 127-128

²⁰⁴ Associate Professor Renée Jeffery (n 197) 16

²⁰⁵ *ibid* 10

²⁰⁶ Rwanda: Law establishing the National Unity and Reconciliation Commission 1999 (n 36) art 3(2)

²⁰⁷ Herbert Rubasha and Isaac Bizumuremyi (n 88) 8

²⁰⁸ *ibid* 5

²⁰⁹ Charles Manga Fombad (n 85) 16

residential schools of the country.²¹⁰ The Commission made an offer to everyone involved with the residential school system with the opportunity to speak about their experience in public.²¹¹ Finally, commemoration project initiatives were funded such as, initiatives that would honor, educate, remember, memorialize, and pay tribute to former residential school students, their families and their communities.²¹² However, land and self-determination claims of indigenous peoples were remained unaddressed.²¹³

The Ethiopian special prosecutor office established in 1992 had a purpose to record abuses of the Mengistu regime and to criminally prosecute those responsible persons. By doing so, the government wants to create a more democratic future. However, 1200 prisoners suspected of gross human rights violations were detained for almost 18 months without charge.²¹⁴ This process violated the right to a fair and speedy trial. Hence, criminal trials alone are not sufficient to bring reconciliation and healing to the victims.

Having a look at the obstructions faced during the past commissions could enable the Ethiopian commission to take constructive lessons and it is expected to pay special attention and readiness to achieve its ambitious programs.

²¹⁰ Truth and reconciliation of Canada, What We Have Learned: Principles of Truth and Reconciliation, (2015), 113<<http://www.trc.ca/assets/pdf/Principles%20of%20Truth%20and%20Reconciliation.pdf>> accessed 11 July 2019

²¹¹ Ibid 25-26

²¹² Ibid 33

²¹³ Matt James, 'a Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission', (2012) International Journal of Transitional Justice, 21

²¹⁴ United States Institute of Peace (n 83) 1-3

CHAPTER FIVE

5 Conclusion and Recommendation

5.1 Conclusion

Generally, the study reviewed the international experiences of TRCs. Thus, the study found out that there are several issues that the Ethiopian proclamation was silent about and failed to fully govern the task of the commission. Generally, the Ethiopian commission focuses on three important issues: truth, justice, and reconciliation. The preamble of the proclamation also recognizes the significant role of the commission to reconcile the disagreement among peoples of Ethiopia based on truth and justice.

Regarding truth, the Ethiopian proclamation failed to govern fully the process of truth-finding, public hearing, and report publishing. However, other commissions have provided the temporal jurisdiction of the commission as well as pointed out human rights violations that should be mainly investigated under the task of the commission. In addition, several countries arranged special hearing procedures for vulnerable group of peoples, established branch offices or forums to cover all geographical areas and bind a responsible government organ with a duty to publish the report within a time bound.

Concerning administration of justice, the Ethiopian proclamation did not clearly provide a guideline for the measures to be taken by the commission. Neither prosecution nor amnesty mechanisms incorporated in the proclamation. On the other hand, the proclamation is also silent with regard to reparation and rehabilitation measures. However, several countries were regulated amnesty, prosecution, reparation mechanisms and procedures. In addition to the formal domestic and international court trials, several countries recognize informal (traditional) justice mechanisms. The liability of the commission, staff members, sub-committees and other cooperative parties were also regulated.

TRCs are mostly considered as the third way between trial and amnesty. On the one hand, perpetrators should accept their guilt of a crime. On the other hand, victims of the crime should apologize the perpetrators without preceding a criminal charge upon them except for international criminal acts. Such a relationship between the perpetrators and victims is important in the process of reconciliation. Therefore, it is important to clarify the policy choice of the

country in the process of reconciliation regarding the administration of justice. Otherwise, it may be difficult to operate the reconciliation process effectively.

The establishment of reconciliation commission is crucial considering the diverse nature of the country such as ethnic, social, economic, cultural, civil and political conflicts. The Ethiopian proclamation was promulgated without national dialogue. However, the establishment of the commission without a process of national dialogue, consultation and consensus with the public may harm the legitimacy of the reconciliation

Generally, it would have been better if lessons were taken from past TRC's regarding budget, the importance of the independence of the commission, the promulgation of additional laws for the effective implementation of tasks of the commission as well as regarding the importance of full-time commissioners.

5.2 Recommendations

The following recommendations are given based on this study;

- ✓ The law maker and the commission need to amend the proclamation and issue regulation or directive respectively. The amendment proclamation, regulation and directive should incorporate the following
 - ❖ The temporal jurisdiction of the commission,
 - ❖ Lists of human rights violations that should be mainly investigated under the task of the commission,
 - ❖ Special hearing procedures for a vulnerable group of peoples,
 - ❖ The duty to establish branch offices at least in all regions of the country,
 - ❖ Bind a responsible organ with a duty to publish the report of the commission,
 - ❖ The connection between the commission and ordinary courts,
 - ❖ Amnesty, prosecution and reparation procedures and mechanisms,
 - ❖ Informal justice system mechanisms and
 - ❖ Govern the liability of the commission as well as cooperative parties
- ✓ To encourage the implementation of recommendations, all parties, civil societies, politicians and the government should be legally bind to implement the recommendations of the commission faithfully and timeously.

- ✓ It is very important to establish committees, sub-committees or teams with an organized clear mandate then after these committees should be legally bind to work in full-time bases and present their report to the commission within a fixed period.
- ✓ To make the work of the commission effective, additional laws should be promulgated such as criminal prosecution, amnesty procedure, reparation mechanism, victim and witness protection.
- ✓ It is very important to take lesson from the failurity of the special prosecution office that was established during EPRDF period.
- ✓ The budget of the commission demands special attention.

6 Bibliography

Legislations

- An Act to Establish the Truth and Reconciliation Commission of Liberia 2005
- Gacaca Jurisdictions And Organizing Prosecutions For Offences Constituting The Crime Of Genocide Or Crimes Against Humanity Committed Between October 1, 1990 And December 31, Organic Law N0 40/2000 Of 26/01/2001.
- International Commission of Jurists, the Right to a Remedy and Reparation for Gross Human Rights Violations, A Practitioner Guide, Revised Ed., 2018
- Office of the United Nations High Commissioner for Human Rights, The Core International Human Rights Treaties, 2006, ICCPR, 34
- Office of the United Nations High Commissioner for Human Rights, National Consultation on Transitional Justice, 2009
- Promotion of National Unity and Reconciliation Act 1995, No. 34
- Proclamation establishing Special public prosecutor's office 1992, No. 22
- Reconciliation commission establishment proclamation, (Proclamation No. 1102/2018), *Federal Negarit Gazeta*, No. 27
- Rwanda: Law establishing the National Unity and Reconciliation Commission 1999, No. 03/99 of 1999, <<https://www.refworld.org/docid/3ae6b59a18.html>> accessed 7 May 2019
- Rome Statute of International Criminal Court, 1 July 2002
- Solomon Islands Truth and Reconciliation Commission Act 2008, No. 5
- Statute of the special court for Sierra Leone 2000
- The Truth and Reconciliation Commission Act 2000
- The commission of inquiry act, Uganda: legal notice creating the commission of inquiry into violations of human rights, legal notice No. 5, (May 16, 1986)
- The Truth, Justice, and reconciliation commission Act 2008, No. 6
- Truth and reconciliation committee charter 2015
- The Uganda Amnesty Act 2000
- The Amnesty Act 2000, Solomon Island Sessional legislation, No. 3
- The Constitution Amendment Act 2001, Solomon Island Sessional legislation, No. 2
- UN General Assembly resolution 60/147, Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights

law and serious violations of international humanitarian law (Basic principles on the right to a remedy and reparation UN Doc. A/RES/60/147, (16 December 2005)

Journals and Articles

- Abdul Tejan-Cole, 'The Complementary and Conflicting Relationship between the Special Court for Sierra Leone and the Truth and Reconciliation Commission', (2003) Vol. 6, Issue 1, art 5, Yale Human Rights and Development Journal
- Anna Triponel and Stephen Pearson, 'What Do You Think Should Happen? Public Participation in Transitional Justice', (2010), Vol. 22,(Issue 1), Pace International Law Review
- David Webster, Truth and Reconciliation in Southeast Asia and the Melanesian Pacific: Potential Canadian Contributions and Potential lessons for Canada, (2017), Vol. 72(1), International Journal
- Eric Brahm, 'What is a Truth Commission and Why Does it Matter?', (2009), Volume 3, (Issue 2), Peace & Conflict Review
- Kader Asmal, 'Truth, Reconciliation and Justice; The South African Experience in Perspective', (January 2000) Vol. 63, (No. 1), The Modern Law Review
- Kim Stanton, 'Canada's Truth and Reconciliation Commission: Settling the Past?', (August 2011), Vol. 2, (Issue 3), The International Indigenous Policy Journal
- Lisa J. Laplante, 'On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development, (2007), Vol. 10, (Issue 1), Yale Human Rights and Development Law Journal
- Matt James, A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission, (2012), International Journal of Transitional Justice
- Michal Ben-Josef Hirsch, Megan MacKenzie, and Mohamed Sesay, 'Measuring the Impacts of Truth and Reconciliation Commissions: Placing the global success of TRCs in local perspective', (2012), Cooperation and Conflict 47(3)
- Onur Bakiner, 'Truth Commission Impact: An Assessment of How Commissions influence Politics and Society', (2013), Vol. 8, The International Journal of Transitional Justice
- Professor Bishnu Pathak, 'A Comparative Study of World's Truth Commissions—From Madness to Hope', (2017), Vol. 4, (No. 3), World Journal of Social Science Research

- Priscilla B. Hayner, 'Truth commissions: a schematic overview', (June 2006), Volume 88, (No. 862), International Review of the Red Cross
- Prudence Acirokop, 'A truth commission for Uganda? Opportunities and challenges', (2012), Vol. 12, African Human Rights Law Journal
- Tricia D. Olsen, Leigh A. Payne, Andrew G. Reiter and Eric Wiebelhaus-Brahm, 'When truth commissions improve human rights', (2010), Vol. 4, The International Journal of Transitional Justice

Reports

- Canadian Federation of Library Associations, Truth and Reconciliation Report and Recommendations, (February 2017) 5 <<http://cfla-fcab.ca/wp-content/uploads/2017/04/Truth-and-Reconciliation-Committee-Report-and-Recommendations.pdf>>accessed 6 September 2019
- Kituo Cha Sheria, Summary of the Truth, Justice, And Reconciliation Commission (TJRC) Report, 2014
- Report of the Au Panel of the Wise Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight against Impunity, (2013)
- Republic of Liberia Truth and Reconciliation Commission: Consolidated Final report, Vol. II, June 30, 2009
- Truth and Reconciliation Working Group, TRC report, A Senior Secondary School Version, (2005), 76 and 89<http://www.sierra-leone.org/Text_book_Sierra_Leone.pdf>accessed 7 august 2019
- Truth and Reconciliation Commission of South Africa report, (October 1998), Volume 1
- Truth and Reconciliation Commission of Canada, Truth and Reconciliation Commission of Canada: Interim Report, (2012)
- The Truth, Justice and Reconciliation Commission of Kenya, "The Final Report of the TJRC"(2013),<www.tjrkenya.org/index.php?option=com_content&view=article&id=573&Itemid=238>
- United States Institute of Peace, Ethiopia: Report of the Office of the Special Prosecutor, (February 1994)

Others

- Amnesty International, Truth, justice and reparation Establishing an effective truth commission, June 2007, AI Index: POL 30/009/2007
- Arab Center for the Independence of Judiciary and the Legal Profession (ACIJLP), "Transitional Justice and Institutional Reform", Recommendation on the Conference, Cairo, (3rd November 2013)
- Associate Professor Renée Jeffery, The Solomon Islands Truth and Reconciliation Commission Report: Forgiving the Perpetrators, Forgetting the Victims?, Australian National University, (January 2015)
- Bogdan Ivanisevic, 'Comparative Study on the Impact of Truth Commissions', (May 2009), International Center for Transitional Justice <<http://recom.link/wp-content/uploads/2014/12/Comparative-Study-on-the-Impact-of-Truth-Commissions.pdf>,> Accessed April 8 2019.
- Caelin King, Truth, Justice, and Reconciliation: A Comparison of the South African Truth and Reconciliation Commission and the Rwandan Gacaca Court System, (Thesis paper, University of British Columbia, 2011)
- Charles Manga Fombad, 'Update: Transitional Justice in Africa: The Experience with Truth Commissions', February 2017, <https://www.nyulawglobal.org/globalex/Africa_Truth_Commissions1.html>
- Engidu Woldie, Ethiopian Satellite Television (ESAT) News, (January 21, 2019)
- Federal Democratic Republic of Ethiopia Government HPR minute, 2011
- George Kasapas, an Introduction to the Concept of Transitional Justice: Western Balkans and EU Conditionality, UNISCI Discussion Papers, No. 18, ISSN 1696-2206, (October 2008)
- Herbert Rubasha and Isaac Bizumuremyi, 'Lessons from Rwanda's National and International Transitional Justice: The Case to Improve Regional and International Perspectives of Justice', a paper presented at Imperial Botanical Beach Hotel, Entebbe, July 2012, <<https://asf.be/wp-content/uploads/2012/10/Rwanda-Situation-Analysis.pdf>>
- Jemima García-Godos, 'Victim Reparations in Transitional Justice– What Is at Stake and Why', (Vol. 26), NR2, S. 111–130. ISSN 1503-6480, (07 August 2014)

- Martina Fischer, *Transitional Justice and Reconciliation: Theory and Practice*, 2011, 415
<[http://www.operationspaix.net/DATA/DOCUMENT/4036~v~Transitional Justice and Reconciliation Theory and Practice.pdf](http://www.operationspaix.net/DATA/DOCUMENT/4036~v~Transitional%20Justice%20and%20Reconciliation%20Theory%20and%20Practice.pdf)> accessed 6 September 2019.
- Min Reuchamps, *What Justice for Rwanda? Gacaca versus Truth Commission?*, Working Papers in African Studies No. 259, (2008)
- Ronald Slye and Mark Freeman, *The Limits of Punishment*, framework paper, ISBN: 978-92-808-9042-6, (May 2018)
- Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Interim Report*, (2012) Para 2<<https://www.falconers.ca/wp-content/uploads/2015/07/TRC-Interim-Report.pdf>>
- Tim Allen and Anna Macdonald, *Post-Conflict Traditional Justice: A Critical Overview*, The Justice and Security Research Programme, JSRP paper 3, ISSN 2051- 0926, (February 2013)
- The Sierra Leone Working Group on Truth and Reconciliation, *Searching for Truth and Reconciliation in Sierra Leone; An Initial Study of the Performance and Impact of the Truth and Reconciliation Commission*, (February 2006)
- Truth and reconciliation of Canada, *What We Have Learned: Principles of Truth and Reconciliation*,(2015),113<<http://www.trc.ca/assets/pdf/Principles%20of%20Truth%20and%20Reconciliation.pdf>> accessed 11 July 2019
- United States Institute of Peace, *lessons from Sierra Leone*, February 2005