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**Interim Secretariat for Truth and
Reconciliation Mechanism**

உண்மை மற்றும் நல்லிணக்கப்
பொறிமுறையின் இடைக்காலச்
செயலகம்

**TRUTH SEEKING MECHANISMS IN SELECTED
JURISDICTIONS**

AND

WAY FORWARD FOR SRI LANKA

VOLUME 1

**TRUTH SEEKING MECHANISMS IN
SELECTED JURISDICTIONS
AND
WAY FORWARD FOR SRI LANKA**

VOLUME I

*INTERIM SECRETARIAT FOR TRUTH AND
RECONCILIATION MECHANISM (ISTRM)*

2023/2024

FOREWORD

As the Director General of the Interim Secretariat for Truth Mechanism (ISTRM), it is an honor to present Volume 1 of the research study undertaken by the ISTRM of selected jurisdictions where mechanisms somewhat similar to the proposed mechanism for truth and reconciliation in Sri Lanka, have functioned.

The proposed legislation for establishing the aforesaid mechanism in Sri Lanka, namely, the Bill for the proposed Commission for Truth, Unity and Reconciliation (CTUR), has already been gazetted on 1st January 2024, as a concept paper, to bring it to the public domain. The ISTRM is currently engaged in an extensive public and stakeholder consultation process to discuss the proposed law with the interested parties and to invite their views, observations and suggestions regarding the same. Pursuant to this, a final version of the draft Bill will be made available for the purpose of re-gazetting the same after which the relevant due process will be followed for tabling the said Bill in Parliament for consideration and approval by the legislature.

If the proposed legislation is approved by the Parliament and the CTUR is accordingly established, it would be extremely useful for the Commission to consider lessons learned, both procedural and other, from selected jurisdictions where truth and reconciliation mechanisms have functioned. It is with this objective in mind that the ISTRM undertook the aforementioned research study.

This Volume presents a comprehensive analysis of truth and reconciliation mechanisms established in five jurisdictions, namely, Rwanda, Canada, East Timor, Australia and Liberia. The chapter on ‘Way forward for Sri Lanka’ identifies 23 thematic areas from the aforementioned jurisdictions, that the proposed CTUR can derive as lessons and best practices.

The ISTRM is currently working on Volume 2 of the report, which will cover the following countries – Nepal, New Zealand, Solomon Islands, Sierra Leone, South Africa and Colombia.

I thank my team for their efforts in finalizing this volume and sincerely hope that it will be a useful guide for the proposed CTUR.

Thank you,



Dr. Asanga Gunawansa, President’s Counsel.
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In the past, Dr. Gunawansa had taught law at NUS, served as a Legal Officer attached to the United Nations Compensation Commission and United Nations Relief and Works Agency, and had been an Advisor to the Independent Redress Mechanism of the Green Climate Fund. During the early part of his career, he was a State Counsel attached to the Department of the Attorney General of Sri Lanka. Dr. Gunawansa has expertise and extensive experience in several diverse areas including, conflict resolution, mediation, arbitration, legal aspects of sustainable development, foreign investment and human rights.

Dr. Gunawansa is currently the Director General of ISTRM and has been responsible for conceptualizing, formulating, editing, and providing overall direction to the ISTRM team in connection with the compilation of the country studies undertaken by the Legal and Policy teams of the ISTRM.

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Asif Fuard is a defence analyst and an academic. He is a visiting lecturer in counterterrorism and strategic communications at General Sir John Kotelawala Defence University and a research supervisor at the Defence Services Command and Staff College and National Defence College. He is currently a Director at Resurge, the Initium Centre for Global Affairs and at RedForce Security Services and Training Academy. He was a war correspondent and defence columnist to report on the final stages of the island's protracted separatist conflict which concluded in 2009.

Mr. Fuard has written extensively on international security, transitional justice, hybrid warfare and transnational terrorism for several leading local and international publications. He contributes towards analysis of policy on post conflict reconciliation and security sector reforms.

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CONTENTS

COUNTRY REPORTS

1. Introduction	03
2. Rwanda	09
3. Canada.....	67
4. East Timor.....	110
5. Australia.....	161
6. Liberia.....	205
7. <i>'Way Forward'</i> Lessons for Sri Lanka.....	261

Introduction

The Backdrop

Following nearly three decades of conflict that took place in the Northern and Eastern Provinces during the period 1983 to 2009, the adverse effect of which are felt all over the island, Sri Lanka is gradually progressing towards sustainable peace, unity, reconciliation, and development. Despite the end of the conflict between the Government of Sri Lanka (GOSL) and armed groups, including the Liberation Tigers of Tamil Eelam (LTTE), in 2009, the repercussions of the conflict persist. Losses suffered by all communities, particularly in the Northern and Eastern Provinces, have left deep-seated wounds and fostered a lack of trust and confidence among the population. These lingering effects continue to hinder the nation's advancement towards peace and reconciliation.

Although there is no evidence to establish specific numbers, there is consensus based on official governmental reports and reports of non-governmental organizations and civil society organizations that over 100,000¹ lives were lost during the aforesaid conflict and about 40,000² persons have permanent physical injuries. The cost of damages caused to the country's state infrastructure as well as private property is yet to be accurately accounted for.

It is in this backdrop that in 2016, (GOSL) took the initiative to take steps to establish transitional justice in the island, a process that would introduce mechanisms associated with a society's attempt to come to terms with the past conflict, repression, violations and abuses, in order to ensure accountability, serve justice and achieve reconciliation. To this end, GOSL appointed a committee of experts on subjects such as law, human rights, public policy, and post conflict reconciliation, consisting of volunteers and nominees to undertake a detailed study and propose the relevant legislations to be introduced. In addition, a Consultation Task Force on Reconciliation Mechanisms (CTF) comprising of 11 members drawn from civil society was appointed by the Prime Minister in January 2016 to seek the views and comments of the general public on the proposed mechanisms for Transitional Justice (TJ) and reconciliation, as per the October 2015 UN Human Rights Council resolution on Sri Lanka, co-sponsored by the Government of Sri Lanka.³

The CTF held wide spread public consultations across the country between June and September in 2016, and received a total of 7,306 submissions of which 4,872 were made at public meetings, 1,386 were at focus group discussions and 1,048 were sent to the CTF as written submissions. Pursuant to concluding the public consultations, the CTF handed over its Report to the GOSL on 3rd January 2017.⁴

Taking into consideration the observations and recommendations made by the CTF, which were based on ongoing learnings from the aforesaid public consultations, their own research and findings pursuant to studying inter alia the applicable laws and policies in other jurisdictions

¹ 'Sri Lankans disabled by war, forgotten in peace' (*refworld*, 16 September 2015) <<https://web.archive.archive.unhcr.org/20230521094727/https://www.refworld.org/docid/55fbc0d84.html>> accessed 18 March 2024

² *ibid.*

³ *Final Report of the Consultation Task Force on Reconciliation Mechanisms: Executive Summary and Recommendations*, November 2016, at page 83 <<http://www.omp.gov.lk/storage/app/uploads/public/5fa936/dd5/5fa936dd5f074287521469.pdf>> accessed on 18.03.2024

⁴ *ibid.*

where long lasting conflicts have occurred, following which initiatives had been taken to establish mechanisms to deal with transitional justice, the aforesaid committee of experts proposed that four laws should be drafted for consideration and approval by the Parliament of Sri Lanka to deal with transitional justice, namely:

- A draft law for establishing an Office of Missing Persons;
- A draft law for establishing an Office of Reparations,
- A draft law for establishing a Truth Commission, and
- A draft law for establishing a Judicial Mechanism.

In August 2016, of the above-mentioned draft laws, the Bill for establishing the Office of Missing Persons was tabled in Parliament and upon approval by Parliament became operational as Act No. 14 of 2016. The Bill for establishing the Office of Reparations was passed by the Parliament in 2018 and became operational as Act No. 34 of 2018.

Thus, of the four aforementioned legislations which were proposed for establishing transitional justice in Sri Lanka, two have been passed by the Parliament and have become operational. The next law to be passed is the one to establish a truth commission, and the proposed legislation for the Commission for Truth, Unity and Reconciliation (CTUR) was gazetted on January 1st 2024 as a concept paper.

Further to the above mentioned four TJ mechanisms, an office termed as ‘The Office of National Unity and Reconciliation (ONUR)’ was established under the authority of the President of Sri Lanka in terms of the Cabinet Decision dated 8th April 2015, to look into the affairs pertaining to national reconciliation.⁵ Today, ONUR is an institution under the Ministry of Justice with the “primary goal of promoting harmony and unity among Sri Lankans.”⁶ The draft Bill for establishing the Office of National Unity and Reconciliation was considered by the Parliament recently and approved and it became operational as Act No. 1 of 2024.

Establishment of the Interim Secretariat for Truth and Reconciliation in Sri Lanka

In October 2022, a Cabinet Sub-Committee appointed by His Excellency the President to consider *inter alia* the progress made since 2016 on the subject of transitional justice, recommended that steps be taken to finalize the draft for establishing a Truth Commission in Sri Lanka.⁷ In February 2023, having considered the recommendations made by the said Cabinet Sub Committee, the Cabinet of Ministers decided to proceed with the initiative to introduce a law for establishing an independent commission to function as a commission for truth, unity and reconciliation in Sri Lanka, and also proposed that an Interim Secretariat⁸ be established to lay the necessary foundation for successfully introducing such law by refining and improving the draft that was prepared in 2016, pursuant to carrying out stakeholder consultations and undertaking studies of similar legal mechanisms in other relevant jurisdictions.

⁵ Office of National Unity and Reconciliation (ONUR) <<https://onur.gov.lk/>> accessed on 06.05.2024

⁶ *ibid*

⁷ ‘Observations of the GoSL in response to Joint Communication (AL/LKA/2023) dated 13 September 2023 from 06 Special Procedures Mandate Holders’ (OHCHR, 16 November 2023) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37827>> accessed 18 March 2024

⁸ *ibid*

Thereafter, GOSL established the Interim Secretariat for Truth and Reconciliation Mechanism (ISTRM), which is an interim body to undertake the foundational work for establishing an independent commission to be appointed under an Act of Parliament. A Director General was appointed to the ISTRM in May 2023.⁹ The ISTRM was staffed with several full-time and part-time employees functioning under four divisions, namely, Legal, Policy, Public Relations, and Information Technology, from September 2023.

The Mandate of ISTRM and the Country Reports

The Mandate of the ISTRM includes, finalizing the draft law for establishing the proposed Commission for Truth, Unity and Reconciliation (CTUR), carrying out stakeholder consultations to obtain their views, suggestions and recommendations, in order to improve and fine-tune the said draft law, prior to the same being tabled in Parliament, carrying out a detailed research study of selected jurisdictions where truth commissions have functioned, in order to prepare a case-study based ‘way forward’ report for the proposed CTUR.

Of the above, ISTRM has already finalized the first draft of the law as a concept paper, which has been gazetted by the Hon. Minister of Foreign Affairs on 01st January 2024 in order to bring the same within the public domain. The stakeholder consultation process is ongoing and a second review of the said draft law has been performed at the end of the first quarter of 2024, pursuant to considering the stakeholder responses received since November 2023.

The research study undertaken by the ISTRM are of selected jurisdictions where truth commissions have functioned, in order to prepare a case-study based ‘Way Forward’ report for the proposed CTUR has been concluded.

Truth Commissions

Truth commissions are *nonjudicial, independent panels of inquiry*.¹⁰ Their primary role is to investigate and document serious violations of human rights or of international humanitarian law in a country’s past. Another central function of truth commissions is to make recommendations to the government with two main aims: to address violations of the past and to prevent such violations from reoccurring in the future.¹¹ Truth commissions had been established in more than 30 countries to investigate and report on human rights abuses.¹²

The ISTRM has selected a set of truth commissions from 11 jurisdictions to analyse how Sri Lanka can gain insights about contexts and best practices. The selection of the countries are based on their locations, backgrounds, and their socio-economic and political contexts.

⁹ *ibid*

¹⁰ Truth Commissions, *International Centre for Transitional Justice*, 2008, <<https://www.ictj.org/sites/default/files/ICTJ-Global-Truth-Commissions-2008-English.pdf>>accessed on 03.06.2024

¹¹ Elin Skaar, The Implementation record of Truth Commissions’ Recommendations in Latin America, *Cambridge University Press*, 2019, <https://www.cambridge.org/core/books/abs/global-impact-and-legacy-of-truth-commissions/implementation-record-of-truth-commissions-recommendations-in-latin-america/695DABC173CD54C09FF70DB52C0349A4>>accessed on 03.06.2024

¹² Truth Commissions, *International Centre for Transitional Justice*, 2008, <<https://www.ictj.org/sites/default/files/ICTJ-Global-Truth-Commissions-2008-English.pdf>>accessed on 03.06.2024

This volume (Volume 1) of the report prepared by the ISTRM based on the aforementioned study explores the experiences from the following jurisdictions which have experienced conflicts and have established and successfully executed and/or implemented mechanisms and/or instruments for truth seeking and reconciliation:

- Rwanda
- Canada
- East Timor
- Australia
- Liberia

Based on the aforementioned case studies, this volume offers lessons for Sri Lanka.

Country Studies - Abstract of Volume 1

Rwanda

Rwanda is one of the countries that had experienced mass conflict on the scale of the genocide that claimed the lives of the minority group called the Tutsis and their sympathisers of the other groups. Within a space of 4 months almost one million people perished due to civil violence. The scale of the genocide meant that millions had suffered and witnessed crimes first-hand. Rwanda had established courts at a national and international level to assess these crimes. These include the United Nations International Criminal Tribunal for Rwanda (ICTR); the Rwandan national courts; and the Gacaca jurisdictions, (community-level courts overseen by locally elected judges) A significant number of Rwandan witnesses had also testified in genocide cases prosecuted on the basis of extraterritorial jurisdiction in North America and Europe.¹³

Canada

Canada stands out amongst developed countries from the western hemisphere to have held a Truth Commission to respond to the Indian Residential School legacy, to acknowledge injustices experienced by indigenous people and the need for continued healing. This led to significant events including the 1998 'Statement of Reconciliation,' the 2008 apology by Prime Minister Stephen Harper, and the 2012 interim report by the TRC, which identified residential schools as 'an assault' on Indigenous children, families, and culture. It is apparent that Sri Lanka and Canada share similarities in their histories of systemic injustices, ethnic diversity, legacies of colonisation and Canadian reconciliation process specifically addressing the abuses within the residential school system by providing a valuable model for other nations grappling with historical injustices. Canada teaches that meaningful reconciliation requires a comprehensive approach involving symbolic apologies, concrete actions, tailored restorative practices, non-retributive strategies, government commitment, national planning and monitoring, research support, transparency, inclusive storytelling, a vision of positive peace, and public debates. However, the Canadian TRC's victim-centred approach has notable weaknesses, including its inability to prosecute perpetrators, hold formal hearings, or offer amnesty, which undermines accountability for the alleged crimes over the victims of the residential school system. Additionally, the reparation mechanism has faced challenges due to high participant

¹³ Testifying to Genocide: Victim and Witness Protection in Rwanda, REDRESS October 2012, <<https://redress.org/wp-content/uploads/2018/01/Oct-12-Testifying-to-Genocide-Rwanda.pdf>>accessed on 03.06.2024

expectations and the absence of a proper framework for reparations. Despite these challenges, Canada is still progressively achieving its goals. By examining and adapting Canada's approaches, Sri Lanka can develop effective strategies for addressing historical injustices and to build sustainable peace.

East Timor

Studying the truth-seeking process in Asian contexts such as East Timor is imperative due to the region's rich diversity, encompassing unique cultural, religious, and societal dynamics that profoundly shape perceptions of justice, reconciliation, and memory. Asian countries, including East Timor, have grappled with complex histories marked by colonialism, conflict, and human rights abuses, making their truth-seeking processes particularly noteworthy for understanding transitional justice efforts. This analysis focuses on East Timor's Truth and Reconciliation Commission, known by Portuguese acronym CAVR to extract insights applicable to Sri Lanka and beyond. The contextual and historical background of Timor-Leste provides a foundation for understanding the nation's journey from colonial rule to independence amidst tumultuous conflicts. Indonesia's annexation of East Timor led to decades of violence and human rights violations, culminating in a post-independence era characterized by reconciliation efforts and socio-economic development.

Emphasizing its independence and objectives of accountability and reconciliation, the Commission prioritized truth seeking and reconciliation, aiming to restore victims' dignity and promote community cohesion through a systematic approach to patterns of violence through an extensive consultative process. A comprehensive set of programs implemented by the CAVR, focusing on truth-seeking, community reconciliation, and victim support promoting healing, forgiveness, and social cohesion, laying the groundwork for a just and peaceful future.

The Commission's adopted community-oriented approach, participatory methods, and inclusive gender-sensitive initiatives and facilitated transparency and community ownership. Lessons highlight the importance of systematic data collection, structured public hearings, media engagement, and capacity building for staff. Despite challenges, the CAVR's comprehensive approach offers valuable insights for other post-conflict societies. Comparative analysis with Sri Lanka underscores the relevance of East Timor's experience. While Sri Lanka's truth-seeking process remains localized, it can benefit from the CAVR's inclusive and systematic approach. Context-specific strategies tailored to diverse stakeholder perspectives and local justice understandings are essential for establishing effective truth-seeking processes.

East Timor's transitional justice journey provides a roadmap for addressing historical injustices and promoting reconciliation in post-conflict societies. By studying the CAVR's experience, valuable insights can be gleaned to inform truth-seeking efforts in Sri Lanka and beyond, fostering a more inclusive, just, and peaceful future.

Australia

In Australia, a Truth Commission was established as a form of Transitional Justice to face colonial legacies. The indigenous communities of Australia, also known as the First People, had been calling for treaty, truth-telling and historical justice. The announcement for Australia's

first truth and justice process to formally recognize the historic wrongs and address the ongoing injustices against its First People, was made on July 2020, by the Australian State Government of Victoria.¹⁴ Apart from exposing the violent colonial history, truth telling in Australia is also about “*recognising and understanding First Nations connections and care for the country and the vast contributions the First Nations have made to the culture, development and society.*”¹⁵

Liberia

Liberia; Africa’s oldest republic and the only Black state that had never been subjected to colonial rule,¹⁶ had been unstable for a long period due to the civil conflict that went on till 2003. Root causes of the conflict had been attributed to “*poverty, greed, corruption, limited access to education, economic, social, civil and political inequalities; identity conflict; land tenure and distribution; the lack of reliable and appropriate mechanisms for the settlement of disputes; as well as the “duality of the Liberian political, social and legal systems which polarizes and widens the disparities between the Liberian peoples.”*”¹⁷

Liberia’s Truth Commission was the first of its kind to include the diaspora in all aspects of its truth commission’s process.¹⁸ Through this country study, the rationale for diaspora involvement and the legal and policy issues that was considered in the strategy for engaging with the diaspora was examined.

¹⁴ Caitlin Reiger, Australia’s First Truth Commission: Transitional Justice to face Colonial Legacies, July 2020, *JusticeInfo.net*, <<https://www.justiceinfo.net/en/45000-australia-s-first-truth-commission-transitional-justice-to-face-colonial-legacies.html>>accessed on 05.06.2024

¹⁵ History of Truth Telling in Australia, ANTA, 2024, <[¹⁶ Liberia, Britannica, <<https://www.britannica.com/place/Liberia>>accessed on 05.06.2024](https://antar.org.au/issues/truth-telling/history-of-truth-telling-in-australia/#:~:text=Truth%2Dtelling%2C%20then%2C%20is,Australia's%20culture%2C%20development%20and%20society.>accessed on 05.06.2024</p></div><div data-bbox=)

¹⁷ Truth Commission Liberia: *United States Institute of Peace*, <<https://www.usip.org/publications/2006/02/truth-commission-liberia>>accessed on 05.06.2024

¹⁸ Laura A young, Rosalin Park, engaging diasporas in truth commissions: lessons from the Liberia’s Truth & Reconciliation Commission Diaspora Project, *International Household Survey Network*, <https://catalog.ihsn.org/index.php/citations/55606>> accessed on 05.06.2024

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Acronyms

AGs	-	Armed Groups
AMI	-	Association Modeste et Innocent program
CDP	-	Community Development Project
CNLG	-	The Commission addressing issues of Genocide survivors
DDR	-	Disarmament, Demobilization and Reintegration
GMO	-	Gender Monitoring Office
ICTR	-	International Criminal Tribunal for Rwanda
MDRP	-	Demobilization and Reintegration Program
MRND	-	Mouvement Republicain National pour le Developpement
NGO's	-	Non-Governmental Organizations
NLC	-	The National Land Centre
NURC	-	National Unity and Reconciliation Commission
OAU	-	Organization of African Unity
PTSD	-	Post Traumatic Stress Disorder
RANU	-	Rwanda Alliance for National Unity
RDF	-	Rwanda Defence Forces
RDRC	-	Rwanda Demobilization and Reintegration Commission
RPF	-	Rwandan Patriotic Front
SSR	-	Security Sector Reforms
UN	-	United Nations
UNAMIR	-	United Nations Mission in Rwanda
UNAR	-	Union Nationale Rwandaise
UNDP	-	United Nations Development Program
UNHCR	-	United Nations Human Rights Commission
9YBE	-	Nine Years Basic Education

CONTENTS

- CHAPTER 1 **Historical Background**
- 1.1. Pre-colonial history
 - 1.2. Colonization
 - 1.3. Independence
 - 1.4. Post-independence
 - 1.5. Genocide
- CHAPTER 2 **Post Genocide Rwanda**
- 2.1. Congo Wars
 - 2.2. Transitional phase
 - 2.3. 2003 Constitution
 - 2.4. National Policy on Unity and Reconciliation
- CHAPTER 3 **National Unity and Reconciliation Commission: NURC**
- 3.1. NURC mandate
 - 3.2. Nationwide Consultations on Unity & Reconciliation
- CHAPTER 4 **Strengths, Weaknesses and Challenges**
- 4.1. Strengths of the reconciliation process and policy framework
 - 4.2. Negative Impacts of the reconciliation process and the national policy
- CHAPTER 5 **Best Practices and Lessons Learnt**
- 5.1. Forgiveness
 - 5.2. International Criminal Tribunal for Rwanda – ICTR
 - 5.3. Home Grown Initiatives
 - 5.4. How women helped rebuild Rwanda
 - 5.5. National Youth Policy
 - 5.6. National Mental Health Policy
 - 5.7. National Heroes’ Day
 - 5.8. Memorialization
 - 5.9. The Unity and Reconciliation Evaluation Day
- CHAPTER 6 **Organizations that assisted Rwanda’s Reconciliation**

CHAPTER 1

Historical Background

1.1. Pre - colonial history

One of the smallest countries in Africa, Rwanda is landlocked, bordering with Burundi, Uganda, Tanzania, and Zaire often referred to as the ‘Switzerland of Africa’¹ The Twa, Tutsi and Hutu are the major inhabitants in Rwanda. Twa, who have been inhabiting the country since 2000 BC,² represents around 1%³ of the population. They are pygmies who prefer living in forests as hunters.

There had been a scarcity of historical data from the mid-19th century on many African nation states until detailed descriptions by the first European travellers were written.⁴ Rwandans had been identifying themselves according to their clans, hence the description of so-called ethnic groups was laid down by predominantly European travellers.⁵ However there have also been reports on the presence of ‘ethnic diversity’ in the form of occupational status and Hutu/Tutsi ancestry.⁶

Around 1000 AD,⁷ migrating Hutu farmers began displacing the Twas. This migration was a part of the so-called Bantu expansion - *a postulated millenia long series of migrations of the speakers of the original Bantu language group*.⁸ This Bantu speaking population expanded and while co-existing with Twa, organizing themselves into clans or lineages under the leadership of heads or chiefs called the *mwamis*⁹ – who were the land chiefs as well as the ritual leaders.

In the 1300’s,¹⁰ the Tutsis first migrated into this area as part of a large pastoralist migration forming a peaceful settlement.¹¹ By about the 15th century¹² the number of Tutsis pastoralists sharply increased and their relationship took the form of a client-patron contract called the *Ubughake*¹³ where the Hutus used the Tutsi cattle in exchange for personal and military service. The Tutsis used their cattle ownership and advanced combat skills to achieve economic, political and social control over the Hutus.¹⁴

Over time, *Ubughake* became a feudal type of class system that eventually shifted the land ownership away from the Hutus to the Tutsi King/mwami. The subsequent state formation was

¹ ‘Rwanda History’ (*East Africa Living Encyclopaedia, African Studies Centre, University of Pennsylvania*) <<https://www.africa.upenn.edu/NEH/rwhistory.htm>> accessed 12 October 2023

² *ibid.*

³ *ibid.*

⁴ Tor Sellstrom and Lennart Wohlgemuth, ‘Historical Perspectives: Some Explanatory Factors, The International Response to conflict & Genocide; Lessons from the Rwandan Experience’ Study 1, at page 21. <<https://www.oecd.org/derec/unitedstates/50189653.pdf>> accessed 12 October 2023

⁵ *ibid.*

⁶ *ibid.*

⁷ *ibid.*, at page 22.

⁸ ‘The Bantu Migration, Chapter 11, African Civilizations’ (*Lumen Learning*) <<https://courses.lumenlearning.com/sunyhccworldcivilization/chapter/the-bantu-migration/>> accessed 29 January 2024

⁹ *ibid.*

¹⁰ ‘Rwanda Profile Timeline’ (*British Broadcasting Corporation*, 17 September 2018) <<https://www.bbc.com/news/world-africa-14093322>> accessed 13 October 2023

¹¹ Tor Sellstrom and Lennart Wohlgemuth, ‘Historical Perspectives: Some Explanatory Factors, The International Response to conflict & Genocide; Lessons from the Rwandan Experience’ Study 1, at page 21. <<https://www.oecd.org/derec/unitedstates/50189653.pdf>> accessed 12 October 2023

¹² *ibid.*

¹³ ‘Rwanda History’ (*East Africa Living Encyclopaedia, African Studies Centre, University of Pennsylvania*) <<https://www.africa.upenn.edu/NEH/rwhistory.htm>> accessed 12 October 2023

¹⁴ *ibid.*

developed into a Tutsi dominated structure with the Hutus at the middle and lower levels of administration.¹⁵

1.2. Colonization

Until 1961,¹⁶ Rwanda was attached to Burundi, and was called the Rwanda-Urundi region. Rwanda and Burundi were located at the juncture of three empires - the Belgians, the Germans and the British - who wanted the possession of this territory and thus became an object in the diplomatic struggle for possession.¹⁷ The European explorers from these countries were entering Africa to discover unknown facts like the source of the river Nile. The first European who was successful in entering the territories of the Rwanda-Urundi region was a German explorer in June 1894.¹⁸ A second German mission entered this region in March 1897¹⁹ during the reign of *Mwami* Musinga. The German flag was given as a symbol of German authority and *Mwami* Musinga signed an agreement with the Germans which would effectively place Rwanda as a German Protectorate.²⁰

Thereafter, Rwanda, together with Tanzania, Burundi and Mozambique came under the occupation of the German East Africa Company.²¹ The Germans ruled indirectly through the existing political structures created by the *Mwami*. They had also conducted military operations against the Hutu chiefs who were not under the *Mwami*'s control.²² By 1900,²³ the missionaries or 'White Fathers' arrived and established the first missionaries.

After the defeat of the Germans in World War 1,²⁴ the League of Nations*²⁵ mandated Belgium to administer Rwanda and in 1919, Rwanda became a Belgian trust territory under the United Nations.²⁶ During the 40-year period of Belgian rule, disintegration and distortion of indigenous social and political structures ensued.²⁷ It also had the impact of strengthening the socio-

¹⁵ Tor Sellstrom and Lennart Wohlgemuth, 'Historical Perspectives: Some Explanatory Factors, The International Response to conflict & Genocide; Lessons from the Rwandan Experience' Study 1, at pp 21-22.

<<https://www.oecd.org/derec/unitedstates/50189653.pdf>> accessed 12 October 2023

¹⁶ Tony Sullivan, 'A History of Rwanda and Burundi, 1894-1990' (*libcom.org*) <<https://libcom.org/article/history-rwanda-and-burundi-1894-1990-tony-sullivan>> accessed 29 January 2024

¹⁷ 'Rwanda History' (*East Africa Living Encyclopedia, African Studies Centre, University of Pennsylvania*)

<<https://www.africa.upenn.edu/NEH/rwhistory.htm>> accessed 12 October 2023

¹⁸ 'Unit 2: German and Belgian Colonization, History & Citizenship' (*REB e-learning*)

<<https://elearning.reb.rw/course/view.php?id=674§ion=2>> accessed 13 October 2023

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ 'German East Africa' (*Freidburg*) <<https://www.freiburg.de/pb/Len/1335945.html>> accessed 16 October 2023

²² 'Rwanda Profile Timeline' (*British Broadcasting Corporation*, 17 September 2018) <<https://www.bbc.com/news/world-africa-14093322>> accessed 13 October 2023 & Rwanda History, East Africa Living Encyclopaedia, African Studies Centre, University of Pennsylvania, <<https://www.africa.upenn.edu/NEH/rwhistory.htm>>, accessed on 12.10.2023

²³ Anthony Court, 'The Christian Churches, the state, and genocide in Rwanda' *Missionalia* (online) Volume 44 n.1 Pretoria 2016, at page 50, <https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S0256-95072016000100005#:~:text=The%20churches%20first%20gained%20a,permission%20from%20the%20mwami%20or, and http://www.scielo.org.za/pdf/mission/v44n1/05.pdf> accessed on 31.01.2024

²⁴ Tor Sellstrom and Lennart Wohlgemuth, 'Historical Perspectives: Some Explanatory Factors, The International Response to conflict & Genocide; Lessons from the Rwandan Experience' Study 1, at pp 22-23.

<<https://www.oecd.org/derec/unitedstates/50189653.pdf>> accessed 12 October 2023

²⁵ *The League of Nations was established at the end of World War I, as an international peacekeeping organization. Members of the League of Nations were required to respect the territorial integrity and sovereignty of all other nation-states and to disavow the use or threat of military force as a means of resolving international conflicts. The League sought to peacefully resolve territorial disputes between members and was in some cases highly effective.

'The League of Nations' (*Khan Academy*) <<https://www.khanacademy.org/humanities/us-history/rise-to-world-power/us-in-wwi/a/the-league-of-nations>> accessed 29 January 2024

²⁶ 'Brief History' (*The Embassy of the Republic of Rwanda Washington DC USA*) <<https://rwandaembassy.org/about-rwanda>> accessed 16 October 2023

²⁷ *ibid.*

economic divisions²⁸ between the Hutus and the Tutsis. By 1935 the Belgians introduced a discriminatory national identification based on ethnicity.²⁹ At first, they favoured the Kings and their chiefs who were from the Tutsi ruling elite, and considered the Tutsis to be superior to Hutus. The Tutsis welcomed this idea and for almost a period of 20 years, they enjoyed better jobs and educational opportunities. As a result, gradual resentments built up among the Hutus.³⁰ The Belgians imposed a Ten-Year Development Plan (1951-1960)³¹ on socio-economic reforms which gradually established social domination by the Hutu majority.

When the demand for independence began in 1959³² by a group of the Tutsi ruling elite called UNAR – Union Nationale Rwandaise - the Belgian authorities started nurturing the Hutus' party called Parmehutu.³³

In 1959, the first massacres of the Tutsi by the Hutu occurred under Belgian supervision. Hutus abolished the monarchy amidst widespread violence.³⁴ This rebellion lasted from 1959-1961 and was called the 'Hutu Peasant Revolution' or the 'social revolution.'³⁵ Although initially the number of victims were not many, the attempts by the Tutsi led traditional power elite to maintain their authority led to violent clashes. Around 300,000 Tutsis fled from Rwanda to Uganda, Congo and Burundi.³⁶

1.3. Independence

The revolutionary transition from a Tutsi dominated monarchy to a Hutu led republic took place between November 1959 and September 1961.³⁷

An election and a referendum were held under the auspices of the UN in September 1961.³⁸ The two referendum questions were, whether the monarchy should be retained after independence the following year, and whether the incumbent, Kigeli V, should remain King. The result was a "no" to both questions from 80%³⁹ of voters, with a 95%⁴⁰ turnout. And the subsequent

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ 'Rwanda: How the genocide happened' (*BBC News Africa*, 17 May 2011) <<https://www.bbc.com/news/world-africa-13431486>> accessed 17 October 2023

³¹ 'Rwanda History' (*East Africa Living Encyclopedia, African Studies Centre, University of Pennsylvania*) <<https://www.africa.upenn.edu/NEH/rwhistory.htm>> accessed 12 October 2023

³² 'Chapter 2, The Political Background'

<<https://www.thecommonwealthibrary.org/index.php/comsec/catalog/download/288/285/2283?inline=1>> accessed 31 January 2024

³³ 'Brief History' (*The Embassy of the Republic of Rwanda Washington DC USA*) <<https://rwandaembassy.org/about-rwanda>> accessed 16 October 2023

³⁴ *ibid.*

³⁵ 'Rwanda: A Brief History of the Country, Outreach Programme on the 1994 Genocide against the Tutsi in Rwanda and the United Nations' (*United Nations*) <<https://www.un.org/en/preventgenocide/rwanda/historical-background.shtml>> accessed 17 October 2023

³⁶ 'Divided by Ethnicity' (*Unites States Holocaust Memorial Museum*) <<https://www.ushmm.org/genocide-prevention/countries/rwanda/divided-by-ethnicity>> accessed 17 October 2023

³⁷ Tor Sellstrom and Lennart Wohlgenuth, 'Historical Perspectives: Some Explanatory Factors, The International Response to conflict & Genocide; Lessons from the Rwandan Experience' Study 1, at page 29. <<https://www.oecd.org/derec/unitedstates/50189653.pdf>> accessed 12 October 2023

³⁸ Barry Turner, *Rwanda* (eds) in *The Statesman's Yearbook* (Palgrave Macmillan, London 2003)

³⁹ '1961 Rwandan Monarchy Referendum' (*DBpedia*) <https://dbpedia.org/page/1961_Rwandan_monarchy_referendum> accessed 6 March 2024

⁴⁰ *ibid.*

parliamentary elections showed a corresponding clear victory for the Hutu dominated parties.⁴¹ This signified the end of Tutsi domination and the sharpening of ethnic tensions.⁴²

The above-mentioned election that resulted in an overwhelming majority for the Republican Party,⁴³ culminated with the proclamation for independence to Rwanda on July 1st, 1962. The subsequent ethnic division of the country can be traced to this crucial period.

The Belgian authorities shifting their support from Tutsi aristocrats to Hutu majoritarianism led to a cycle of power struggle.⁴⁴ Instead of crushing the revolt, the Belgians adopted a de facto pro-Hutu policy by appointing Hutu chiefs in place of the Tutsi incumbents who had fled or been killed in the uprising.⁴⁵ Thereafter they imposed a new policy for positions based on ethnic proportionality.⁴⁶ The elections reflected the ‘turning of the tables’ and against this backdrop the *Mwami* at that time, Tutsi King Kigeri V, together with tens of thousands of Tutsis were forced into exile to Uganda.⁴⁷

What began as a peasant revolt transformed into an organized political movement to overthrow the monarchy and vest total political power to the Hutus. A crushing victory to the Hutu led party at the parliamentary elections took place in September 1961 with 78% of votes, whilst UNAR (Tutsi led party) gained only 17%.⁴⁸

In October 1961, Gregoire Kayibanda, a Hutu, became the first Republican President.⁴⁹ Eight months later, in July 1962, Rwanda and Burundi gained formal independence as two sovereign states.⁵⁰

1.4. Post-Independence

FIRST REPUBLIC

A new cycle of violence continued after independence. Kayibandu’s party preached hatred against Tutsis, referring to them as snakes and cockroaches thereby marginalizing and discriminating against them and forcing them into exile. Tutsi refugees in Tanzania and Zaire seeking to regain their former positions in Rwanda began organizing attacks on the Hutu government and targets. Between the periods of 1962-1967 ten such attacks occurred.⁵¹ This led to retaliatory killings of a large number of Tutsis in Rwanda, causing another large wave of refugees into the neighbouring areas.⁵² Tutsis who remained in the country were excluded from

⁴¹ *ibid.*

⁴² ‘Rwanda: A Brief History of the Country, Outreach Programme on the 1994 Genocide against the Tutsi in Rwanda and the United Nations’ (*United Nations*) <<https://www.un.org/en/preventgenocide/rwanda/historical-background.shtml>> accessed 17 October 2023

⁴³ Barry Turner, *Rwanda* (eds) in *The Statesman’s Yearbook* (Palgrave Macmillan, London 2003)

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ ‘Rwanda Profile Timeline’ (*British Broadcasting Corporation*, 17 September 2018) <<https://www.bbc.com/news/world-africa-14093322>> accessed 13 October 2023

⁴⁸ Tor Sellstrom and Lennart Wohlgemuth, ‘Historical Perspectives: Some Explanatory Factors, The International Response to conflict & Genocide; Lessons from the Rwandan Experience’ Study 1, at page 30. <<https://www.oecd.org/derec/unitedstates/50189653.pdf>> accessed 12 October 2023

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ ‘Rwanda: A Brief History of the Country, Outreach Programme on the 1994 Genocide against the Tutsi in Rwanda and the United Nations’ (*United Nations*) <<https://www.un.org/en/preventgenocide/rwanda/historical-background.shtml>> accessed 17 October 2023

⁵² *ibid.*

civil and political rights, denying their right to education, right to employment and other human rights.⁵³ The State used this situation to encourage radicalism.

SECOND REPUBLIC

In 1973, Kayibanda's presidency came to an end when he was overthrown in a bloodless coup led by Major General Juvenal Habyarimana.⁵⁴ The nation was put under military rule until 1978 (when a new constitution was propagated and he established himself as the president). He created a single party state consisting of only his party, **Mouvement Republicain National pour le Developpement – MRND**, in charge of the government which pursued the same discriminatory policies against the Tutsis. All political activities outside MRND were banned.⁵⁵ He escaped an attempted coup against his government in 1980 and used the anti-Tutsi sentiment to stay in power.⁵⁶

The discriminatory policies and MRND's lack of respect for democracy, basic human rights and rule of law, led the Tutsi refugees in Uganda, along with the moderate Hutus⁵⁷ to form the **Rwanda Alliance for National Unity - RANU**, who later transformed into the **Rwandan Patriotic Front**⁵⁸ -RPF, who started the liberation war in 1990, with the intent to fight for human rights and democratic change in Rwanda.⁵⁹ Their aim was to overthrow Habyarimana and secure their right to return to Rwanda, and stop the regimes genocide against Tutsis.⁶⁰

Habyarimana attempted to unite all the Hutus to campaign against the Tutsis; and Tutsis inside Rwanda were accused of collaborating with the RPF. Tensions between the Tutsis and the Hutus flared in the form of civil/liberation wars when the RPF from Uganda invaded Rwanda. Media continued to spread rumours against the 'Tutsi invaders' that further inflamed ethnic hostilities.⁶¹

The rival factions that emerged amongst the Hutu moderates in Rwanda desired an end to the supremacy campaign, create a multi-party system and end corruption and democratize Rwanda.⁶² Habyarimana was becoming unpopular due to corruption, power monopolization, fraud, and weakening the state. After heavy national and international pressure, in March 1991 Habyarimana agreed to a cease fire and a new multi-party constitution was promulgated, thereby forcing him to share power with the moderate Hutus who emerged victorious in the parliamentary elections in 1992.⁶³ They pushed for negotiations with the Tutsi leaders of RPF,

⁵³ National Unity & Reconciliation Commission, Republic of Rwanda, *Unity & reconciliation Process in Rwanda*, December 2016, at page 20, <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed on 17.10.2023

⁵⁴ 'Rwanda History' (*East Africa Living Encyclopaedia, African Studies Centre, University of Pennsylvania*) <<https://www.africa.upenn.edu/NEH/rwhistory.htm>> accessed 12 October 2023

⁵⁵ Paul Foyart, 'Juvenal Habyarimana (1937-1994)' (*Black Past*, 25 March 2018) <<https://www.blackpast.org/global-african-history/habyarimana-juvenal-1937-1994/>> accessed 17 October 2023

⁵⁶ *ibid.*

⁵⁷ National Unity & Reconciliation Commission, Republic of Rwanda, *Unity & reconciliation Process in Rwanda*, December 2016, at page 25, <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed on 17.10.2023

⁵⁸ 'Rwanda: How the genocide happened' (*BBC News Africa*, 17 May 2011) <<https://www.bbc.com/news/world-africa-13431486>> accessed 17 October 2023

⁵⁹ National Unity & Reconciliation Commission, Republic of Rwanda, *Unity & reconciliation Process in Rwanda*, December 2016, at page 22, <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed on 17.10.2023

⁶⁰ 'Rwanda: How the genocide happened' (*BBC News Africa*, 17 May 2011) <<https://www.bbc.com/news/world-africa-13431486>> accessed 17 October 2023

⁶¹ *ibid.*

⁶² Paul Foyart, 'Juvenal Habyarimana (1937-1994)' (*Black Past*, 25 March 2018) <<https://www.blackpast.org/global-african-history/habyarimana-juvenal-1937-1994/>> accessed 17 October 2023

⁶³ *ibid.*

in order to find a solution to the war situation confronting the Rwandese people and signed an agreement in Arusha Tanzania – called the ARUSHA PEACE AGREEMENT/ACCORD.⁶⁴

The civil war between the RPF and the Rwandan Armed Forces gathered international attention, which helped in establishing this peace agreement and sponsoring a United Nations mission on the ground in Rwanda to enforce the peace call **UNAMIR – United Nations Mission in Rwanda**.⁶⁵

In addition to power sharing provisions, the aforesaid accord also provided for a **Unity and Reconciliation Commission**.⁶⁶ Chapter 4, Article 24 of the Protocol of Agreement on Power-Sharing within the Framework of a Broad-Based Transitional Government between the Government of the Republic of Rwanda and the Rwandese Patriotic Front⁶⁷ calls for the establishment of a specialized commission called the “**Commission for National Unity and National Reconciliation**” – to achieve peace and educate the Rwandese on unity and reconciliation.⁶⁸

Chapter 4 Articles 15 and 16 of the Protocol of Agreement between the Government of Republic of Rwanda and the Rwandese Patriotic Front on the Rule of Law aimed to establish a National Commission on Human Rights and an International Commission of Enquiry to investigate human rights violations committed during the war.⁶⁹

Nonetheless, parallel to these negotiations the Hutu extremists of the Habyarimana regime, were crafting ‘an apocalypse’ – the 1994 genocide against the Tutsis.⁷⁰

1.5. Genocide

The Hutu extremists started opposing the new peace deal. Hutu owned broadcasting stations spread messages condemning Tutsis and their supporters. President Habyarimana who accepted the agreements, was assassinated in April 1994 by Hutu extremists. Hutu supremacists falsely blamed the Tutsis for this, resulting in intense ethnic violence in the form of a chilling and a well-organized extermination of the Tutsis⁷¹ by the Hutu militias; although those responsible for the president’s assassination hadn’t been established.

The violence that followed was one of the worst in the history of mankind. Within just 100 days (beginning on April 6th and ending in mid-July 1994),⁷² the Hutu militia or the Rwandan Armed

⁶⁴ See the link for the Accords: <https://peaceaccords.nd.edu/wp-content/accords/Rwanda_Peace_Accord.pdf> accessed 18 March 2024

⁶⁵ ‘Genocide against the Tutsis in Rwanda’ (University of South Carolina Shoah Foundation) <<https://sfi.usc.edu/collections/rwandan#:~:text=During%20this%20time%2C%20some%20of,difficult%20time%20for%20Rwanda's%20rulers>> accessed 17 October 2023

⁶⁶ National Unity & Reconciliation Commission, Republic of Rwanda, *Unity & reconciliation Process in Rwanda*, December 2016, at page 27, <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>, >accessed on 17.10.2023

⁶⁷ See the Link for the Protocol on Power sharing: <https://peaceaccords.nd.edu/wp-content/accords/Rwanda_Peace_Accord.pdf> accessed 18 March 2024

⁶⁸ Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front 1993, <https://peaceaccords.nd.edu/wp-content/accords/Rwanda_Peace_Accord.pdf,> accessed on 18.03.2024

⁶⁹ *ibid.*

⁷⁰ National Unity & Reconciliation Commission, Republic of Rwanda, *Unity & reconciliation Process in Rwanda*, December 2016, at page 22, <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>, >accessed on 17.10.2023

⁷¹ Bridget Johnson., ‘Why is there conflict between Hutus and Tutsis’ (*ThoughtCo.*, 13 February 2020) <<https://www.thoughtco.com/location-of-conflict-tutsis-and-hutus-3554918>> accessed 17 October 2023

⁷² ‘Genocide’ (*Britannica*) <<https://www.britannica.com/event/Rwanda-genocide-of-1994/Genocide#ref1111307>> accessed 31 January 2024

Forces (FAR in French) targeted Tutsis, moderate Hutus and even Twas, and an estimated 800,000 people were killed, thousands were maimed, raped, physically and psychologically afflicted for life; around two million fled to neighbouring countries and one million were internally displaced.⁷³

Prime Minister Agatha Uwilingiyamana, a moderate Hutu and 10 of her guards who were Belgian soldiers, part of the UN peacekeeping force was also killed,⁷⁴ as part of a campaign to eliminate moderate Hutu or Tutsi politicians.⁷⁵

There was a wave of mass killings in the following months. The UN's unsuccessful attempts to mediate a ceasefire deepened the crisis, and the decision to reduce the UNAMIR troops in Rwanda from 2,500 to 270, at the time when assistance was sorely needed, had a significant impact on this situation.⁷⁶

⁷³ Bridget Johnson., 'Why is there conflict between Hutus and Tutsis' (*ThoughtCo.*, 13 February 2020) <<https://www.thoughtco.com/location-of-conflict-tutsis-and-hutus-3554918>> accessed 17 October 2023

⁷⁴ The Editors of Encyclopaedia Britannica, 'Rwanda genocide of 1994' (*Britannica*) <www.britannica.com/event/Rwanda-genocide-of-1994/Genocide> accessed 17 October 2023

⁷⁵ 'Genocide and aftermath' (*Britannica*) <<https://www.britannica.com/place/Rwanda/Genocide-and-aftermath#ref975751>> accessed 31 January 2024

⁷⁶ 'Genocide' (*Britannica*) <<https://www.britannica.com/event/Rwanda-genocide-of-1994/Genocide#ref1111307>> accessed 31 January 2024

CHAPTER 2

Post Genocide Rwanda

2.1. Congo Wars

Ten Weeks after the beginning of the genocide, (23rd June to 21st August 1994),⁷⁷ the UN Security Council authorized the French army to intervene under “Operation Turquoise”⁷⁸ to provide a safe zone in the western part of the Country. This operation was opposed by the RPF, since France had always supported President Habyarimana’s government and policies.⁷⁹ Although this intervention saved lives, it also became the means for the FAR members to escape to Zaire, Tanzania and Burundi rapidly establishing refugee camps.⁸⁰

The rebel army RPF who rejected the Hutu extremist interim government that was instituted in April, resumed fighting, making rapid territorial gains, successfully securing most of the country and capturing the capital Kigali in July 1994.⁸¹ The genocide came to an end with the Hutu interim government collapsing and when the RPF declared a ceasefire.⁸² As the RPF victory became apparent, an estimated two million Hutus fled to Zaire (the present day Congo); many of whom were responsible for the genocide, pushing others under threat and others due to fear of RPF reprisals.⁸³

The refugee camps that were rapidly set out were under the control of the ‘refugee leaders’,⁸⁴ responsible for the genocide, who transformed the camps into rear bases seeking the reconquest of Rwanda through propaganda, violence and threat against refugees who wanted to be repatriated. They took control of the food and relief distribution, deliberately inflating the number of the refugees to obtain more supplies. Those who repeatedly disobeyed them were killed, thereby creating an atmosphere of permanent insecurity. Violence, intimidation, illegal



⁷⁷ ‘Rwandan Refugee Camps in Zaire & Tanzania 1994-1995’ (Médecins Sans Frontières. April 20040
<<https://www.msf.org/sites/default/files/2019-04/MSF%20Speaking%20Out%20Rwandan%20Refugee%20camps%201995-1995.pdf>> accessed 23 October 2023

⁷⁸ *ibid.*

⁷⁹ ‘Genocide’ (*Britannica*) <<https://www.britannica.com/event/Rwanda-genocide-of-1994/Genocide#ref1111307>> accessed 31 January 2024

⁸⁰ ‘Rwandan Refugee Camps in Zaire & Tanzania 1994-1995’ (Médecins Sans Frontières. April 20040
<<https://www.msf.org/sites/default/files/2019-04/MSF%20Speaking%20Out%20Rwandan%20Refugee%20camps%201995-1995.pdf>> accessed 23 October 2023

⁸¹ ‘Genocide’ (*Britannica*) <<https://www.britannica.com/event/Rwanda-genocide-of-1994/Genocide#ref1111307>> accessed 31 January 2024

⁸² *ibid.*

⁸³ ‘Rwandan Refugee Camps in Zaire & Tanzania 1994-1995’ (Médecins Sans Frontières. April 2004)
<<https://www.msf.org/sites/default/files/2019-04/MSF%20Speaking%20Out%20Rwandan%20Refugee%20camps%201995-1995.pdf>> accessed 23 October 2023

⁸⁴ *ibid.*

taxation, vandalism and, most of all, violent actions against innocent refugees were largely reported by the UNHCR officials. They wrote, "*We are in a state of virtual war in the camps.*"⁸⁵

As a result of the aforesaid crisis Rwanda was left with a very traumatized and a vulnerable population. The entire infrastructure including schools, factories, hospitals etc. were totally destroyed or looted. Law and order were completely broken down and judicial institutions had ceased to exist. In addition, a cloud of uncertainty persisted, as the defeated government, ex forces and militia, who fled to the neighbouring countries, began to reorganize themselves to continue their genocidal campaigns and other forms of actions.⁸⁶

With the fleeing of many of the perpetrators of genocide to Zaire, the epicentre of violence shifted from Rwanda to Zaire.⁸⁷ The first Congo War (1996-1997⁸⁸) began when the Hutu extremists who entered Zaire (present day Congo) began organizing militia within Zaire. Pressure intensified as Tutsi militias began to organize against the Hutu groups. The RPF launched an invasion into Zaire based on the claim allegedly that the Hutu groups were still a threat to the Tutsi population and that the Zaire regime was harbouring the Hutus. A subsequent attack was launched with the support of Zaire's opposition.

The second Congo War broke out in 1998 with a reversal of alliances by the Congo government who allowed the Hutu armed groups to organize at the border once again. Rwanda responded by invading in 1998.⁸⁹

2.2. Transitional Phase

*'Enlarged Transitional Government'*⁹⁰

When the Tutsi led RPF took over the country in July 1994, Rwanda had acquired the reputation as a failed state.⁹¹ Those who lived in Rwanda and those who came back from exile both had painful experiences. However, there was an overwhelming realization that the only hope for creating a peaceful, democratic society lay in reconciliation.⁹²

As the first mechanism for national unity,⁹³ The Rwandan Patriotic Front - RPF – established a transitional national government, for a term of 5 years (later extended to 9), with four other political parties who hadn't taken part in the genocide against Tutsis.⁹⁴ RPF formed an

⁸⁵ Howard Adelman, 'The Use and Abuse of Refugees in Zaire April 1996 to March 1997' (*Stanford.edu*) <https://web.stanford.edu/~stedman/2001_readings/Zaire.htm> accessed 23 October 2023

⁸⁶ National Unity & Reconciliation Commission, Republic of Rwanda, *Unity & reconciliation Process in Rwanda*, December 2016, at page 99, <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>>, accessed on 17.10.2023.

⁸⁷ Dennis B. Klein, *Societies Emerging from Conflict: The Aftermath of Atrocity* (Cambridge Scholars Publishing 2017) 96.

⁸⁸ 'Conflict in the Democratic Republic of Congo' (*Centre for Preventive Action*) <<https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo>> accessed 23 October 2023

⁸⁹ *ibid.*

⁹⁰ 'Power sharing Transitional Government Arusha Accord' (*Peace Accords Matrix, University of Notre Dame*) <<https://peaceaccords.nd.edu/provision/powersharing-transitional-government-arusha-accord-4-august-1993>> accessed 23 October 2023

⁹¹ Ezechiel Sentama, 'National Reconciliation in Rwanda: Experiences & Lessons Learnt' EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

⁹² *ibid.*

⁹³ National Unity & Reconciliation Commission, Republic of Rwanda, *Unity & reconciliation Process in Rwanda*, December 2016, at page 39, <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>>, accessed on 17.10.2023

⁹⁴ 'Rwanda: How the genocide happened' (*BBC News Africa*, 17 May 2011) <<https://www.bbc.com/news/world-africa-13431486>> accessed 17 October 2023

administration based on the principles of power sharing, consensus building and national reconciliation which were also the basis of the 1993 Arusha Accords.⁹⁵

Pasteur Bizimungu, a Hutu, became the president and RPF leader Paul Kagame, a Tutsi, became the vice president. The government's priorities were security, rebuilding the economy and national reconciliation whilst prohibiting any official recognition of ethnicity.⁹⁶ **According to the words of the new government, national unity and reconciliation “was not an alternative, but it was the only option to survival.”⁹⁷**

In June 1994, various stakeholders were invited to put forward ideas for a transitional government.⁹⁸ Between the period of July 1994 and 2000,⁹⁹ the government of National Unity, with the help of the international community, state organizations and civil society embarked on the reconstruction of Rwanda, designing policies and programs for economic recovery and social wellbeing.

URUGWIRO Village Discussions

Pursuant to 4 years of post-conflict rehabilitation from 1994, the government in 1998 organized the *Urugwiro* Village Discussions,¹⁰⁰ for a long-lasting transformation of the country. These discussions took place once a week from May 1998 until March 1999 leading to political direction to strengthen national unity, placing the citizens at the centre of the development strategies, setting up major institutions of new Rwanda, the 2003 Constitution and the National Unity and Reconciliation Commission. The Gacaca Courts and the Vision 2020 strategy for economic transformations were also conceived at *Urugwiro*.¹⁰¹

Gradually, the government of National Unity restored peace and security; by settling the majority of refugees and displaced people, restoring democracy and rule of law, embarking on decentralization, promoting policies of national unity; which transformed the political landscape of the country. The presidential and legislative elections in 2003 marked the end of the period of the post genocide transition.¹⁰²

⁹⁵ 'Chapter 2, The Political Background'

<<https://www.thecommonwealthibrary.org/index.php/comsec/catalog/download/288/285/2283?inline=1>> accessed 31 January 2024

⁹⁶ *ibid.*

⁹⁷ Ezechiel Sentama, 'National Reconciliation in Rwanda: Experiences & Lessons Learnt' EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

⁹⁸ National Unity and Reconciliation Commission, *History of Rwanda: From the Beginning to the End of the Twentieth Century* (Kigali, 2016)

<http://197.243.22.137/nurc7/index.php?id=70&no_cache=1&tx_drblob_pi1%5BdownloadUid%5D=86> accessed 24 October 2023

⁹⁹ *ibid.*

¹⁰⁰ 'Post Genocide Rwanda' (*Rwandapedia*) <<https://rwandapedia.rw/country/today>> accessed 24 October 2023

¹⁰¹ 'Country Profile' (*Rwandapedia*) <<https://rwandapedia.rw/country/today>> accessed 31 January 2024

¹⁰² National Unity and Reconciliation Commission, *History of Rwanda: From the Beginning to the End of the Twentieth Century* (Kigali, 2016)

<http://197.243.22.137/nurc7/index.php?id=70&no_cache=1&tx_drblob_pi1%5BdownloadUid%5D=86> accessed 24 October 2023

2.3. 2003 Constitution

A new constitution was adopted by a referendum in May 2003 and abolished the 1991 constitution.¹⁰³ **It starts by condemning the Rwandan genocide in the preamble and expresses hope for reconciliation and prosperity.** It provided for multi-party politics and sought to prevent Hutu or Tutsi supremacy over political power.

Article 10 included a gender quota to ensure gender equality and women's representation in decision making.¹⁰⁴

Article 143 of the constitution established specialized courts called the Gacaca Courts.¹⁰⁵

Article 168, under the title Decentralized Authorities, established the National Dialogue Council.¹⁰⁶

Article 178 established an independent national institution called the National Unity and Reconciliation Commission – NURC.¹⁰⁷

2.4. Policy on National Unity and Reconciliation

The policy agenda on reconciliation was aligned under the theme of **“One Rwanda for all Rwandan.”** The National Policy on unity and reconciliation is based on the principles set out in Articles 9 and 178 of the 2003 Constitution, ideas from the Vision 2020 and closely related to the contents of the Arusha Accords and the *Urugwiro* Consultations.¹⁰⁸

Unity and reconciliation for Rwanda will depend on achieving good governance, rule of law, improvement of human rights and the welfare of citizens. Hence the national policy acts as the monitoring and evaluating tool to measure achievements, encounter challenges and facilitate the change of mind-set.¹⁰⁹

The objectives of the policy are to build a united Rwanda with equal rights to all, to fight against the genocide ideology, divisionism and discrimination, to empower Rwandans, to promote human rights, tolerance, trust, values that contribute to unity, mentor and sensitize Rwandans on patriotic values.

In order to achieve these objectives, the policy outlined a set of strategic tools¹¹⁰

- Civic Education – to educate people on respecting and defending the Constitution; on their rights, rights of others and to fight for and defend their rights; on the principles

¹⁰³ ‘Constitution of the Republic of Rwanda and its amendments of 2 December 2003 and of 8 December 2005’ (*Refworld*) <<https://www.refworld.org/docid/46c5b1f52.html>> accessed 24 October 2023

¹⁰⁴ Ritwick Dutta, ‘Rwanda’s 30% gender quota led to the world’s largest share of women in government’ (*Inequality Solutions*, 6 June 2023) <<https://www.sdg16.plus/policies/rwandas-30-percent-gender-quota-led-to-the-worlds-largest-share-of-women-in-government/>> accessed 2 February 2024

¹⁰⁵ ‘Constitution of the Republic of Rwanda and its amendments of 2 December 2003 and of 8 December 2005’ (*Refworld*) <<https://www.refworld.org/docid/46c5b1f52.html>> accessed 24 October 2023

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.*

¹⁰⁸ National Unity and Reconciliation Commission, *The National Policy on Unity & reconciliation*, September 2007, <http://197.243.22.137/nurc7/index.php?id=70&no_cache=1&tx_drblob_pi1%5BdownloadUId%5D=26> accessed 24 October 2023

¹⁰⁹ *ibid.*

¹¹⁰ National Unity & Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

embedded in Vision 2020; on the meaning of the symbols of the national emblems; inculcate a culture of peace among family members and youth; entrench peace education exchanges; ensure History of Rwanda is taught at all levels and unity and reconciliation is included in the school curricula; Faculty of unity and reconciliation to be established in all universities; empower exemplary leadership; unity programs targeting diaspora.¹¹¹

- Community Sensitization – sensitizing people that the family is the foundation of unity, mentor children on patriotism, fidelity, trustworthiness, integrity, interdependency; renewed relationships based on mutual trust; choice of names for children that doesn't reflect hatred and divisionism; respond positively to government programs; work together on self-healing and healing one another; importance of analyzing issues; sensitizing civil society, religious institutions and media on their role in promoting unity; educating citizens to take ownership of policies that promote national unity; fight genocide ideologies and divisionism; clarify genocide ideologies and the laws against it.¹¹²
- Advocacy - support activities promoting unity and reconciliation, commemoration of genocide victims, initiatives assisting genocide survivors; monitor if the laws and government programs adhere to the principles of unity and reconciliation; fight against all forms of injustice, eradicate culture of impunity, ensure the function of rule of law; improve living conditions and promote socio economic development.¹¹³
- Research Work – carry out research on cultural values that could be used as a catalyst in promoting unity, prevailing obstacles to unity and strategies to mitigate conflicts and to avail a well-researched credible history of Rwanda so that citizens will know their past, understand their present and decide on their future; disseminate ideas and publications on peace, unity and reconciliation.¹¹⁴
- Community Consultations – provide a safe forum to contribute to social cohesion; promote a culture of constructive exchange, and respect the ideas of others.¹¹⁵
- Promotion of Partnership – to have consultative forums and promote programs with institutions on peace and reconciliation;¹¹⁶
- Fight against poverty and ignorance – sensitize parents to send their children to school; promote the culture of creating jobs rather than looking for employment; to join profit making associations and cooperatives; sensitize the diaspora to participate in the economic development; and sensitize private sector to invest in rural areas.¹¹⁷
- Monitoring and Evaluation – to check if all partners are diligently implementing the national policy and if the resolutions are executed; put in place basic indicators for

¹¹¹ ibid.

¹¹² ibid.

¹¹³ ibid.

¹¹⁴ ibid.

¹¹⁵ ibid.

¹¹⁶ ibid.

¹¹⁷ ibid.

evaluation; effective mechanisms to mitigate divisionism; denounce divisive activities or publications; capacity building of all partners in the areas of peace and unity.¹¹⁸

Government and non-government entities, including, parastatal organizations, decentralized entities, civil societies, private sector, donor communities, religious institutions, media, political parties and the general Rwandan society, must follow the policy on national unity and reconciliation in their day-to-day activities, such as planning, performing of contracts, budgeting etc, as a responsibility to a promote Rwandan nationalism.¹¹⁹

¹¹⁸ *ibid.*

¹¹⁹ Ezechiel Sentama, 'National Reconciliation in Rwanda: Experiences & Lessons Learnt' EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

CHAPTER 3

National Unity and Reconciliation Commission (NURC)

3.1. NURC mandate

The major instrument of achieving the policy of reconciliation and restoration of national unity was the National Unity and Reconciliation Commission (NURC), set up by the Government of National Unity Law No. 03/99.¹²⁰ It has the obligation of ensuring the proper implementation of the policy, and to coordinate and closely monitor how stakeholders and partner institutions implement this policy. They provide a comprehensive set of guidelines to fulfil this obligation.

Due to intervening violence the NURC was not officially set up until March 1999.¹²¹ **The Commission became a permanent body in 2002¹²² and continues to function to the present day.** NURC marks a major milestone in changing fundamentally the effects of bad governance based on discrimination and exclusion.

The commission identifies ‘reconciliation’ as, “*a consensus practice of citizens who have common nationality, who share the same culture and have equal rights; citizens characterized by trust, tolerance, mutual respect, equality, complementary roles/interdependence, truth, and healing or one another’s wounds inflicted by our [Rwanda’s] history, with the objectives of laying a foundation for sustainable development*”.¹²³

NURC’s mission is to *Promote Unity, Reconciliation, and social cohesion among Rwandans and build a country in which everyone has equal rights and contributing towards good governance.*

The Prime Minister and Minister of Justice are responsible for the implementation for the NURC law (Article 14)

The legislation referred above which established the NURC shows that the Unity and reconciliation model of Rwanda is towards a ‘national’ ethos and is both retrospective and progressive; and follows the principles of new Rwandan identity, healing, forgiveness, truth telling, combating genocide ideology and commemorating the genocide with the aim of making ‘Never again’ a reality. Ownership of the reconciliation process was made paramount for every Rwandan, through strong political will, good governance and a combination of home grown and community-based mechanisms rooted in Rwanda’s culture.¹²⁴

Grassroot and national consultative meetings organized by the Government of National Unity on unity, justice, democracy, national economy and national security, gave a common

¹²⁰ National Unity and Reconciliation Commission, *History of Rwanda: From the Beginning to the End of the Twentieth Century* (Kigali, 2016)

<http://197.243.22.137/nurc7/index.php?id=70&no_cache=1&tx_drblob_pi1%5BdownloadUId%5D=86> accessed 24 October 2023

¹²¹ ‘Truth Commission: Rwanda 99’ (*United States Institute of Peace*, 1 March 1999)

<<https://www.usip.org/publications/1999/03/truth-commission-rwanda-99>> accessed 23 October 2023

¹²² *ibid.*

¹²³ National Unity & Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016

<<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

¹²⁴ *ibid.*

understanding of the difficult legacy of Rwanda's unpleasant past, and to explore a common vision of the peaceful and prosperous future of Rwanda.¹²⁵

These meetings led to the conclusion that the Unity and Reconciliation process is a cornerstone to all national efforts and a basis for combating all forms of discrimination and exclusion that characterized Rwandans for decades. It was also concluded that there was a need to reshape the Rwandan culture through the promotion of good values that empower Rwandans to own the process. Around Rwanda's vision to be "a united, democratic and prosperous country," these values, drawn from Rwanda's constructive culture, include: patriotism for Rwanda and Rwandans, better ethical practices, good behaviour appreciated by others, living in peace with other people, mutual help, respect, integrity and patience"¹²⁶

"The restoration of the Rwandan identity and a sense of solidarity among Rwandans toward the ownership of their destiny"¹²⁷ was successful by the various programs and strategies adopted by the NURC in compliance with its mandate that constructively laid the groundwork for reconciliation and ended the transition period successfully.

NURC, drew on aspects of the Rwandan culture and traditional practices to enrich and adapt its development programs to the country's needs and context—Unity and Reconciliation based development, at a higher level.¹²⁸ The result was a set of home-grown and community-based solutions, which were translated into sustainable development programs; many having reshaped the universal mechanisms that appeared less or non-reconciliatory.

These homegrown and community-based mechanisms, which portray the unique experience of Rwanda, include but are not limited to: *Umuganda* (Collective Action), *Girinka* (One Cow per Poor Family Program), *Imihigo* (Performance Contracts), *Abunzi* (Mediation Committees), *Gacaca* (Local Community Courts), *Ingando* (Solidarity Camps), *Ubudehe* (Community Work), *Umushyikirano* (National Dialogue), *Umwiyerero* (Leadership Retreat), *Ndi Umunyarwanda* (Rwandanness) program, and *Itorerero* (Civic Education program), etc¹²⁹(see Chapter 5 below)

As various researchers have indicated, these initiatives enhanced social cohesion, unity, inclusiveness, and inclusiveness among Rwandans in their respective communities, re-energized national identity and patriotism, while enhancing collective ownership of national problems, as well as finding solutions together.¹³⁰

The Council of Commissioners consists of 12 Rwandans, all directly appointed by the Rwandan President¹³¹ on the advice of the Cabinet. The Commissioners would be adults who are at least 21 years of age and those who possess moral integrity, good behaviour and competence.¹³² They are appointed for a term of three (3) years. The commissioners' term may

¹²⁵ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ *ibid.*

¹³¹ Susan Thomson, 'Rwanda's National Unity and Reconciliation Program' (*E- International Relations*, 1 May 2004)

<<https://www.e-ir.info/2014/05/01/rwandas-national-unity-and-reconciliation-program/>> accessed 25 October 2023

¹³² 'Rwanda: Law No.03/99 of 1999 establishing the National Unity and Reconciliation Commission' (*Refworld*, 12 March 1999) <<https://www.refworld.org/legal/legislation/natlegbod/1999/en/82718>> accessed 21 February 2024

be renewed or they may be replaced by the President for reasons set out in the legislation (Article 3)

The Commission also comprises of an;

- Executive Committee of three individuals (President, Vice President and the Executive Secretary) and a
- Permanent Secretariat of 26 members with 3 departments (Department of Civic Education, Department of Peace Building and Conflict Management, Department of Administration and Finance).¹³³

The Permanent Secretariat is based in the Office of the President of the Republic and headed by an Executive Secretary with a rank of a Minister of State.

The Executive Secretary is also appointed by a Presidential order.¹³⁴ The Executive Secretary serves as the Secretary of the Commission. (Article 5)

The NURC is managed on a daily basis by the executive secretary, who is responsible to its deputy chairperson/vice president. The deputy, in turn, reports to the chairperson/president of the NURC, who is accountable to Parliament for all its activities and publications.

The President of the Commission has supervision over and the direction of the Commission and shall preside over meetings of the Commission.

The Council of Commissioners, act as the advisory body under the guidance of the chairperson/president.¹³⁵

The Commission is tasked with 8 responsibilities:¹³⁶

- Prepare national programs aimed at promoting national unity and reconciliation;
- Establish and promote mechanisms for restoring and strengthening the Unity and Reconciliation of Rwandans;
- Educate, sensitize and mobilize the population in areas of national unity and reconciliation;
- Research, organize debates, disseminate ideas and make publications on the promotion of peace, unity and reconciliation of Rwandans;
- Propose measures and actions that can contribute to the eradication of divisionism among Rwandans and reinforce unity and reconciliation;
- Denounce and counter actions, publications, and utterances that promote any kind of division and discrimination, intolerance and xenophobia;
- Make an annual report and other reports that may be deemed necessary, on the level of attainment of national unity and reconciliation;

¹³³ 'Truth Commission Rwanda 99' (*United States Institute of Peace*) <<https://www.usip.org/publications/1999/03/truth-commission-rwanda-99>> accessed 21 February 2024

¹³⁴ 'Rwanda: Law No.03/99 of 1999 establishing the National Unity and Reconciliation Commission' (*Refworld*, 12 March 1999) <<https://www.refworld.org/legal/legislation/natlegbod/1999/en/82718>> accessed 21 February 2024

¹³⁵ Susan Thomson, 'Rwanda's National Unity and Reconciliation Program' (*E- International Relations*, 1 May 2004) <<https://www.e-ir.info/2014/05/01/rwandas-national-unity-and-reconciliation-program/>> accessed 25 October 2023

¹³⁶ 'NURC Background' (*National Unity & Reconciliation Commission, Republic of Rwanda*) <<http://197.243.22.137/nurc7/index.php?id=83>> accessed 21 February 2024

- Monitor how public institutions, leaders and the population in general comply with the National Unity and reconciliation policy and principle;

NURC's mission is to coordinate the national programs to promote unity and reconciliation. It is not an investigative body but it may denounce acts, writings, and statements that are intended to promote discrimination, intolerance, or xenophobia.¹³⁷

NURC established constant contact with the population on information of calamities and division that shaped the history of Rwanda. It identified and analyzed the failures of the previous regimes on unity. Lastly it presented a new political direction on unity and reconciliation. The commission also conducted extensive tours around the country to explain the importance of justice to the people and helped the courts to engage the people in dialogue about the issues of genocide.¹³⁸

Since it became a permanent body, the Commission's interim reports are published annually.

The Commission is to submit its report to the President of the Republic with a copy to the Government, the Parliament and the Supreme Court. (Article 10)

3.2. Nationwide Consultations on Unity and Reconciliation:

(April – June 2001)

The NURC organized a series of consultations to give opportunities for the Rwandan people to discuss and exchange on the ways of fostering coexistence.¹³⁹ Debates on history of cohabitation of Rwandan people and the role of the population in good governance were held across the country in order to help the participants to adopt attitudes towards improving coexistence.

Consultations consisted of open discussions amongst participants. Facilitators gave opportunities to the population who spoke out their mind while contributing their ideas. Before starting these consultations, a three-day training on mobilization and moderation focus group discussions were organized in March 2001.¹⁴⁰

The objectives of these consultations were to understand mobilization, communications and channels of communications, group dynamism techniques and group leadership and support. In order to get a concrete picture of coexistence in the districts, the sample groups consisted of women's associations, youth, religious associations, teachers and vulnerable groups of people etc.

¹³⁷ 'Truth Commission: Rwanda 99' (*United States Institute of Peace*, 1 March 1999)

<<https://www.usip.org/publications/1999/03/truth-commission-rwanda-99>> accessed 26 February 2024

¹³⁸ National Unity and Reconciliation Commission, *History of Rwanda: From the Beginning to the End of the Twentieth Century* (Kigali, 2016)

<http://197.243.22.137/nurc7/index.php?id=70&no_cache=1&tx_drblob_pi1%5BdownloadUId%5D=86> accessed 24 October 2023

¹³⁹ National Unity and Reconciliation Commission, *Report on the Evaluation of National Unity and Reconciliation* (Kigali, June 2002) <<https://repositories.lib.utexas.edu/bitstream/handle/2152/5515/2805.pdf?sequence=1>> accessed 30 October 2023

¹⁴⁰ *ibid.*

The outcome¹⁴¹ of these consultations was the identification of the following indicators:

Indicator	Defined by
Harmonious coexistence,	<ul style="list-style-type: none"> ● students to have equal chances in schools and not based on ethnic or religious quota; ● resisting and denouncing sectarian ideologies; ● orphaned children to get foster families; ● properties illegally retained to be returned to the owners; ● national army to be recruited on capability basis and not privileged to one ethnic group; ● free and transparent local elections; ● no more mentioning of 'ethnic backgrounds' in identity cards; ● job positions to be given on merit basis.
Divisions and their origins	<ul style="list-style-type: none"> ● infiltrate activities from different countries whose aim is to destabilize the national security; ● remember and to bury in dignity victims of cruelty of preceding governments; ● high authorities should be chosen carefully; ● Land sharing process and related conflicts; ● Corruption in judicial system
General recommendations	<ul style="list-style-type: none"> ● law on land to be enacted as soon as possible; ● people to be sensitized on laws, so as to be protected by them instead of facing them only when one is in courts; ● funds to assist vulnerable groups without discrimination; ● fund for the genocide survivors to be well managed to avoid divisions amongst Rwandans; ● bad leaders to be identified and dismissed in due course; ● teachers' contracts should be terminated in transparency and dignity- in respect of the labour law; ● Government institutions should add more efforts in working closely with the population to fight against injustice; ● Leaders should make regular visits to the population to explain Government policies. These visits will help the population not to continue to be confused with malpractice by some so-called government representatives. ● Capacity building by local institutions to help them to better fulfill their tasks; ● People should work diligently and avoid sectarianism.

It has been noticed that most of the sectarian problems emerge on misinformation and failure of both leaders and the population to play their role in solving problems. Therefore, a **Unity**

¹⁴¹ ibid.

and Reconciliation Evaluation Day¹⁴² was organized to allow leaders and the population to set up strategies for strengthening progress made and to identify obstacles to harmonious coexistence of Rwandans as one unified nation.

¹⁴² *ibid.*

CHAPTER 4

Strengths, Weaknesses and Challenges

4.1. Strengths of the reconciliation process and policy framework¹⁴³

Power Sharing and Inclusivity

At the core of the national unity and reconciliation policy lay the resonant slogan, 'One Rwanda for all Rwandans'.¹⁴⁴

The government led by the RPF after the genocide observed that the divisions among ethnic groups had been a catalyst for the tragic events of the genocide. To counter this, a collective Rwandan citizenship was created to foster a unified identity as the solution to a history steeped in ethnic animosity and bloodshed.¹⁴⁵

The RPF government asserted that while striving for national unity, it was imperative to embrace the notion of inclusivity, ensuring that all Rwandans were recognized and represented in the nation's affairs. This approach was conceived as pivotal to healing the scars of the past and ensuring a harmonious future for all citizens.¹⁴⁶

Constitutional and Legal Reforms:

The new constitution of 2003, committed the government to complying with the promotion of national unity and reconciliation. For example, it made any form of divisions and discrimination among Rwandans illegal (Article 11).

Another significant milestone brought in by the 2003 constitution, is the creation of various institutions responsible for helping in resolving major issues faced by the country: e.g., community-based Gacaca jurisdictions, National Dialogue Council-Umushyikirano, civic education school-Itorero, civic education camps-Ingando and community work-Umuganda. In all these cases, unity and reconciliation were central.¹⁴⁷

In particular, Article 178 of the Constitution created the NURC as a mechanism of coordination and integration of all reconciliation efforts at national and local levels.

Key legal reforms were also effectively implemented. These included: the law punishing discrimination and sectarianism; the Presidential decree for pardon; abolition of death penalty; the law encouraging wrongdoers to admit their wrongdoings to repent and to request forgiveness; and the law punishing genocide ideology.¹⁴⁸

Rwanda's legal reforms have allowed for the prosecution of genocide suspects while respecting human rights and international legal standards. This has contributed to accountability and justice for victims.

¹⁴³ Ezechiel Sentama, 'National Reconciliation in Rwanda: Experiences & Lessons Learnt' EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid.*

Security Sector Reform:

The Arusha Accord (1993) had provisions for a military reform¹⁴⁹ and hence the Rwandan government executed a disarmament, demobilization and reintegration/security sector reform (DDR/SSR) programme that was externally funded, in order to create an alliance of the armed groups into a new, professionalized Rwanda Defence Force (RDF) in accordance with the accord. This involved the assimilation of the former ‘enemy; combatants too.’¹⁵⁰ According to this agreement, 60% to be composed of the new force and 40% of RPF.¹⁵¹

Rwanda had completed two DDR programmes since 1997. First programme was designed and implemented by UNDP between 1997 and 2001 and the second one from 2001 to 2008 designed by the Multi-country Demobilization and Reintegration Program (MDRP) and implemented by Rwanda Demobilization and Reintegration Commission (RDRC).¹⁵²

The significance placed on DDR can be emphasized by the establishment of the Rwanda Demobilization and Reintegration Commission (RDRC) as an independent government commission, created in 1997 with the mandate to demobilize and reintegrate ex-combatants.¹⁵³

RDRC’s mission was to ensure that all demobilized ex-combatants are successfully reintegrated into their communities. In order to achieve this objective, they based their guiding *principle* “*in the interests of reconciliation, all ex-combatants, irrespective of previous military affiliation, receive appropriate assistance from the Programme; they are free to choose their communities of settlement and their path to economic reintegration; and the reintegration assistance seeks to foster community participation...*”¹⁵⁴ Between 1997 and 2007, a total of 60,000 ex-combatants had been demobilized.¹⁵⁵

This integration was facilitated through the tradition of *Ingando*, (see chapter 5) which encompassed civic (re)-education camps or schools designed to instil values of unity and patriotism.¹⁵⁶

Government support and political will had been crucial to the success of reintegration. Since the trust in the government was low in the aftermath of the war, the government’s efforts in bridging the social capital sent a strong message in the political will of the government to achieve unity and reconciliation.¹⁵⁷ The Establishment of RDRC also demonstrates the government’s commitment to the successful reintegration of ex-combatants.¹⁵⁸

¹⁴⁹ ‘Military Reform: Arusha Accord – 4 August 1993’ (*University of Notre Dame*)

<<https://peaceaccords.nd.edu/provision/military-reform-arusha-accord-4-august-1993>> accessed 11 March 2024

¹⁵⁰ David Duriesmith and Georgina Holmes, ‘The Masculine Logic of DDR and SSR in the Rwanda Defence Force’ *Security Dialogue*, 50 (4). pp. 361-379.

¹⁵¹ ‘Military Reform: Arusha Accord – 4 August 1993’ (*University of Notre Dame*)

<<https://peaceaccords.nd.edu/provision/military-reform-arusha-accord-4-august-1993>> accessed 11 March 2024

¹⁵² Richard Bowd, ‘From Combatant to Civilian: The Social Reintegration of ex-Combatants in Rwanda and the Implications for Social Capital and Reconciliation’ (2008) PhD thesis, University of York, at page 119<<https://core.ac.uk/download/pdf/77022778.pdf>>accessed on 11.03.2024

¹⁵³ Martin Edmonds, Greg Mills and Terence McNamee, ‘Disarmament, Demobilization, and Reintegration and Local Ownership in the Great Lakes: The Experience of Rwanda, Burundi, and the Democratic Republic of Congo’ *African Security*, Volume 2, 2009 Issue 1, Taylor & Francis Online,<<https://www.tandfonline.com/doi/full/10.1080/19362200902766383>> accessed on 11.03.2024

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

¹⁵⁷ Richard Bowd, ‘From Combatant to Civilian: The Social Reintegration of ex-Combatants in Rwanda and the Implications for Social Capital and Reconciliation’ (2008) PhD thesis, University of York, at page 119<<https://core.ac.uk/download/pdf/77022778.pdf>>accessed on 11.03.2024

¹⁵⁸ *ibid.*, at p 189-190.

Establishment of supplementary institutes like the NURC and the Community Development Project (CDP) that served to reinforce the activities of the RDRC through the sensitization of communities, further exemplified the political will of the government.¹⁵⁹

*"We were given that money, some people would use it to buy land, to buy a house, to buy clothes, just to start a new life and I really wondered why they gave us that money, I was really surprised. When we were given that money, we were not expecting it because we were their enemies, because we were fighting against them."*¹⁶⁰

By including the ex-FAR and the ex-AGs (Armed Groups) in the DDR program, shows that the ex-combatants are 'on equal footing', restoring trust in government.¹⁶¹

RDRC had also focused a lot on community sensitization. RDRC Commissioners held meetings with local leaders to encourage them to welcome returning ex-combatants and to accommodate them into the community. They were encouraged to involve the ex-combatants in community activities and programmes of support that may be introduced by local government or NGOs, whilst drawing attention to the benefit that ex-combatants can bring to the community. RDRC delivered the message of *"forgiveness, to welcome people as civilians who are going back to their civilian lives. To work together, to create activities together, not to stigmatize, not to marginalize."*¹⁶²

Policy on refugees and reparation

In the aftermath of the genocide, the government faced the pressing task of ensuring security and stability by repatriating, resettling, and reintegrating millions of refugees, both recent cases and long-standing ones.¹⁶³ This included refugees primarily in neighbouring countries such as Zaire, Burundi, Tanzania, Uganda, and Kenya, as well as internally displaced individuals.¹⁶⁴

These reintegration efforts were aligned with the provisions outlined in the 1993 Arusha Peace Accords. The process entailed the implementation of civic education initiatives, notably the Ingando program, (See chapter 5) which involved (re)educational camps for both new returnees and internally displaced individuals.¹⁶⁵ Consequently, this endeavour played a pivotal role in reuniting individuals and communities, instilling a renewed sense of optimism for a normalized life.¹⁶⁶

NURC:

NURC played a pivotal role in promoting dialogue, unity, and reconciliation among Rwandans. Its community outreach programs and educational initiatives helped bridge division and promote national healing.

At the core of NURC policies is the promotion of a unified national identity: *Ndi Umunyarwanda*, which means, "I am Rwandan" (not Hutu, Tutsi or Twa). One of the aims of

¹⁵⁹ *ibid.*

¹⁶⁰ *ibid.*

¹⁶¹ *ibid.*

¹⁶² *ibid.*

¹⁶³ Krishna Kumar and David Tardif-Douglin, *'Rebuilding Post War Rwanda, The Role of the International Community'* U.S agency for International Development, July 1996 <<https://www.oecd.org/derec/unitedstates/50189461.pdf>> accessed 22 February 2024

¹⁶⁴ UNHCR *'The State of the World's Refugees, Return and Reintegration: A Humanitarian Agenda'* <<https://www.unhcr.org/sites/default/files/legacy-pdf/3eb78b3e4.pdf>> accessed 22 February 2024

¹⁶⁵ Ezechiel Sentama, *'National Reconciliation in Rwanda: Experiences & Lessons Learnt'* EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

¹⁶⁶ *ibid.*

the *Ndi Umunyarwanda* is a program designed to rebuild trust by encouraging individuals to tell the truth about what happened in the genocide, and to help the Rwandan people, particularly youth, to better understand their origins.¹⁶⁷

As such, NURC supported the RPF government's narrative of the Genocide against the Tutsi, which looked back to pre-colonial Rwanda when, it is claimed, social divisions were based on economic status rather than any notion of ethnic difference. Ethnic differences, according to the officially sanctioned narrative, were invented and reinforced by colonial authorities.¹⁶⁸

The NURC worked wisely in getting the participation of Rwandans from all walks of life to shape and influence the ways and means of how unity and reconciliation is to be achieved and to provide a platform upon which Rwandans air their views on what has divided them in the past, and on how to build a united and reconciled Rwanda. It gathered groups of people and asked them what they needed in order to reconcile.¹⁶⁹

The advantages identified in this process¹⁷⁰ were:

- People engaged with the idea of reconciliation;
- They were enabled to help identify what they needed for reconciliation to take place; and
- By expressing their views and then actively engaging with each other and with the process, they became creators and actors.

This is valuable since reconciliation can only be facilitated. It cannot be created or imposed by others.¹⁷¹

The NURC was also instrumental in civic education through consultations, trainings, communication and mobilization of Rwandans of all walks of life, summits, media (television, newspapers, internet, free telephone calls, and radio talks), seminars and conferences, and forums, for example the creation of *Ingando* (solidarity camps) and *Itorero* (peace education academy), among others.¹⁷² (See Chapter 5)

The NURC also developed a new history curriculum for schools together with the National Museum of Rwanda and the University of Rwanda and other stakeholders. These programs reveal the extreme importance of the NURC's achievements especially since the systematic civic education program was introduced.¹⁷³

The NURC also supported and still supports annual community festivals that play an important role in the unity and reconciliation process. Youth engagement in all unity and reconciliation initiatives (youth councils and children commissions) has also been at the core of the NURC's work.¹⁷⁴ The NURC also participated actively in the creation of the Constitutionally-based institutions that promote good governance and unity and reconciliation: The Commission addressing issues of Genocide survivors (CNLG), the Commission ensuring accountability and

¹⁶⁷ Laura E.R. Blackie and Nicki Hitchcott, 'I am Rwandan: Unity and Reconciliation in Post Genocide Rwanda' *Genocide Studies and Prevention: An International Journal*: Vol. 12: Iss. 1: 24-

37, <<https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1480&context=gsp>> accessed on 21.02.2024

¹⁶⁸ *ibid.*

¹⁶⁹ Ezechiel Sentama, 'National Reconciliation in Rwanda: Experiences & Lessons Learnt' EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

¹⁷⁰ *ibid.*

¹⁷¹ *ibid.*

¹⁷² National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*

good governance (the Ombudsman), the Office of the Auditor General, and the Governance Advisory Council, now Rwanda Governance Board etc¹⁷⁵

The former executive secretary of the NURC (2002-2009), Fatuma Ndingiza described the function of NURC as “*monitoring government institutions and political parties to make sure that their actions are in line with reconciliation principles.... if there is a program for poverty reduction, it should be for all Rwandans and not just for one group. Everyone, the young, the old, the women, the elderly should see themselves in the nation-building process.*”¹⁷⁶

Land Policy

Resolving land issues hold a crucial strategic importance in reconciliation and development in post-conflict Rwanda. Research shows that land and genocide were intricately related with each other. Some participated to gain land, which were left behind by the Tutsi victims. Several researchers have found that once violence started to escalate, “*land greed instantly fuelled the killings.... The promise to get more land was a powerful incentive offered by local administrators to those hesitating to get engaged in the killings*” (Wyss, 2006).¹⁷⁷ Some who have been involved in land disputes became the target of killings. The post-genocide government of Rwanda was not slow in preparing a new land policy subsequently. Peace negotiations included land issues from the very beginning.¹⁷⁸

Land issues in post-genocide Rwanda included several important dimensions. One of the most significant was the magnitude of refugees returning from neighbouring countries after the genocide. With the new RPF government planning a new policy on land, it took eight years from the initial assessments into the land issues to the promulgation of the Land Law in 2005.¹⁷⁹

In order to implement this new Law, the National Land Centre (NLC) was established in 2007.¹⁸⁰ Numerous impediments were present in implementing equal land distribution. In order to sort those out, a series of important pilot land registration activities took place in 2006 and 2007, starting in 4 areas (3 in rural and 1 in urban)¹⁸¹

Actual land verification and registration in one area took about a month and half on average, after which the NLC then issued two documents: a lease agreement between the government and the holders; and a certificate of land title.¹⁸²

The Land Policy had the following features:

- all Rwandans will enjoy the same rights of access to land;
- all land should be registered for security and titles that are tradable unless it fragments a plot to less than 1 ha;
- land use should be optimal;

¹⁷⁵ *ibid.*

¹⁷⁶ Elizabeth Powley, ‘*Strengthening Governance: The Role of Women in Rwanda’s Transition*’ October 2003, <https://www.inclusivesecurity.org/wp-content/uploads/2012/08/10_strengthening_governance_the_role_of_women_in_rwanda_s_transition.pdf> accessed 26 February 2024

¹⁷⁷ Fumihiko Saito, ‘*Land Reform in Post Genocide Rwanda: Connecting Sustainable Livelihoods and Peacebuilding*’ 国際社会文化研究所紀要 第13号 (2011年) <<https://www.world.ryukoku.ac.jp/~fumis96/docs/rwanda.pdf>> accessed 26 February 2024

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

¹⁸⁰ *ibid.*

¹⁸¹ *ibid.*

¹⁸² *ibid.*

- consolidation of household plots is encouraged to ensure that each holding is not less than 1 ha;
- land administration is to be based on a reformed cadastral (registered title deeds) system;
- a system of land administration is to be developed;
- marshlands are in the state's private domain and are to be allocated to individuals on concession by the Ministry of Lands (MINITERE) on condition of good management;
- all land has to be registered, protected and conserved;
- land consolidation is encouraged and will be approved by the minister responsible for agriculture in conjunction with local authorities;
- monitoring of land use is assigned to land commissions whereas registration is assigned to land officers;
- failure to use, protect and conserve land properly can result in requisition or confiscation;
- land ownership is only provided through leases of up to 99 years;
- marshlands remain state property;
- transfer of title deeds requires prior consent of all family members,
- there will be a land tax; and
- underdeveloped land reverts to the state's private domain after three years.¹⁸³

This was a successful process. As stated by an international donor official, "One of the reasons for this success was that the process mainly focused on the technical aspect of identification, verification and processing on land titles without making the exercises politically mingled."¹⁸⁴

Another obvious positive change is expressed by women. In Rwanda in particular and in Africa in general, land is inherited along the patrilineal lines: from father to sons. Women have been excluded from this inheritance. However, the new Law clearly states that wives and daughters can enjoy equal legal entitlement for land inheritance. While some men still make cases complaining that lands inherited by women are illegal, the legal provision itself is undoubtedly clear on gender equality.¹⁸⁵

Focus on Survivor Support:

The government's commitment to supporting survivors through healthcare, education, and social services is an important aspect of the reconciliation process. This approach acknowledged the long-lasting impact of the genocide on survivors and their families. The Government of National Unity has set aside 5% of the revenue every year to assist genocide survivors.¹⁸⁶

Gacaca Courts: (see Chapter 5.3 a) below)

The establishment of Gacaca courts was a notable success in providing a community-based, restorative justice system. These courts encouraged the participation of victims, facilitated truth-telling, and helped in the identification and prosecution of perpetrators.

¹⁸³ *ibid.*

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*

¹⁸⁶ Ezechiele Sentama, 'National Reconciliation in Rwanda: Experiences & Lessons Learnt' EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

4.2. Negative impacts of reconciliation process and the national policy¹⁸⁷

Power Sharing

The RPF-dominated government only included political parties that had not taken part in the genocide. The RPF also created a forum for political parties and requested all parties to function as part of this RPF-led coalition. Critics stress that this strategy was to maintain “total control over the political landscape.”¹⁸⁸

The RPF government also claimed that although RPF had won the war, it complied with the 1993 Arusha core principle which is ‘*the winner does not take all*’. The process has not, however, exactly followed the Arusha Accords’ principle regarding how power was to be shared.¹⁸⁹

Limited Political Pluralism and Freedom of Expression:

A vibrant and pluralistic political landscape is essential for fostering genuine dialogue, understanding, and the healing necessary for reconciliation. But the government's control over political opposition and media outlets has been criticized for stifling dissent. This limits the diversity of perspectives needed for open discussions about the past, making it difficult to achieve genuine reconciliation. One of the critical weaknesses in Rwanda's approach to reconciliation and transitional justice lies in the limited political pluralism and restricted freedom of expression.¹⁹⁰

In 1995, President Kagame forced Rwanda’s Prime Minister Twagiramungu and four ministers out of cabinet because he felt that they were indirectly challenging his authority by championing justice for Hutus who had experienced acts of violence during and after the genocide.¹⁹¹

Selective Justice:

While thousands of individuals have been prosecuted for their involvement in the genocide, there is a widespread belief that some key figures who orchestrated the violence have evaded accountability. This has led to frustration and a sense of injustice among survivors and their families. To truly achieve reconciliation, it is suggested that justice is pursued comprehensively, without exceptions for high-profile individuals.

Process of addressing past injustice has been restricted to the genocide committed by the defeated government and it has neglected RPF crimes. Citizens’ resentment over the adopted mechanisms’ inability to address these important issues hampers national reconciliation.¹⁹²

¹⁸⁷ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

¹⁸⁸ Ezechiel Sentama, ‘*National Reconciliation in Rwanda: Experiences & Lessons Learnt*’ EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

¹⁸⁹ *ibid.*

¹⁹⁰ ‘Rwanda: Events of 2018’ (*Human Rights Watch*) <<https://www.hrw.org/world-report/2019/country-chapters/rwanda>> accessed 22 February 2024

¹⁹¹ Lara Jennings, ‘*Recovering from Genocide: Reconciliation and Kagame’s Controversial Leadership in Rwanda*’ JCSP 45 – PCEMI 45 2018 – 2019 <<https://www.cfc.forces.gc.ca/259/290/308/286/jennings.pdf>> accessed 22 February 2024

¹⁹² Ezechiel Sentama, ‘*National Reconciliation in Rwanda: Experiences & Lessons Learnt*’ EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

Memorials and commemorations were selective as they only considered the Tutsi victims. They did not include the Hutu victims of the genocide, nor did they include other crimes, notably those allegedly committed by the RPF.¹⁹³

*Capacity Constraints and Inconsistencies in Gacaca Courts*_(see Chapter 5.3a) below):

Capacity constraints, including a shortage of trained personnel and resources, hindered their effectiveness. This led to inconsistencies in verdicts, with some cases lacking the thoroughness required for a fair and just resolution. Additionally, accusations of corruption within the Gacaca system raised concerns about the integrity of the process.

Long-lasting Trauma and Psychological Healing:

The psychological scars of the genocide persist in many Rwandans, both survivors and perpetrators. The new government was therefore faced with a huge challenge to unite and reconcile Rwandans, who were in total trauma and distress, and to rebuild the socio-economic, cultural and institutional fabric, restore security, provide justice, in order to bring about reconciliation and unity in a devastated country made up of the wounded and traumatized people.¹⁹⁴

While policies and systems have been put in place to address the mental health needs of survivors, there was a need for continued and expanded support. Trauma-healing programs, counselling services, and mental health resources had to be made more widely available to aid in the long-term recovery and well-being of affected individuals.¹⁹⁵

Ongoing Ethnic Tensions and Mistrust:

Rebuilding trust between Hutu and Tutsi populations was a complex and delicate process.¹⁹⁶ Some individuals still harboured resentment or fear, making genuine reconciliation a challenging endeavour.

A total absence of trust between Rwandan citizens and the leadership/government institutions, and among themselves, and consequently the lack of social cohesion was the characteristic of the situation in the immediate aftermath of the 1994 Genocide against Tutsi.¹⁹⁷

Given the deep wounds and sorrows resulting from bad leadership that divided Rwandans up to the Genocide, Rwandan citizens had completely lost trust in their leaders and political institutions too. They had also lost trust among themselves to the extent that mutual suspicion and hatred was the norm.¹⁹⁸

In this context, re-establishing links between Rwandans became imperative.¹⁹⁹

¹⁹³ *ibid.*

¹⁹⁴ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

¹⁹⁵ *ibid.*

¹⁹⁶ *ibid.*

¹⁹⁷ *ibid.*

¹⁹⁸ *ibid.*

¹⁹⁹ *ibid.*

Socio-economic Disparities:

Addressing the socio-economic disparities that persisted in Rwanda was a critical component in achieving reconciliation.²⁰⁰ Poverty and inequality contributed to ongoing tensions and mistrust, as individuals were struggling for resources and opportunities.

Efforts to reduce poverty, improve access to education and healthcare and promote economic development became essential in creating a more inclusive and equitable society.

Legacy of Genocide Denial:

Genocide denial remained a persistent challenge in Rwanda.²⁰¹ Some individuals, both within Rwanda and abroad, continued to dispute the scale and nature of the atrocities that took place in 1994. This denial not only hindered the healing process for survivors but also threatened the collective memory and understanding of the genocide, making it harder to prevent future atrocities.²⁰²

²⁰⁰ *ibid.*

²⁰¹ *ibid.*

²⁰² *ibid.*

CHAPTER 5

Best Practices and Lessons Learnt

5.1. Forgiveness

Rwanda's reconciliation process after the 1994 genocide highlighted the power of forgiveness in successfully reintegrating people who have committed serious harms back into the society.²⁰³ NURC played an important role in resocializing the Rwandans. NURC emphasized unity as a mechanism in response to the genocide.

With the prisons being overcrowded with the mass offenders, the government released about 50,000-60,000 low level offenders since 2003.²⁰⁴ One of the reconciliatory legal measures that was adopted by the new national constitution in 2003 was the Presidential Decree for Pardon (since January 2003)²⁰⁵ by which 19 were pardoned and released and thereafter 556 prisoners, (who allegedly committed ordinary crimes and all the acts of genocide) who had confessed their wrongdoings, those in prison for periods longer than the penalty provided by the law, and the sick, old and frail, were pardoned and released.²⁰⁶

NURC implemented the Association Modeste et Innocent (AMI) program²⁰⁷ that primarily focused on creating sustainable and enduring relationships between the offenders and victims of genocide. It is the victim that must either choose to forgive and or reconcile with the offender. The relationship between the victim and the offender will only be restored on the acceptance of forgiveness by the victim.

AMI uses a 3-step process of forgiveness to establish a successful dialogue between the two. First step involves the two to express the truth of what happened. This allows each party to express themselves regarding the offence. Second step involves overcoming the initial reaction of the offence, allowing them to express their feelings on the offence; for hope of empathy and altruism to settle into the minds of both. The final step involves the commitment to forgiveness and expressing forgiveness. This process of forgiveness seems to be effective for both.²⁰⁸

One example²⁰⁹ of an exchange between an offender and victim:

Aggressor: "Now I feel free, joyful and happy....."

Victim: "I have forgiven him from the bottom of my heart. Before, I was sad; now we are well; forgiving has cleansed my heart; I feel after forgiving, my heart is free; I feel relaxed; now life is like normal."

²⁰³ Daniel Patten and Jeremy Storch, 'Forgive and Regret: A Comparative Analysis of the role of forgiveness in the US and Rwandan Criminal Justice Systems' (*Licensee IntechOpen*, 18 October 2022) <<https://www.intechopen.com/chapters/83895>> accessed 26 October 2023

²⁰⁴ *ibid.*

²⁰⁵ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

²⁰⁶ *ibid.*

²⁰⁷ Daniel Patten and Jeremy Storch, 'Forgive and Regret: A Comparative Analysis of the role of forgiveness in the US and Rwandan Criminal Justice Systems' (*Licensee IntechOpen*, 18 October 2022) <<https://www.intechopen.com/chapters/83895>> accessed 26 October 2023

²⁰⁸ *ibid.*

²⁰⁹ *ibid.*

*Victim: “After forgiving him, we started to collaborate (joint projects): we have rebuilt trust with each other.”*²¹⁰

As seen in the above exchange, it is evident that positive mental health of genocide victims of Rwanda is linked to successful interpersonal reconciliation and sentiments of unconditional forgiveness through such programs.²¹¹ Even though the initial urge among many victims is not forgiveness, institutionalizing forgiveness through such AMI programs has led to successful resocialization and Rwandans have seen the benefits of forgiveness.²¹²

5.2. International Criminal Tribunal for Rwanda – ICTR²¹³

On the 8th of November 1994, the Security Council of the United Nations adopted a resolution 955(1994) and created “*an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.*”²¹⁴

This was the first international court established to prosecute high ranking individuals for massive human rights violations in Africa. The purpose was to prosecute those allegedly responsible for the 1994 genocide in Rwanda.

As per the resolution, ICTR asserts primacy over the domestic laws and national courts of third States, and has the ability to force the surrender of an accused, be they a Rwandan citizen or not, located in Rwanda or any third State. As provided in Security Council resolution 977 (1995) of 22 February 1995, the ICTR is headquartered in Arusha, Tanzania, with additional offices located in Kigali, New York and The Hague.²¹⁵

Thousands had perished, many were arrested and accused of crimes committed during genocide, prison system were overwhelmed, people waited in extreme overcrowded and life-threatening prison conditions for their cases to be processed.²¹⁶

Many judges, lawyers and other judicial staff had been killed in the genocide, with much of the country’s infrastructure destroyed.²¹⁷ The capacity of the Rwandan domestic court system was severely affected. The Rwandan judicial system had 785 judges before the genocide, but only 20 of them survived.²¹⁸

There were 130,000 suspects to be tried by these national courts and it was estimated that the sheer number of cases could take up to 150 years to process.²¹⁹

²¹⁰ *ibid.*

²¹¹ *ibid.*

²¹² *ibid.*

²¹³ Michael P. Scharf, ‘*Statute of the International Criminal Tribunal for Rwanda*’ United Nations Audiovisual Library of International Law <https://legal.un.org/avl/pdf/ha/ictf/ictf_e.pdf> accessed 26 October 2023

²¹⁴ *ibid.*

²¹⁵ *ibid.*

²¹⁶ ‘International Criminal Tribunal for Rwanda’ (*Holocaust Memorial Day Trust*) <<https://www.hmd.org.uk/learn-about-the-holocaust-and-genocides/rwanda/international-criminal-tribunal-for-rwanda/>> accessed 25 February 2024

²¹⁷ ‘Rwanda: Justice after Genocide - 20 years On’ (*Human Rights Watch*, 28 March 2014) <<https://www.hrw.org/news/2014/03/28/rwanda-justice-after-genocide-20-years>> accessed 25 February 2024

²¹⁸ Thomas Hauschildt, ‘*Gacaca Courts and Restorative Justice in Rwanda*’ E-International Relations (July 2012) <<https://www.e-ir.info/pdf/23858>> accessed 25 February 2024

²¹⁹ *ibid.*

To deal with such overwhelming number of perpetrators, Rwandan government had to find a way to pursue justice and embarked on an ambitious and unprecedented approach to delivering justice, deciding on three different levels.²²⁰

- The national courts system,
- The Gacaca courts, and
- The International Criminal Tribunal for Rwanda (ICTR)

The ICTR statute established the following list of crimes under its jurisdiction:²²¹

- Genocide;
- Crimes against humanity, specifically murder, extermination, enslavement, deportation, imprisonment, torture, rape and persecution on political, racial and religious grounds;
- Violations of the Geneva Conventions for the Protection of War Victims include collective punishments, acts of terrorism, pillage, and the taking of hostages.

The ICTR was governed by its statute, which is annexed to Security Council resolution 955(1994) and consists of 3 major organs: the Chambers, The Office of Prosecutor and the Registry.²²²

The ICTR was expected to try those who played a leading role in the genocide; who were high ranking individuals for massive human rights violations, and to an extent it had performed this task by trying and convicting several prominent figures²²³ as stated below.

One of the most momentous cases under international law – *The Prosecutor V Jean-Paul Akayesu* was the first trial at ICTR on 9th January 1997.²²⁴ During the 1994 genocide, Akayesu was serving as a mayor of the city called Taba, where thousands of Tutsis were systematically raped, tortured and murdered. He was found guilty on 2nd September 1998, on nine counts of genocide, direct and public incitement to commit genocide and crimes against humanity for extermination, murder, torture, rape and other inhumane acts. This conviction marked “*the first in which an international tribunal was called upon to interpret the definition of genocide as defined in the Convention for the Prevention and Punishment of the Crime of Genocide.*” Akayesu was given life imprisonment in Mali, then from 2020 he was imprisoned in Benin.²²⁵

Another precedent the ICTR set was the case of *The Prosecutor V Jean Kambanda*. Kambanda had served as the Prime Minister of the interim government of Rwanda throughout the 100 days of genocide. Kambanda’s guilty plea and conviction marked the first time in international law that a Head of Government was convicted of genocide, but this was also the first time that an accused person acknowledged his guilt for genocide before an international criminal tribunal.²²⁶

²²⁰ ‘International Criminal Tribunal for Rwanda’ (Holocaust Memorial Day Trust) <<https://www.hmd.org.uk/learn-about-the-holocaust-and-genocides/rwanda/international-criminal-tribunal-for-rwanda/>> accessed 25 February 2024

²²¹ ‘International Criminal Tribunal for Rwanda’ (Holocaust Memorial Day Trust) <<https://www.hmd.org.uk/learn-about-the-holocaust-and-genocides/rwanda/international-criminal-tribunal-for-rwanda/>> accessed 25 February 2024

²²² Michael P. Scharf, ‘Statute of the International Criminal Tribunal for Rwanda’ United Nations Audiovisual Library of International Law <https://legal.un.org/avl/pdf/ha/ictf/ictf_e.pdf> accessed 26 October 2023

²²³ ‘Rwanda: Justice after Genocide - 20 years On’ (Human Rights Watch, 28 March 2014)

<<https://www.hrw.org/news/2014/03/28/rwanda-justice-after-genocide-20-years>> accessed 25 February 2024

²²⁴ Michael P. Scharf, ‘Statute of the International Criminal Tribunal for Rwanda’ United Nations Audiovisual Library of International Law <https://legal.un.org/avl/pdf/ha/ictf/ictf_e.pdf> accessed 26 October 2023

²²⁵ *ibid.*

²²⁶ *ibid.*

Another noteworthy ICTR prosecution was the so called “*The Media Case;*” *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*. This trial was the first time since Nuremberg*²²⁷ that the role of the media was examined as a component of international criminal law. In 2003, the named accused in this case was convicted for genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and crimes against humanity.²²⁸

Between 1997 and 2008, roughly about 86 persons have been tried before the ICTR. Resolution 1503 by the Security Council in March 2003,²²⁹ ordered the ICTR to complete all of its work in 2010, that involved the Completion Strategy Campaign by expediting the cases and increasing the number of judges etc.

On 31st December 2015,²³⁰ the UN officially dissolved the ICTR. Its remaining cases were transferred to the jurisdiction of the International Residual Mechanism for Criminal Tribunals*²³¹

5.3. Home-grown Initiatives

Rwanda’s Reconciliation process included some home grown and community-based mechanisms that portray the country’s unique experience.²³² A space for unity and reconciliation was created in Rwanda with the establishment of the Government of National Unity, the NURC and the various contact and dialogue based home grown programs.²³³

a) *GACACA: a traditional forum meaning ‘justice on the grass’*

Soon after the genocide the justice system was inoperative in Rwanda, but the need to convict those who took part in the genocide became a national issue. Many judges were killed during the genocide, and it took some time until the ordinary courts were fully operative. It soon became evident that these courts could not dispose of all cases against the huge number of

²²⁷ *Nuremberg trials were a series of 13 trials carried out in the city of Nuremberg in Germany between 1945 and 1949. These trials were held for the purpose of bringing Nazi war criminals to justice. The defendants, who included Nazi party officials and high-ranking military officials, were indicted on charges of crimes against peace and crimes against humanity. The Nuremberg trials are now regarded as a milestone toward the establishment of a permanent international court, and an important precedent for dealing with later instances of genocide and other crimes against humanity. One of the cases was called the Trial of Major War Criminals.

‘Nuremberg Trials’ (History.Com) <<https://www.history.com/topics/world-war-ii/nuremberg-trials>> accessed 26 February 2024

²²⁸ Michael P. Scharf, ‘Statute of the International Criminal Tribunal for Rwanda’ United Nations Audiovisual Library of International Law <https://legal.un.org/avl/pdf/ha/ictf/ictf_e.pdf> accessed 26 October 2023

²²⁹ *ibid.*

²³⁰ ‘International Criminal Tribunal for Rwanda’ (Cornell Law School)

<https://www.law.cornell.edu/wex/international_criminal_tribunal_for_rwanda> accessed 22 February 2024

²³¹ *The International Residual Mechanism for Criminal Tribunals (“Mechanism”) is mandated to perform a number of essential functions previously carried out by the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”). In carrying out these essential functions the Mechanism maintains the legacies of these two pioneering *ad hoc* international criminal courts and strives to reflect best practices in the field of international criminal justice. Their functions include tracking and prosecution of remaining fugitives, monitoring cases referred by ICTR to national courts, assistance to national jurisdictions and domestic proceedings, Protection of victims and witness, supervision of enforcement of sentences, retrials, appeals and review proceedings, preservation and management of archives. ‘Functions of the Mechanism’ (United Nations International Residual Mechanism for Criminal Tribunals) <<https://www.irmct.org/en/about/functions>> accessed 22 February 2024

²³² National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016

<<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

²³³ *ibid.*

suspected genocidaires throughout the country. The authorities therefore had to set up a system of gacaca courts, which were to render justice on the lawn at the local level.²³⁴

A traditional Rwandan restorative justice system which was revived to deal with all backlog of genocide cases, and to bring justice at grass root levels. The Gacaca courts were created with the intention for it to be used by the smaller communities to hold lower-level offenders accountable for their crimes. “Organic Law N° 16/2004 of 19/6/2004 - established the Gacaca courts setting out its competence and functioning with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1st, 1990 and December 31, 1994”²³⁵

Gacaca judges known as *Inyangamugayo* were suggested and elected by the local community, on the basis of integrity.²³⁶ They went through a few days of training before assuming their posts; prior legal experience or training was not a prerequisite to being elected as a judge.²³⁷

Community members were not only spectators, but also active participants whose accounts and testimonies directly influenced the trial and subsequently the verdict.²³⁸

The courts became fully operational in 2005. Since then, more than 12,000 community-based courts have tried 1.2 million cases throughout the country.²³⁹

The prospect of prosecuting many civilians and almost the entire former civil service, is another reason why Rwanda looked towards the Gacaca courts. In the Gacaca courts people from the community come together and the elders hear the cases. All genocide related crimes could be tried in the Gacaca courts, except when they were committed by government officials or top-level planners (Then it would be heard in the ICTR)²⁴⁰

Throughout the entire trial process, the community was encouraged to speak out and participate in order to best flush out the truth of the events that had occurred during the prior period of unrest and violence. Eventually, participation became mandatory, and those who refused to attend the trials could face fines.²⁴¹

Gacaca court can give sentences of up to life imprisonment, making it an appropriate judicial mechanism to try crimes as severe as acts of genocide. Here, the victims watch as perpetrators are sentenced by people they know, instead of by foreign judges. This physical proximity has a great impact of giving Rwandans a tangible sense of justice.²⁴²

²³⁴ Erik Mose, ‘The ICTR and Reconciliation in Rwanda’ TOAEP, FICHL Policy Brief Series No.30 (2015) <<https://www.toaep.org/pbs-pdf/30-moese>> accessed 22 February 2024

²³⁵ Organic Law N°16/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1st, 1990 and December 31, 1994.

²³⁶ Thomas Hauschildt, ‘Gacaca Courts and Restorative Justice in Rwanda’ *E-International Relations* (July 2012) <<https://www.e-ir.info/pdf/23858>> accessed 25 February 2024

²³⁷ Lauren Haberstock, ‘An Analysis of the Effectiveness of the Gacaca Court System in Post Genocide Rwanda’ *Global Tides*, Vol. 8 [2014], Art. 4, at page 8.

²³⁸ Thomas Hauschildt, ‘Gacaca Courts and Restorative Justice in Rwanda’ *E-International Relations* (July 2012) <<https://www.e-ir.info/pdf/23858>> accessed 25 February 2024

²³⁹ Erik Mose, ‘The ICTR and Reconciliation in Rwanda’ TOAEP, FICHL Policy Brief Series No.30 (2015) <<https://www.toaep.org/pbs-pdf/30-moese>> accessed 22 February 2024

²⁴⁰ Naomi Kok, ‘The Closing of the Gacaca Courts and the Implications for Access to Justice in Rwanda’ (*Institute for Security Studies*, 28 February 2012) <<https://issafrica.org/iss-today/the-closing-of-the-gacaca-courts-and-the-implications-for-access-to-justice-in-rwanda>> accessed 6 March 2024

²⁴¹ Lauren Haberstock, ‘An Analysis of the Effectiveness of the Gacaca Court System in Post Genocide Rwanda’ *Global Tides*, Vol. 8 [2014], Art. 4, at page 8 <<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1094&context=globaltides>> accessed on 25.02.2024

²⁴² Naomi Kok, ‘The Closing of the Gacaca Courts and the Implications for Access to Justice in Rwanda’ (*Institute for Security Studies*, 28 February 2012) <<https://issafrica.org/iss-today/the-closing-of-the-gacaca-courts-and-the-implications-for-access-to-justice-in-rwanda>> accessed 6 March 2024

The Gacaca courts aimed at reconciliation and often gave lesser sentences to perpetrators who accepted the responsibility of their actions, and made efforts to seek forgiveness from their victims. Convictions also required no physical evidence and relied solely on witness testimony.²⁴³

This also provides the opportunity for grievances to be aired in public, which is vital in a country where victims are living side by side with perpetrators. Most importantly, the Gacaca offers victims an opportunity to ask the perpetrators about the location of their relatives' bodies. In Rwandan society, it is important to visit the graves of one's relatives. Locating remains of one's murdered relatives provides a sense of closure. In this way the Gacaca courts offered a unique solution to ordinary Rwandans that no other court could.²⁴⁴

In June 2012, these courts were officially closed.²⁴⁵ After a decade, the Gacaca justice system was seen to have fairly conceded to have achieved its intended objectives and provided the solution for the complexity of cases related to the genocide.²⁴⁶

Organic Law No. 04/2012/OL of 15/06/2012 - Terminating Gacaca Courts and Determining Mechanisms for Solving Issues which Were under their Jurisdiction, Official Gazette n° Special of 15/06/2012,²⁴⁷ terminated the Gacaca courts and made provisions to deal with pending issues under their jurisdictions including those new issues that may arise.²⁴⁸

At first the Government of Rwanda divided the perpetrators of the genocide according to their responsibility into four categories (Government of Rwanda, Organic Law no. 08/96, 1996).²⁴⁹

After a pilot phase for gacaca courts the original Categories 2 and 3 were merged which led subsequently to three categories of perpetrators (Government of Rwanda, Organic Law no 16/2004, 2004)²⁵⁰

Category 1:

Planners, organizers, instigators, supervisors, leaders, people of higher authority, for example in the army or police, and their accomplices. In addition, notorious murderers who committed crimes with extraordinary brutality and persons who committed acts of torture and rape. The latter includes acts which did not lead to the death of the victim. Moreover, this category included persons who committed degrading acts on dead bodies.

Category 2:

Co-authors who caused deliberate homicide or serious attacks which caused death. Moreover, persons who, with the intention of causing death, caused injuries, but from

²⁴³ Lauren Haberstock, 'An Analysis of the Effectiveness of the Gacaca Court System in Post Genocide Rwanda' *Global Tides*, Vol. 8 [2014], Art. 4, at page

9<<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1094&context=globaltides>> accessed on 25.02.2024

²⁴⁴ Naomi Kok, 'The Closing of the Gacaca Courts and the Implications for Access to Justice in Rwanda' (*Institute for Security Studies*, 28 February 2012) <<https://issafrica.org/iss-today/the-closing-of-the-gacaca-courts-and-the-implications-for-access-to-justice-in-rwanda>> accessed 6 March 2024

²⁴⁵ Susan Thomson, 'Rwanda's Gacaca Courts' *Témoigner, Entre histoire et mémoire*, 121 | 2015, 143-144.

²⁴⁶ 'Closure of Gacaca' (*UNDP*, 21 January 2002) <<https://www.undp.org/rwanda/news/closure-gacaca>> accessed 18 March 2024

²⁴⁷ Organic Law N°04/2012/OL of 15/06/2012 terminating Gacaca Courts and determining Mechanisms for solving Issues which were under their Jurisdiction (Official Gazette n° Special of 15/06/2012)<<https://archive.gazettes.africa/archive/rw/2012/rw-government-gazette-dated-2012-06-15-no-special.pdf>>accessed on 18.03.2024

²⁴⁸ *ibid.*

²⁴⁹ Thomas Hauschildt, 'Gacaca Courts and Restorative Justice in Rwanda' *E-International Relations* (July 2012) <<https://www.e-ir.info/pdf/23858>> accessed 25 February 2024

²⁵⁰ *ibid.*

which the victims did not die. In addition, this category included persons who caused injuries without the intent to kill.

Category 3:

Persons who committed theft and the destruction of goods and properties.

All genocide related crimes could be tried in the Gacaca courts, except when they were committed by government officials or top-level planners. The ICTR was tasked to investigate and prosecute ‘Category 1’ perpetrators of the genocide and was based in Tanzania to ensure impartiality during the proceedings.²⁵¹

Gacaca courts that involved the whole community to be present and participate during proceedings in which alleged perpetrators of that community were tried for ‘Category 2’ and ‘Category 3’ crimes.²⁵²

The first phase of Gacaca included an information-gathering session in each of the communities affected by the genocide. These sessions documented those affected by the genocide, the testimonies of witnesses, and those accused of crimes.²⁵³

Following the information-gathering sessions, the crimes of the accused were then placed into the categorization system designed by the government; this determined at what level the accused would be tried.²⁵⁴

Finally, the trials began in the communities affected by the genocide. After hearing the testimonies of the witnesses, the judges would meet together and determine the verdict against the accused.²⁵⁵

Gacaca courts had 3 organs:²⁵⁶

General Assembly – for evaluating the activities,

The Seat – comprising of the judges – elected by a country wide consultation held in the month of October 2001 – mostly school teachers, business people and civil servants,

Coordination Committee – for the administrative work.

²⁵¹ Naomi Kok, ‘The Closing of the Gacaca Courts and the Implications for Access to Justice in Rwanda’ (*Institute for Security Studies*, 28 February 2012) <<https://issafrica.org/iss-today/the-closing-of-the-gacaca-courts-and-the-implications-for-access-to-justice-in-rwanda>> accessed 6 March 2024

²⁵² Anne-Marie de Brouwera and Etienne Ruvebana, ‘The Legacy of the Gacaca Courts in Rwanda’ *International Criminal Law Review* 13 (2013) 937–

976<),https://pure.uvt.nl/ws/files/1546084/The_legacy_of_the_Gacaca_courts_in_Rwanda.pdf>accessed on 18.03.2024

²⁵³ *ibid.*

²⁵⁴ *ibid.*

²⁵⁵ *ibid.*

²⁵⁶ Maya Goldstein Bolocan, ‘Rwandan Gacaca: An Experiment in Transitional Justice’ *Journal of Dispute Resolution*, Vol. 2004, Iss. 2 [2004], Art. 2, at page 379<,
<https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1471&context=jdr>> accessed on 02.03.2024 & <<https://rwandapedia.rw/hgs/gacaca/how-did-it-work>> accessed on 24.11.2023

The Gacaca had a hierarchy²⁵⁷

- Cell Gacaca Court – operating at the second lowest local government level, the cell, dealt with crimes in category three.
- The Sector Gacaca Court - operating at the sector level which is the next local government level up from the cell, dealt with defendants whose offences fell into category three, as well as opposition made against sentences pronounced in the absence of the accused.
- The District or Town Gacaca Court - operating at the district level which is the next local government level up from the sector, dealt with crimes in category two, appeals filed against judgments at the first level, or decisions by Sector Gacaca Courts that were rendered in the absence of the accused.
- The Gacaca Court of the Province or Kigali City - operating at the province or Kigali City level which is the next local government level up from the district, dealt with appeals of judgments rendered at the first level, or on objection by Gacaca Courts of the District or Town.

Hearings:²⁵⁸

- Public hearings;
- At the request of the party hearing were under camera;
- Deliberations of the judges were under closed doors;
- Hearings held at least once a week;
- Those summoned were given 7 days' notice for appearance; one month in the case of missing addresses;
- Witness takes an oath and swears to tell the truth;
- Sessions are governed by a set of eight rules which ensure the proper and respectful functioning of the hearing. These rules stipulated that those present raise their hand to speak, prohibited insults or threats, and obliged participants to always tell the truth.²⁵⁹

Principles followed by Gacaca:²⁶⁰

1. Suspects are classified into categories based on the charges against them,
2. Opportunity to admit and confess and ask forgiveness in front of the community – sentences reduced after confessions are accepted,
3. Special sentencing for committing genocide as minors.

²⁵⁷ Stephanie Wolters, 'The Gacaca Process: Eliminating the Culture of Impunity in Rwanda' Institute for Security Studies, Situation Report, 5 August 2005 <<https://www.files.ethz.ch/isn/102061/050805RWANDA.PDF>> accessed 1 March 2024

²⁵⁸ *ibid.*

²⁵⁹ *ibid.*

²⁶⁰ *ibid.*

b) INGANDO: (solidarity camps):

Ingando had been one of NURC's useful strategies for unity and reconciliation, especially in reference to redefine a new identity and rehabilitate the common heritage of 'Ubunyarwanda' (Rwandanness) as the central pillar of unity and reconciliation in Rwanda.²⁶¹ They were established for prisoners who were about to be released into society.²⁶²

Traditionally, in Rwanda, *Ingando* referred to a unique moment in which the elders of a village or young people had to leave their ordinary settlement, to an isolated place for a short or long time for concentration, meditation and sharing reflections aiming at solving fundamental problems at the community or the nation, like famine, conflict or poverty.²⁶³

The first *Ingando* that was organized in 1996 by the Ministry of Youth brought together about 870 young people, with different backgrounds and views of national realities, participated. Some were coming from the Diaspora; others were Genocide survivors, while others were presumably guilty of genocide acts or family members of Genocide perpetrators. The objective of this *Ingando* was to bring them together and provide them with insights about the unifying and reconciliatory vision of the Government of National Unity.²⁶⁴

Importance of *Ingando* was obvious in the face of the sudden and massive repatriation of Rwandan refugees. The *Ingando* (through peace/civic educative interactions) addressed the foreseeable worries of the millions of refugees. In this regard, *Ingando* enabled the peaceful reintegration of old-case returnees. In particular, *Ingando* have been very useful in peacefully reintegrating new-case returnees, notably those who had expressed either fear of revenge by Genocide survivors against the authors of Genocide or their family members, or worries that their properties could be confiscated.²⁶⁵

Ingando were also used for reintegrating ex-combatants into the national army and society, while combating existing Genocide ideologies that entailed the mixing of the ex-FAR and the RPA soldiers and giving them an opportunity to talk about the Rwandan conflict.²⁶⁶

Ingando have indeed been an opportunity through which former 'enemy' combatants were gathered for 'problem solving sessions' recounting the causes and taking ownership of the tragedy, exposing mutual myths and stereotypes, and endeavouring to rebuild trust after the deep trauma of the past and the Genocide.²⁶⁷

INGANDO had facilitated the Rwandans to come to terms with their past by facing history and forging a common vision for a united future. NURC was entrusted with these tasks and from 1999 to 2009 where more than 90,000²⁶⁸ Rwandans have participated. These programs aimed to clarify Rwandan history, origins of division, patriotism and fight genocide ideology,²⁶⁹ with the objective of overcoming mutual fear and suspicion caused by the war and the Genocide and

²⁶¹ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

²⁶² Thomas Hauschildt, 'Gacaca Courts and Restorative Justice in Rwanda' E-International Relations (July 2012) <<https://www.e-ir.info/pdf/23858>> accessed 25 February 2024

²⁶³ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

²⁶⁴ *ibid.*

²⁶⁵ *ibid.*

²⁶⁶ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

²⁶⁷ *ibid.*

²⁶⁸ Department of Public Information, *The Justice and Reconciliation Process in Rwanda*, March 2012 <<https://www.un.org/en/preventgenocide/rwanda/pdf/bgjustice.pdf>> accessed 25 October 2023

²⁶⁹ *ibid.*

avoid the temptation to carry out revenge attacks, to accept responsibility for the harm done, dispel negative perceptions amongst Rwandans and encourage collective ownership of the war and agree on the future course of actions to prevent such things happening again.²⁷⁰

Ingando employs the concept of problem-solving workshops, as a participatory conflict transformation strategy, thus encouraging the parties to analyze their conflict, its causes, their attitudes towards each other, and their post-conflict relationship.²⁷¹

Ingando has expanded to include school youth and students at secondary and tertiary levels and thus became a civic education camp.²⁷²

c) ITORERO RY'IGIHUGU: Civic Education Academy

This is a civic education homegrown initiative inspired by the Rwandan culture that was formerly a traditional Rwandan school to instil moral values of integrity, and capacity to deal with one's problems; everyone mentored through *Itorero* is called an '*Intore*'²⁷³

The process generally culminated in social entertainment activities called *ubusabane*; whereby people perform cultural songs and dances known as *ibitaramo* (community evening parties) and share food and drinks.

It was believed that before the colonial period, all Rwandans used to live harmoniously in the same community as a result of *Itorero*, the civic education channel or school through which the nation could convey the messages to the people regarding national culture in different areas such as language, patriotism, social relations, sports, dance, songs and the defence of the nation. As a result, young citizens grew with an understanding and attachment to their culture.²⁷⁴

When colonizers arrived, they found Rwanda's leadership very strong under the *Itorero* channel, amongst other factors. The first mandate of colonization has been to suppress the *Itorero* by changing its mission to focus only on dancing. This situation impacted negatively on relationships among Rwandans and the way the country was governed.²⁷⁵

Itorero became useful to restore national unity as an educative initiative aimed at re-introducing the culture of serving the country at no financial reward, encouraging patriotism, positive values, responsibility and selfless service— attributes that contribute to accelerating progress, promote social cohesion, peace and reconciliation and democratic governance. *Itorero* has nowadays been revived to promote values of unity, truth, culture of hard work and avoiding attitudes and mindsets that deter development, all aimed at speeding up the attainment of Vision 2020. From 2007-2009, 115,228 had participated.²⁷⁶

The President of Rwanda, launched this program publicly in 2007, reiterating the importance of *Itorero* by saying that the mission is to participate actively in the — 'mindset change' of Rwandans about economic and social revolution.²⁷⁷

²⁷⁰ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

²⁷¹ *ibid.*

²⁷² *ibid.*

²⁷³ *ibid.*

²⁷⁴ *ibid.*

²⁷⁵ *ibid.*

²⁷⁶ *ibid.*

²⁷⁷ *ibid.*

The *Itorero* objective to focus on recreating a Rwandan, characterized by values founded on culture and on national vision.²⁷⁸

Major specific objectives are:

- 1) To mould a self-respecting Rwandan, marked by distinct Rwandan values, and ready to accept positive changes for sustainable development. *Itorero* should enhance a self-sustaining knowledge-based economy, dependent on internal resources and good governance.
- 2) To produce patriotic servant leaders who strive for the development of the community and are capable of promoting creativity and competitiveness.

Now, *Itorero* also includes professional activities along with classes on Rwandan history so as to reintroduce some of the cultural values lost through colonization.²⁷⁹

An *Itorero* National Commission²⁸⁰ was put in place by the government. This Commission was entrusted with the elaboration of a sustainable institutional framework allowing the willing sections of the population from diverse backgrounds to contribute to their personal growth and the wellbeing of the communities where they live or they serve, thus creating opportunities to enhance positive values, build a sense of responsibility through patriotism, and also gain professional knowledge.

The values at the core of this modern day *Itorero* are²⁸¹:

- a) Unity:
- b) Patriotism
- c) Selflessness
- d) Integrity
- e) Responsibility
- f) Volunteerism
- g) Humility

Itorero targets all Rwandans and designs different curricula to suit the various sections of the population, including children of seven years old and above.

d) UMUGANDA: (Collective Action)

'*Umuganda*', dates back to the pre-colonial times and referred to Rwanda's tradition of voluntary work to achieve a range of societal objectives collectively. This methodology was reintroduced to Rwandan life in 1998 to reconstruct the country and to nurture a shared national identity. Every last Saturday of each month, Rwandans come together in the unique and homegrown 'collective action' called '*Umuganda*.'²⁸²

'*Umuganda*' is about the rallying of communal labour for the reconstruction and repair of basic public development infrastructure under the supervision of village leaders. Roads, bridges and water channels have been rehabilitated, schools and health centres built, the vulnerable people

²⁷⁸ *ibid.*

²⁷⁹ *ibid.*

²⁸⁰ *ibid.*

²⁸¹ *ibid.*

²⁸² National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

given shelter, and the environment protected. 'Umuganda' required everyone to contribute free labour.²⁸³

All Rwandans, including security forces, the President of the Republic and other political leaders, as well as non-Rwandans, participate in 'Umuganda.'²⁸⁴

Collective action through 'Umuganda' was seen as a tool that created solidarity, unity among those participating in it, bonded families and solidified social cohesion, social trust and reconciliation in Rwanda. It promoted neighbourliness while removing the separation walls between neighbouring communities. Through 'Umuganda,' friends and foes share a joke, exchange ideas and eventually transform conflicts constructively. The 'Umuganda' also enabled Rwanda to become self-reliant with dignity, as problems are solved by Rwandans themselves through such joint efforts.²⁸⁵

For example: By 2011, 2,346 classrooms for Nine Years basic education (9YBE) to accommodate 70,000 students, valuable to Rwandan Franc 25 billion were built through 'Umuganda.'²⁸⁶

5.4. How women helped rebuild Rwanda

Because most of those killed and fled the country were men, 70% of Rwanda's post-genocide population was female. Faced with ensuring their families' very survival, women played a crucial role to create stability in the aftermath of intense violence.²⁸⁷

Throughout the country mothers took in the orphaned children and organized support groups for widows. Women moved from cleaning buildings to reconstructing them. They farmed and started businesses.²⁸⁸

The promotion of gender equality, and women's empowerment, was considered by the Government of National Unity as a prerequisite for sustainable peace and development. In this regard, one of the principles of the 2003 National Constitution was to ensure equal rights between men (male) and women (female), an issue of development, governance, human rights and social justice and cohesion in Rwanda.²⁸⁹

In this perspective, a Gender Monitoring Office (GMO)—a public institution established by the 2003 Constitution of the Republic of Rwanda, (Article 185)- was created. The Law no 51/2007 of 20/09/2007 determines the responsibilities, organization and functioning of the GMO, with the mission of promoting gender equality and women empowerment in Rwanda. Gender Monitoring Office is thus part of the gender promoting mechanisms that particularly facilitate gender equality, and a distinctive value to women and girls.²⁹⁰

The government of Rwanda made a critical decision to classify rape in category one of genocide and other crimes against humanity. Women's views were taken into account and integrate in

²⁸³ *ibid.*

²⁸⁴ *ibid.*

²⁸⁵ *ibid.*

²⁸⁶ *ibid.*

²⁸⁷ '25 Years after the Genocide: How women helped rebuild Rwanda' (*Inclusive Security*)

<<https://www.inclusivesecurity.org/how-women-helped-rebuild-rwanda/>> accessed 2 February 2024

²⁸⁸ *ibid.*

²⁸⁹ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016

<<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

²⁹⁰ *ibid.*

the law categorizing use during genocide as a crime against humanity.²⁹¹ Today, the country is making strong progress toward achieving gender equality: Marital rape was outlawed in 2009²⁹² and 91.7%²⁹³ of Rwanda's legal frameworks advance gender equality, with a focus on violence against women.

As of December 2022, women constituted 61.3%²⁹⁴ of the Rwandan Parliament, making Rwanda, the country with the highest percentage of women in parliament in the world. This is considered quite a remarkable transformation for a nation that faced genocide almost 2.5 decades ago; where the Hutu extremists purposefully inflicted unprecedented campaign of sexual violence on Tutsi women as part of their broader efforts to eliminate the Tutsi minority.²⁹⁵

Since the establishment of the transitional government in Rwanda by the RPF, and the genocide, the Rwandan government had been in conversation with the women survivors of genocide, who filled the leadership voids left by widespread murder of men, to promote policies to ensure women's inheritance rights, access to family planning resources, and increased visibility in public life etc.²⁹⁶

Such reforms have been often stated by scholars as a dramatic change from the “*deeply entrenched patriarchal systems*” that previously dominated Rwanda, seemingly since time immemorial.

“The traditionally patriarchal society thrust its women into the role of rebuilding the country. They formed local councils, headed judicial proceedings, tilled the land, and rose through the ranks of government.

Amazingly, against a backdrop of near total ruin, they ushered in a level of peace and reconciliation that whipped the country into the model of development and gender equality it is today” (Stroclich, 2017)

A seemingly hopeless situation opened the way for women to play leading roles in repairing a broken society. Without much planning or coordination, at least initially, women began to distribute assistance and relief to communities, mediate and resolve disputes, and advocate for peace. Increasingly women became involved in shaping policy, driving socio-economic change and even serving as judges on *Gacaca*, once the exclusive preserve of “*wise and respected old men*” (*inyangamugayo*). The emergence of women in important, non-traditional roles after the genocide generated conversations and intersected at the national level.²⁹⁷

Since women knew about issues of health, education, and family life, it was discovered that they could convey the needs of communities. Earlier it was the men who made decisions on money making. Now, with women at the helm, the income was being invested in families and

²⁹¹ The National Unity and Reconciliation Commission, *The Role of Women in Reconciliation and Peacebuilding in Rwanda: Ten Years after Genocide 1994-2004*, May 2005 <<https://repositories.lib.utexas.edu/server/api/core/bitstreams/9ca5e871-27fc-4456-b7c5-5c213ecf5dba/content>> accessed on 26.02.2024

²⁹² ‘Rwanda’ (Women for Women International) <<https://www.womenforwomen.org/where-we-work/rwanda>> accessed 1 November 2023

²⁹³ *ibid.*

²⁹⁴ Einar H. Dyvik, ‘National Parliaments with largest share of women 2022’ (*Statista*, 23 January 2023)

<<https://www.statista.com/statistics/267028/women-in-selected-national-parliaments/>> accessed 1 November 2023

²⁹⁵ Sarah E. Watkins, Erin Jessee and Emma Brunton, ‘Women in Rwanda’ Oxford Research Encyclopaedia, African History (2022) <<https://doi.org/10.1093/acrefore/9780190277734.013.522>> accessed 2 February 2024

²⁹⁶ *ibid.*

²⁹⁷ Terence McNamee, ‘Such a Long Journey: Peacebuilding After Genocide in Rwanda’ In McNamee, T., Muyangwa, M. (eds) *The State of Peacebuilding in Africa*, Palgrave Macmillan, Cham. <https://doi.org/10.1007/978-3-030-46636-7_21> accessed 1 November 2023

households. On a national level, leaders saw the obstacles facing the female population and channelled them into policy reforms²⁹⁸.

The movement of Rwandan women through the government was made permanent by a 30 percent quota prescribed by the new government's constitution, which also established a gender monitoring office.²⁹⁹

In addition to this quota, there are voluntary gender quotas for political parties and the government pledged that women will be appointed to leadership roles, i.e. ministers, local area officials, and police chiefs.³⁰⁰

Today, countries around the world look to Rwanda as an example of women's impact on government and the peace process.³⁰¹

There are times they break out into singing and that is therapy. They forget they have no brothers, no sisters, some of them have no families," (Duncan, Garcia 2019)

In 2009,³⁰² the association, *Women for Women International*, responsible for carrying out humanitarian work to help women in poor countries, received a plot of five acres from the government of Rwanda with the task of building a centre of help and support. This became the first ever³⁰³ Women's Opportunity Centre in Rwanda; a Rwandan school based on the idea of enabling women to be self-sufficient; an innovative centre dedicated to the enrichment, fulfilment and progress of women and the communities in which they live; where women survivors of war and conflict go to heal, share business skills, and sell their hand-made products in one energizing space.

The said centre became both a permanent residence and a gathering place for women survivors of war as they learnt new skills including crafts and brick making and projects aiming to rebuild social infrastructure and restore cultural heritage. Education and self-empowerment at a grassroots level was seen as the best approach.

As trailblazers for societal reconstruction, women were seen as fearless, and have great hope due to their motivations. Women have also taken up important roles in Gacaca proceedings. A number of female-run cooperatives have been very powerful. They work as a team, which in turn builds their own strength and they get to have a say in the community. The ambitious policies and programs³⁰⁴ of the new Rwandan government gave the power to the women to rebuild the shattered nation.

The centrality of women to all parts of Rwanda's peacebuilding and post-conflict recovery is distinct in the African context. And studies on post genocide Rwanda largely celebrate women's

²⁹⁸ Nina Stochlic, 'Two Decades after Genocide, Rwanda's Women have made the Nation Thrive' (*Daily Beast*, 12 July 2017) <<https://www.thedailybeast.com/two-decades-after-genocide-rwandas-women-have-made-the-nation-thrive>> accessed 1 November 2023

²⁹⁹ Terence McNamee, 'Such a Long Journey: Peacebuilding After Genocide in Rwanda' In McNamee, T., Muyangwa, M. (eds) *The State of Peacebuilding in Africa*, Palgrave Macmillan, Cham. <https://doi.org/10.1007/978-3-030-46636-7_21> accessed 1 November 2023

³⁰⁰ *ibid.*

³⁰¹ Nina Stochlic, 'Two Decades after Genocide, Rwanda's Women have made the Nation Thrive' (*Daily Beast*, 12 July 2017) <<https://www.thedailybeast.com/two-decades-after-genocide-rwandas-women-have-made-the-nation-thrive>> accessed 1 November 2023

³⁰² 'Women's opportunity Centre in Rwanda' (*WikiArquitectura*) <<https://en.wikiarquitectura.com/building/womens-opportunity-center-in-rwanda/>> accessed 1 November 2023

³⁰³ 'First-ever Women's Opportunity Centre in Rwanda' (*Women for Women*, 31 May 2013) <<https://www.womenforwomen.org/blogs/first-ever-womens-opportunity-center-rwanda>> accessed 1 November 2023

³⁰⁴ Terra Lawson-Remer, 'Empowering Female Entrepreneurs in Rwanda' (*Council on Foreign Relations*, 10 April 2014) <<https://www.cfr.org/blog/empowering-female-entrepreneurs-rwanda>> accessed 1 November 2023

resilience and agency in helping the nation to reconcile with its violent past and pursue gender equality, despite significant ongoing challenges.³⁰⁵

5.5 National Youth Policy

Catering for the youth of Rwanda and their future was at the core of the new Government's concerns, especially the youth who represented the country's active force. With the heavy impact of the genocide and its related conflict on children and vulnerable groups, Rwanda's hope was the contribution of all segments of the society to rebuild the nation.³⁰⁶

Devising a national policy³⁰⁷ for youth became a necessity as "they were facing many challenges in different fields such as education, management of direct or indirect consequences of genocide, national unity and reconciliation, employment, fighting against hunger and poverty, environment deterioration, gender and health promotion, promotion of culture, sports, leisure and new information and communication technology."³⁰⁸

The youth were seen to play a key role in Rwandan society as leaders of tomorrow and were an indispensable inciting force for quality and sustainable development. The policy was a result of ideas, consultations and analysis by all partners and stakeholders of development in terms of youth by the youth themselves.³⁰⁹ The policy not only assigned legitimacy and orientation to programs centred on youth and proposed strategies and guidelines for their planning and implementation and directing the youth's forces and talents toward sustainable development of the nation.

To solve youth problems, certain programs like youth mobilization and training, support to youth initiatives, youth cooperation, educational, unity and reconciliation, poverty reduction and environment protection were prioritized.

Line ministries, National Unity and reconciliation Commission, youth associations and organizations, National Human Rights Commission, Civil society, the media, religious institutions, National Women Council were all made sub-partners to make the policy instrumental.³¹⁰

5.6. National Mental Health Policy

National Mental Health Policy³¹¹ was introduced in 1995 and has allowed political decision makers and other stakeholders in society to identify anchor points to initiate a mental health practice adopted to the context and that is close to the community.³¹²

³⁰⁵ Sarah E. Watkins, Erin Jessee and Emma Brunton, 'Women in Rwanda' Oxford Research Encyclopedias, African History (2022) <<https://doi.org/10.1093/acrefore/9780190277734.013.522>> accessed 2 February 2024

³⁰⁶ The Republic of Rwanda, Ministry of Youth, Culture and Sports, 'National Youth Policy' <https://www.youthpolicy.org/national/Rwanda_2005_National_Youth_Policy.pdf> accessed 1 November 2023

³⁰⁷ *ibid.*

³⁰⁸ *ibid.*

³⁰⁹ *ibid.*

³¹⁰ *ibid.*

³¹¹ *ibid.*

³¹² *ibid.*

The genocide left a large segment of the population with severe mental health disorders. A census conducted in 2002 revealed that prevalence of PTSD (Post Traumatic Stress Disorder) among the genocide survivors' population was estimated at 84.7%.³¹³

During the post genocide period, new challenges related to trauma related issues began to emerge.³¹⁴ The government of Rwanda was dedicated to promote mental health awareness, preventing mental health problems and drug abuse through advocacy, education, research and developing mental health services in Rwanda.³¹⁵

However, the availability of these services has been limited due to lack of trained professionals and inadequate finances. The Rwandan mental health care system consists of only 2 agencies that provide specialized mental care. In addition, the government has been decentralizing health care, and recently the district hospitals have started employing mental health nurses and psychologists.³¹⁶

A number of challenges confronts the mental health sector, including the need for setting up a legal framework governing the sector. Therefore, in order to provide adequate and quality mental health care, there is a need to revise Rwanda's National Policy of Mental Health.

Even 20 years after the genocide, many still suffer from past psychological wounds. *“The country's mental health agenda is based on individualized and psychiatric approaches that help some but cannot be provided on a large-scale. Further, many reconciliation initiatives have been based on public testimonies, which have been shown to be potentially re-traumatizing, leading to calls for small-scale community-based approaches to healing, which constitute a middle way between individualized and public approaches”*³¹⁷

5.7. National Heroes Day

Since 1995, on every first day of February, a National Heroes' Day has been celebrated in Rwanda.³¹⁸ This celebration is aimed at bringing together Rwandans to honor and remember the heroes of Rwanda without distinction or discrimination (military, politicians and ordinary citizens, including the victims of the 1994 Genocide against Tutsi), who either lost their lives to liberate Rwanda from oppression, bad leadership and Genocide and/or, who lost their lives in defending the unity of Rwandans.

The National Heroes' Day is also a particular occasion to share lessons about heroism, virtue and the values of patriotism, which also include the history of Rwanda, notably what divided Rwandans and how to unite and reconcile.³¹⁹

³¹³ *ibid.*

³¹⁴ *ibid.*

³¹⁵ *ibid.*

³¹⁶ L.C. Nag and B. Harerimana, 'Mental health care in post-genocide Rwanda: evaluation of a program specializing in posttraumatic stress disorder and substance abuse' *Glob Ment Health* (Camb), 2016; 3: e18<[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5012309/#:~:text=The%20mental%20health%20care%20provided,are%20enrolled%20\(Farmer%20et%20al\)](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5012309/#:~:text=The%20mental%20health%20care%20provided,are%20enrolled%20(Farmer%20et%20al)>)>accessed on 01.11.2023

³¹⁷ Ines-Lena Mahr and Catherine Campbell, 'Twenty years post-genocide: the creation of mental health competence among Rwandan survivors through community-based healing workshops' 2016, *Journal of Community & Applied Social Psychology*, 26 (4). pp. 291-306<https://eprints.lse.ac.uk/64880/1/Campbell_20%20Years%20post-genocide_2016.pdf>accessed on 01.11.2023

³¹⁸ National Unity and Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 1 February 2024

³¹⁹ *ibid.*

On the National Heroes' Day, people are thus reminded of the great value in service to the country that the national heroes have shown to those who are still alive. This day constitutes one of the strategies to enforce patriotism, unity and reconciliatory values rooted in Rwandan culture. This is so given that Rwandans need to be reminded of who they really are—Rwandans above anything else—because at one time they forgot that they were Rwandans and killed their compatriots.³²⁰

5.8. Memorialization

In Rwanda, memory focuses on the recognition of past injustice and violations of human rights, as well as their impact, towards preventive measures under “*never again*” commitment of the Government of National Unity after 1994.³²¹

Therefore, unlike the modern era whereby memory is solely labelled as archival, because its primary purpose has become a means of preserving history, memory in the context of Rwanda goes beyond preserving history and adds the preventive and the correctional measures, as well as the envisioning of the constructive future of the society.³²²

The Rwandan government has not chosen against amnesia of events that have occurred. Memorials at massacre sites and annual commemorations are used to preserve the memory of the Genocide against Tutsi and to show the dangerous results of ethnic divisions.³²³

Monuments, Memorials, and Museums have thus been part of the unity and reconciliation process. The same goes to cultural products of various kinds, films, novels, and national holidays. Related activities highlight the maintenance of memorial sites, the promotion of national rituals of commemoration, new national symbols to shape the collective memory of Rwandan history, and the annual-National Day of Heroes. The museum also conducts workshops for secondary students: Learning from the past; Building the future workshops. In particular, every year national commemoration that remembers, or commemorates for, the victims of the 1994 Genocide perpetrated against Tutsi refreshes and fosters collective memory.³²⁴

5.8. The Unity and Reconciliation Evaluation Day

On November 23rd, 2001, in the second year of the NURC's existence, the Unity and Reconciliation Evaluation Day was organized for the Rwandans to make a thorough self-assessment and reconcile with their own conscience and discuss truly and openly about their cohabitation.³²⁵ Leaders as well as the general population were allowed to set up strategies for strengthening progress made so far and to assess obstacles to harmonious coexistence of Rwandans.³²⁶

³²⁰ *ibid.*

³²¹ *ibid.*

³²² *ibid.*

³²³ *ibid.*

³²⁴ *ibid.*

³²⁵ National Unity and Reconciliation Commission, *Report on the Evaluation of National Unity and Reconciliation* (Kigali, June 2002) <<https://repositories.lib.utexas.edu/bitstream/handle/2152/5515/2805.pdf?sequence=1>> accessed 30 October 2023

³²⁶ *ibid.*

The NURC organized different meetings on the Unity and Reconciliation process throughout the country and compiled a report on the outcomes of the consultations. Different categories of Rwandans took advantage of these consultations and participated to assess the progress made so far in the field of social relations and coexistence of Rwandans, as well as to voice freely their ideas; which are indicative of their current views in this respect.³²⁷

Authorities in all instances of the country also participated and sufficiently clarified issues raised and took strategies of keeping on explaining to the population issues which are still unclear in a bid to promote good achievements in the field of social relations and good coexistence of Rwandans.³²⁸

Everybody felt called upon to play his part in building unity and the reconciliation process. Biased feelings should be fought and the social welfare of all Rwandans should be put in the frontline.³²⁹

Obstacles noted from the Evaluation Day consultations	Recommendations from the Evaluation Day consultations
Misunderstanding of Government policy; this is caused by lack of clear explanations that are given to the population by some officials who misinterpret government policy;	Speeding up Gacaca jurisdictions set up; which are expected to work for the betterment of good coexistence amongst Rwandan people;
The population has not understood their role in various important activities; they expect everything from the Government;	Preparing the population for harmonious coexistence with those who will have been acquitted by ordinary courts or Gacaca jurisdictions and sensitize detainees on good coexistence with the population in villages once they will be released;
Top officials who are negative role models who have double talk; it's hard to know their exact position, hence sowing confusing in the population;	Speeding up the setting up of development programmes for the most vulnerable groups;
Poverty and ignorance;	The National Assembly should to speed up the Law against Corruption and other related offences;
Corrupt politicians who are still convinced that they need to use ethnicity and regionalism to achieve their ambitions, so they create divisions and put aside Rwandans' interests; Laws which are not clarified to the population to inform them about their rights, so that they can understand that laws are to protect them and not to oppress them;	Officials in high instances should be chosen with care and Leader's code of Conduct be put in place;

³²⁷ *ibid.*

³²⁸ *ibid.*

³²⁹ *ibid.*

Slowness of authorities in solving problems of the population; which leads to the loss of confidence in the Government;	A Compensation Fund is highly needed, as it could help judicial systems to execute verdicts of genocide trials;
Problems of land mainly resulting from a selfishness and lack of land legislation;	Campaigns to sensitize Rwandan refugees on voluntary repatriation should continue;
Lack of confidence in the judicial system due to the mischievous behaviour of their representatives who are corrupted. ³³⁰	Competition for a job position is a step to be appreciated and should be improved. They should be organized by experts in transparency. Specifications required for various positions should be clarified on time and results be known to the public;
	Promoting the welfare of the population by strengthening the National Poverty Reduction Programme and involving the population in its activities;
	The Law on Land should be enacted as soon as possible as it will solve some conflicts related to land. ³³¹

Such consultations to evaluate the reconciliatory efforts of the government brought to light that, if the population were invited to take part in various debates about their daily life, it would change their understanding and what they were considering as source of divisions could then be turned into opportunities for Unity and reconciliation, whilst leaders at all levels would know that they represent the Government, that their mischievous behaviours are counted on the Government's shoulders. Therefore, it is imperative for them to be good role models in order for the population not to lose confidence in their government.³³²

³³⁰ *ibid.*

³³¹ *ibid.*

³³² *ibid.*

CHAPTER 6

Organizations that assisted Rwanda's Reconciliation

- Organization of African Unity (OAU)- supported comprehensive agreements between the RPF and Government of Rwanda in 1993.
- UNHCR - monitored the returnees in Rwanda, to help in reintegration, UNHCR has also concentrated efforts on upgrading damaged schools.
- Save the Children Fund/U.K., Save the Children Fund/U.S., and UNICEF supported the Ministry of Family and the Promotion of Women, the Ministry of Rehabilitation, and women's groups in their advocacy efforts - Save the Children Fund/U.K. was also the lead agency in tracing and reunification, and initiated a strategy to register all children.
- UNICEF - assisted in reopening primary schools; a number of organizations helped pay the salaries of teachers, administrators, and civil servants. UNICEF funded one-time incentive payments.
- UNICEF, the UN Assistance Mission to Rwanda (UNAMIR), ICRC, Oxfam, and Britcon, along with others, worked to restore the water supply to Kigali- Actual fighting destroyed some water and sanitation facilities, but most were damaged through neglect during and immediately after the war.
- UNICEF and UNESCO, with the assistance of various NGOs, had distributed 7,400 teacher emergency packages throughout the country in camps. Both UNICEF and UNESCO provided direct assistance to the Ministry of Primary and Secondary Education to purchase basic office equipment, supplies, and vehicles, and to reprint textbooks.
- Interpeace Rwanda and Prison Fellowship Rwanda – conducted baseline research on mental health and trauma healing.
- Trócaire and the Commission for Justice and Peace³³³ started working shortly after the genocide, providing vital trauma counselling and healing support, and helping to break down divisions in communities across Rwanda.
- Karuna Center for Peacebuilding, Aegis Trust, Healing and Rebuilding Our Communities, and Institute of Research for Dialogue and Peace partnered the Healing Our Communities: Promoting Social Cohesion in Rwanda; aimed to prepare community members to serve as healing and reconciliation resources for their communities ongoing; funded by USAID³³⁴
- USAID with other donors have supported human rights initiatives in three key areas to promote national rebuilding: 1) establishment of the International Tribunal for Rwanda, 2) reconstruction of the justice system, and 3) assistance to the UN Human Rights Field Operation funding agriculture rehabilitation programs. among the first to provide assistance to the new government for institutional capacity-building
- UN agencies, ICRC and bilateral donors arrived with trained health professionals, medicines, supplies, and equipment. They re-established basic curative services and helped restore damaged water systems.
- The UN commissioner for human rights and the Government of Rwanda agreed to deployment of 147 human rights field officers, one for each of the country's communes. The Human Rights Field Operation for Rwanda aimed to investigate the genocide,

³³³ 'Rwanda 25 years – The Journey to Reconciliation' (*Trocaire*, 16 April 2019) <<https://www.trocaire.org/news/rwanda-genocide-journey-reconciliation/>> accessed 30 October 2023

³³⁴ 'Healing Our Communities: Promoting Social Cohesion in Rwanda' USAID #AID-696-F-16-00002, Final Report, October 2019 <<https://www.karunacenter.org/wp-content/uploads/2018/03/Healing-Our-Communities-Final-Report.pdf>> accessed 30 October 2023

monitor the human rights situation, help re-establish confidence, and provide technical assistance in administration of justice.

- ICRC has responsibility for children in camps, for cross-border operations, and for centralizing data on unaccompanied children throughout the Great Lakes region.
- (ICRC) and some NGOs, such as Médecins sans Frontières, began to operate and refurbish clinics and hospitals in Kigali and in the Northeast
- World Food Program and Caritas/Catholic Relief Services food support programs specifically targeted toward vulnerable groups, including female heads of households.
- UNICEF, UNDP, Canada, Finland, Norway, and the United Kingdom, have supported capacity-building for the appropriate ministries in policy development and service delivery of water, sanitation, and hygiene.
- FAO, WFP, NGOs and the Ministry of Agriculture helped ensure that all regions needing productive inputs, tools, and food aid were covered
- UNDP, World Bank, and IMF have sent consultative missions, conducted studies, and otherwise supported efforts to identify priority needs for economic and administrative management.
- Humanity Unified (USA) teamed up with Aspire Rwanda³³⁵, trained the women to grow crops and start/grow businesses.

³³⁵ Jericka Duncan and Luisa Garcia, 'Rwandan women rebuild their country from the ground up after the genocide' (*CBS News*, 12 January 2019) <<https://www.cbsnews.com/news/rwandan-women-rebuild-their-country-from-the-ground-up-after-genocide/>> accessed 1 November 2023

SUMMARY

COUNTRY	RWANDA Location: East Central Africa A German Colony; then assigned to Belgium;
Background / Context	<ul style="list-style-type: none"> ● 2 ethnic groups Tutsi & Hutu; ● Tutsi determined superiority over Hutu; ● Discrimination against the Tutsi population started from the time of independence from Belgium in 1961; which later widespread; ● ethnic tensions between the majority Hutu and the minority Tutsi provoked the civil war, which led to genocide; ● Rwandan Civil War was a conflict between the Rwandan Patriotic Front (RPF) of the Tutsi rebels and the Rwandan Armed Forces of the Hutu government that occurred from October 1990 through July 1994; ● Rwandan genocide occurred alongside the civil war from April 1994 to July 1994; ● The Arusha Accords, - August 1993- between President & RPF established a power sharing arrangement – which angered the Hutu extremists; ● The United Nations Assistance Mission for Rwanda (UNAMIR) – October 1993- gave humanitarian assistance; ● Assassination of leaders and UNAMIR soldiers plunged the country into anarchy; ● April 1994–July 1994—The Rwandan Genocide occurred over the course of approximately 100 days- Hutu killed Tutsi citizens; ● 800,000 to 1 million died;
Meaning of TRC	<ul style="list-style-type: none"> ● Working towards reconciliation; ● Reunifying the country’s citizens;
Mandate of TRC	<ul style="list-style-type: none"> ● National Unity and Reconciliation Commission in March 1999; ● to promote unity, reconciliation, and social cohesion among Rwandans and build a country in which everyone has equal rights and contributing to good governance; ● foster tolerance, culture of peace and human rights; ● to educate the citizens of their rights and rights of others; ● to monitor if the people and the authorities are respecting and observing the policy of reconciliation and unity;
Composition of TRC	<ul style="list-style-type: none"> ● Council of commissioners comprising 12 members including President & Vice President and; ● Permanent Secretariat comprising 26 members;
Work of TRC	<ul style="list-style-type: none"> ● Final report not published but various reports on the consultations held; commissioner’s activities and annual reports have been issued; ● Commission is divided into 3 departments: Dept of Civic Education, Dept of Peacebuilding & Conflict Management and Dept of Administration & Finance; ● Commission became a permanent body in 2002; ● Has a particular focus on homegrown initiatives;
Recommendations	<ul style="list-style-type: none"> ● Proposed a law to punish all kinds of discrimination; ● History book drafter to be included into the school curricula;
Success/Praises	<ul style="list-style-type: none"> ● Anti-discriminatory law passed in 2001 against those practicing segregation or discrimination; ● International exhumation of 500 individuals;

	<ul style="list-style-type: none"> ● Ingando – traditional reconciliation mechanism that programs peace education in solidary camps to promote patriotism and fight genocide ideology; ● Itorero ry'Igihugu - Established in 2007 to promote Rwandan values and cultivate leaders who strive for the development of the community; ● N di Umuryawanda – translated as 'I am Rwandan' a dialogue-based program emphasizing on shared citizenship and unity before references to any ethnic identities; ● NURC barometer studies shows that levels of reconciliation are extremely high (over 90%); ● The adopted mechanisms have laid a solid foundation that paved the way for comprehensive and sustainable national reconciliation; ● A national and shared sense of identity and dignity has been restored through programmes favouring the inclusiveness and dignity of Rwandans, such as the abolition of divisive-and false ethnic identities and the promotion of Rwandanness (Ndi Umunyarwanda)
Negative Impacts	<ul style="list-style-type: none"> ● Proposed history book has not been adopted;
Limitations / Challenges	<ul style="list-style-type: none"> ● Exhumation of 500 individuals in 1995 were so traumatic that further investigations by internationals were not permitted since; ● 4 major hindrances for unity and reconciliation - 1) '<i>genocide ideology, divisionism and denial</i>' among the elderly and youth, 2) '<i>fresh wounds</i>' and '<i>memories of division and genocide</i>', 3) '<i>problem with the compensation of the properties looted or destroyed</i>' 4) '<i>poverty and socio-economic inequality</i>'
Criticisms	<ul style="list-style-type: none"> ● the process of addressing past injustice has been selective; it has been restricted to the genocide committed by the defeated government and it has neglected RPF crimes; ● Rwanda's government has consistently obstructed the tribunal's investigation of RPF crimes³³⁶
Lessons Learnt / Suggestions	<ul style="list-style-type: none"> ● Commission has published a number of studies investigating the causes of conflicts in Rwanda and how to mitigate and resolve them; ● Memory preservation – ceremonies broadcasted on state television and radio; ● One week in April an intensive week for mourning and any kind of parties and celebrations are discouraged ● Government recreated the traditional Gacaca system of justice in 2001, an informal local system of participatory and restorative justice in which people, especially community elders, used to sit together in the Gacaca (the 'grass' or 'lawn') and settle their disputes with the aim of reconciling conflicting parties; ● It is the state's responsibility to set the stage and promote national reconciliation- lead by example – walk the talk – inclusive democratic govt is paramount; ● Successful national reconciliation necessitates integrated efforts involving the state/ government and non-state actors. This must involve a safe space for dialogue between these actors reflecting the national (top), middle range (elites), and community/local

³³⁶ Janine Natalya Clark, 'National unity and reconciliation in Rwanda: A flawed approach' *Journal of Contemporary African Studies*, 28:2, 137-154 <<https://www.tandfonline.com/action/showCitFormats?doi=10.1080%2F02589001003736793>> accessed on 21.09.2023

	<p>(grassroots) levels- they need to agree on core national reconciliation goals, priorities, and implementation mechanisms;</p> <ul style="list-style-type: none">● One of the best benefits here is a shared vision of the past and future that is acceptable to all;● use of mechanisms that are grounded in a society's context, culture, traditions and customs- Home-grown solutions;● a mechanism for integration and coordination is paramount, - it was not a 'Truth and Reconciliation Commission'; instead, it was a mechanism mandated to coordinate, monitor, and integrate all efforts at national and local levels, aimed at promoting reconciliation;● all actors need to realize that national reconciliation remains a long, complex, and dynamic process whose success should involve an inclusive and integrated approach;● Successful reconciliation should be comprehensive. Approaches that are selective (e.g. deliberately considering some injustices to the detriment of others) are a recipe for disaster;● important to regularly track the progress of reconciliation in order to revise the mechanisms and processes, or to create new ones, and so address any persisting challenges.
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Acronyms

CEP	- Common Experience Payment
IAP	- The Independent Assessment Process
ICTJ	- International Center for Transitional Justice
INAC	- Indigenous and Northern Affairs Canada
IRS	- Indian Residential School
IRSS	- Indian Residential School System
IRSSA	- Indian Residential School Settlement Agreement
NAC	- National Administration Commission
NCTR	- Creation of National Centre for Truth and Reconciliation
RCAP	- Royal Commission on Aboriginal People
RCMP	- Royal Canadian Mounted Police
RCPA	- Royal Commission on Aboriginal People
TRC	- Truth and Reconciliation Commission
UNDRIP	- The United Nations Declaration on the Rights of Indigenous Peoples

CONTENTS

CHAPTER 1

History and Background

- 1.1. Legacy of Colonialism
- 1.2. Canada's assimilation policies and the Indian Residential School System (IRSS)
- 1.3. The establishment of the Royal Commission on Aboriginal People (RCAP)
- 1.4. The jurisprudence of reconciliation in Canada

CHAPTER 2

The path towards truth seeking and reconciliation

- 2.1. The State apology and Indian Residential Schools Settlement Agreement as solutions.
- 2.2. The process of reconciliation
- 2.3. The establishment of the Truth and Reconciliation Commission (TRC)

CHAPTER 3

Policy framework of the TRC process

- 3.1. Health Development for Indigenous people
- 3.2. Cultural Genocide and Education
- 3.3. The State Sovereignty, non-interferences
- 3.4. Commemoration
- 3.5. Modern child-welfare

CHAPTER 4

Lessons Learnt

- 4.1. Moving from apology to action
- 4.2. National events
- 4.3. The process of statement gathering
- 4.4. The salient features of the Settlement Agreement (IRSSA)
- 4.5. Powers and Responsibilities vested with the Commission
- 4.6. Expression of interest
- 4.7. Education and Outreach
- 4.8. Commemoration and community events funding
- 4.9. Creation of National Centre for Truth and Reconciliation (NCTR)
- 4.10. Prosecutions
- 4.11. The TRC Final Report and Calls to Action

CHAPTER 5

Concluding remarks and lessons for Sri Lanka

CHAPTER 1

History and Background

Canada, a vast and diverse landmass stretching from the Atlantic to the Pacific,¹ is a nation steeped in history and multiculturalism. According to the history of Canada,² the colonization occurred with the migration of a new group of people to North America and when the group began to control the natives by seizing the lands and by controlling their access to the resources and trade. From its earliest indigenous inhabitants to the arrival of European explorers and settlers, Canada's story is one of exploration, colonization, and the complex interplay of cultures and people. Canada's story begins long before the arrival of European explorers, with indigenous people inhabiting the land for thousands of years.

When Europeans began exploring Canada, they found that all the regions were occupied by the native people and referred to them as 'Indians' assuming that they had reached the East Indies.³ It is apparent that, *the Huron-Wendat of the Great Lakes region, the Iroquois, the Cree and the Dene of the Northwest, the Sioux, the Inuit and the West Coast natives* were some of the known dominant natives tribes⁴ who lived off the land by hunting, gathering, and cultivating. Warfare was also reportedly common among them as they competed for the land, resources and also treated each other with respect and dignity.⁵

The arrival of the European traders, missionaries, soldiers and the colonists completely altered the native way of life of the original inhabitants' way of life in Canada.⁶ A large number of the natives died⁷ as a result of the European epidemic diseases⁸ to which indigenous communities lacked immunity. However, it is evident that the indigenous communities and the Europeans had a complex often antagonistic relationship over 200 years of existence which laid the foundations for the modern-day Canada.⁹ This chapter further elaborates on the impact of colonization.

¹ Canada Guide, 'Canadian Geography', <<https://thecanadaguide.com/places/geography/>>, accessed on 4th March 2024

² 'Colonization' (BCcampus) <<https://opentextbc.ca/indigenizationfoundations/chapter/43/>> accessed 30 January 2024

³ 'Discover Canada – Canada's History' (Government of Canada, 26 October 2015) <<https://www.canada.ca/en/immigrationrefugeescitizenship/corporate/publications-manuals/discover-canada/read-online/canadas-history.html>> accessed 12 January 2024

⁴ Canada's original inhabitants-The Huron-Wendat of the Great Lakes Region, like the Iroquois, were farmers and hunters. The Cree and Dene of the Northwest were hunter-gatherers. 'History of Canada' (Government of Canada, 8 June 2020) <<https://www.canada.ca/en/canadian-heritage/services/history-canada.html>> accessed 30 January 2024

⁵ 'Discover Canada – Canada's History' (Government of Canada, 26 October 2015) <<https://www.canada.ca/en/immigrationrefugeescitizenship/corporate/publications-manuals/discover-canada/read-online/canadas-history.html>> accessed 12 January 2024

⁶ 'First Nations in Canada' (Government of Canada, 2 May 2017) <<https://www.rcaanc-cirnac.gc.ca/eng/1307460755710/1536862806124>> accessed 30 January 2024

⁷ Nearly six out of 10 native people living in a 9,000-year-old community in Canada died when European settlers arrived, bringing diseases to which the local people had no immunity, according to a new genetic study. <<https://www.independent.co.uk/news/science/first-nations-canada-european-settlers-diseases-killed-almost-60-genetic-study-british-columbia-a7418441.html>>, accessed on 30/01/2024

⁸ While the European population had a strong resistance to diseases such as bronchitis, measles, scarlet fever, chicken pox and even the common cold – exposure to these diseases was often fatal to Aboriginal populations. Added to this were other diseases such as smallpox, tuberculosis and venereal disease (such as syphilis) that were deadly for European and Aboriginal populations alike, <<https://aboriginalhistoryofyarra.com.au/9-disease/>>, accessed on 30/01/2024

⁹ 'Discover Canada – Canada's History' (Government of Canada, 26 October 2015) <<https://www.canada.ca/en/immigrationrefugeescitizenship/corporate/publications-manuals/discover-canada/read-online/canadas-history.html>> accessed 12 January 2024

1.1. Legacy of Colonialism

The history of Canada and its policies on “*cultural genocide*”¹⁰ and “*assimilation*”¹¹ have created a legacy of persecution and trauma for the native Canadians, and has created deeply rooted divisions within the Canadian society.¹² Canada is founded and based on *two colonial legal fictions*¹³, ‘*Terra Nullius*’¹⁴ and ‘*the Doctrine of Discovery*’.¹⁵ “*These doctrines proclaimed that any land not occupied by Christians was considered empty and thus void of ‘civilized’ people and would therefore become the property of the Crown. Consequently, in their conquest to dispossess Indigenous peoples of their lands, the colonial empire deemed and committed cultural genocide as a means to eradicate Indigenous peoples*”¹⁶

1.2. Canada’s assimilation policies and the Indian Residential School System (IRSS)

The Indian Residential School System (IRSS) policy which was adopted by the colonial Government of Canada and administered by the Christian Church to educate indigenous children which has an agenda of separating indigenous children from their families and their communities.¹⁷ The IRSS officially operated from the 1880s into the closing decades of the 20th century.¹⁸ Further, IRSS consisted of the boarding schools under the operation of the

¹⁰ Starting in the 1880's and for much of the 20th century, more than 150,000 children from hundreds of indigenous communities across Canada were forcibly taken from their parents by the government and sent to what were called Residential Schools. Funded by the state and run by churches, they were designed to assimilate and christianize indigenous children by ripping them from their parents, their culture, and their community. The children were often referred to as savages and forbidden from speaking their languages or practicing their traditions. Many were physically and sexually abused, and thousands of children never made it home. The Guardian, ‘The cultural genocide: a shameful history of Canada’s residential school’, <<https://www.theguardian.com/world/ng-interactive/2021/sep/06/canada-residential-schools-indigenous-children-cultural-genocide-map>>, accessed on 26/02/2024

¹¹ Indian residential schools operated across Canada for almost 150 years with the purpose of the total assimilation of Indigenous children into settler society. Since the 18th century, Canada’s colonial and post-colonial authorities have used different assimilation tactics to subjugate Indigenous people into the Canadian-European state’s political identity. UNESCO, ‘Children Speak: Forced assimilation of indigenous children through Canadian residential school’, <<https://www.unesco.org/en/memory-world/children-speak-forced-assimilation-indigenous-children-through-canadian-residential-schools>>, accessed on 26/02/2024

¹² Government of Canada, ‘Truth and Reconciliation Commission, ‘Canada’s Residential Schools: Reconciliation Volume 6’, <https://publications.gc.ca/collections/collection_2015/trc/IR4-9-6-2015-eng.pdf>, p.19, accessed on 26/02/2024

¹³ Kontinóhstats - The Mohawk Language Custodians, ‘Submission to the UN Expert Mechanism on the Rights of Indigenous Peoples: the role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples’, 3

¹⁴ European map-makers drew unexplored landscapes as blank spaces. Instead of interpreting these blank spaces as areas yet to be mapped, they saw them as empty land waiting to be settled. When settlers arrived in North America, they regarded it as terra nullius, or “nobody’s land.” They simply ignored the fact that Indigenous Peoples had been living on these lands for thousands of years, with their own cultures and civilizations. For the settlers, the land was theirs to colonize. As time went on, more and more settlers took over the traditional territories of Indigenous Peoples- Colonization, ‘Colonization’ (*BCcampus*) <<https://opentextbc.ca/indigenizationfoundations/chapter/43/>> accessed 30 January 2024

¹⁵ The Doctrine of Discovery was set out in a series of declarations by popes in the 15th century. These declarations (known as “papal bulls”) provided religious authority for Christian empires to invade and subjugate non-Christian lands, peoples and sovereign nations, impose Christianity on these populations, and claim their resources.- Travis Tomchuk, ‘The Doctrine of Discovery’ (*Canadian Museum for Human Rights*, 2 November 2022) <<https://humanrights.ca/story/doctrine-discovery>> accessed on 30 January 2024

¹⁶ Kontinóhstats - The Mohawk Language Custodians, ‘Submission to the UN Expert Mechanism on the Rights of Indigenous Peoples: the role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples’, 3

¹⁷Erin Hanson, ‘The Residential School System’, <https://indigenousfoundations.arts.ubc.ca/the_residential_school_system/#what-were-residential-schools>, accessed on 18/03/2024

¹⁸ *ibid*

government of Canada and the churches to adapt the aboriginal children into Canadian society. “Up until the 1990s, the Canadian government, in partnership with a number of Christian churches, operated a residential school system for Aboriginal children. These government-funded, usually church-run schools and residences were set up to assimilate indigenous people forcibly into the Canadian mainstream by eliminating parental and community involvement in the intellectual, cultural, and spiritual development of their children.”¹⁹

The incidents related to the Indian Residential School System (IRSS) were a part of a structured programme of colonization. Such assimilation policies were institutionalized through the *Indian Act in 1876* and the IRSS. It is evident from history, how the aboriginal children were kidnapped from their families by the authorities of the government and were sent to the Residential Schools which were great distances away from their homes. At the Residential School, the children were forced to learn English or French and were severely punished when they spoke their Indigenous languages to break the family ties and to disturb traditional practices and were subjected to inhuman, degrading, physical and mental treatment and punishments.²⁰

*“The officials at the school facilitated the destruction of Native cultures. They cut children's braids, denied wearing of traditional clothes, and doled out harsh punishments if children spoke their native languages. Children were forcibly taken from their families and placed in schools that were more akin to prisons. As a former student of a residential school described it, “[the school is] what I imagine jail to be.”*²¹

1.3. The establishment of the Royal Commission on Aboriginal People (RCAP)

The Royal Commission on Aboriginal People (RCAP) was established in response to the ‘Oka crisis’²² in 1990 and mandated to cover the long-term relationships between the aboriginals and non- aboriginals. Also known as Kanehsatake resistance, it was a land dispute between Mohawk people and the townspeople of Oka in Quebec. It began in July 11, 1990 and lasted for 78 days causing the death of two people.²³

The main purposes of establishing the RCAP was to focus on the historical, social, cultural, economic and political circumstances of the aboriginal people and to help restore justice to the aboriginal people.²⁴ The life span of the Commission was 5 years and heard the voices of 96

¹⁹ Truth and reconciliation Commission of Canada, ‘Truth and Reconciliation Commission of Canada : Interim Report 2012, <https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf>, accessed on 1/11/2023

²⁰ Kontinónhstats - The Mohawk Language Custodians, Submission to the UN Expert Mechanism on the Rights of Kontinónhstats - The Mohawk Language Custodians, ‘Submission to the UN Expert Mechanism on the Rights of Indigenous Peoples: the role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples’,

²¹ Victoria Roman, ‘NOTE AND COMMENT: From Apology to Action: A Comment on Transitional Justice in the United States and Canada’, Maryland Journal of International Law 2022

²² The Oka Crisis began over land near the Mohawk community of Kanesatake and the village of Oka outside Montreal and led to a confrontation with Quebec provincial police.

Melinda Meng, ‘Bloody blockades: The legacy of the Oka crisis’ (Harvard International Review, 30 June 2020) <<https://hir.harvard.edu/bloody-blockades-the-legacy-of-the-oka-crisis/>> accessed 30 January 2024

²³ [Oka Crisis - Wikipedia](#), Retrieved,10/05/20204

²⁴ Rosemary Nagy, ‘The Truth and Reconciliation Commission of Canada: Genesis and Design’ (2014)29 Can JL & Soc 199, p.204

communities within 178 days.²⁵ According to the findings, those who have testified before the Commission were the survivors of the residential schools governed by the Government and the churches and it was the first major inquiry to report on the residential schools.²⁶

Kim Stanton elaborates on how the interim report of TRC in 2012 highlighted the special features: “[The] RCAP’s guiding principles of mutual recognition, mutual respect, sharing and mutual responsibility are critical to any reconciliation process.”²⁷ However, due to lack of political responses to the findings of RCAP, the survivors of the residential schools who came before the Commission had filed lawsuits and sought alternative dispute resolution processes. These actions are believed to have paved the way for the formation of TRC.²⁸

Stanton further elaborates²⁹ about the applicability of the contents in the RCAP report in the modern context. “We now have an unprecedented opportunity to learn from the mistakes of the past and to set out, both as governments and as peoples, in totally new directions. If Canada has a meaningful role to play on the world stage...then it must first set its domestic house in order and devise, with the full participation of the federal government, the provinces and the aboriginal peoples, a national policy of reconciliation and generation of which we can all be proud.”³⁰

1.4. The jurisprudence of reconciliation in Canada

The landmark cases discussed in this section clearly depicts how jurisprudence played a key role in the process of reconciliation in Canada. The cases of *White and Bob*³¹, *Calder*³², *Guerin*³³ and *Sparrow*³⁴ mark clear evidence on how the Supreme Court of Canada paid attention to the

²⁵ Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 Journal of Law and Social Policy 21, p.3

²⁶ *ibid*

²⁷ *ibid*

²⁸ Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 Journal of Law and Social Policy 21, p.4

²⁹ *ibid*

³⁰ *ibid*, p.22

³¹ *R v White and Bob* (1964), 50 DLR (2d) 613 (BCCA), *aff’d* [1965] SCR vi,

³² *Calder v British Columbia (Attorney-General)*, [1973] SCR 313 - It was the first time that Canadian law acknowledged that aboriginal title to land existed prior to the colonization of the continent and was not merely derived from statutory law. While the lower levels of court had denied the existence of Aboriginal title, the Supreme Court ruled in 1973 that Aboriginal title had indeed existed at the time of the Royal Proclamation of 1763. The Supreme Court’s 1973 decision was the first time that the Canadian legal system acknowledged the existence of Aboriginal title to land and that such title existed outside of, and was not simply derived from, colonial law. <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5113/index.do>>, accessed on 18/03/2024

³³ *Guerin v The Queen*, [1984] 2 SCR 335 -This ruling set a precedent in the recognition of Aboriginal rights in Canada. This acknowledged that Canada (the federal government) has a trust-like relationship, or “fiduciary duty” towards First Nations, specifically in regards to reserve lands. In other words, the federal government has the obligation to act in their best interest.

³⁴ *R v Sparrow* [1990] 1 SCR 1075 -This was a precedent-setting decision made by the Supreme Court of Canada that set out criteria to determine whether governmental infringement on Aboriginal rights was justifiable, providing that these rights were in existence at the time of the Constitution Act, 1982. This criterion is known as “the Sparrow Test.- which sets out a list of criteria that determines whether a right is existing, and if so, how a government may be justified to infringe upon it. The Sparrow test first seeks to define whether or not a right has been infringed upon. A government activity might infringe upon a right if it: Imposes undue hardship on the First Nation; Is considered by the court to be unreasonable; Prevents the right-holder from exercising that right. The Sparrow test then outlines what might justify an infringement upon an Aboriginal right. An infringement might be justified if: The infringement serves a “valid legislative objective.” The court suggested a valid legislative objective would be conservation of natural resources, in which First Nations interest would come second only to that; There has been as little infringement as possible in order to effect the desired result; Fair compensation was provided, and, Aboriginal groups were consulted, or, “at the least... informed.<https://indigenousfoundations.arts.ubc.ca/sparrow_case/> accessed on 18/03/2024

litigations in relation to ensuring the rights of indigenous people.³⁵ The case of *Sparrow*³⁶ has been recognized as the first one which had discussed reconciliation³⁷ linking it with the Section 35 (1)³⁸ of the Constitution Act of 1982 by recognizing the existing aboriginal and treaty rights of the native communities in Canada.

In the cases of *Haida Nation v British Columbia*³⁹ and *Taku River Tlingit First Nation v British Columbia*,⁴⁰ the rights of the aboriginal people in Canada have been recognized. Further it was held in the case of *Haida*⁴¹ that “*the duty to consult and accommodate is a part of the process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution. Reconciliation is not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s.35(1) of the Constitution Act, 1982. This process of reconciliation flows from the Crown’s duty of honourable dealing toward aboriginal people, which arises in turn from the Crown’s assertion of sovereignty over an aboriginal people and de facto control of land and resources that were formerly in the control of that people*”.⁴²

Furthermore, the case of *Tsilhqot’in Nation v. British Columbia*⁴³ elaborates on reconciliation and recognizes the rights of the aboriginal people. Hon. Chief Justice of Canada Beverley McLachlin held that, “*the Court in Delgamuukw confirmed that infringements of aboriginal title can be justified under s.35 of the Constitution Act, 1982 pursuant to the Sparrow test and described this as a necessary part of reconciliation of aboriginal societies with the broader political community of which they are part.*”⁴⁴ This case clearly demonstrates that the Canadian courts recognized the rights of the indigenous people as opposed to the Crown’s assertion of sovereignty over such communities.

³⁵ Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 Journal of Law and Social Policy 21, p.6

³⁶ R v Sparrow [1990] 1 SCR 1075

³⁷ Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 Journal of Law and Social Policy 21, p.6

³⁸ Section 35 recognizes and affirms the existing aboriginal and treaty rights of the aboriginal people of Canada

³⁹ *Haida Nation v British Columbia* 2004 SCC 73 [Haida Nation]

⁴⁰ *Taku River Tlingit First Nation v British Columbia* 2004 SCC 74 [Taku River]

⁴¹ *Haida Nation v British Columbia* 2004 SCC 73 [Haida Nation]

⁴² Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 Journal of Law and Social Policy 21, p.10

⁴³ [2014]2 SCR 257, 2014 SCC 44 [Tsilhqot’ in SCC]

⁴⁴ [2014]2 SCR 257, 2014 SCC 44 [Tsilhqot’ in SCC]

CHAPTER 2

The Path Towards Truth Seeking and Reconciliation

2.1. The State apology and the Indian Residential Schools Settlement Agreement as solutions.

In general, the concept of transitional justice is a study of the past wrongdoings and responding to the serious violations of human rights which occurred in the past and also, ‘a way to bridge the irreparable harms of the past with the rule of law’⁴⁵.

A significant feature of the entire reconciliation process is not only about removing the traumatic memories of the past, but also opening a pathway towards healing from the past and ensuring non-recurrence by acknowledging the past grievances and root causes. In Canada, the process of healing which falls within the broader confines of transitional justice commenced in the 1980s with the church apologizing for their treatment of indigenous people and harm caused to their cultures.⁴⁶ Clearly, the process of reconciliation continued with the findings of the Royal Commission on Aboriginal Peoples, along with court recognition of the validity of the Survivors’ stories.⁴⁷

Moreover, the government of Canada issued a, ‘Statement of Reconciliation’ in 1998 to apologize for the physical and sexual abuse during the IRSS.⁴⁸ However, it is stated that, there was an increased pressure on the government due to the absence of addressing cultural, socio-economic and psychological harms until 2002 with more than 12,000 legal claims against the government and the churches.⁴⁹ Thereafter, the federal government approved the Indian Residential Schools Settlement Agreement (IRSSA) in 2006.⁵⁰ This was recognized as the largest class action settlement in Canadian history. The IRSSA recognized the damage inflicted on Indigenous peoples by residential schools in Canada and established a multi-billion-dollar fund to help the survivors. The IRSSA, which came into effect in September 2007, has five main components namely, the Common Experience Payment (CEP), Independent Assessment Process (IAP), the TRC, Commemoration, and Health and Healing Services.⁵¹

This process began with IRSSA and the apology by the Prime Minister of Canada in Parliament in June 2008, along with apologies of all other parliamentary leaders.⁵² The process of healing and reconciliation are to be continued with the objective to transform the country by restoring mutual respect between people and States. It is clear that Canada has established the TRC process as a result of a comprehensive response to the legacy of the Indian Residential School

⁴⁵ Victoria Roman, ‘From Apology to Action: A Comment on Transitional Justice in the United States and Canada’ (2022) 37 Md. J. Int'l L. 122, 148

⁴⁶ *ibid*

⁴⁷ *ibid*

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ The Canadian Encyclopaedia, ‘The Indian Residential Schools Settlement Agreement’, <<https://www.thecanadianencyclopedia.ca/en/article/indian-residential-schools-settlement-agreement>>, accessed on 20/03/2024

⁵² The apology of the Prime Minister Stephen Harper in 2008 was a significant step for the survivors of residential schools. Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 Journal of Law and Social Policy 21, p.10

and acknowledgement of injustices/harms experienced by the Aboriginal people and the need for continued healing with the major task of creating records of IRSS and its impact.⁵³

While the main goals of the TRC include discovering truth and promoting healing and reconciliation, it is essential to critically interrogate its design and activities in order to gain insight into its potential to allow Canada to move beyond trauma and build a just future.

2.2. The process of reconciliation

In the context of the Canadian TRC, the concept of reconciliation differs based on perspectives, people, communities, institutions, and organizations.⁵⁴ The TRC mandate describes reconciliation as, “an ongoing individual and collective process, and will require commitment from all those affected including First Nations, *Inuit and Métis*, former Indian Residential School (IRS) students, their families, communities, religious entities, former school employees, government and the people of Canada ”⁵⁵

Further, the Canadian Truth and Reconciliation Commission has defined reconciliation as an ongoing process in relation to building and maintaining peace among communities. The process of reconciliation involves building the truth, providing reparations and introducing mechanisms for re-integration amongst other things. In the literature related to transitional justice, the process of reconciliation is defined as, “repairing torn relationships between ethnic, religious, regional or political groups, between neighbours, and between political communities.”⁵⁶

The reconciliation process created an avenue for indigenous communities to heal from the past traumas that were part of the destructive legacy of colonization and has also inspired the multicultural communities in the land to transform into a Canadian society as a more united, pluralistic and secular nation. The Canadian TRC developed a much-needed dialogue about the necessity of the process of healing the wounds of the past and reconciling past divisions.

⁵³ Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 Journal of Law and Social Policy 21, p.10

⁵⁴ The reconciliation process is not easy. It asks those who have been harmed to revisit painful memories and those who have harmed others—either directly or indirectly—to be accountable for past wrongs. It asks us to mourn and commemorate the terrible loss of people, cultures, and languages, even as we celebrate their survival and revitalization. It asks us to envision a more just and inclusive future, even as we struggle with the living legacies of injustice, ‘Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada’, <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, p.286, accessed on 30/10/2023

⁵⁵ ‘Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada’, <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

⁵⁶ Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 Journal of Law and Social Policy 21, p.11 (Hayner, supra note 3 at 133)

2.3. The establishment of the Truth and Reconciliation Commission (TRC)

The Truth and Reconciliation Commission (TRC) of Canada was established in 2008 under the terms of the IRSSA.

The Commission was mandated to;

- gather historical records and documents related to the residential school system;
- reveal to Canadians the complex truth about the history and the ongoing legacy of the church-run residential schools;
- guide and inspire a process of truth and healing, leading toward reconciliation within;
- providing a platform for the voices of survivors, their families, and other witnesses to the system to be heard;
- create a public record of the experiences of Indigenous peoples in the residential school system;
- make recommendations to the Canadian government on how to address the ongoing legacy of the residential school system.⁵⁷

The significant phases of the TRC's work can be categorized as follows:⁵⁸

- *Establishment and planning* - One of the key elements of the IRSSA was to establish the Truth and Reconciliation Commission of Canada to facilitate reconciliation among indigenous, non-indigenous in Canada.⁵⁹
- *Community hearings* - The Commission travelled to all parts of Canada and heard from more than 6,500 witnesses.⁶⁰
- *National Events and Final Events* - The Commission hosted 7 national events to engage with the public, educate people about the history and legacy of the IRSSA and in June 2015, the Commission held its closing event in Ottawa and presented the executive summary of the findings contained in its final report.⁶¹
- *Publication of the Final Report*- In December 2015, the Commission released its final report which consists of 6-volumes with the recommendations for further reconciliation.⁶²

Further, in order to achieve the objectives of reconciliation, the Canadian Truth and Reconciliation Commission has suggested 10 principles which need to be incorporated into the reconciliatory justice process.⁶³

⁵⁷ 'Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada', <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

⁵⁸ ibid

⁵⁹Government of Canada, 'Truth and Reconciliation Commission of Canada', <<https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>>, accessed on 26/ 02/2024

⁶⁰ ibid

⁶¹ ibid

⁶² ibid

⁶³ Truth and Reconciliation Commission Canada 'What we have learned: Principles of truth and reconciliation', <https://publications.gc.ca/collections/collection_2015/trc/TR4-6-2015-eng.pdf>, accessed on 30/1/2024

These 10 principles are:

- 1) The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is the framework for reconciliation at all levels and across all sectors of Canadian society;⁶⁴
- 2) First Nations, Inuit, and Métis peoples, as the original peoples of this country and as self-determining peoples, have Treaty, Constitutional, and Human Rights that must be recognized and respected;⁶⁵
- 3) Reconciliation is a process of healing of relationships that requires public truth sharing, apology, and commemoration that acknowledge and redress past harms;⁶⁶
- 4) Reconciliation requires constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on native peoples' education, cultures and languages, health, child welfare, the administration of justice, and economic opportunities and prosperity.⁶⁷
- 5) Reconciliation must create a more equitable and inclusive society by closing the gaps in social, health, and economic outcomes that exist between Aboriginal and non-Aboriginal Canadians;⁶⁸
- 6) All Canadians, as Treaty peoples, share responsibility for establishing and maintaining mutually respectful relationships;⁶⁹
- 7) The perspectives and understandings of Aboriginal Elders and Traditional Knowledge Keepers of the ethics, concepts, and practices of reconciliation are vital to long-term reconciliation;⁷⁰
- 8) Supporting Aboriginal peoples' cultural revitalization and integrating Indigenous knowledge systems, oral histories, laws, protocols, and connections to the land into the reconciliation process are essential;⁷¹
- 9) Reconciliation requires political will, joint leadership, trust building, accountability, and transparency, as well as a substantial investment of resources;⁷²
- 10) Reconciliation requires sustained public education and dialogue, including youth engagement, about the history and legacy of residential schools, Treaties, and Aboriginal rights, as well as the historical and contemporary contributions of Aboriginal peoples to Canadian society.⁷³

The process of the Canadian Truth and Reconciliation Commission has laid the foundation to commence the reconciliation in Canada and the work carried out by it has had a significant impact on Canada. The 'Calls to Action'⁷⁴ has been introduced in the final report to hold the government and other responsible bodies accountable for the system.

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ *ibid*

⁶⁹ *ibid*

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² *ibid*

⁷³ *ibid*

⁷⁴ 'Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada', <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

As observed by Paulette Regan in one of the articles, “...[I]n Australia reconciliation has been a social movement, in Canada it has largely been a legal remedy primarily concerned with reconciling aboriginal and Crown land title.”⁷⁵

⁷⁵ Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 Journal of Law and Social Policy 21, p.10

CHAPTER 3

Policy Framework of the TRC Process.

The TRC in Canada operated as an independent body to address the historical legacy of residential schools and promote reconciliation between Indigenous and non-Indigenous Canadians.

Three Commissioners were appointed in 2008. They resigned shortly after being appointed and new Commissioners were then appointed. Honourable Justice Murray Sinclair as Chair, and Chief Wilton Littlechild and Dr. Marie Wilson, were appointed to replace them in 2009 by the parties to the Settlement Agreement.⁷⁶

While the TRC itself did not have the authority to implement policies, its final report included Calls to Action directed at various levels of government and other institutions. These Calls to Action outlined specific policy recommendations to address the ongoing impact of the residential school system and advance the process of reconciliation.

Some key areas of focus included the following aspects:

Education.

The TRC called for the development and implementation of curriculum and learning resources on Indigenous history, residential schools, and Indigenous contributions to Canada. This is aimed at fostering a more comprehensive understanding of Indigenous history and experiences among all Canadians. Additionally, supporting Indigenous languages and incorporating them into educational systems is intended to promote linguistic diversity and cultural preservation.

Language and Culture

Recognizing and supporting Indigenous languages as a fundamental and valued element of Canadian culture involves actively working to preserve and revitalize Indigenous languages. This may include initiatives such as language immersion programs, language courses, and community-led efforts to ensure the transmission of languages to future generations.

Health.

Closing the gaps in health outcomes between Indigenous and non-Indigenous communities requires addressing the social determinants of health and ensuring access to culturally sensitive healthcare. The TRC also emphasized the importance of addressing specific health needs of residential school survivors, recognizing the unique challenges they may face in terms of mental and physical health.

Justice

The TRC called for the elimination of the overrepresentation of Indigenous peoples in the criminal justice system. This involves addressing systemic issues that contribute to disproportionate rates of incarceration among Indigenous individuals. Developing culturally competent approaches to justice means recognizing and incorporating Indigenous legal traditions and cultural perspectives within the Canadian legal system.

⁷⁶ Honouring the Truth, Reconciling for the Future, Summary of the Final Report of the Truth and Reconciliation Commission of Canada, <<https://caid.ca/TRCFinExeSum2015.pdf>> accessed on 22.05.2024

Reparations

Providing funding for community-based healing programs and support services for survivors is crucial for addressing the intergenerational impacts of residential schools. These programs may include counselling, cultural support services, and initiatives that contribute to the overall well-being of survivors and their communities. Supporting the preservation of Indigenous history acknowledges the importance of documenting and sharing the history and legacy of residential schools.

Media and Reconciliation.

Ensuring accurate and fair portrayals of Indigenous peoples in media and popular culture is essential for challenging stereotypes and promoting a more nuanced understanding of Indigenous communities. Recognizing the contributions of Indigenous broadcasters and journalists involves acknowledging their role in shaping narratives and providing diverse perspectives.

Church Apologies and Reconciliation.

Encouraging churches and other faith groups to formally apologize for their roles in the residential school system acknowledges the historical role of religious institutions in the assimilation policies. Supporting reconciliation initiatives within religious institutions involves fostering dialogue, understanding and collaborating between these institutions and Indigenous communities.

Settlement Agreements and Parties to the Agreement.

The Indian Residential Schools Settlement Agreement, reached in 2007, was a comprehensive settlement involving the Canadian government, churches, and Indigenous organizations. The settlement included financial compensation for survivors, funding for the Truth and Reconciliation Commission, and initiatives to address the legacy of residential schools.

Acknowledgment and Apology.

The Canadian government, on behalf of the nation, formally acknowledged and apologized for the role it played in the establishment and operation of residential schools. The apology, delivered by the then-Prime Minister Stephen Harper in 2008, recognized the harm caused by the residential school system and expressed remorse.

It's important to note that these recommendations were directed not only at the federal government but also at provincial and territorial governments, churches, educational institutions, and other stakeholders. The implementation of these policies and recommendations involves ongoing collaboration and commitment from multiple parties to address the historical and systemic issues identified by the TRC.

Before the TRC made recommendations, the Canadian Government implemented several policies for reconciliation. Establishing TRC is also one of the state policies that has been implemented.

3.1. Health Development for indigenous people

Truth and Reconciliation Commission of Canada's report from 2015 and the National Centre for Truth and Reconciliation report from 2019⁷⁷ highlight the persisting health inequalities between indigenous and non-indigenous populations in Canada and emphasize the need for a reevaluation of the country's approach to credible public policy. While the specific details of Canada's approach to public health policy are not explicitly outlined in the text, key points can be elicited based on the reports.

Resistance to International Declarations

Less than a decade ago, Canada, along with a few other Western nations, voted against the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This resistance suggests a historical reluctance to acknowledge and uphold the human and inherent rights of Indigenous peoples.

Inequitable Indian Act

The study suggests that the federal government's persistent support of the Indian Act reinforces assumptions that Indigenous peoples are not worthy of respect, recognition, or equitable access to quality services in public service systems. The Indian Act is identified as a factor contributing to health disparities.

Lack of National Healthy Public Policy

Canada's failure to implement a national public policy for indigenous people's health reflects systemic issues such as racism and a lack of political will at the federal level. The absence of a comprehensive and inclusive national healthy public policy is identified as a contributing factor to ongoing health inequities.

Reconciliation as a Path Forward

The study highlights the importance of reconciliation, as outlined in the Truth and Reconciliation Commission's findings. Reconciliation is portrayed as critical for healing the wounds inflicted by historical policies, such as the Indian Residential Schools, and for forging a new, healthy relationship between the parties in conflict.

Call for Systemic Change

The text emphasizes the need for systemic change, including a shift in philosophy, reorientation of public attitudes, and a commitment by the federal government to acknowledge the rights of Indigenous Canadians. The study suggests that creating healthy public policy will require time, a commitment to empathy, and advocacy efforts from various stakeholders.

⁷⁷ The Indian Residential Schools Agreement 2007 created both the Truth and Reconciliation Commission of Canada (TRC) and National Centre for Truth and Reconciliation (NCTR) to ensure this history was not forgotten. Once the TRC finished, the NCTR will be the permanent place to house the materials from the TRC and be a place for ongoing truth and reconciliation work. The TRC ran from 2008-2015 and the NCTR was officially opened in 2015.

3.2. Cultural Genocide and Education⁷⁸

As stated in the introduction, the arrival of the Europeans in the Americas strongly altered the existence of Indigenous Peoples, introducing and solidifying a system of white supremacy that significantly impacted their treatment. Colonization not only brought about economic, political, and social changes but also transformed the education of Indigenous Peoples.

Missionaries from various denominations established missions and schools among Indigenous Peoples in the 1600s, and by the mid-1800s Canada had enacted legislation like the British North American Act (1867) and the Indian Act (1876) to regulate Indigenous education. The Amendments to the Indian Act in 1884 and 1920 made Indigenous education compulsory, reflecting an assimilative objective to "kill the Indian and save the man"⁷⁹. The Indian Residential Schools (IRS) system has been referred to as "Canada's greatest national shame"⁸⁰

The extent of the IRS legacy became better known with the establishment of the RCAP. The RCAP was established in 1991, and during the course of 178 days of public hearings in 96 communities, many survivors of the schools gave emotional and troubling testimony recounting the abuses they had suffered, thus bringing wider attention to the IRS legacy.

In 1996, RCAP made its recommendation calling for a public inquiry into the IRS. No public inquiry was established in response to that recommendation. The federal government made what it called a Statement of Reconciliation. Minister of Indian Affairs Jane Stewart made the statement but for many, it fell short of an apology⁸¹.

The religious denominations and the Canadian Government, during the mission and residential school eras, held an attitude towards Indigenous Peoples identified as cultural genocide.⁸²

Canadian schools today have a chance to rectify this long-held colonial assumption of white supremacy that schools have enacted and to help put an end to the cultural genocide of the Indigenous Peoples of Canada. Fostering positive attitudes towards Indigenous peoples may rectify this issue.

The stories the TRC received were horrific. Beginning with Confederation in 1867 and continuing for more than a century, the Canadian federal government implemented a systematic assimilation policy designed to annihilate the Indigenous presence in the country. The most widely executed method of assimilation was the incarceration of over 150,000 First Nations, Métis, and Inuit children between the 1880s and 1990s, into the infamous IRS system⁸³.

⁷⁸ How Integrating Indigenous Perspectives into the Classroom Affects Students Attitudes Towards Indigenous Peoples
Tiffany Prete *Journal of Contemporary Issues in Education*, 2020, 15(2), pp.120-134. (c) Author(s), Creative Commons Attribution 4.0 (CC BY 4.0) licence. <http://ejournals.library.ualberta.ca/index.php/JCIEdoi10.20355/jcie29387>

⁷⁹ Carney, R., 1995. Aboriginal residential schools before Confederation: The early experience. *Historical Studies*, 61(1), pp.13-40.

⁸⁰ Stanton, K., 2011. Canada's Truth and Reconciliation Commission: Settling the Past? *The International Indigenous Policy Journal*, 2(3).

⁸¹ How Integrating Indigenous Perspectives into the Classroom Affects Students Attitudes Towards Indigenous Peoples
Tiffany Prete *Journal of Contemporary Issues in Education*, 2020, 15(2), pp.120-

⁸² Castellano, M.B., Davis, L. and Lahache, L. eds., 2000. *Aboriginal education: Fulfilling the promise*. UBC Press.

⁸³ Peters, M., 2016. *A Respectable Solution to the Indian Problem: Canadian Genocidal Intent, Non-physical Conceptions of Destruction and the Nova Scotia Mi'kmaq 1867-1969* (Doctoral dissertation, Acadia University).

According to J.R. Miller, it is likely that Canada considered physical annihilation, but “because more coercive methods of achieving the ‘Euthanasia of savage communities’ were inimical, expensive, and politically dangerous,” it chose another route. “Assimilation through evangelization, education, and agriculture,” the policies preferred after the 1830s, proved versatile weapons in the elimination of Aboriginal people⁸⁴. Determined to see indigenous extinction through to the end, Canada implemented many different methods of destroying indigenous cultures.

The TRC of Canada focuses on addressing educational disparities between the indigenous and non-indigenous Canadians. The key points include repealing Section 43 of the Criminal Code, developing a joint strategy to eliminate educational and employment gaps, ensuring equitable federal education funding for First Nations children, preparing annual reports on funding and attainment, drafting new education legislation with input from the victim communities, committing to sufficient funding, improving educational attainment, developing culturally appropriate curricula, protecting their languages, enabling parental and community responsibility, and providing adequate funding for post-secondary education and early childhood education programs for the indigenous families⁸⁵.

The recommendations in this section from the Truth and Reconciliation Commission of Canada focus on education for reconciliation. The key points include making age-appropriate curriculum on residential schools, Treaties, and indigenous peoples' contributions mandatory for Kindergarten to Grade Twelve students, providing funding for teacher education in Indigenous knowledge and teaching methods, supporting schools specializing in utilizing Indigenous knowledge, establishing senior-level positions in government dedicated to native content in education, maintaining an annual commitment to indigenous education issues, including curriculum development and learning resources, promoting intercultural understanding, and requiring denominational schools to provide education on comparative religious studies, including their spiritual beliefs.

Additionally, it calls for the establishment of a national research program, in collaboration with various stakeholders, to advance understanding of reconciliation.

3.3. State Sovereignty, non-interferences

*Indigenous Communities and Self-Government in Canada*⁸⁶

A study by Able and Michael (2006)⁸⁷ identifies the following four models as per current practices and proposals for Indigenous Self-government:

(1) “*Mini-municipalities*” embedded in federalism-as-usual,

The mini-municipality model envisions Indigenous People’s governments with powers delegated from provincial or federal levels, resembling municipal structures in Canada. These entities, termed “mini-municipalities,” offer services to small populations, exercise limited

⁸⁴ J.R. Miller, *Shingwauk’s Vision: A History of Native Residential Schools* (Toronto: University of Toronto Press, 1996), 75

⁸⁵ Truth and Reconciliation Commission of Canada: *Calls to Action*

⁸⁶ Frances Abele & Michael J. Prince (2006) *Four Pathways to Aboriginal Self-Government in Canada*, *American Review of Canadian Studies*, 36:4, 568-595, DOI: 10.1080/02722010609481408

⁸⁷ *ibid*

taxation powers, and operate under federal supervision. Initially proposed in 1983, this model suggested increased powers for band councils but maintained federal control. Despite its revival in a 2002 referendum in British Columbia, where a minority supported it, no such nations have identified the mini-municipality model as their ultimate goal.

Instead, some negotiate municipal-like arrangements as transitional steps towards constitutionally entrenched self-government. Challenges arise from the gradual augmentation of powers within the framework of the Indian Act, with ongoing resistance and limited self-determination. While the mini-municipality model may persist, especially in cases like the Alberta Métis Settlement governments, its legitimacy is declining, possibly evolving into a fading vision of native community's governance or a transitional stage toward greater autonomy. Legal decisions challenging this model suggest a future where their governments are recognized as inherent rights and institutionalized as a distinct order within the Canadian federation.

(2) *New subnational entities in a modest adaptation of Canadian federalism (adapted federalism);*

The "adapted federalism" model, exemplified by the creation of Nunavut in Canada's Arctic, represents a unique approach to indigenous peoples' self-determination within the Canadian federation. Unlike the mini-municipality model, adapted federalism involves significant changes and the establishment of a new form of public government through the renegotiation of the relationship between an indigenous collectivity and the federation. The creation of Nunavut in 1999, resulting from the Nunavut Land Claims Agreement, serves as the sole existing example. In this case, Inuit exercised their right of self-determination to form a new territory with equal rights for all residents, driven by demographic advantages and the importance of wildlife harvesting.

However, it is unlikely that this model will see additional examples soon, as the circumstances leading to Nunavut's creation are unique. While other native groups may favour a public government model, their size and specific circumstances make the replication of the Nunavut model challenging. Another proposed model suggests the creation of a single indigenous community province to represent all native and indigenous peoples within the federal system. Despite its logical appeal, this idea faces practical challenges and lacks strong advocacy among indigenous communities, as it could be perceived as a reversal of existing gains in representation. The current preference is to enhance opportunities for diverse representation rather than consolidating into a single province.

(3) *A fully-developed third order of government in 571*⁸⁸

The emergence of a third Aboriginal order of government within the Canadian system is gaining recognition, with various public deliberative bodies envisioning the full participation of Aboriginal governments in federalism. This concept dates back to the early 1980s, as highlighted by the Penner Report, which recommended the recognition of First Nation governments as a distinct order with jurisdictional powers within the Canadian federation.

⁸⁸ Downloaded by [University of Connecticut] at 19:04 13 October 2014 Four Pathways to Aboriginal Self Government in Canada the federation (trilateral federalism);

The vision includes extensive powers for First Nation governments, negotiated through a transitional transfer of legislative powers from provincial and federal jurisdictions. The failed Charlottetown Accord in 1992 marked a high point for recognizing indigenous governments as a third order, and subsequent efforts in the mid-1990s acknowledged the inherent right to self-government. The federal government's approach emphasized the division of powers and authorities among Aboriginal, federal, and provincial governments, with indigenous community governments operating within the Canadian constitutional framework. The Royal Commission on indigenous peoples supported the restructuring of Canadian federalism to accommodate the third order, requiring cooperation and flexibility among all parties involved.

This model aims to create a new and improved relationship between indigenous peoples and the Canadian state, addressing social issues and fostering self-confidence. However, critics argue that it may lead to "race-based governments" or "ethnic enclaves" and express concerns about resource development and property tax revenues. Additionally, proponents of the nation-to-nation model may reject the third-order model for not incorporating the original sovereignty of indigenous nations into contemporary constitutional arrangements.

(4) *Indigenous governments as part of a treaty-based alliance between the indigenous community governments and the Crown in Canada (nation-to-nation). Query*

The nation-to-nation model proposes bilateral relations between an indigenous nation and either the federal or a provincial government, emphasizing "double bilateral" relations with both levels of government. It fundamentally differs from the adapted federalism and third-order models in two key areas. Firstly, in the nation-to-nation approach, indigenous nations establish primary relations with the Crown through treaties, maintaining sovereignty and not joining the Canadian confederation. Secondly, the distribution of power in the nation-to-nation model acknowledges historically grounded indigenous nations with self-determination powers outside of and predating the Canadian state, coexisting with Canadian authorities.

This model predicts Canada as a political association of two confederations: a treaty confederation of indigenous communities with the Crown and a constitutional confederation of provinces and the federal government. It draws inspiration from authoritative artefacts such as the Royal Proclamation of 1763 and emphasizes respect for diversity, autonomy, and co-equal friendship between nations. Critics express concerns about potential isolation and separation, but proponents argue for a shared political space and the importance of mutual recognition, consent, and interdependence.

Implementing the nation-to-nation model requires building political and administrative institutions within indigenous nations and communities, as well as shared institutions between indigenous communities and Canadian governments. While public opinion on this model may evolve, recent decades have seen changes in discourse, jurisprudence, policies, and scholarship in indigenous-Canadian relations.

Figure 2. Power Relations Embodied in the Four Models

Model	Concurrency of Powers	Asymmetry in IG Relations	Power Status for Aboriginal Governments
Mini-municipality	None	Not really, because few First Nations will follow this pathway	Power under the authority and control of federal government
Adapted federalism	Modest	A small amount	Power within the federation
Third Order	Relatively more	Some	More power within the federation
Nation-to-Nation	Not formally	Potentially quite substantial	Power alongside the Canadian federation

The TRC released its final report in 2015, which included 94 Calls to Action aimed at addressing the legacy of residential schools and advancing the process of reconciliation between Indigenous and non-Indigenous peoples in Canada. While the TRC's Calls to Action cover a wide range of issues, including education, health, and justice, there are specific recommendations related to Indigenous self-government. The recommendations are part of the broader effort to recognize and respect Indigenous rights, cultures, and self-determination.

Below are some of the Calls to Action that touch upon the theme of Indigenous self-government:

- **Calls to Action 10-12:** These recommendations focus on child welfare and call for the establishment of national standards for child apprehension and the provision of adequate resources to enable Indigenous communities to maintain their children within their own communities.
- **Calls to Action 18-24:** These recommendations highlight the need for collaboration between governments and Indigenous peoples to close the gaps in education and employment outcomes. They emphasize the importance of equitable funding for education and the incorporation of Indigenous knowledge and perspectives into the curriculum.
- **Calls to Action 25-42:** These recommendations address issues related to the recognition and implementation of Indigenous rights. They call for the adoption and implementation of the UNDRIP and the development of a national action plan to achieve its goals.
- **Calls to Action 43-44:** These recommendations focus on the establishment of a Royal Proclamation and Covenant of Reconciliation to reaffirm the nation-to-nation relationship between Indigenous peoples and the Crown. They also call for the creation of a National Council for Reconciliation to monitor, evaluate, and report on progress in reconciliation.
- **Calls to Action 45-49:** These recommendations address the need for reconciliation in the legal system and call for changes to legal education and training to ensure that judges, lawyers, and other legal professionals receive cultural competency training.

It's important to note that while the TRC's Calls to Action provide a roadmap for reconciliation, their implementation requires concerted efforts from all levels of government, Indigenous communities, and non-Indigenous Canadians.

3.4. Commemoration

The Canadian federal government, in collaboration with Indigenous communities and artists, to create a reconciliation framework for Canadian heritage and commemoration.

The recommendations include:

- amending the Historic Sites and Monuments Act for Indigenous representation;
- integrating Indigenous history into the National Program of Historical Commemoration;
- developing a national plan for commemorating residential school sites and indigenous contributions to Canada's history.

It also proposes establishing a National Day for Truth and Reconciliation as a statutory holiday, creating a Residential Schools National Monument in Ottawa, and commissioning similar monuments in each capital city. Additionally, it calls on the Canada Council for the Arts to prioritize funding for collaborative projects that contribute to the reconciliation process.

“79 Call of Action; We call upon the federal government, in collaboration with Survivors, Aboriginal organizations, and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration.”⁸⁹

3.5. Modern child-welfare

This recommendation by TRC 2019 calls on various levels of government to collaborate in reducing the number of indigenous children in care through several measures. These include monitoring neglect investigations, providing resources to keep families together in safe environments, safeguarding education and training for child-welfare personnel on the history and impacts of residential schools, considering the cultural appropriateness of placements, and preparing annual reports on child welfare.

Additionally, it emphasizes the full implementation of Jordan's Principle and urges the enactment of indigenous child-welfare legislation with national standards and principles affirming the rights of Aboriginal governments. Cultural appropriateness in placements and the development of culturally appropriate parenting programs are also highlighted.

- **Call to Repeal Section 43 of the Criminal Code:**
Repeal Section 43 of the Criminal Code.
This call suggests a legal change, emphasizing the importance of eliminating a section related to corporal punishment and promoting non-violent disciplinary measures.

⁸⁹ Truth and Reconciliation Commission of Canada: Calls to Action

- **Call for Joint Strategy on Educational and Employment Gaps:**
This is a call to develop a joint strategy to eliminate educational and employment gaps. Recognizing the disparities, this call seeks a collaborative effort between the government and indigenous groups to address gaps in education and employment, promoting inclusivity and equality.
- **Call for Equal Federal Education Funding:**
Eliminate the funding discrepancy for First Nations children on and off reserves. This call highlights the need for equitable funding in education for First Nations children, irrespective of their location, addressing a historical disparity.
- **Call for New indigenous Education Legislation**
Draft new indigenous education legislation with indigenous participation. This has been proposing legislative changes, this call underscores the importance of involving indigenous peoples in shaping educational policies that respect their cultures and self-determination.
- **Call for Culturally Appropriate Early Childhood Education Programs**
Develop culturally appropriate early childhood education programs. This call acknowledges the importance of cultural sensitivity, this call focuses on the early stages of education, fostering an environment that respects and incorporates Indigenous cultures.

CHAPTER 4

Lessons Learnt

Reconciliation is an ongoing process of establishing and maintaining meaningful relationships between the individuals, communities in the society. In that backdrop, the TRC considered the safeguard mechanisms laid under the UNDRIP⁹⁰ to protect the rights of its people by developing a holistic vision of reconciliation that embraces all aspects of the relationship between different communities in Canada.⁹¹

As highlighted by the Canadian Commission, the reconciliation process is not a one-time event; it is a multi-generational journey where all Canadians need to be involved.⁹² Apparently, the public apology was recognized as the first step in the process of reconciliation. However, the Commission recognized that the words of apology alone are not sufficient and the necessity of the concrete actions on both symbolic and material fronts.⁹³

Further, it is evident that Canada employed mainly non-retributive approaches to resolve the disputes such as community-based strategies to rebuild broken relationships and considered restorative justice, the theories of recognition, and truth Commissions. This chapter demonstrates how the principles such as accessibility, victim-centred approach, confidentiality, non-harm, prioritizing the health and safety of participants, transparency, accountability, openness, and an honourable process have been formulated into the process. Further, this chapter also focuses on how those principles emphasize a comprehensive, inclusive, educational, holistic, just, and fair approach highlighting respect, voluntariness, flexibility, and a forward-looking perspective in terms of rebuilding and renewing relationships between indigenous communities and the broader Canadian population, both indigenous and non-indigenous.

4.1. Moving from apology to action

It is evident from the history of Canada that the Canadian government has issued three apologies to the survivors of residential school⁹⁴. In 1991, Assistant Deputy Minister for Indian Affairs, Bill Van Iterson, apologized at a conference in Vancouver on the legacy of Indian Residential Schools. In 1998, then Minister of Indian Affairs and Northern Development, Jane Stewart, offered a 'Statement of Reconciliation' in response to the Royal Commission on Aboriginal

⁹⁰ The United Nations Declaration on the Rights of Indigenous Peoples provides a framework for reconciliation, healing and peace, as well as harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith. <<https://www.justice.gc.ca/eng/declaration/about-apropos.html>>, accessed on 30/01/2024

⁹¹ Kim Stanton, 'Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission' (2017) 26 Journal of Law and Social Policy 21, p.18-19

⁹² Dorell Mathew, '*from reconciliation to reconciling: Reading what 'we now recognize in the government of Canada's 2008 residential school apology'*', English studies in Canada, suppl. Special Issues: Aboriginal Redress; Edmonton, Vol.35 , Iss 1, (March 2009) 27-45, <<https://www.proquest.com/docview/520170476>>, accessed on 30/01/2024

⁹³ *ibid*

⁹⁴ Dorell Mathew, '*from reconciliation to reconciling: Reading what 'we now recognize in the government of Canada's 2008 residential school apology'*', English studies in Canada, suppl. Special Issues: Aboriginal Redress ; Edmonton, Vol.35 , Iss 1, (March 2009) 27-45, <<https://www.proquest.com/docview/520170476>>, accessed on 30/01/2024

Peoples at a lunch time ceremony on Parliament Hill and in 2008 the Prime Minister Stephen Harper delivered his ‘Statement of Apology’ in the House of Commons.⁹⁵

In June 11, 2008, Canada has declared a “*Day of the Apology*”⁹⁶, the day when Prime Minister Stephen Harper, and the leaders of all other federal political parties, formally apologized in the House of Commons for the harms caused by the IRSS.⁹⁷

It is stated in the literature how the participants including the survivors who came before the TRC recalled the day of the apology and how they felt when the Prime Minister acknowledged that it had been wrong for the government to have taken them away from their families for the purpose of ‘killing the Indian’ in them and when they heard the words ‘We are sorry’⁹⁸

Further, acknowledging that the residential schooling policy was wrong, the Prime Minister pointed out the importance of the Settlement Agreement towards building a strong relationship between indigenous people and other Canadians.⁹⁹

The apology talked about the impacts of the residential schools, not just on the students, but also on their families and communities¹⁰⁰ and it is deeply appreciated how the Government of Canada and church institutions in the schools accepted their measure of responsibility. Moreover, the Prime Minister’s apology and acknowledgement of wrongdoings marked a major step towards repairing the broken relationships between the State and the aboriginals.¹⁰¹

The Commission has recommended in the interim report:¹⁰²

1)To ensure that survivors and their families receive as much healing benefit as the apology may bring them, the Government of Canada distribute individual copies of the “Statement of Apology to Former Students of Indian Residential Schools” to all known residential school survivors;¹⁰³

2)To distribute to every secondary school in Canada a framed copy of the “Statement of Apology to Former Students of Indian Residential Schools” for prominent public display and ongoing educational purposes.¹⁰⁴

⁹⁵ *ibid*

⁹⁶ Kim Stanton, ‘Reconciling Reconciliation: Differing conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission’ (2017) 26 *Journal of Law and Social Policy* 21, p.10

⁹⁷ Government of Canada, ‘The day of apology’, <<https://www.rcaanc-cirnac.gc.ca/eng/1100100015657/1571589032314>>, accessed on 31/1/2024

⁹⁸ Rosemary L. Nagy, *The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission* IJTJ (2013) 7(1): 52–73 1 March 2013, Oxford University Press 2013

⁹⁹ *ibid*

¹⁰⁰ Truth and reconciliation Commission of Canada, ‘Truth and Reconciliation Commission of Canada : Interim Report 2012’, <https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf>, accessed on 1/11/2023

¹⁰¹ Government of Canada, ‘The day of apology’, <<https://www.rcaanc-cirnac.gc.ca/eng/1100100015657/1571589032314>>, accessed on 31/1/2024

¹⁰² Truth and reconciliation Commission of Canada, ‘Truth and Reconciliation Commission of Canada : Interim Report 2012’, <https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf>, accessed on 1/11/2023

¹⁰³ *ibid*

¹⁰⁴ *ibid*

4.2. National events

It is apparent that the Commission held different events¹⁰⁵ covering all the parts of the country to encourage the people to make their contributions towards the process during its tenure. “The largest and most visible of these were the National Events held in Winnipeg¹⁰⁶, Inuvik¹⁰⁷, Halifax, Saskatoon, Montreal, Vancouver, and Edmonton between June 2010 and March 2014. “The Commission estimates there were as many as 155,000 visits to the seven National Events; over 9,000 residential school Survivors registered to attend them (while many others attended but did not register). It also held 238 days of local hearings in seventy-seven communities across the country”¹⁰⁸

Further, some events have been organized to draw the general public into conversation regarding the process of healing and reconciliation and the general public was invited to share information about their contributions, ideas about what more needs to be done for reconciliation.

¹⁰⁵ During the six years of its operation, the Commission held events in all parts of the country. The largest and most visible of these were the National Events held in Winnipeg, Inuvik, Halifax, Saskatoon, Montreal, Vancouver, and Edmonton between June 2010 and March 2014. The Commission estimates there were as many as 155,000 visits to the seven National Events; over 9,000 residential school Survivors registered to attend them (while many others attended but did not register). To augment its statement-gathering activities and to help build public interest and participation in its National Events, the trc organized Regional Events in Victoria and Whitehorse. It also held 238 days of local hearings in seventy-seven communities across the country. The Commission also sponsored “town halls” on reconciliation at its Victoria Regional Event in April 2012 and at subsequent National Events as a means to draw a greater number of visitors into conversation with the trc about healing and reconciliation. Members of the general public were invited to come forward at the town halls to share information about what they are already doing to support reconciliation and to describe their ideas about what more needs to be done, ‘Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada’, <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

¹⁰⁶ In a more informal way, learning took place in a series of tents where various aspects of the residential school experience were explored. • The Learning Tent presented Commission-produced educational materials. Church and government archivists made photographs of Manitoba and northwestern Ontario residential schools available to former students. • In the Interfaith Tent church representatives and Aboriginal people discussed reconciliation efforts in their communities. • The Athletes Tent highlighted Aboriginal contributions to amateur and professional sport. • The Inuit Tent showcased Inuit art and entertainment, and depicted the residential school experience from the Inuit perspective. • The Métis Tent reflected the experience of residential schools in cultural activities such as music, dance, photographs, documents, and video. • The Legacy of Hope’s photo exhibit Where are the children depicted the national residential school experience. (The Legacy of Hope is a national Aboriginal charitable organization dedicated to raising awareness and understanding of the legacy of residential schools., Truth and reconciliation Commission of Canada, ‘Truth and Reconciliation Commission of Canada : Interim Report 2012, <https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf>, accessed on 1/11/2023

¹⁰⁷ The program also provided opportunities for learning about the residential school experience. • Expressions of Reconciliation—opportunities for individual organizations and representatives of the parties to the Indian Residential Schools Settlement Agreement to make statements, presentations, or apologies directly to survivors. • The Learning Place—through speakers, posters, photographs, and videos, the history of residential schools in Canada was explored, with a particular focus on the northern schools that were included in the Settlement Agreement. • The Churches’ Listening Area—survivors were provided with an opportunity to share their experience in one-to-one meetings with church representatives. • Interactive Traditional Sports History and Demonstrations with Elders—dialogue on traditional sports history and its cultural importance. • Children and Youth Programming—cultural activities, sports, education, and artistic expression were highlighted. • Special Film Screenings—screenings of My Own Private Lower Post and The Experimental Eskimos, two films about the residential experience impacts on northern Aboriginal people. • Daily Call to Gather - hosted by a master of ceremonies, a video summary of the day’s activities, which includes the sharing of experiences by the Honorary Witnesses for that day, Truth and reconciliation Commission of Canada, ‘Truth and Reconciliation Commission of Canada : Interim Report 2012, <https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf>, accessed on 1/11/2023

¹⁰⁸ ‘Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada’, <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

The IRSS Agreement also mandated to create a platform for the communities to share their experiences and the Commission has developed a Community Events Guide¹⁰⁹. It is stated that the Traditional knowledge and practice guided much of the Commission's work¹¹⁰.

It is evident from the activities carried out by the Commission that the Commission was able to share its work with Canadians everywhere, and with a worldwide audience, through live streaming of the National Events on the internet and additional postings on the Commission's website and social-media platforms.

4.3. The process of statement gathering

Reconciliation is not possible without knowing the truth. In order to determine the truth, it was fundamentally important to the Commission's work to be able to hear the voices of the survivors, members of the families, and interested groups. Gathering confessions and statements which are purely based on voluntary participation of the affected communities is a central element of the Commission's mandate. The Commission has received statements from the survivors of residential schools, the family members and other interested parties who wished to share their knowledge and experiences about the residential school system.

The process of gathering statements formed an integral part of the permanent collection of documents pertaining to Canada's policies that created divisions and discrimination of the indigenous communities. The Commission gathered statements from inmates in correctional institutions and it is stated that, "health-support workers, cultural support workers, and/or professional therapists were present everywhere the Commission gathered statements to provide support and counselling as needed"¹¹¹

Further, a mechanism has been adopted to obtain the consent from the participants to have their statements archived for future reference.¹¹²

The reasoning behind the gathering statements in the reconciliation process are:¹¹³

- The statements gathered have been used by the Commission in the preparation of its report, and eventually will be housed in the National Research Centre,
- The statements gathering have occurred at National Events, community events, and at events coordinated by the Commission's regional liaisons,

¹⁰⁹ Truth and reconciliation Commission of Canada, 'Truth and Reconciliation Commission of Canada : Interim Report 2012, <https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf>, accessed on 1/11/2023

¹¹⁰ "The Seven Sacred Teachings of the Anishinaabe* (The Anishinaabeg are a large group of Indigenous people; which means the "True People" or the "Original People.") Further, it is stated that respect, courage, love, truth, humility, honesty, and wisdom—served as the themes for the seven National Events, and ceremony and traditional observance played an important part in the National Events. The Commission held a Traditional Knowledge Keepers Forum to learn how traditional Aboriginal knowledge can contribute to reconciliation and with the support of Égale Canada Human Rights Trust, the Commission Anishinabek Nation, <<https://www.anishinabek.ca/education-resources/gdoo-sastamoo-kii-mi/who-are-the-anishinaabeg/>>, accessed on 12.01.2024

¹¹¹ 'Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada', <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

¹¹² Truth and reconciliation Commission of Canada, 'Truth and Reconciliation Commission of Canada : Interim Report 2012, <https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf>, accessed on 1/11/2023

¹¹³ ibid

- Received the support from trained staff to gather the statements,
- The statement gathering involved recording the biographies of those providing statements to the Commission,
- The Statement providers are encouraged to talk about any and all aspects of their lives they feel are important, including times before, during, and after attending a residential school,
- The family members of survivors, former staff, and others affected by the residential schools are also encouraged to share their experiences,
- Obtain support from the health support worker, a cultural support worker, or a professional therapist to attend their session,

4.4. The salient features of the Settlement Agreement (IRSSA)

The Settlement Agreement 2006 has introduced ‘non-compensatory components’ such as TRC¹¹⁴, Commemoration¹¹⁵, Healing Supports¹¹⁶ and ‘compensation related components’ such as the ‘Common Experience Payment’(CEP), the ‘Independent Assessment Process’ (IAP)¹¹⁷ Common Experience Payment, (CEP)- Students who resided at any IRS prior to December 31, 1997 were eligible under this process to receive compensation. *“Administered by Indigenous and Northern Affairs Canada (INAC), the CEP was an unprecedented recognition of the common experience of having resided at an Indian Residential School. Every former student who had resided at a recognized IRS and was alive as of May 30, 2005, was eligible to apply for and receive \$10,000 for their first school year or partial school year, with an additional \$3,000 in compensation for each full or partial school year of residence beyond the first school year. Under the CEP, eligible former students received an average award of \$20,457. The total compensation provided through CEP was \$1.6 billion.”*¹¹⁸

¹¹⁴ The TRC was allocated \$60 million over five years to document the histories of survivors, families, communities and anyone affected by the residential school experience. Through events at both the national and community levels, it guided and inspired Indigenous people and Canadians in a process of reconciliation and renewed relationships based on mutual understanding and respect. The TRC released its final report in 2015. , Independent Assessment Process Oversight Committee-2021, ‘Independent Assessment Process’, <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/04/IAP_Final_Report_English_Feb-1678.pdf>, accessed on 30/1/2024, pg.22

¹¹⁵ The Settlement Agreement provided \$20 million in funding over six years for commemorative initiatives to honour, educate, remember, memorialize, and pay tribute to former students of Indian Residential Schools, their families, and the larger Indigenous community. Independent Assessment Process Oversight Committee-2021, ‘Independent Assessment Process’, <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/04/IAP_Final_Report_English_Feb-1678.pdf>, accessed on 30/1/2024, pg.22

¹¹⁶ To foster healing in Indigenous communities, a \$125 million endowment was provided to the Aboriginal Healing Foundation to continue its mission. The Settlement Agreement also provided for the continuation of supports provided by Health Canada, such as a 24-hour crisis line and front-line Resolution Health Support Workers. Independent Assessment Process Oversight Committee-2021, ‘Independent Assessment Process’, <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/04/IAP_Final_Report_English_Feb-1678.pdf>, accessed on 30/1/2024, pg.22

¹¹⁷ Compensation was provided up to \$275,000, based on nature of the abuse and the level of harm suffered by each student.⁷⁰ Once the IRSSA received Court approval, IAP applications from survivors were accepted from September 19, 2007 to September 19, 2012.⁷¹ As the IAP was framed as part of a settlement of a class action, it was no longer an “opt-in” alternative to litigation. With the Settlement Agreement, the IAP was now the only way to claim compensation for abuse at a residential school, other than for those who explicitly opted out of the class action settlement within the timeframe allotted by the Courts or those who, by the application deadline, had not filed claims in Court, the ADR or the IAP, Independent Assessment Process Oversight Committee-2021, ‘Independent Assessment Process’, <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/04/IAP_Final_Report_English_Feb-1678.pdf>, accessed on 30/1/2024, pg.22

¹¹⁸ Independent Assessment Process Oversight Committee-2021, ‘Independent Assessment Process’, <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/04/IAP_Final_Report_English_Feb-1678.pdf>, accessed on 30/1/2024, pg.22

Independent Assessment Process (IAP)¹¹⁹ – This was introduced to compensate for the claims of sexual abuses, physical abuses and other inhumane acts and punishments suffered while attending the residential schools. This was introduced under the Agreement as an adjudicative process for the financial compensation to residential school survivors who had faced serious abuses at residential schools. Under this process the persons who provided their details also consented to have their statements archived for future purposes.

As noted by the Commission, “the Survivors’ stories must be preserved. The loss of these documents would be a blow to Canada’s national memory of a significant historic injustice, could contribute to the possibility that future generations would never know of the abuses in residential schools, and could contribute to the argument of those who would assert that this never happened. The Commission intends to vigorously advance a position to prevent the destruction of the IAP documents without the informed consent of individual Survivors.”¹²⁰

The following diagram¹²¹ clearly depicts the process of IAP from making the application up-to receipt of granting compensation.

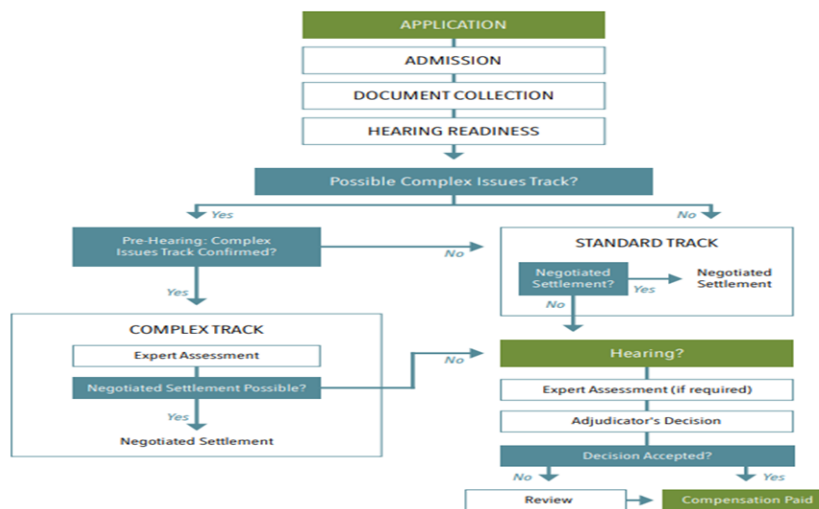


Diagram 1 : IAP Flow Chart

The following lessons can be drawn from the process

- . IAP offered both emotional and technical support;
- 2. Supported to minimize the risk of re-traumatization;
- 3. Supported to protect the survivors’ health and well-being;
- 4. Availability of trained professionals throughout the process (from the moment of filling the application);
- 5. Provided the opportunities for the survivors to tell their story; and
- 6. A platform to preserve the records.

¹¹⁹ ibid

¹²⁰ ‘Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada’, <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

¹²¹ Independent Assessment Process Oversight Committee-2021, ‘Independent Assessment Process’, <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/04/IAP_Final_Report_English_Feb-1678.pdf>, accessed on 30/1/2024, pg.22

4.5. Powers and Responsibilities vested with the Commission

A Truth and Reconciliation process will be established as set out in Schedule “N” of the IRSSA. The Truth and Reconciliation Commission may refer to the National Administration Commission (NAC) for determination of disputes involving document production, document disposal and archiving, Commission's Report and Recommendations and Commission decisions regarding the scope of its research and issues to be examined. As stipulated in Article 7 of the IRSSA, the Commission needs to make best efforts to resolve the matter itself before referring it to the NAC.¹²²

Section 2 of Schedule N of the IRSSA will clearly depict the special powers and the responsibilities vested with the Commission;¹²³

- Commissioners are authorized to obtain statements and documents from the students, their families, community and from other relevant parties;
- Commissioners are authorized and required to preserve the information and allowing access to the public in accordance with the privacy legislation and any other applicable legislation;
- Shall not hold formal hearings, nor act as a public inquiry, nor conduct a formal legal proceeding;
- Shall not possess subpoena powers, and do not have powers to compel attendance or participation or in any of its events and activities. Participation is entirely voluntary;
- May adopt any formal procedures or methods;
- May at its discretions hold inquiry in camera, or require that sessions be held in camera;
- Shall perform their duties holding events, activities, in public meetings, public consultations and in making reports without making any findings or expressing any conclusions or recommendations regarding any misconduct of a person unless such findings or information has already been established through legal proceedings, by admission or by public disclosure by the individual;
- Further, the commission shall not make any reference in any of its activities or in its report or recommendations to a possible civil or criminal liability of any person or organization, unless such findings or information about the individual or institution has already been established through legal proceedings;
- Shall not, except as required by law, use or permit access to the statements of the individuals made during the events of the Commissions events, activities, except with

¹²² Article 7 of the Indian Residential Schools Settlement Agreement 2006

¹²³ ‘Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada’, <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

the express consent of the individual and only for the sole purpose and extent for which the consent is granted;

- Shall not make use of any personal information without the express consent of the individual unless information and identity established through legal process, by an admission, or by public disclosure by the individual;
- Shall require in camera proceedings for the taking of any statements that contains the name or names or other identifying information of the persons alleged by the person making the statement of some wrongdoing, unless the person named or unless the person identified or named has been convicted for wrong doing. Other information that requires to identify the said individuals shall be anonymized to the extent possible;
- Shall not, except as required by law to provide to any other proceedings, for use, any personal information, statement made by the individual without obtaining the consent of that individual;
- Shall ensure that the conduct of commission not jeopardized with the legal proceedings;

4.6. Expressions of interest

The Commission received expressions from the individuals, organizations, who wished to publicly state their commitment to the journey of healing and reconciliation. The documents and items related to each expression of reconciliation become part of the permanent legacy of the TRC housed in the National Centre for Truth and Reconciliation (NCTR)¹²⁴The Commission also invited Canadians to make expressions of reconciliation at the National and Regional Events. The documents and items related to each expression of reconciliation became part of the permanent legacy of the TRC housed in the National Centre for Truth and Reconciliation.¹²⁵

4.7. Education and Outreach

Education was a key part of the Commission's mandate and the Commission worked on its mandate to educate and encourage the public to participate in the process of truth and reconciliation. Further, the commission worked with universities, academics, traditional knowledge keepers to hold awareness raising campaigns related to the legacy of colonialism, residential schools and healing and reconciliation.¹²⁶

The Commission worked with the Children and Youth Programme of the International Center for Transitional Justice (ICTJ) to conduct some programmes for children and youth.¹²⁷ It is

¹²⁴ 'Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada', <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

¹²⁵ ibid

¹²⁶ ibid

¹²⁷ ibid

worth mentioning that the purpose of implementing these types of activities was to encourage the engagement of youth and children in the process of truth and reconciliation.¹²⁸

4.8. Commemoration and community events funding

The Settlement Agreement allocated \$20 million¹²⁹ for commemoration initiatives such as honouring, educating, remembering, memorializing, and paying tribute to former residential school students, their families, and their communities. The Commission issued two separate calls for commemoration project proposals and it is worth noting that the Commission's work inspired others to undertake commemorative projects using their own resources.¹³⁰

One example is the Government of Canada's decision to memorialize the legacy of Indian residential schools through permanent installation of a stained-glass window in the Centre Block of Parliament Hill and that design selected for the window was created by indigenous artist.¹³¹

Further, it is worth mentioning that, "the Commission issued a separate call for proposals for community events and allocated funding to approved projects up to a maximum of \$15,000 per event. The TRC supported seventy-five community events, which were designed to promote healing and reconciliation by developing collective community narratives about the impact of the residential school system on former students, families, and communities."¹³²

4.9. Creation of National Centre for Truth and Reconciliation (NCTR)

NCTR was established as a result of the mandate of the Commission to preserve the materials received and University of Manitoba had been selected to become the permanent host of the NCTR. "*The Commission reviewed a number of proposals for housing the research centre and, in June 2013, announced that the University of Manitoba had been selected to become the permanent host of the NCTR.*"¹³³

¹²⁸ *ibid*

¹²⁹ 'Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada', <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

¹³⁰ The Settlement Agreement allocated \$20 million for commemoration initiatives. These were defined as initiatives that would honour, educate, remember, memorialize, and pay tribute to former residential school students, their families, and their communities. The Commission issued two separate calls for commemoration project proposals. The maximum funding award for a project advanced by a single group was \$50,000. Up to ten communities could collaborate on a submission for a maximum contribution of \$500,000, and a commemoration project of national scope was eligible for a contribution of up to \$2 million. The Commission recommended 152 projects to the federal Department of Aboriginal Affairs and Northern Development for funding, and 143 projects were approved. The TRC Report online, <<https://nevillepark.github.io/trc/commission-activities/>>, accessed on 20/12/2023

¹³¹ The Government of Canada's decision to memorialize the legacy of Indian residential schools through the permanent installation of a stained-glass window in the Centre Block of Parliament Hill. The design selected for the window was created by Aboriginal artist Christi Belcourt and is entitled Giniigaaniimenaaning or Looking Ahead, Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada', <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

¹³² The TRC Report online, <<https://nevillepark.github.io/trc/commission-activities/>>, accessed on 20/12/2023

¹³³ The NCTR is governed by a Trust Deed and Administrative Agreement signed by the Commission and the university. A Governing Circle and Survivors Circle play important roles in ensuring the promises undertaken to Survivors are honoured. The NCTR also works in direct partnership with a growing number of universities, colleges, and other organizations across the country, The TRC Report online, <<https://nevillepark.github.io/trc/commission-activities/>>, accessed on 20/12/2023

The NCTR will be the permanent agency for all statements, documents, and other materials gathered by the Commission and further, the NCTR has engaged in respectful dialogues on the process of reconciliation.

The purposes of the establishment of NCTR are as follows;

- survivors and their families have access to their own history;
- educators can share the residential school history with new generations of students;
- researchers can delve more deeply into the residential school experience and legacy;
- public can access historical records and other materials to help foster reconciliation and healing;
- the history and legacy of the residential school system are never forgotten.

4.10. Prosecutions

As the Commission is not to act as a public inquiry or to conduct a formal legal process, it will, therefore, not duplicate in whole or in part the function of criminal investigations, the court actions. Canada is the only Western, developed country to have held a full truth Commission. Yet, the Commission has no mechanism for including perpetrators, commanders, architects, or even bystanders to come before the Commission.¹³⁴

The Commission has been able to identify fewer than fifty convictions¹³⁵ stemming from allegations of abuse at residential schools. However, it is stated that the figure mentioned is insignificant compared with the nearly 38,000 claims of sexual and serious physical abuse that were submitted as part of the Independent Assessment Process (IAP), set up under the Settlement Agreement.¹³⁶

In late 1994, the Royal Canadian Mounted Police (RCMP) established the 'E Division'¹³⁷ Task Force to investigate allegations of abuse in British Columbia residential schools.¹³⁸ Due to some procedural defects, the recommendations have been made to the written policy that reaffirms the independence of the RCMP to investigate crimes in which the government has its own interest as a potential or real party in civil litigation.¹³⁹

In the TRC mechanism, it is stated that, "the courtroom experience was made worse by the fact that many lawyers did not have adequate cultural, historical, or psychological knowledge to deal with the painful memories that the survivors were forced to reveal."¹⁴⁰ Therefore, the

¹³⁴ Bridget Storrie, 'The Mighty Life-Creating and Transforming Power' of Carnival: Why the Canadian Truth and Reconciliation Commission Does Not Seem to Have It, but Indigenous Resurgence Does IJTJ (2015) 9(3): 469–485 1 November 2015, Oxford University Press 2015

¹³⁵ Honouring the truth and reconciling for the future- Summary of the final report, TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf, accessed on 27/11/2023

¹³⁶ *ibid*

¹³⁷ In late 1994, the RCMP established the E Division Task Force to investigate allegations of abuse in British Columbia residential schools. Honouring the truth and reconciling for the future- Summary of the final report, TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf, p. 172, accessed on 27/11/2023

¹³⁸ *ibid*

¹³⁹ *ibid*

¹⁴⁰ Sandy Lamalle, 'Founding a New Path in Canada: The conclusions of the Commission on Truth and Reconciliation' (2015)8 Indigenous L Bull 3, p.5

Commission has recommended the training of lawyers and public servants in conflict resolution, human rights, etc. and all law students in Canadian law schools were recommended to take a course in Native History and Law.¹⁴¹

4.11. The TRC Final Report and Calls to Action

The TRC released its final report titled "Truth and Reconciliation: Calls to Action" in 2015. The report has introduced a set of recommendations addressing the legacy of the IRS system and promoting reconciliation.

Some key findings of the Commission are as follows:¹⁴²

1. The IRS system was a State-sponsored programme of cultural genocide;
2. The IRS system has created lasting impact on the aboriginal people;
3. Truth-telling is essential for healing and reconciliation;
4. Reconciliation is a long and complex process;
5. Education is crucial for reconciliation.

The Calls to Action cover a wide range of topics, including:¹⁴³

- Education about the history of colonialism and Indian residential schools;
- Support for Indigenous-led healing and reconciliation initiatives;
- Increased Indigenous representation in government and institutions;
- Promotion of Indigenous languages and cultures;
- Increased accountability for past abuses.

¹⁴¹ *ibid*

¹⁴² Honouring the truth and reconciling for the future- Summary of the final report, TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf, accessed on 27/11/2023

¹⁴³ *ibid*

CHAPTER 5

Concluding Remarks and Lessons for Sri Lanka

Transitional justice is a complex process of addressing the past and ongoing grievances of the indigenous people affected by the residential boarding schools and child welfare policies in Canada. It is clear from the literature on transitional justice, the process of reconciliation is not new to the Canadians. Further, the essence of the process came directly from the survivors of the residential schools and therefore, did not pay much attention on other countries' experiences due to the unique nature of IRS oppression¹⁴⁴.

*As Rosemary Naggy notes that "...aboriginal people, throughout time, have known and practiced reconciliation, long before the experts ever came, long before the truth commissions were ever set up. Throughout the millennia we have had ceremonies and rituals that attempt to bring about that reconciliation. It might be just reconciling the elements; it might be reconciling with the spirit world. We don't understand it, feel it or touch it or anything, but we know it's there because that is what's the essence of this great circle of life... We always had this notion that we are connected, [and] because we're connected, that those things need to be balanced. We always view that the harm of one would eventually impact and affect all, and could result in the harm of all...that's fundamental to all of the teachings that we have."*¹⁴⁵

The Canadian framework for truth and reconciliation may have several shortcomings due to the failures of addressing structural violence and intergenerational trauma, absence of hearing the voices of perpetrators themselves, absence of an interplay between the victims and perpetrators like the South African model.

Sri Lanka also has an opportunity to learn from Canada's truth and reconciliation commission. The general public needs to be encouraged for more participation and to become involved in every step of the transitional justice process. It is evident from the lessons of the past Presidential Commissions of Inquiries in Sri Lanka that it may be difficult to hold people criminally accountable for historical wrongs. Yet, by looking at the transitional justice process in Canada, it can possibly be argued that there are some alternative mechanisms that Sri Lanka can adopt to bring justice for its people.

Sri Lanka is a country which was in a state of conflict for over three decades. Absolutely, reconciliation processes go far beyond simply trying to erase traumatic memories. It's a journey toward healing from the wounds of the past while also taking steps to prevent similar injustices from happening again. This involves acknowledging the historical grievances and understanding their underlying causes, which often stem from deep-seated societal issues. In Canada, this holistic approach has been pivotal in fostering reconciliation, emphasizing not just the suppression of painful memories but also addressing their underlying causes. Similarly, in Sri Lanka, where a protracted armed conflict raged for three decades, recognizing past grievances and their root causes stands as a linchpin for genuine reconciliation. Despite the passage of nearly 15 years since the conflict's end, the scars remain, and the government holds a responsibility to acknowledge the violations and injustices that occurred. By acknowledging

¹⁴⁴ Rosemary Naggy, 'The Truth and Reconciliation Commission of Canada: Genesis and Design' (2014)29 Can JL & Soc 199, p.213

¹⁴⁵ *ibid*

past grievances and root causes, the government can demonstrate its commitment to accountability and justice.

It is worth mentioning that the process of the Canadian Truth and Reconciliation Commission provides valuable lessons for Sri Lanka directing towards transitional justices and the following key lessons from Canadian mechanism can be adopted to Sri Lanka to address the historical wounds;

- Acceptance of violations from past;
- Acknowledge the truth by hearing the voices of the people and by allowing victims to share their experiences;
- Introducing a secure platform to safeguard the rights of the participants (victims, perpetrators);
- Increasing awareness among the general public and educating younger generation about a common history;
- Promoting the process of healing by forgiving, re-integrating perpetrators, into society and building peace.

It is clear that reconciliation is a matter of trust, genuine intention of all parties and trust needs to be built through political will. Further, the process of reconciliation not only requires apologies, public commemoration, but also real change in the socio, political, and economic structures.

SUMMARY

Key areas	Discussion
Introduction and the chronological events	<ul style="list-style-type: none"> ● Reasons for the establishment of truth and reconciliation process in Canada, <ul style="list-style-type: none"> -as a result of a comprehensive response to Indian Residential School legacy, -to acknowledge injustices/harms experienced by indigenous people and the need for continued healing. ● The direct Indian residential school's legacy is also evident in other instances of structural violence. For example, over 600 Indigenous women and girls have gone missing in Canada in the last 30 years, two-thirds of whom are confirmed as murdered. ● In 1991, the Royal Commission on Aboriginal Peoples (RCAP) identified a number of contemporary social injustices between indigenous and non-indigenous communities ● Three apologies from the Government of Canada has been delivered from time to time ● In its 1998 'Statement of Reconciliation,' the government apologized for the physical and sexual abuse of residential schools, but <i>not</i> for the system itself or its cultural, socio-economic, political or psychological effects ● The Truth and Reconciliation Commission of Canada was established as part of the 2006 Indian Residential Schools Settlement Agreement (IRSSA) in response to a staggering number of lawsuits over the damages inflicted by the Indian residential school system ● The Canadian TRC was set up in 2008 as part of the Indian residential schools Settlement Agreement, and is the first truth commission to be produced through litigation. It has a mandate to educate and to record and witness the testimonies of those affected by the residential school system. ● On 11 June 2008, Prime Minister Stephen Harper apologized for residential schools in the House of Commons. Leaders from five of the main Indigenous organizations spoke in response to the apology from the floor of the House of Commons, an unprecedented and symbolically important move, and overall, the apology was reportedly well received. ● In February 2012, TRC published an interim report and an accompanying historical document. The report identifies residential schools as 'an assault' on Indigenous children, families, culture and nations.
Mandate of the commission	<ul style="list-style-type: none"> ● The work of the 2006 Commission focuses on establishing a historical record and promoting awareness and commemoration, distinctly separated from legal proceedings. Its objectives include: <ul style="list-style-type: none"> ● 1) Revealing the complex truth about history and ongoing legacy to Canadians ● 2) Guiding and inspiring a process of truth and healing ● 3) Mandating the Commission to hold seven National Events
Salient Features of the TRC	<ul style="list-style-type: none"> ● Moving from apology to action ● Meeting from coast to coast ● The process of the statement gathering ● TRC has focused much of its energy on collecting survivor statements, primarily for the purpose of healing. ● Organize national events ● Commemoration and community events funding

	<ul style="list-style-type: none"> ● Published an Interim report in 2012 that addressed the gaps in school curriculum ● The commission was mandated to create a Centre for National Truth and Reconciliation ● Adopted the framework introduced under United Nations Declaration of Rights of Indigenous People ● Adopted Victim-centred approach ● Publication of the TRC Report and campaign of “Calls to Action.” ● Canada employed mainly non-retributive approaches to the dispute resolution, such as community-based strategies to rebuild broken relationships. ● Adopted restorative justice, the theory of recognition, and truth commissions ● Prosecutorial process-As the Commission is not to act as an entity of public inquiry or to conduct any formal legal process, it will, therefore, not duplicate, in whole or in part, the function of criminal investigations, the court actions. ● Independent Assessment Process (IAP) -The funding process obtains the consent from the participants to archive their records. ● Healing process- access to mental health support mechanism ● The digital platform
<p>Failures and Possible challenges</p>	<ul style="list-style-type: none"> ● Canadian TRC which is based on the victim-centred approach has weaknesses. ● Not robust enough to prosecute perpetrators despite the alleged murder of over 600 women and children. ● Absence of a more structural focus on the un-addressed land and self-determination claims of indigenous peoples. Criticized that the TRC was never charged with and cannot properly serve as a forum for solving such historical claims. ● It is evident that the residential schools were about much more than individual experiences. They were also about specific Canadian acts and decisions made, in many cases, by still-living individuals and established, ongoing institutions which have lasting impact. ● The Canadian TRC cannot hold formal hearings and has no power of subpoena. Unlike the South African TRC, it has been prohibited from naming names and is unable to offer amnesty. ● The Commission has no mechanism for including perpetrators, commanders, architects, or even bystanders to come forward.¹⁴⁶ Absence of hearing the voices of perpetrators themselves. Absence of interplay between the victims and perpetrators. (SA integrates a mechanism in relating to interplay between the victims and the perpetrators) ● The variety of voices or heteroglossia in dialogue is notably absent in the Canadian TRC. ● The victim-centred approach, unfortunately fosters the absence of a more detailed and ‘accountability-promoting examination’ of the agents responsible for the residential school system. ● Reparation mechanism has been challenged with the high expectation of the participants. Absence of proper framework for reparations.

¹⁴⁶ Bridget Storrie, ‘The Mighty Life-Creating and Transforming Power’ of Carnival: Why the Canadian Truth and Reconciliation Commission Does Not Seem to Have It, but Indigenous Resurgence Does IJTJ (2015) 9(3): 469–485 1 November 2015, Oxford University Press 2015

	<ul style="list-style-type: none"> ● Lack of funds- Community events also have significant potential for grassroots, decolonizing narratives because they can operate explicitly outside the ambit of state-based 'expressions of reconciliation' that have been offered by important Church and government officials at national events. However, this potential is as yet underutilised as a result of limited funds, a 'passive' design of having communities come to the TRC and community events often functioning as an 'add-on' to other events. ● Canada's TRC focused only on the 'dominant script' of truth commissions that focus on civil and political rights violations at the expense of structural violence. The recent truth commissions have begun to grapple in greater depth with economic crimes (Kenya), gender-based violence (Sierra Leone), racism and socio-economic inequality (Guatemala). ● TRC's progress is hampered by the conservative political environment, the Commission's weak public profile and to some degree the Commission's own emphasis on healing. ● Defects in the criminal prosecutions- lack of trained lawyers to deal with the painful memories of survivors.
<p>Reasons for selection</p>	<ul style="list-style-type: none"> ● Canada is the only western developed country to have held a full truth Commission¹⁴⁷. ● A developed country with rich resources. ● Identified similar issues as in Sri Lanka where specific communities have been targeted.
<p>Lessons learnt</p>	<ul style="list-style-type: none"> ● An apology is an important symbolic gesture that requires concrete action if it is to be part of a lived restorative relationship. ● Reparations for historical injustices must include not only apology, financial redress, legal reform, and policy change, but also the rewriting of national history and public commemoration- in short a complete reorientation at multiple levels. ● Introduction of restorative practices is contingent upon specific contexts and evaluating their effectiveness necessitates a case-by-case examination. ● Benefits of employing non-retributive approaches to the dispute resolution, such as community-based strategies to rebuild broken relationships. ● Implementation and follow up of the recommendations of the Truth Commission by the government. ● Recommended to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation. ● Recommended to develop a national action plan, strategies, and other concrete measures to achieve the goals of the United Nations Declaration on the Rights of Indigenous Peoples. ● Suggestions to establish a national council to monitor progress of actions to be taken and recommendations. ● Invest in and support new research on reconciliation. ● Ensuring availability of documents/ records in relation to the process of reconciliation. ● Hearing the voices of people. ● The multi-voiced, democratic and liberating character of storytelling in victim-centred Truth Commissions in which the rules of 'judicial

¹⁴⁷ David Webster, 'Truth and Reconciliation in Southeast Asia and the Melanesian Pacific: Potential Canadian Contributions and Potential Lessons for Canada' (2017)72 Int'l 120, pp.120-130

	<p>procedure' are inverted. Truth and Reconciliation Commissions (TRC) need to provide a 'carnavalesque healing of both storytellers and their audiences.'</p> <ul style="list-style-type: none">● Canadian TRC may be among the 'less robust' of Truth Commissions worldwide. However, the emphasis on individual accountability may also free the TRC from the narrow legalism associated with transitional justice elsewhere and make possible greater engagement with structures of violence.● Aligns with the peace-building vision of positive peace, where 'people might fulfil their potential as human beings in productive and cooperative relationships with one another.' Notably, working toward 'positive' or 'sustainable' peace need not occur just in war-torn societies, and links are being made in the residential schools' literature between peace building, Indigenous methodologies and the TRC.● A more widespread understanding of the actions and decisions of Canadian institutions and individuals in relation to the schools - as opposed to a highly individualized focus on specific abusers or a broadly generalized one on faceless 'past policies' — might promote more informed debates about contemporary indigenous — Canadian relationships in areas like child welfare, sanitation services, health provision and education.
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EAST TIMOR

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Acronyms

Apodeti	Timorese Popular Democratic Association
ASDT/Fretilin	Timorese Social Democratic Association
CAVR	Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste/ Commission for Reception, Truth, and Reconciliation
CEP	Community Empowerment and Local Governance Project
CNRT	National Council of Timorese Resistance
CRP	Community Reconciliation Procedures
CTF	Commission for Truth and Friendship
FDTL	Timor Leste Defence Force
FRAP	Faniltil Reinsertion Assistance Program
HR	Human Rights
HRDAG	Human Rights Data Analysis Group
ICTJ	International Center for Transitional Justice
IOM	International Organization for Migration
OGP	Office of the General Prosecutor
OTI	Office of Transitional Initiatives
PNTL	National Police Force
RESPECT	Recovery, Employment and Stability Program
SCU	Serious Crimes Unit
SSR	Security Sector Reforms
TFET	Trust Fund for East Timor
UDT	Timorese Democratic Union)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNMISSET	United Nations Mission of Support in East Timor
UNMIT	United Nations Mission in East Timor
UNTAET	United Nations Transitional Administration in East Timor

CONTENTS

CHAPTER 1

Contextual Background

- 1.1. Historical Background
- 1.2. Struggle for independence
- 1.3. Indonesian Occupation
- 1.4. Post conflict East Timor
- 1.5. Truth and Reconciliation Efforts
- 1.6. Subsequent Developments

CHAPTER 2

Policy Framework for TRC

- 2.1. Independence of the Commission
- 2.2. Two pillars of Truth Seeking and Reconciliation
- 2.3. Systematic and Systemic Patterns
- 2.4. Definitions of violations and responsibilities of individuals
- 2.5. Policy considerations due to continuing violence until independence
- 2.6. Justice of war and Justice in war
- 2.7. Focus on Justice and reconciliation
- 2.8. Public naming and shaming
- 2.9. Community Reconciliation Procedures

CHAPTER 3

Introduction to the Commission-Reception, Truth and Reconciliation

- 3.1. Origins of the Commission
- 3.2. Formation of the Commission
- 3.3. Mandate of the Commission
- 3.4. Powers of the Commission
- 3.5. Initial Challenges faced by the Commission
- 3.6. CAVR as an institution
- 3.7. Organisations that assisted in the TRC process

CHAPTER 4

Programmes of the Commission

- 4.1. Truth seeking
- 4.2. Systematic statement taking
- 4.3. Research
- 4.4. Public hearings
- 4.5. Death Toll Project
- 4.6. Submissions
- 4.7. Community Reconciliation
- 4.8. Community Reconciliation Procedures (CRPs)
- 4.9. Acolhimento (Reception) and Victim Support
- 4.10. Assistance to recent returnees to Timor Leste
- 4.11. Public Awareness
- 4.12. Healing workshops
- 4.13. Community Profile Workshops

CHAPTER 5

Security Sector Reforms

- 5.1. Introduction
- 5.2. DDR Process and Integration
- 5.3. Breakdown of Command and Control
- 5.4. Role of International Donors
- 5.5. Challenges and Fragmentation of Donor Programs
- 5.6. Recommendations by the Truth Commission
- 5.7. Civilian Oversight Mechanism
- 5.8. Challenges and Criticisms
- 5.9. Key Lessons
- 5.10. Conclusion

CHAPTER 6

Best Practices and Lessons Learnt

- 6.1. Community-oriented Approach
- 6.2. Pilot projects and gradual expansion
- 6.3. Community profile workshops (second pilot)
- 6.4. Community Reconciliation Procedures (third pilot)
- 6.5. Sequence of activities
- 6.6. Rights of the participants in the process
- 6.7. Confessions and Forgiveness
- 6.8. Highly participatory and consultative
- 6.9. Inclusive of women's experience and gender aspects
- 6.10. The focus was on documenting the human rights abuses committed by an external party that is no more present in the nation (i.e The Indonesian Army)
- 6.11. Systematic methods were used to collect information
- 6.12. CAVR was complimentary to the judicial/justice process
- 6.13. Lack of Clarity and Trust
- 6.14. Unfulfilled Reparations and Economic Disappointment
- 6.15. Inadequate follow-up and Lack of Implementation
- 6.16. Selective Justice

CHAPTER 7

Concluding Remarks and Lessons for Sri Lanka

CHAPTER 1

Contextual Background

As will be discussed in the historical background, the context of East Timor revolves around the period of colonialism and postcolonialism. East Timor's status as an independent nation was in question at the time of the withdrawal of the colonial powers. Thus, East Timor became a contested land between the Timorese people and the Indonesian state who claimed it as theirs. It then led to independence from Colonialism to independence from the Indonesian state.

1.1. Historical Background

Timor is a South East Asian Island. It is the largest of a series of islands between Java and New Guinea, and is regarded as a continental crustal fragment geologically.¹ The Eastern section/Timor Leste was under Portugal's administration from the late 16th century and Portugal had some tensions with the rival colonial power Dutch in ruling this territory.² In 1913 through a decision (Sentenca Arbitral) at the International Court in the Hague, colonial boundaries between Portuguese and Dutch were fixed with Portugal taking the eastern half of the island and the Dutch the Western portion.³ East Timor, located in the eastern part of the island of Timor, became a Portuguese colony, along with other territories in Southeast Asia, such as Macau and Goa.

The island faced external pressures, including Japanese occupation during World War II. In 1942, Japan invaded and occupied East Timor.⁴ The occupation lasted until 1945, when Japan surrendered at the end of the war. During the occupation, the Japanese military committed numerous atrocities against the Timorese people, including massacres, forced labour, and widespread abuse.⁵ Many Timorese died as a result of the harsh conditions and violence inflicted by the Japanese forces. The impact on East Timorese society was devastating.⁶ Between 40,000 and 60,000 East Timorese are reported to have died. Many were tortured and killed by Japanese troops on suspicion of assisting Australian guerrilla fighters.⁷ Sexual slavery of East Timorese women by Japanese troops was widespread.⁸ But there were no consequent international investigations or prosecutions carried out.⁹

Until the Carnation Revolution¹⁰ of 25 April 1974 which led to the decolonization of all the colonies of Portugal, Timor Leste was the most remote and least important colony of Portugal

¹Kathryn A Monk and others, *The ecology of Nusa Tenggara and Maluku* (Periplus Editions, Hong Kong 1997) 41-43

² Robert Parks, 'East Timor Gains Its Independence' (GALE , 20th May 2022) <<https://blog.gale.com/east-timor-gains-its-independence/>> accessed 19 January 2024

³Adam Schwartz, *A nation in waiting: Indonesia in the 1990s* (1st edn, Westview Press 1994) 198.

⁴HenryP Frei, 'Australian Historical Studies' [2008] 27(107) Japan's reluctant decision to occupy Portuguese Timor, 1 January 1942 - 20 February 1942 <<https://www.tandfonline.com/doi/abs/10.1080/10314619608596014>> accessed 22 January 2024

⁵Reliefweb, 'Situation of human rights in East Timor' (*ReliefWeb report*, 10 December 1999) <<https://reliefweb.int/report/indonesia/situation-human-rights-east-timor>> accessed 19 January 2024

⁶James Dunn, *East Timor: A Rough Passage to Independence* (3rd edn, Longueville Media 2003)19 -21

⁷East Timor and Indonesian action network, 'Part 3: The History of the Conflict' (*ETAN org*, 2006) <<https://www.etan.org/etanpdf/2006/CAVR/03-History-of-the-Conflict.pdf>> accessed 22 January 2024

⁸Stephanie Coop, 'Sex slave exhibition exposes darkness in East Timor' (*The Japan Times*, 23 Dec 2006) <<https://www.japantimes.co.jp/news/2006/12/23/national/sex-slave-exhibition-exposes-darkness-in-east-timor/>> accessed 19 January 2024

⁹ *ibid*

¹⁰ The Carnation Revolution, or 25 April in Portuguese, marked a significant turning point in Portugal's history. It was a leftist military uprising on April 25, 1974, in Lisbon, which toppled the authoritarian Estado Novo regime. This event brought about

with very little economic or political investment. The Portuguese primarily focused on extracting resources, such as sandalwood and coffee, from the colony.¹¹

1.2. Struggle for independence

When Portugal decided to decolonize all the nations under its administration following the launch of the Carnation Revolution on 25th April 1974, however, the people of East Timor began to form political platforms and pursue self-determination.¹² This led to the rise of the creation of political parties of UDT (Timorese Democratic Union) and ASDT/Fretilin (Timorese Social Democratic Association) and Apodeti (Timorese Popular Democratic Association) in May 1974.¹³ The UDT took a very conservative approach to governance and consisted of elites arguing for East Timor to remain under the colonial administration of the Portuguese.¹⁴ Fretilin was formed a mere nine days after the formation of UDT and included young intellectuals who took a strong anti-colonial stance.¹⁵ In 1975 there were plans for a decolonization program to have elections in 1976 and to end Portuguese sovereignty in 1978.¹⁶

1.3. Indonesian Occupation

On August 17, 1945, just days after Japan's surrender, Indonesia proclaimed independence from the Dutch and started the struggle for sovereignty.¹⁷ Continuous diplomatic negotiations, armed resistance and mobilization of popular support led to the Dutch-Indonesian Round Table Conference in 1949 which ended the three centuries of Dutch colonial rule.¹⁸ In the wake of the Carnation Revolution, when Portugal was about to relinquish control over East-Timor, Indonesia, which had Western Timor as part of its territory, displayed its intentions to govern the eastern part of the island.¹⁹ Indonesia viewed East Timor's independence as a threat due to concerns about the spread of communism and the potential for East Timor to become a sanctuary for Indonesian dissidents.²⁰

UDT leaders launched an armed movement on 11 August to prevent Indonesian intervention and there was violence between UDT, and Apodeti which caused an internal armed conflict with deaths, displacement, emergency, and the withdrawal of the Portuguese administration.²¹ Fretilin temporarily took over the administration and called the international community to prevent the imminent full-scale invasion and led the process of declaring independence

extensive transformations in Portugal's society, economy, territory, population, and politics, impacting not only the mainland but also its overseas colonies.

¹¹ Schwartz (n3)

¹² Government of timor leste, 'History' (*Government of Timor Leste*, 2020) <<http://timor-leste.gov.tl/?lang=en&p=29>> accessed 19 January 2024

¹³ Stephen Hoadley, 'East Timor: Civil War — Causes and Consequences' [1976] (-) South Asian Affairs <<https://www.jstor.org/stable/27908293>> accessed 20 January 2024

¹⁴ ibid

¹⁵ East Timor and Indonesia Action Network (n7)

¹⁶ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005), ch3 pp. 14-16

¹⁷ Julien, 'Kaltimber - Timber Merchant - Flooring Shop' (*Kaltimber - Timber merchant - Flooring shop* 28 August 2023) <<https://www.kaltimber.com/blog/from-dutch-ruling-to-independence-a-short-history-of-indonesia#:~:text=The%20Proclamation%20of%20Independence.aspirations%20of%20millions%20of%20Indonesians.>> accessed 4 March 2024.

¹⁸ ibid

¹⁹ Kusuma Agus, 'Future Indonesia-East Timor Relations: An Analysis of the Regional Security Practices in the Cold War and After' (*NAVAL POSTGRADUATE SCHOOL MONTEREY CA*, 1 June 2001) <<https://apps.dtic.mil/>

²⁰ Laura Southgate, 'The Indonesian Invasion of East Timor, ASEAN Resistance to Sovereignty Violation: Interests, Balancing and the Role of the Vanguard State' (2019) 25-70

²¹ Durand Frédéric, 'THREE CENTURIES OF VIOLENCE AND STRUGGLE IN EAST TIMOR (1726-2008)' (*SciencesPo*, 14 October 2011) <<https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/three-centuries-violence-and-struggle-east-timor-1726-2008.html>> accessed 22 January 2024

unilaterally.²² However, political instability and internal divisions plagued the newly independent nation. Indonesia conducted a full-scale invasion of East Timor in December 1975 and installed a provincial government.²³

For the next 24 years, there was an armed conflict between the Indonesian army and Fretilin troops which was under the political control of an East Timor resistance movement.²⁴ This period witnessed significant human rights abuses and resistance. Between 1975 and 1999, over 200,000 Timorese were killed by Indonesian occupation troops who employed famine, sexual brutality, chemical weapons, and napalm in addition to chemical weapons and napalm.²⁵ The Santa Cruz massacre in 1991 was a crucial incident in the history of the conflict that the Indonesian Army fired at a group of mourners who were burying a young student killed by the Indonesian army which led to over 200 killed.²⁶ Video footage of this incident went viral internationally which gained a lot of attention and the act was widely condemned.²⁷ A long-awaited independence vote in 1999 sparked further bloodshed, with Indonesian military and paramilitary retaliation killing over 2,000 Timorese and destroying 75% of the country's infrastructure.²⁸ One-third of the population, 240,000 people, abandoned their homes and were forcefully moved to the Indonesian state of West Timor.²⁹

Overall, the combination of grassroots activism, journalistic coverage, diplomatic pressure, and recognition by international organizations helped to shine a spotlight on the Indonesian occupation of East Timor. In 1996 two East Timorese were awarded the Nobel Peace Prize for their work towards a just and peaceful solution to the conflict which brought global attention to the ongoing problem.³⁰

When the Indonesian President Suharto resigned in 1997 the interim president B.J. Habibie offered conditional autonomy to East Timor.³¹ Rejecting this, East Timor people preferred to have a referendum.³² With the UN monitoring, there was a referendum in 1999 which had a 99% turnout and 78 % voted for independence.³³ Within two weeks of the referendum, the Indonesian army forcefully evacuated thousands of East Timorese to West Timor under dire conditions and attacked East Timor destroying the businesses, infrastructure, and homes.³⁴ With the approval of the United Nations Security Council, the UN mission intervened and Indonesia withdrew.³⁵ The United Nations sent the peacekeeping force and installed the United Nations Transitional Administration in East Timor (UNTAET) from 1999 until the nation was ready to become fully independent in 2002.

²² East Timor and Indonesia Action Network (n7)

²³ Ben Kiernan, 'War, Genocide, and Resistance in East Timor, 1975–99: Comparative Reflections on Cambodia' (*Yale University*, 15 July 2003) <https://gsp.yale.edu/sites/default/files/03-263_ch_09.pdf> accessed 22 January 2024

²⁴ *ibid*

²⁵ DoeV lumintang, 'TIMOR-LESTE (EAST TIMOR)' (*The Centre for Justice and Accountability*, 2024) <<https://cja.org/where-we-work/archives/timor-leste-east-timor/>> accessed 22 January 2024

²⁶ Amnesty international, 'East Timor: After the massacre' (*Amnesty International*, 1991) <<https://www.amnesty.org/en/documents/asa21/024/1991/en/>> accessed 1 March 2024

²⁷ *ibid*

²⁸ DoeV Lumintang (n25)

²⁹ *ibid*

³⁰ United nations, 'NOBEL PEACE PRIZE WINNER CALLS FOR UNITED NATIONS HUMAN RIGHTS OFFICE IN EAST TIMOR' (*United Nations; Meetings Coverage and Press Releases*, 186 June 1997) <<https://press.un.org/en/1997/19970616.gacol29.66.html>> accessed 22 January 2024

³¹ Political economy research institute, 'East Timor - Indonesia (1975 - 1999)' (*MODERN CONFLICTS: CONFLICT PROFILE*, 2001) <<https://peri.umass.edu/fileadmin/pdf/Easttimor.pdf>> accessed 22 January 2024

³² *ibid*

³³ Martha Thompson, 'Refugees: The Other Side of the Crisis in East Timor' (*ReliefWeb*, 12 Nov 1999) <<https://reliefweb.int/report/indonesia/refugees-other-side-crisis-east-timor>> accessed 22 January 2024

³⁴ United nations peacekeeping, 'East Timor Background - UNTAET' (*UNTAET*, May 2002) <<https://peacekeeping.un.org/en/mission/past/etimor/UntaetB.htm>> accessed 22 January 2024

³⁵ CAVR Chega! (2005) ch1, para 19, 5

1.4. Post conflict East Timor

After years of struggle for independence and a tumultuous transition period marked by violence and instability, East Timor has undertaken several initiatives to promote reconciliation and rebuild the nation. Some key aspects of this progress include:

1. **Truth and Reconciliation Commission (CAVR):** Established in 2002, the CAVR aimed to investigate human rights abuses that occurred during the Indonesian occupation (1975-1999) and promote reconciliation. Its report, "Chega!," documented widespread human rights violations and provided recommendations for reconciliation and justice.
2. **Justice and Accountability:** Efforts have been made to address past injustices through both national and international mechanisms. This includes trials for perpetrators of crimes against humanity through the Special Panels for Serious Crimes and cooperation with international bodies like the International Criminal Court.
3. **Reintegration and Rehabilitation:** Programs have been implemented to support the reintegration of former combatants into society, including demobilization, disarmament, and rehabilitation efforts. Economic opportunities and social support are provided to encourage former fighters to reintegrate peacefully.
4. **Political stability:** The establishment of democratic institutions and peaceful political transitions has contributed to stability, enabling a conducive environment for reconciliation efforts to take root.
5. **Social and Economic Development:** Investments in social services, infrastructure, and economic development projects have aimed to address underlying grievances and improve living conditions for the population, thereby contributing to reconciliation efforts.

1.5. Truth and Reconciliation Efforts

After a hundred years of Portuguese colonialism and 24 years of foreign occupation, East Timor was left devastated by the end of 1999. It is estimated that at least 100,000-180,000 East Timorese died during the Indonesian occupation.³⁶ The issue of past crimes and impunity enjoyed by the perpetrators and the legacy of the long conflict were threatening factors for the violence to reignite.³⁷

The UN sent a commission of inquiry to investigate events of 1999, established a serious crimes investigation process in Timor Leste, and advised Indonesia to show their respect to the rule of law by prosecuting wrongdoers living in Indonesia using its judiciary.³⁸ However, East Timorese leaders recognized the fact that they needed a more holistic process looking at the long-standing conflict beyond the events of 1999.³⁹

³⁶ Holly L Guthrey, 'Local Norms and Truth Telling: Examining Experienced Incompatibilities within Truth Commissions of Solomon Islands and Timor-Leste', (2016) 28(1) *The Contemporary Pacific* 1,10

³⁷ CAVR, *Chega!* (2005) ch 1, para 5

³⁸ CAVR, *Chega!* (2005) ch 1, para 6, 3

³⁹ James Dunn (n6)

The National Council of Timorese Resistance (CNRT) which brought all political groups of East Timor under one umbrella decided to form a commission for reconciliation in 2000.⁴⁰ The UNTAET established the **Commission for Reception, Truth and Reconciliation in East Timor** (also referred to as CAVR the Portuguese acronym) in 2001 as an independent authority to look into widespread killings, human rights violations, and destructions from 25th April 1974 to 25 October 1999⁴¹. Also, in 2001, Timorese citizens elected a constituent Assembly to write the first constitution. In September 2022 the UN General Assembly admitted Timor-Leste as its 191-member state. However, 25 years of conflict left Timor-Leste as the newest and poorest of Asian Nations.⁴²

The post-conflict reconciliation process in East Timor has been a complex and multifaceted endeavour. The establishment of CAVR was a pivotal step in addressing the atrocities committed during this time and fostering healing and reconciliation in the nation⁴³. The CAVR played a crucial role in promoting accountability, reconciliation, and healing in East Timor. While its mandate officially ended in 2005, its legacy continues to shape discussions on justice and reconciliation in the country.⁴⁴

1.6. Subsequent Developments

CAVR process had a far-reaching impact on the nation-building of East Timor. It is commented that 'Chega! needs to be viewed as only the beginning, rather than the end, of discussions about the meaning of the past and its role in the future'⁴⁵ and the effect of the truth-telling process is still reverberating in many forms. CAVR process encouraged many memorialization and commemoration projects at village levels thereafter.

As indicated in the final report of the CAVR the Community Reconciliation Procedure (CRP) was highly successful. The report stated that "Ninety-six percent of all persons interviewed expressed that the CRP had successfully fulfilled its primary objective of fostering reconciliation in their community."⁴⁶ It emphasized the powerful symbolic significance of the CRP within communities, symbolizing the conclusion of the nation's prolonged history of conflict. However, **the report acknowledged that reconciliation is a gradual process and cannot be achieved instantly or through a single event**⁴⁷. It underscored the ongoing need for support in community reconciliation efforts and recommended that the government establish a community-focused mechanism for conflict prevention and resolution, drawing on the lessons learned from the CAVR community reconciliation process⁴⁸.

Chega acknowledges that truth is not sufficient and reparations and justice elements also need to be addressed. Indonesia and Timor-Leste established the bilateral Commission for Truth and Friendship (CTF) in 2005 to establish the truth about 1999's events which concludes that

⁴⁰ CAVR *Chega!* (2005) ch1, para 7, 3

⁴¹ *ibid*

⁴² John Macaulay, 'Timor Leste: Newest and Poorest of Asian Nations' (2003) 88(1),40

⁴³ United States Institute of Peace, 'Truth Commission: Timor-Leste (East Timor)' (*USIP Publications*, 7 February 2022) <<https://www.usip.org/publications/2002/02/truth-commission-timor-leste-east-timor>> accessed 19 November 2023

⁴⁴ Luiz Viera, 'Case Studies on Transitional Justice and Displacement the CAVR and the 2006 Displacement Crisis in Timor-Leste Reflections on Truth-Telling, Dialogue, and Durable Solutions Transitional Justice and Displacement Project' (2012) <<https://www.ictj.org/sites/default/files/ICTJ-Brookings-Displacement-Truth-Telling-Timor-Leste-CaseStudy-2012-English.pdf>> accessed 22 January 2024

⁴⁵ Lia Kent (n213)

⁴⁶ CAVR *Chega!* (2005) Ch 9, p 34

⁴⁷ *ibid*

⁴⁸ *ibid*

Indonesian military police as well as the civilian government and militia groups were responsible for much of the 1999 violence⁴⁹ The Commission, consisting of an equal number of members from Indonesia and Timor-Leste, was formed autonomously from the United Nations (UN) and released its report in 2008 which includes recommendations regarding institutional reform the development of joint policies, the creation of new human rights institutions and the provision of material and symbolic reparations.

The Commission also expressed the necessity to continue its work that would allow it to recognize and acknowledge the truth of what happened to achieve nonviolence and reconciliation. Therefore, a new institution was set up in 2005, the post-CAVR secretariat to⁵⁰:

- a. Implement the recommendations of the CAVR report;
- b. continue with reconciliation efforts in East Timor;
- c. the former Comarca prison should be transformed from being the national office of the CAVR into a national centre for education that should commemorate the human rights violations and its victims and should house the CAVR archives as well⁵¹

Chega! has been distributed to formal organizations like churches, donors, political parties and the international community and followed up with the local community in the time period of six months, from April to September 2006⁵². Moreover, the post-CAVR secretariat produced at the beginning a weekly radio program on the report, invited community groups to visit the exhibition of Chega! and published a “plain guide to Chega!” that is a much shorter and comprehensive version of the final report⁵³. In 2008, there was additionally a comic version of the report printed for children and for the many people with a low literacy rate in East Timor.

Timor Leste has demonstrated significant progress in conflict transformation in that it has risen 20 places in the Global Peace Index since 2008 and 10 places in the Positive Peace Index since 2005 and international assistance, socio-economic development programs, a democratic culture, and regional peacebuilding have been identified as contributory factors.⁵⁴ Global Peace Index 2023 provides a contemporary, comparative, and contextual perspective here that Sri Lanka was ranked 133 demonstrating a medium level in the state of peace and Timor-Leste was ranked 76 making it a nation with a high level of peace..

⁴⁹‘Timor-Leste | International Center for Transitional Justice’ (*Ictj.org*2024) <<https://www.ictj.org/location/timor-leste>> accessed 19 November 2023.

⁵⁰ CAVR Chega! A Plain Guide, sec 9, 90

⁵¹CAVR Chega! A Plain Guide, Sec 9, 101

⁵² CAVR Chega! A Plain Guide (2006), 104

⁵³ CAVR Chega! A Plain Guide (2006), 3

⁵⁴dlewis, ‘Timor-Leste: How One of World’s Newest Countries Built Peace’ (*Vision of Humanity*6 November 2018) <<https://www.visionofhumanity.org/one-worlds-youngest-countries-became-example-positive-peace-development/>>. accessed 24th Oct 2023

CHAPTER 2

Policy Framework for the Truth and Reconciliation Commission

2.1. Independence of the Commission

The Commission known as CAVR was created as an independent organization. It was “not subject to the control or direction” of any individual or agency of the government, elected or otherwise.⁵⁵ The primary aim of the Commission was to deal with the dual issues of accountability and reconciliation in relation to crimes that took place in the past and reconciliation for a peaceful and unified future.⁵⁶ The Commission was to focus on identifying and establishing the fact (truths) in relation to the Human Rights violations “in the context of political violence” that took place between the period, 25th April 1974 and 25th October 1999.⁵⁷

It was also a “complementary mechanism” since the UN sponsored “serious crimes Investigation Unit” through which a process was already in place in accordance with the UN Security Council Resolution 1272.⁵⁸

2.2. Two Pillars of Truth Seeking and Reconciliation

The commission had two main pillars of truth seeking and reconciliation. Both factors are expected to restore the “dignity of the victims” as the Commission so crucially identifies.⁵⁹ The regulation had provided a framework for the Commission to conduct specific activities focused on truth seeking and community reconciliation. Another core objective was to assist in restoring the dignity of victims. It was open to the Commission to develop policies and activities which best achieved these mandated goals.

On restoring the dignity of the victims were the key theme in the Commission, reconciliation and reintegration of the various groups within the Community, particularly in view of the violence that continued after the withdrawal of the Indonesian armed forces, when the referendum was conducted on 30th August 1999 where over 98% of the eligible voters of East Timore went to the polls. This phase of the violence flared up when the result of the referendum was overwhelmingly in favour of independence of East Timore. The independence was opposed by elements within the paramilitary groups aligned to the Indonesian armed forces and the independent pro-Indonesian militia. This latter phase of the violence was also to be the focus of the Commissions inquiry and “take into particular consideration”.⁶⁰

⁵⁵ UNTAET Regulation 2001/10 established the Commission as an independent authority, with a requirement that it “not be subject to the control or direction” of any cabinet minister or other government official.

⁵⁶ CAVR, (n16), Ch 1, para 28

⁵⁷ CAVR, (n16), Para 2,02

⁵⁸ Prior to the formation of the Commission, the Serious Crimes Investigations Unit and the Special Panels of the Dili District Court were established, in accordance with UN Security Council Resolution 1272, with a mandate to investigate and prosecute those responsible for serious crimes committed between 1 January and 25 October, 1999. CAVR, (n16) para 29, 07

⁵⁹ CAVR, (n16) para 70, 22

⁶⁰ CAVR, (n16) para 5,03

2.3. Systematic and Systemic Patterns

The task of the Commission was to identify and understand the context, background and historical factors leading to the violent events. The purpose was to understand if the violence was systematic and systemic, (para 33)⁶¹ rather than focus on the crimes itself which is handled by the serious Crimes Unit. The idea was to inquire, into “which persons, authorities, institutions and organizations were involved in human rights violations,”⁶² so that the “totality of what occurred”,⁶³[5], the patterns underlying the violence could be identified. This, it was envisaged, will lead to an understanding of how and why this violence occurred and identify those responsible and to ensure it is not repeated.⁶⁴

Focus on systemic violation and not on Individual crimes

The main approach was to focus on the “broader patterns of violence” between the 1975-1999, based on “comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received.”⁶⁵ Hence, the purpose was not to prepare individual cases for prosecution to gather maximum amount of details where adequate information was not available.⁶⁶ Thus, the focus was to conduct a detailed analysis of a limited number of incidents in order to uncover the patterns, if there are any, and in that context to assess liability of specific individuals or groups.⁶⁷ The mandate itself placed a great emphasis on the many thousands of “serious violation.”⁶⁸

2.4. Definitions of violations and responsibilities of individuals

As per UNTAET regulation 2001/10, the broad functional policy framework consisted of the following:⁶⁹

- The context, causes, antecedents, motives and perspectives which led to the violations
- Whether they were part of a systematic pattern of abuse
- The identity of persons, authorities, institutions and organisations involved in them
- Whether they were the result of deliberate planning, policy or authorisation on the part of the state, political groups, militia groups, liberation movements or other groups or individuals
- The role of both internal and external factors
- Accountability, “political or otherwise”, for the violations.

Hence, the Commission took a cue from the South African Truth and Reconciliation Commission which interpreted “modern developments within International Law” which holds

⁶¹ “..whether violations were part of systematic patterns of abuse, issues of accountability arising from the violations, CAVR, (n16) para 25, 7

⁶² CAVR, (n16) para 26, 07

⁶³ CAVR, (n16) para 33,08

⁶⁴ CAVR, (n16) para 32, 08

⁶⁵ CAVR, (n16) Ch.2, para 25, 7

⁶⁶ *ibid*, para 29,7

⁶⁷ *Ibid*, para 30-34,8

⁶⁸ *Ibid*, para30,8

⁶⁹ CAVR, (n16), para 2, 02

both “state and non-state actors with equal responsibility for human rights violations.”⁷⁰ This was on the “balance of probability” based on evidence presented to the commission making a “determination that it is more probable than not that the allegations under consideration are true.”⁷¹

Various TRCs have approached the consequence of the identity based on their mandate and the prosecutorial powers they are mandated with. In the South African TRC, for instance, the testimonies and confessions were integral to the Amnesty programme and in the process, as the proceedings are public, the corollary was that the identity and confessions became public knowledge. In the East Timor case, the Commission uses the naming and shaming as a direct punitive and non-repetition and preventive measure and against impunity as a matter of policy. This is also due to the fact that the allegations about the crimes took place over two decades ago and, “presented a major logistical challenge for the Commission.”⁷²

Given the broad definition of HR violations, the definition of participants in the conflict and violations had to be specifically redefined for the purpose of the conflict which was more focused on reconciliation. For this purpose, the Commission had to formulate a “suitable mandate”. Usually, individuals, particularly state officials are required to comply with national laws while subscribing to legal obligation on human rights are based on international laws. Hence, the so called “traditional views” is that it is only the state and its agents are responsible for human rights violations.⁷³ As the Commission observes, the mandate is complicated in view of the reality where violence is committed not only by state officials but also political and social individuals and other segment of the civil society.

As the TRC is focused more on the systemic nature of the conflict rather than excessively focusing on the individuals, groups and institutions, the Commission’s focus was on the “totality” of the conflict. And individual events. The separate events were important in so far as they are a constituent component of the entirety of the conflict. The Commission used the term “human rights *standards*” to approach the violations rather than “Human rights *law*”. The reasoning was that the latter term can be restrictive with the possibly of excluding non-state actors, “whether, by individuals, groups, institutions or states’ including pro-independent groups and the Portuguese government and its agents in the context of the political nature of the conflict.”⁷⁴

2.5. Policy considerations due to continuing violence until independence

In view of the continuing of violence until even after the referendum of independence in May 2002, the Commission was to engage in a probe with a broad policy framework. And had similar spectrum of “substantial” Inquiry-related powers granted to it.⁷⁵

- Order individuals to attend hearings and answer questions
- Order the production of specified documents or objects relevant to inquiries
- Request an Investigating Judge of the District court to issue a search warrant which would enable police to search particular premises

⁷⁰ CAVR, (n16) para 9, 04

⁷¹ CAVR, (n16), para 27,07

⁷² CAVR, (n16), para 34, 9

⁷³ Ibid, para 7,03

⁷⁴ Ibid, para 12-14,04

⁷⁵ Ibid, para 19, 06

- Request information from government authorities both within and outside Timor-Leste
- Gather information and hold meetings in other countries
- Hold public and private hearings and protect the identity of certain witnesses in these hearings.

2.6. Justice of war and Justice in war

The general justification for the violence by either party was predicated on the conflict being political. However, within the ambit of International Humanitarian Law, even those who fight what is viewed as a just war, can only use “just means”. The other proviso is that such rules governing the conduct of war applies equally to all parties to the conflict. As such, all non-combatant including those who are involved in combat no longer take part in combat. As determined by the South African TRC the East Timor Commission also holds the greater onus of responsibility of maintaining the rule of law in times of war is greater on the state armed forces than those who wage war against the state. Ultimately as the Commission states:

The methods of warfare employed by all parties who have taken up arms in a conflict must comply with the provisions of international humanitarian law.⁷⁶

2.7. Focus on Justice and reconciliation

As mentioned previously, the primary aim of the Commission was to deal with the dual issues of justice through accountability and reconciliation. Unlike in other Commissions such as the Sierra Leone, Liberian and Rwandan Commission where the primary focus was accountability followed by attempt to understand the systemic failures.

2.8. Public naming and shaming

Various TRCs have approached the consequence of the identity based on their mandate and the prosecutorial powers they are mandated with. In the South African TRC, for instance, the testimonies and confessions were integral to the Amnesty programme and in the process, as the proceedings are public, the corollary was that the identity and confessions became public knowledge. In the East Timor case, the Commission uses the naming and shaming as a direct punitive and non-repetition and preventive measure and against impunity as a matter of policy. This is also due to the fact that the allegations about the crimes took place over two decades ago and, “presented a major logistical challenge for the Commission.”⁷⁷

The consequence can be devastating for the perpetrator which may work against the larger purpose of reconciliation. As the Commission notes: *[T]he public naming of an individual as a perpetrator of a serious human rights violation has the potential to destroy their reputation, career and family life. It may also have serious consequences on the lives of spouses and children of those named.*⁷⁸

Of course, this entire approach of publicly naming and shaming is predicated on,” Strong, reliable evidence.”⁷⁹This is also due to the limited degree of success. As the mandate states.

⁷⁶ CAVR, (n16), para 49,12

⁷⁷ CAVR, (n16), para 34, 9

⁷⁸ CAVR, (n16), para 34, 9

⁷⁹ CAVR, (n16), para 34, 9

Thus, the viable alternative that the Commission sees is the public naming and shaming. The aim, however, is not to expose individual for a cruel and hostile future, but to think of integration through reconciliation and offer it as the viable option and against impunity.

2.9. Community Reconciliation Procedures

The foundation policy of the CRP was to facilitate “the reception and reintegration of persons into their communities...in relation to criminal or non-criminal acts committed within the context of the political conflicts in Timor-Leste between 25 April 1974 and 25 October 1999.”⁸⁰

A summary of the process of reconciliation is as follows:

An individual who is allegedly having committed a crime provides a statement of their actions which is then forwarded to the Office of the General Prosecutor with comments from CRP; after review, if not warranted serious action is returned to CRP leading to the *Community based approach*.”

The community-based approach is handled by the Regional Commissioners who is the chair along with a panel of three to five local leaders of the community where the matter is deliberated and an appropriate “act of reconciliation” from community service to public apology to reparations are decided and after agreement by the “deponent” he or she is accepted into the community and a *Community Reconciliation Agreement* is signed as a legal order at the district Court. When the reconciliation acts are completed, the person is offered immunity from any further legal action.

In addition to dealing with individual acts of violence, a series of *Community Reconciliation Procedures* (CRPs) are conducted such as public hearing, radio programmes on reconciliation, workshops dealing with history of HR violations and particularly *special reparation schemes for victims in need of urgent assistance*.

Serious criminal offenses such as murder, torture, other sexual offenses, crimes against humanity, genocide and war crimes coming within the purview of the General Prosecutor and Special Panel of the Dili District court were not handled by the Community based processes.

Overall, it was clear that the partnership between communities and the Commission offering community-based solutions provided an avenue for healing wounds facilitating reconciliation.⁸¹

⁸⁰ CAVR, (n16), para 51, 13

⁸¹ CAVR, (n16), para 60,14

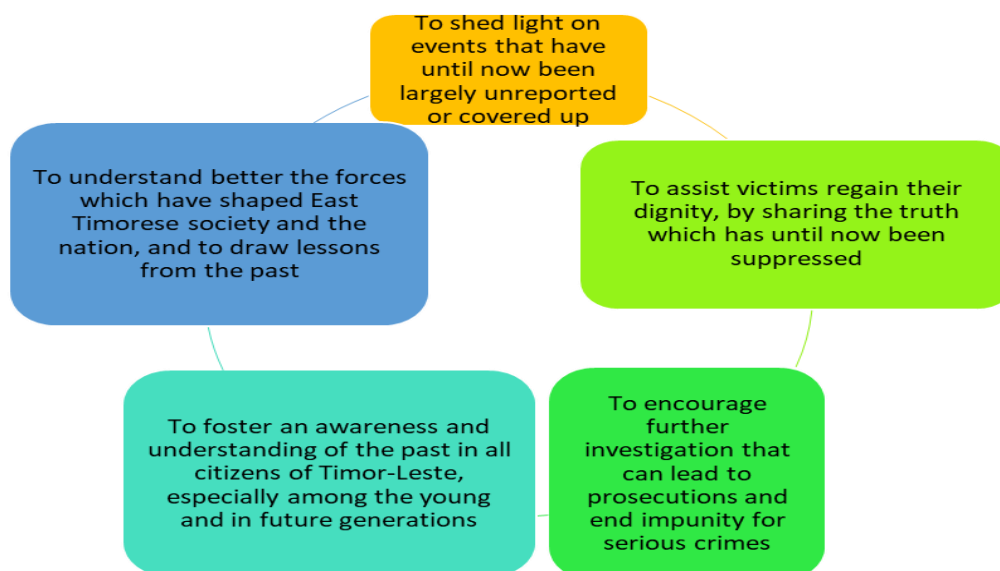
CHAPTER 3

Introduction to the Commission - Reception, Truth and Reconciliation

3.1 Origins of the Commission⁸²

In June 2000 UNTAET Human Rights Unit supported a workshop bringing in East Timorese civil society, the Catholic Church, and community leaders and one of the outcomes was the consensus to put forward a proposal to the first National Congress of the CNRT to establish a Truth and Reconciliation Commission.⁸³ Accordingly, Congress recommended establishing a commission, and a steering committee with representation from multiple stakeholders was formed to develop a proposal. The steering committee conducted consultations with communities, political parties, and human rights groups across the nation from Sep 2000 to Jan 2001.⁸⁴ Based on the results of the consultations and with the technical assistance of the international community, over three months, the committee drafted the legislation to establish the commission and with due approvals from necessary stakeholders it was promulgated a law in July 2001.⁸⁵ An interim office was established in Aug 2001 which was supported by the UNTAET Human Rights Unit to support the steering committee to select the National and Regional Commissioners, to seek funds for the establishment of the commission, and to sort out operational matters like seeking premises for the office of the commission.⁸⁶ An Advisory Council was formed in 2002 to provide advice and feedback to the National Commissioners.⁸⁷

As per the mandate of the commission, the truth-seeking process was to meet the below-captured goals in East Timor.⁸⁸



⁸² CAVR, *Chega!* (2005) ch 1, Sec 1.2, 10-14

⁸³ CAVR, *Chega!* (2005) ch 1, para 36, 10

⁸⁴ CAVR, *Chega!* (2005) Ch1, para 39, 10

⁸⁵ CAVR, *Chega!* (2005) Ch1, para 40, 10

⁸⁶ CAVR, *Chega!* (2005) Ch1, para 49, 13

⁸⁷ CAVR, *Chega!* (2005) Ch1, para 50, 13

⁸⁸ CAVR, *Chega!* (2005) Ch1, para 34, 9

3.2 Formation of the Commission

As per the law, there was a selection panel which included major political parties and civil society groups to advise on the appointment of the commissioners⁸⁹. It was possible to appoint five to seven National Commissioners with 30 % women representation and 25 to 30 Regional Commissioners⁹⁰. The selection panel travelled across Timor-Leste and Indonesia to canvas nominations for the positions of National and Regional Commissioners⁹¹. Though the regulation gave the flexibility to recommend two international persons as National commissioners the panel decided it was better left with East Timorese who gained endorsement from the public during the community consultations and nominated names of East Timorese (five men and two women) who were sworn in as National Commissioners in Jan 2002⁹². On the advice of the National Commissioners 29 Regional Commissioners were appointed in which 10 of them were women⁹³. The role of the regional commissioners was to represent the CAVR and the National Commissioners in the districts and to facilitate community participation in the programs of the commission.

The Commission is headed by seven National Commissioners.⁹⁴ In addition to a national office, the Commission is expected to have up to 6 regional offices, headed by 25 to 30 Regional Commissioners in total.⁹⁵ Offices will be staffed by East Timorese, supported by a small number of international technical experts helping Timorese staff in the national office.

A Selection Panel comprising representatives of four political parties, NGOs, the Church, and two UN nominees consulted with the community to propose the names of suitable Commissioners.⁹⁶ Criteria for selecting the Commissioners included that they be persons of high moral character, impartiality, integrity, commitment to human rights and competence; and that they not have a high political profile or be the spouse or blood relative in the first degree (parent/child/sibling) of another Commissioner. Human rights lawyer Aniceto Guterres Lopes was subsequently chosen from among them to be the Commission's chairman.⁹⁷

Soon after the appointment the National Commissioners held a five-day retreat to exchange their views on their understanding of the mandate and agreed on a set of principles that the work of the commission would be based on.⁹⁸

A *formal strategic plan*⁹⁹ was approved in May 2002 to maintain a clear sense of direction throughout the operational period. The plan outlined an integrated approach in three core program areas of *truth-seeking, community reconciliation, and victim support*.¹⁰⁰ 'It divided the work of the Commission into 13 periods. In each period specified activities were to be undertaken according to strict timelines. The administrative and logistical implications and indicators of achieved goals were also spelled out.'¹⁰¹

⁸⁹ CAVR, *Chega!* (2005) ch 1, para 52, 14

⁹⁰ *ibid*

⁹¹ 2001/10 Regulation on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, Section 4

⁹² CAVR, *Chega!* (2005) ch 1, para 54, 14

⁹³ CAVR, *Chega!* (2005) ch1, para 52, 14

⁹⁴ CAVR, *Chega!* (2005) ch1, 17

⁹⁵ CAVR, *Chega!* (2005) ch1, para 58, 19

⁹⁶ CAVR, *Chega!* (2005) ch1 para 52, 14

⁹⁷ United States institute of peace (n42)

⁹⁸ CAVR, *Chega!* (2005) ch1 para 55, 18

⁹⁹ CAVR, *Chega!* (2005) ch1, 24

¹⁰⁰ CAVR, *Chega!* (2005) ch1 para 74, 24

¹⁰¹ CAVR, *Chega!* (2005) ch 1, para 76, 25

3.3 Mandate of the Commission¹⁰²

The identification of official and non-state actors complicit in severe human rights abuses was central to the mandate of CAVR.¹⁰³ The panel was tasked with determining who was to blame for the offenses and assessing their level of guilt. The commission was also required to make recommendations on how various actors who committed infractions could be held accountable. The panel assumed that conclusions on responsibility and accountability processes were critical to encouraging reconciliation amongst former foes.¹⁰⁴

The Regulation mandated the Commission to give special attention to three significant aspects of the political conflict in carrying out its truth-seeking functions.¹⁰⁵ Firstly, it was required to consider the events before, during, and after the Popular Consultation of 30 August 1999. Secondly, the Commission was tasked with examining the events and experiences of all parties immediately preceding, during, and after Indonesia's entry into Timor-Leste on 7 December 1975. Lastly, it was directed to assess the effect of the policies and practices of Indonesia and its forces present in Timor-Leste between 7 December 1975 and 25 October 1999.¹⁰⁶ These directives ensured a comprehensive investigation into the historical context and actions surrounding the conflict, providing a thorough understanding of its complexities and implications.

Under its mandate¹⁰⁷, the Commission was tasked with various responsibilities aimed at addressing human rights violations within the context of political conflicts in Timor-Leste from April 25, 1974, to October 25, 1999. Firstly, the Commission was required to inquire into and establish the truth regarding these violations. This included examining the context, causes, motives, and perspectives behind the violations, determining whether they constituted a systematic pattern of abuse, identifying the individuals and entities involved, assessing whether they resulted from deliberate planning or authorization, considering the role of internal and external factors, and holding accountable those responsible for the violations. Additionally, the Commission was mandated to prepare a comprehensive report detailing its activities and findings based on factual and objective information. Furthermore, it was tasked with formulating recommendations for reforms and initiatives aimed at preventing the recurrence of human rights violations and addressing the needs of victims, which could encompass legal, administrative, and other measures.

The Commission was also responsible for recommending prosecutions to the Office of the General Prosecutor, promoting reconciliation, implementing CRPs to support the reintegration of individuals who had caused harm, assisting in restoring the dignity of victims, and promoting human rights. These tasks collectively aimed to address past injustices, promote accountability, support victims, and foster reconciliation and respect for human rights within the community.

The commission outlined three primary functional requirements to guide its operations.¹⁰⁸ Firstly, it prioritized Truth Seeking, aiming to uncover human rights violations in East Timor within the context of political conflicts spanning from April 25, 1974, to October 25, 1999. To achieve this, the Commission established a truth-telling mechanism allowing victims and perpetrators to describe, acknowledge, and record past abuses. Secondly, the commission

¹⁰² CAVR, *Chega!* (2005) ch 2

¹⁰³ Joseph Nevins, "The CAVR: Justice and Reconciliation in a Time of "Impoverished Political Possibilities"" [Winter 2007/2008] 80(4) *Pacific Affairs* 593-602

¹⁰⁴ CAVR, *Chega!*, ch.1, 32

¹⁰⁵ CAVR, *Chega!* (2005) ch. 2, 2

¹⁰⁶ *ibid*

¹⁰⁷ CAVR, *Chega!* (2005) ch. 2, 2

¹⁰⁸ Commission for Reception, Truth and Reconciliation in East Timor, (Mandate) <https://www.easttimor-reconciliation.org/mandate.html#Purpose>, accessed 8 January 2024

emphasized Community Reconciliation, facilitating the resolution of lesser crimes such as looting, burning, and minor assault. This process involved mediation by a panel consisting of a Regional Commissioner and local community leaders, aiming to reach agreements on acts of reconciliation to be carried out by the perpetrators. Lastly, the commission focused on providing Recommendations to the Government, intending to inform the government of its findings and suggest further actions for reconciliation and the promotion of human rights. These functional requirements aimed to ensure a comprehensive approach to addressing past injustices and promoting healing and reconciliation within the community.

3.4. Powers of the Commission¹⁰⁹

The Regulation provided the Commission with substantial powers to make inquiries. These included the power to:¹¹⁰ order individuals to attend hearings and answer questions; order the production of specified documents or objects relevant to inquiries; request an Investigating Judge of the District Court to issue a search warrant that would enable police to search particular premises; request information from government authorities both within and outside Timor-Leste; gather information and hold meetings in other countries; hold public and private hearings and protect the identity of certain witnesses in these hearings.¹¹¹

3.5. Initial Challenges Faced by the Commission¹¹²

The Commission faced the task of gaining trust and credibility among the population, particularly among those who had endured the conflict's traumas and were hesitant to engage with official bodies.¹¹³ Operating in a politically charged environment, the Commission had to navigate delicate relationships with various stakeholders, including government entities, former combatants, and international actors, while maintaining its impartiality and independence.¹¹⁴

Like many truth commissions, the East Timor Truth Commission operated within constraints of limited resources, including funding, personnel, and logistical support, which posed challenges to its effectiveness and scope of operations¹¹⁵ irrespective of the support from the UN and the international community. The commission had to function at a time when East Timor was in the very early stage of reconstruction after long-standing conflict and emergencies. There were no land phone lines, email, or postal links between the capital and the districts or between the districts¹¹⁶. Roads were in poor condition in the rural areas and basic items like banking facilities, and stationery were not available outside the capital.¹¹⁷ Ensuring the security and safety of Commission staff and witnesses, particularly in areas with lingering tensions or where perpetrators of past abuses still held power, also posed significant challenges.¹¹⁸

Obtaining accurate and comprehensive information about past human rights violations proved challenging, as it required cooperation from individuals and institutions that may have been

¹⁰⁹ CAVR, *Chega!* (2005) ch

¹¹⁰ CAVR, *Chega!* (2005) ch 2, para 19, 5

¹¹¹ Regulation 2001/10, Section 14

¹¹² CAVR, *Chega!* (2005) ch1, sec 1.4, 20-21

¹¹³ UNSC, Report of the International Commission of Inquiry on East Timor, 2000

¹¹⁴ CAVR, *Chega!* (2005) ch 1, para 63, 21

¹¹⁵ CAVR, *Chega!* (2005) ch1, para 62, 20

¹¹⁶ CAVR, *Chega!* (2005) ch1, para 61, 20

¹¹⁷ *ibid*

¹¹⁸ CAVR, *Chega!* (2005) ch1, para 60, 20

reluctant to disclose incriminating details or evidence.¹¹⁹ Additionally, the Commission faced the challenge of managing expectations within the population, as many people hoped for swift justice and reconciliation, despite the complex and time-consuming nature of truth-seeking processes.¹²⁰ Another practical challenge was that the Constitution recognized Tetum and Portuguese as official languages and Indonesian and English as working languages.¹²¹ During the operational period Indonesian, Tetum, and English were used for written documents, and Tetum was the main spoken language. The usage of multiple languages made the whole process complex and time-consuming.¹²²

3.6. CAVR as an institution¹²³



Divisions were formed for effective implementation of the programs as indicated in the chart and at the peak of its operations there were 124 national officers and 154 district officers (a total of 278) attached to these divisions.¹²⁴ During the first year, there was a lot of focus on capacity building and institutional development. Special attention was given to making sure that women's representation was adequate at all levels.

All international staff in the commission apart from the Deputy Director were advisors or short-term consultants.¹²⁵ Arrangements were made that they were assigned to assist and advise East Timor's national counterparts rather than being in charge of the work.¹²⁶ There was also a requirement for these staff to understand the context of Timor Leste.

3.7. Organizations that assisted in the TRC process¹²⁷

The United Nations gave considerable technical support, funding, and advice. The Human Rights unit of the UNTAET and UNMISSET (United Nations Mission of Support in East Timor),

¹¹⁹ CAVR, *Chega!* (2005) ch1, para 196, 45
¹²⁰ CAVR, *Chega!* (2005) ch1, para 65, 21
¹²¹ Constitution of the Republic of East Timor 2002
¹²² CAVR, *Chega!* (2005) ch 1, 21
¹²³ CAVR, *Chega!* (2005) ch 1, 39-40
¹²⁴ CAVR, *Chega!* (2005) ch 1, para 178, 41
¹²⁵ CAVR, *Chega!* (2005) ch 1, para 182, 42
¹²⁶ *ibid*
¹²⁷ CAVR, *Chega!* (2005) ch 1, para 206-211,47

the office of the High Commissioner for Human Rights, and the UNDP arranged international advisors¹²⁸. UNHCR (The UN High Commissioner for Refugees) and (IOM) the International Organization of Migration supported the returnees from West Timor and contributed to some of the logistical process.

Catholic Relief Services and the Asia Foundation through their offices in East Timor made submissions and conducted independent studies on the commission's work.¹²⁹ ICTJ (The International Centre for Transitional Justice) supported the whole process from inception to completion. The Human Rights Data Analysis Group (HRDAG) maintained a human rights database and conducted the death toll research for the Commission.¹³⁰

CAVR in East Timor faced financial constraints when it came to developing a reparations scheme. However, it received assistance through a partnership with the Community Empowerment and Local Governance Project (CEP). The CEP, managed by the Ministry of the Interior and funded through the Trust Fund for East Timor (TFET) administered by the World Bank had a program aimed at aiding "vulnerable groups."¹³¹

¹²⁸ *ibid*

¹²⁹ CAVR, *Chega!* (2005) ch1, para 207, 47

¹³⁰ CAVR, *Chega!* (2005) ch1, para 210, 47

¹³¹ CAVR, *Chega! A Plain Guide*, 86

CHAPTER 4

Programmes of the Commission

The commission focused on three main core programs¹³² under the thematic areas of truth-seeking, community reconciliation, and reception and support to the victims.

4.1 Truth Seeking¹³³

In the context of East Timor, truth-seeking served several purposes.¹³⁴ Mainly it was the acknowledgement and validation of the suffering and experiences of victims and survivors. It provided a platform for victims to share their stories and ensured that their suffering was not forgotten. Truth-seeking contributed to the historical record documenting human rights violations and atrocities¹³⁵. Though the truth-seeking process involved confronting painful truths it contributed to reconciliation by fostering understanding, empathy, and dialogue among victims, perpetrators, and society as a whole¹³⁶. The process included systematic statement-taking, research, public hearings, receiving submissions, and a death toll project.

4.2 Systematic statement taking¹³⁷:

The commission obtained 7760 victim statements¹³⁸. Statement takers interviewed deponents individually (family member, friend, or victim support member (both victims or perpetrators). Statements were recorded in narrative form to encourage richness of details and background information about the violations and circumstances and to make the setting less intimidating for those unaccustomed to being questioned in official settings. The statements were **checked and coded** by statement readers and entered into the **database** after identifying the human rights violations in each statement.¹³⁹

4.3 Research

There was a broader untargeted approach that any individual who wished to approach the commission and report a piece of information about the political conflict was allowed.¹⁴⁰ The Commission identified thematic areas for detailed research and conducted over 1000 interviews¹⁴¹. Secondary documentation like documents, video and audiotapes, film records, and photographs were also collected in the thematic areas.

¹³² CAVR, *Chega!* (2005) ch 1, sec 1.5

¹³³ CAVR, *Chega!* (2005) ch 1, sec 1.5

¹³⁴ 2001/10 Regulation section 13

¹³⁵ CAVR, *Chega!* (2005) ch1, para 73, 24

¹³⁶ CAVR, *Chega!* (2005) ch1 paea 30, 8

¹³⁷ CAVR, *Chega!* (2005) ch1, para 73, 24

¹³⁸ United States Institute of Peace (n 40)

¹³⁹ CAVR, *Chega!* (2005) ch1, para 85, 26

¹⁴⁰ CAVR, *Chega!* (2005) ch1, para 89, 27

¹⁴¹ CAVR, *Chega!* (2005) ch1, para 91, 28

4.4. Public hearings ¹⁴²

Public hearings served as a symbolic avenue for acknowledgment and healing. It all began with survivors providing their accounts to a member of the district team, marking the initial steps toward healing through attentive listening and documentation.¹⁴³ Some survivors opted to extend their healing journey by sharing their stories in public hearings. These hearings, conducted at the national, sub-district, and village levels, positioned victims at the core of their communities. Community members listened to and respected their narratives, recognizing their pain and offering support, thus alleviating their sense of isolation and sharing their burden.

The Commission organized eight national public hearings, each with its own distinct focus.¹⁴⁴ The national hearings were presided over by the seven National Commissioners who questioned the witnesses following their testimonies and there were eight of them that were broadcast in all forms of media¹⁴⁵. The first, held on November 11-12, 2002, was a victims' hearing aimed at honouring the collective suffering of victims of human rights violations.¹⁴⁶ Subsequent hearings, seven in total, were characterized by thematic focuses aligned with the Commission's truth-seeking endeavours.¹⁴⁷ These hearings focused on below listed thematic areas.¹⁴⁸

- Political Imprisonment (February 2003)
- Women and the Conflict (April 2003)
- Forced Displacement and Famine (July 2003)
- Massacres (November 2003)
- The Internal Conflict of 1974–1976 (December 2003)
- Self-Determination and the International Community (March 2004)
- Children and the Conflict (March 2004).

After the three-month program in each sub-district, district teams conducted public hearings in 52 out of the 65 sub-districts.¹⁴⁹ These hearings, referred to as Victims' Hearings, provided selected community members who had provided statements to the Commission with the chance to share their experiences with Regional Commissioners, community leaders, and the wider community.¹⁵⁰

The national victims' hearing and thematic hearings were widely regarded as the apex of the Commission's efforts in the public eye. These events received extensive coverage from national media outlets and garnered attention across the country, as well as coverage in the international media¹⁵¹. Their significant public presence served as a powerful means of fostering broader awareness and support for victims and the Commission's mission.

These national hearings were a novel experience for both victims and the nation as a whole. Many victims, hailing from rural areas, had never before spoken publicly. Televised in Dili and broadcast nationwide via radio, the hearings reached into homes and communities across Timor-Leste. They provided victims with a rare opportunity to address national leaders directly when

¹⁴² CAVR, *Chega!* (2005) ch1, 28

¹⁴³ CAVR, *Chega!* (2005) ch1, para 93, 28

¹⁴⁴ CAVR, *Chega!* (2005) ch1, para 95, 29

¹⁴⁵ *ibid*

¹⁴⁶ CAVR, *Chega!* (2005) ch1, para 96, 29

¹⁴⁷ CAVR, *Chega!* (2005) ch1, para 97, 29

¹⁴⁸ CAVR, *Chega!* (2005) ch1, para 102, 30

¹⁴⁹ CAVR, *Chega!* A Plain Guide, Sec 8, 85

¹⁵⁰ CAVR, *Chega!* (2005) ch1, para 94, 28

¹⁵¹ CAVR, *Chega!* A Plain Guide, Sec 8, 85

National Commissioners invited them to convey messages to the nation, thereby placing ordinary citizens at the forefront of national discourse on healing, reconciliation, and justice.¹⁵²

The Commission broached sensitive topics during these public hearings, particularly the national ones.¹⁵³ For the first time, the community heard first hand testimonies about grave violations committed by Timorese political factions during 1974–1976.¹⁵⁴ Victims recounted instances of violence perpetrated by East Timorese within the Indonesian military and its affiliates, highlighting the profound familial and communal impacts of such violence. Women bravely shared accounts of sexual violence, challenging prevalent beliefs that Timorese culture prohibited discussion of this topic¹⁵⁵. The hearings underscored the deeply personal toll of the extensive and protracted violence perpetrated by the Indonesian military throughout the Commission's tenure.¹⁵⁶

4.5 Death Toll Project¹⁵⁷

The commission conducted a dedicated statistical inquiry into the fatalities directly linked to the conflict. The extent of mortality linked to the conflict during Indonesia's occupation of Timor-Leste has sparked significant debate, with estimates ranging from 40,000 to over 200,000¹⁵⁸. Recognizing the sensitivity of this matter, the Commission employed three datasets it had constructed to derive a scientifically credible estimation.

- Information contained in the statements provided by nearly 8,000 individuals who stepped forward to offer their testimony to the Commission¹⁵⁹
- a retrospective mortality survey with 1,396 households¹⁶⁰
- a graveyard census with public graveyards which documented more than 319,000 graves¹⁶¹

Based on data it was estimated that conflict-related deaths were 102,800 which is considered as a minimum as this figure reflects solely those fatalities that were recalled by individuals from whom the Commission gathered its data.¹⁶²

4.6 Submissions

The commission received written submissions (original documents, reports, photos, film footage, consultant's report) from individuals and organizations both locally and internationally.¹⁶³

¹⁵² *ibid*

¹⁵³ *ibid*

¹⁵⁴ CAVR, *Chega!* (2005) ch 1, para 102, 30

¹⁵⁵ CAVR, *Chega!* A Plain Guide, Sec 8, 85

¹⁵⁶ *ibid*

¹⁵⁷ CAVR, *Chega!* (2005) ch 1, 30

¹⁵⁸ CAVR, *Chega!* (2005) ch1, para 103, 30

¹⁵⁹ CAVR, *Chega!* (2005) ch1, para 104, 30

¹⁶⁰ CAVR, *Chega!* A Plain Guide, Sec 3, 16

¹⁶¹ *ibid*

¹⁶² CAVR, *Chega!* A Plain Guide, Sec 3, 17

¹⁶³ CAVR, *Chega!* (2005) ch1, 30

4.7 Community Reconciliation

In the words of a Timorese teacher, “reconciliation means forgiving each other, admitting one's mistakes, and solving past conflicts...”¹⁶⁴

The Commission's central aim was to foster reconciliation in Timor-Leste, shaping the design and execution of all its initiatives accordingly. Employing an inclusive strategy, the Commission involved all sectors of society in its efforts, addressing reconciliation from multiple perspectives through diverse programs throughout its tenure.¹⁶⁵ Recognizing the necessity of broad engagement for lasting impact, the Commission aimed to involve individuals, families, and community groups from all sides of the conflict, extending its reach to the highest echelons of national leadership, with a commitment to sustained efforts over many years.¹⁶⁶ **One of the main and novel reconciliation initiatives of the commission was the community reconciliation procedures.**¹⁶⁷

4.8 Community Reconciliation Procedures (CRPs)¹⁶⁸

The objective was to facilitate the reintegration of individuals who had become alienated from their communities due to involvement in politically related, "less serious," harmful acts during the conflicts in Timor-Leste.¹⁶⁹ Central to the program was the belief that both communities and those who had inflicted lesser harm were prepared to reconcile. The CRP operated on the premise that community reconciliation could most effectively occur through a village-based, participatory approach, blending elements of traditional justice, arbitration, mediation, and elements of both criminal and civil law.¹⁷⁰

In accordance with Regulation 10/2001, the Commission was tasked with organizing community-based hearings aimed at facilitating the reintegration of perpetrators of "harmful acts" back into their communities.¹⁷¹ These hearings provided a platform for victims, perpetrators, and the wider community to directly engage in the reconciliation process.¹⁷² While the regulation outlined the fundamental steps of the CRP, it allowed flexibility to incorporate elements from local traditional practices.¹⁷³

Participation in the CRP was voluntary.¹⁷⁴ Conducted within the affected community, the hearings were presided over by a panel of local leaders, chaired by a Regional Commissioner responsible for the district. During the hearings, perpetrators were required to fully acknowledge their involvement in the conflict. Victims and other community members then had the opportunity to pose questions and offer comments on the perpetrator's statement.¹⁷⁵ These hearings often evoked intense emotions and could extend late into the night. Following all

¹⁶⁴ Cheah Wui Ling, 'FORGIVENESS AND PUNISHMENT IN POST-CONFLICT TIMOR' [2005] 10(2) UCLA Journal of International Law and Foreign Affairs 297-359

¹⁶⁵ *ibid*

¹⁶⁶ CAVR, *Chega! A Plain Guide*, Section 7, 79

¹⁶⁷ *ibid*

¹⁶⁸ Regulation 2001/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, PART IV, Section 22

¹⁶⁹ CAVR, *Chega! A Plain Guide*, 7

¹⁷⁰ CAVR, *Chega! A Plain Guide*, Sec 7, 80

¹⁷¹ *ibid*

¹⁷² *ibid*

¹⁷³ *ibid*

¹⁷⁴ *ibid*

¹⁷⁵ *ibid*

testimonies, the panel facilitated an agreement wherein the perpetrator agreed to undertake specific actions, such as community service or reparations to victims, in exchange for reintegration into the community. Traditional practices were integrated into the process, tailored to local customs.¹⁷⁶

A Reconciliation Panel, comprising three to five individuals, is established by the Regional Commissioner, **consulting local community leaders and ensuring appropriate gender representation.**¹⁷⁷ The flexible reconciliation hearing, spanning one or two days, involves as few as a couple or as many as thirty deponents, especially in cases involving entire militia groups.¹⁷⁸ Briefings for the Reconciliation Panel, applicants, and victims occur one or two days before the hearing, emphasizing its reconciliatory aim.¹⁷⁹

During the hearing, victims and applicants had equal opportunities to speak, with the panel and audience permitted to interrupt with questions.¹⁸⁰ The hearings incorporated traditional lisan procedures and involved the participation of spiritual leaders, a significant aspect as participants believed that their ancestors, invoked at the ceremony's outset, served as witnesses to the *nahe biti bo'ot* ritual, thereby validating the proceedings.¹⁸¹ The presence of ancestors rendered the process legally binding, with any refusal to accept the outcome deemed to have severe consequences.¹⁸² Additionally, it has been suggested that the commission's decision to give traditional leaders a prominent role in the CRP panels aimed at the "rehabilitation" of traditional structures, which had been significantly influenced during the Indonesian occupation.¹⁸³ The anticipated outcome was an elevated status and trust in traditional leadership, to extend the influence of traditional justice systems beyond the immediate context of the CRP.¹⁸⁴

Before a hearing could proceed, the Office of the General Prosecutor (OGP) needed to assess the case and approve its referral to the CRP instead of prosecution in the courts.¹⁸⁵ Subsequently, the drafted reconciliation agreement underwent judicial review, potentially becoming a Court Order upon approval. If the Court sanctioned the agreement and the perpetrator fulfilled their obligations, immunity from civil or criminal prosecution would be granted. The ultimate goal of the reconciliation hearing is the formation of a Community Reconciliation Agreement (Reconciliation Agreement), defined in **Section 27.7 of Regulation 2001/10** as an "act of reconciliation."¹⁸⁶ This agreement may include community service, reparation, a public apology, or other acts of contrition.¹⁸⁷

The outcomes of the CRP initiative demonstrate its significant role in fostering community reconciliation in Timor-Leste and facilitating the return of past wrongdoers to their communities. With 1,379 perpetrators having successfully undergone the CRP, exceeding the initial goal of 1,000, and considering the numerous requests for the program's continuation, it is evident that the CRP has garnered substantial support and yielded positive results.¹⁸⁸

¹⁷⁶ *ibid*

¹⁷⁷ CAVR, *Chega!* (2005) ch1, para 212, 47

¹⁷⁸ CAVR, *Chega!* (2005) ch1, para 124, 33

¹⁷⁹ *ibid*

¹⁸⁰ CAVR, *Chega!* A Plain Guide, Sec 7, 81

¹⁸¹ Ling (n122)

¹⁸² *ibid*

¹⁸³ CAVR, *Chega!* (2005) ch

¹⁸⁴ Luiz Viera (n44)

¹⁸⁵ CAVR, *Chega!* A Plain Guide, Sec 7, 80

¹⁸⁶ Regulation 2001/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, PART IV, Section 27.7

¹⁸⁷ *ibid*

¹⁸⁸ CAVR, *Chega!* A Plain Guide, Section 2, 9

4.9 Acolhimento (Reception) and Victim Support¹⁸⁹

The significance of "acolhimento" (reception) to the Commission's mission was evident in its inclusion as the primary guiding principle in the name of the Comissão de Acolhimento, Verdade e Reconciliação (Commission for Reception, Truth, and Reconciliation).¹⁹⁰ It represented a fundamental ethos that permeated all aspects of the Commission's work. Acolhimento encapsulated the spirit of acceptance and welcome that guided the Commission's efforts, acknowledging the imperative for Timorese people to embrace one another following years of division and conflict.¹⁹¹

The Reception and Victim Support Unit of the East Timor Truth Commission was responsible for providing assistance and support to individuals who came forward to share their experiences and testimonies. This unit played a crucial role in ensuring that those who sought to engage with the Commission felt welcomed, safe, and supported throughout the process¹⁹². It offered various forms of assistance, including emotional support, counselling services, and guidance on accessing legal or other forms of assistance.

4.10. Assistance to recent returnees to Timor Leste

The unit identified and followed up on cases through problem-solving in liaison with refugee agencies, such as UNHCR. As of 2004, the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) approximated that nearly all refugees, except for around 25,000 individuals, had repatriated to Timor-Leste.¹⁹³ The incorporation of a specific displacement component in the commission's mandate and its direct support of the return and resettlement process was key in creating an enabling environment for the short-term return of thousands of displaced people.¹⁹⁴

The commission's local-level reconciliation efforts were concentrated on facilitating the return and reintegration of individuals who had perpetrated harmful acts within their communities. By assessing their cases, referring them to appropriate agencies and providing modest financial assistance, as part of the Commission's Urgent Reparations scheme.¹⁹⁵

An initial timeframe for the reparations program was set to identify the most vulnerable victims, with provisions for victims to submit applications for assistance during this period.¹⁹⁶ Prior to and throughout this timeframe, extensive outreach efforts were conducted to ensure widespread awareness of the program, with a particular emphasis on targeting women to achieve gender balance in applications.

The application process was prioritized accessibility for victims, including those in remote areas, those with limited literacy, and those who do not speak the official languages.¹⁹⁷ This was involved in simplified and concise application forms, providing forms in multiple

¹⁸⁹ CAVR, *Chega!* A Plain Guide, Sec 8

¹⁹⁰ CAVR, *Chega!* (2005) ch1, para 42, 12

¹⁹¹ CAVR, *Chega!* A Plain Guide, Sec 8

¹⁹² CAVR, *Chega!* (2005) ch1, para 130, 34

¹⁹³ CAVR, *Chega!* (2005) ch1, para 209, 47

¹⁹⁴ Luiz Viera (n44)

¹⁹⁵ CAVR, *Chega!* A Plain Guide, Sec 8, 86

¹⁹⁶ *ibid*

¹⁹⁷ International centre for transitional justice, 'Concept paper on a National Reparations Program for Timor-Leste' (*ICTJ*, Jul 2008) <<https://www.ictj.org/sites/default/files/ICTJ-TimorLeste-Reparations-Concept-2008-English.pdf>> accessed 22 January 2024

languages, offering staff assistance for completing forms, and addressing inquiries about the process.

4.11. Public Awareness¹⁹⁸

A weekly one-hour radio program produced by the commission called the Road to Peace (Dalan ba Dame) was broadcast on many networks.¹⁹⁹ The commission developed a partnership with a national television broadcaster to give coverage to the national thematic hearings. The Commission also produced two videos on its work targeting the communities in its outreach programs. Print publications explaining the commission's mandate were disseminated and progress updates in the form of a bulletin were published every two months. The Commission had media releases and press conferences, posters, t-shirts, booklets and brochures were also used to make the commission popular.

4.12. Healing workshops²⁰⁰

The Healing Workshops aimed to strengthen the bond between the Commission and victims of human rights violations, focusing on four primary goals: enhancing the level of support available to victims within the Commission's capacity; directing survivors to additional services and organizations for continued assistance; assisting survivors in strategizing the utilization of their Urgent Reparations grants; soliciting survivors' insights and recommendations regarding further actions the Commission should propose in its Final Report. In total 156 people participated in the six workshops: 82 women (52%) and 74 men (47%).²⁰¹

4.13 Community Profile Workshops²⁰²

This was a community discussion on the impact of human rights violations. The 297 Community Profile workshops expanded the district team's efforts in supporting victims and seeking truth by incorporating a group dynamic.²⁰³ In these workshops, small groups from village communities deliberated on the repercussions of human rights violations at the local level. Facilitated and documented by members of the district team dedicated to victim support, these sessions allowed communities to explore the history of conflict through their unique perspectives.²⁰⁴ By centering on communal experiences, the workshops recognized that communities, like individuals, endured victimization during the years of conflict and thus required assistance and understanding.²⁰⁵

¹⁹⁸ CAVR, *Chega!* (2005) ch1, 46

¹⁹⁹ CAVR, *Chega!* (2005) ch1, para 201, 46

²⁰⁰ CAVR, *Chega!* A Plain Guide, Sec 8, 87

²⁰¹ *ibid*

²⁰² CAVR, *Chega!* (2005) ch1, 23

²⁰³ CAVR, *Chega!* A Plain Guide, 10

²⁰⁴ CAVR, *Chega!* A Plain Guide, Sec 8, 87

²⁰⁵ *ibid*

CHAPTER 5

Security Sector Reforms

5.1. Introduction

Timor-Leste, after gaining independence in 2002, embarked on a comprehensive post-conflict reconstruction effort, with Security Sector Reform (SSR) being a critical component. The SSR policies were aimed to build stable, effective, and accountable security institutions capable of maintaining peace, promoting human rights, and fostering democratic governance. The SSR process in Timor-Leste sheds light on the several challenges, successes and failures that shaped the country's post-conflict security environment today, and provides invaluable lessons when adopting policies that would strengthen a nation's internal and external security.

The Timor-Leste Defence Force, known in Tetum as Forças Defesa Timor Lorosae and in Portuguese as Forças de Defesa de Timor Leste or Falintil-FDTL (commonly referred to as F-FDTL), is the military arm of East Timor. Established in February 2001, the F-FDTL comprises two infantry battalions, along with naval and air components, and several logistical and auxiliary units.

The primary mandate of the F-FDTL is to protect East Timor from external threats. It also shares internal security duties with its national police force – the Polícia Nacional de Timor-Leste (PNTL). The overlap in responsibilities between the F-FDTL and the PNTL has on several occasions caused tensions, resulting in low morale, lack of discipline, corruption, politicization and the breakdown of command and control within the F-FDTL.

5.2. DDR process and Integration

In the pursuit of stability, the leadership of Timor-Leste's guerrilla forces reached an agreement with the United Nations Transitional Administration in East Timor (UNTAET) to consolidate all forces into a single cantonment until the establishment of a national army (Ball, 2002; Glendhill, 2014). This agreement culminated in February 2001, with the selection of 650 troops from approximately 1,900 guerrilla fighters to form the newly established East Timor Defense Force (F-FDTL) (USAID/OTI, 2010). The USAID Office of Transition Initiatives (OTI) aimed to support the reintegration of the remaining 1,308 guerrilla fighters through the Falintil Reinsertion Assistance Program (FRAP).

The year-long FRAP included several components to facilitate the transition of ex-combatants to civilian life. These included:

- Transportation to host communities.
- A transitional safety net, providing a subsidy of \$500 over five months.
- Rapid employment generation, offering six to eight weeks of paid work on rehabilitation projects.
- Vocational and technical training, along with other forms of training and reintegration packages to support income-generating activities.

In addition to these efforts, INTERFRET and UNTAET, in collaboration with other international donor agencies, implemented a series of DDR (Disarmament, Demobilization, and Reintegration) programs for former Falintil combatants (Anam, 2022). Despite heavy reliance on international aid, the Timorese government maintained a significant degree of autonomy.

However, the DDR program faced challenges, and dissatisfaction with the reintegration process that led to internal security threats from former Falintil fighters. These national security threats included violent incidents, such as protests against the parliament led by a former Falintil commander, clashes between the F-FDTL and PNTL in 2006, and violence by martial arts groups. The disarmament of former Falintil members was initially requested by the UNAMET to the Indonesian government, which rejected the request, insisting on disarming the Falintil first (Anam, 2022).

Reintegration efforts included recruiting former Falintil members into military and police organizations and reintegrating them into civilian life. The economic welfare of former guerrilla fighters was also a priority, with two key programs established: the Falintil Reinsertion Assistance Project (FRAP) conducted by the International Organization for Migration (IOM) and the Recovery, Employment, and Stability Program (RESPECT) implemented by the United Nations Development Program (UNDP).

The FRAP aimed to reintegrate 1,100 former guerrilla fighters through a committee comprising IOM, the World Bank, OTI, USAID, UNTAET, UN Military Observers, and the UN Peacekeeping Force. The program had four stages:

- **Cantonment and Registration:** Provision of food, water, and sanitation at the cantonment site by the World Food Program (WFP), along with identification, data collection, issuance of IDs, and database maintenance.
- **Discharge and Departure:** Assembly and arms storage, health screening, pre-discharge orientation, discharge procedures, and transportation to chosen communities (Anam, 2022).
- **Community Reintegration:** Establishment of a safety net of USD 100 per month for the first five months post-discharge to meet basic needs.
- **Reinsertion and Livelihood Support:** Training and startup packages, including materials for agriculture, fisheries, and micro-enterprises to ensure self-sufficiency.

The FRAP project, with a total budget of USD 2.11 million, provided transitional financial assistance and skills training to ex-Falintil fighters. The program also included training and startup packages to support self-sufficiency in agriculture, fisheries, and small businesses. Additionally, IOM facilitated the return of FRAP participants to their home communities (Anam, 2022).

Despite these efforts, the DDR process in East Timor was not entirely successful, leading to ongoing dissatisfaction and security threats from former combatants. Nevertheless, the continued engagement of international donors and the increasing autonomy of the Timorese government in managing SSR initiatives are positive steps towards long-term stability and security.

5.3. Breakdown of command and control

In 2006, the F-FDTL faced a major crisis when nearly half of its personnel were dismissed following protests related to discrimination and substandard conditions. This mass dismissal contributed to a severe collapse of both the F-FDTL and PNTL in May 2006, compelling the government to seek the intervention of foreign peacekeepers to restore security.

The origins of the 2006 crisis can be traced to long-standing issues within East Timor's security apparatus and broader political environment. Following its independence from Indonesia in 2002, East Timor's government struggled to integrate former guerrilla fighters into a coherent national military force. The Timorese Defence Force (F-FDTL) and the National Police of Timor-Leste (PNTL) both experienced internal factionalism and lacked effective oversight (Kingsbury, 2009).

The socio-political landscape of East Timor was marred by regional divisions, economic disparities, and unresolved tensions from the independence struggle. These issues were compounded by dissatisfaction among former Falintil fighters who felt marginalized in the new security setup (Peake, 2007).

In response to the deteriorating security situation, the Timorese government requested international assistance. The United Nations and Australia, among other countries, deployed peacekeeping forces to restore order. The Australian-led International Stabilisation Force (ISF) played a crucial role in stabilizing the situation (UN, 2006).

5.4. Role of International Donors

The United Nations Mission in East Timor (UNMIT) was established in August 2006 to support the government in restoring stability and rebuilding the security sector. UNMIT provided technical assistance and helped coordinate the international response (UNMIT, 2006). Currently, the F-FDTL is in the process of rebuilding with international assistance. A comprehensive long-term force development plan has been drawn up to guide its reconstruction and enhance its operational capabilities.

A multitude of international donors collaborate with Timor-Leste to bolster reform efforts in the security sector. While many of these initiatives have yielded positive outcomes, there has been a lack of coordination in donor-driven security reform agendas. At best, this fragmentation has resulted in suboptimal results, while at worst, it has sparked animosity, tension, and even violence. Fortunately, there is a gradual shift away from this paradigm as the Timorese government assumes a more active role in coordinating and overseeing its own Security Sector Reform (SSR) agenda.

Key international donors included:

- **United Nations (UN):** The UN played a pivotal role through various missions such as UNTAET, UNMISSET, and UNMIT, providing technical assistance, training, and capacity building for Timor-Leste's police and military forces (United Nations, 2013).
- **European Union (EU):** The EU contributed significantly to police training programs and the establishment of legal frameworks to ensure the rule of law and respect for human rights (European Union External Action, 2020).

- **Australia:** As one of Timor-Leste's closest neighbours, Australia provided substantial support through training, equipment donations, and strategic advisory roles to improve the operational capabilities of the Timorese security forces (Australian Government, Department of Foreign Affairs and Trade, 2020). Australia's involvement was pivotal in quelling the violence. The ISF, comprising Australian and New Zealand troops, helped re-establish security in Dili and other affected areas. Australia's engagement was driven by regional security interests and its long-standing commitment to East Timor's stability (Australian Government, 2006).
- **United States:** The US focused on professionalizing the security forces by offering training programs aimed at enhancing leadership, ethics, and operational efficiency within the police and military (US Department of State, 2019).
- **Portugal:** Portugal, leveraging its historical ties, provided training and technical assistance particularly to the Polícia Nacional de Timor-Leste (PNTL), focusing on community policing and institutional reform (Institute for Security Studies, 2018).

The initiatives undertaken by these donors were diverse and aimed at addressing multiple facets of security sector reforms that range from:

- **Training and Capacity Building:** Programs aimed at improving the skills and professionalism of the security personnel. This included human rights training, leadership courses, and specialized tactical training (Peake, Scheye, & Hills, 2007).
- **Institutional Development:** Efforts to establish robust legal and organizational frameworks for the - security forces, including the drafting of laws and regulations governing the operations of the PNTL and F-FDTL (Kingsbury, 2009).
- **Community Policing:** Initiatives to build trust between the security forces and local communities, emphasizing the importance of responsive and accountable policing practices (Greener, 2009).
- **Infrastructure and Equipment:** Investments in the physical infrastructure of the security sector, such as the construction of police stations, barracks, and the provision of modern equipment to enhance operational effectiveness (Australian Government, Department of Foreign Affairs and Trade, 2020).

5.5. Challenges and Fragmentation of Donor programmes

Despite the positive impacts of these initiatives, the lack of coordination among the various donor programs often led to inefficiencies. This fragmentation resulted in several challenges:

- **Overlapping Programs:** Multiple donors often implemented similar projects without sufficient coordination, leading to redundancy and resource wastage (International Crisis Group, 2011).
 - **Conflicting Approaches:** Differing methodologies and priorities among donors sometimes led to conflicting strategies, creating confusion and hindering the overall effectiveness of the reforms (Greener, 2009).

- **Local Discontent:** The perception of externally driven agendas fostered a sense of dependency and resentment among local actors, occasionally resulting in tensions and resistance to the reforms (Kingsbury, 2009).
- **Transition to Local Ownership**
- Recognizing these issues, there has been a concerted effort to shift towards a more locally driven SSR agenda. The Timorese government has increasingly taken the lead in coordinating and managing these efforts:
- **National Coordination Bodies:** Establishment of government bodies tasked with overseeing SSR initiatives to ensure alignment with national priorities and improve donor coordination (UNDP, 2021).
- **Policy Frameworks:** Development of comprehensive policy frameworks to guide the reform process, ensuring that all initiatives are cohesive and support long-term stability and development goals (Peake, Scheye, & Hills, 2007).
- **Community Engagement:** Enhanced focus on involving local communities in the reform process to build trust and ensure that security policies are responsive to the needs of the population (Institute for Security Studies, 2018).

5.6. Recommendations by the Truth Commission

The Commission for Reception, Truth and Reconciliation in East Timor (CAVR) was established in 2001 to address human rights violations committed between 1974 and 1999. The CAVR's report, *Chega!*, provided several key recommendations aimed at fostering stability and reconciliation:

Institutional Reform: CAVR emphasized the creation of professional, non-partisan security institutions. This involved demilitarizing the police, establishing clear civilian oversight mechanisms, and confining the military's role to national defense (CAVR, 2005).

- **Accountability and Justice:** The commission recommended prosecuting serious crimes committed during the conflict, establishing a culture of accountability, and deterring future abuses (CAVR, 2005).
- **Capacity Building:** Extensive training and capacity-building programs for security personnel were advocated to enhance professionalism and adherence to human rights standards (CAVR, 2005).
- **Community Engagement:** Ensuring local communities' involvement in security decisions was crucial for building trust and responsiveness (CAVR, 2005).

In response to CAVR's recommendations, Timor-Leste implemented several significant policy reforms such as the restructuring of the F-FDTL and PNTL to enhance their professionalism and accountability. Clear distinctions were made between the police and military roles, ensuring that each institution focused on its core functions (International Crisis Group, 2011).

A robust legal framework was established to guide the operations of security forces. Key legislations, such as the Organic Law of the PNTL (2009) and the Law on National Security (2010), defined roles, responsibilities, and oversight mechanisms (Greener, 2009). Robust

civilian oversight bodies, such as the Ministry of Interior for the police and the Ministry of Defense for the military, were established to ensure accountability and transparency within the security sector (Kingsbury, 2009). Comprehensive training programs were developed to improve the skills and professionalism of security personnel. These programs emphasized human rights, the rule of law, and community policing principles (Peake, Scheye, & Hills, 2007).

5.7. Civilian Oversight Mechanism

In theory, civilian control in East Timor has been achieved through several institutional mechanisms. UNTAET established a National Security Council to ensure civilian monitoring and coordination among various security entities. Additionally, civilian control is exercised through the Defense Secretary, with the President serving as the Commander-in-Chief (Philipps et al., 2014). The Department of Defense and Security, the parliament, the Supreme Council for Defense and Security, and the Office of the Ombudsman collectively contribute to the civilian oversight of security forces (Chappuis et al., 2014).

A key component of international efforts to instill accountability in East Timor's security sector was the establishment of the Ombudsman's office, modelled after the Portuguese Provedor. This office, although conceived in the 2002 Constitution, only became operational in 2005 with substantial financial backing from various international donors, including the United Nations High Commissioner for Human Rights, the United States, New Zealand, Ireland, Sweden, and Australia (Chappuis et al., 2014).

The Ombudsman's office, with around 100 employees in Dili and additional staff in sub-offices across Oecussi, Same, Baucau, and Maliana, was tasked with investigating human rights abuses based on received complaints. The findings were formulated into recommendation reports for relevant authorities. Provedor Ximenes and his team actively engaged with communities and district police officers to address local issues and shortcomings (Chappuis et al., 2014). Despite these efforts, the Ombudsman's powers were limited to investigation and summoning suspects without the authority to enforce sanctions, relying instead on other institutions for enforcement (Chappuis et al., 2014).

Another dimension of civilian control involved the establishment of democratic policing, specifically community policing. This approach aimed to involve community members in crime prevention (Chappuis et al., 2014). However, the implementation in East Timor was hindered by ambiguous definitions of 'community policing,' differing interpretations of its concept, and limited expertise among UNPOL staff who communicated the initiative to local police and officials (Chappuis et al., 2014).

The international community's attempt to establish pluralistic policing structures faced several obstacles. The community policing model adopted was less aggressive compared to the robust methods used by the Portuguese National Republican Guard (GNR). This approach facilitated communication between the police and community members but was less effective in crime suppression (Chappuis et al., 2014).

Institutional and funding difficulties further undermined the effectiveness of the community policing project. With a limited number of officers assigned to the community policing department, its operations were often disrupted as officers were transferred to other departments (Chappuis et al., 2014). This led to the department being perceived as a 'ceremonial structure' (Belo & Koenig, 2014). Resistance and Limited Adoption Parts

A section of the government and the main police force, the Polícia Nacional de Timor-Leste (PNTL), viewed community policing as an external imposition and were resistant to its adoption (Chappuis et al., 2014). Consequently, the international effort resulted in only partial adaptation of normative standards and organizational structures to satisfy donor expectations, with little practical application. Neither the relevant ministries nor the PNTL developed a clear understanding of how to effectively implement community policing (Chappuis et al., 2014).

The process of establishing civilian control and democratic oversight over East Timor's security forces has been complex and fraught with challenges. While significant progress has been made through the establishment of various oversight bodies and the Ombudsman's office, operational and cultural challenges persist. The limited success of community policing highlights the difficulties of implementing international models in local contexts. Continued efforts and adaptations are required to ensure effective civilian control and the development of a cohesive and accountable security sector in East Timor.

5.8. Challenges and Criticisms

Despite significant progress, Timor-Leste's SSR faced numerous challenges and criticisms:

- **Fragmentation and Rivalry:** Persistent tensions between the PNTL and F-FDTL often led to fragmentation and coordination issues, undermining effective security operations. Historical animosities and competition for resources exacerbated these issues (International Crisis Group, 2011).
- **Political Interference:** Political interference in security sector appointments and operations hindered impartiality and professionalism. During periods of political instability, security forces were often seen as tools of political factions, compromising their credibility and effectiveness (Kingsbury, 2009).
- **Resource Constraints:** Limited financial and human resources impeded the full implementation of SSR initiatives. Budgetary constraints affected training programs, infrastructure development, and the acquisition of necessary equipment, limiting the operational capabilities of security forces (Peake, Scheye, & Hills, 2007).
- **Community Trust:** Building trust between security forces and local communities has been an ongoing challenge. Historical grievances, instances of misconduct, and slow responses to community needs have occasionally strained these relationships (Greener, 2009).
- **Corruption:** Corruption within the security sector of East Timor, encompassing both the military (F-FDTL) and police (PNTL), has been a significant impediment to the country's post-conflict recovery and development. Despite various reforms and international assistance, systemic corruption has undermined the effectiveness and credibility of these institutions. Corruption in East Timor's security sector is pervasive, affecting both the military and the police. Reports indicate that corruption manifests in various forms, including bribery, embezzlement, nepotism, and misuse of power. Transparency International's Corruption Perceptions Index consistently ranks East Timor among the countries with high levels of perceived corruption (Guterres, 2017). The F-FDTL has been plagued by issues of corruption since its establishment. One significant issue is the misuse of funds allocated for military purposes. There have been

instances where funds intended for military equipment and personnel training were diverted for personal gain by high-ranking officers (ICG, 2013)

5.9. Key Lessons

Several key lessons can be drawn from Timor-Leste's SSR experience:

- **Integrated Approach:** Successful SSR requires a holistic approach that integrates justice, human rights, and community engagement. This ensures that reforms are comprehensive and address the root causes of insecurity. For instance, Timor-Leste's integration of transitional justice mechanisms with security reforms has helped build a more resilient and accountable security sector (Peake, Scheye, & Hills, 2007).
- **Sustained International Support:** Continuous support from international entities, such as the United Nations, is crucial for the success of SSR. This support provides the necessary resources, expertise, and legitimacy to reform efforts. Timor-Leste benefited significantly from the sustained involvement of UN missions, which provided both direct assistance and a framework for long-term development (UN, 2013). However, local dynamics need to be considered and the context of the security environment need to be assessed when initiating programmes that would assist the SSR initiative.
- **Local Ownership:** Ensuring local ownership and leadership in SSR processes enhances their legitimacy and effectiveness. Local actors are better positioned to understand the specific needs and dynamics of their communities. Timor-Leste's experience demonstrates that locally led reforms, supported by international partners, can lead to more sustainable outcomes (Greener, 2009).
- **Building Trust:** Building trust between security forces and local communities is essential for sustainable security. This can be initiated through community policing programmes as well as civil-military initiatives. This requires transparency, accountability, and consistent efforts to address grievances and build positive relationships. Community policing initiatives in Timor-Leste have shown that fostering direct engagement and responsiveness can significantly improve public perceptions of security forces (Peake, Scheye, & Hills, 2007).
- **Adaptability:** SSR processes must be adaptable to changing circumstances. Flexibility allows for adjustments in response to emerging challenges and opportunities. Timor-Leste's SSR has had to navigate various political and social shifts, highlighting the importance of maintaining a dynamic approach to reform (Kingsbury, 2009).
- **Civilian oversight:** Civilian oversight of the security sector is critical for ensuring accountability, transparency, and adherence to democratic norms. In the context of East Timor, maintaining effective civilian oversight over its military (F-FDTL) and police (PNTL) has been a complex challenge due to the nation's history of conflict, institutional weaknesses, and evolving political dynamics. The establishment of a robust institutional framework has been central to East Timor's efforts to maintain civilian oversight. The United Nations Transitional Administration in East Timor (UNTAET) played a crucial role in setting up initial oversight structures. This included the creation of a National Security Council designed to provide civilian monitoring and coordination among different security mechanisms

- **Legislative oversight:** The Timorese parliament, through its Defense and Security Committee, plays a pivotal role in overseeing the security sector. The committee is responsible for scrutinizing defense policies, budgets, and the activities of the security forces. This legislative oversight is intended to ensure that security forces operate within the bounds of the law and respect human rights. This also ensures accountability and transparency on matters related to national security, while also safeguarding confidentiality.
- **Training on human rights:** The government of East Timor, with support from international partners like the UN and various NGOs, has initiated several programs aimed at incorporating human rights education into military and police training. While significant strides have been made, continuous improvement, commitment, and international support are necessary to overcome existing challenges. Through comprehensive, well-implemented training programs, East Timor can ensure its security forces not only maintain order but do so in a manner that upholds the highest standards of human rights.
- **Curbing corruption:** When police and military officials engage in corrupt practices, it erodes public trust in these institutions. In East Timor, a country still consolidating its democracy since gaining independence in 2002, maintaining the integrity of the rule of law is essential. Effective law enforcement and a trustworthy military are critical for good governance and the protection of citizens' rights. Corruption within the military can have dire consequences for national security. It can lead to the misappropriation of resources, weakening the country's defense capabilities. In East Timor, which has faced historical and ongoing security challenges, a robust and corruption-free military is vital for protecting national sovereignty and maintaining peace.

5.10. Conclusion

Timor-Leste's post-conflict SSR provides valuable insights into the complexities of rebuilding security institutions in a fragile state. While significant progress has been made in professionalizing the PNTL and F-FDTL, establishing robust legal frameworks, and incorporating human rights principles, ongoing challenges highlight the need for sustained effort and international cooperation. The experience of Timor-Leste underscores the importance of a comprehensive, inclusive approach to SSR, balancing immediate security needs with long-term goals of justice and human rights. By learning from Timor-Leste's experience, other post-conflict nations can develop more effective strategies for building stable, accountable, and human rights-respecting security sectors.

CHAPTER 6

Best Practices and Lessons Learnt

6.1. Community-oriented Approach²⁰⁶

Community consultation was a primary approach throughout the process, every activity was consulted and the commission was responsive to additional suggestions from the public. For the startup, pilot projects in major three aspects of truth-seeking, community profiles, and Community Reconciliation procedures were implemented to shape them into effective programs.

6.2. Pilot projects and gradual expansion²⁰⁷

*Truth-seeking (First pilot):*²⁰⁸

A pilot project was rolled out from the 7th - 22nd Of June 2002 in which valuable lessons in logistics and methodology were documented in statement taking.²⁰⁹ Revisions were made to the language policy of statement-taking.²¹⁰ Decisions were made to record all the interviews to ensure accuracy. It was also found that witnesses appreciated hearing a playback of their testimony which increased their confidence in the reliability of the commission to document their statement.

6.3. Community Profile workshops (second pilot)²¹¹:

This was a community discussion on the impact of human rights violations. Two main tools were used to complement the individual focus of statement-taking and to help in assessing the overall impact of violence on the East Timorese community²¹²

- A time-line exercise with a focus on key HR violations from 1974-1999
- A mapping exercise enabling community members to draw a map showing places significant as locations of HR violations.

6.4. Community Reconciliation Procedures (third pilot):²¹³

This is a process where the former perpetrators gave testimony admitting their wrongs and victims and community members then spoke with their own perspectives on the events described by the deponents on less serious crimes.²¹⁴ Traditional elders cleansed the area of

²⁰⁶ CAVR, *Chega!* (2005) ch1, sec 1.5, 32

²⁰⁷ CAVR, *Chega!* (2005) ch 1, 23

²⁰⁸ *ibid*

²⁰⁹ *ibid*

²¹⁰ *ibid*

²¹¹ *ibid*

²¹² *ibid*

²¹³ *ibid*

²¹⁴ *ibid*

violent spirits and invited all the perpetrators and victims to sit together on a large mat which is how they traditionally sought to resolve disputes. With the panel presiding it was decided to accept the apologies of the perpetrators and not to impose any sanction but with some agreements to complete some community service or reparation.

6.5. Sequence of activities²¹⁵

They were focusing on one sub-district for 3 months before moving on to the next one.²¹⁶ During the first 6 weeks, there were meetings and consultations. Regional commissioners and district teams organized a public meeting to explain the commission's mandate and its core program of work and allowed members of the community to voice their suggestions and worries.²¹⁷ There were both informal and formal discussions. Communities were asked to map out major periods and incidents of violence district teams identified specific communities where the demand for truth-seeking, statement taking and community reconciliation is high.²¹⁸ Victim support and outreach staff facilitated group discussions on the impact of human rights violations and followed up with individuals who were interested in providing statements or participating in the community reconciliation process. The final event was a victim hearing where all the relevant stakeholders were present.²¹⁹ After the hearing, the Regional Commissioners informed the community about the activities conducted in the sub-district during the three months.

6.6. Rights of the participants in the process²²⁰

All the statements were taken under the clause of confidentiality. Consent was particularly obtained to use the content of the statements to be used in the Final Report and to be archived beyond the commission's mandate period.²²¹ The options were provided to provide statements on a confidential basis, anonymously, or remove identities of them or others relevant.

It was clearly explained to the applicants to the community reconciliation procedures that their statements are forwarded to the office of the General Prosecutor and there could be legal implications.²²²

The commission also clearly communicated the available safety measures and the practical limitations on witness protection so that the witnesses could decide whether to provide evidence in public or writing.

6.7. Confessions and Forgiveness

Per Regulation 10/2001, the Commission was tasked to screen minor crimes by the Prosecutor's office to process them through community reconciliation procedures which allowed amnesty. Confessions and forgiveness played an important role in Timor Leste's reconciliation

²¹⁵ CAVR, *Chega!* (2005) ch 1, para 76-80, 25

²¹⁶ CAVR, *Chega!* (2005) ch 1, para 76, 25

²¹⁷ CAVR, *Chega!* (2005) ch 1, para 78, 25

²¹⁸ CAVR, *Chega!* (2005) ch 1, para 79, 25

²¹⁹ *ibid*

²²⁰ CAVR, *Chega!* (2005) ch 1, para 150-152, 37

²²¹ CAVR, *Chega!* (2005) ch 1, para 150, 37

²²² *ibid*

hearings.²²³ Due to the predominant influence of Catholicism in Timorese society, where the majority population is Catholic. Reconciliation hearings typically commenced with a brief address from the village's Catholic priest, emphasizing the significance of repentance and forgiveness within the Catholic faith.²²⁴ The Catholic Church in Timor has consistently adopted a conciliatory, non-partisan stance in the country's political history, occasionally causing frustration among local independence leaders.

When convening reconciliatory talks between all parties, Bishop Belo suggested to all sides: "Let's all lay down our arms and have dialogue with bare hands, using our brains and our hearts. Treating each other as equals. Not with the attitude, 'You're wrong and I'm right' "²²⁵

The shared Catholic tradition serves as a common foundation during reconciliation hearings, providing all parties with a unifying starting point for resolving disputes. The participants' cultural familiarity with religious concepts further strengthens their commitment to the reconciliation process.²²⁶ For instance, the concept of reparations mandated by the Reconciliation Commission aligns with the Catholic tradition of assigning penance following confessions by wrongdoers.

6.8. Highly participatory and consultative

A widespread statement-taking process was undertaken that, 7669 statements were taken from East Timor and 91 statements from East Timorese living in West Timor.²²⁷ Around 1000 interviews were conducted.²²⁸ Public hearings were conducted at the national and district level.²²⁹ From the inception to the completion public responses and feedback were considered and necessary changes were made in the implementation accordingly.

6.9. Inclusiveness of women's experiences and gender aspects

At the outset, there was formal recognition that there are barriers for women to equally take part in employment or political activities in Timor Leste so the institutions need to have special considerations. The UNTAET Regulation itself requires gender considerations in all aspects of the Commission's work.²³⁰ The Commission mandate required 30% of the National and Regional Commissioners to be women which resulted in two out of seven National Commissioners and ten out of 29 Regional Commissioners being women.²³¹ Even though staff recruitment policies required the same percentage among the staff it was challenging to meet this target at the staff level due to the field activities which required them to be away from home for a longer period.²³²

There was a requirement that at least one of the CRP panel members at the hearing should be a woman and the result was interesting in that these women often played a leading role which

²²³Cheah Wui Ling, 'FORGIVENESS AND PUNISHMENT IN POST-CONFLICT TIMOR' [2005] 10(2) UCLA Journal of International Law and Foreign Affairs 297-359

²²⁴ *ibid*

²²⁵ *ibid*

²²⁶ *ibid*

²²⁷ CAVR, *Chega!* (2005) ch 1, para 82, 26

²²⁸ *ibid*

²²⁹ CAVR, *Chega!* (2005) ch 1, para 83, 26

²³⁰ CAVR, *Chega!* (2005) ch 1, para 173, 41

²³¹ *ibid*

²³² CAVR, *Chega!* (2005) ch 1, para 193, 44

was also fully accepted by community members. There were also women in all district statement-taking teams and 21.4 % of the deponents who gave statements were women.²³³

A six-woman team conducted a six-month research project on the experiences of women during conflict²³⁴. There were specific healing workshops, and community profile workshops designed only for women. Women staff informally met the rural women visiting home and other gatherings encouraging their participation in the activities of the Commission. Overall, there were many attempts to 'record women's experiences and the impact of the conflict as perceived by female community members'²³⁵

6.10. The focus was on documenting the human rights abuses committed by an external party that is no more present in the nation (i.e. The Indonesian Armed Forces)

CAVR was not formed as part of a political solution between two parties in a single nation.²³⁶ The Timor-Leste TRC was established in response to the violence and human rights abuses during the Indonesian occupation of East Timor (1975–1999), to look into the actions primarily by the Indonesian forces who had left the country already.

In fact, this absence of main perpetrators allowed the commission to work with complete freedom and to document a truth based on a 'collective Timorese memory of suffering'²³⁷ However, it had its disadvantage in that CAVR could not demand the Indonesian forces to testify which placed limitations on the nature of the truth and frustrations among the people who testified at public hearings.²³⁸

In the face of widespread global criticism regarding the clearly planned violence, and to avoid the establishment of a temporary international tribunal, Indonesia openly pledged to both the international community and the East Timorese people to bring those accountable for the atrocities in East Timor to justice.²³⁹ Despite establishing the Ad Hoc Human Rights Court on East Timor in Jakarta with the sole purpose of addressing these matters, Indonesia has notably not fulfilled its promises.²⁴⁰ The outcomes of the twelve rulings issued by the Ad Hoc Court indicate a lack of accountability for Indonesians implicated in abuses in East Timor.²⁴¹ Among the cases concluded, all nine military and police individuals have been cleared of charges, all of whom are Indonesian. Only two individuals, both East Timorese, have been found guilty.²⁴²

²³³ CAVR, *Chega!* (2005) ch 1, para 174, 41

²³⁴ CAVR, *Chega!* (2005) ch 1, para 176, 42

²³⁵ CAVR, *Chega!* (2005) ch 1, para 177, 42

²³⁶ CAVR, *Chega!* A Plain Guide, 90

²³⁷ Jenkins Catherine, 'A TRUTH COMMISSION FOR EAST TIMOR: LESSONS FROM SOUTH AFRICA' [October 2001] 7(2) *Journal of Conflict & Security Law* 233-251

²³⁸ Lia Kent, 'The truth seeking and memory politics in post conflict East Timor' (2008),4

<<https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=6c0fba9f37d0d1e9a94ee3e01592848716664d9e>> accessed 17th Nov 2023

²³⁹ Human Rights Watch, *Justice Denied for East Timor*,(2002) <

<<https://www.hrw.org/legacy/backgrounder/asia/timor/etimor1202bg.htm>> accessed 26 Mar 2024

²⁴⁰ *ibid*

²⁴¹ *ibid*

²⁴² *ibid*

6.11. Systematic methods were used to collect information

The Commission recorded statements, conducted surveys according to the protocol of social science, conducted oral interviews according to the standards of oral history, and conducted community forum sessions.²⁴³

6.12. CAVR was complementary to the judicial/justice process

The UN mission had a complementary prosecutorial body as the Serious Crimes Unit (SCU) which became a subunit of the general prosecutor's office to investigate and prosecute the most serious offenders.²⁴⁴ In June 2002 a memorandum of understanding was signed between the commission and the Prosecutors office detailing the information exchange and maintaining independence and integrity of both institutions.²⁴⁵ CAVR was obligated to refer any serious crimes uncovered during the investigations to the prosecutor's office and what crimes are eligible to be facilitated through a CRP was also supervised by the Prosecutor's office. The UN also established a special panel for serious crimes to hear the serious crimes. This hybrid tribunal known as the Special Panels for Serious Crimes, comprised of both international and Timorese judges, operating under the Serious Crimes Unit (SCU) in Dili.²⁴⁶ These specialized panels were responsible for adjudicating cases involving serious crimes until May 2005. At that point, the UN Security Council chose not to extend the mandate of the tribunal due to dissatisfaction with the perceived lack of political will in Timor-Leste, as well as within the UN itself.²⁴⁷ By the time of its discontinuation, the SCU had issued indictments against 391 individuals, resulting in 84 convictions and three acquittals.²⁴⁸

6.13. Lack of Clarity and Trust

The East Timor reconciliation process faced suspicion and reluctance from local communities, particularly in certain areas, due to a lack of clarity on how the CAVR would translate into a mechanism ensuring accountability for perpetrators.²⁴⁹ This ambiguity generated fears within the communities, with concerns ranging from the possibility of inadequate justice for perpetrators to direct threats against CAVR staff, reflecting a profound lack of trust in the reconciliation process²⁵⁰. Indonesians were hostile and were reluctant to participate in the process. The feeling of unfairness felt by those who survived or have family members affected, especially in situations where CAVR could not bring serious human rights violators to justice

²⁴³ John Roosa, 'How Does a Truth Commission Find out What the Truth Is? The Case of East Timor's CAVR', (Winter, 2007/2008) 80(4) *Pacific Affairs*, 570

²⁴⁴ CAVR, *Chega!* (2005) ch 1, para 6, 3

²⁴⁵ CAVR, *Chega!* (2005) ch 1, p 46

²⁴⁶ Caitlin Reiger and Marieke Wierda, 'The Serious Crimes Process in Timor-Leste: In Retrospect' [March 2006] PROSECUTIONS CASE STUDIES SERIES - International Center for Transitional Justice <<https://www.ictj.org/sites/default/files/ICTJ-TimorLeste-Criminal-Process-2006-English.pdf>> accessed 22 November 2023

²⁴⁷ Megan Hirst and Howard Varney, 'JUSTICE ABANDONED? An Assessment of the Serious Crimes Process in East Timor' [June 2005] International Center for Transitional Justice - OCCASIONAL PAPER SERIES <<https://www.ictj.org/sites/default/files/ICTJ-TimorLeste-Justice-Abandoned-2005-English.pdf>> accessed 22 November 2023

²⁴⁸ USIP, <<https://www.usip.org/publications/2002/02/truth-commission-timor-leste-east-timor>> accessed 19 November 2023

²⁴⁹ *ibid*

²⁵⁰ Johannes Langer, 'Creation of Truth and Memory in Two Truth Commissions in Timor Leste: The Inclusion and Exclusion of Civil Society' <<https://alacip.org/cong15/prajohannes8c.pdf>> accessed 22 November 2023

as many top military figures and militia leaders accused of heinous acts managed to escape prosecution by finding refuge in Indonesia.²⁵¹

6.14. Unfulfilled Reparations and Economic Disappointment

The call for reparations outlined in the reconciliation report has remained unfulfilled by East Timorese politicians, leading to widespread frustration among the local population²⁵². The expectation that participation in the reconciliation process would translate into economic support for the new government went unrealized, exacerbating discontent. Furthermore, the limited distribution of the reconciliation report contributed to a lack of awareness among the people, hindering their understanding of the process and impeding the potential economic benefits they anticipated.

6.15. Inadequate follow up and Lack of Implementation

Despite claims by the East Timorese government that "many" recommendations had been implemented, human rights groups contested this assertion, asserting that not a single recommendation had been addressed²⁵³. For example, CAVR proposed providing reparations to victims of human rights abuses, including compensation, rehabilitation, and other forms of support. While some efforts have been made in this regard, the full implementation of comprehensive reparations programs has been limited. The overall lack of follow-up on the recommendations, coupled with politicians' failure to reference them in policy proposals, highlighted a significant gap between rhetoric and action²⁵⁴. This disconnect undermined the effectiveness of the reconciliation process, raising questions about the government's commitment to addressing the findings and recommendations of the Commission for Reception, Truth, and Reconciliation (CAVR). In the comment of Jose Ramos-Horta as Foreign Minister of Timor-Leste at the time, that the CAVR recommendations 'are only recommendations and are not obligations for the Government and the Parliament to follow'²⁵⁵

6.16. Selective Justice

The Commission for Reception, Truth, and Reconciliation (CAVR) failed to meet the justice expectations of local communities. In response, these communities independently initiated efforts to establish memorials, form support groups for victims, and seek political acknowledgment of their hardships during the Indonesian occupation and beyond²⁵⁶. These grassroots initiatives, termed "unofficial memory practices"²⁵⁷ draw inspiration from Timorese cultural values, emphasizing the belief that ancestors play a role in reshaping society.²⁵⁸

²⁵¹ Dominique Le Touze, Derrick Silove & Anthony Zwi, 'Can there be healing without justice? Lessons from the Commission for Reception, Truth and Reconciliation in East Timor Intervention' 2005, Volume 3, Number 3, 192

²⁵² *ibid*

²⁵³ *ibid*

²⁵⁴ *ibid*

²⁵⁵ Asia society, 'José Ramos-Horta on the Complexities of Nation-Building in East Timor' (*Asia Society*, 2006) <<https://asiasociety.org/jos%C3%A9-ramos-horta-complexities-nation-building-east-timor>> accessed 22 November 2023

²⁵⁶ Lia Kent (n213)

²⁵⁷ Lia Kent, 'Interrogating the "Gap" Between Law and Justice: East Timor's Serious Crimes Process' [2012] 34(4) Human Rights Quarterly 174

²⁵⁸ Johannes Langer (n225)

CHAPTER 7

Concluding Remarks and Lessons for Sri Lanka

The CAVR in East Timor stands out from other countries discussed, such as Rwanda and Canada, due to its unique mandate and historical context. Unlike Rwanda, where the truth and reconciliation process primarily focused on internal conflicts and genocide, or Canada, which addressed historical injustices against Indigenous peoples, the CAVR was established to address grievances arising from a foreign occupation by Indonesia.

It co-existed with institutions like the Serious Crimes Panel and an *ad hoc* Human Rights Court established by Indonesia, emphasizing its distinct role in promoting national reconciliation and healing. Unlike purely homegrown initiatives, the CAVR in East Timor was established with significant UN and international backing. The UN's involvement in establishing the CAVR underscored the global community's recognition of the need for comprehensive truth-seeking and reconciliation processes in post-conflict settings. This international intervention brought technical expertise, resources, and a framework for accountability that might have been challenging to achieve through purely domestic efforts.

However, it's essential to note that this international intervention also brings complexities and challenges. The involvement of external actors can sometimes lead to tensions or disagreements regarding the scope, focus, or outcomes of truth and reconciliation processes. UNTAET lacked democratic legitimacy among the East Timorese population leading to less clarity and trust in the mechanism. As an NGO in East Timor put it, "Although UNTAET preached good governance, transparency, accountability, democracy and the rule of law to the East Timorese, it showed little of these in itself. UNTAET is a government without a constitution, with all power residing in one man, the Transitional Administrator Sergio Vieira de Mello. The lack of human and material resources and the distrust of the people in the system were challenges to the East Timor TRC system.

Its approach delved into understanding the root causes of the conflict, including historical injustices, human rights violations, and their impact on communities, rather than focusing solely on specific events or time periods. Central to its success was the inclusive nature of the Commission, which engaged all sectors of society, including victims, perpetrators, community leaders, and government entities, fostering a sense of ownership and participation in the reconciliation process. The CRPs facilitated the reintegration of individuals involved in conflicts back into their communities, blending traditional justice with modern legal principles and emphasizing community involvement. Maintaining a highly participatory and consultative process, especially inclusive of women's experiences, enhanced transparency and inclusivity. Moreover, the focus on documenting the actions of external perpetrators, utilizing diverse information collection methods, and collaborating with judicial processes align with truth-seeking and accountability endeavours.

Contextually, there are two striking differences between Sri Lanka and East Timor. While there are international efforts and pressure to facilitate a transitional justice process in Sri Lanka, the design process and ultimate decision remain very much local. In East Timor, however, the international community played a significant role not just in the resolution of the conflict but also in the Transitional Justice process. The emphasis in East Timor was on recording the violations of human rights carried out by a now-absent external entity, whereas in Sri Lanka, a

truth-seeking initiative endeavours to confront issues with involvement of both victims and perpetrators.

However, the proposed Commission on Truth, Unity and Reconciliation in Sri Lanka can draw valuable technical lessons from the East Timor CAVR to enhance its effectiveness.

- Firstly, implementing a systematic approach to gathering victim statements, conducting comprehensive research on thematic areas and documenting data rigorously were crucial steps.
- Organizing public hearings at various levels focused on specific themes relevant to the conflict allows for a structured examination of different aspects.
- Leveraging media coverage and fostering inclusivity among stakeholders, including victims, perpetrators, and community leaders, promotes dialogue and empathy.
- Sensitively handling emotional topics during public hearings while providing a safe space for victims to share their experiences was commendable.
- Gender sensitive approaches which was cross cutting in all their truth-seeking approaches are highly recommended

Capacity building for TRC staff and maintaining a long-term perspective on reconciliation efforts ensured sustainable peace-building and community empowerment. Further, gradual expansion of the process with pilot testing were proved to be strategic and efficient

East Timorian experience becomes relevant to Sri Lanka to assess if there is a thirst among different stakeholders for a truth-seeking process and the possible formula for a truth-seeking model. In the East Timorian context, local perceptions of justice significantly differed from the conventional understanding of criminal law.²⁵⁹ While many acknowledged the importance of prosecutions, punishment, and truth-telling, numerous individuals engaged in transitional justice processes with diverse objectives.²⁶⁰ These included tasks such as locating and retrieving bodies, publicly shaming perpetrators, restoring victims' standing within their communities, or providing economic aid to alleviate poverty.²⁶¹ These varied perspectives were influenced by multiple factors, including deeply ingrained customary beliefs emphasizing ongoing obligations to the spiritual realm and deceased ancestors, historical narratives tied to the resistance movement, and prevailing socio-economic circumstances. These insights suggest that relying solely on trials and the approach of Truth Commissions may not fully align with local expectations of justice.

Overall, East Timor, situated within the Asia Pacific region, offers valuable and relatable best practices and lessons that Sri Lanka can draw upon to effectively establish and execute a truth-seeking process.

²⁵⁹ Lia Kent, *Rethinking Transitional Justice: Lessons from East Timor*, ANU, 2013/6, https://dpa.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/SSGM_IB_2013_6_0_0.pdf

²⁶⁰ *ibid*

²⁶¹ *Ibid*

SUMMARY

Country	Location - South East Asia A Portuguese Colony
Background/context	<ul style="list-style-type: none"> • After the decolonization of 1974, East Timor formed political parties: UDT (Timorese Democratic Union) ASDT/Fretilin (Timorese Social Democratic Association) and Apodeti (Timorese Popular Democratic Association) • Indonesia, who was controlling West Timor, intervened in East Timor in the name of anti-colonialism and anti-communism • Internal armed conflicts between political parties and Indonesian Armies • Fretilin political party took over the administration of East Timor • December 1975 - full-scale intervention by Indonesia and instalment of a provincial government • 1975 - 1999 - armed conflicts between the Indonesian army and Fretilin troops • 1991 - Santa Cruz massacre - 200 killings by the Indonesian army and global attention to the ongoing conflict • 1996 - Two East Timorese were awarded the Nobel Prize for their work toward a peaceful solution • 1997 - Indonesian Interim President B. J Habibie offered conditional autonomy to East Timor • 1999 - With UN monitoring there was a referendum which had a 99% turnout and 78 % voted for independence. • Indonesian army attacked East Timor and forcefully evacuated thousands of East Timorese to West Timor within two weeks of the referendum under dire conditions • With the approval of the UNSC, the UN mission intervened and Indonesia withdrew. • The UN sent the peacekeeping force and installed the United Nations Transitional Administration in East Timor (UNTAET) from 1999 until the nation was ready to become fully independent in 2002. • Between 1975 and 1999, 100,000 - 180,000 Timorese were killed by Indonesian occupation troops
Meaning of TRC	<ul style="list-style-type: none"> • The notion of "healing" • restoration of dignity to individuals who have suffered from the war
Mandate of TRC	<ul style="list-style-type: none"> • Commission for Reception, Truth and Reconciliation in East Timor (CAVR) in 2001 • The identification of official and non-state actors complicit in severe human rights abuses between 25th April 1974 to 25 October 1999 • Preparing a “comprehensive report which sets out the Commission’s activities and findings • Formulating recommendations concerning reforms and initiatives designed to prevent the recurrence of human rights violations • Inquiries and investigations that lead to prosecutions and recommending prosecutions, where appropriate, to the Office of the General Prosecutor • Implementing Community Reconciliation Procedures (CRPs)

	<ul style="list-style-type: none"> • To foster an awareness and understanding of the past in all citizens of Timor Leste
Composition of TRC	<ul style="list-style-type: none"> • Five men and two women were selected as national commissioners • On the advice of the National Commissioners 29 Regional Commissioners were appointed in which 10 of them were women
Work of TRC²⁶²	<p>“By the end of its operational phase in April 2004 the Commission had:</p> <ul style="list-style-type: none"> • Recorded the statements of 7,669 victims, witnesses and perpetrators of human rights violations. These statements were summarised and their elements such as the type, time, location, victim and perpetrator of the violation, were coded and entered with the summaries into a database. This permitted the Commission to analyse patterns, causes and the impact of violations statistically, provide a basis for findings of responsibility and accountability, and retrieve statements exemplifying particular patterns. • Conducted 1,048 targeted research interviews with individuals who had played key roles in the conflict, victims, perpetrators and witnesses of violations. These interviews enabled the Commission to deepen its knowledge of the themes that it had identified as crucial to an understanding of the conflict. • Completed a study of the number of people who had died as a direct result of the conflict. • Completed 1,379 Community Reconciliation Procedure (CRP) cases in which individuals who had committed “less-serious crimes” or acts that were harmful to their communities during the period of conflict in 1999 participated in formal, village-based hearings aimed at reintegrating them into their communities. Victims, perpetrators, community members, the Office of the General Prosecutor and the courts were party to CRPs. • Conducted eight national public hearings. The complete hearings were covered live by national television and broadcast by radio to the remote regions of Timor-Leste and into some areas of West Timor. • Held 52 public hearings at the sub-district level which allowed victims to share their experiences of the conflict. • Coordinated 257 Community Profile workshops in which members of communities where severe violations had occurred met to discuss and record their experiences over the 25-year period of political and military conflict. About 4,000 people participated in these workshops. • Produced and broadcast weekly radio programmes which focused on mandate-related topics, in particular the promotion of reconciliation.

²⁶² Post-CAVR Technical Secretariat, A plain guide- Chega!(2013) 10

	<ul style="list-style-type: none"> • Conducted programmes in West Timor refugee camps, which included taking statements and providing information about the activities of the Commission. • Held six Healing Workshops at the national office in Dili. Victims who had been most severely affected by the conflict were invited to participate in these workshops. • Provided Urgent Reparations for medical treatment and other expenses to 712 victims of human rights abuses. • Established an archive and documentation centre. • Rehabilitated four regional offices and the former Balide prison in Dili as both a heritage site and the CAVR national office.”
Recommendations	<ul style="list-style-type: none"> • Incorporating Chega into the history education curriculum at primary, secondary and tertiary levels, or making it a part of the training of teachers and the seminary education of clergy • Government to set up a reparations program and memorials to remember the victims as well as conduct further inquiry into mass graves and the fate of the disappeared. • Establish a working group to conduct consultations on a follow-up institution to implement agreed-to recommendations proposed by the CAVR
Success/ Praises	Timor-Leste has risen 20 places in the Global peace index since 2008
Negative Impacts	<ul style="list-style-type: none"> • Lack of political will follow the recommendations of CAVR • Lack of clarity and trust about the reconciliation process • Unfulfilled reparations • Selective justice
Limitations/ Challenges	<ul style="list-style-type: none"> • Communication and transportation hindrances • Lack of basic infrastructure facilities • Usage of multiple languages
Lessons Learnt/ Suggestions	<ul style="list-style-type: none"> • The CAVR had undertaken widespread statement-taking processes, interviews and public hearings at the national and district levels to encourage public participation • A weekly one-hour radio program produced by the commission called the Road to Peace (Dalan ba Dame) was broadcast on many networks • Inclusive of women’s experience and gender aspects in the commission's work - mandatory women's participation in statement-taking teams, recruitment processes and workshops • Variety methods of collecting information - conducted surveys, oral interviews, community forum sessions and recorded statements • The commission was complementary to the judicial process - Serious Crimes Unit (prosecutorial body of UN mission) • MoU between the commission and the Prosecutor's Office related to information exchange and maintaining independence and integrity

	<ul style="list-style-type: none">• The UN established a special panel for serious crimes to hear serious crimes and convict• Chega acknowledges that truth is not sufficient and reparations and justice elements also need to be addressed.• Indonesia and Timor-Leste established the bilateral Commission for Truth and Friendship (CTF) in 2005• The Indonesian government acknowledged the human rights violations committed by its state institutions• CAVR was dissolved in 2005 and the government established a CAVR secretariat to follow through the recommendations of the Chega report.
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AUSTRALIA

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Acronyms

ACT	-	Australian capital Territory
APS	-	Australian Parliamentary Services
BLM	-	Black Lives Matter
CAR	-	Council for Aboriginal Reconciliation
CERD	-	The UN Committee on the Elimination of Racial Discrimination
COAG	-	Council of Australian Governments
Cth	-	Commonwealth
KBHAC	-	Kinchela Boys Home Aboriginal Corporation
NACC	-	National Aboriginal Consultative Committee
NACCHO	-	The National Aboriginal Community Controlled Health Organization
NSW	-	New South Wales
NT	-	Northern Territory
PSIEN	-	Parliamentary Service Indigenous Employees Network
RAP	-	The Reconciliation Action Plan
UN	-	United Nations
VIC	-	Victoria

CONTENTS

CHAPTER 1	History 1.1 Background 1.2 Invasion and Colonization 1.3 Conflicts
CHAPTER 2	Discriminatory Laws and Policies Concerning the Indigenous People 2.1 Prior to 1901 2.2 Constitution 2.3 Subsequent Legislations
CHAPTER 3	Events that demonstrated the struggles of the Aboriginal Australians 3.1 Timeline
CHAPTER 4	Reconciliation in Australia 4.1. History of Formal Reconciliation – 1987-2023
CHAPTER 5	Transitional Justice to face Colonial Legacies 5.1 Truth Telling efforts in Australian States and Territories 5.2 First People’s Assembly 5.3 Yoorrook Justice Commission 5.4 Yoorrook’s Mandate 5.5 Voice Referendum
CHAPTER 6	Best Practices and Lessons to be Learnt 6.1 Community Truth Telling 6.2 The National Agreement on Closing the Gap 6.3 Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander People
CHAPTER 7	Challenges and Early Lessons on Truth Telling Process 7.1 The First Referendum - October 14 th 2023 7.2 Mental Health 7.3 Victoria’s Yoorrook Commission 7.4 People’s views on ‘Closing the Gap’

CHAPTER 1:

HISTORY

1.1. Background

Australia can be considered one of the oldest living cultural histories in the world, since the indigenous Australian Aborigines are reported to have been living in this nation for more than 50,000 years.¹ The original people who are known as the Aboriginal Torres Strait Islanders, also called the “First Nations People of Australia”² are nomadic hunters and farmers who settled in the coastal areas. They come from all areas of mainland Australia, including Tasmania and the surrounding Islands, including the Torres Strait Islands.³ They lived in small family groups in unique, strong, well-developed cultural communities. Their existence and lifestyles were interrupted by explorer James Cook in 1770 when he landed in the present Australia.⁴

On the other side of the world, in Britain, with the industrial revolution, people moved away from the countryside to the ever-growing industrial cities looking for work as agriculture was no longer a viable employment option. Crime rates increased exponentially due to the number of people in the cities struggling to find jobs living in abject poverty.⁵ The prisons became overcrowded and hard to maintain. As a solution the British government looked to the remote continent of Australia for *transportation*.^{*6}

Between 1788 and 1868, 162,000 convicts were transported by the British penal system to claim their presence and use the labour for colonial development.⁷ The first fleet of ships arrived in 1788⁸, with a cargo of convicts, settling in Botany Bay, New South Wales and establishing Australia as a British colony, which set the process of colonization in motion.⁹

From 1788 – 1859, Britain colonized and established six separate colonies within the continent of Australia.¹⁰ These six self-governing states were constitutionally connected to Britain.¹¹ South Australia, however, was called a province, as it was a place assigned not for convicts but for the free immigrants.¹² Although each colony had their separate parliaments and court

¹ ‘A Brief Guide to the History of Australia’ (*Insider Guides*, 30 March 2016)

< <https://insiderguides.com.au/brief-guide-history-australia/> > accessed 25 September 2023

² ‘Profile of First Nations People’ (*Australian Institute of Health and Welfare*, 7 September, 2023)

< <https://www.aihw.gov.au/reports/australias-welfare/profile-of-indigenous-australians> > accessed 6 March 2024

³ ‘Australia’s First Peoples’ (*AIATSIS*) < <https://aiatsis.gov.au/explore/australias-first-peoples> > accessed 26 September 2023

⁴ ‘Who was the First European to land on “Terra Australis?” < <https://www.nla.gov.au/faq/who-was-the-first-european-to-land-on-australia> > accessed 13 February 2024

⁵ ‘First Fleet’ (*Britannica Kids*) < <https://kids.britannica.com/students/article/First-Fleet/631554> > accessed 4 March 2024

⁶ *ibid.*

*Transportation was the method of punishment where the sentenced convicts were sent in exile to overseas penal colonies. This also provided the British government a way to remove criminals from British society while also providing a free labor force to build up new colonies. More than 200 crimes were punishable by transportation.

⁷ [Convicts in Australia - Wikipedia](#), retrieved 5/8/2024, 8.40

⁸ *ibid.*

⁹ *ibid.*

¹⁰ ‘Documenting a Democracy’ (*Museum of Australian Democracy*)

< <https://www.foundingdocs.gov.au/places.html#:~:text=Because%20each%20State%20began%20as,at%20135%20degrees%20of%20longitude> > accessed 25 September 2023

¹¹ *ibid.*

¹² ‘Australian Convict record’ (*State Library, South Australia*)

< <https://guides.slsa.sa.gov.au/convicts#:~:text=South%20Australia%20was%20an%20experimental,their%20convict%20past%20if%20possible> > accessed 4 March 2024

systems, they were, however, subjected to the laws of the British Parliament and courts with the Monarch being the sovereign to each colony.¹³

A large influx of immigrants was recorded in 1850's with the discovery of gold which further changed the course of Australia's history, with an expansion in population.¹⁴ In the 1870's, Torres Strait Islands were annexed to Queensland.¹⁵ On January 1st 1901, Australia not only celebrated a new year, but also the birth of a new country.¹⁶ The six colonies united as one nation under the name of the Commonwealth of Australia.¹⁷ Representatives from each colony created a set of rules on how to function as one nation and these rules became the basis for the Constitution. The British parliament passed the Commonwealth of Australia Constitution Act in 1990.¹⁸ The six colonies then constituted the six states and began to function under a federal parliamentary system called '*The Federation*.'¹⁹

1.2. Invasion and Colonization

Ever since the colonial invasion from 1788, the Aboriginal people of Australia have been facing oppression and discrimination in many forms, alien to their existence.²⁰ With the arrival of James Cook in 1788, Australia was considered *not as a land of conquest*, but a British Colony of settlement taking over lands on the basis that it is '*terra nullis*' (land belonging to no one) or wasteland.²¹

Having arrived at the coast, the invasion towards further inland began with the establishment of a base at Warrane (Sydney Cove.)²² Many Aborigines lived in the interior having special associations and boundaries with the land based on a strong spiritual and inheritance basis.²³ Hence, it is clear that the initial assumptions of the explorers with regard to the Aboriginal population and the land as *terra nullis* was erroneous.²⁴

The indigenous Aboriginal people were compelled to submit themselves to the invaders on the assumption that European culture was superior to all the others.²⁵ A subsequent resistance struggle by the indigenous people led to the so-called '*Frontier wars*' between the colonists and

¹³ 'How did the People of the Colonies feel about being part of the British Empire, Getting it Together From Colonies to Federation' (*MOAD, Old Parliament House*) <<https://getting-it-together.moadoph.gov.au/national-story/people-and-places/investigation-3.html>> accessed 4 March 2024

¹⁴ 'Gold Rushes' (*National Museum Australia*) <<https://www.nma.gov.au/defining-moments/resources/gold-rushes#:~:text=The%20discovery%20of%20gold%20in,and%20Bendigo%20Creek%20in%20Victoria>> accessed 4 March 2024

¹⁵ 'History' (*Strait Experience*) <www.straitexperience.com.au/about-the-torres-strait/history/#:~:text=The%20administrative%20centre%20was%20moved,the%20Legislative%20Assembly%20in%20Brisbane> accessed 2 October 2023

¹⁶ 'Australia's Federation' (*Parliamentary Education Office*) <<https://peo.gov.au/understand-our-parliament/history-of-parliament/federation/australias-federation>> accessed 4 March 2024

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ 'Colonization (1788-1890)' (*Working with Indigenous Australians First Nations People*)

< http://www.workingwithindigenoustralian.info/content/History_3_Colonisation.html > accessed 25 September 2023

²² Emma Dortins, 'Arabadoo (c. 1759–1789)' (*Australian Dictionary of Biography, National Centre of Biography, Australian National University*) < <https://adb.anu.edu.au/biography/arabadoo-1711/text40541> > accessed 26 September 2023

²³ 'Colonization 1788-1890' (*Working with Indigenous Australians First Nations People*)

< http://www.workingwithindigenoustralian.info/content/History_3_Colonisation.html > accessed 25 September 2023

²⁴ *ibid.*

²⁵ 'Colonization 1788-1890' (*Working with Indigenous Australians First Nations People*)

< http://www.workingwithindigenoustralian.info/content/History_3_Colonisation.html > accessed 25 September 2023

the natives. Additionally, disease and devastation struck the Aboriginal people, who had no resistance to the deadly viruses that came in with the influx of settlers, sailors and convicts.²⁶

1.3. Conflicts

For the indigenous people, the connection to land and water are vital as these are part of their spiritual universe.²⁷ In contrast, the colonizers see land as material and means of production from a capitalistic perspective, merely as a source to be exploited, in both senses of the term. Based on these contrasting orientations, the struggle for land rights became one of the fundamental challenges for the indigenous people who fought back the colonial powers.

One of the first recorded Aboriginal incidence of resistance has been in 1788²⁸ when two European convicts were killed accused of theft and transgression of Aboriginal Law, near Rushcutters Bay, now a suburb in Sydney.²⁹ These massacres, wars and incidents of resistance related to the Aborigines that began since the arrival of the colonists are referred to as the *Frontier Wars*.³⁰ Although the wars are said to have officially ended in the 1930's, many acts of violence and oppression have been continuing to this day, as do their resistance leading to the death of a substantial number of Aboriginal people.³¹

Due to the intervention of the colonial encounter combined with violence and diseases it is estimated that 90% of the original indigenous population may have been killed.³² The actual number of deaths of the Aborigines is not known for certain as many cases were covered up and/or not reported.³³

First of the frontier wars began on the west of Sydney in 1795,³⁴ when the local Aboriginal people in the areas of Hawkesbury and Nepean rivers called 'Darug,' stuck back against the cruelty of the settlers. The two groups continued their fight over the course of 20 years – known as the Hawkesbury and Nepean Wars.³⁵

The island of Tasmania, then called the Van Diemen's Land, was taken over by the British in 1803³⁶ leading to the long period of conflicts known as the Tasmanian War or the Black War.³⁷ Conflicts began all over the territory with the settlers taking over lands and killing animals leading to food shortages for the native population combined with harassment of women and

²⁶ 'Frontier Wars' (*Deadly Story*) < https://deadlystory.com/page/culture/history/Frontier_wars > accessed 26 September 2023

²⁷ 'Chapter 6, Indigenous Peoples and Water' Native Title Report 2008, at page 171, <https://humanrights.gov.au/sites/default/files/content/social_justice/nt_report/ntreport08/pdf/chap6.pdf> accessed 6 March 2024

²⁸ Jens Korff, 'Aboriginal timeline: Conflict' (*Creative Spirits*) < <https://www.creativespirits.info/aboriginalculture/history/australian-aboriginal-history-timeline/conflict> > accessed 26 September 2023

²⁹ Jane Morrison, 'Some Known Conflicts in Australian Colonies, States and Territories 1770-1940s' (*Australian Frontier Conflicts Timeline*, 11 July 2023) < <https://australianfrontierconflicts.com.au/timelines/timeline-of-australian-frontier-conflicts/> > accessed 26 September 2023

³⁰ 'Frontier Wars' (*Deadly Story*) < https://deadlystory.com/page/culture/history/Frontier_wars > accessed 26 September 2023

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*

³⁴ 'Indigenous and European Contact in Australia' (*Britannica Kids*) <<https://kids.britannica.com/students/article/IndigenousandEuropeanContactinAustralia/631556#:~:text=Angered%20by%20the%20invasion%20of,west%20of%20Sydney%20in%201795>> accessed 26 September 2023

³⁵ 'Hawkesbury and Nepean Wars' (*DBpedia*) <https://dbpedia.org/page/Hawkesbury_and_Nepean_Wars> accessed 4 March 2024

³⁶ 'Indigenous and European Contact in Australia' (*Britannica Kids*) <<https://kids.britannica.com/students/article/IndigenousandEuropeanContactinAustralia/631556#:~:text=Angered%20by%20the%20invasion%20of,west%20of%20Sydney%20in%201795>> accessed 26 September 2023

³⁷ *ibid.*

children. Fighting became intense in the 1820's and continued until 1830.³⁸ Martial law was imposed by the settlers that resulted in a near elimination of almost all Aboriginal people due to rampant mass killings.³⁹

In Western Australia, a mass killing of men women and children took place in 1834 known as the Battle of Pinjarra, which was in retaliation for a convict settler who was killed.⁴⁰

Similar mass killings took place in Queensland known as Kilcoy and Whiteside poisoning where flour that was deliberately poisoned was distributed to the locals;⁴¹ Battle of One Tree Hill⁴² took place in 1843 in retaliation for the poisoning, where the Aborigines blocked the only supply route to a settlement of the colonists in Downtown Darling;⁴³ a series of wars called the Kalkadoon Wars⁴⁴ in Queensland lasted from 1870-1890,⁴⁵ where about 900⁴⁶ Aborigines died protecting their land; Coniston massacre⁴⁷ took place in 1938⁴⁸ in the Northern Territory. This was recorded as one of the last mass killings in the frontier wars.⁴⁹ A study conducted by the University of New Castle, concludes that at least 10,000⁵⁰ indigenous people were killed in 416⁵¹ massacres between 1780 and 1930⁵² many being strategic attacks with the intention of genocide.



Figure SEQ Figure | * ARABIC 1
CITATION Rac22 | I 1033 (Knowles,
2022)

An eight-year project that tracked and recorded the frontier massacres on a national map; project lead, Newcastle historian Emeritus Professor Lyndall Ryan.



University of Newcastle's Massacre Map resource tracks frontier massacres across the nation between 1780 and 1930. Source: Supplied

³⁸ *ibid.*

³⁹ 'Frontier Wars' (*Deadly Story*) < https://deadlystory.com/page/culture/history/Frontier_wars > accessed 26 September 2023

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² 'Battle of One Tree Hill' (*Australian Frontier Wars*, 25 August 2020) < <https://historyguild.org/battle-of-one-tree-hill-australian-frontier-wars/> > accessed 4 March 2024

⁴³ *ibid.*

⁴⁴ 'Kalkadoon Wars' (*Wikiwand*) < https://www.wikiwand.com/en/Kalkadoon_Wars > accessed 4 March 2024

⁴⁵ Jens Korff, 'Aboriginal timeline: Conflict' (*Creative Spirits*) < <https://www.creativespirits.info/aboriginalculture/history/australian-aboriginal-history-timeline/conflict> > accessed 26 September 2023

⁴⁶ *ibid.*

⁴⁷ 'Frontier Wars' (*Deadly Story*) < https://deadlystory.com/page/culture/history/Frontier_wars > accessed 26 September 2023

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ Rachael Knowles, 'Over 100 colonial era massacres added to ongoing project' (*NITV News*, 16 March 2022)

< <https://www.sbs.com.au/nitv/article/over-100-colonial-era-massacres-added-to-ongoing-project/qr2wi3ezc> > accessed 26 September 2023

⁵¹ *ibid.*

⁵² *ibid.*

CHAPTER 2

Discriminatory Laws and Policies Concerning the Indigenous People

The long history of conquest, colonization and killings has established a structure of violence and discrimination that penetrates deep into the Australian social and political system to date. The struggle that is presently going on is symptomatic of this long history of discrimination and the apathy of the predominantly white Australian society.

The following section presents the details of these discriminatory practices.

2.1. Prior to 1901

Under the government policy to ‘protect’ the Aborigines in the 1800’s, all the states established ‘Protection Boards.’ From this point, the government’s policies on protection and assimilation began under the guise of various legislations.⁵³ In 1869, Victoria became the first colony to enact a policy to control the lives of the indigenous people through The Aboriginal Protection Act 1869 (Vic).⁵⁴ The Board for the protection of Aborigines gave extraordinary powers to control every aspect of their lives like residence, marriage, employment and social life. An amendment to this Act also brought a policy to forcibly remove ‘half-caste’ Aborigines from these missions and reserves, by changing the definition to exclude ‘half-caste.’⁵⁵

Within this repressive structure, the First People/Aboriginals were forcibly relocated onto reserves or missions, far away from their original dwelling, forbidden to speak their native language and practise their traditions. There were also widespread human rights abuses in the missions subject to arbitrary rules. Many were used as forced labour under heavy monitoring; families were broken up, expelled, and properties confiscated.⁵⁶ These activities were carefully choreographed to erase Aboriginal people’s cultural identity.⁵⁷

2.2. Constitution

Subsequent to the establishment of the Federal Parliament and Constitution of Australia coming into effect from January 1901, the laws governing the Aboriginal population migrated to individual states, thus allowing each state to pass the Colonial and State Aborigines Protection Acts.⁵⁸

⁵³ ‘Chapter 2, Life under the Protection Acts’ (*Parliament of Australia*)

<https://www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/2004-07/stolen_wages/report/c02> accessed 4 March 2024

⁵⁴ ‘The Aboriginal Protection Act 1869 (Vic)’ (*Documenting Democracy*) <<https://www.foundingdocs.gov.au/item-sdid-22.html>> accessed 26 September 2023

⁵⁵ ‘The Aborigines Protection Act 1869 (1887-1890)’ (*Find & Connect*)

<[https://www.findandconnect.gov.au/guide/vic/E000432#:~:text=The%20Aborigines%20Protection%20Act%201886%20\(1887%20%2D%201890\)&text=The%20Aborigines%20Protection%20Act%201886%2C%20No.,exclude%20%22half%2Dcastes%22](https://www.findandconnect.gov.au/guide/vic/E000432#:~:text=The%20Aborigines%20Protection%20Act%201886%20(1887%20%2D%201890)&text=The%20Aborigines%20Protection%20Act%201886%2C%20No.,exclude%20%22half%2Dcastes%22)> accessed 26 September 2023

⁵⁶ ‘Missions, Reserves and Stations’ (*Australian Museum*, 1 September 2021) <<https://australian.museum/learn/first-nations/unsettled/surviving-genocide/missions-reserves-stations/>> accessed 4 March 2024

⁵⁷ *ibid.*

⁵⁸ ‘Protection Legislation introduced in Victoria’ (*Deadly Story*)

<https://deadlystory.com/page/culture/history/Protection_legislation_introduced_in_Victoria#:~:text=Aboriginal%20Protecti

Since the indigenous people have already been displaced and oppressed, this Federation in 1901 was not a cause for a celebration. The Aboriginals and the Torres Strait Islanders have been documented as the First Australians, and their recognition in the Constitution (sections 5 and 127)⁵⁹ was discriminatory as they were not consulted during the drafting of the constitution. As such, they could not vote, nor were they included in the census as the federal laws effectively excluded them.⁶⁰ Overall, the constitution had two sections referring to the Aborigines that marginalized them and turned them into second class citizens in their own land.⁶¹

As commented by Webber, “*The authors of the Constitution believed that Indigenous Australians would die out and so didn’t require recognition or special laws.*”⁶²

All the discriminatory provisions led to a humanitarian movement being founded in Britain called the ‘Aborigines Protection Society’⁶³ advocating for the Aboriginal people’s recognition in the constitution in the 1900’s.⁶⁴ Although they were ignored, the demand for change grew louder.⁶⁵

During 1933-1940, William Cooper, leader of Yorta Yorta (an Aboriginal clan near the surrounding Murray Rivers⁶⁶) set to petition to King George V, for the Aboriginal people to be represented in the Commonwealth Parliament. He argued that the British Crown had a moral duty to do so, because the 1788 commission stated “*the [country’s] original inhabitants and their heirs and successors should be adequately cared for*”⁶⁷

2.3. Subsequent Legislations

The situation hardly changed and the discriminatory laws continued to be enacted as noted below.

- The Aborigines Act of 1905 was enacted as ‘*An Act to make provision for the better protection and care of the Aboriginal inhabitants of Western Australia.*’ For almost 60 years this Act governed the lives of the First People.⁶⁸

[on%20Act%201869%20\(Vic\)%20\(transcript\)&text=The%20Aboriginal%20Protection%20Act%201869,the%20lives%20of%20Aboriginal%20people](#)> accessed 4 March 2024

⁵⁹ Caroline Webber, ‘Equal Rights for Aborigines; Indigenous Activism and Constitutional Reform’ (*National Archives of Australia*, 29 May 2020) < <https://www.naa.gov.au/blog/equal-rights-aborigines-indigenous-activism-and-constitutional-reform> > accessed 26 September 2023

⁶⁰ ‘The 1967 Referendum’ (*Deadly Story*) < https://deadlystory.com/page/culture/history/The_1967_Referendum > accessed 27 September 2023

⁶¹ ‘Timeline – Events that led to the 1967 referendum’ (*National Library of Australia*) <<https://www.nla.gov.au/digital-classroom/year-10/1967-referendum/timeline-events-led-1967-referendum> > accessed 26 September 2023

⁶² Caroline Webber, ‘Equal Rights for Aborigines; Indigenous Activism and Constitutional Reform’ (*National Archives of Australia*, 29 May 2020) < <https://www.naa.gov.au/blog/equal-rights-aborigines-indigenous-activism-and-constitutional-reform> > accessed 26 September 2023

⁶³ ‘Aborigines Protection Society’ (*Quakers in the World*) <<https://www.quakersintheworld.org/quakers-in-action/386/Aborigines-Protection-Society>> accessed 4 March 2024

⁶⁴ ‘Timeline – Events that led to the 1967 referendum’ (*National Library of Australia*) <<https://www.nla.gov.au/digital-classroom/year-10/1967-referendum/timeline-events-led-1967-referendum> > accessed 26 September 2023

⁶⁵ Caroline Webber, ‘Equal Rights for Aborigines; Indigenous Activism and Constitutional Reform’ (*National Archives of Australia*, 29 May 2020) < <https://www.naa.gov.au/blog/equal-rights-aborigines-indigenous-activism-and-constitutional-reform> > accessed 26 September 2023

⁶⁶ ‘Come walk with us the people of Yorta Yorta country’ (*Deadly Story*) <https://deadlystory.com/page/aboriginal-countrymap/Aboriginal_Country_In_Development/Yorta_Yorta#:~:text=The%20Yorta%20Yorta%20people%20come,provided%20by%20the%20ancestral%20lands > accessed 27 September 2023

⁶⁷ Bain Munro Attwood, ‘90 years ago, Yorta Yorta leader William Cooper petitioned the King for Aboriginal representation in Parliament’ (*The Conversation*, 2 March 2023) <<https://theconversation.com/90-years-ago-yorta-yorta-leader-william-cooper-petitioned-the-king-for-aboriginal-representation-in-parliament-198396> > accessed 27 September 2023

⁶⁸ ‘Aborigines Act 1905 (1906-1964)’ (*Find & Connect*) < <https://www.findandconnect.gov.au/guide/wa/WE00406> > accessed 26 September 2023

This Act created the position of Chief Protector of Aborigines, who became the legal guardian of every Aboriginal child to the age of 16 years, and permitted authorities to 'send and detain' Aboriginal children in institutions and in 'service' (work),⁶⁹

- The Native Welfare Act 1963 which repealed Aborigines Act 1905 made provisions for the Commissioner of Native Welfare to cease to be the guardian of Aboriginal children, and went one step further to take the responsibility for the '*custody, maintenance and education of the children of natives*'.⁷⁰

This Act was later repealed by another Act in 1972,

- 'The Aboriginal Affairs Planning Authority Act 1972 (Act no.1972/024)' – this Act was not responsible for Aboriginal matters and was no longer directly involved in out of home care for Aboriginal children in Western Australia.⁷¹

These two legislations had an intrusive policy objective of separating Aboriginal children from their families to be raised in the 'white way'.

- An Act called the Aborigines Protection Act of 1909 was passed in New South Wales that allowed for the Aboriginal children to be removed from families if the courts declared them to be 'neglected' and for the Aboriginal people to be removed from towns, preventing non-Aborigines from associating with Aborigines.⁷²
- An amendment to this Act in 1915 created a government sanctioned practice for removing Aboriginal children from their families, even without having to prove they are 'neglected' in a court of law.⁷³

Under such a highly discriminatory set of a multitude of laws removal of children from families took place who later came to be known as the Stolen Children or the "Stolen Generation". *⁷⁴ Due to poor recordkeeping, the precise number of children who had been forcibly removed from families is still unknown.⁷⁵

Direct activism by the Aborigines brought an end to such policies in 1972.⁷⁶

- The 1939 Queensland Act continued the financial management controls for Aboriginal workers whereby the Protectors retained the power to direct employers to pay the whole or part of a worker's wages to the protector⁷⁷.

⁶⁹ *ibid.*

⁷⁰ 'Native Welfare Act 1963 (1963-1972)' (*Find & Connect*) < <https://www.findandconnect.gov.au/guide/wa/WE00423> > accessed 26 September 2023

⁷¹ 'Aboriginal Affairs Planning Authority Act 1972 (1972-)' (*Find & Connect*) < <https://www.findandconnect.gov.au/guide/wa/WE00427> > accessed 26 September 2023

⁷² 'Aborigines Protection Act 1909 (1909-1969)' (*Find & Connect*) < <https://www.findandconnect.gov.au/guide/nsw/NE00010#:~:text=The%20Aborigines%20Protection%20Act%201909.consequent%20thereon%20or%20incidental%20thereto> > accessed 26 September 2023

⁷³ *ibid.*

⁷⁴ *The Stolen Generations refers to a period in Australia's history where Aboriginal children were removed from their families through government policies. This happened from the mid-1800s to the 1970s.

'Who are the Stolen Generations?' (*Healing Foundation*) < <https://healingfoundation.org.au/who-are-the-stolen-generations/#:~:text=The%20Stolen%20Generations%20refers%20to,mid%2D1800s%20to%20the%201970s> > accessed 6 March 2024

⁷⁵ 'Defining Moments, Aborigines Protection Act' (*national museum Australia*) < <https://www.nma.gov.au/defining-moments/resources/aborigines-protection-act> > accessed 26 September 2023

⁷⁶ Brandon Etto, 'The Impact of Colonialism on Aboriginal people' (*linkedin.com*, 6 February 2017) < <https://www.linkedin.com/pulse/impacts-colonialism-aboriginal-people-brandon-etto/> > accessed 26 September 2023

⁷⁷ 'Chapter 2 - Life under the protection acts' (*Parliament of Australia*) < www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/2004-07/stolen_wages/report/c02 > accessed 26 September 2023

Long, torturous campaigning, awareness raising and petitioning have been carried by many champions and heroes- Aboriginals and Non-Aboriginals alike. The Federal Council for Aboriginal Advancement⁷⁸ conducted a national petition campaign during 1962-1963 highlighting the discriminatory laws and inconsistency in the legal settings within the states regarding the indigenous people.⁷⁹ The petition with 103,000 signatures was presented to parliament to secure the parliament support.⁸⁰

To raise awareness of the poor state of the health, education and housing services for the Aborigines, Charles Perkins led 'The Freedom Ride' in 1965 in the western New South Wales. This also drew the attention of the public.⁸¹

Following that in 1967, under the leadership of the then Prime Minister Harold Holt, the *Constitution Alteration Bill* was passed in both the Senate and the House of Representatives, allowing for a referendum to be called.⁸²

The referendum question was simple. The Australians had to vote 'yes or no' to the question that proposed whether *to alter the constitution to recognize the First People of Australia Voice*.

*"A resounding 90.77 per cent said 'Yes' and every single state and territory had a majority result for the 'Yes' vote. It was one of the most successful national campaigns in Australia's history."*⁸³

This event is historically known today as the 'Yes Vote', and in response brought about a symbolic value to the fight for rights. Thereafter, on 10th August 1967 the constitution was formally changed as the Constitutional Alteration (Aboriginals) Act No 55 of 1967.⁸⁴

"The 1967 referendum was a major milestone in the long journey to equality for Aboriginal and Torres Strait Islander people – a step towards Australia becoming a more just and equitable society, where all Australians are in this together." (Webber, 2020)

However, even though there have been criticisms regarding the referendum as having been misunderstood, there hasn't been any great impact. The perception was "they promised us the world and gave us an atlas" (Taylor, 2017).

Changes following the referendum were slow and disappointing leading to widespread disillusionment for the Aboriginals. The referendum did not give them voting rights nor did it extend social welfare benefits. It did not provide for equal pay or wage justice nor did it do away with the state systems of protection completely.⁸⁵ However, the long-term impacts can be

⁷⁸ *a council that was established in 1958, based on an idea to form a federal council, uniting the existing state bodies to press for greater involvement of the Commonwealth government in Aboriginal affairs and to work for the removal of discriminatory legislations.

⁷⁹ 'Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI)' (*national museum Australia*) <https://indigenoustrights.net.au/organisations/pagination/federal_council_for_the_advancement_of_aborigines_and_torres_strait_islanders_fcaatsi> accessed 27 September 2023

⁸⁰ Russell Taylor, 'Indigenous Constitutional Recognition: The 1967 Referendum and Today' (*Parliament of Australia*) <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/Papers_on_Parliament_68/Indigenous_Constitutional_Recognition_The_1967_Referendum_and_Today> accessed 27 September 2023

⁸¹ 'Analysis - Five Things you should know about the 1967 Referendum' (*The University of Sydney*, 27 May 2017) <<https://www.sydney.edu.au/news-opinion/news/2017/05/29/five-things-to-know-about-the-1967-referendum.html>> accessed 27 September 2023

⁸² 'Timeline – Events that led up to the 1967 Referendum' (*National Library of Australia*) <<https://www.nla.gov.au/digital-classroom/year-10/1967-referendum/timeline-events-led-1967-referendum>> accessed 27 September 2023

⁸³ 'The 1967 Referendum' (AIATSIS) <<https://aiatsis.gov.au/explore/1967referendum#:~:text=On%2027%20May%201967%2C%20Australians,to%20make%20laws%20for%20them>> accessed 27 September 2023

⁸⁴ 'Timeline – Events that led up to the 1967 Referendum' (*National Library of Australia*) <<https://www.nla.gov.au/digital-classroom/year-10/1967-referendum/timeline-events-led-1967-referendum>> accessed 27 September 2023

⁸⁵ Henry Reynolds, 'Aborigines and the 1967 Referendum: Thirty Years On' *Papers on Parliament No. 31 June 1998* (Department of the Senate Occasional Lecture Series at Parliament House, 14 November 1998)

witnessed by the dismantling of the residual discriminatory laws, the development of new approaches, changes made to section 52 of the Constitution and the inclusion of the Aborigines into the census collation.⁸⁶

<https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/pop31/c05#:~:text=After%20all%2C%20the%20referendum%20did,allowed%20the%20Commonwealth%20to%20legislate> accessed 27 September 2023

⁸⁶ Russell Taylor, 'Indigenous Constitutional Recognition: The 1967 Referendum and Today' (*Parliament of Australia*) <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/Papers_on_Parliament_68/Indigenous_Constitutional_Recognition_The_1967_Referendum_and_Today> accessed 27 September 2023

CHAPTER 3

Events that demonstrated the struggles of the Aboriginal Australians

This Chapter records the timeline of the struggle for the Aboriginal Rights⁸⁷

3.1. Timeline

Australia set up a 10-year policy of reconciliation in the 1990s in order to develop an improved relationship between the indigenous community and the larger Australian population. This policy was based on recognizing and acknowledging the increasing dichotomy between these communities since the 1970s.⁸⁸

1971

The Northern Territory Supreme Court (SC) decided against the Aboriginal people and in favour of a mining company to have access to Aboriginal lands, shocking many in the process. It was concluded that the Australian Common law did not recognize Aboriginal land rights.⁸⁹

1972

In protest against the 1971 SC decision and their plea for land rights failing yet again, the Aboriginal people erected the *Tent Embassy* *⁹⁰ in Canberra in 1972 as a protest. The Supreme Court of the Australian Capital Territory deemed the removal of the Aboriginal *Tent Embassy* as illegal and instructed its removal.⁹¹

The *Tent Embassy* has become a heritage-listed landmark for Aboriginal protest. In the year of 2022, the Aboriginal *Tent Embassy* celebrated its 50th Anniversary, making it Australia's longest standing site of political agitation.⁹²

The Larrakia Petition of 1972 is one of the most important documents in the history of their struggle for land rights. Signed by 1,000 Aboriginal people, it had been titled as *Gwalwa*

⁸⁷ Jens Korff, 'Aboriginal timeline – Protest' (*Creative Spirits*)

<<https://www.creativespirits.info/aboriginalculture/history/australian-aboriginal-history-timeline/protest?page=2>> accessed 28 November 2023

⁸⁸ Delphine David., 'White, Indigenous and Australian: Constructions of Mixed Identities in today's Australia' History, Université Sorbonne Paris Cité, 2017 <<https://theses.hal.science/tel-02093056/document>> accessed 6 March 2024

⁸⁹ Jens Korff, 'Aboriginal Tent Embassy, Canberra' (*Creative Spirits*, 1 March 2022)

<<https://www.creativespirits.info/aboriginalculture/history/aboriginal-tent-embassy-canberra>> accessed 2 November 2023

⁹⁰ *A beach umbrella that was planted opposite Parliament House (now known as Old Parliament House). They erected a sign that said "Aboriginal Embassy". The term "embassy" was used to bring attention to the fact Aboriginal people had never ceded sovereignty nor engaged in any treaty process with the Crown. As a collective, Aboriginal people were the only cultural group not represented with an embassy. The Tent Embassy was therefore a public display of our disapproval of and objection to the policies and practices of the government.

Jens Korff, 'Aboriginal Tent Embassy, Canberra' (*Creative Spirits*, 1 March 2022)

<<https://www.creativespirits.info/aboriginalculture/history/aboriginal-tent-embassy-canberra>> accessed 2 November 2023

⁹¹ *ibid.*

⁹² *ibid.*

Daraniki which means 'this is our land'. This petition calls for their land rights and political representation.⁹³

The original attempt to present the petition to Princess Margaret during her official visit to Darwin in October 1972 by breaking through the police barriers led to a scuffle and the petition being torn in the process. This incident symbolises the struggles the Aboriginals faced. Subsequently, they posted it to the Queen with an accompanying apology letter for the poor condition of the document.⁹⁴

The petition was sent by Buckingham Palace to the office of the Australian Governor-General, Sir Paul Hasluck in early 1973. From there it was placed on file in the Department of Aboriginal Affairs before being deposited with the National Archives of Australia in 1975.⁹⁵

1973

National Aboriginal Consultative Committee (NACC) was established to advise the Department of Aboriginal Affairs and the subject Minister on “*all matters affecting Aboriginal People*”.⁹⁶

The Aboriginal Land Rights Commission, also called the Woodward Royal Commission, was established to look into appropriate ways to recognize Aboriginal land rights in the Northern Territory. This was not, “to see *whether* the Indigenous population should be given land rights, but to see *how* they could be given land rights. There was no longer any question on a federal level as to the Aboriginal people's ownership of land in Australia; the question now was how to grant it (emphasis added).”⁹⁷

1975

Racial Discrimination Act was enacted that prohibited unlawful discrimination against a person due to race, colour, descent, national or ethnic origin or immigrant status, in many areas of public life like employment, land and housing, access to places and provision of goods and services.⁹⁸

1976

Aboriginal Land Rights (Northern Territory) Act was passed with historic bipartisan support. It was the first legislation that allowed for First Nations peoples to claim land title if traditional association could be proven.⁹⁹

⁹³ Jens Korff, ‘The 1972 Larrakia Petition’ (*Creative Spirits*, 8 February 2019)

<<https://www.creativespirits.info/aboriginalculture/land/the-1972-larrakia-petition>> accessed 2 November 2023

⁹⁴ *ibid.*

⁹⁵ *ibid.*

⁹⁶ ‘History repeating – the series of indigenous advisory voices that government ignored’ (*Solidarity.net.au*, 3 April 2023)

<<https://solidarity.net.au/highlights/history-repeating-the-series-of-indigenous-advisory-voices-that-governments-ignored/>> accessed 6 March 2024

⁹⁷ ‘The Woodward Royal Commission’

<<https://www.skwirk.com.au/skwirk/uploadFiles/content/database/files/chapter.1135.body.html>> accessed 6 March 2024

⁹⁸ ‘Racial Discrimination’ (*Australian Human Rights Commission*) <<https://humanrights.gov.au/our-work/employers/racial-discrimination#:~:text=The%20Racial%20Discrimination%20Act%201975.ethnic%20origin%2C%20or%20immigrant%20status>> accessed 6 March 2024

⁹⁹ ‘Aboriginal Land Rights Act’ (*national museum Australia*)

<<https://www.nma.gov.au/definingmoments/resources/aboriginallandrightsact#:~:text=In%20December%201976%20the%20Aboriginal,traditional%20association%20could%20be%20proven>> accessed 2 November 2023

Four land councils were established under the Act. By 2020, about 50% of the Northern Territory and 85% of its coastline was recognized as being owned by First Nations groups.¹⁰⁰

1977

More than 200 Aborigines lobbied for Aboriginal land rights demanding the abolition of Aboriginal land trusts, as a result of which a non-statutory New South Wales (NSW) Aboriginal Land Council was established.¹⁰¹

1979

In *Coe Vs Commonwealth*, an Aboriginal barrister was unsuccessful in challenging the legal concept that ‘Australia had been an uninhabited land which had been settled and not conquered.’¹⁰²

1980

‘The Black Mist of 1953’ brought to attention the radioactive contamination of the Aboriginal people in South Australia when symptoms of sight loss and skin rashes were reported as a result of atomic bomb testing by the British military with the Australian government approval.¹⁰³

1982

About 1,000 Queensland Aborigines protested at the Commonwealth Games, holding banners and wearing badges that read “Stop playing games: land rights now.”¹⁰⁴

1985

A protest took place against the proposed changes to the Aboriginal Land Rights of the Northern Territory.¹⁰⁵

1988

SURVIVAL DAY – thousands of Aborigines marched through the streets of Sydney to celebrate their survival during the previous 200 years.¹⁰⁶

¹⁰⁰ *ibid.*

¹⁰¹ ‘Our History’ (*New South Wales Aboriginal Land Council*) <<https://alc.org.au/our-history/>> accessed 6 March 2024

¹⁰² ‘Aboriginal Timeline: Land and land rights’ <<https://www.creativespirits.info/aboriginalculture/history/australian-aboriginal-history-timeline/landrights?page=2>> accessed 7 March 2024

¹⁰³ *ibid.*

¹⁰⁴ ‘Commonwealth Games Brisbane and Aboriginal Protest 1982’ (*Museums Victoria Collection*) <<https://collections.museumsvictoria.com.au/articles/2766#:~:text=On%2029%20September%201%2C000%20people.in%20Brisbane%20during%20the%20Games>> accessed 7 March 2024

¹⁰⁵ Jens Korff, ‘Aboriginal timeline – Protest’ (*Creative Spirits*) <<https://www.creativespirits.info/aboriginalculture/history/australian-aboriginal-history-timeline/protest?page=2>> accessed 28 November 2023

¹⁰⁶ Nicole Cama, ‘Anniversary Day, Australia Day, Survival Day, Invasion Day’ (*Dictionary of Sydney*) <https://dictionaryofsydney.org/blog/anniversary_day_australia_day_survival_day_invasion_day> accessed 7 March 2024

1991

The Council for Aboriginal Reconciliation was set up funded by the Commonwealth Parliament as a statutory body under the Council for Aboriginal Reconciliation Act 1991. The Council's overall task was to promote the reconciliation process between Aboriginals and the wider Australian community.¹⁰⁷

The Royal Commission into Aboriginal Deaths in Custody presents its report to the Commonwealth where out of the 99 deaths investigated, 43 were of people who were separated from their families as children.¹⁰⁸

Two thirds of the Upper House in Tasmania rejected a land rights bill purporting to transfer title to 21 areas of land for Aboriginal communities.¹⁰⁹

1992

Prime Minister Paul Keating spoke at Redfern Park Sydney, to mark the start of the year of the Indigenous People acknowledging past wrongs against the Aboriginal people.¹¹⁰

1997

On 27th May 1997, at the opening address of the Reconciliation Committee, Premier John Howard referred to the plight of the Aboriginals as a mere 'blemish', dismissing centuries of dispossession and violence as insignificant. Indigenous *delegates* protested by turning their backs on the Prime Minister.¹¹¹

2000

The Aboriginal *Tent Embassy* was set up in Sydney during the time of Olympics, to attract the world's attention towards the Australian Indigenous issues.¹¹²

2004

Michael Long, a former Australian footballer player of Aboriginal descent, walked from Canberra to Melbourne to speak with the then Prime Minister John Howard to raise awareness about the Aboriginal struggles. This came to be known as the Long Walk.¹¹³

¹⁰⁷ 'The Council for Aboriginal Reconciliation' (*Reconciliation Australia*)

<www5.austlii.edu.au/au/orgs/car/council/spl98_20/council.htm> accessed 7 March 2024

¹⁰⁸ 'Track the History Timeline: The Stolen Generations' (*Australian Human Rights Commission*)

<<https://humanrights.gov.au/our-work/education/track-history-timeline-stolen-generations>> accessed 28 November 2023

¹⁰⁹ Denise Garder, 'Aborigines and Land Rights in Tasmania- the Deep South' (*Aboriginal Law Bulletin*)

<www.austlii.edu.au/cgi-bin/viewdoc/au/journals/AboriginalLawB/1991/53.html> accessed 7 March 2024

¹¹⁰ Tom Griffiths, 'The Quest for Indigenous Recognition: 1992 The Redfern Park Speech' (*Australian Dictionary of Biography*)

<adb.anu.edu.au/the-quest-for-indigenous-recognition/the-redfern-park-speech> accessed 7 March 2024

¹¹¹ 'Reconciliation Convention 1997' (*State Library of Victoria*) <ergo.slv.vic.gov.au/explore-history/fight-rights/indigenous-rights/reconciliation-convention-1997> accessed 7 March 2024

¹¹² Jens Korff, 'Aboriginal timeline: Politics' (*Creative Spirits*)

<<https://www.creativespirits.info/aboriginalculture/history/australianaboriginalhistorytimeline/politics?page=6&limit=all>> accessed 28 November 2023

¹¹³ *ibid.*

2007

When 143¹¹⁴ nations adopted the United Nations Declaration on the Rights of Indigenous Peoples, Australia along with Canada, US and New Zealand, voted against the declaration. Later in 2009, Australia supported this declaration.

2010

The UN Committee on the Elimination of Racial Discrimination (CERD) delivers a negative report on Australia's failure to meet international commitments on eliminating discrimination.¹¹⁵

2012

Aborigines set up tent embassies in 3 cities to draw attention to sovereignty and native titles. A widespread outrage and a petition signed by over 20,000 people, made Facebook remove a page of Aboriginal memes portraying Aborigines as drunk and taking advantage of welfare.¹¹⁶

2015

A sit-in in Canberra Parliament House was started by the Aboriginal people to confront the politicians about their affairs around the country. They demanded that the Commonwealth Australia begin negotiations on decolonization with the goals of healing from the violations of human rights of the Aborigines.¹¹⁷

Thousands rally protesting against the planned closure of around 150 remote Aboriginal Communities in Western Australia.¹¹⁸

2016

Aboriginal leaders came together to announce the Redfern Statement, *¹¹⁹ an urgent call for a more just approach to Aboriginal Affairs and government action.¹²⁰

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ Asher Moses and Adrian, 'Contents removed from racist Facebook page' (*The Sydney Morning Herald*, 8 August 2012) <<https://www.smh.com.au/technology/contents-removed-from-racist-facebook--page-20120808-23tr1.html>> accessed 9 March 2024

¹¹⁷ Jens Korff, 'Aboriginal timeline: Politics' (*Creative Spirits*) <<https://www.creativespirits.info/aboriginalculture/history/australianaboriginalhistorytimeline/politics?page=6&limit=all>> accessed 28 November 2023

¹¹⁸ *ibid.*

¹¹⁹ *The Redfern statement is an 18-page manifesto signed by 18 Aboriginal Organizations coming together demanding a new and better relationship with the government, which set out their expectations and priorities for engagement and progress. It is a blueprint to address the disadvantage and inequality many Aboriginal communities are still challenged with in areas such as health, education, justice and family violence.

'The 2016 Redfern Statement' (*Creative Spirits*) <<https://stage.creativespirits.info/aboriginalculture/politics/the-2016-redfern-statement>> accessed 9 March 2024

¹²⁰ 'The 2016 Redfern Statement' (*Creative Spirits*) <<https://stage.creativespirits.info/aboriginalculture/politics/the-2016-redfern-statement>> accessed 9 March 2024

2017

An Aboriginal teenager, Aretha Brown, was chosen as the first female Aboriginal youth Prime Minister of Australia at the National Youth Parliament in Canberra.¹²¹

‘Spirit Walker’ Clinton Pryor walked 5,800 kilometres – a year long walk, to highlight the situation of the Aborigines, meets the Prime Minister and presents him with a list of grievances on the state of the Aboriginal affairs.¹²²

2020

Triggered by the death of a Black person named George Floyd by the police in the USA, thousands joined the Black Lives Matter (BLM) protests across Australia, to complain about the deaths of the Aboriginal people in police custody.¹²³

2023

Referendum was held to constitutionally recognize the Aboriginal rights.¹²⁴ The rejection of the proposal to recognize the Indigenous people in the constitution, became a major setback to Australia's efforts for reconciliation with its First Peoples.¹²⁵ Prime Minister Anthony Albanese acknowledged that since this was not the outcome he had hoped for, that Australia would have to seek a new way forward for reconciliation.¹²⁶

¹²¹ Jens Korff, ‘Aboriginal timeline: Politics’ (*Creative Spirits*)

<<https://www.creativespirits.info/aboriginalculture/history/australianaboriginalhistorytimeline/politics?page=6&limit=all>> accessed 28 November 2023

¹²² Damien Murphy, ‘Long Walk for Justice: ‘Spiritual Walker’ Clinton Pryor crosses the country for his people’ (*The Sydney Morning Herald*, 10 August 2017) <<https://www.smh.com.au/national/nsw/long-walk-for-justice-spiritual-walker-clinton-pryor-crosses-the-country-for-his-people-20170810-gxtsnt.html>> accessed 9 March 2024

¹²³ ‘Thousands Rally across in Australia in Black Lives Matter protests’ (*Reuters*, 4 July 2020)

<<https://www.reuters.com/article/global-race-protests-australia/thousands-rally-across-australia-in-black-lives-matter-protests-idINKCN24509U/>> accessed 10 March 2024

¹²⁴ ‘Referendum on an Aboriginal and Torres Strait Islander Voice’ (*National Indigenous Australians Agency*)

<www.niaa.gov.au/indigenous-affairs/referendum-aboriginal-and-torres-strait-islander-voice> accessed 10 March 2024

¹²⁵ Praveen Menon, Lewis Jackson and Wayne Cole, ‘Australia rejects Indigenous referendum in setback for reconciliation’ (*Reuters*, 14 October 2023) <<https://www.reuters.com/world/asia-pacific/voting-begins-australia-landmark-indigenous-voice-referendum-2023-10-13/>> accessed 23 March 2024

¹²⁶ *ibid.*

CHAPTER 4

Reconciliation in Australia

Ever since the colonization of the First people and the repression, discrimination and violence they were subjected to, by the white settlers, the first people have been confronting this reality by resisting it in various ways, as discussed in Chapter 3.

The custodial deaths in state and territories of Australia led to an outcry and a royal commission was set up.¹²⁷ This led to a process of national reconciliation,¹²⁸ with the landmark decision of the high court of Australia that overturned the principle of *terra nullis*.¹²⁹

This chapter deals with the chronology of the process of reconciliation and actions carried therein.

4.1. History of Formal Reconciliation – 1987 to 2023

1987

In response to the public concern of consistent deaths related to Aborigines in custody in state and territories, a Royal Commission was set up by the then Prime Minister Hawke called The Royal Commission into Aboriginal Deaths in Custody.¹³⁰

1991

The final report on the above-mentioned Commission was presented and called for a process of national reconciliation.

The process of reconciliation formally began as a result of the report of this Commission.¹³¹ The Australian Commonwealth Parliament officially launches this process by unanimously passing the Council for Aboriginal Reconciliation Act 1991¹³² and establishing the Council for Aboriginal Reconciliation (CAR), that set up a 10-year time frame to advance a national process of reconciliation and addressing Aboriginal disadvantages.¹³³

¹²⁷ 'Royal Commission into Aboriginal Deaths in Custody' (*National Archives of Australia*) <<https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody>> accessed 2 October 2023

¹²⁸ 'Reconciliation Timeline: Key Moments' (*Reconciliation Australia*, 19 May 2021) <<https://www.reconciliation.org.au/reconciliation-timeline-key-moments/>> accessed 2 October 2023

¹²⁹ 'Overturning the doctrine of Terra Nullius: The Mabo Case' AIATSIS NTRU Mabo v Queensland <https://aiatsis.gov.au/sites/default/files/research_pub/overturning-the-doctrine-of-terra-nullius_0_3.pdf> accessed 10 March 2024

¹³⁰ 'Royal Commission into Aboriginal Deaths in Custody' (*National Archives of Australia*) <<https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody>> accessed 2 October 2023

¹³¹ 'How did Reconciliation start in Australia?' (*Creative Spirits*) <<https://www.creativespirits.info/aboriginalculture/people/what-you-need-to-know-about-reconciliation>> accessed 23 March 2024

¹³² 'Reconciliation Timeline: Key Moments' (*Reconciliation Australia*, 19 May 2021) <<https://www.reconciliation.org.au/reconciliation-timeline-key-moments/>> accessed 2 October 2023

¹³³ 'How did Reconciliation start in Australia?' (*Creative Spirits*) <<https://www.creativespirits.info/aboriginalculture/people/what-you-need-to-know-about-reconciliation>> accessed 23 March 2024

CAR's vision was "*A united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all.*"¹³⁴

1992

Mabo V Queensland (No.2) recorded a landmark decision by the High Court of Australia in 1992 that recognized the Native Title of Australia, overturning the myth of '*terra nullius*.'¹³⁵

One of the most noteworthy events that is still spoken of today is the *Redfern Address* where the then Prime Minister Paul Keating delivered the momentous speech, *for the tangible and passionate acceptance of responsibility for Aboriginal loss, devastation and trauma.* (Grives 1992)¹³⁶

1993

12 months after the landmark case of *Mabo V Queensland*, later the government enacted the *Natives Title Act (Cth) 1993* to recognize, protect and determine claims for native titles.¹³⁷

1997

'*Bringing Them Home*' Report of April 1997,¹³⁸ was a tribute to the strength and struggles of thousands of Aborigines affected by the forcible removal of their children from their families, acknowledging their hardships and sacrifices and to remember and lament all the children who will never come home.

2000

After almost a decade of research and consultations, CAR (See 1991 above) presented its final report titled, "*The Australian Declaration towards Reconciliation and The Roadmap for Reconciliation.*"¹³⁹

One of the recommendations of this report was the formation of 'Reconciliation Australia'¹⁴⁰- an independent, non-profit organization and the national body for reconciliation in Australia that focuses on influencing organization, people and policies.¹⁴¹

¹³⁴ '2021:20 years of Reconciliation Australia' <<https://www.reconciliation.org.au/2021-20-years-of-reconciliation-australia/>> accessed 23 March 2024. (See Years 2000 & 2001 for details)

¹³⁵ 'Overturning the doctrine of Terra Nullius: The Mabo Case' AIATSIS NTRU Mabo v Queensland <https://aiatsis.gov.au/sites/default/files/research_publications/overturning-the-doctrine-of-terra-nullius_0_3.pdf> accessed 10 March 2024

¹³⁶ 'Keating Speech: The Redfern Address (1992)' (Australian Screen NFS website) <<https://aso.gov.au/titles/spoken-word/keating-speech-redfern-address/notes/>> accessed 2 October 2023

¹³⁷ 'About Native Title' (AIATSIS) <<https://aiatsis.gov.au/about-native-title/>> accessed 2 October 2023

¹³⁸ 'Bringing them Home Report (1997)' (Australian Human Rights Commission) <<https://humanrights.gov.au/our-work/bringing-them-home-report-1997>> accessed 27 November 2023

¹³⁹ '2021:20 years of Reconciliation Australia' <<https://www.reconciliation.org.au/2021-20-years-of-reconciliation-australia/>> accessed 23 March 2024

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

2001

'Reconciliation Australia' is an independent, non-profit organization, established as the lead body for the reconciliation in the nation.¹⁴² They promote and facilitate reconciliation by building relationships, trust and respect between Aboriginal and Torres Strait Islanders and the rest of the Australians. Their program of work is carried out within businesses, schools, community groups and government organizations.¹⁴³ Their vision of reconciliation is based on five interrelated dimensions. (See Figure 2)

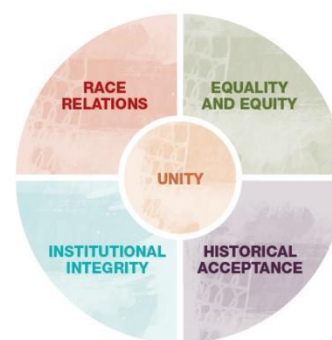


Figure 2 ¹⁴⁴

They have three program areas¹⁴⁵—

- Reconciliation Action Plan Program; (RAP)
- Narrangunnawali: Reconciliation in Education Program;
- Indigenous Governance Program.

RAP is a strategic document that supports a business plan of any practice or organization, outlining concrete ways of contributing towards national reconciliation movement internally in the organization or within a community. It is the RAP program of 'Reconciliation Australia' that provides this framework for any organization to advance reconciliation.¹⁴⁶

RAPs are designed to suit any organization at their different stages of the reconciliation journey.¹⁴⁷ Organizations are required to report on their commitment annually.¹⁴⁸ The annual RAP Impact Measurement Report presents the total impact of RAP's program activities across all walks of Australian life.¹⁴⁹

2005

Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma released the *Social Justice Report 2005*, in accordance with section 46C(1)(a) of the Human Rights and Equal Opportunity Commission Act 1986, to address the health inequality among the Aboriginal and Torres Strait Islanders. The report provides for recommendations for action to be taken to ensure the exercise and enjoyment of human rights by them.¹⁵⁰

¹⁴² 'What we do' (*Reconciliation Australia*) <<https://www.reconciliation.org.au/about-us/what-we-do/>> accessed 7 December 2023

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*

¹⁴⁵ '2021:20 years of Reconciliation Australia' <<https://www.reconciliation.org.au/2021-20-years-of-reconciliation-australia/>> accessed 23 March 2024

¹⁴⁶ 'Reconciliation Action Plans' (*RACGP*) <<https://www.racgp.org.au/rap/resources/reconciliation-action-plans>> accessed 23 March 2024

¹⁴⁷ 'The RAP Framework' (*Reconciliation Australia*) <<https://www.reconciliation.org.au/reconciliation-action-plans/the-rap-framework/>> accessed 23 March 2024

¹⁴⁸ 'The Impact of RAPs' (*Reconciliation Australia*) <<https://www.reconciliation.org.au/reconciliation-action-plans/rap-impact/>> accessed 23 March 2024

¹⁴⁹ *ibid.*

¹⁵⁰ 'Social Justice Report: 2005: Home' (*Australian Human Rights Commission*) <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-report-5>> accessed 23 March 2024

This report calls for the Australian governments to commit to achieve equality to the Aboriginal and Torres Strait Islander people in health and life expectancy within 25 years.¹⁵¹

Non-government agencies responded with a National Indigenous Health Equality Campaign in 2006, and launched the *Close the Gap Campaign* in 2007.¹⁵²

2007

The Commonwealth, states and territories share accountability for the refreshed Closing the Gap agenda and are jointly accountable for outcomes for Aboriginal and Torres Strait Islander people.¹⁵³

The Council of Australian Governments (COAG) set measurable targets to track and assess developments in the health and wellbeing of Aboriginal and Torres Strait Islanders.¹⁵⁴

2008

Then Prime Minister Kevin Rudd proposed to establish a Commission to ‘Close the gap’ between the indigenous and the non- indigenous people in “*life expectancy, educational achievement and economic opportunity.*”¹⁵⁵

The Prime Minister and the leader of Opposition signed the *Close the Gap Statement of Intent*, that spelled out the commitments of the government and became the point of reference to the Close the Gap Campaign.¹⁵⁶

The opening of the 42nd Parliament on 12 February 2008, featured the first “Welcome to Country” ceremony of Aboriginal and Torres Strait Islander peoples’ music and dance to be held at the commencement of a Parliament.¹⁵⁷

The Australian Government has made a commitment to *holding a referendum on constitutional recognition of Aboriginal and Torres Strait Islander peoples*. Significant work has been completed to understand what form constitutional recognition may take.¹⁵⁸

2011

Appointment of the Expert Panel on ‘Recognizing Aboriginal and Torres Strait Islander peoples in the Constitution’ (the Expert Panel) to consult throughout Australia (with the submission of its final report and recommendations in 2012) was a significant event. The Panel investigated how to give effect to constitutional recognition to the Aboriginal and Torres Strait Islander peoples.¹⁵⁹

¹⁵¹ ‘Closing the Gap 2008-2018, Introduction’ (Australian Government, Department of the Prime Minister and the Cabinet)

<<https://www.niaa.gov.au/sites/default/files/reports/closing-the-gap-2019/introduction.html>> accessed 23 March 2024

¹⁵² *ibid.*

¹⁵³ *ibid.*

¹⁵⁴ ‘Close the Gap Campaign History’ (*Close the Gap*) <<https://closethegap.org.au/history/>> accessed 23 March 2024

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid.*

¹⁵⁸ Commonwealth of Australia, *Final Report of the Referendum Council* (2017) 11.

¹⁵⁹ ‘Recognizing Aboriginal and Torres Strait Islander peoples in the Constitution’ Report of the Expert Panel <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/12-01-16-indigenous-recognition-expert-panel-report.pdf>> accessed 10 March 2024

2013

The Parliamentary Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples 2015 (the Joint Select Committee) was appointed to review work undertaken by the Expert Panel, to undertake consultation with key organizations and to review the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 (with the submissions of its final report and recommendations in 2015)¹⁶⁰

This Joint Committee was to inquire into steps to progress towards a successful referendum on Indigenous Constitutional Recognition. Their inquiry concluded and the report tabled in June 2015.¹⁶¹

2015

A 16-member Referendum Council was appointed by the Prime Minister Malcolm Turnbull and the Leader of the Opposition Bill Shorten, to consult widely throughout Australia and advise on next steps concerning reconciliation. The consultations had included 12 First Nations Regional Dialogues, culminating in a National Indigenous Constitutional Convention (mentioned below); as well as an invitation for public submissions based on the Council's Discussion Paper.

This council built on the work of the Expert Panel on Constitutional Recognition of Indigenous Australians and Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, to advise the Prime Minister and the Leader of the Opposition on progress and next steps towards a successful referendum to recognize Aboriginal and Torres Strait Islander peoples in the Constitution.¹⁶²

2017 - First Nations National Constitutional Convention

Convened by the Referendum Council, the First Nations National Constitutional Convention brought together more than 250 Aborigines in May 2017, to discuss and agree on an approach to constitutional reform to recognize Aboriginal and Torres Strait Islander peoples.¹⁶³

'The Uluru statement from the Heart' was made at this convention by the Aboriginal and Torres Strait Islander people to all communities in Australia, as a call for constitutional, legal and structural reforms. An invitation from the First people to the non-indigenous people calling for substantive reforms to help realize indigenous rights.¹⁶⁴

¹⁶⁰ 'Progress Report: Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, Appendix 1, Background, Role of the Committee'

<https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples/~media/Committees/jscatsi_ctte/progress_report/e01.pdf> accessed 10 March 2024

¹⁶¹ 'Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples 2015' (*Parliament of Australia*)

<https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/2015_Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples> accessed 10 March 2024

¹⁶² 'The Council' (*Referendum Council*) <<https://www.referendumcouncil.org.au/council.html>> accessed 10 March 2024

¹⁶³ Daniel McKay, 'Uluru Statement: a quick guide' (*Parliament of Australia*, 19 June 2017)

<https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/UluruStatement> accessed 27 November 2023

¹⁶⁴ 'The Uluru Statement from the Heart' (*Australian Human Rights Commission*)

<<https://humanrights.gov.au/ourwork/aboriginal-and-torres-strait-islander-social-justice/publications/uluru-statement-heart>> accessed 20 December 2023

This document called for –

- 1) a constitutionally recognized ‘*Voice*’ of the First people – an independent body¹⁶⁵ to advise government and border parliaments on matters affecting indigenous people,
- 2) Establishment of the *Makarrata* Commission – *Makarrata* means coming together after a struggle, will supervise the process of agreement or treaty making and
- 3) truth telling aspects of their history.¹⁶⁶

While the majority of delegates at the Convention backed the *Uluru Statement*, a small number walked out in opposition before the final consensus resolution was passed.¹⁶⁷ This statement also called for a truth telling body to be established.¹⁶⁸ Later, this statement was considered to be the driving force behind the 2023 Australian referendum on a Voice to Parliament.

2018

Victoria became the first Australian state to pass a Treaty legislation dealing with reconciliation, thus advancing the Treaty Process with the enactment of the Aboriginal Victorians Act 2018 (VIC)¹⁶⁹

Barunga Agreement was an MOU signed by four Aboriginal Land Councils in the Northern Territory as the basis for negotiating a treaty based on 8 key principles.¹⁷⁰

Buthera Agreement was signed by South Australia establishing a basis for Treaty negotiations in the state. The agreement is expected to deal with capacity-building for the Narunga National Aboriginal Corporation to undertake economic development, economic enterprise and collaborative agreement with other government agencies on Guuranda (Yorke Peninsula) under two priority areas, economic development and social services.¹⁷¹ However, a change in the government in March 2018, paused the negotiations.¹⁷²

Australian Capital Territory (ACT) held the first Reconciliation Day as a public holiday in Australia, in remembrance of the 1967 referendum.¹⁷³

The Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples was appointed by a resolution of appointment and was passed by the House of Representatives and the Senate. This was to inquire into and report on matters relating to constitutional change including the proposal for the establishment of a First Nations Voice.

¹⁶⁵ ‘Aboriginal and Torres Strait Islander Voice to Parliament Referendum’ (*Deakin University Library*)

<<https://deakin.libguides.com/voice-to-parliament/background>> accessed 2 October 2023

¹⁶⁶ ‘The Uluru Statement from the Heart’ (*Australian Human Rights Commission*)

<<https://humanrights.gov.au/ourwork/aboriginal-and-torres-strait-islander-social-justice/publications/uluru-statement-heart>> accessed 20 December 2023

¹⁶⁷ Daniel Mckay, ‘Uluru Statement: a quick guide’ (*Parliament of Australia*, 19 June 2017)

<https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/UluruStatement> accessed 27 November 2023

¹⁶⁸ Al Jazeera Staff, ‘Timeline: Indigenous voice, treaty and truth in Australia’ (*Al Jazeera*, 13 October 2023)

<<https://www.aljazeera.com/features/2023/10/13/timeline-indigenous-voice-treaty-and-truth-in-australia>> accessed 7 December 2023

¹⁶⁹ ‘Reconciliation TimeLine: Key Moment’ (*Reconciliation Australia*, 19 May 2021)

<<https://www.reconciliation.org.au/reconciliationtimelinekeymoments/>> accessed 7 December 2023

¹⁷⁰ Emma Vines, ‘Voice, Treaty, Truth? The role of Truth Telling in Australian, state and territory governments’ reconciliation processes: a chronology from 2015’ (*Parliament of Australia*, 17 August 2022)

<https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp2223/Chronologies/VoiceTreatyTruth> accessed 12 December 2023

¹⁷¹ *Buthera Agreement | Attorney-General's Department (agd.sa.gov.au)*, downloaded on 31/09/20204, 8.50am.

¹⁷² *ibid.*

¹⁷³ *ibid.*

The Committee presented its interim report on July 2018 and the final report in November 2018.¹⁷⁴

This Committee considered the recommendations of the Referendum Council (2017), the Uluru Statement from the Heart (2017), the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015), and the Expert Panel on Constitutional Recognition of Indigenous Australians (2012).¹⁷⁵

2019

On 10th December 2019, The First Peoples' Assembly of Victoria was inaugurated in the Victorian Parliament House. The Assembly was elected by the first peoples across the State of Victoria to work with the Victorian Government to prepare for treaty*¹⁷⁶ negotiations.¹⁷⁷

Statement of Commitment for the Path to Treaty was released in Queensland; establishes a working group and an Eminent Panel to advise on the Path to Treaty.¹⁷⁸

2020

The 2020–21 Budget in Victoria promised \$357 million for self-determination, access to education, better housing and health support, and improved quality of life for Indigenous Victorians. Of this, \$20.2 million is allocated to support the First Peoples' Assembly of Victoria to continue its treaty work.¹⁷⁹

The National Agreement to Close the Gap*¹⁸⁰ came into effect on 27 July 2020. This is an agreement for the National government and the Aboriginal and Torres Strait Islander People to work together to overcome inequality and achieve life outcomes.¹⁸¹

¹⁷⁴ 'Joint Select Committee on Constitutional recognition relating to Aboriginal and Torres Strait Islander Peoples' (*Parliament of Australia*) <<https://www.aph.gov.au/constitutionalrecognition>> accessed 24 January 2024

¹⁷⁵ 'Resolution of Appointment' (*Parliament of Australia*) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Constitutional_Recognition_2018/Role_of_the_Committee> accessed 10 March 2024

¹⁷⁶ *Treaty is the embodiment of Aboriginal self-determination. Treaty provides a path to negotiate the transfer of power and resources for First Peoples to control matters which impact their lives. Treaty is also an opportunity to recognise and celebrate the unique status, rights, cultures and histories of First Peoples. In negotiating a Treaty with First Peoples, the Victorian Government is acknowledging that prior to the formation of the State of Victoria, First Peoples communities were here – practicing their own law, lore, and cultural authority. Treaty will deliver long-term, sustainable solutions because First Peoples will be in the driver's seat, making decisions about the matters that impact their lives.

'Treaty in Victoria' (*First Peoples-State Relations*) <<https://www.firstpeoplesrelations.vic.gov.au/treaty>> accessed 10 March 2024

¹⁷⁷ 'First People's Treaties with Victoria: Jurisdiction' (*Melbourne Law School*) <<https://law.unimelb.edu.au/constitutional-transformations/projects/completed-projects/FirstPeoples-treaties-with-Victoria-jurisdictions>> accessed 10 March 2024

¹⁷⁸ Emma Vines, 'Voice, Treaty, Truth? The role of Truth Telling in Australian, state and territory governments' reconciliation processes: a chronology from 2015' (*Parliament of Australia*, 17 August 2022)

<https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp2223/Chronologies/VoiceTreatyTruth> accessed 12 December 2023

¹⁷⁹ *ibid.*

¹⁸⁰ *For the first time, a National Agreement has been developed in genuine partnership between Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organizations (the Coalition of Peaks) with the objective to enable Aboriginal and Torres Strait Islander people and governments to work together to overcome the inequality experienced by Aboriginal and Torres Strait Islander people, and achieve life outcomes equal to all Australians.

National Agreement Closing the Gap, At a glance, <<https://www.closingthegap.gov.au/national-agreement>>, accessed on 10.03.2024

¹⁸¹ 'Closing the Gap' (*Government of Western Australia*) <<https://www.wa.gov.au/organisation/department-of-the-premier-and-cabinet/closing-the-gap>> accessed 10 March 2024

2021

The State of Victoria created the Yoorrook Justice Commission, the first official truth telling body in Australian history.¹⁸²

The Victorian Government also established the Interim Funeral Fund which provides support to families of Stolen Generations who have passed away since 01 January, 2021.¹⁸³

2022

The Yoorrook Justice Commission, the first official truth telling body in Australian history, commenced its work through a ceremonial hearing in March and released its interim report in June.¹⁸⁴

2023

Path to Treaty Act was passed in Queensland.¹⁸⁵

E-petition/request to commit for an establishment of truth telling in Western Australia.¹⁸⁶

A nationwide referendum was held in Australia on the 14th of October 2023, (Referendum Day), calling for a ‘Yes’ or ‘No’ response to a single question. “A Proposed Law to alter the Constitution to recognize the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islanders Voice. Do you approve this proposed alteration?”¹⁸⁷

¹⁸² Al Jazeera Staff, ‘Timeline: Indigenous voice, treaty and truth in Australia’ (*Al Jazeera*, 13 October 2023) <<https://www.aljazeera.com/features/2023/10/13/timeline-indigenous-voice-treaty-and-truth-in-australia>> accessed 7 December 2023

¹⁸³ Emma Vines, ‘Voice, Treaty, Truth? The role of Truth Telling in Australian, state and territory governments’ reconciliation processes: a chronology from 2015’ (*Parliament of Australia*, 17 August 2022) <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp2223/Chronologies/VoiceTreatyTruth> accessed 12 December 2023

¹⁸⁴ *ibid.*

¹⁸⁵ ‘Queensland’s Path to Treaty’ (*Queensland Government*) <<https://www.qld.gov.au/firstnations/treaty/queensland-path-to-treaty/progress>> accessed 12 December 2023

¹⁸⁶ ‘Current e-petitions for the Legislative Council’ (*Parliament of Western Australia*) <[https://www.parliament.wa.gov.au/Parliament/LCePetitions.nsf/\(\\$All\)/B1343ADDEC100825482589BB000269DA?opendocument](https://www.parliament.wa.gov.au/Parliament/LCePetitions.nsf/($All)/B1343ADDEC100825482589BB000269DA?opendocument)> accessed 12 December 2023

¹⁸⁷ ‘What you need to know about the Referendum’ (*Victorian Women’s Trust*, 6 October 2023) <https://www.vwt.org.au/what-you-need-to-know-about-the-referendum/?gclid=CjwKCAiA98WrBhAYEiwA2WvhOhX-NcRoMQx3BTAo-a3Q6GH0I4S3J-hfr4JAHHpYrml-cfyE3wdBlxoC9-EQAvD_BwE> accessed 7 December 2023

CHAPTER 5

Transitional Justice to face Colonial Legacies.

5.1. Truth Telling efforts in Australian States and Territories

Calls for historical justice, treaties and truth telling has had a long history in Australia as understood in the previous two chapters. The positive outcome from the *Uluru Statement* is its entreaty to states and territories to take steps of their own to develop policies on treaty and truth telling.¹⁸⁸

Since 2016, most of the States have committed to engage on Treaties with the First Nations People¹⁸⁹ and the states in Australia are now at various stages in implementing the truth telling process.

In a lead to follow other states and territories,¹⁹⁰ Western Australia (WA) is trying to advance *Makarrata* and recognize the devastating effects of colonization in their communities. There has been an e-petition submitted and facilitated by members to the Legislative Council of the Western Australia Parliament, acknowledging the importance of truth telling to advance the First Peoples' agency. Since WA has a number of ongoing discriminatory practices that haven't been addressed, there is an urgent need of a mechanism to hold the State Government accountable for the injustices and ensure services and systems are designed and operated in a culturally appropriate manner.¹⁹¹ The requirement was to commit to the establishment of truth telling in WA in 2023.¹⁹²

Queensland has also been taking several actions to have a treaty with the Indigenous people and the rest of the Queenslanders. It is a shared path of moving forward equally on their shared land and to honour the indigenous people. Queensland's journey on the Path to treaty began in 2019, with the release of the Statement of Commitment that reframed the relationship between the Queensland Government and the Aboriginals and Torres Strait Islanders.¹⁹³

It was envisaged that the Culture and Economic Participation team provides leadership to the entirety of the Government in improving outcomes across Queensland. Through the Culture and Economic Participation team, the Queensland Government developed the Reconciliation Action Plan 2018-2021 (RAP) in partnership with Reconciliation Australia and Reconciliation Queensland Incorporated. It was a total government approach to build social cohesion, increase

¹⁸⁸ 'Background to Treaty' (*Tasmanian Aboriginal Centre*) <<http://tacinc.com.au/news-events/tuylupa-tunapri/background-to-treaty/>> accessed 12 December 2023

¹⁸⁹ Harry Hobbs, 'Treaty-Making gathers pace' (*Inside Story*, 17 March 2023) <<https://insidestory.org.au/treaty-making-gathers-pace/>> accessed 23 March 2024

¹⁹⁰ 'Truth Telling & Justice Commission for WA' (*The Greens*) <<https://greens.org.au/campaigns/truth-telling-and-justice-commission-wa>> accessed 12 December 2023

¹⁹¹ 'Current e-petitions for the Legislative Council' (*Parliament of Western Australia*) <[https://www.parliament.wa.gov.au/Parliament/LCePetitions.nsf/\(\\$All\)/B1343ADDEC100825482589BB000269DA?opendocument](https://www.parliament.wa.gov.au/Parliament/LCePetitions.nsf/($All)/B1343ADDEC100825482589BB000269DA?opendocument)> accessed 12 December 2023

¹⁹² *ibid.*

¹⁹³ 'Queensland's Path to Treaty' (*Queensland Government*) <<https://www.qld.gov.au/firstnations/treaty/queensland-path-to-treaty/progress>> accessed 12 December 2023

economic participation, improve community participation and promote cultural recognition of Aboriginal peoples and Torres Strait Islander peoples.¹⁹⁴

An Eminent Panel and a Treaty Working Group held public consultations, and the Treaty Advancement Committee provided recommendations to the Government on the next steps on the Path to treaty. The Committee presented its report to the Queensland Government on 12th October 2021.¹⁹⁵ On 16th August 2022,¹⁹⁶ the Path to Treaty commitment was signed and on May 10th 2023,¹⁹⁷ a landmark Act for the state of Queensland was passed – Path to Treaty Act 2023, which provides for the “*Truth-telling and Healing Inquiry to hear and record the historical and ongoing impacts of colonization on Aboriginal and Torres Strait Islander Queenslanders.*”¹⁹⁸

During the 2016 elections, a promise was made in the Northern Territory to open discussions about a Treaty with First Nations, as a necessary step towards achieving genuine reconciliation and self-determination.¹⁹⁹ The commitment was upheld by the successful government by signing a historic MOU called the *Barunga Agreement* in 2018 between the government and four Aboriginal Land Councils, to fund the Northern Territory Treaty Commission.²⁰⁰ The MOU stated that successful co-existence starts with truth telling, which involves understanding the consequences of the NT history. In 2020, the Treaty Commissioner Act was enacted.²⁰¹

Over three years the Commission has been consulting Aboriginal people across NT to develop a framework for future treaty negotiations. The Treaty Commissioner delivered a guide to truth telling called “Towards Truth Telling.”²⁰² Final report of the Commission was tabled in Parliament in July 2022²⁰³, and the NT government provided its response to the report in December 2022²⁰⁴, whereby they pledged to continue supporting the development of the treaty process in a way that aligns with the aspirations of the Aborigines.²⁰⁵

In *Tasmania*, consultations with the Aboriginal Tasmanians started to map out a pathway to treaty and truth telling in 2021.²⁰⁶ The consultations had led to 24 recommendations in the Pathway to Truth Telling and Treaty.

The *New South Wales* government had committed \$5million²⁰⁷ funding to support a treaty consultation process in support of the “Uluru statement from the heart.” Ten months ago, there had been a call from the Australian Green party for dedicated seats for First Nations Peoples in

¹⁹⁴ “Bold Delivers,” Evaluation Report, Queensland government Reconciliation Action Plan, 2018-2022, Pg.44. Queensland: Abt Associates

¹⁹⁵ ‘Queensland’s Path to Treaty’ (*Queensland Government*)

¹⁹⁶ ‘Queensland’s Path to Treaty’ (*Queensland Government*) <<https://www.qld.gov.au/firstnations/treaty/queensland-path-to-treaty/progress>> accessed 12 December 2023

¹⁹⁷ *ibid.*

¹⁹⁸ *ibid.*

¹⁹⁹ ‘NT government response to NT Treaty Commissions’ Final report’ (*Northern Territory Government, Office of Aboriginal Affairs*) <<https://aboriginalaffairs.nt.gov.au/our-priorities/treaty/nt-government-response-to-treaty-commissions-final-report>> accessed 12 December 2023

²⁰⁰ *ibid.*

²⁰¹ ‘History’ (*Northern Territory Treaty Commission*) <<https://treatynt.com.au/history>> accessed 12 December 2023

²⁰² *ibid.*

²⁰³ ‘NT government response to NT Treaty Commissions’ Final report’ (*Northern Territory Government, Office of Aboriginal Affairs*) <<https://aboriginalaffairs.nt.gov.au/our-priorities/treaty/nt-government-response-to-treaty-commissions-final-report>> accessed 12 December 2023

²⁰⁴ *ibid.*

²⁰⁵ NT Government, ‘Next Steps taken in Treaty Process in NT’ (*Mirage News*, 29 December 2022) <<https://www.miragenews.com/next-steps-taken-in-treaty-process-in-nt-922925/>> accessed 12 December 2023

²⁰⁶ Loretta Lohberger, ‘Tasmania says it is committed to truth and treaty, but how is it progressing?’ (*ABC News*, 29 May 2023) <<https://www.abc.net.au/news/2023-05-29/tasmanian-progress-towards-aboriginal-treaty-explained/102403316>> accessed 12 December 2023

²⁰⁷ ‘Voice – Treaty – Truth’ (*Reconciliation NSW*) <<https://reconciliationnsw.org.au/uluru-statement-voice-treaty-truth/>> accessed 12 December 2023

NSW parliament and truth telling and treaty processes, as part of their state campaign, in respect of the upcoming elections in March.²⁰⁸

In early February 2023, the *Australian Capital Territory* government had plans to set up its own First Nations Advisory Panel called the Aboriginal and Torres Strait Islander Eminent Panel for Community Engagement and Healing²⁰⁹. The government said that the process to set up the panel will not be rushed, and is expected to be established in 2023.²¹⁰

5.2. First People's Assembly

The First Peoples Assembly was born in 2019, as an elected body representing traditional owners of *Victoria*, to develop a framework for treaty negotiations between the Aboriginal communities and the State Government.²¹¹

The First people of Australia state that their sovereignty has not been ceded; and for generations they have been calling for a Treaty process that delivers self-determinations for the First people of Victoria in order to set mutually agreed terms of their relationship with the Australian government.²¹² The idea of constitutional recognition of Indigenous Australians has become a highly political and contentious issue.²¹³ They believe that the Treaty will deliver long term sustainable solutions, based on an honest reflection of their history. This also transfers the power to the First People to take control of matters that would impact their lives.

An independent office called the *Treaty Advancement Commission* was established in January 2018,²¹⁴ whose main role was to maintain the momentum of the treaty process, and to set up the First People's Assembly of Victoria that will create the ground rules for negotiations and be the democratic voice of the Aborigines. The Treaty Advancement Commission ceased to function with the commencement of the First People's Assembly in 2019.²¹⁵

The state of Victoria enacted the first ever treaty legislation; *Advancing the Treaty Process with the Aboriginal of Victorians Act 2018 (Vic)* which provided the legal basis for the creation of the 'First People's Assembly of Victoria'²¹⁶

In June 2020, The First Peoples' Assembly of Victoria (Assembly) passed a resolution seeking commitment from the State to establish a truth and justice process.²¹⁷ In response, on the 11th

²⁰⁸ Tamsin Rose, 'NSW Greens to push for dedicated First Nations seats in parliament, truth-telling and treaty processes' (*The Guardian*, 23 January 2023) <<https://www.theguardian.com/australia-news/2023/jan/24/nsw-greens-to-push-for-dedicated-first-nations-seats-in-parliament-truth-telling-and-treaty-processes>> accessed 12 December 2023

²⁰⁹ Anna Macdonald, 'First Nations panel on healing to advise ACT government' (*The Mandarin*, 10 February 2023) <<https://www.themandarin.com.au/211769-first-nations-panel-on-healing-to-advise-act-government/>> accessed 12 December 2023

²¹⁰ *ibid.*

²¹¹ NT Government, 'Next Steps taken in Treaty Process in NT' (*Mirage News*, 29 December 2022) <<https://www.miragenews.com/next-steps-taken-in-treaty-process-in-nt-922925/>> accessed 12 December 2023

²¹² Bianca de Marchi, 'What actually is a treaty? What could it mean for Indigenous people?' (*The Conversation*, 2 April 2023) <<https://theconversation.com/what-actually-is-a-treaty-what-could-it-mean-for-indigenous-people-200261>> accessed 27 September 2023

²¹³ Megan Davis and Marcia Langton, 'It's Our Country, Indigenous Arguments for Meaningful Constitutional Recognition and Reform' (*MUP*, 2 May 2016) <<https://www.mup.com.au/books/its-our-country-paperback-softback>> accessed 27 September 2023

²¹⁴ 'About the Commission' (*Victorian Treaty Advancement Commission*) <[About the Commission | Victorian Treaty Advancement Commission \(archive.vic.gov.au\)](https://www.vic.gov.au/about-the-commission)> accessed 27 September 2023

²¹⁵ *ibid.*

²¹⁶ 'Treaty in Victoria' (*Reconciliation in Victoria*) <<http://www.reconciliationvic.org.au/the-victorian-context>> accessed 10 March 2024

²¹⁷ 'Truth and Justice in Victoria' (*VIC.GOV.AU*) <<https://www.firstpeoplesrelations.vic.gov.au/truth-and-justice>> accessed 3 November 2023

of July in 2020, the Australian State government of Victoria announced that they will work with the Aboriginal communities to establish the first truth and justice process to formally recognize historic wrongs and address the ongoing injustices against its First Nations Peoples.²¹⁸

The First Peoples of Australia acknowledge that they cannot talk about their shared future until they acknowledge their shared past. Truth Commission will therefore offer them a formal and legitimate process to reconcile and a healing for the overall suffering endured by their communities.²¹⁹

5.3. Yoorrook Justice Commission

The Victorian Government, after many months of working in partnership with the First Peoples Assembly of Victoria, established the nation's first formal truth telling process. On 12 May 2021, the Governor of Victoria signed the letters patent, as required under the Inquiries Act 2014, to legally establish the Yoorrook Justice Commission as a Royal Commission and set its Terms of Reference.²²⁰

The formal document that established Yoorrook is called the Letters Patent. The Letters Patent provides the rules for what the Commission can and cannot do. Yoorrook is the Wamba Wamba²²¹ word for 'truth' (An indigenous Australian group in North-Western Victoria and South-Western New South Wales).

Yoorrook Commission operates independently from the government and is different to any other Royal Commission or inquiry undertaken in Australia, because of its unique truth-telling purpose.²²² Its work promises to bring about real change by:

- facilitating truth-telling and healing,
- educating the wider Victorian community on the historical past and the First Peoples' struggles,
- developing recommendations for institutional and legal reform.²²³

The Commission delivered its first interim report in June 2022. The Yoorrook for Justice interim report was released in August 2023 and a further Interim Report is due in December 2024. The Yoorrook Justice Commission will run until 30 June 2025 after being granted a 12-month extension.²²⁴

²¹⁸ Caitlin Reiger, 'Australia's First Truth Commission: Transitional Justice to face Colonial Legacies' (*Justiceinfo.net*, 30 July 2020) <<https://www.justiceinfo.net/en/45000australiasfirsttruthcommissiontransitionaljusticetofacecoloniallegacies.html>> accessed 2 November 2023

²¹⁹ 'Truth and Justice in Victoria' (*VIC.GOV.AU*) <<https://www.firstpeoplesrelations.vic.gov.au/truth-and-justice>> accessed 3 November 2023

²²⁰ *ibid.*

²²¹ The Wemba Wemba is an indigenous Australian group in North-Western Victoria & South-Western New South Wales. Their traditional lands encompassed around the Murray River and its tributaries. They have maintained their cultural practices and traditions, and continue working towards recognition of their rights and interests. 'Wemba Wemba and Community Support' (*Wemba Consulting*) <www.wembaconsulting.com.au/communit/> accessed 2 January 2024

²²² 'Truth and Justice in Victoria' (*VIC.GOV.AU*) <<https://www.firstpeoplesrelations.vic.gov.au/truth-and-justice>> accessed 3 November 2023

²²³ *ibid.*

²²⁴ *ibid.*

5.4. Yoorrook’s Mandate

The broad and far-reaching mandate covers the timeline from colonization to the present including law making, proselytising, exclusion of the first people from census and constitution, assimilation, integration and welfare system.²²⁵ Under this mandate the Commission will identify the systemic injustices suffered by the First People of Victoria in all aspects of their lives.

The Letters Patent mandates the Commission to investigate, document and recommend remedy and reform for systemic injustices experienced since colonization.²²⁶ The core elements of the mandate have been summarized into three central goals: *truth, understanding and transformation*.²²⁷

- *Truth*– drawing from a wide range of sources and taking a holistic approach in recognizing diversity and commonalities and continuities of the First peoples’ experiences, the Commission will create a lasting public record of historic and ongoing systemic injustice, how it came to occur and who or what is responsible.²²⁸
- *Understanding* – the Commission will enable the broader Victorian community to understand the links between past, present and future by deep listening and hearing the experiences of the First people and learning how culture has evolved and survived amidst trauma.²²⁹
- *Transformation* – the Commission will propose changes to laws, institutions and systems which can be taken up through treaty negotiations and other ways to build new relationships amongst all Victorians, including by holding the State accountable. These reforms must remedy injustices against First Peoples so that Victoria can turn a new page.²³⁰

“Yoorrook is independent from government and the Assembly. As a Royal Commission, Yoorrook has strong powers to compel government and others, if necessary, to produce documents and official records.”²³¹

Commissioners were appointed through an open and transparent selection process which was designed jointly by the Assembly with the state government. The Commissioners meet periodically with both the Minister for Aboriginal Affairs and the Co-Chairs of the Assembly. However, they remain fully autonomous in setting the strategic direction of Yoorrook’s work and in the Commission’s day-to-day functions and operations.²³²

Yoorrook’s independence is supported by the Commission’s information technology systems and website being completely standalone from the government, unlike the arrangements in other Royal Commissions.”²³³

²²⁵ Yoorrook Justice Commission, *Yoorrook with purpose: Interim Report* (Victorian Government Printer 2022) viii

²²⁶ *ibid.*, 3.

²²⁷ *ibid.*, 3.

²²⁸ *ibid.*

²²⁹ *ibid.*

²³⁰ *ibid.*

²³¹ *ibid.*

²³² *ibid.*

²³³ *ibid.*

5.5. Voice Referendum

Any change to Australia's Constitution needs a national referendum. Referendums in Australia have to surpass a high bar of 'double majority' to be successful which means that it has to be supported by more than 50% of the voters nationwide and backed by a majority of voters in at least 4 of the 6 states.²³⁴

October 14th 2023,²³⁵ was a defining moment in the struggle for indigenous rights in the country as the Australians were to vote whether they wanted to change the constitution to recognize Aboriginal and Torres Strait Island people.

The people faced a six-week campaign²³⁶ asking if they want a change in the constitution to include a "Voice to Parliament" – an indigenous committee to advise the Federal Parliament on matters affecting the Aboriginal and Torres Island people as they are not mentioned in Australia's constitution despite inhabiting the land for more than 65,000 years.²³⁷ If the Referendum was passed, the parliament would have the power to decide on the composition, functions, powers and procedures of the 'Voice.'

The Voice to Parliament was recommended by the historic document called "*Uluru Statement from the Heart*" in 2017 drafted by more than 250 indigenous leaders - a call to action for reforms for the First Nations Australians.²³⁸ Because, the indigenous people feel a 'powerlessness' when tackling structural problems that affect their lives when the non-indigenous descendants of colonizers and migrants make decisions about communities, they know nothing about.²³⁹

On 14th of October 2023, the referendum was rejected by 61% of the country. This also meant voting against the creation of the 'Voice' to the Parliament, that could have had a say on the indigenous related issues. The indigenous Australians called for a 'week of silence' and mourning after the referendum. The defeat is seen by the indigenous community as a setback to their hard struggle for reconciliation and recognition of the First Nations in Australia.²⁴⁰

²³⁴ Praveen Menon, 'Australia sets October date for historic vote on Indigenous recognition' (*Reuters*, 30 August 2023) <<https://www.reuters.com/world/asia-pacific/australias-albanese-set-announce-date-indigenous-referendum-2023-08-30/>> accessed 8 December 2023

²³⁵ *ibid.*

²³⁶ *ibid.*

²³⁷ *ibid.*

²³⁸ Tiffanie Turnbull, 'Voice Referendum: What is Australia's Voice to Parliament proposal?' (*BBC News*, 14 October 2023) <<https://www.bbc.com/news/world-australia-62374703>> accessed 8 December 2023

²³⁹ 'Voice Referendum: What is Australia's Voice to Parliament Proposal?' (*BBC News*, October 2023) <<https://www.bbc.com/news/world-australia-62374703>> accessed 10 March 2024

²⁴⁰ 'Australia rejects proposal to recognize Aboriginal people in Constitution' (*The Guardian*) <<https://www.theguardian.com/australia-news/2023/oct/14/australia-rejects-proposal-to-recognise-aboriginal-people-in-constitution>> accessed 10 March 2024

CHAPTER 6

Best Practices and Lessons to be Learnt.

The long call for a comprehensive process of truth telling and reconciliation by the Indigenous people can be acknowledged through the previous chapters. Despite the result of the referendum and the absence of a federal body, State and Territory governments have announced that they will proceed with the implementation of the ‘*Uluru statement from the heart.*’²⁴¹

The following sections will deal with some of the initiatives that prioritized the First Nations’ agency and self-determination.

6.1. Community Truth Telling

Truth Telling at a National Level

The Aboriginals and Torres Strait Islander communities did not wait for formal processes to tell their historical truths. Community driven and survivor led truth telling processes have been underway across the country for many years, often with little to no resources.²⁴²

A joint study was conducted by the Deakin University and ‘Reconciliation Australia,’ titled ‘*Recognizing community truth-telling: An exploration of local truth-telling in Australia report.*’²⁴³ The report’s corresponding policy briefing paper suggests ways to support truth telling. This documents 25 community truth telling projects, including 10 in-depth case studies across the continent, illustrating diverse grassroot engagements.²⁴⁴ *These case studies provide easily understandable examples of what truth telling looks like, what constitutes best practice and how to ensure safety and protection from re-traumatizing.*²⁴⁵

This report stated that community-led truth-telling initiatives have contributed to a considerable shift in the national narrative about Australia’s history, including a growing recognition of the frontier violence that accompanied colonization.²⁴⁶

“This report tells us that truth-telling includes an extraordinary array of ongoing activity including community commemorations, festivals, memorial events, public artwork projects, repatriation of ancestors, return of land, renaming of places and the creation of healing sites.”²⁴⁷

²⁴¹ ‘Australian States to push ahead with voice and treaty processes in absence of federal body’ (*The Guardian*) <<https://www.theguardian.com/australia-news/2023/oct/16/australian-states-to-push-ahead-with-voice-and-treaty-processes-in-absence-of-federal-body>> accessed 23 March 2024

²⁴² Vanessa Barolsky, Karen Berger and Kirstie Close, ‘Recognizing Community Truth-Telling: an exploration of local truth-telling in Australia’ Alfred Deakin Institute for Citizenship and Globalization, Centre for Inclusive and Resilient Societies and Reconciliation Australia <<https://www.reconciliation.org.au/wp-content/uploads/2023/09/Recognising-community-truth-telling-report.pdf>> accessed 10 March 2024

²⁴³ ‘New report shows impact of community truth-telling’ (*Reconciliation Australia*, 6 September 2023) <<https://www.reconciliation.org.au/community-truth-telling-report/>> accessed 19 December 2023

²⁴⁴ *ibid.*

²⁴⁵ *ibid.*

²⁴⁶ *ibid.*

²⁴⁷ ‘Hard truths: Exploring Indigenous truth-telling in Australia’ (*Deakin university*, 6 September 2023) <<https://www.deakin.edu.au/about-deakin/news-and-media-releases/articles/hard-truths-exploring-indigenoustruthellinginaustrali>> accessed 19 December 2023

Examples of Truth Telling Initiatives that prioritized First Nation's agency and Self-Determination.

Place Reclaiming/Name change

Reclaiming pre-colonial names or assigning new names that hold meaning to the Aboriginal people is an opportunity to disrupt colonial truths.²⁴⁸ *'Place reclaiming also holds the potential to expose and make explicit the relationship that names hold to local histories of dispossession which often lay dormant in public and political consciousness.'* For example, it had taken many years to change the name Ayers Rock back to 'Uluru.'²⁴⁹

After a ten-month engagement process spearheaded by the Elders, Mooreland City Council in Melbourne was renamed as 'Merri-bek' in 2022.²⁵⁰

Such name changes are not to be understood merely as symbolic but also as projects of truth that make explicit the links between historical dispossession and contemporary injustice.²⁵¹

World's largest sand island²⁵² Fraser Island was renamed as *K'gari World Heritage Area*.²⁵³

*Repatriation of Indigenous place names is a part of the process of reintroducing Indigenous perspectives into the narratives of our modern society.*²⁵⁴ *...Repatriation of Indigenous place names reaffirms that First Nations have always existed, and still exist in Australia today. Moreover, they are a source of distinction that sets Australia apart from the rest of the world for the one thing no other country in the world can come close to: being home to the oldest living cultures in the world. That should be a source of pride for all Australians.*²⁵⁵

New South Wales renamed Boyd National Park as *Beowa National Park* after consultations with the Aboriginal and South Sea Islander communities, because of Boyd's shocking legacy of "black birding" an euphemism for the practice of kidnapping Pacific Islanders and using them as forced labour in particular on sugar and cotton plantations in Australia.²⁵⁶

Names of some famous landmarks in Byron Bay have been proposed to be changed. Cape Byron will be called '*Walgun*' and Julian Rocks as '*Nguthungulli*' - as these places are sacred to the Aborigines and hold a spiritual and cultural significance in that area.²⁵⁷

²⁴⁸ 'Community Truth-Telling' (ANTAR) <<https://antar.org.au/issues/truth-telling/community-truth-telling/>> accessed 10 March 2024

²⁴⁹ *ibid.*

²⁵⁰ *ibid.*

²⁵¹ *ibid.*

²⁵² 'Fraser Island renamed – World's largest sand island reverts to its original name, K'gari' <<https://www.queensland.com/us/en/plan-your-holiday/news-and-articles/queensland-news/fraser-island-renamed-kgari->>> accessed 10 March 2024

²⁵³ 'Celebrating K'gari: why the renaming of Fraser Island is about so much more than a name' (SBS, 28 September 2021) <<https://www.sbs.com.au/nitv/article/celebrating-kgari-why-the-renaming-of-fraser-island-is-about-so-much-more-than-a-name/da5mxflty>> accessed 18 December 2023

²⁵⁴ *ibid.*

²⁵⁵ *ibid.*

²⁵⁶ 'NSW renames National Park over pastoralist Ben Boyd's link to slavery in Pacific' (*The Guardian*, 30 September 2022) <<https://www.theguardian.com/australia-news/2022/sep/30/nsw-renames-national-park-over-pastoralist-ben-boyds-links-to-slavery-in-pacific>> accessed 18 December 2023

²⁵⁷ Donna Harper and Bruce MacKenzie, 'Julian Rocks, Cape Bryon could soon be known by traditional Aboriginal names Nguthungulli, Walgun' (*ABC News*, 3 July 2023) <<https://www.abc.net.au/news/2023-07-03/julian-rocks-cape-byron-aboriginal-dual-name-nguthungulli-walgun/102555940>> accessed 18 December 2023

Museums and Monuments

As sources of cultural heritage, curators of historical narratives and public sources of information, museums and monuments play a fundamental role in the process of truth telling.

KBHAC – Kinchela Boys Home Aboriginal Corporation was established by the Stolen Generation Survivors and descendants of survivors of the boys' home. KBHAC has worked *from a model of survivor-led healing rooted in self determination to recover and reclaim the site of the Kinchela Boys home in order to transform it into a place of truth telling, education, memory and healing.*²⁵⁸

In 2020, the KBHAC launched a Mobile Education Centre in an old commuter bus to operate as a '*site of conscience*,' targeting as a preservation site for memories of survivors, deepen knowledge about the Stolen Generations, rejoin survivors with the communities from which they were taken, and to invite the public for truth telling.²⁵⁹ Truth-telling potential of museums and monuments are found in many states of Australia.²⁶⁰

Art and Archives

The Indigenous Law Centre of the University of New South Wales have created a groundbreaking resource for truth telling. '*Towards Truth*' is the first attempt to map in detail how Australian Parliaments and institutions have touched every aspect of the Indigenous peoples lives since colonization. *Towards Truth* have created an archive of articles, legislations, case studies and reports on matters of land rights, education, child removals and language. Although currently the focus is on NSW, the resources are being developed to include other jurisdictions as well.²⁶¹

Many artists, photographers and even universities have brought up new versions of the past by working with narratives of memory, time, location and representation through artwork and photography. Curtin University in Western Australia has embarked on a project to create a dedicated home for the artwork of the young children of the Stolen Generation that had been lost overseas for over 60 years as a centre for truth-telling, reconciliation and healing.²⁶²

"Rising Sun"²⁶³ is also a visual exhibition documenting the important story of Australia's past. It was held at the Light Room Studio in Adelaide. The exhibition is showcased in the state's largest curved LED wall. It was hoped that this would spark conversations and truth-telling about Aboriginal issues.

'Pretty Little Lines' is an independently recorded sound by Jimmy Baker, an Aboriginal person, as a tool for preserving and documenting Aboriginal culture.²⁶⁴

²⁵⁸ 'Community Truth Telling' (*Antar*) <<https://antar.org.au/issues/truth-telling/community-truth-telling/>> accessed 18 December 2023

²⁵⁹ *ibid.*

²⁶⁰ *ibid.*

²⁶¹ *ibid.*

²⁶² 'The Carrolup Centre for truth telling' (*Curtin University*) <<https://www.curtin.edu.au/friends/ourcommunity/carrolup/>> accessed 19 December 2023

²⁶³ Isabella Carbone, 'Brachina Gorge massacre behind Lavene Ngatokorua's truth telling art of Flinders' Ranges violent past' (*ABC News*, 11 November 2023) <<https://www.abc.net.au/news/2023-11-11/lavene-ngatokorua-aroon-a-flinders-ranges-massacre-sa/103026546>> accessed 19 December 2023

²⁶⁴ 'Pretty Little Lines – Jimmy Barker Sound Pioneer' (*AIATSIS*) <<https://aiatsis.gov.au/explore/pretty-little-lines-jimmie-barker-sound-pioneer>> accessed 19 December 2023

6.2. The National Agreement on Closing the Gap

This is an agreement between the Coalition of Aboriginal and Torres Strait Islander Peak Organizations (Coalition of Peaks), the Australian Government, all state and territory governments and the Australian Local Government Association. This is the first-time governments have collaboratively developed and negotiated a national agreement in partnership with Aboriginal and Torres Strait Islander people, committed to progressing fundamentally new ways of working side-by-side with Aboriginal and Torres Strait Islander people to ‘Close the Gap.’²⁶⁵

It commits all parties to a future where policy making and programs that impact on the lives of Aboriginal and Torres Strait Islander people is done in full and genuine partnership. This includes listening to the voices and aspirations of Aboriginal and Torres Strait Islander people and changing the way we work in response.²⁶⁶

Clause 21 requires all government parties “to implement all activities under this Agreement in a way that takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people.” Prioritizing culture is a key principle that underpins all activities and reforms arising from implementing the National Agreement.²⁶⁷

Each party to the National Agreement has developed their own Implementation Plan and will report annually on their actions to achieve the outcomes of the Agreement. Each set out how policies and programs are aligned to the National Agreement and what actions will be taken to achieve the Priority Reforms and outcomes, including information on funding and timeframes for actions.²⁶⁸

The National Agreement has been built around four priority areas as directly informed by the Aboriginal and the Torres Strait Islander People. Each priority reform includes a target and an outcome. They focus on measuring the change governments are making in the way they work with Aboriginal and Torres Strait Islander people. Indicators have also been developed to support reporting against the Priority Reforms, similar to that for the socio-economic targets.²⁶⁹

The Implementation Tracker²⁷⁰ shows progress for each Party to the National Agreement on delivering against these commitments. The dynamic representation of progress made in achieving agreed commitments are available in a chart in the implementation tracker website – all commitments are hyperlinked to the corresponding clause in the National Agreement.

²⁶⁵ Department of the Premier and Cabinet, *Closing the Gap jurisdictional implementation plan WA* (Dumas House 2021) <https://www.wa.gov.au/system/files/2021-09/Implementation%20Plan%20-%20CtG_1.pdf> accessed on 19.12.2023

²⁶⁶ *ibid.*

²⁶⁷ *ibid.*

²⁶⁸ ‘Implementation Plans’ (*Closing the Gap*) <<https://www.closingthegap.gov.au/implementation-plans>> accessed 19 December 2023

²⁶⁹ ‘Priority Reforms’ (*Closing the Gap*) <<https://www.closingthegap.gov.au/national-agreement/priority-reforms>> accessed 19 December 2023

²⁷⁰ ‘Implementation Tracker’ (*Closing the Gap*) <<https://www.closingthegap.gov.au/national-agreement/implementation-tracker>> accessed 19 December 2023

6.3. Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander People

Acknowledging massacres-mapping and memorials

The Final Report of the *Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples* recognized the importance of mapping massacres and establishing memorials to encourage reconciliation, education and healing. The Committee heard evidence regarding the development of a digital map of massacre sites which is considered an ongoing ‘process of truth-telling.’ Importance of memorials was also accepted by the Committee.²⁷¹

Truth- telling through education

Education has been recommended as an avenue for truth telling in this report. Importance of including Indigenous history in Australian education systems, as education is said to lead to far greater understanding of the history of the country. For this reason, truth telling and history are considered in the Australian curriculum, in addition to teachers’ cultural competency.²⁷²

²⁷¹ Parliament of the Commonwealth of Australia, *Final Report*, Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, November 2018
Canberra <<https://nativetitle.org.au/sites/default/files/2020-11/Final%20Report%20Joint%20Select%20Committee%20on%20Constitutional%20Recognition%20Relating%20to%20Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>> accessed on 10.03.2024

²⁷² Tracy Woodroffe, ‘Truth Telling in the Australian education system’ (*SSTUWA, Western Teacher, Volume 52.1* January 2023) <<https://www.sstuwa.org.au/WesternTeacher/2023/volume-521-january-2023/truth-telling-australian-education-system>> accessed 19 December 2023

CHAPTER 7

Challenges and Early Lessons On Truth Telling Process

7.1. The First Referendum - October 14th 2023

Approximately 61%²⁷³ of Australia's electorate rejected the constitutional recognition of the indigenous Australians and a constitutionally enshrined indigenous voice to parliament on the 14th of October 2023. Thus, Australia remains as a country that steadfastly refused to recognize the humanity of the indigenous people for almost two centuries, let alone their equality.²⁷⁴

Notwithstanding the uncertainty and pessimism about the way forward after the referendum on 14th of October 2023, questions about truth telling and the need for long lasting settlement between the indigenous and non-indigenous Australians remain. *“This referendum was really about one thing; it was an opportunity to say that Australia is not a racist country and that failed.”*²⁷⁵

The long and difficult struggle asking for an indigenous voice in Australia still continues today. Indigenous Australians have called for a week of silence and mourning after the referendum vote on 14th of October. The indigenous people say that it is *“a bitter irony”* that *“people who have only been on this continent for 235 years would refuse to recognize those whose home this land has been for 60,000 years.”*²⁷⁶

7.2. Mental Health

Indigenous-run health organization, NACCHO - The National Aboriginal Community Controlled Health Organization, has stated that there has been an increase in people experiencing “increased anxiety and depression” in the wake of the “no” vote. ‘Mental health is one of many areas where Indigenous people in Australia experience disadvantage, adding to a more than seven-year difference in life expectancy between Indigenous and non-Indigenous Australians.’²⁷⁷

7.3. Victoria’s Yoorrook Commission

Building up the Commission to examine the colonial past and the first year of its operations required a dedicated time for designing, planning, consulting and feedback. Every conceptual

²⁷³ Mark McKenna, ‘The need for Truth Telling is more urgent than ever if we are to change hearts and minds for future referendums’ (*The Guardian*, 26 October 2023) <<https://www.theguardian.com/commentisfree/2023/oct/26/the-need-for-truth-telling-is-more-urgent-than-ever-if-we-are-to-change-hearts-and-minds-for-future-referendums>> accessed 19 December 2023

²⁷⁴ *ibid.*

²⁷⁵ *ibid.*, esteemed Yuin elder Ossie Cruse.

²⁷⁶ Lyndal Rowlands, ‘Indigenous Australians call for a ‘week of silence’ after referendum failure’ (*Al Jazeera*, 15 October 2023) <<https://www.aljazeera.com/news/2023/10/15/indigenous-australians-call-for-week-of-silence-after-referendum-failure>> accessed 19 December 2023

²⁷⁷ *ibid.*

decision had to be evaluated in terms of cultural appropriateness and adapted to its mandate of upholding self-determination principles.²⁷⁸

Impact of the Covid pandemic too was a challenge in setting up the commission, as most businesses were conducted virtually between June and December 2021.²⁷⁹ Appointing staff members was difficult. No face-to-face meet-ups due to working remotely during the pandemic. This meant repeated delays in introducing its work to the communities, in building trust, and in accessing those who cannot use virtual technology. Country visits got cancelled, instead a Facebook live event was held. Face to face meetings took place after 10 months of establishing Yoorrook.²⁸⁰

The reality of the structural racism and unconscious bias in society was a challenge to Yoorrook. During the set-up phase, Yoorrook encountered misunderstandings of resistance in its interactions. Yoorrook is documenting these experiences for further reflections.²⁸¹

7.4. People's views on 'Closing the Gap'

'Closing the Gap' is important because it is aimed at reducing the disadvantage among indigenous people. This is central to the empowerment of the Aboriginal people, and achieving parity to all Australians.²⁸²

Some believe that 'Closing the gap' is a multi-generational project that requires the rebuilding of trust between the Aboriginals and the governments. *"We don't trust a lot of people. When we hear what politicians have to say, we're very wary,..how can we advance if we don't trust and believe? There are a lot who don't believe that's a big barrier and a big hurdle for politicians to get over."*²⁸³

New data released by the Productivity Commission*²⁸⁴ shows there is still a long way to close the gap for the Aboriginals in Australia. The gap is not closing fast enough.²⁸⁵ This is why a 'Voice' to the Parliament is needed, so that the voices of the indigenous people will be heard on matters that affect their communities. "For too long governments have made policies for Indigenous Australians, not with Indigenous Australians."²⁸⁶

²⁷⁸ Yoorrook Justice Commission, *Yoorrook with purpose: Interim Report* (Victorian Government Printer 2022) 14<<https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/06/Yoorrook-Justice-Commission-Interim-Report.pdf>> accessed on 19.12.2023

²⁷⁹ *ibid.*

²⁸⁰ *ibid.*

²⁸¹ *ibid.*

²⁸² 'Who are the Aboriginal and Torres Strait Islander people of Australia?' (*World Vision*) <<https://www.worldvision.com.au/global-issues/work-we-do/supporting-indigenous-australia/closing-the-gap>> accessed 20 December 2023

²⁸³ Alex Treacy, 'Tasmanian Aboriginal Centre – Closing the Gap, 2023' (*Tasmanian Aboriginal Centre*, 30 August 2023) <<https://tacinc.com.au/closing-the-gap-2023/>> accessed 20 December 2023

²⁸⁴ *The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long-term interest of the Australian community. The Productivity Commission has the task of undertaking a comprehensive review of progress every three years, to inform ongoing implementation and find areas where additional effort is required to close the gap.

Productivity Commission, 'A guide to Productivity Commission' <<https://gcyp.sa.gov.au/2024/02/09/productivity-commission-releases-new-report-on-closing-the-gap/>> accessed 10 March 2024

²⁸⁵ 'New data shows the gap is not closing' (*Australian Government Department of the Prime Minister and Cabinet*, 15 June 2023) <<https://ministers.pmc.gov.au/mccarthy/2023/newdatashowsgapnotclosing>> accessed 20 December 2023

²⁸⁶ *ibid.*

SUMMARY

COUNTRY	AUSTRALIA
Background / Context	<ul style="list-style-type: none"> ● Australia can be called the oldest living cultural history in the world, since the indigenous Australians have been living in this nation for more than 50,000 years.²⁸⁷ ● The original people are also called the First People of Australia ● Their developments and lifestyles were interrupted with the discovery of this nation by explorer James Cook in 1770 and establishing it initially as a British penal colony. ● 1788-1859 – British colonization and establishment of 6 separate states, ● Conflicts began between the indigenous people and the settlers for land rights, ● Frontier Wars – wars between the settler groups and the natives, ● Stolen Generations – Aboriginal children separated from families through harsh policies, ● Many discriminatory laws and policies for indigenous people were enacted, ● Many landmark events took place to record the struggles of the Aboriginal people, ● Uluru Statement from the Heart, a petition in 2017 which is an invitation from the First people to the non-indigenous people calling for substantive reforms to help realize Indigenous rights through the establishment of an Indigenous Voice to the Parliament and a <i>Makarrata</i> Commission, ● Victoria, the first state to establish a truth telling commission called the <i>Yoorrook Justice Commission</i> ● Other states are following the steps taken by Victoria, some other states have paused their process, ● Referendum on October 14th 2023 to recognized the constitutional rights of the indigenous people; the referendum failed, ● Fight for Aboriginal rights continues.
Establishment of Yoorrook Commission	<ul style="list-style-type: none"> ● First Peoples Assembly was initiated in Victoria in 2019, ● Initiatives on Treaty making/ Treaty Legislations – for long term sustainable solutions, ● <i>Advancing the Treaty Process with the Aboriginal of Victorians Act 2018 (Vic)</i> which provided the legal basis for the ‘First People’s Assembly of Victoria’, ● Letters Patent established the Yoorrook Justice commission, ● Extension granted for the Commission till 2025,
Mandate of Yoorrook	<ul style="list-style-type: none"> ● Core elements under three central goals: Truth, Understanding and Transformation ● Independent establishment

²⁸⁷ ‘A Brief Guide to the History of Australia’ (*Insider Guides*, 30 March 2016) <<https://insiderguides.com.au/brief-guide-history-australia/>> accessed 25 September 2023

	<ul style="list-style-type: none"> ● To Establish official record of the impact of colonization on the First People ● Make recommendations for healing, system reform, practical changes to law, policy and education. ● Hear stories and gather information on injustices past as well as present. ● Support the First People in how they want to share information and to avoid further trauma.
Composition of Yoorrook	<ul style="list-style-type: none"> ● Four commissioners amongst whom three are women, ● Commissioners are all indigenous people, ● Many ‘Truth Receivers’ working in the grassroots to know about truth and injustices,
Success/Lessons Learnt /Best Practices	<ul style="list-style-type: none"> ● Acknowledgement of truth telling at national levels, ● Community Truth Telling - Name changing, museums, monuments, arts and archives, ● The National Agreement on Closing the Gap, ● Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples – mapping of massacres, truth telling through education, ● Colourful, informative and user-friendly website accessible to all,
Negative Impacts	<ul style="list-style-type: none"> ● “For too long governments have made policies <i>for</i> Indigenous Australians, not <i>with</i> Indigenous Australians,”²⁸⁸ ● People are wary of what politicians say, ● Each state is at different stages in the truth telling process, ● Challenges in the initial phase of the Yoorrook Commission – Covid pandemic prevented face to face meetings with communities until 10 months later, ● Facing the reality of structural racism and bias by the Yoorrook Commission, ● Increased depression and anxiety after the ‘no’ vote, ● Mental health is an area where the indigenous people experience disadvantage,
People’s feelings	<ul style="list-style-type: none"> ● requires the rebuilding of trust between the Aboriginals and the governments, ● reducing the disadvantages of the indigenous people is a multi-generational project, ● Politicians have a big hurdle in making people trust the government

²⁸⁸ ‘New Data shows the gap is not closing’ (Australian Government Department of Prime Minister and Cabinet, 15 June 2023) <<https://ministers.pmc.gov.au/mccarthy/2023/new-data-shows-gap-not-closing#:~:text=The%20gap%20is%20not%20closing%20fast%20enough..Australians%2C%20not%20with%20Indigenous%20Australians>> accessed 20 December 2023

LIBERIA

Key Author –

ZAF Wazniya – Senior Executive Legal

Support Author –

Dulan Dasanayaka – Senior Executive Policy

Acronyms

ACS	- American Colonization Society
AFL	- The Armed Forces of Liberia
AU	- African Union
CPA	- The Comprehensive Peace Agreement
DDRR	- Disarmament, Demobilization, Rehabilitation and Reintegration
ECOMOG	- West African peacekeeping force
ECOWAS	- Economic Community of West African States
EDC	- Egregious Domestic Crimes
EDLV	- Egregious Domestic Law Violations
FLY	- Federation of Liberian Youth
GHRV	- Gross Human Rights Violations
HRCSA	- Human Rights Foundation of South Africa
HRPS	- The Human Rights Protection Section of UNMIL
ICGL	- International Contact Group on Liberia
ICTJ	- International Centre for Transitional Justice
IGNU	- Interim Government of National Unity
IHL	- International Humanitarian Law
IHRL	- International Human Rights Law
INCHR	- Independent National Council for Human Rights
INPFL	- Independent National Patriotic Front
ITAC	- International Technical Advisory Committee
JMC	- Joint Monitoring Committee
LDF	- Lofa Defense Force
LFF	- The Liberian Frontier Force,
LPC	- Liberian Peace Council
LURD	- Liberians United for Reconciliation and Democracy
LWI	- Liberian Women Initiative
MODEL	- Movement for Democracy in Liberia
NDPL	- National Democratic Party of Liberia
NPFL	- National Patriotic Front of Liberia
NPFL CRC	- NPFL Central Revolutionary Council
NTGL	- National Transitional Government of Liberia
PRC	- People's Redemption Council or the Military junta
RUF	- Revolutionary United Front
SHLV	- Serious Humanitarian Law Violations
SRM	- Strategic Roadmap for National Healing Peacebuilding and Reconciliation
SSR	- Security Sector Reforms
TJ	- Transitional Justice
TJWG	- Transitional Justice Working Group
TRC	- Truth and Reconciliation Commission
TWP	- The True Whig Party
ULIMO	- United Liberation Movement for Democracy
UNHCR	- The United Nations High Commissioner for Refugees
UNMIL	- UN Mission in Liberia
UNOMIL	- UN Observer Mission in Liberia
UNPSOL	- United Nations Peace-Building Support Office in Liberia
WCT	- War Crimes Tribunal

CONTENTS

Chapter 1	Historical Background	
	1.1. Birth of Liberia	1816-1847
	1.2. Americo – Liberian Rule	1847-1980
	1.3. End of Americo-Liberian Rule and The Military Coups	1980-1989
	1.4. The Civil Wars	1989-2003
Chapter 2	Post Conflict Liberia	
	2.1. An Attempt at Justice	
	2.2. Mandate of the Truth and Reconciliation Commission	
	2.3. Functions, Powers and Guiding Principles of the TRC	
	2.4. Composition of the TRC	
Chapter 3	Policy Framework of the TRC process	
	3.1. Key Policies	
	3.2. The Four Dimensions of Truth	
Chapter 4	Truth and Reconciliation Commission Liberia 2003	
	4.1. Initial challenges faced by Commissioners	
	4.2. Amnesty	
	4.3. Community Views	
	4.4. Criticisms, Controversies and Negative Impacts	
Chapter 5	Best Practices and Lessons Learnt from Liberia	
	5.1. Achievements and Testimonies of Successes	
	5.2. Human Rights Information Management	
	5.3. Thematic Hearings	
	5.4. Women and Conflict	
	5.5. The Diaspora Project	
	5.6. Disarmament, Demobilization, Rehabilitation and Reintegration	
	5.7. TRC Final Reconciliation Initiatives	
Chapter 6	Subsequent Developments and Policies	
	6.1. The Palava Hut Project	
	6.2. Independent National Council for Human Rights (INCHR)	
	6.3. Strategic Roadmap for National Healing, Peacebuilding and Reconciliation (SRM)	

CHAPTER 1

Historical Background

1.1. Birth of Liberia 1816 - 1847

In 1816, a group of “white Americans” founded the ‘American Colonization Society’ (ACS), to deal with the problem of growing number of free blacks in the United States,¹ a social crisis created by themselves by using Africans as slave labour,² and started a movement to return them to Africa. Former Presidents like Thomas Jefferson and James Madison supported this initiative and arranged for public funding for the ACS and began sending representatives to West Africa to look for lands. However, the representatives were unable to find a location due to the unwillingness of the local tribes to sell any lands.³

Somehow in 1821,⁴ through coercion by the then Navy Officer in Charge, Lieutenant Stockton, a strip of land in the African continent was sold to the ACS. This settlement was called Liberia (the free land⁵) and the settler-built fortresses to protect themselves from attacks by the local tribes. The settlement called *Christopolis*⁶ was renamed Monrovia as its capital in honour of the President James Monroe who supported this project with funding.⁷ The settlers tried to live according to the traditions they had learnt and brought from the U.S and mostly didn’t mix with the natives of the land.

In 1847, Liberia was established as a sovereign State by declaring independence from the ACS, and adopted a constitution that mirrored that of the U.S.⁸ Joseph Jenkins Roberts became the first President of Liberia⁹ who was responsible for lobbying for Liberia’s recognition as an independent State. He was the first non-white governor of Liberia before his presidency. The British recognized this new republic by signing a treaty of commerce and friendship in 1848.¹⁰ Although at first the U.S didn’t recognize the colony it had created due to impacts it will have on slavery in the U.S., they did establish diplomatic connections with Liberia from 1862 until the 1990’s.¹¹ Liberia is Africa’s oldest republic and also the only Black State in Africa never to have been subjected to a colonial rule.¹²

¹ ‘Founding of Liberia 1847, Milestones 1830-1860’ (*Office of the Historian, Foreign Service Institute, United States Department of State*) <<https://history.state.gov/milestones/1830-1860/liberia>> accessed 3 October 2023

² The Advocates for Human Rights, ‘Background on Liberia and the Conflict Chapter 4’ <https://www.theadvocatesforhumanrights.org/Res/chapter_4-background_on_liberia_and_the_conflict.pdf> accessed 3 October 2023

³ *ibid*

⁴ ‘Founding of Liberia 1847, Milestones 1830-1860’ (*Office of the Historian, Foreign Service Institute, United States Department of State*) <<https://history.state.gov/milestones/1830-1860/liberia>> accessed 3 October 2023

⁵ ‘Collection Maps of Liberia, 1830 to 1870’ (*Library of Congress*) <<https://www.loc.gov/collections/maps-of-liberia-1830-to-1870/articles-and-essays/history-of-liberia/1820-to-1847/>> accessed 3 October 2023

⁶ *ibid*.

⁷ ‘Founding of Liberia 1847, Milestones 1830-1860’ (*Office of the Historian, Foreign Service Institute, United States Department of State*) <<https://history.state.gov/milestones/1830-1860/liberia>> accessed 3 October 2023

⁸ History.com Editors, ‘Liberian Independence proclaimed’ (*History*, 21 July 2010) <<https://www.history.com/this-day-in-history/liberian-independence-proclaimed>> accessed 29 February 2024

⁹ Benjamin Elisha Sawe, ‘Presidents of Liberia through History’ (*World Atlas*, 22 July 2019) <<https://www.worldatlas.com/articles/presidents-of-liberia-through-history.html>> accessed 3 October 2023

¹⁰ *ibid*.

¹¹ *ibid*.

¹² Svend E. Holsoe, Abeodu Bowen Jones, Donald Rahl Petterson, ‘Liberia’ (*Encyclopedia Britannica*) <<https://www.britannica.com/place/Liberia>> accessed 3 October 2023

1.2. Americo – Liberian Rule 1847-1980

The settlers and the descendants of the free black slaves, who were the minority called the Americo-Liberians, dominated Liberia whilst having social and political control of the country until the 1980's.¹³ They developed a culture that closely resembled that of the Americans, even to the extent of establishing the idea of racial supremacy.¹⁴

The indigenous African tribes violently opposed the settlers. Throughout the 19th century, the tribal natives and the settlers were at war over territories and trade routes.¹⁵ The social stratification of Liberia between the indigenous majority and the settler minority, afflicted the majority with poverty and lack of basic amenities. The political domination by the predatory settler elites who abused power¹⁶ and the unequal distribution of power and wealth were at the centre of the conflicts.¹⁷

In the late 1800's, just like the other African politics, Liberia too faced the possibility of becoming involuntarily incorporated into the expanding colonial empires of Britain, France and other European Powers. Outright annexation with the European powers were prevented due to Liberia's connections with the U.S, amidst imminent threats of armed intervention.¹⁸

It was the *settler led* government that declared independence and governed the country as a one-party State for 133 years.¹⁹ The country was fairly stable during this period. Whilst they dominated the government, the indigenous Africans were not given the opportunity of citizenship until 1904.²⁰ Their governance was mostly only along the coastal territories. However, after a few years, inland Liberia or the '*hinterland*' which made up most of the Liberian lands occupied by the majority of the indigenous tribes, came under the administrative and military control of the settler government.²¹ *The Armed Forces of Liberia (AFL)* which was earlier called *The Liberian Frontier Force (LFF)*, - the military and domestic policing arm of the Liberian government - became the primary instrument to control hinterland.²²

Internal dissension between the settlers and the natives, frequent border disputes with the neighbouring nations including the European nations that colonized the surrounding territories along with financial pressures, represented a level of desperation that promoted Liberia's plea to the U.S. for financial and military assistance. From 1912-1927, *Buffaloe Soldiers* (former

¹³ Peter Dennis, 'A Brief History of Liberia' (The International Center for Transitional Justice 2006)

<<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Brief-History-2006-English.pdf>> accessed 2 February 2024

¹⁴ 'Constitution of Liberia' (*Constitution Net*) <<https://constitutionnet.org/country/liberia>> accessed 3 October 2023

¹⁵ The Advocates for Human Rights, 'Background on Liberia and the Conflict Chapter 4'

<<https://www.theadvocatesforhumanrights.org/Res/chapter-4-background-on-liberia-and-the-conflict.pdf>> accessed 3 October 2023

¹⁶ *ibid.*

¹⁷ Peter Dennis, 'A Brief History of Liberia' (The International Center for Transitional Justice 2006)

<<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Brief-History-2006-English.pdf>> accessed 29 February 2024

¹⁸ Claude A. Clegg, 'A splendid type of Colored American: Charles Young and the Reorganisation of The Liberian Frontier Force' *The International Journal of African Historical Studies*, Volume 29, No.1, 1996<<https://www.africabib.org/rec.php?RID=151543313>>accessed on 17.04.2024

¹⁹ 'Settlement of Liberia and Americo-Liberian Rule' (*PeacebuildingData.org*)

<<http://www.peacebuildingdata.org/research/liberia/about-liberia/americo-liberian-rule>> accessed 3 October 2023

²⁰ *ibid.*

²¹ The Advocates for Human Rights, 'Background on Liberia and the Conflict Chapter 4'

<<https://www.theadvocatesforhumanrights.org/Res/chapter-4-background-on-liberia-and-the-conflict.pdf>> accessed 3 October 2023

²² *ibid.*

African-American Officers and non-commissioned officers of the U.S. Army's Black Regiments) commanded the LFF.²³

1.3. End of Americo-Liberian Rule and The Military Coups 1980 – 1989

When President William Tolbert came to power in July 1971, there was already a wide disparity between the Americo-Liberians and the general population due to the “Open Door” economic policy initiated by the former President Tubman that brought in a great deal of foreign investments. President Tolbert, being a member of one of the most influential and affluent Americo-Liberian families, was tainted with allegations of nepotism.²⁴ In April 1979, violence broke out known as the ‘rice riot’, when the proposal to increase the price of rice met with severe opposition, damaging Tolbert’s credibility with the claim that his family controls the rice monopoly.²⁵ The 133 years of Americo-Liberian domination ended in 1980, with the formation of the PRC- *People’s Redemption Council or the Military junta*, when an indigenous Liberian Master Sergeant Samuel Doe from an ethnic group called Krahn, together with his co-partner Sergeant Thomas Quiwonkpa, executed the then President William Tolbert along with some other government officials, mostly of Americo-Liberian descent and seized power in a *coup d’état*.²⁶

After the said coup, PRC headed by Doe, assumed power and suspended the Constitution. He was paranoid about threats to his leadership, as a result of which the government monopolized political power. Facing increasing pressure from international organizations and donors, Doe lifted the ban on political parties and called for elections in 1985.²⁷ After five years of ruling as a quasi-dictator,²⁸ an election was held with the idea of constitutional reforms. Doe, declared himself and his party, NDPL – National Democratic Party of Liberia as victorious²⁹ in an election that was widely seen as rigged. Other political parties had been excluded from participating in this election and popular opponents or candidates like Mrs. Ellen Johnson-Sirleaf were arrested and charged with treason.³⁰

In 1986, a new constitution established the second republic of Liberia. Samuel K. Doe, the 1980 coup leader, retained power as head of state.³¹ Doe’s co-partner in the first coup, and co-founder of PRC, Thomas Quiwonkpa, attempted a coup to topple Doe. This rebellion was violently put down by the AFL and Quiwonkpa was executed. There were several coup attempts that were thwarted by Doe. Brutal campaigns against his opponents made Liberia noted for widespread human rights violations.³²

²³ Timothy A. Rainey, ‘*Buffalo Soldiers in Africa: The Liberian Frontier Force and the United States Army 1912-1927*’ (DPhil thesis, John Hopkins University 2001) <<https://www.africabib.org/rec.php?RID=157136604>> accessed on 17.04.2024

²⁴ Peter Dennis, ‘*A Brief History of Liberia*’ (The International Centre for Transitional Justice 2006) <<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Brief-History-2006-English.pdf>> accessed 29 February 2024

²⁵ *ibid.*

²⁶ ‘Liberia 09/06’ (US Department of State) <<https://2009-2017.state.gov/outofdate/bgn/liberia/74187.htm>> accessed 3 October 2023

²⁷ *ibid.*

²⁸ Colonel John H Thomson, ‘*The Liberian Coup d’etat, its impact on economic and security assistance*’ (1988) USAWC Military Studies Program Paper <<https://apps.dtic.mil/sti/pdfs/ADA195745.pdf>> accessed 3 October 2023

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² The Advocates for Human Rights, ‘*Background on Liberia and the Conflict Chapter 4*’ <https://www.theadvocatesforhumanrights.org/Res/chapter_4-background_on_liberia_and_the_conflict.pdf> accessed 3 October 2023

1.4. Civil Wars 1989 – 2003

Charles Taylor, a former official in the Doe government launched an invasion into Liberia from the neighbouring country of Ivory Coast in December 1989.³³ His group of fighters, *National Patriotic Front of Liberia-(NPFL)*, took control of territories resulting in human rights abuses leading to international action. A fragment group of NPFL – *Independent National Patriotic Front – (the INPFL)*, captured Samuel Doe and tortured him to death.

During this period several agreements were signed, the first one being a cease-fire agreement between NPFL and Doe’s soldiers; second one was the peace agreement between the interim government, NPFL and Doe’s supporters, usually under the lead of the Economic Community of West African States (ECOWAS), a regional body that became increasingly engaged in peace-making and other regional matters.³⁴ The Interim Government of National Unity (IGNU) was established by the ECOWAS. Fighting continued even after these agreements, and the interim government was not recognized by Taylor.³⁵

The fighting was marked by wide-scale atrocities that helped to increase, inter-ethnic tensions. ECOWAS troops, strongly backed by Nigeria, tried to maintain the peace, but were often themselves pulled into the fighting. In addition to waging war at home, Charles Taylor supported and helped to start another war in neighbouring Sierra Leone.³⁶

In 1993, a peace agreement mediated by the UN, called the Conotou Accord³⁷ was signed by the Organization of African Unity (OAU), and ECOWAS, two of the warring factions (NPFL, ULIMO) and the interim government called the Liberian Transitional Government. The accord stipulated that concomitant with disarmament, a five-person Council of State elected by all the factions would take power from the interim government until elections were held. An important element of the plan involved the creation of a UN Observer Mission in Liberia (UNOMIL), pursuant to a Security Council Resolution 866, to help supervise and monitor the agreement, in conjunction with the West African peacekeeping force (ECOMOG)³⁸

Little progress was made until further political infighting and renewed combat brought disarmament to a virtual standstill. By 1995, Liberia’s civil war had grown to include the following seven major factions:³⁹

- NPFL
- NPFL Central Revolutionary Council (NPFL-CRC)
- Lofa Defense Force (LDF)

³³ *ibid.*

³⁴ Priscilla Hayner, ‘*Negotiating peace in Liberia: preserving the possibility of Justice*’ Centre for Humanitarian Dialogue, ICTJ, November 2007 <<https://www.hdcentre.org/wp-content/uploads/2016/08/89NegotiatingpeaceinLiberia-PreservingthepossibilityforJustice-November-2007.pdf>> accessed 5 February 2024

³⁵ Peter Dennis, ‘*A Brief History of Liberia*’ (The International Center for Transitional Justice 2006) <<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Brief-History-2006-English.pdf>> accessed 29 February 2024

³⁶ Priscilla Hayner, ‘*Negotiating peace in Liberia: preserving the possibility of Justice*’ Centre for Humanitarian Dialogue, ICTJ, November 2007 <<https://www.hdcentre.org/wp-content/uploads/2016/08/89NegotiatingpeaceinLiberia-PreservingthepossibilityforJustice-November-2007.pdf>> accessed 5 February 2024

³⁷ *ibid.*

³⁸ ‘*Human Rights Abuses by the Liberian Peace Council and the Need for International Oversight*’ Volume 6, No.3, 1994 <<https://www.hrw.org/reports/1994/liberia/>> accessed 1 March 2024

³⁹ Peter Dennis, ‘*A Brief History of Liberia*’ (The International Center for Transitional Justice 2006) <<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Brief-History-2006-English.pdf>> accessed 29 February 2024

- ULIMO - the United Liberation Movement for Democracy in Liberia: made up primarily of soldiers from former President Samuel Doe's army, and then again split into two along ethnic lines as the Krahn and Mandingo ethnicities.⁴⁰

ULIMO-K:

ULIMO-J :

- Armed Forces of Liberia (AFL)
- Liberian Peace Council (LPC) – an offshoot of President Doe’s Army.

The characteristic of the Liberian civil war has been that civilians suffered the most, and were killed in far greater numbers than combatants. Lack of protection for civilians from abuses by all sides and the profound distrust among the warring factions remained as the obstacles to lasting peace.⁴¹ Abuses included widespread looting, arbitrary arrest and detention, forcible recruitment, beatings, torture, rape, and extrajudicial executions.⁴²

In September 1995, in accordance with the Abuja Peace Accords^{*43} the seven factions joined to form the Liberian Council of State. Despite this agreement, fighting continued and the year 1996 saw some of the war’s deadliest battles. However, in accordance with the timetable laid out in a supplement to the accords (the “Abuja Supplement”), elections were conducted in July 1997 and Charles Taylor was declared winner, garnering nearly 75% of the vote. Some have speculated that Taylor won because many citizens believed that electing him was the only way to end the war.⁴⁴

By the late 1990s it was evident that Taylor was supporting the Revolutionary United Front (RUF) in the civil war in neighbouring Sierra Leone, as a result of which the UN imposed sanctions on the Liberian government.⁴⁵

In 1997, UN Secretary-General Kofi Annan established the United Nations Peace-Building Support Office in Liberia (UNPSOL) and The United Nations High Commissioner for Refugees (UNHCR) established a mission to provide repatriation assistance to Liberian refugees. ECOMOG-Liberia was disbanded in 1998, but some 5,000 ECOWAS military personnel remained in the country to train the government’s security forces and to maintain order.⁴⁶

Taylor’s repressive policies and continued support for rebels in neighbouring countries, led to the founding of the armed opposition group in 1999 by Liberian refugees called, *Liberians United for Reconciliation and Democracy (LURD)*. In early 2003, an offshoot of LURD, the

⁴⁰ *ibid.*

⁴¹ ‘Human Rights Abuses by the Liberian Peace Council and the Need for International Oversight’ Volume 6, No.3, 1994 <<https://www.hrw.org/reports/1994/liberia/>> accessed 1 March 2024

⁴² *ibid.*

⁴³ *A new peace agreement was signed in Abuja, Nigeria that was to bring an end to this little known but brutal war in Liberia. The agreement included all the warring factions and provided for a new cease-fire. It established an amended timetable for implementation of the 1995 peace accord and provided for an immediate cease-fire, disarmament and demobilization of factional fighters, and internationally-supervised elections for a democratic civilian government by May 1997.

Amnesty International, ‘Nigeria: A New Peace Agreement: an Opportunity to Introduce Human Rights Protection’ AFR 34/01/1995, 20 September 1995 <<https://www.refworld.org/reference/countryrep/amnesty/1995/en/32018>> accessed 1 March 2024

‘The United States Government welcomes the inauguration of the new Liberian Council of State Chairperson, Ruth Perry’ (*relief web*) <<https://reliefweb.int/report/liberia/united-states-government-welcomes-inauguration-new-liberian-council-state-chairperson>> accessed 1 March 2024

⁴⁴ Peter Dennis, ‘A Brief History of Liberia’ (The International Center for Transitional Justice 2006) <<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Brief-History-2006-English.pdf>> accessed 29 February 2024

⁴⁵ *ibid.*

⁴⁶ ‘Liberia 1943- Present’ (*University of Central Arkansas*) <<https://uca.edu/politicalscience/home/research-projects/dadm-project/sub-saharan-africa-region/liberia-1943-present/>> accessed 1 March 2024

Movement for Democracy in Liberia (MODEL), was formed. These groups launched military campaigns against Taylor.⁴⁷ ECOWAS withdrew its remaining military personnel from the country in 1999. Sporadic clashes continued with government troops and LURD in many areas of Liberia, resulting in numerous deaths and the imposition of a state of emergency.⁴⁸

Taylor stepped down in 2003 due to international pressure, by accepting an ECOWAS brokered peace deal that offered him asylum in Nigeria.⁴⁹ In October 2003, the UN took over peacekeeping operations from ECOWAS and established the UN Mission in Liberia (UNMIL)⁵⁰ under UN Security Council Resolution 1509 which mandated to monitor the ceasefire, to monitor the disengagement of military forces, and to facilitate the provision of humanitarian assistance.⁵¹ Thereafter, a Comprehensive Peace Agreement (CPA) was signed between the interim government and the warring factions that provided for a transitional government until elections in 2006.⁵² This ended the 14-year-old conflict with an estimated 250,000⁵³ people losing their lives. After the exit of Charles Taylor, the government was headed by the Vice President for an interim period until the Transitional Government was installed.⁵⁴

⁴⁷ Peter Dennis, 'A Brief History of Liberia' (The International Center for Transitional Justice 2006) <<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Brief-History-2006-English.pdf>> accessed 29 February 2024

⁴⁸ 'Liberia 1943- Present' (*University of Central Arkansas*) <<https://uca.edu/politicalscience/home/research-projects/dadm-project/sub-saharan-africa-region/liberia-1943-present/>> accessed 1 March 2024

⁴⁹ Peter Dennis, 'A Brief History of Liberia' (The International Center for Transitional Justice 2006) <<https://www.ictj.org/sites/default/files/ICTJ-Liberia-Brief-History-2006-English.pdf>> accessed 29 February 2024

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² The Advocates for Human Rights, 'Background on Liberia and the Conflict Chapter 4' <https://www.theadvocatesforhumanrights.org/Res/chapter_4-background_on_liberia_and_the_conflict.pdf> accessed 3 October 2023

⁵³ 'Where We Work Liberia' (*The Centre for Justice and Accountability*) <<https://cja.org/where-we-work/liberia/>> accessed 3 October 2023

⁵⁴ 'Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties Accra' 18 August 2003, United States Institute of Peace <https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/liberia_08182003.pdf> accessed 5 October 2023

CHAPTER 2

Post-Conflict Liberia

2.1. An Attempt at Justice

Liberia had been at peace since 18th August 2003, with the signing of The Comprehensive Peace Agreement (CPA) in Accra, Ghana.⁵⁵ Since then, Liberia has sustained a period of uninterrupted stability transforming from one of the most volatile, to one of the most peaceful nations in West Africa, despite facing economic difficulty and other challenges relating to sustainable development.

The Joint Monitoring Committee (JMC) that was set up under the terms of the Ceasefire Agreement to monitor ceasefire violations and cessation of all unauthorised military activities cantonment of forces began meeting on a weekly basis from October 2003. The JMC was chaired by a representative of ECOWAS and included equal representation from the Parties, as well as representatives of the UN, AU and ICGL. The JMC reported daily to ECOWAS Headquarters and were to investigate reports of ceasefire violations by the parties.⁵⁶ The JMC strongly condemned all violations of the ceasefire and called on the parties to the conflict to exercise control over their combatants in order to ensure that the ceasefire is adhered to. The JMC also agreed for all parties to allow free and unhindered access to humanitarian agencies, NGOs and peacekeepers to areas under their control.⁵⁷

According to the Secretary General, the JMC had been “a valuable mechanism for monitoring the ceasefire, maintaining dialogue among the armed groups, and facilitating contacts between UNMIL and the ground commanders of these groups.”⁵⁸ Its role was endorsed in the CPA and in the UN Security Council Resolution 1509 (19 September 2003).⁵⁹

The CPA, also called the Accra Agreement, was the fifteenth peace agreement of Liberia since the beginning of the war in 1989.⁶⁰ Most of the other agreements held for only a few weeks or less. The 2003 agreement sought to cover a broad range of issues, and was more detailed and lengthier than the previous accords. Unlike some previous peace agreements, the CPA granted a great majority of ministries in the transitional government to the warring factions that had surrendered their arms.

Under the new administration, there were many disagreements to be resolved. One of the biggest disputes was to agree on the choice between a War Crimes Tribunal (WCT) and a Truth and

⁵⁵ Priscilla Hayner, ‘Negotiating peace in Liberia: preserving the possibility of Justice’ Centre for Humanitarian Dialogue, ICTJ, November 2007 <<https://www.hdcentre.org/wp-content/uploads/2016/08/89NegotiatingpeaceinLiberia-PreservingthepossibilityforJustice-November-2007.pdf>> accessed 5 February 2024

⁵⁶ Agreement on Ceasefire and Cessation of Hostilities between the Government of the Republic of Liberia and Liberians United for Reconciliation and Democracy and the Movement for Democracy in Liberia 2003, art.6

⁵⁷ ‘Liberia: UNMIL agrees that central Monrovia, Bushrod Island and Paynesville would be weapons free in 72 hours’ (Relief web, UNMIL/PIO/PR/2 Press release) 6 October 2003 <<https://reliefweb.int/report/liberia/liberia-unmil-agrees-central-monrovia-bushrod-island-and-paynesville-would-be-weapons>> accessed 1 March 2024

⁵⁸ ‘Accra Peace Agreement’ (*Peace Accords Matrix, University of Notre Dame*) <<https://peaceaccords.nd.edu/accord/accra-peace-agreement>> accessed 1 March 2024

⁵⁹ ‘Liberia: UNMIL agrees that central Monrovia, Bushrod Island and Paynesville would be weapons free in 72 hours’ (Relief web, UNMIL/PIO/PR/2 Press release) 6 October 2003 <<https://reliefweb.int/report/liberia/liberia-unmil-agrees-central-monrovia-bushrod-island-and-paynesville-would-be-weapons>> accessed 1 March 2024

⁶⁰ *ibid.*

Reconciliation Commission (TRC).⁶¹ Supporters of a retributive justice process, motivated by the chronic legacy of impunity and abuses in the country opted for the WCT; but others preferred a restorative justice process for reconciliation and offer healing, as a better way of breaking Liberia's cycle of violence and revenge, and to lessen the resentments within the society.⁶² The warring factions too bargained strongly for a TRC.

'The TRC became a very attractive option, because the dominant view of participants from civil society and political parties was for a war crimes court... You didn't need a general amnesty, because the TRC would give you an amnesty, it was thought. There was a sense that it was clear a tribunal means you'd be put away, but the TRC wouldn't put you in jail. No one paid any attention to explaining what this meant.' The agreement on a TRC effectively ended any discussion about amnesty, which had begun to be raised by the factions.⁶³

Hence, the signatories of the CPA called for a Truth and Reconciliation Commission -TRC₂ as a "forum that [would] address issues of impunity, as well as [provide] an opportunity for both victims and perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and reconciliation"⁶⁴

The CPA as mediated by the former Head of State of Nigeria, General Abdulsalami Abubakar,⁶⁵ envisaged the TRC as the first step in the long path towards peace and reconciliation.

The talks concluded with the resolution to establish a transitional government and an agreement for institutional reforms, a human rights inquiry, massive disarmament and demobilization, and a plan for national elections in two years.⁶⁶

On 14th October 2003, a political body called the National Transitional Government of Liberia came into being under a power sharing agreement between the members of the many warring factions.⁶⁷ An important part of the negotiations was also to give the title of 'chairman' to the choice of the two-year transitional head of state.⁶⁸

Acting under Article XIII of the CPA, the National Transitional Legislative Assembly of the National Transitional Government of Liberia enacted The Truth and Reconciliation

⁶¹ Aaron Sleh, 'Amnesty and the Liberian TRC: Who is Pardonable?' (*The Perspective*, 18 April 2006) <<https://www.theperspective.org/articles/0418200603.html>> accessed 5 October 2023

⁶² *ibid.*

⁶³ Priscilla Hayner, 'Negotiating peace in Liberia: preserving the possibility of Justice' Centre for Humanitarian Dialogue, ICTJ, November 2007 <<https://www.hdcentre.org/wp-content/uploads/2016/08/89NegotiatingpeaceinLiberia-PreservingthepossibilityforJustice-November-2007.pdf>> accessed 5 February 2024

⁶⁴ 'Where We Work Liberia' (*The Centre for Justice and Accountability*) <<https://cja.org/where-we-work/liberia/>> accessed 3 October 2023

⁶⁵ 'Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties Accra' 18 August 2003, United States Institute of Peace <https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/liberia_08182003.pdf> accessed 5 October 2023

⁶⁶ Priscilla Hayner, 'Negotiating peace in Liberia: preserving the possibility of Justice' Centre for Humanitarian Dialogue, ICTJ, November 2007 <<https://www.hdcentre.org/wp-content/uploads/2016/08/89NegotiatingpeaceinLiberia-PreservingthepossibilityforJustice-November-2007.pdf>> accessed 5 February 2024

⁶⁷ 'Where We Work Liberia' (*The Centre for Justice and Accountability*) <<https://cja.org/where-we-work/liberia/>> accessed 3 October 2023

⁶⁸ Priscilla Hayner, 'Negotiating peace in Liberia: preserving the possibility of Justice' Centre for Humanitarian Dialogue, ICTJ, November 2007 <<https://www.hdcentre.org/wp-content/uploads/2016/08/89NegotiatingpeaceinLiberia-PreservingthepossibilityforJustice-November-2007.pdf>> accessed 5 February 2024

Commission (TRC) of Liberia on the 10th of June 2005.⁶⁹ The new President Ellen Johnson-Sirleaf formally launched the TRC in 2006.⁷⁰

As per the CPA, the TRC was established to address issues of impunity, as an opportunity for victims and perpetrators to share their experiences and deal with the root causes of the crisis and human rights violations.⁷¹

2.2. Mandate of the Truth and Reconciliation Commission.

The mandate of the TRC was expansive and complex as stated in section 4 of the TRC Act. For the purposes of attaining its objectives, the TRC Act in Article IV⁷² gave the Commission the powers to “promote national peace, security, unity and reconciliation” by:

- Investigating gross human rights violations, international humanitarian law abuses, sexual violence, massacres, from the time period of January 1979 to October 14th 2003;
- The option to explore the period before 1979 as needed;
- To determine if these violations were systematic in nature or isolated incidents; find those who were responsible, their motives and the impact on victims; establish the antecedents; [the root causes];
- Provide a forum to address impunity;
- Provide an opportunity to victims and violators to share experience in order to facilitate healing;
- Review the historical past critically in order to address falsehood and correct the misconceptions;
- Adapt specific mechanisms for the vulnerable groups; women, children, disabled;
- Compile a report with its findings.

In addition, the Act specifies the following;

Section 43 stated that the final report of the Commission to be published simultaneously with its presentation in at least three local dailies in pursuit of transparency and public interest objectives.⁷³

The final report to be detailed on all aspects of the TRC work, investigations, hearings, findings and recommendations for prosecutions. Section 44

⁶⁹ Republic of Liberia, Truth and Reconciliation Commission, *Volume I, Preliminary Findings and Determinations* <http://trcofliberia.org/resources/reports/final/volume-one_layout-1.pdf> accessed 4 October 2023

⁷⁰ ‘Liberia’s Truth and Reconciliation Commission formally launched; Deputy UN Envoy urges continued international support to the Commission’ (*relief web*, 23 June 2006) <<https://reliefweb.int/report/liberia/liberias-truth-and-reconciliation-commission-formally-launched-deputy-un-envoy-urges>> accessed 3 October 2023

⁷¹ ‘Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties Accra’ 18 August 2003, United States Institute of Peace <https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/liberia_08182003.pdf> accessed 5 October 2023

⁷² ‘Truth and Reconciliation Commission of Liberia Mandate’ (*Truth and Reconciliation Commission of Liberia*) <<https://www.trcofliberia.org/about/trc-mandate.html>> accessed 13 November 2023

⁷³ *ibid.*

Independence of and freedom from all kinds of interferences and bias to the Commission had been assured under section 39.

Every Commissioner had to take an oath as per Section 41, to honour the obligations on confidentiality and to act in accordance with the provisions of the Act. Section 25 imposed strict rules on breach of confidentiality on all involved in the TRC.⁷⁴

Wilful obstruction and/or interference with any member or work of the TRC was considered an offence and liable for a conviction/imprisonment. Section 28

Section 48 specified in clear terms that within 3 months of the receiving of the report by the Head of State and thereafter on a quarterly basis, he must report the same to the National Legislature on the implementations of its recommendations.

One of the significant aspects of the TRC Act was that all recommendations were to be implemented and the Head of State was required to show cause as to the non-compliance of these recommendations, if any, to the National Legislature.

2.3. Functions, Powers and Guiding Principles of the TRC.

Under Article VII of the TRC Act,⁷⁵ the TRC was granted the powers necessary to fulfil its mandate, including:

- facilitate, and where necessary, initiate or coordinate inquiries into, and investigate abuses;
- identify perpetrators;
- determine if abuses were deliberate and systematic;
- gather information through statement taking and public hearings;
- ensure accountability; restore human dignity;
- create an independent, accurate and objective record;
- make recommendations for amnesty where no violation of international humanitarian law is established by TRC;
- adopt their own rules, codes and guidelines;
- ensure confidentiality of information against any authority;
- security of victims to be addressed; adopt special mechanisms for the vulnerable groups and to employ specialists for them during testimony;
- decide on the type of hearing to be conducted – public, private or in camera;
- seek assistance from traditional, religious leaders; request information from other authorities- local or foreign;
- Art. VIII subpoena power (Special Magistrate to be appointed); enter/visit any place without prior notice;
- compel attendance of any person;

⁷⁴ *ibid.*

⁷⁵ *ibid.*

Additionally, the TRC was to make recommendations to the Liberian government with regard to (Article VII, Section 26(j):

- reparations and rehabilitations for victims;
- legal, institutional and other reforms;
- the need for continuing investigations and inquiries; and
- the need to hold prosecutions in particular cases.

The TRC Act also paid special attention to treating victims as guided by the following principles:⁷⁶

- Treat victims with compassion and respect for their dignity;
- Treat victims equally with respect to race, ethnicity, religion, language, sex, and nationality;
- Execute fair and expeditious procedures;
- Minimize the inconvenience to victims;
- Allow victims to communicate in their language of choice;
- Employ specialists to protect women's and children's rights, allow them to submit testimony, and ensure their psychological reintegration;
- When necessary, protect the privacy of victims and ensure the safety of their families and witnesses; design victim and witness protection on a case-by-case basis.

The broad mandate challenged the TRC with the task of assessing which bodies of the International Human Rights Law (IHRL) and International Humanitarian Law (IHL) applied when making its determinations on those responsible for committing the crimes and human rights violations. Therefore, the TRC had to develop a legal architecture and set of standards supportive of Liberia's international commitments and obligations, whilst providing it with the flexibility of applying law that is suitable to Liberia.⁷⁷ Thus, the TRC adopted three primary classifications of crimes to investigate and determine responsibility:

- i) Egregious Domestic Crimes (EDC) – which included economic crimes;
- ii) Gross Human Rights Violations (GHRV) – those that are generally but not exclusively committed by state actors, during times of peace or armed conflict, and directed against individuals or groups and
- iii) Serious Humanitarian Law Violations (SHLV) - included serious violations of humanitarian law that trigger universal jurisdiction to prosecute.⁷⁸

Since the TRC Act was silent on the question of the standard of proof to use in investigating and determining those responsible for the violations, it was decided that the standard of proof to be that of a “preponderance of evidence” (similar to that of a probability test based on the volume and credibility of evidence gathered) - this was the standards used by other truth and reconciliation commissions as well.⁷⁹

⁷⁶ *ibid.*

⁷⁷ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

⁷⁸ *ibid.*

⁷⁹ *ibid.*

2.4. Composition of TRC

The Commissioners who would guide the TRC were appointed by the Head of State. There was a total of 9 Commissioners, with no less than 4 women in its structure. The Commission was to encompass Commissioners with integrity and honour reflecting the diverse backgrounds and groups of Liberian society.⁸⁰

The Commissioners were appointed by the Head of the National Transitional Government of Liberia, Gyude Bryant in February 2004, as per Article XIII of CPA.⁸¹ Since such appointments were made before the enactment of the TRC Act, a comprehensive and rigorous exercise of public vetting steered by some members of the international community and local civil society actors was conducted.⁸²

As per section 8 of the TRC Act, a selection panel of seven individuals of integrity, including three from civil society, two from political parties, one from the UN, and one from Economic Community of West African States [ECOWAS] was formed with the ECOWAS representative to preside over the panel, to coordinate and process the selection.

This panel was tasked with the vetting of nominees for the selection as TRC members and conducted a process of public scrutiny based on individual nominations and other petitions from the general public, institutions, and organizations (Section 11 of the TRC Act).⁸³

The Selection Panel for the Commission screened more than 150 candidates nominated by the Liberian public and provided a shortlist of 15 names to Chairman Bryant on 23 September 2005. New commissioners were then appointed as a result of this process. President Ellen Johnson Sirleaf inaugurated the Commission on 20 February 2006.⁸⁴

Members of the Commission:

- Chairman - Cllr. Jerome J Verdier: a leading human rights and civil society activist prior to his selection to serve on the TRC.
- Vice Chairperson – Dede Dolopei: a Liberian administrator, manager, social worker and peace activist. She has been instrumental in the promotion and protection of women’s rights in Liberia and is well-known for her efforts and expertise in peace building, conflict resolution and psychosocial counselling.
- Member - Oumu K. Syllah: a registered nurse, HIV/AIDS counsellor and social worker.

⁸⁰ ‘Truth and Reconciliation Commission of Liberia Mandate’ (*Truth and Reconciliation Commission of Liberia*) <<https://www.trcofliberia.org/about/trc-mandate.html>> accessed 13 November 2023

⁸¹ ‘Truth & Reconciliation Commission of Liberia’ (*Participedia*) <<https://participedia.net/case/7756>> accessed 4 October 2023

⁸² ‘Report, Generating Recommendations for the Liberian Truth and Recommendation Commission: Civil Society Regional Consultations’ ICTJ SFCG, FID, December 2008 <<https://www.ictj.org/sites/default/files/ICTJ-CJPC-Liberia-NGO-Consultations-2008-English.pdf>> accessed 4 October 2023

⁸³ Truth and Reconciliation Commission of Liberia, *Volume 1, Findings and Determinations* <<https://www.trcofliberia.org/resources/reports/final/trc-final-report-volume-1-full.pdf>> accessed 1 March 2024

⁸⁴ ‘Liberia: Truth, Justice and Reparation, Memorandum on the Truth & Reconciliation Commission Act’ Amnesty International, 22 June 2006 <<https://www.amnesty.org/en/wp-content/uploads/2021/08/afr340052006en.pdf>> accessed 1 March 2024

- Member - Retired Bishop Arthur F. Kulah: a well-known Methodist prelate who travelled throughout Liberia during the civil war spreading hope to the people. He was one of the initiators of the creation of an interfaith committee that helped build a foundation for the 2003 peace process in Liberia.
- Member - Sheikh Kafumba F. Konneh: Liberian Muslim Authority who has had a long practical record of conflict resolution and peace building efforts during the major civil and military conflicts in Liberia.
- Member - Cllr. Pearl Brown Bull; lawyer and a renowned Liberian politician since the late 70s. She is a legal drafter with more than a quarter of a century of experience in peace building, conflict resolution and social work.
- Member - Ambassador Rev. Gerald B. Coleman: an electrical engineer and project manager by training. He was the Government of Liberia's Commissioned Ambassador and Special Envoy to the Far East in 1996.
- Member - John H. T. Stewart: a Liberian journalist, human rights advocate and activist, well known for his acerbic writing and interviewing style. He had been an advocate for the past 30 years and had been imprisoned and tortured for his activism.
- Member - Massa Washington: a journalist with more than 20 years of experience. She is a women's rights activist and a member of the Liberian Women Initiative (LWI), which has been at the vanguard of peace advocacy in Liberia.

The Chairperson was to function as the Chief Representative and official spokesperson for the Commission, with the ability to delegate his work to one of the commissioners to act on his behalf. The Vice-Chairperson assisted the Chairperson in the discharge of his duties. Commissioners were not involved in the day-to-day operations of the Commission, but all of them had equal powers with the Chairperson exercising his/her powers as a 'first among equals'. All members of the Commission were to exercise oversight responsibilities for the functioning of the Commission in order to maintain a balanced and comprehensive perspective of TRC operations.⁸⁵

Significantly, the Commissioners of the Liberian TRC underwent various types of training and courses on;⁸⁶

- the history and origin of truth commissions as a form of transitional justice mechanisms, including their functions, goals, objectives;
- importance in post conflict countries;
- best practices approach and experiences of other truth commissions;
- human rights and humanitarian law training;
- investigation of human rights violations;
- technical issues in conducting public and in-camera hearings;
- psychosocial care and support for victims, and others coming before the TRC;
- conflict prevention and resolution;

⁸⁵ Truth and Reconciliation Commission of Liberia, *Volume I, Findings and Determinations* <<https://www.trcofliberia.org/resources/reports/final/trc-final-report-volume-1-full.pdf>> accessed 1 March 2024

⁸⁶ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

- reparations; and
- other specialized topics of interest,

This training was facilitated by a combination of local and international experts in the field of international law and transitional justice. An array of institutions including the Economic Community of West African States (ECOWAS), Human Rights Foundation of South Africa (HRCSA), the International Centre for Transitional Justice (ICTJ), the United Nations Mission in Liberia (UNMIL), and the locally based Transitional Justice Working Group (TJWG) assisted the TRC during those formidable stages of its work, thus enabling the Commissioners to function within the accepted operational standards of Truth Commissions.⁸⁷

Prior to the launching of the TRC, the Commissioners were sent on a study tour of South Africa for orientation and to become acquainted with the country's past truth and reconciliation process in order to experience first-hand how the South African TRC approached and managed its process. The training was well coordinated and intensive, and gave the opportunity for the Commissioners to meet and speak one-on-one with former South African Commissioners, staff, human rights advocates, government officials, and renowned South African persons, on the impact of the TRC in South Africa. The training assisted Commissioners in expanding their knowledge about the practice of truth and reconciliation commissions and provided them with a broader understanding of what they would be encountering when functioning as Commissioners. Additional training had continued on an ongoing basis throughout the process.⁸⁸

The National Secretariat was the administrative and operational arm of the TRC. It was headed by an Executive Secretary who was responsible for day-to-day operations and was tasked with providing technical, professional, administrative and clerical assistance to the Commission. The TRC staff working in the National Secretariat were required to have professional background in areas such as “finance, investigation, law, women, children and vulnerable groups, psychosocial and trauma counselling, amnesty, reparation, statement taking” (article IX, section 33).⁸⁹

Women were fully represented and included as staff at all levels of the work of the Commission. Members of staff and experts engaged as consultants were to be protected from political influence and independent of the institutions and agencies under investigation. This was to apply also to seconded public officials who normally worked for other public bodies. For this purpose, staff and consultants were to be screened on the basis of similar criteria as those used for the Commissioners under article V, section 11 of the TRC Act. The Secretariat of the Commission and its specialized staff included many national and international members and consultants. (article IX, section 35).⁹⁰

⁸⁷ Truth and Reconciliation Commission of Liberia, *Volume I, Findings and Determinations*

<<https://www.trcofliberia.org/resources/reports/final/trc-final-report-volume-1-full.pdf>> accessed 1 March 2024

⁸⁸ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report*

<<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

⁸⁹ ‘Liberia: Truth, Justice and Reparation, Memorandum on the Truth & Reconciliation Commission Act’ Amnesty International, 22 June 2006 <<https://www.amnesty.org/en/wp-content/uploads/2021/08/afr340052006en.pdf>> accessed 1 March 2024

⁹⁰ *ibid.*

There were four line-directors, as middle level managers who formed part of the Secretariat and report to the Executive Secretary:⁹¹

- (1) the Director of Inquiry - who analyzed the vast data received through thematic, individual and institutional hearings;
- (2) the Director for Outreach and Media – who functioned as the spokesperson of the TRC and managed public relations;
- (3) the Director of Programs – who managed the database and coding unit, psycho-social unit, hearings, statement takings and the administration of all 15 county offices;
- (4) the Director of Administration – who controlled the budget and managed the financial accounts. This position was not filled in Liberia, instead this role was carried out by the appointed Finance Manager.⁹²

The Secretariat and Specialized staff of the TRC included the following:⁹³

- Report Writing Committee;
- Consultants;
- Gender Committee;
- Children’s Committee;
- Youth Committee;
- Media and Outreach Unit;
- Economic Crimes Unit;
- Religion, Traditional and Reconciliation Unit;
- Civil Society Unit;
- Diaspora Unit;
- Program and Planning Unit;
- Historical Review Unit;
- Vulnerable Groups Unit; and
- Governance Unit.

In addition, TRC had offices in all 15 counties, which were headed by county coordinators.⁹⁴ The county offices were established to decentralise the TRC’s operations and to provide the local residents with the prospect of having ownership of the TRC process.⁹⁵

International Technical Advisory Committee (ITAC)

Article V of section 10 of the TRC Act provided for the establishment of the 3-member committee called the International Technical Advisory Committee (ITAC), with one representation from the United Nations High Commissioner for Human Rights (UNHCHR) and two by the Economic Community of West African States (ECOWAS). This committee was to

⁹¹ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report*

<<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ *ibid.*

work directly with the Commission in the fulfilment of its mandate, and provide legal, policy oversight and technical advice to TRC Commissioners. The international advisors, chosen among individuals of “international distinction and repute,” were entitled to full rights and privileges as commissioners, including disclosure rights, except the right to vote. (Article V, section 10)⁹⁶

Special Magistrate

The TRC was given the power to recommend at least three lawyers, from which the Head of State will appoint and commission as a *Special Magistrate* ranking as a circuit judge, with the consent of the National Legislature. (Section 28 of the TRC Act) The Special Magistrate would be under the direction of the Commission, and he was invested with the authority to;

- a) issue out citations, summons, warrants and commitments;
- b) conduct quasi-judicial inquiries and hold contempt hearings; and
- c) perform all other acts as may from time to time be designated by the Commission.

The Special Magistrate was to perform his duties in consultation with the TRC Legal Counsel and the Executive Secretary, upholding all standards of due process, impartiality, fairness and justice, in accordance with the constitution and laws of Liberia. The Special Magistrate was appointed by Her Excellency President Ellen Johnson-Sirleaf in December 2008.⁹⁷

⁹⁶ ‘Truth and Reconciliation Commission of Liberia Mandate’ (*Truth and Reconciliation Commission of Liberia*) <<https://www.trcofliberia.org/about/trc-mandate.html>> accessed 13 November 2023

⁹⁷ Truth and Reconciliation Commission of Liberia, *Volume 1, Findings and Determinations* <<https://www.trcofliberia.org/resources/reports/final/trc-final-report-volume-1-full.pdf>> accessed 1 March 2024

CHAPTER 3

Policy Framework of the TRC Process

3.1. Key Policies

The Liberian TRC Process was guided by a comprehensive policy framework that were based on the following:

- Transitional Justice (TJ) Principles:

The TRC was founded on the principles of transitional justice, which include truth-telling, justice, reparations, and reconciliation. These principles guided the commission in its work to address past atrocities while promoting national healing and unity. Two main TJ policies that were operating in Liberia were truth seeking and security sector reforms (SSR). TRC began its work in 2006 and SSR began in 2003.⁹⁸

- Victim-Centered Approach:

The policy framework emphasized a victim-centred approach, focusing on the experiences and needs of victims of human rights abuses. This approach aimed to provide a platform for victims to share their stories and seek redress. (Article VII, section 26(r))⁹⁹

Addressing immediate needs of the victims, refugees, the displaced and special population were some of the priority recommendations of the Liberian TRC.¹⁰⁰

In 2006, a Gender Committee was established to ensure proper coordination and broad-based participation by women in the TRC process, and to guarantee that women's concerns are adequately expressed and addressed. This Committee was composed of members of the civil society and international partners.¹⁰¹

Children's protection orientation training for TRC Commissioners and training for TRC statement takers and investigators on child-friendly procedures and policies were conducted whilst creating various programs for children to participate in its processes.¹⁰²

- Policy to take the TRC to the people:

This policy guaranteed that the people from all levels in society are involved, not only in the TRC process, but also in all governance issues and the making of decisions that affect them. Against this backdrop, the TRC involved civil society, all the 15 counties and stakeholders in all aspects of the Commission; from public awareness to statement taking, hearings and other programs like research, town hall meetings, workshops, group discussions.

⁹⁸ 'Liberia, Background: A Violent History, a fragile peace' (*ICTJ*) <<https://www.ictj.org/location/liberia>> accessed 1 March 2024

⁹⁹ 'Liberia: Truth, Justice and Reparation, Memorandum on the Truth & Reconciliation Commission Act' Amnesty International, 22 June 2006 <<https://www.amnesty.org/en/wp-content/uploads/2021/08/afr340052006en.pdf>> accessed 1 March 2024

¹⁰⁰ The Advocates for Human Rights, 'Priority Recommendations Chapter 2' <https://www.theadvocatesforhumanrights.org/Res/chapter_2-priority_recommendations.pdf> accessed 1 March 2024

¹⁰¹ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹⁰² *ibid.*

With the participation of all Liberians, the TRC was able to produce three major documents which gave a clear understanding of the past experiences of the Liberian people during the war, and their overwhelming aspirations to ensure that war will be no more, and that in unity, the current peace will be sustained. The three reports are:

- 1) TRC Preliminary Report;
- 2) TRC Conflict Mapping Project Report; and
- 3) Reports of the TRC Regional County Consultations.¹⁰³

- Reparations:

The policy framework recognized the importance of reparations for victims. It called for reparative measures to be taken to address the harms suffered by victims and to contribute to their healing and rehabilitation. TRC considered community, individual as well as symbolic reparations,¹⁰⁴

- Independence and Impartiality:

The TRC was designed to be independent and impartial in its operations. Its members were expected to act without bias and political influence, ensuring that the truth-seeking process was credible and trustworthy. (Section 39 of the TRC Act)

- Confidentiality and Witness Protection:

The framework recognized the need for confidentiality in certain cases to protect witnesses and victims who might face threats or retaliation. It also included provisions for witness protection. This was done by assuring that the names and other identifying information of witnesses and victims are kept in strict confidence.¹⁰⁵ Witness protection was applied on an individual case by case basis due to inadequate resources and the limited time to achieve the mandate of the TRC. Confidentiality of the statement-giver during statement taking was insisted upon, and anonymous statements were allowed. In-camera hearings were confidential and off limits to any member of the public or TRC staff.¹⁰⁶

- Outreach and Public Awareness:

The TRC was mandated to conduct extensive outreach and public awareness campaigns to inform Liberians about its work and encourage participation. This was crucial for ensuring that the truth-seeking process was inclusive and reached all segments of society.

- Decision to engage with the Diaspora:

It was believed that Liberians outside of their home country were important constituents of the TRC process and documenting violations related to flight, refugee life and immigration could be an important part of a truth commission process. Liberia set the precedent as one of the first TRC projects to inculcate the diasporas in a country's reconstruction process. In order to foster

¹⁰³ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report*

<<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹⁰⁴ William J. Long, 'Liberia's Truth and Reconciliation Commission: An Interim Assessment' *International Journal of Peace Studies*, Volume 13, No.2, 2008<https://www3.gmu.edu/programs/icar/ijps/vol13_2/IJPS13n2%20LONG.pdf> accessed on 17.04.2024

¹⁰⁵ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report*

<<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹⁰⁶ *ibid.*

greater national reconciliation, their voices needed to be heard, and their issues and concerns addressed.¹⁰⁷

- The Right to know the fate of the family:

International jurisprudence has recognized the agony of not knowing the fate of a family member as tantamount to cruel, inhuman and degrading treatment, and for many Liberians, both in the diaspora and at home, the fate and whereabouts of family members remain unresolved. The fact that the CPA set up the TRC to address the human rights violations was seen as a process to enable the Liberians to move forward to a lasting peace.¹⁰⁸ Community members and survivors expressed the importance of the truth being told. *They felt that it was necessary to investigate fully in order to identify all those who had died so people throughout Liberia could account for their missing relatives.*¹⁰⁹

- The Right to Know the Circumstances, Causes and Conditions:

Victims also have the right to the truth about the circumstances, events and causes surrounding human rights violations. The Basic Principles and Guidelines promote access to information so that victims may seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth.

- Recommendations:

The TRC policy framework outlined that the commission would make recommendations for actions to be taken by the government, civil society, and other stakeholders to promote reconciliation, justice, and human rights in Liberia.

Commendable national strategies and initiatives that advanced the TRC recommendations were *“the Strategic Roadmap for National Healing, Peacebuilding and Reconciliation, and the Agenda for Transformation, economic empowerment and poverty reduction, the National Palava Hut Programme, the Whistle Blower Act of 2012, decentralisation of political and economic power, constitutional review, justice sector reform, police reform, promotion of good governance and the rule of law, and the establishment of the Independent National Commission on Human Rights.”*¹¹⁰

However, the failure of the TRC to follow through on their recommendations on war crimes trials and lustrations, had the effect of working against the rule of law in Liberia. The recommendations haven't brought about an improvement since 2003 is also partially attributed to the lack of political will.¹¹¹

¹⁰⁷ Siphokazi Magadla, 'The 16th County: The Role of Diaspora Liberians in Land Reform, Reconciliation and Development in Liberia' (Masters Thesis, Ohio University 2010) <https://etd.ohiolink.edu/acprod/odb_etd/etd/r/1501/10?clear=10&p10_accession_num=ohiou1273885451> accessed on 17.04.2024

¹⁰⁸ 'Liberia: Truth, Justice, Reparation for Liberia's victims' (*Amnesty International*, 15 February 2007) <<https://www.refworld.org/reference/countryrep/amnesty/2007/en/40415>> accessed 2 April 2024

¹⁰⁹ *ibid.*

¹¹⁰ 'Implementing TRC Recommendations: Five Years on, an opportunity for a fresh start' (*UNMIL*, 1 July 2014) <<https://unmil.unmissions.org/implementing-trc-recommendations-five-years-opportunity-fresh-start>> accessed 2 April 2024

¹¹¹ Julie. A. Keil, 'Liberia's TRC: The road to Rule of law or a dead end?' *Afr. J. Pol. Sci. Int. Relat.* (2017) Volume II (8), pp. 201-209 <<https://academicjournals.org/journal/AJPSIR/article-full-text/5FA74CB65307>> accessed on 02.04.2024

- Report and Follow-Up:

The TRC was required to produce a comprehensive final report documenting its findings, conclusions, and recommendations. The policy framework specified that the government and other relevant institutions would be responsible for implementing the TRC's recommendations.

3.2. The Four Dimensions of Truth

In the context of the Truth and Reconciliation Commission (TRC) in Liberia, four distinct types or dimensions of truth were considered and recognized.¹¹²

These four truths were;

- 1) Objective or factual truth¹¹³ – to reach a public and official acknowledgement of what happened during the period under review. Discovering truth in a forensic sense helped a society redefine itself by “*establishing and giving recognition to historical truths in order to address falsehoods and misconceptions of the past . . .*” (TRC Act, Article IV, 4d).

This truth became the basis for the TRC’s final report and recommendations and for any subsequent judicial proceedings.

- 2) Personal or narrative truth¹¹⁴ - truth that emerged from the stories told by victims, witnesses, and perpetrators. In public hearings and through broadcasts to the wider society, these personal truths also become part of a larger societal discourse. The act that created the Liberian TRC (and the CPA before it) explicitly required that the TRC was to “*provide a forum that will address issues of impunity, as well as provide an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to get a clear picture of the past to facilitate genuine healing and reconciliation*” (TRC Act, Preamble).

Explicit in the Act was an affirmation of the healing power of personal narrative.

- 3) Social or “Dialogical” truth¹¹⁵ - truth established through interaction, discussion, and debate among various individuals, communities, sectors, and parties that was open to public scrutiny and media attention.

The key feature of dialogical truth was the process by which truth was acquired; a process that was transparent, inclusive, and participatory. The Liberian TRC Act mandated “*a process which seeks to establish the truth through a public dialogue that engages the nation*” including the provision of information by “*any person, group of persons or organizations or institutions*” (TRC Act, Preamble; Article VII, 26m).

- 4) Healing and Restorative truth¹¹⁶ - truth that helped to repair past damage and that would prevent the recurrence of civil violence. Restorative truth established a new moral order and made recommendations for a political, social, and economic transformation.

¹¹² William J. Long, ‘*Liberia’s Truth and Reconciliation Commission: An Interim Assessment*’ International Journal of Peace Studies, Volume 13, No.2, 2008<https://www3.gmu.edu/programs/icar/ijps/vol13_2/IJPS13n2%20LONG.pdf> accessed on 17.04.2024

¹¹³ *ibid.*

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

This form of truth was to be the culmination of the TRC's efforts wherein they were to *"make recommendations reflective of the truth, to reunify and reconcile contending groups and/or the peoples of Liberia"* (TRC Act, Article VII, 26i)

CHAPTER 4

Truth Reconciliation Commission of Liberia 2003

4.1. Initial challenges faced by the Commissioners

After inauguration of the TRC and the three-month preparatory phase as outlined in the act, the Commission faced high administrative, operational, financial and human resource challenges, retarding progress at the beginning. At the outset, the Commission began with reviewing the enabling legislation, understanding the mandate and drafting a work plan, sans a complimentary full staff and without funding. Initial efforts to raise funding and awareness were met with serious setbacks. In fact, Commissioners had to expend their personal funds to visit institutions and constituencies, holding community, groups and town hall meetings around the country; explaining the mandates, objectives and goals of the TRC.¹¹⁷

The Commission's initial challenges in developing a comprehensive staffing plan, organizational structure, a complete work plan and budget were noted as: "*Lack of transparency, proper process of hiring staff, awarding contracts and other fiscal matters*"¹¹⁸ which severely impacted the TRC's subsequent operational activities, including the process leading to its final report.¹¹⁹ The absence of an in-house legal team impacted on the quality of legal evaluations leading to contracting external expert advice from the private sector.¹²⁰

These factors impacted the initial public hearings that were scheduled to begin in January 2007,¹²¹ leading to widespread disappointment at the level of the community. Consequently, the hearings had to be postponed indefinitely causing doubts as to whether the TRC is operational at all. The mandated operating dates of the TRC were from 20th February 2006 to 22nd June 2009;¹²² but public hearings did not start until January 2008.¹²³

These issues led to comments from the International Centre for Transitional Justice (ICTJ) that - "*limited technical capacity, poorly coordinated programming, and disharmony among its commissioners,*", leading to lack of, "*evidentiary data, coherence\...specificity and the unanimous support of all commissioners, two of whom refused to endorse it.*"¹²⁴

Due to tensions between the Commissioners and some members of the ITAC, only one member of ITAC was present until the final stage.¹²⁵ Furthermore, difficulties in managing international

¹¹⁷ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report*

<<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹¹⁸ Julia Emtseva, 'Philanthropic Justice: the Role of Private foundations in Transitional Justice Processes' Michigan Journal of International Law, Vol 44 Issue 2, 2023<<https://repository.law.umich.edu/mjil/vol44/iss2/3/>> accessed on 17.04.2024

¹¹⁹ Paul James-Allen, Aaron Weah, Lizzie Goodfriend, 'Beyond the Truth & Reconciliation Commission: Transitional Justice Options in Liberia' ICTJ, May 2010 <https://syriaaccountability.org/content/images/wordpress/ICTJ-Liberia-Beyond-TRC-2010_EN.pdf> accessed 6 October 2023

¹²⁰ Julia Emtseva, 'Philanthropic Justice: The Role of private foundations in Transitional Justice Processes' Michigan Journal of International Law, Vol 44 Issue 2, 2023<<https://repository.law.umich.edu/mjil/vol44/iss2/3/>> accessed on 17.04.2024

¹²¹ Tristan McConnell, 'Liberia in Transition' (*Global Policy Forum*, 16 March 2007)

<<https://archive.globalpolicy.org/security/issues/liberia/2007/0316transition.htm>> accessed 6 October 2023

¹²² 'Truth Commission: Liberia' (*United States Institute of Peace*, 20 February 2006)

<<https://www.usip.org/publications/2006/02/truth-commission-liberia>> accessed 6 October 2023

¹²³ *ibid.*

¹²⁴ Paul James-Allen, Aaron Weah, Lizzie Goodfriend, 'Beyond the Truth & Reconciliation Commission: Transitional Justice Options in Liberia' ICTJ, May 2010 <https://syriaaccountability.org/content/images/wordpress/ICTJ-Liberia-Beyond-TRC-2010_EN.pdf> accessed 6 October 2023

¹²⁵ *ibid.*

and national partnerships and lack of confidence by observers impacted on external support such as financial assistance.¹²⁶

There wasn't a single methodological approach that adequately assisted the TRC in fulfilling its complex mandate. Given the unique historical and contemporary dynamics of Liberia, the TRC defined the methodology of its work qualitatively and quantitatively under the following considerations:

*It first established the fundamental purpose of the TRC, then reviewed the mandate thoroughly for understanding and clarity of the functions and powers of the Commission, what was feasible and practicable bearing in mind the two-year stipulated time frame for implementation of its work, the country condition and available resources, and then established short- and long-term objectives for meeting its goals.*¹²⁷

Once the TRC agreed on the meaning of its mandate, functions and powers, it moved forward with determining its modus operandi as a quasi-judicial body pursuant to the TRC Act. Consequently, the TRC adopted a set of rules and procedures to guide its work and ensure stability in TRC operations.¹²⁸

4.2. Amnesty

As stated in Chapter 2, initially while debating for the support or the opposition for a Truth and Reconciliation Commission (TRC) or a War Tribunals Commission (WTC), the operative understanding of a TRC for many were based on their knowledge of the South African TRC which granted amnesty in exchange for the truth.¹²⁹

Further the fact that the neighbouring country of Sierra Leone having had both a WTC and a TRC, further reinforced the notion that TRC is more about amnesty for the perpetrators in exchange for the truth, whilst the WTC offers criminal punishments for the guilty offenders.¹³⁰

Warring factions may have expected a blanket amnesty under TRC process, whilst the civil society and some political party representatives feared that the TRC would allow the offenders evade justice and strengthen impunity.¹³¹

Under Section 26(g) of Article VII of the TRC Act, one of the functions and powers of the Commission is to 'recommend amnesty for individuals making full disclosures of their wrongs and thereby expressing remorse for their acts and/or omissions, whether as an accomplice or a perpetrator'; however, such amnesty does not apply to those who have committed crimes against humanity and violated the standards of International Humanitarian Law and standards.¹³²

Section 33 of the TRC Act also provides for a National Secretariat to provide technical and professional assistance to the Commission on amnesty.

¹²⁶ *ibid.*

¹²⁷ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹²⁸ *ibid.*

¹²⁹ Aaron Sleh, 'Amnesty and the Liberian TRC: Who is Pardonable?' (*The Perspective*, 18 April 2006) <<https://www.theperspective.org/articles/0418200603.html>> accessed 5 October 2023

¹³⁰ *ibid.*

¹³¹ *ibid.*

¹³² Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

The refusal of the TRC to grant amnesty and instead recommending prosecutions was seen as a deterrent to most former fighters from attending.¹³³ However, the final report recommended amnesty for children in armed conflict. The TRC believes and is consistent with international standards that amnesty for heinous crimes is unacceptable, immoral and promotes impunity.¹³⁴

Amnesty was one of the key policy areas of the TRC and in order to provide notice to the public of its determinations on critical issues, the TRC issued, published and circulated several public policy bulletins on key policy areas which included ‘the application for amnesty’¹³⁵

4.3. Community Views

Most of the people were fearful of coming forward as the TRC and the government was not clear about the policy on amnesty.¹³⁶ Those who observed their country’s first public TRC hearing, were confused about the implications of such hearings if it doesn’t lead to the prosecution of the wrongdoers. Some women who had been sexually abused and children who had been forcibly conscripted felt apprehensive and were reluctant to report their cases as they were doubtful of the benefits of participating in the TRC process. The sense of shame and the possible consequences of sharing their stories was also another factor that made the women reluctant¹³⁷

Others had positive views of TRC. They felt that it was important that their stories are told, and that by participating in the TRC process they would be in a better position to obtain much needed compensation. Some expressed the desire to face the alleged perpetrators because of the deep trauma due to their experiences and the impact of the violence on their lives.¹³⁸

Some of the views of the victims below reflect the diversity of perspectives:

“It is difficult for me to accept an apology from someone who brutally killed five of my family members... in front of my eyes...”

A Victim¹³⁹

“The rebel fighter who did the killings still moves freely in Monrovia as if he has not committed any atrocity. I do not believe the TRC public hearing of my testimony will solve the pain and trauma I have been going through.”

A Victim¹⁴⁰

¹³³ ‘Liberia: Mixed feelings about truth commission’s purpose’ (*relief web*, 10 January 2008)

<<https://reliefweb.int/report/liberia/liberia-mixed-feelings-about-truth-commissions-purpose>> accessed 6 October 2023

¹³⁴ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report*

<<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹³⁵ *ibid.*

¹³⁶ ‘Liberia: Mixed feelings about truth commission’s purpose’ (*relief web*, 10 January 2008)

<<https://reliefweb.int/report/liberia/liberia-mixed-feelings-about-truth-commissions-purpose>> accessed 6 October 2023

¹³⁷ ‘Liberia: Truth, Justice and Reparations for Liberia’s victims’ Amnesty International, July 2021

<<https://www.amnesty.org/es/wp-content/uploads/2021/07/afr340012007en.pdf>> accessed 6 October 2023

¹³⁸ ‘Liberia: Mixed feelings about truth commission’s purpose’ (*relief web*, 10 January 2008)

<<https://reliefweb.int/report/liberia/liberia-mixed-feelings-about-truth-commissions-purpose>> accessed 6 October 2023

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

"Because I am afraid of what would happen to me, I cannot personally go to a particular family whose house I burnt down during the war. So, the hearing will be good for me to meet them at the TRC forum.

A former government soldier¹⁴¹

"Just telling a victim sorry is a recipe for another round of atrocities as those perpetrators could do the same acts again in the future and rely on apologies, but when one is tried and convicted of war crimes, it would serve as a deterrent to others."

A former rebel¹⁴²

As seen by these testimonials, the TRC process is clearly a challenging and complex one. It is inevitable that there is likely to be distrust and cynicism about any truth-seeking process and in the case of most TRCs, at least in the initial stages.¹⁴³

It was envisaged that the TRC mechanism will deal with a wide spectrum of victims and perpetrators as mandated, reflecting a community-based approach towards justice and accountability.¹⁴⁴ The people were delighted with the final report since it pointed out names of past as well as present senior government officials from all branches of government, despite criticisms from former perpetrators and some of the political elites, that the report is fundamentally flawed and recommendations should not be implemented.¹⁴⁵

Unlike ordinary Liberians, perpetrators, (including those who were occupying responsible government positions at that time) wanted the report withdrawn.¹⁴⁶

Approximately, three weeks before the TRC report was released, the public were on the streets protesting against the rampant corruption in the government.¹⁴⁷ The Liberians' warm reception to the TRC report was observed to be partially attributed to the government's failure to deal decisively with endemic post-war corruption.¹⁴⁸

There was widespread disbelief when President Sirleaf's name was included in the "*50 political leaders and financiers of different warring factions,*" and was barred from holding public office for the next 30 years.¹⁴⁹ At the same time people were also confused when over 34 recognized offenders were recommended to be pardoned or not prosecuted.¹⁵⁰

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

¹⁴⁷ Aaron Weah, 'Hopes and Uncertainties: Liberia's Journey to End Impunity' *International Journal of Transitional Justice*, Volume 6, Issue 2, July 2012, pages 331–343 <<https://academic.oup.com/ijtj/article/6/2/331/2357072>> accessed on 17.04.2024

¹⁴⁸ *ibid.*

¹⁴⁹ Fred P.M. Van De Kraaji, 'Controversial TRC report rocks Liberia' (*Liberia Past and Present*, 8 July 2009) <<https://www.liberiapastandpresent.org/36/>> accessed 5 October 2023

¹⁵⁰ *ibid.*

4.4. Criticisms, Controversies and Negative Impacts

There was the possibility of all the recommendations being overlooked due to vociferous debates that were raging over the 200 odd persons being recommended for prosecutions by the TRC. As a result, the focus on all the other recommendations that were essential for peacebuilding was seen as lost.¹⁵¹ Several former warlords who were also signatories to the CPA viewed the TRC report as ‘anti-peace’ and would undermine democracy and stability in the country.¹⁵²

Although there have been public hearings and media forums for the perpetrators to take responsibility for their actions, numerous warlords kept stating that they did not have an opportunity to come face to face with their victims to apologize and move on towards reconciliation. Some prominent rebel fighters escaped prosecutions by showing remorse and accepting responsibility for war crimes they committed.¹⁵³ Another rebel leader, Prince Johnson threatened to destabilise the country if his name was mentioned in the report.¹⁵⁴

There was vociferous debate among the general public about the pardoning of the infamous Joshua Milton Blahyi, better known by his nom de guerre General Butt Naked, who confessed about the atrocities he had committed including the responsibility for 20,000¹⁵⁵ deaths in 2008, and to cannibalism although the TRC Act prohibits amnesty for war crimes or crimes against humanity. The public sanction of President Sirleaf raised the question of whether the TRC mandated the recommendation for public sanctions under chapter 3 of the Act.¹⁵⁶

Several non-governmental organisations criticized the TRC, for lack of due process in formulating their recommendations and naming of names. The ICTJ Liberia stated that *“the lack of due process coupled with the lack of supporting information linking those on the lists with the violations or crimes they allegedly perpetrated, is exacerbated by the fact that the lists are presented without any explanation of the criteria and methodology used by the TRC.”*¹⁵⁷

Some of the news reports and publications after the release of the TRC report were symptomatic of the public pessimism¹⁵⁸:

*‘Mockery to Justice;
An incomplete Report;
War Crimes Groups want Ellen to Resign;
Civil War Panel seeks to ban President from Politics;
Liberian Opinion divided on Truth and Reconciliation Findings;
TRC Retracts Controversial Report;
Controversial TRC report rocks Liberia....’*

¹⁵¹ ‘Liberia: TRC furore overshadows peace building proposals’ (*IRIN*, 9 July 2009)
<www.refworld.org/docid/4a5aff9fc.html> accessed 4 October 2023

¹⁵² *ibid.*

¹⁵³ *ibid.*

¹⁵⁴ *ibid.*

¹⁵⁵ Fred P.M. Van De Kraaji, ‘Controversial TRC report rocks Liberia’ (*Liberia Past and Present*, 8 July 2009)
<<https://www.liberiapastandpresent.org/36/>> accessed 5 October 2023

¹⁵⁶ *ibid.*

¹⁵⁷ Aaron Weah, ‘Hopes and Uncertainties: Liberia’s Journey to End Impunity’ *International Journal of Transitional Justice*, Volume 6, Issue 2, July 2012, pages 331–343 <<https://academic.oup.com/ijtj/article/6/2/331/2357072>> accessed on 17.04.2024

¹⁵⁸ Fred P.M. Van De Kraaji, ‘Controversial TRC report rocks Liberia’ (*Liberia Past and Present*, 8 July 2009)
<<https://www.liberiapastandpresent.org/36/>> accessed 5 October 2023

There had been some concern that sufficient awareness-raising activities had not reached the more remote areas of Liberia.¹⁵⁹

Further, two TRC Commissioners who publicly distanced themselves from the report and its recommendations by not participating at the final drafting stage of the final report added to the problems.¹⁶⁰

In addition, the report was written by consultants who were ignorant of Liberian realities. Questions regarding the credibility of the report were raised when several members of the TRC Commission and their international advisor dissociated themselves from the final report. The TRC lost the lawsuit filed against it on the grounds that lustration*¹⁶¹ was a form of punishment and as such was illegal and unconstitutional unless adjudicated in a court of law.¹⁶²

“... the compromise of the TRC mediating between a general amnesty on the one hand and criminal prosecutions on the other meant that the hybrid results of some recommendations for amnesty and some recommendations for prosecution pleased no one....” (Perry 2012)

The Chairman of the National Transitional Government of Liberia (NTGL), Charles Gyude Bryant, had announced the appointment of the members of the future Truth and Reconciliation Commission in late January 2004. This appointment was done without consultation with civil society and before the legislation setting out the Commission’s mandate, composition and powers had been drafted and enacted into law.¹⁶³

There were concerns regarding the manner of these appointments. The emergence of one of those appointed as a high-profile figure within the LURD, which led to calls for his resignation, appeared to confirm the initial fears of a politicized Commission. Although the TRC Act “recognized” the January 2004 appointments, it however established that the Selection Panel would vet the commissioners already appointed through a “process of public scrutiny based on individual nominations and other petitions from the general public, institutions, and organizations” (Article V, sections 8 and 9)¹⁶⁴

The TRC Selection Panel was inaugurated on 14th July 2005 by General Abdusalami Abubakar, Economic Community of West African States (ECOWAS) mediator in the Liberian peace process. Amnesty International had written to the Chairman of the TRC Selection Panel to ensure that the vetting process of the Commission members complied with international human rights standards, further to setting out additional criteria for the selection of the Commission

¹⁵⁹ ‘Liberia: Mixed feelings about truth commission’s purpose’ (*relief web*, 10 January 2008)

<<https://reliefweb.int/report/liberia/liberia-mixed-feelings-about-truth-commissions-purpose>> accessed 6 October 2023

¹⁶⁰ John Perry, ‘Reconciliation and Healing as the Ultimate Reality and Meaning of Peacebuilding in the Thought of John Paul Lederach with Special Reference to the Truth and Reconciliation Commission of Liberia’ Volume 35, Issue 3-4, September–December 2012, pp. 317-331 <<https://utpjournals.press/doi/10.3138/uram.35.3-4.317>> accessed on 14.07.2024

¹⁶¹ *Lustration: from the Latin *lustratio*, meaning “purification by sacrifice” Lustration is the removal of public officials and judges who are associated with a tainted political regime. It has been used as a tool of transitional justice in newly independent and post conflict countries. Lustrating begins with vetting—a review of conduct and competency. Individuals associated with the discredited government, and credibly accused of corruption or human rights violations, are dismissed. Officials appointed on the basis of political connections may be removed or reassigned to lower-level positions. Lustration also can be implemented indirectly, as with lowering the mandatory retirement age for judges.

‘What is Lustration?’ (*FJC*) <<https://judiciariesworldwide.fjc.gov/question/what-lustration>> accessed 13 November 2023

¹⁶² *ibid.*

¹⁶³ ‘Liberia: Truth, Justice and Reparation, Memorandum on the Truth & Reconciliation Commission Act’ Amnesty International, 22 June 2006 <<https://www.amnesty.org/en/wp-content/uploads/2021/08/afr340052006en.pdf>> accessed 1 March 2024

¹⁶⁴ *ibid.*

members based on proven expertise, knowledge and experience in the promotion and protection of human rights and expertise in dealing with victims of serious crimes, such as traumatized victims, victims of sexual violence and child victims.¹⁶⁵

The Public had unrealistic hope on the TRC, but when the new chairperson of the TRC was selected, he was seen as a young lawyer lacking in leadership and that his appointment as the head was seen as an unfortunate mistake.¹⁶⁶

¹⁶⁵ *ibid.*

¹⁶⁶ John Perry, 'Reconciliation and Healing as the Ultimate Reality and Meaning of Peacebuilding in the Thought of John Paul Lederach with Special Reference to the Truth and Reconciliation Commission of Liberia' Volume 35, Issue 3-4, September–December 2012, pp. 317-331 <<https://utpjournals.press/doi/10.3138/uram.35.3-4.317>> accessed on 17.04.2024

CHAPTER 5

Best Practices and Lessons Learnt from Liberia

5.1. Achievements and Testimonies of Successes

Following three years of public inquiry into the root causes of the conflict, the TRC submitted the final report in June 2009.¹⁶⁷ Consolidated Report (Volume II) and Appendixes (Volume III) were planned to be released in March 2009, earlier than the due release date. The main rationale for issuing the Report prior to June was to provide the Liberian people notice of its findings and determinations to date; notwithstanding that the actors and institutional hearings will be continued through March 2009, as will its findings and recommendations.¹⁶⁸

Over 20,000¹⁶⁹ statements and about 800¹⁷⁰ testimonies collected from all 15 counties as well as the Diaspora were heard by the TRC, leading to an optimistic journey towards reconciliation in Liberia.

Hearings were broadcasted live and victims opened up to speak for themselves, name their perpetrators; some took this as an opportunity of mourning in the process of testifying. The testimonies were recorded and monitored by newspapers, radio stations and other media. The hearings were conducted under individual, thematic as well as institutional categories. When the hearings began in January 2008, the national police also assigned nine additional uniformed police to the Commission. Policy bulletins on ‘Public Hearings’, ‘Right to Counsel during hearings’ and ‘in-camera or confidential hearings’ were published and circulated by the TRC to inform the public of its determination on critical issues.¹⁷¹

This process enabled the Liberians to engage in a national conversation, where individual and personal testimonies similar to other groups and victims’ accounts of the conflict. Together, they formed a national narrative about what happened and a revival of history that had been denied.¹⁷²

"The most significant thing that this indicates is that Liberians are secure enough in their current peace to take public stances against people who might want to detract from the peace agenda." (Goodfriend, ICTJ 2009)

"There is always a backlash after a truth and reconciliation report..... But Liberians are resolved to move forward with their lives.....they won't let anyone take this country back to the path of war." (Keargoi, TRC 2009)

¹⁶⁷ Aaron Weah, ‘Hopes and Uncertainties: Liberia’s Journey to End Impunity’ International Journal of Transitional Justice, Volume 6, Issue 2, July 2012, pages 331–343<<https://academic.oup.com/ijtj/article/6/2/331/2357072>> accessed on 17.04.2024

¹⁶⁸ Republic of Liberia, Truth and Reconciliation Commission, *Volume I, Preliminary Findings and Determinations* <http://trcofliberia.org/resources/reports/final/volume-one_layout-1.pdf> accessed 4 October 2023

¹⁶⁹ Aaron Weah, ‘Hopes and Uncertainties: Liberia’s Journey to End Impunity’ International Journal of Transitional Justice, Volume 6, Issue 2, July 2012, pages 331–343<<https://academic.oup.com/ijtj/article/6/2/331/2357072>> accessed on 17.04.2024

¹⁷⁰ *ibid.*

¹⁷¹ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹⁷² Aaron Weah, ‘Hopes and Uncertainties: Liberia’s Journey to End Impunity’ International Journal of Transitional Justice, Volume 6, Issue 2, July 2012, pages 331–343<<https://academic.oup.com/ijtj/article/6/2/331/2357072>> accessed on 17.04.2024

Attempts by warlords and former rebels to instil fear to counter the 2003 CPA was resisted by the strong reactions from community activists.¹⁷³

The term 'Troubled Boundaries' is used to describe the root causes of the Liberian conflict. Poverty, unreliable and weak judiciary and oppression of the indigenous people among others have been cited as root causes. Other major finding includes the impact of the conflict on women, children and the generality of the Liberian society; responsibility for the massive commission of Gross Human Rights Violations (GHRV), and violations of International Humanitarian Law (IHL), International Human Rights Law (IHRL) as well as Egregious Domestic Law Violations (EDLV)¹⁷⁴

Reparations and a "Palava Hut" Forum was also recommended as necessary and desirable to redress impunity, promote peace, justice, security, unity and genuine national reconciliation.¹⁷⁵ The Recommendations in the report were divided as recommendations for the people of Liberia; for the Government of Liberia; and the International Community.

The final TRC report also recommended President Ellen Johnson Sirleaf be barred from public office for 30 years once her presidential term runs out in 2011. Although she apologized for her 'foolishness' in supporting Charles Taylor in the 1980's and specified the withdrawal of her support when realized Taylor's greed and ruthlessness; TRC justified in listing her name in the report for public sanctions, because *she failed to express remorse* for her acts.¹⁷⁶ Whilst being the President, she attended the public hearings that were ongoing at the TRC headquarters at Sinkor on the 12th of February 2009 for testifying.¹⁷⁷

The Commission had incorporated desk research, media publications and human rights reports of very prominent international and local human rights institutions into its work, in order to put out a well poised, guided and informed report of four volumes, consisting of their comprehensive work with recommendations.¹⁷⁸

The final report that identified serious violations of international law and human rights abuses committed by all sides of the armed conflict, recommended the establishment of an Extraordinary Criminal Court for Liberia, an internationalized domestic criminal court with the power to prosecute alleged perpetrators of atrocities, including war crimes, crimes against humanity, and gross violations of human rights.¹⁷⁹

The TRC report showcased the courage of the Commission. *In a society where decisions regarding accountability have been limited to the political elites, the release of the report to ordinary people initiated a paradigm shift.* (Weah, 2012)

¹⁷³ Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Routledge

2011) <https://edisciplinas.usp.br/pluginfile.php/4215774/mod_resource/content/0/Unspeakable%20Truths_%20Transitional%20Justice%20and%20the%20Challenge%20of%20Truth%20Commissions%20-%20Routledge%20%282010%29.pdf> accessed on 17.04.2024

¹⁷⁴ 'Liberia's TRC presents final report' (*relief web*, 1 July 2009) <<https://reliefweb.int/report/liberia/liberias-trc-presents-final-report>> accessed 6 October 2023

¹⁷⁵ *ibid.*

¹⁷⁶ Fred P.M. Van De Kraaji, 'Controversial TRC report rocks Liberia' (*Liberia Past and Present*, 8 July 2009) <<https://www.liberiapastandpresent.org/36/>> accessed 5 October 2023

¹⁷⁷ MyBlack Panet, 'Former Liberian President Ellen Johnson-Sirleaf Testimony at TRC Liberia' (4 November 2021) <<https://www.youtube.com/watch?v=Xjb1a8iN8cc>> accessed 4 October 2023

¹⁷⁸ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹⁷⁹ 'Where We Work Liberia' (*The Centre for Justice and Accountability*) <<https://cja.org/where-we-work/liberia/>> accessed 3 October 2023

Due to its public awareness campaign and the fact that hearings took place in all county capitals, most Liberians became aware of the TRC.¹⁸⁰ In order to provide notice to the public of its determinations on critical issues, the TRC extensively published and circulated several public policy bulletins on key policy areas like public hearings, general immunity for all TRC witnesses, right to counsel during hearings, prosecution, amnesty, reparations, confidential or in camera hearings etc. generating public confidence in the TRC process.¹⁸¹

The TRC had also recognized the need to include the youth of Liberia into this process and on that notion collaborated with *Federation of Liberian Youth (FLY)*, the consortium for youth organizations in Liberia and conducted several awareness programs on the TRC mandate and transitional justice. TRC established the University of Liberia club with about 200 students for assistance with TRC outreach.

5.2. Human Rights Information Management

The Benetech Human Rights Program was commissioned by the TRC to implement a complex human rights information management system consistent with the specific needs of the TRC like data collection and analysis of the key questions of human rights violations.¹⁸²

Their specific work with the Commission involved establishing analytical objectives, collecting data, designing and implementing an information management system, conducting statistical analysis, integrating quantitative findings and follow-up support. In addition, Benetech*¹⁸³ also provided training and support to help the TRC develop the capacity to undertake necessary steps to accurately and defensibly represent and quantify information about human rights violations documented in Liberia.¹⁸⁴

Benetech published a report analyzing more than 17,000 victim and witness statements collected by the Liberian TRC. The report titled “*Descriptive Statistics from Statements to the Liberian Truth and Reconciliation Commission*,” is included as an annexure to the Liberian TRC Final Report.¹⁸⁵

The statistical expertise to transform narrative information from the statements into scientifically- defensible knowledge were provided by Benetech, in order to create a clear historical data. By supporting the effective capture, preservation and analysis of statements relating to human rights violations, the TRC was able to tell a broader truth about the Liberian conflict. The analysis also helped the TRC to determine the proportional responsibility of

¹⁸⁰ *ibid.*

¹⁸¹ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹⁸² Republic of Liberia, Truth and Reconciliation Commission, *Volume II: Consolidated Final Report*, 2009 <https://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf> accessed 11 October 2023

¹⁸³ *A nonprofit organization based in California, having worked for over fifteen years with eight other truth commissions to incorporate information technology and scientific methods to support their truth-seeking mandates.

‘Benetech Human Rights Data Analysis Group Releases Statistical Report for the Liberian Truth & Reconciliation Commission’ (*Benetech*, 3 July 2009) <<https://benetech.org/blog/benetech-human-rights-data-analysis-group-releases-statistical-report-for-the-liberian-truth-and-reconciliation-commission/>> accessed 2 March 2024

Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹⁸⁴ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹⁸⁵ ‘Benetech Human Rights Data Analysis Group Releases Statistical Report for the Liberian Truth & Reconciliation Commission’ (*Benetech*, 3 July 2009) <<https://benetech.org/blog/benetech-human-rights-data-analysis-group-releases-statistical-report-for-the-liberian-truth-and-reconciliation-commission/>> accessed 2 March 2024

alleged perpetrators and decide who should be prosecuted for the most serious crimes. The findings are useful to provide evidence for possible future prosecutions as well.¹⁸⁶

Georgia Institute of Technology of USA¹⁸⁷ too worked with the TRC to study the role of media following user-centred best practices.¹⁸⁸ They developed an innovative scheme called the ‘Mobile Story Exchange System- MOSES’ to reach both the urban and illiterate sections of the community.

Collaborating with relevant international organizations such as the African Union (AU), Economic Community of West African States (ECOWAS), United Nations (UN), and the International Centre for Transitional Justice (ICTJ), the TRC ensured compliance with international legal procedures and standards.¹⁸⁹

5.3. Thematic Hearings

In addition to individual hearings, thematic and institutional hearings were also conducted throughout the 15 counties in Liberia. Some of the thematic hearings were held with specific groups, others were heard on various themes that were relevant to the Liberian post conflict context.¹⁹⁰

Some of the specific groups with whom thematic hearings were held were:

- Women;
- Children;
- Youth;
- Judiciary;
- Civil Society;
- People with Disabilities;
- Elders, Chiefs, Traditional and Religious Leaders, etc.,¹⁹¹

Some titles considered under thematic hearings:

- Liberian Crisis;
- Reconciliation: the way forward to general peace in Liberia;
- Role of Educational Institutes in the National Reconciliation,
- Improvement of youth livelihood,
- Children and the Liberian Conflict: What does the future hold;
- Role of Mass Media in the Liberian Conflict, etc.,¹⁹²

These thematic hearings addressed the trends, themes and root causes of the conflict, whilst specifically looking at how the conflict uniquely affected or was affected by thematic elements

¹⁸⁶ *ibid.*

¹⁸⁷ Republic of Liberia, Truth and Reconciliation Commission, *Volume II: Consolidated Final Report*, 2009 <https://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf> accessed 11 October 2023

¹⁸⁸ *ibid.*

¹⁸⁹ ‘Truth & Reconciliation Commission of Liberia’ (*Participedia*) <<https://participedia.net/case/7756>> accessed 4 October 2023

¹⁹⁰ ‘TRC Transcripts’ (*Truth and Reconciliation Commission, Liberia*) <<https://www.trcofliberia.org/transcripts.html>> accessed 3 March 2024

¹⁹¹ *ibid.*

¹⁹² *ibid.*

of the conflict; such as motivations, inherent root causes, and the role of specific elements of our society.¹⁹³

These hearings also provided an opportunity to learn about the roles various components of the war played in the conflict. While victim hearings were personalized narratives, the thematic hearings were not about the personal experiences of the presenters, but of the society as a whole. This nuanced version of history was sought to incorporate various levels of a national history that blend the stories of a diverse range of victims and perpetrators.¹⁹⁴

Media

A three-day thematic hearing on the media was also held on the experiences of the domestic and international news media and the role they played in the Liberian civil conflict. This was sought to examine the overall role of the media spanning the timeframe of the TRC mandate. It focused on how the media reported on the conflict regarding content, level of coverage, ethical issues underpinning media coverage of the conflict, challenges confronting the media during the period under review, how these impacted the conflict generally, and lessons learnt.¹⁹⁵

The hearings were structured to reflect the various eras, within the TRC's timeframe and investigative periods. Subsequently, the hearing was followed by a three-day capacity building workshop to critically appraise the performance of the Liberian media in its coverage of the civil war; while taking stock of the role journalists play in today's society and how best they could contribute to the national reconstruction process. It was equally intended to focus on the important role of the media in the implementation of all the TRC recommendations.¹⁹⁶

A broad-based approach for working with the media was initiated through the holding of meetings with editors, reporters and other media practitioners on how the TRC could collaborate with the media in facilitating the necessary and appropriate coverage of the commission. The TRC resolved to generally work with all media outlets across the board, whilst working with a core media group for wider coverage or broader interest in TRC issues.¹⁹⁷

The media was empowered and made aware about the mandate of the TRC and its activities by holding trainings and workshops with the Press Union of Liberia (PUL), media institutions and individual journalists. As a result of these combined efforts, they were able to develop and adopt a code of conduct to govern the media's coverage of the TRC particularly the public hearings. The TRC created the department of media and outreach which coordinated the public affairs of the TRC and liaised directly with the media in ensuring proper management of information dissemination of the commission to the general public.¹⁹⁸

Due to the cordial relationship between the media and the TRC, editorials and commentaries in support of the TRC were promoted throughout its life span.¹⁹⁹

¹⁹³ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report* (at page 153) <<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

¹⁹⁴ *ibid*, p.153.

¹⁹⁵ *ibid*, p.48.

¹⁹⁶ *ibid*, p.48.

¹⁹⁷ *ibid*, p.49.

¹⁹⁸ *ibid*, p.49.

¹⁹⁹ *ibid*, p.50.

5.4. Women and Conflict

The mandate of the TRC Liberia recognizes that a deep understanding of the concept of gender and its impact on Liberian society and the conflict are essential for the success of the TRC process.²⁰⁰

In addition to clear provisions for the inclusion of women as Commissioners in the TRC Act, it also made 9 provisions for dealing with gender issues. In Article 4 section 4, Article 6 section 24 and Article 7 section 26, the concept of gender was linked explicitly to women and children. Appointment of female commissioners who had diverse experiences in women's issues was to recognize the full participation of Liberian women in building the future of Liberia.²⁰¹

The '*gender sensitive*' provisions in the Act that authorizes the Commission to give focused attention to women's human rights issues was considered a broad term which inferred a commitment and sensitivity for women's and children's rights.²⁰² The following are the relevant sections germane to the rights of women and children:

"...specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender-based violations..." (Article IV Section 4e of the Liberian TRC Act)²⁰³

"...employ specialists in children's and women's rights....", (Article VII, Section 260 of Liberian TRC Act)²⁰⁴

"...ensure that special measures or mechanisms are employed that will enable women and children to provide testimony to the TRC, while at the same time protecting their safety and not endangering or delaying their social reintegration or psychological recovery" (Article VII, Section 260 of Liberian TRC Act)²⁰⁵

A *Gender Committee* was established in 2006²⁰⁶ when the TRC was preparing to undertake an outreach programme targeted at Liberian women.²⁰⁷ The Gender Committee designed and undertook projects that exclusively focused on engaging women in the TRC process, mainstreaming women, women's experiences and victims of sexual violence.

Prior to the establishment of this committee, work on gender had been led principally by individual Commissioners.²⁰⁸ The Gender Committee also helped the TRC to craft a gender policy.²⁰⁹ Crafting and finalizing the comprehensive policy took months due to funding and

²⁰⁰ The Advocates for Human Rights, 'Women Chapter 10' <https://www.theadvocatesforhumanrights.org/Res/chapter_10-women.pdf> accessed 6 October 2023

²⁰¹ *ibid.*

²⁰² Anu Pillai, 'Truth Seeking and Gender: The Liberian Experience' (*ACCORD, AJCR 2009/02*, 30 October 2009) <<https://www.accord.org.za/ajcr-issues/truth-seeking-and-gender/>> accessed 7 February 2024

²⁰³ *ibid.*

²⁰⁴ An Act to establish the Truth & Reconciliation Commission (TRC) of Liberia, enacted by the National Transitional Legislative Assembly on May 12, 2005 <<https://www.refworld.org/legal/legislation/natlegbod/2005/en/50725>> accessed on 17.04.2024

²⁰⁵ *ibid.*

²⁰⁶ Anu Pillai, 'Views from the Field, Truth Seeking and Gender: The Liberian Experience' <<https://www.accord.org.za/wp-content/uploads/2015/09/ajcr-2009-2-Truth-seeking-and-gender.pdf>> accessed 6 October 2023

²⁰⁷ Anu Pillai, 'Truth Seeking and Gender: The Liberian Experience' (*ACCORD, AJCR 2009/02*, 30 October 2009) <<https://www.accord.org.za/ajcr-issues/truth-seeking-and-gender/>> accessed 7 February 2024

²⁰⁸ *ibid.*

²⁰⁹ Anu Pillai, 'Views from the Field, Truth Seeking and Gender: The Liberian Experience' <<https://www.accord.org.za/wp-content/uploads/2015/09/ajcr-2009-2-Truth-seeking-and-gender.pdf>> accessed 6 October 2023

personnel issues. This committee was represented by organizations like UNIFEM, the Women's NGO Secretariat, the Liberian Women Media Action Committee, Voice of the Voiceless and the International Centre for Transitional Justice's (ICTJ) gender focal person with expertise in working with women and female survivors of sexual violence.

The gender policy focused on the references made to 'gender' in the TRC Act, stressing that the common understanding of gender equality and equity was key to thorough investigation in the search for the truth about Liberia's past.²¹⁰ The policy document laid out a detailed plan with clear recommendations in each category of operation that the TRC was to engage in, to achieve those goals. The greater portion of these recommendations were to be implemented by a gender expert/advisor. One significant recommendation worth stating was the need for periodic review and assessment by the TRC with monitoring oversight by the Gender Committee.²¹¹

The Gender Committee convened on an ad hoc basis to advise and assist the TRC in their outreach efforts directed at women including the conduct of workshops to encourage traditional women leaders and male relatives to support female participation in the TRC. They helped in organizing thematic public hearings on the role of women during conflict in addition to a national consultation with women on the TRC recommendations. Gender programmes were implemented with exclusive focus on "women's" issues and efforts centred on women's involvement in the statement-taking and public hearing processes.²¹²

Approximately 51% of the 18,000 statements collected by September 2008 came from women. In addition to widely participating in the public hearings. In Liberia women seemed more willing to talk about themselves, extensively engaging with the TRC recounting experiences due to better preparation and pre - hearing support.²¹³

The 'inquiry unit' of the TRC established the 'role of women and children' as one of their main thematic areas of investigation and research following up on gross human rights violations on women and children.²¹⁴

One of the drawbacks was that the interpretation of 'gender' had the tendency to focus on women as 'victims.' Although other identities of women like war combatants were recognized, the multiple identities of women and the full spectrum of women's involvement were seldom explored in the hearings.²¹⁵

While TRC had been commended for the inclusion of women at every level of operation and execution, the first report released by TRC in December 2008 was widely seen as gender blind, leading to a need for a gender specialist. Subsequent regional dialogues with women revealed the specific needs and concerns of women struggling with post conflict issues and collated as recommendations.²¹⁶

²¹⁰ Anusanthee Pillay, 'Transitional Justice in Liberia: Gender, Women or Both?' 2008 <https://www.researchgate.net/publication/269101629_Transitional_Justice_in_Liberia_Gender_Women_or_Both> accessed 7 February 2024

²¹¹ *ibid.*

²¹² Anu Pillai, 'Truth Seeking and Gender: The Liberian Experience' (*ACCORD, AJCR 2009/02*, 30 October 2009) <<https://www.accord.org.za/ajcr-issues/truth-seeking-and-gender/>> accessed 7 February 2024

²¹³ Anu Pillay, 'Views from the Field, Truth Seeking and Gender: The Liberian Experience' <<https://www.accord.org.za/wp-content/uploads/2015/09/ajcr-2009-2-Truth-seeking-and-gender.pdf>> accessed 6 October 2023

²¹⁴ *ibid.*

²¹⁵ *ibid.*

²¹⁶ *ibid.*

The TRC's embarkation on its ambitious project to bring women's experiences of the Liberian conflict to the fore through a series of activities started off as early as 2006 when the Commission began reaching out to the female population in initial sensitization of women about the TRC. The Commission led the planning and implementation of 15 town hall meetings in all the fifteen counties of Liberia immediately followed by four zonal workshops targeting women's organizations. The heads of organizations in the counties were trained on the impact, knowledge and understanding of the mandate of TRC and the Commission's agenda with women.²¹⁷

A Memorandum of Understanding with Women's Campaign International (an international women's advocacy organization based in Philadelphia, USA) was also initiated to support the Gender Committee of TRC and enhance participation of women in the TRC process.²¹⁸

Specific objectives of the project are:

- To recruit a National Gender Officer to serve as liaison and networker with various women's groups, as well as the recruitment of other staff for the project;²¹⁹
- To train 15 community-based psychosocial trauma counsellors on trauma counselling support for the women who appear before the TRC and to provide post hearings psychosocial assistance to the women in their communities;²²⁰
- To conduct four targeted zonal sensitization and awareness workshops for a total of 400 male partners and relatives of women to raise their awareness about the need to support women to participate in the TRC process;²²¹
- To hold a three-day education and sensitization training for traditional female leaders ("Zoes") for their participation and support to encourage rural women affected by the war to come to the TRC to discuss taboo subjects and tell their full stories;²²²
- To design and produce sensitization, education and communication materials (posters, banners, flyers, bumper stickers, and t-shirts) for women depicting and explaining different phases of the TRC process;²²³
- To hold a National Conference for women to structurally discuss the TRC's final report and recommendations in the area of reparation, prosecution and amnesty;²²⁴ and
- To conduct NGO referral medical and child reunification services for women.²²⁵

VOLUME THREE of the TRC report of Liberia was titled as '**WOMEN AND THE CONFLICT**' taking an in-depth look at the gendered dimensions of the conflict, highlighting the experiences of women and girls.²²⁶ It starts by giving a brief overview of the gendered history of the country, the status of women pre-2003 and how that links to the specific

²¹⁷ Republic of Liberia, Truth and Reconciliation Commission, *Volume Three: Appendices, Title I: Women and the Conflict* <https://www.trcofliberia.org/resources/reports/final/volume-three-1_layout-1.pdf> accessed 7 February 2024

²¹⁸ *ibid.*

²¹⁹ *ibid.*

²²⁰ *ibid.*

²²¹ *ibid.*

²²² *ibid.*

²²³ *ibid.*

²²⁴ *ibid.*

²²⁵ *ibid.*

²²⁶ *ibid.*

experiences of women and girls during and after the conflict. It looks at the work of the TRC Gender Unit and the Gender Committee and their findings pertaining to the experiences of women and girls as presented to the Commission. It discusses the complex nature of gender issues and how they intersect with conflict. It then goes on to give an overview of the current status of women in Liberia, and finally making recommendations on the way forward to address the needs of women and girls, and to advance gender equality.²²⁷

5.5. The Diaspora Project

The diaspora was viewed as intimately involved in Liberia's civil war²²⁸ and that no process of reconciliation would be complete without their involvement; the TRC approached 'The Advocates for Human Rights (The Advocates)', known at that time as 'Minnesota Advocates for Human Rights', and proposed a partnership to engage with the Liberian diaspora, particularly based in the U.S., UK and Ghana.²²⁹ They signed a memorandum of understanding to authorize the Advocates to act as the TRC's implementing partner in the Diaspora Project.

The Advocates' long engagement with the Liberian diaspora was the reason for their choice to be perceived as trusted, transparent, and neutral within the diaspora community.²³⁰

The goal was to give Liberians outside a voice in the TRC Process, promote international justice and human rights as part of TRC mandate in Liberia and raise awareness on transitional justice mechanisms.²³¹ Hence, the Diaspora Project was integrated as part of the TRC's overall work, whereby 'The Advocates' extensively consulted the Commissioners and the staff of TRC on the broad operation and structure of the Project.

This became a groundbreaking initiative that for the first time allowed for the involvement of victims of human rights abuses outside their homeland to participate in the reconciliation and accountability process. It became a model for involving a Diaspora population in TRC mechanisms that promote international justice, human rights and the rule of law.²³²

One Commissioner was in charge of this project, whilst the Chairman travelled to the U. S. to assist the training of the volunteers and plan future diaspora projects with funding handled independently by The Advocates.

The Advocates also created the project structure to ensure accountability to key stakeholders, by having a pro bono management team composed of representatives from law firms who had committed from the outset to provide volunteers and in-kind support to ensure the project's successful completion along with a National Advisory Committee of Liberian community leaders in the U.S, who represented the geographic and ethnic diversity of the Liberian society to provide input and strategic advice throughout the project.²³³ The TRC had to approve the members of the national advisory team.

²²⁷ *ibid.*

²²⁸ Jonny Steinberg, 'Diaspora and Conflict: The Liberians of Staten Islands' (*HFG*) <https://www.hfg.org/grant_summaries/diaspora-and-conflict-the-liberians-of-staten-island/> accessed 6 October 2023

²²⁹ The Advocates for Human Rights, 'Diaspora Project Overview and Methods Chapter Three' <<https://www.theadvocatesforhumanrights.org/res/byid/9354>> accessed 6 October 2023

²³⁰ *ibid.*

²³¹ Ahmed Sirleaf and Laura Young, 'The Liberian Truth and Reconciliation Commission' <https://www.theadvocatesforhumanrights.org/Res/general_trc_diaspora_ppt.pdf> accessed 6 October 2023

²³² *ibid.*

²³³ The Advocates for Human Rights, 'Diaspora Project Overview and Methods Chapter Three' <<https://www.theadvocatesforhumanrights.org/res/byid/9354>> accessed 6 October 2023

The Diaspora Project Advisory Committee sought the intervention of experts in critical areas, like the Centre for Victims on Torture and ICTJ for advice and training of volunteers in the undertaking of public hearings and on transitional justice concepts²³⁴.

Some decisions of the TRC such as not calling the major perpetrators to public hearings until late in the process, the reluctance of key actors including the president to appear before the TRC and media coverage of internal conflicts at the TRC had dampening effects on participation in the diaspora, bringing into highlight the complexity and importance of coordination between in-country and diaspora processes. Nevertheless, the news coverage of diaspora hearings in the United States, where high level witnesses came forward to testify, seemed to have spurred many higher-level witnesses within Liberia to come forward.

Outreach, sensitization, statement taking, public hearings and report writing were carried out by the committee and all tools and methodologies used were approved by the TRC prior to use.

Statements from more than 1600 Liberians in the diaspora were documented and testimony from more than 20 witnesses at public hearings were recorded.²³⁵ This project was also one of the first truth commissions to systematically engage more than 600²³⁶ extensively trained pro bono volunteers as statement takers, researchers, outreach workers, and to support witnesses.

However, this project faced some legal issues relating to jurisdictional applicability and protection for statement givers, since the TRC legislation had no mandate outside its territories.²³⁷ To overcome these complexities, the Advocates consulted experts in the field of immigration and criminal law, and ethics to deal with the statement taking protocol. As a result, they developed a disclosure statement with an opportunity to consult a lawyer²³⁸ before deciding to give statements. Risks and requirements on conflict of interest and concerns of defamation were closely examined by the Advocates.

All information gathered for the TRC Diaspora Project was treated as property of the TRC of Liberia and information provided to the Diaspora Project was subject to the same policy proscriptions as information gathered in Liberia.

The House with Two Rooms,²³⁹ is the title of the final report of the Truth and Reconciliation Commission of Liberia Diaspora Project published by the Advocates for Human Rights.

This report documents the experience of human rights abuses and violations of international humanitarian law that forced many Liberians to leave their homeland. This report also includes the analysis of more than 1,600 statements, fact-finding interviews, and witness testimony at public hearings held in the U.S. The notion of "triple trauma"^{*240} experienced by members of the diaspora during their flight through Liberia and across international borders, while living in refugee camps in West Africa, and in resettlement in the U.S. and U.K. has also been captured

²³⁴ *ibid.*

²³⁵ 'Liberia TRC Diaspora Project' (*The Advocates for Human Rights*)

<https://www.theadvocatesforhumanrights.org/Liberia_TRC_Diaspora_Project> accessed 6 October 2023

²³⁶ *ibid.*

²³⁷ The Advocates for Human Rights, 'Diaspora Project Overview and Methods Chapter Three'

<<https://www.theadvocatesforhumanrights.org/res/byid/9354>> accessed 6 October 2023

²³⁸ *ibid.*

²³⁹ Michele Garnett McKenzie and Jennifer Prestholdt, 'The House with Two Rooms; final report of the Truth & Reconciliation Commission of Liberia Diaspora Project' (2009)

<<https://www.theadvocatesforhumanrights.org/Publications/A/Index?id=64>> accessed 7 April 2024

²⁴⁰ *Displaced persons often experience what is known as the triple trauma paradigm. This long standing paradigm posits that refugees experience trauma in the country of origin, during flight, and in the country of refuge. Each phase brings with it unique and recurring traumatic experiences.

'Chapter Thirteen, "Everyone Scattered" Experiences of the Liberian Diaspora'

<https://www.theadvocatesforhumanrights.org/Res/chapter_13_-_experiences_of_the_liberian_diaspora.pdf> accessed 7 April 2024

in this report. In addition, it also summarizes the views of Liberians in the diaspora on the root causes of the conflict and their recommendations for systemic reform and reconciliation.²⁴¹

5.6. Disarmament, Demobilization, Rehabilitation and Reintegration – DDRR

Disarmament, demobilization, rehabilitation, and reintegration (DDRR) processes and transitional justice measures in Liberia, did not take place parallelly. DDRR was nearing completion by the time the TRC began its operations. Sequencing of the DDRR program prior to the TRC had the advantage of allowing for a more secure environment for pursuing transitional justice.²⁴²

The Comprehensive Peace Agreement (CPA) provided for a request to the UN to send troops to support the transitional government. This included a mandate to aid in the reconstruction of the country, including the reintegration of former combatants. Accordingly, the United Nations Mission in Liberia (UNMIL) was established in 2003 under UN Security Council resolution 1509 (UNDDR 2011).²⁴³

UNMIL's mandate was to demobilize, disarm and provide training and reintegration support to former soldiers for the two main factions, the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL), as well as the Armed Forces of Liberia (AFL). This included women and children.²⁴⁴

Serious attempts were made to involve women in the process. UNMIL reports that 22,370 women were disarmed and demobilized.²⁴⁵

Since many, if not the majority, of fighters in the Liberia conflict were child combatants, UNICEF played a significant role in ensuring that the issue of child combatants was part of the planning of the DDRR program. UNMIL states that 10,972 children were disarmed and demobilized in total including 8,532 boys and 2,440 girls.²⁴⁶

While the process was considered largely successful, TRC found that a significant number of children formerly associated with the armed forces who testified before the TRC never went through the DDRR process. Some former children associated with the armed forces who have never gone through the DDRR process have difficulties reintegrating into civilian life and are particularly vulnerable to exploitation and homelessness today.²⁴⁷ The DDRR program was completed on October 31, 2004, with 101,496 combatants and their “associates” disarmed and demobilized.²⁴⁸

Those who participated in the DDRR programs were provided multiple benefits like medical screening and treatment, transportation back to their community of choice, a Transitional Safety

²⁴¹ *ibid.*

²⁴² Thomas Jaye, ‘Transitional Justice and DDR: The Case of Liberia’ ICTJ Research Brief, June 2009

<https://www.ictj.org/sites/default/files/ICTJ-DDR-Liberia-ResearchBrief-2009-English_0.pdf> accessed 3 March 2024

²⁴³ Ian Lively, ‘Measuring Intermediate Outcome of Liberia’s DDRR program’ IES Working Paper 02/2012, Charles University in Prague, Institute of Economic Studies, Prague

<<https://www.econstor.eu/bitstream/10419/83399/1/684815257.pdf>> accessed 3 March 2024

²⁴⁴ *ibid.*

²⁴⁵ Thomas Jaye, ‘Transitional Justice and DDR: The Case of Liberia’ ICTJ Research Brief, June 2009

<https://www.ictj.org/sites/default/files/ICTJ-DDR-Liberia-ResearchBrief-2009-English_0.pdf> accessed 3 March 2024

²⁴⁶ *ibid.*

²⁴⁷ Republic of Liberia, Truth and Reconciliation Commission, *Volume II, Consolidated Final Report*

<<https://www.trcofliberia.org/resources/reports/final/trc-of-liberia-final-report-volume-ii.pdf>> accessed 2 March 2024

²⁴⁸ Thomas Jaye, ‘Transitional Justice and DDR: The Case of Liberia’ ICTJ Research Brief, June 2009

<https://www.ictj.org/sites/default/files/ICTJ-DDR-Liberia-ResearchBrief-2009-English_0.pdf> accessed 3 March 2024

Allowance of US\$300 and a one-month food ration from the World Food Programme upon one's discharge.²⁴⁹

The Liberia DDR program was divided into two main stages: the first phase, or "DD" phase and the second phase or "RR" phase.²⁵⁰ "DD" phase consisted of disarming and demobilizing combatants, where the combatants were required to turn in serviceable weapons (or ammunition of a certain amount) in order to register for the program, (this restriction was relaxed in later phases). Upon doing so, each was given US\$300 and an ID card that allowed him to register for further benefits, including training.²⁵¹

The "RR" phase mainly consisted of job training. Participants were given the choice to enter formal education programs (for which funding was provided to cover school fees, related costs and a stipend for up to three years) and vocational training programs that were provided by contracted partners. Each student was given a stipend of \$30 a month plus in-kind support from the contracted training institutions.²⁵² These vocational programs prepared participants for careers in masonry, tailoring, agriculture and other fields. Most of those who demobilized, around 90%, registered for training benefits, although not all of those individuals completed training programs.²⁵³

Approximately 90,000 ex-combatants had participated in the rehabilitation and reintegration phase, which offered training opportunities in formal education, vocational training, and apprenticeship.²⁵⁴ A survey by the UNDP in 2006, recorded an overall 8% increase in the socio-economic situation of the ex-combatants. And around 94% indicated that they have not had problems being accepted into their communities.²⁵⁵

Although the DDR program in Liberia was considered a success, there were some issues highlighted, like the threat to peace and stability posed by ex-combatants who have not been successfully reintegrated. Since employment opportunities in post-war Liberia have been very poor, this became the most serious restraint to the ability of training programs targeted at ex-combatants to produce results.²⁵⁶

Since the goal of any DDR programs is not simply to help ex-combatants attain higher incomes, but to facilitate reintegration into the society to prevent peace-spoiling activities and further violence, its effectiveness should be understood through this dimension.

5.7. TRC Final Reconciliation Initiatives

The Truth and Reconciliation Commission's (TRC) Final Reconciliation Initiatives were of two types; County Consultations and a National Conference to promote and sustain peace.

²⁴⁹ *ibid.*

²⁵⁰ Ian Lively, 'Measuring Intermediate Outcome of Liberia's DDR program' IES Working Paper 02/2012, Charles University in Prague, Institute of Economic Studies, Prague
<<https://www.econstor.eu/bitstream/10419/83399/1/684815257.pdf>> accessed 3 March 2024

²⁵¹ *ibid.*

²⁵² *ibid.*

²⁵³ *ibid.*

²⁵⁴ Thomas Jaye, 'Transitional Justice and DDR: The Case of Liberia' ICTJ Research Brief, June 2009

<https://www.ictj.org/sites/default/files/ICTJ-DDR-Liberia-ResearchBrief-2009-English_0.pdf> accessed 3 March 2024

²⁵⁵ *ibid.*

²⁵⁶ Ian Lively, 'Measuring Intermediate Outcome of Liberia's DDR program' IES Working Paper 02/2012, Charles University in Prague, Institute of Economic Studies, Prague
<<https://www.econstor.eu/bitstream/10419/83399/1/684815257.pdf>> accessed 3 March 2024

Their objective was to provide opportunities for the Liberians to actively participate in harnessing the TRC recommendations in relation to the four policy issues of *Reconciliation, Amnesty, Reparation, and Prosecution* and deepen their understanding on these issues through discussions and dialogues.²⁵⁷

These initiatives were *“a collective effort and a prerequisite to accelerating economic and social growth and development in Liberia.”*²⁵⁸

One of the conference declarations known as the ‘**Virginia Declaration**’ - Called for a Way Forward to a New Liberia through Reconciliation. It provided 38 recommendations to be included in the TRC final recommendations.²⁵⁹

The TRC’s final reconciliation initiatives provided a forum through which inclusiveness and genuine participation in the TRC process was enhanced and gave an opportunity for the Liberians to provide the government concrete recommendations and strategies to enhance implementation of the TRC final recommendations. The project approach was a bottom-to-top one that started with people at the county level and results fed into the wider national discussions/dialogue or consultations.²⁶⁰

²⁵⁷ The Truth and Reconciliation Commission, ‘TRC Final Reconciliation Initiatives’ 2009
<https://mptf.undp.org/sites/default/files/documents/10000/pbf-lbr-a-5_final_report_trc_final_reconciliation_initiatives.pdf>
accessed 11 October 2023

²⁵⁸ *ibid.*

²⁵⁹ *ibid.*

²⁶⁰ *ibid.*

CHAPTER 6

Subsequent Developments and Policies

One of the key recommendations of the TRC was the establishment of an extraordinary tribunal to prosecute individuals who committed gross human rights violations, crimes under international humanitarian law, and economic crimes. Recommendations also included the use of traditional conflict resolution mechanisms through a "Palava Hut" approach; establishment of a Reparations Trust Fund; observance of a national memorial and unification day; and call for renewed commitments aimed at protection and promotion of rights of women and children. The establishment of the INCHR – Independent Commission for Human Rights - was also aimed at addressing the disregard for human rights from the 14-year Liberian civil crisis and the mandated agency to ensure the implementation of the TRC recommendations.²⁶¹

6.1. The Palava Hut Project

The word ‘Palava’ means “problem” or “issue²⁶².” This was a traditional “*reconciliatory dispute resolution mechanism convened by elders to settle community matters such as extramarital affairs, divorces, land disputes, debt, and occasionally theft and murder...*” during the settler times in Liberia.²⁶³

The salience of the Palava Hut is within indigenous frameworks, based on a non-state justice framework, where the overwhelming majority of Liberians, particularly those in the countryside, seek and receive justice. Literally speaking, the Palava Hut is a gathering place, usually a round thatched hut symbolizing sustained relationship that is the essence of the process. The process derives its legitimacy from a host of indigenous norms and cultural practices and has the greatest viability in rural communities.²⁶⁴

Potentials of the Palava hut

- a home-grown and context specific mechanism rooted in local norms, values and culture, conducted in a language understood by all, thereby enabling direct and greater participation;
- highly decentralized, as it takes place on site within the community where actual reconciliation occurs;
- proceedings are presided over by trusted and respected Elders of integrity from within the community acting as mediators, implying that the process does not only enjoy high degree of legitimacy, but also that decisions reached through Palava Hut are binding and enduring;
- saves time, it is comparatively cheaper financially, and therefore easily accessible;
- Avoiding legal technicalities, the Palava Hut is perceived as less prone to corruption and official manipulation;

²⁶¹ Tania Bernath and Julius Togba, ‘Evaluation of the Project “Strengthening the capacity of the Independent National Commission on Human Rights in Liberia” Final Evaluation Report’ OHCHR, March 2022
<<https://www.ohchr.org/sites/default/files/2022-06/Evaluation-of-the-project-Strengthening-the-Capacity-of-the-Independent-National-Commission-on-HR-Liberia.pdf>> accessed 3 March 2024

²⁶² *ibid.*

²⁶³ *ibid.*

²⁶⁴ Kwaku Danso, ‘Mending Broken Relations after Civil War: The ‘Palava Hut’ and the Prospects for lasting peace in Liberia’ Policy Brief 2/May 2016, Kofi Annan International Peacekeeping Training Centre, <<https://africacenter.org/wp-content/uploads/2023/03/KAIPTC-Policy-Brief-The-Palava-Hut-in-Liberia.pdf>> accessed 3 March 2024

- It aims at restoring justice and broken relationships in communities;
- The ultimate aim of punishment under this process is to restore and sustain just and peaceful relations within the community. Thus, it is a relational justice process.²⁶⁵

The TRC of Liberia in its final report specified the names of, at least, 7600 persons, mostly ex-combatants, who were to avail themselves to the National Palava Hut programme in order to help restore justice and broken relationships in post-war Liberia.²⁶⁶

On October 19, 2013, the Palava Hut program was officially launched as pilot projects by the then-President, Ellen Johnson-Sirleaf, as one of the 142²⁶⁷ recommendations of the TRC of Liberia to set the process in motion.²⁶⁸

Typically, the offender confesses or apologizes for the wrong committed, and seeks forgiveness from the victim.²⁶⁹ To complete this process subsequent cleansing and restitution is carried out. The Palava Hut Committee scolds the perpetrator and consoles the victim. Once forgiven, the victim and perpetrator share a drink of blessed water to symbolize “heart-cleansing”, a consummation of a moral and spiritual vow to let go of the past and embrace a future of reconciliation and peaceful coexistence.²⁷⁰

Failure to adhere to the Palava Hut system could result in dire consequences such as public sanctions, debarment from holding public office, lustrations, and criminal and civil prosecution.²⁷¹

From a TRC perspective, key concepts of the Palava Hut pilot project include accountability and forgiveness of crimes committed during the civil war and the era from 1979 to 2002.²⁷²

The INHRC – Independent National Human Rights Commission oversees and coordinates the Palava Huts. With a tenure of ‘not less than three years and not more than five years,’²⁷³ its jurisdiction included crimes of “lesser gravity” (looting and destruction of property to certain acts of torture and humiliation, forced labour and displacement)²⁷⁴ and excluded those prosecuted for international crimes. However, a recommendation in favour of anyone accused of a high crime or gross human rights violations can be made to the Head of State or equivalent court.²⁷⁵

²⁶⁵ *ibid.*

²⁶⁶ *ibid.*

²⁶⁷ ‘Palava Hut System’ (*Participedia*) <<https://participedia.net/method/7755>> accessed 11 October 2023

²⁶⁸ Kwaku Danso, ‘Mending Broken Relations after Civil War: The ‘Palava Hut’ and the Prospects for lasting peace in Liberia’ Policy Brief 2/May 2016, Kofi Annan International Peacekeeping Training Centre, <<https://africacenter.org/wp-content/uploads/2023/03/KAIPCTC-Policy-Brief-The-Palava-Hut-in-Liberia.pdf>> accessed 3 March 2024

²⁶⁹ ‘Palava Hut System’ (*Participedia*) <<https://participedia.net/method/7755>> accessed 11 October 2023

²⁷⁰ ‘Healing the wounds of war: Liberia’s Palava Hut hearings on wartime crimes aim to build lasting peace’ (*relief web*, 1 November 2022) <<https://reliefweb.int/report/liberia/healing-wounds-war-liberias-palava-hut-hearings-wartime-crimes-aim-build-lasting-peace>> accessed 3 March 2024

²⁷¹ ‘Palava Hut System’ (*Participedia*) <<https://participedia.net/method/7755>> accessed 11 October 2023

²⁷² Gorpudolo C.Z., Community-based restorative justice in peacebuilding: A case study of Liberia’s Palava Hut Pilot Project, International Institute of Social Studies, December 2019, file:///C:/Users/Administrator/Downloads/Gorpudolo-Christo-Zorgbo_MA-2018_19_SJP.pdf, accessed on 03.03.2024

²⁷³ Republic of Liberia, Truth and Reconciliation Commission, *Volume Three: Appendices, Title XII: Towards National Reconciliation and Dialogues: The Palava Hut or Peace Forums* <https://www.trcofliberia.org/resources/reports/final/volume-three-12_layout-1.pdf> accessed 11 October 2023

²⁷⁴ ‘Healing the wounds of war: Liberia’s Palava Hut hearings on wartime crimes aim to build lasting peace’ (*relief web*, 1 November 2022) <<https://reliefweb.int/report/liberia/healing-wounds-war-liberias-palava-hut-hearings-wartime-crimes-aim-build-lasting-peace>> accessed 3 March 2024

²⁷⁵ ‘Palava Hut System’ (*Participedia*) <<https://participedia.net/method/7755>> accessed 11 October 2023

Until August 2022, the Palava Hut mechanism resolved 277 war-related cases of human rights violations involving more than 500 people - 275 victims and 244 perpetrators. The (INCHR) had accomplished this through conducting hearings in 4 out of the 15 counties, presided over by elders. The hearings have addressed matters of assault and torture, forced displacement and forced labour, arson attacks, looting and destruction of property, and desecration of sacred sites.²⁷⁶ The Palava Hut hearings are pivotal in establishing the truth of what happened, and securing apologies, setting the stage for reconciliation and social cohesion.²⁷⁷

6.2. Independent National Council for Human Rights (INCHR)

Article XII of the CPA called for the establishment of an Independent National Commission on Human Rights (INCHR).²⁷⁸

The INCHR was set up with a broad human rights mandate with a significant role to play to ensure that the recommendations set forth by the TRC would be implemented. In 2017, the INCHR in Liberia was accredited with “A” status by the Global Alliance for National Human Rights Institutions (GANHRI) demonstrating their alignment with the Paris Principles.²⁷⁹ Since the creation of the INCHR, it has gone through three cycles of appointments of the Board of Commissioners in 2010, 2016 and, most recently, in 2021.

The Human Rights and Protection Section (HRPS) of UNMIL supported the INCHR with capacity building and funding including providing technical support; ensuring compliance with international human rights principles; training monitors in monitoring and reporting human rights violations, on implementing the National Human Rights Action Plan (NHRAP) and advocated with the national authorities to increase budgetary support. The UNMIL HRPS were also instrumental in helping to develop the strategy to support the INCHR.²⁸⁰

Notwithstanding all the criticisms levelled at the TRC, they had provided a strong base for their successor body the Independent National Council for Human Rights (INCHR) for their future work.²⁸¹

6.3. Strategic Roadmap for National Healing Peacebuilding and Reconciliation (SRM)

The Government of Liberia seemed to have found it extremely difficult to implement major recommendations of the Truth and Reconciliation commission because of their complex nature.²⁸² Long-lasting positive results and outcomes remain threatened, unless the

²⁷⁶ ‘Liberia’s Palava Hut mechanism delivering quick wins in long, winding road to justice’ (UNDP, 11 August 2022) <<https://www.undp.org/liberia/news/liberias-palava-hut-mechanism-delivering-quick-wins-long-winding-road-justice>> accessed 3 March 2024

²⁷⁷ ‘Healing the wounds of war: Liberia’s Palava Hut hearings on wartime crimes aim to build lasting peace’ (reliefweb, 1 November 2022) <<https://reliefweb.int/report/liberia/healing-wounds-war-liberias-palava-hut-hearings-wartime-crimes-aim-build-lasting-peace>> accessed 3 March 2024

²⁷⁸ Tania Bernath and Julius Togba, ‘Evaluation of the Project “Strengthening the capacity of the Independent National Commission on Human Rights in Liberia” Final Evaluation Report’ OHCHR, March 2022 <<https://www.ohchr.org/sites/default/files/2022-06/Evaluation-of-the-project-Strengthening-the-Capacity-of-the-Independent-National-Commission-on-HR-Liberia.pdf>> accessed 3 March 2024

²⁷⁹ *ibid.*

²⁸⁰ *ibid.*

²⁸¹ John Perry, ‘Reconciliation and Healing as the Ultimate Reality and Meaning of Peacebuilding in the Thought of John Paul Lederach with Special Reference to the Truth and Reconciliation Commission of Liberia’ Volume 35, Issue 3-4, September–December 2012, pp. 317-331 <<https://utpjournals.press/doi/10.3138/uram.35.3-4.317>> accessed on 17.04.2024

²⁸² Nat B. Walker, ‘Liberia: Challenges facing peace and reconciliation’ (Peace Insight, 24 October 2012) <<https://www.peaceinsight.org/en/articles/liberia-healing-peacebuilding-reconciliation-processchallenges/?location=liberia&theme=transitional-justice-reconciliation>> accessed 12 October 2023

controversies surrounding the Truth and Reconciliation recommendations are subjected to a national consultative and consensus building process. The Strategic Roadmap for National Healing Peacebuilding and Reconciliation (SRM)- an 18-year duration map – was designed to fill this gap outlining responsibilities for the key government actors and civil societies, to deliver on programmatic framework for its implementation around three themes: accounting for the past; managing the present and planning for the future.²⁸³

The ‘Roadmap’ is aligned with the Agenda for Transformation and Vision 2030 of the Government of Liberia.²⁸⁴

²⁸³ ‘Reconciliation & Peace Consolidation’ (UNMIL) <<https://unmil.unmissions.org/reconciliation-and-peace-consolidation>> accessed 12 October 2023

²⁸⁴ *ibid.*

SUMMARY

COUNTRY	LIBERIA Location: Western Africa; Only Black state in Africa never subjected to colonial rule; Legal system: US & UK common law
Background / Context	<ul style="list-style-type: none"> ● The various indigenous tribes were at war with the Americo-Liberians over territory and trade routes; ● A rebellion in the 1979, called the Rice Riot for increase in rice prices during the government of Tolbert- whose family was the leading rice importer²⁸⁵. ● Military coup 1980 in resulted in the murder of President Tolbert; summary execution of 13 govt ministers; installation of an army master sergeant Doe, as the national leader;(1980-1989); suspends the constitution and forms an authoritarian regime- People’s Redemption Council²⁸⁶; ● 1985 failed coup attempt against Doe by his co-partner General Thoman Quiwonkpa; ● 1989 invasion of Liberia by Cote d Ivoire (Ivory Coast) – setting off 2 civil wars; ● This invasion killed 200,000 and displaced more than one million people; ● Wars went on till 2003 ● Almost 10 rebel factions are engaged during the conflict; AFL, INPFL, LDF, LPC, LURD, MODEL, NPFL, ULIMO – (tribal groups, armed forces²⁸⁷)
Meaning of TRC	<ul style="list-style-type: none"> ● a Parliament-enacted organization; ● Dealing with constructive interchange between victims and perpetrators of human violations and armed conflicts; ● to recommend mechanisms for healing.
Mandate of TRC	<ul style="list-style-type: none"> ● The Truth and Reconciliation Commission Act ● to “promote national peace, security, unity and reconciliation,” ● to hold perpetrators accountable for gross human rights violations and violations of international humanitarian law, sexual violations, economic crimes that occurred in Liberia between January 1979 and October 2003; ● option to explore the period before 1979 as needed; ● to determine whether abuses were isolated incidents or part of a systematic pattern; ● establish the antecedents, circumstances, factors and context of such violations and abuses; ● determine those responsible for the commission of the violations, their motives as well as the impact of the abuses on victims; ● provide a forum against impunity; ● address experiences of women, children and vulnerable groups;

²⁸⁵ ‘Liberia, No More War’ (*Frontline World*, May 2005) <<https://www.pbs.org/frontlineworld/stories/liberia/facts.html>> accessed 10 October 2023

²⁸⁶ *ibid.*

²⁸⁷ ‘Chapter 6, Tactics and fighting factions during the Liberian Civil war’ <https://www.theadvocatesforhumanrights.org/Res/chapter_6-tactics_and_fighting_factions_during_the_liberian_civil_war.pdf> accessed 10 October 2023

	<ul style="list-style-type: none"> ● conduct a critical review of the past to recognize historical truth and address falsehood and misconceptions of socio economic and political development; ● compile a public report with findings and recommendations.
Composition of TRC	<ul style="list-style-type: none"> ● 9 commissioners; 4 women and 5 men; ● Provision for a 3-member International Technical Advisory Committee to work directly with Commissioners, ● A selection panel of 7 persons comprising civil society, political parties, UN, ECOWAS for the process of selecting the Commissioners.
Work of TRC	<ul style="list-style-type: none"> ● Collected more than 20,000 statements from 15 counties from 2006 October; ● Public hearings held focusing on specific events, groups or kinds of violations; ● Compilation of TRC final report; TRC concluded in 2009 ● Duration of operation of the TRC: 3 + years – public hearings started in 2008;
Findings of TRC	<ul style="list-style-type: none"> ● Root causes of conflict attributed to poverty, greed, corruption, limited access to education, economic, social, civil and political inequalities; chasm between settler Liberian and indigenous Liberian; land tenure and distribution, ● Abuse, violence against women, recruitment of children as child soldiers ● External actors supported and conspired violence.
Recommendations	<ul style="list-style-type: none"> ● Named individuals, corporations and institutes for prosecution or further investigations; ● Named people recommended to be barred from holding public office; ● Institutional reform for good governance and prevent further abuse; ● Reparations; ● Establishment of National Palava Hut Forum, a complimentary tool to access justice – based on traditional dispute resolution; ● guarantee full enjoyment of all rights of people; ● the incumbent president of Liberia and some of the perpetrators of the conflict who are now in power to step down from government office and leave politics; for having supported warring factions in the civil war; ● to establish an extraordinary tribunal and domestic criminal court to prosecute 124 and 58 individuals respectively, for gross violations of human rights and violations of international humanitarian law, including all former heads of warring factions and generals;
Success/Praises	<ul style="list-style-type: none"> ● Active inclusion of the Liberian Diaspora; Diaspora project integrated into TRC’s work by an agreement between TRC and a human rights organization.

	<ul style="list-style-type: none"> ● Ambition to use the final report as an education tool; to uproot the culture of impunity by wide dissemination and implementation of recommendations; ● Conducted hearings in all counties and overseas; ● No amnesty for perpetrators; ● Partnered with George Tech of the USA to study the role of news media in reconciliation and reach all Liberians in the TRC process.
<p>Negative Impacts</p>	<ul style="list-style-type: none"> ● TRC report not embraced by all Liberians giving rise to controversies; ● Some recommendations were seen as destabilizing to the precarious peace; ● The publication of the TRC report caused a lot of confusion and tension for number of reasons; ● Some groups urged the TRC report to be discarded; ● Death threats to some Commissioners; ● two lists of names of perpetrators and persons of interest were released while the TRC was proceeding; ● disconnection between those hearings and the recommendations regarding prosecution and lustration; offenders were not given notice they would be subject to lustration by the commission and had limited opportunity to contest the allegations against them due to inadequate notice; ● difficulty in implementing recommendations, often due to lack of funds, absence of efficient institutions and political will to carry out recommendations; ● lack of evidentiary data to support many of its claims and inadequate references to substantiate the information on which conclusions are based; ● lack of consistency between different sections of the report leading to some observers to question its reliability; especially the thematic content of women and children; ● failure to capture the extent of sexual-based violence against women, due to under-reporting; ● commission failed to collect adequate information on the experiences of female combatants; ● In best practices, every truth commission recommendation should be directed to a specific implementing agent and contain sufficient specificity, direction, and guidance. Few, if any, of the recommendations meet all of these basic criteria. Many are quite vague; ● recommendations are not well-contextualised or linked to ongoing reconstruction efforts; ● questions about the constitutionality of both the TRC Act and its recommendations.
<p>Limitations / Challenges</p>	<ul style="list-style-type: none"> ● Absence of a legal framework to enhance access to information; ● High levels of illiteracy; ● poor institutions for managing information, such as archives and libraries;

	<ul style="list-style-type: none"> ● lack of skills to handle the documentation of atrocities; ● lack of an archiving component in the TRC budget to manage the documentation generated.
Controversies	<ul style="list-style-type: none"> ● Then elected president attended TRC and confessed that she supported Taylor in 1990; ● General Butt who was claimed to have taken 20,000 lives recommended amnesty; ● 49 people including the then president recommended for lustration.
Criticisms	<ul style="list-style-type: none"> ● Recommendations banning a number of individuals from holding public office was deemed unconstitutional by the Supreme Court in 2011; ● The Liberian Supreme Court ruled that no testimony about Taylor should be given to the TRC to avoid complications of his trial at the Special Court of Sierra Leone. ● Criticised for lack of a due process in formulating the recommendations and transparency in naming the names; ● the report was written by consultants who were ignorant of the Liberian realities; ● half of the members of the TRC and their international advisor disassociated themselves from the final report giving rise to problems of credibility.
Amnesty	<ul style="list-style-type: none"> ● Final report recommends amnesty for children in armed conflict; ● Section 26g of the TRC mentions the grant of amnesty to those who disclose the truth; to the exclusion of those who committed acts against humanity and international standards; ● Controversy against the granting of amnesty to General Butt, who committed criminal acts against humanity.
People's feelings	<ul style="list-style-type: none"> ● Many Liberians were confused about what the hearings would mean if the accused would not be prosecuted afterwards; ● Most of them feared to come forward as the TRC and the government was not clear about amnesty for them; ● TRC has not been able to properly carry out a robust information campaign about its role that would target perpetrators and guarantee amnesty to those perpetrators who are willing to come up and tell their stories; ● former warring factions state that the report is biased and politically motivated.
Lessons Learnt / Suggestions	<ul style="list-style-type: none"> ● The TRC process generated multiple debates on reconciliation, truth and justice; ● Suggestion to use TRC report to open up public debate on its relevance to post war reconciliation and on access to information on post war Liberia; as a tool to promote democratic practice and values; to raise awareness; ● Resources to be invested in the management of TRC's documentation of war atrocities;

	<ul style="list-style-type: none"> ● To create a common understanding of the TRC process to achieve long term reconciliation. ● A good information infrastructure would convey the TRC documentation to a managed environment, where access would be controlled and classified documents safeguarded; knowledge empowers and would enable masses to stand up for their rights; ● To address issues such as technology obsolescence, standards, the integrity and authenticity of the digital records, formats, metadata, preservation of the context of digital records, and their provenance; ● To address the difficulties in long term preservation of digital information by calling for enormous resources and a proactive approach to overcoming them; ● Facts and allegations should have been sourced and referenced.
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*‘Way Forward’
Lessons for Sri Lanka*

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CONTENTS

1. Introduction	265
2. Initial Challenges	265
3. Traditional Grassroot Mechanisms for Community Reconciliation	268
4. Potential of Existing Local Structures for Reconciliation in Sri Lanka	272
5. Engagement with the Diaspora	276
6. Training for Commissioners of TRC	281
7. Capacity Building for the Staff of TRC	283
8. Public Outreach	284
9. TRC's Relationship with the Media	287
10. Restorative Justice	291
11. Temporal Mandate	292
12. Religion, Culture and Tradition.....	293
13. Conflict Mapping Project (Liberia)	293
14. Thematic Hearings	293
15. Role of Women	295
16. Creating a Common National Identity	296
17. Political Will / State Apology	297
18. Policy on National Unity and Reconciliation	299
19. Permanent Entity to deal with National Unity and Reconciliation.....	300
20. Institutional Reforms	302
21. Preserving History/ Archiving	302
22. Commemoration and Memorialization	304
23. Significance of Reconciliation and Truth-Telling	305
24. Victim and Witness Protection	306

1. INTRODUCTION

This section deals with the lessons for Sri Lanka that can be elicited from the ideas, processes and procedures that have been adopted in other jurisdictions. While transitional justice has been following standardized processes guided by various agencies such as International Centre for Transitional Justice (ICTJ), countries have been adopting their own approaches to suit the local situations and conditions. The local cultural approaches to matters such as conflict resolution using local traditions are seen to be more effective in restorative justice programmes and integrating parties in conflict rather than any punitive approaches that sustain hostility within the broader policy and legal framework as mandated by the Truth Commission. In many cases inter and intra community conflict has been more challenging to reconcile than the violence committed by the armed forces.

2. INITIAL CHALLENGES

The mandates of the Truth Commission in Liberia and the proposed Commission for Sri Lanka appear to be based on similar intentions and principles, having experienced turbulent civil wars that resulted in thousands of deaths and having caused large-scale displacements.

The initial stage of the Liberian TRC recorded a difficult start, which seemed to be the case for almost all Truth Commissions, and Sri Lanka too is likely to encounter a similar challenge. The TRC commissioners of Liberia were unable to develop a comprehensive staffing plan and organizational structure during the preparatory period. Such problems severely impacted the TRC's later operational activities, including the process leading to its final report.¹

“Limited technical capacity, poorly coordinated programming,² staffing challenges,³ difficulties in managing international and national partnerships that limited the TRC's abilities to utilize external support,⁴ lack of confidence in the TRC by the external observers that further delayed financial assistance were some of the challenges faced by the Liberian TRC.”⁵

This is a story of caution that the proposed Truth Commission for Truth Unity and Reconciliation (CTUR) in Sri Lanka needs to take into consideration.

In Sri Lanka, even before the proposed CTUR is established and the Commissioners appointed; an Interim Secretariat for the Truth and Reconciliation Mechanism (ISTRM) was set up in September 2023, to lay the groundwork and the necessary preparatory work for the Commission to be established to enable its function. A Director General and several officers have been recruited following a transparent selection process under three key divisions namely, legal, policy and the public relations, to carry out its work.⁶

¹ Paul James-Allen, Aaron Weah and Lizzie Goodfriend, 'Beyond the Truth & Reconciliation Commission: Transitional Justice Options in Liberia' International Centre for Transitional Justice, May 2010
<https://syriaaccountability.org/content/images/wordpress/ICTJ-Liberia-Beyond-TRC-2010_EN.pdf> accessed 6 October 2023

² *ibid*

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ 'Observations of the GoSL in response to Joint Communication (AL/LKA/2023) dated 13 September 2023 from 06 Special Procedures Mandate Holders' (OHCHR, 16 November 2023)
<<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37827>> accessed 18 March 2024

As indicated above, the main objective of ISTRM is to lay the groundwork to build the necessary legal and policy framework, operational procedures and guidelines for the Commission. One of the key tasks of ISTRM is to ensure stakeholder engagement, to create public awareness of the work of the proposed CTUR and to consider their feedback, observations and concerns in connection to the establishment of the Commission⁷ and most importantly to explain the bill which is the basis on which the CTUR is established and obtain views of all the stakeholders.

The ISTRM conducted several consultations with key stakeholders including organizations such as, the Office of Missing Persons (OMP), the Office for Reparations (OR) and the Office for National Unity and Reconciliation (ONUR) regarding collaboration and coordination with the objective of developing synergies. In addition to this, the ISTRM is engaging in field visits and carrying out consultations with the public, civil society representatives, religious leaders, politicians and other stakeholders⁸ to ensure the legal framework of the Commission is built with their participation and consultation, in order to shape this transformative mechanism and ultimately paving the way for sustainable peace and national unity.⁹

Sri Lanka has had a history of disappointments with a struggle for accountability and a plethora of Commissions whose recommendations have not been effectively implemented. Thus, understandably, there is scepticism about the proposed CTUR and its effectiveness. Therefore, drawing lessons from the initial challenges faced by the Liberian TRC, Sri Lanka can work towards avoiding the same impediments in preparing the groundwork for the establishment of an effective and efficient truth and reconciliation mechanism through structures such as the ISTRM, where once the Commission is established, it can immediately begin to function.

The studies of other jurisdictions reveal that the TRC process is a challenging and a complex one and distrust and scepticism about any truth-seeking mechanism seems inevitable.¹⁰

As observed by the Chairman of the Liberian TRC, “*A true transitional justice process, as the TRC of Liberia, is never a perfect human endeavour and will not satisfy all segments of our society. It is equally true that the TRC may never meet all the expectations or allay all the fears of contending interests it naturally arouses. Expectations, fears and anxieties, justifiably so, are products of the TRC process and not its outcome. The process is what justifies or legitimizes the product or the outcomes.*”¹¹

Similarly in Rwanda, the pressing challenge for the newly established Government of National Unity was building a foundation for peace and unity going beyond ethnic and racial prejudice that caused the 1994 genocide. This had left Rwanda as a failed state and the Rwandan citizens deeply traumatized. In such a situation, addressing the question of unity and reconciliation would not have been possible without addressing the issues of justice, security, good governance, economic development and social welfare.¹²

⁷ *ibid.*

⁸ *ibid.*

⁹ ‘Historic step towards setting up Independent Commission for Truth, Unity and Reconciliation’ (*DailyFT*, 9 December 2023) <<https://www.ft.lk/front-page/Historic-step-towards-setting-up-Independent-Commission-for-Truth-Unity-and-Reconciliation/44-756131>> accessed 9 January 2024

¹⁰ ‘Liberia: Mixed feelings about truth commission’s purpose’ (*Relief Web*, 10 January 2008) <<https://reliefweb.int/report/liberia/liberia-mixed-feelings-about-truth-commissions-purpose>> accessed 6 October 2023

¹¹ Republic of Liberia, Truth and Reconciliation Commission, *Volume II: Consolidated Final Report*, 2009 <https://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf> accessed 2 March 2024

¹² National Unity & Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 5 April 2024

Restoring trust in authorities, rehabilitating the image of the police and army which were parties to the genocide under the previous regime, ensuring transparency, holding leaders accountable to the will of the people and improving livelihoods without discrimination was a difficult feat for the National Government of Rwanda.¹³

In Rwanda, the hindrances were divisionism and the genocide ideology that had been nurtured since colonialism and the eradication of which seemed impossible in the short term. Rwanda's determination to keep mainstreaming unity and reconciliation process at all levels of the community and institutions and further promoting the Rwandan identity that encouraged Rwandans to prioritise national interests instead of gender, ethnicity or religion, helped in the realization of building a nation devoid of divisionism and fight against the genocide ideology.¹⁴

In a similar vein, Australia had been struggling to hold a truth, reconciliation and reparations process on the violence committed against its indigenous population.¹⁵ During the first year of its operations, Victoria's Yoorrook Commission had to deal with multiple challenges unique to its situation. Every step of designing the commission required an evaluation of the 'cultural appropriateness' of its operations and adopting the mandate to uphold principles of self-determination.¹⁶ Significant time had to be dedicated to consultation, planning and designing the commission that was to critically examine its own colonial foundations.

Similarly in East Timor, the Commission embarked on the daunting task of earning trust and credibility from a population deeply scarred by the conflict, particularly those who were wary of engaging with official institutions.¹⁷ Amidst a politically charged environment, it had to delicately navigate relationships with various stakeholders, including government bodies, former combatants, and international actors, while upholding its impartiality and independence.¹⁸

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ Maxim Shanahan, 'Continued Violence of Colonization exposed before Australia's Yoorrook Commission' (*Justiceinfo.net*, 3 February 2023) <<https://www.justiceinfo.net/en/111986-australia-yoorrook-commission-faces-continued-violence-colonisation.html>> accessed 5 April 2024

¹⁶ Yoorrook Justice Commission, *Yoorrook with purpose: Interim Report* (Victorian Government Printer 2022) 14.

¹⁷ UNSC, Report of the International Commission of Inquiry on East Timor, 2000

¹⁸ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1, para 63, 21

3. TRADITIONAL GRASSROOT MECHANISMS FOR COMMUNITY RECONCILIATION.

Many societies that experienced conflict have chosen to focus on more grassroots and local efforts to foster reconciliation. These initiatives, due to their natural conception and execution, have a tendency to prioritize the needs of victims. However, the ability of local, grassroots initiatives to advance intergroup reconciliation is still constrained by the socio-political context of the post-transitional situation.¹⁹

East Timor- Traditional practice of “restoring harmony”

As a partially successful policy against impunity, the Commission used the naming and shaming of those involved in East Timor as a direct punitive, non-repeating, preventive measure, but within a certain limit. This was because the allegations about the crimes that took place over two decades ago had “presented a major logistical challenge for the Commission.”²⁰ The reason for not emphasising on punitive action is because any consequence of such action can be devastating for the perpetrator which may work against the larger purpose of reconciliation. As the Commission notes: *[T]he public naming of an individual as a perpetrator of a serious human rights violation has the potential to destroy their reputation, career and family life. It may also have serious consequences on the lives of spouses and children of those named.*²¹

Further, this entire approach of publicly naming and shaming is predicated on, “Strong, reliable evidence.”²² Thus, the viable alternative that the Commission sees is the public naming and shaming within a limited degree. The aim, however, is not to expose individuals for a cruel and hostile future, but to think of integration through reconciliation and offer it as the viable option against impunity.

On the other hand, traditional approaches to conflict resolution are predicated on establishing harmony within the community destroyed by the conflict. Traditional societies such as East Timor which consists of over 30 different ethnic groups, with their own sub-cultures and languages also resolve conflict in ways that are quite different from the western judicial processes. The retributive system such as naming and shaming will essentially destroy communal harmony by preventing integration of those engaged in the conflict. Traditional mechanisms such as *lisan*, on the contrary, views the conflict, not as something between two individuals or groups, but one that disturbs the harmony within the entire community as a whole and thereafter restoring harmony through practices such as *Lisan*.

As explained by Aziz:

“*Lisan* as a form of traditional justice has been practised by East Timorese for a long time even before Portuguese colonialism. It is used in a range of contexts in order to resolve disputes and re-establish harmony not only between the parties in disagreement but the community at large. For example, when police could not resolve the problem in Manufahi, *Lisan* tradition was used to resolve this conflict. People in the community depend on traditional conflict resolution practises that let a distressed person to seek help and resolve a dispute through the intervention

¹⁹ Pham Quang Dung, The Constraints of Transitional Justice in Promoting Intergroup Reconciliation, *E-International Relations*, April 15, 2020, <<https://www.e-ir.info/2020/04/15/the-constraints-of-transitional-justice-in-promoting-intergroup-reconciliation/>>accessed on 13.06.2024

²⁰ CAVR, (n16), para 34, 9

²¹ CAVR, (n16), para 34, 9

²² CAVR, (n16), para 34, 9

of elders known as *lia nain*. These practices gather all parties involved, their families, and sometimes other members of the community to present and give insight in a ceremony to settle a dispute. They believe any failure to accept the result of the meeting may cause serious repercussions.”²³

Such mechanism of traditional conflict resolution ensures that those who are not familiar with western judicial mechanisms of retributive justice will be able to deal with the issues within a communal setting overlooked by community leaders and whereby the entire community is engaged in the exercise of restoring harmony.

A summary of the process of reconciliation in East Timor:

An individual who allegedly committed a crime, provides a statement of their actions which is then forwarded to the Office of the General Prosecutor with comments from *Community Reconciliation Procedures* (CRP); after review, if not warranted serious action, it is returned to CRP leading to the *Community based approach*.”

The community-based approach is handled by the Regional Commissioners who are chairs along with a panel of three to five local leaders of the community where the matter is deliberated and an appropriate “act of reconciliation” from community service to public apology to reparations are decided. After agreement by the “deponent” he or she is accepted into the community and a *Community Reconciliation Agreement* is signed as a legal order at the district Court. When the reconciliation acts are completed, the person is offered immunity from any further legal action.

In addition to dealing with individual acts of violence, a series of CRPs such as public hearing, radio programmes on reconciliation, workshops dealing with history of human rights violations and particularly special reparation schemes for victims in need of urgent assistance were conducted.

Serious criminal offenses such as murder, torture, other sexual offenses, crimes against humanity, genocide and war crimes coming within the purview of the General Prosecutor and Special Panel of the Dili District court in the Capital, were not handled by the Community based processes.

Overall, it was clear that the partnership between communities and the Commission offering community-based solutions provided an avenue for healing wounds which facilitated reconciliation.²⁴

In the East Timor context, the Commission was entrusted with the organization of community-based hearings aimed at facilitating the reintegration of perpetrators of "harmful acts" into their communities.²⁵ Participation in these CRP was voluntary.²⁶ These sessions were conducted for the affected communities and these hearings were overseen by a panel of local leaders chaired by a Regional Commissioner accountable for the district.

Throughout the hearings, perpetrators were required to openly acknowledge their involvement in the conflict. Subsequently, victims and other community members were given the

²³ Aziz, A. A, “The Use of Traditional Conflict Resolution: A Case Study of Timore Leste”, Dept. of International Relations, Universitas Brawijayas, Indonesia.

²⁴ CAVR, (n16), para 60,14

²⁵ CAVR, ‘Chega! A Plain Guide’ Sec 7, 80

²⁶ *ibid*

opportunity to pose questions and provide comments on the perpetrator's statement. These hearings often elicited intense emotions and frequently extended late into the night.

Following all testimonies, the panel facilitates an agreement wherein the perpetrator commits to undertake specific actions, such as community service or reparations to victims, in exchange for reintegration into the community. This process integrated traditional practices tailored to local customs, enriching its cultural relevance and effectiveness.²⁷

However, operating in a post-conflict East Timor still in the early stages of reconstruction presented additional hurdles, including inadequate communication infrastructure, poor road conditions, and a scarcity of basic necessities outside the capital.²⁸

Gathering accurate and comprehensive information about past human rights violations was hindered by reluctance from individuals and institutions to disclose incriminating details or evidence.²⁹ Moreover, managing public expectations proved challenging, as many anticipated swift justice and reconciliation, despite the intricate and time-intensive nature of truth-seeking processes.³⁰ The Commission also grappled with the complexity of language dynamics, with Tetum and Portuguese recognized as official languages and Indonesian and English as working languages.³¹ This multilingual environment added layers of complexity and time to the overall process.³²

The Palava Hut Project in Liberia

Similar traditional mechanisms were deployed in Liberia as an integral part of reconciliation known as the *Palava Hut* practice. These huts provide a secure public space facilitating face-to-face meetings between victims and their alleged perpetrators in front of a trained group of elders.³³

From a TRC perspective, key concepts of the *Palava Hut* pilot project include accountability and forgiveness of crimes committed during the civil war and the era from 1979 to 2002. Traditionally *Palava* meant the “*reconciliatory dispute resolution mechanism convened by elders to settle community matters such as extramarital affairs, divorces, land disputes, debt, and occasionally theft and murder...*”³⁴

Typically, the offender confessed or apologized for the wrong committed, and sought forgiveness from the victim.³⁵ To complete this process subsequent cleansing and restitution was carried out. Failure to adhere to the *Palava Hut* system resulted in dire consequences such as public sanctions, debarment from holding public office, lustrations, and criminal and civil prosecution.³⁶

²⁷ Ibid

²⁸ ibid para 61, 20

²⁹ ibid para 196, 45

³⁰ ibid para 65, 21

³¹ Constitution of the Republic of East Timor 2002

³² CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR) (2005)* ch 1, 21

³³ Liberia's Palava Huts healing wounds from the civil war and reconciling communities, *United Nations Development Programme (undp.org)* <www.undp.org/liberia/stories/liberias-palava-huts-healing-wounds-civil-war-and-r...> accessed on 30.05.2024

³⁴ ibid.

³⁵ ibid.

³⁶ ibid.

October 19, 2013, the *Palava Hut* program was officially launched as one of the 142 recommendations of the TRC of Liberia.³⁷

This offered the first publicly available comprehensive mapping of human rights violations, discussion of economic crimes and the exploitation of resources as a principal source of conflict and the protection of vulnerable populations.³⁸

Gacaca Courts in Rwanda

In Rwanda, another indigenous concept of restoring communal harmony to the society was adopted through the *Gacaca* courts. The *Gacaca* courts were created to bring justice at grass root levels with the intention of holding lower-level offenders accountable for their crimes and to ease the backlog of genocide cases. Judges were elected by the local community on the basis of integrity, after undergoing training.³⁹ Community members are not only spectators, but also active participants whose accounts and testimonies directly influenced the trial and subsequently the verdict.⁴⁰

These courts became fully operational in 2005. Since then, more than 12,000 community-based courts have tried approximately 1.2 million cases throughout the country.⁴¹

The prospect of prosecuting many civilians and almost the entire former civil service, was another reason why Rwanda looked towards the *Gacaca* courts. In the *Gacaca* courts people from the community come together and the elders heard the cases. All genocide related crimes were tried in the *Gacaca* courts, except when they were committed by government officials or top-level planners (Then it would be heard in the ICTR)⁴²

Throughout the entire trial process, the community was encouraged to speak out and participate in order to reveal the truth underlying the events that had occurred during the period of unrest and violence. Eventually, participation became mandatory, and those who refused to attend the trials were imposed with fines.⁴³

The *Gacaca* courts aimed at reconciliation and often gave lesser sentences to perpetrators who accepted the responsibility of their actions and made efforts to seek forgiveness from their victims. Convictions also required no physical evidence and relied solely on witness testimony.⁴⁴

This also provided the opportunity for grievances to be aired in public, which was considered vital in a country where victims and perpetrators live side by side. Most importantly, the *Gacaca* offered an opportunity for perpetrators to identify the location where the victims were buried. In Rwandan society, it is important to visit the graves of one's relatives to pay respect and

³⁷ 'Palava Hut System' (*Participedia*) <<https://participedia.net/method/7755>> accessed 11 October 2023

³⁸ *ibid.*

³⁹ Thomas Hauschildt, 'Gacaca Courts and Restorative Justice in Rwanda' E-International Relations (July 2012) <<https://www.e-ir.info/pdf/23858>> accessed 25 February 2024

⁴⁰ *ibid.*

⁴¹ Erik Mose, 'The ICTR and Reconciliation in Rwanda' TOAEP, FICHL Policy Brief Series No.30 (2015) <<https://www.toaep.org/pbs-pdf/30-moese>> accessed 22 February 2024

⁴² Naomi Kok, 'The Closing of the Gacaca Courts and the Implications for Access to Justice in Rwanda' (*Institute for Security Studies*, 28 February 2012) <<https://issafrica.org/iss-today/the-closing-of-the-gacaca-courts-and-the-implications-for-access-to-justice-in-rwanda>> accessed 6 March 2024

⁴³ Lauren Haberstock, 'An Analysis of the Effectiveness of the Gacaca Court System in Post Genocide Rwanda' *Global Tides*, Vol. 8 [2014], Art. 4.

⁴⁴ *ibid.*

provide a sense of closure. Thus, the Gacaca courts offered a unique solution to ordinary Rwandans.⁴⁵

4. POTENTIAL OF EXISTING LOCAL STRUCTURES FOR RECONCILIATION IN SRI LANKA

As discussed previously, Sri Lanka can adopt many home-grown solutions to conflict mediation and conflict resolution through existing structures. The following section explores the potential for Sri Lanka to deploy local solutions that can be integrated within the conflict resolution framework of the proposed CTUR.

Mediation Boards

Sri Lanka has a historical practice of traditional dispute resolving mechanisms since the colonial period, like village councils led by village elders.⁴⁶ The village tribunals were later transformed into formal courts and due to court congestion, a separate and distinct entity called the *Conciliation Boards* that were outside the hierarchy of the formal courts were established to settle minor disputes and to avoid costly, time-consuming litigation.⁴⁷

Today, Sri Lanka has Mediation Boards that were established to remedy the flaws of the conciliation boards, which were legally introduced to Sri Lanka through the Mediation Boards Act No.72 of 1988. Currently, there are 329 Conciliation Boards in operation, each consisting of a minimum of 12 members.⁴⁸ They have specific jurisdiction to attend to certain categories of disputes. The mediation process in Sri Lanka has been providing a voluntary and semi-formal dispute resolution mechanism to enable speedy and free access to justice for people over three decades. A group of mediators help people to negotiate concrete and mutually satisfactory agreements to resolve their disputes.⁴⁹

Mediation sets a solid foundation to resolve differences and helps disputants to re-establish, redefine or transform their attitudes and relations with one another, and move towards more peaceful reconciliation and relationships and to promote peace and encourage co-existence in Sri Lanka.⁵⁰ Mediation process also functions with regard to minor and medium scale criminal offenses and is not applicable to serious criminal cases.⁵¹

Disputes can be referred to the mediation boards by disputing parties themselves, courts of law and the police. Considering the success rate of mediated settlements, it can be concluded that

⁴⁵ 'The Closing of the Gacaca Courts and the Implications for Access to Justice in Rwanda' (*Institute for Security Studies*, 28 February 2012)

<<https://issafrica.org/iss-today/the-closing-of-the-gacaca-courts-and-the-implications-for-access-to-justice-in-rwanda>> accessed 25 October 2023

⁴⁶ P.B. Herat, 'Community Based Dispute Resolution in Sri Lanka' *Forum Journal* pages 33-37, 1993.

⁴⁷ *ibid.*

⁴⁸ 'Mediation Boards and youth: the role, need, and implementation of conflict resolution in Sri Lankan school systems' (*Colombo Gazette.com*, 29 January 2023) <<https://colombogazette.com/2023/01/29/mediation-boards-and-youth-the-role-need-and-implementation-of-conflict-resolution-in-sri-lankan-school-systems/>> accessed 10 January 2024

⁴⁹ Mediation Boards Commission <<http://www.mediation.gov.lk/whoarewe>> accessed 10 January 2024

⁵⁰ *ibid.*

⁵¹ Akshina Liyanageand Tharushi Gamage, 'What is Mediation 3, (Mediation Board System in Sri Lanka)' (*Rotaract Club of Faculty of Law University of Colombo*, 23 September 2020) <<https://lawfacrotaract.com/2020/09/23/mediation-board-system-in-sri-lanka/>> accessed 10 January 2024

mediation has become a largely popular method of conflict resolution that is widely available in the country.⁵²

Mediation programs are on three levels:⁵³

- Community Mediation Boards - commonly address disputes between private parties related to land issues, family disagreements, financial disputes and minor offences.
- Special Mediation Boards - designed and developed to provide access to justice for specialized types of disputes relating to Social and Economic and to enable the resolution of disputes between private parties as well as between private parties and the State. Eg. Tsunami mediation, Migrant workers, Land issues.
- School Mediation - an experimental program conducted in selected schools with an aim to promote personal and social development within school children of Sri Lanka.

This process serves as a positive social framework enriched with guidelines of individualization, space to express their feelings freely, acceptance, non-judgmental attitude of the mediator and confidentiality of information shared in the process.⁵⁴

This is a system that has been soundly established in the country and well accepted by the people; therefore, this can be considered as a grassroot mechanism to aid the TRC process. The TRC may improve on the concept of mediation boards ensuring dignity of the affected people, confidentiality, sensitivity of the suffering of the victims and psycho-social sensitivity.

District Reconciliation Committees (DRC)

This concept was the brainchild of a former President who was also holding the office as the Minister of National Integration and Reconciliation,⁵⁵ in order to settle disputes and tensions that are of religious and ethnic in nature.

The importance of setting up reconciliation committees with district level representations including inter-religious leaders was felt due to the escalating pockets of incidence in certain areas and localities. 25 DRCs were set up with over 200 inter-religious leaders, District Secretary focal points including retired Magistrates and retired school principals in 2017/2018.

These leaders met in January 2018 under the direction of the Ministry of National Integration and Reconciliation to discuss reconciliation strategies, interventions and addressing ethnic and religious tensions through mediation, negotiation, and conflict resolution. At the forum they also discussed the need to meet regularly, address issues of tension, maintain a database on incidents on ethnic and religious tensions, address attacks on religious places of worship, address hate speech, dealing with conflicting negative messages through social media, promoting peace journalism, inculcating core values and virtues among school children, youths and universities, adults and Sunday religious school teachers and others.⁵⁶

⁵² Mediation Boards Commission <<http://www.mediation.gov.lk/whoarewe>> accessed 10 January 2024

⁵³ *ibid.*

⁵⁴ 'Mediation Board systems in Sri Lanka' (*Studoc*) <<https://www.studocu.com/row/document/university-of-colombo/law/mediation-boards-system-in-sri-lanka/9289533>> accessed 10 January 2024

⁵⁵ '25 District Reconciliation Committees meet to dialogue and address religious and ethnic tensions' (*DailyFT*, 12 January 2018) <<https://www.ft.lk/News/25-District-Reconciliation-Committees-meet-to-dialogue-and-address-religious-and-ethnic-tensions/56-647149>> accessed 10 January 2024

⁵⁶ *ibid.*

Any resolved problems are submitted as written reports to the Secretary to the Ministry for information. If the problem is not resolved amicably, the committee will submit its recommendation to the said Secretary.⁵⁷

Although the relevant Ministry does not exist at present, the leaders who were selected to be peacebuilders are currently engaged in various peacebuilding and conflict management activities with non-state actors. Such a leadership database is already available and the resource persons are working at village and grassroots levels. They are well aware of the context of the localities, trusted and respected by the communities in those areas. Furthermore, these leaders have been sensitized in the thematic areas relating to reconciliation and are useful resources who can be used for truth telling and dealing with the past initiatives by the proposed TRC.⁵⁸

Jana Sabha

A recent initiative called the “Jana Sabha,” a concept developed by a former speaker of Parliament is aimed at enabling the active participation of citizens in the creation of public policies and its successful implementation.⁵⁹ It is, “*a mechanism that will allow the solving of the problems of any province through a voluntary assembly system without any political, religious or caste discrimination in the entire country and creating a fairer social democracy*”⁶⁰

This concept was initiated after the country witnessed the intense demand for participatory democracy in Sri Lanka during the popular protest movement called ‘Aragalaya’.⁶¹ This institution, called ‘Jana Sabha’ was proposed as *a grassroots-level, non-partisan, participatory establishment, stretching from the village to the national level. It will function in an advisory and consultative capacity on both local and national issues.*⁶²

This initiative can also be used by the TRC process as one of Sri Lanka’s grassroots mechanisms for truth telling, acknowledging the past and dealing with a peaceful future.

As per the concept paper, a Grameeya Jana Sabha (GJS) will be placed at the bottom of the tier in each Grama Niladhari Division (GND)⁶³; a Pradeshiya Jana Sabha (PJS) at the Pradeshiya Sabha level; and a Jathika Mahajana Sabha (JMS) at the national level.⁶⁴

There will also be a Jathika Jana Sabha Secretariat (JJSS) at the national level.⁶⁵

The ‘Jana Sabha system’ is envisaged to be a fully independent entity, set up by an act of parliament with powers to communicate with parliament and the President’s office.⁶⁶

Every GJS will have a secretary, who is a Development Officer belonging to the Public Service and attached to the Divisional Secretariat. The GJS will have a maximum of 25 members,

⁵⁷ ‘District Reconciliation Committees Mandates and Functions’ Ministry of National Integration & Reconciliation, January 2018.

⁵⁸ Direct Communication

⁵⁹ ‘Cabinet nod to establish National People’s Council Secretariat’ (*DailyFT*, 12 October 2022)

<<https://www.ft.lk/news/Cabinet-nod-to-establish-National-People-s-Council-Secretariat/56-740837>> accessed 10 January 2024

⁶⁰ *ibid.*

⁶¹ ‘Bringing participatory democracy to Lanka through Jana Sabhas’ (*Counterpoint*, 17 October 2022)

<<https://counterpoint.lk/bringing-participatory-democracy-lanka-jana-sabhas/>> accessed 10 January 2024

⁶² *ibid.*

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ *ibid.*

chosen by consensus. A quota of 30% has been allocated for women and 25% for the youth. Minority ethnic and religious groups to be represented according to their percentage in the local population. Committee members and the Chairperson will hold their positions on a voluntary basis. All public officials related to the GND will also be members of the committee but without the vote.⁶⁷

The primary function of the GJS would be giving suggestions on development work in the village to the Provincial and Central governments, ensuring community participation in the activities of Local Government institutions, and participating in the decision-making process at the Regional Development Committee. When implementing government policies in relation to the GND, the relevant officials will consult the GJS committee.⁶⁸

A pilot project has been organized in 25 Divisional Secretariat divisions in 25 districts⁶⁹ as model village assemblies. Since such an organized system is being put in place, this will be one resource that could be used by the proposed TRC as a grassroots/local level mechanism for truth telling.

ONUR AND OR

The Office for National Unity and Reconciliation (ONUR) has established Co-existence Committees in DS/GA levels chaired by the District Secretariats/Government Agent. Already 11,000 Coexistence Committees have been established. These Committees have an advisory board consisting of members of the clergy of all faiths. They are mandated to look into grassroots level reconciliatory issues. In case their efforts are unsuccessful, these matters are to be directed to higher authority at ONUR. (Personal Comment)

In addition, the Office of Reparations (OR) has dedicated officers to deal with victims of violence. Some of the Management Assistants have also been engaged in basic conflict resolution functions at various Divisional Secretaries Offices around the country.

Since these committees are already established and in place, they can be used as contact points by the CTUR.

Other Rights Groups

In addition, there are traditional Community Based Organizations (CBO), Civil society Organizations (CSO), Co-operative Societies including many that are registered under each Divisional Secretariat such as the Rural Development Society, Women Development Society, Youth Clubs, Welfare Society, Senior citizens Society that work directly in the villages and have a strong link with the locality. These societies play an active role and are firmly rooted in the cultural traditions of Sri Lankans. They are an integral part of the village structure who are chosen by the people and are a potential segment that can be used as resources for grassroots conflict resolution and reconciliation efforts with adequate training.

⁶⁷ *ibid.*

⁶⁸ *ibid.*

⁶⁹ *ibid.*

Despite many challenges, civil society in Sri Lanka remains committed in promoting democracy, human rights, and social justice and has played a significant role in advocating for political reforms, supporting victims of human rights abuses, and promoting social and economic development.⁷⁰

They are yet another mechanism that can be a resource for the truth telling process.

Local village temples as mediators and psycho-social centres.

During the heightened periods of conflict in the North and the East since the mid-1980s for over a decade, the local temples, particularly the mother goddess temples played a vital role in offering hope and solace to the families of victims who have disappeared. The *pusari* priest of these local annual temples called the *sadangu kovil* played a mediation role between the victims and the deities helping the victims to come to terms with their loss and suffering in situations where there was little hope for any resolution with regard to issues such as indefinite detentions, disappearances, torture committed by both state and non-state actors. No action could be taken as the normal judicial process was also suspended under the Prevention of Terrorism Act of 1981 which was originally introduced as a temporary provision in 1979.

Under the circumstances when the usual protection of the law and agencies that were to uphold the law became the very entities and individuals which turned into the perpetrators of violence, there was very little protection for the people. In such a situation, these village temples and the priests played a crucial role in offering counselling, hope and a sense of belonging. They were respected and trusted by the community, particularly in very remote villages, these temple structures have the potential to play a mediating and conflict resolution role where individuals to the conflict hail from these villages. In many situations as in the case of various militant groups within a single village began to victimise people of the village, the temples and priests performed a stabilising role. As an integral part of the village structure, these temples continue to play this role working with the perpetrators and the victims on joint decision making, rather than mediation done by a third party exclusively like TRC mandated external officials. Within the framework of the CTUR, these temples, priests and village elders can be integrated to play a role similar to that of Gacaca courts in Rwanda and *lisan* in East Timor which goes beyond the conflict between two individuals to restoring harmony of the entire community.⁷¹

5. ENGAGEMENT WITH THE DIASPORA

Any conflict usually generates displacement both internally and internationally. Many of those who migrate internationally, do not always engage with the process of seeking justice or working for peace in their home country, even though they may have been directly affected. On the other hand, some engage more robustly demanding justice, working with host country governments to the extent of influencing foreign policies of both home and host countries. In recent years, the TRC process has begun to recognize the positive role that the diaspora could play and indeed acknowledge their potential to restore harmony within the country. Ignoring this vital segment may turn them hostile to the entire process of justice and reconciliation as

⁷⁰ 'Civic Freedom Monitor Sri Lanka' (*International Centre for Not-For-Profit Law*) <<https://www.icnl.org/resources/civic-freedom-monitor/sri-lanka#>> accessed 11 January 2021

⁷¹ Azis, A A, "The Use of Traditional Conflict Resolution: A Case Study of Timor Leste," Indonesia: Department of International Relations Universitas Brawijaya

envisaged by the home country.⁷² In this regard, TRCs all over the world have adopted a robust approach to work with their respective diaspora communities to ensure lasting peace, such as in the case of Liberia, Rwanda and East Timor etc.

As noted by Wiebelhaus-Brahm, “Home country governments weigh these pressures as they decide whether to pursue peace processes, political liberalisation, and, ultimately, transitional justice The agency of migrants, exiles, and refugees in building pressure for and articulating a vision of transitional justice has been underexplored. In reality, diaspora groups often play an important role in shaping transitional justice politics in their home country”⁷³

Sri Lanka can also learn valuable lessons from the methodology and approaches adopted by countries such as Liberia, Rwanda and East Timor among others.

The case of Liberia

The diaspora was believed to have been closely involved in Liberia’s civil war and it was realised that no process of reconciliation would be complete without their involvement.⁷⁴ Quite often, organizations outside the country who have been working with the diaspora communities are seen as suitable partners to work in the process of peace and reconciliation. An international Human rights Organization called the ‘*The Advocates for Human Rights (The Advocates)*’, known at that time as ‘*Minnesota Advocates for Human Rights,*’ partnered with the Liberian TRC in order to engage with the Liberian diaspora, particularly the U.S, UK and Ghana. A memorandum of understanding was signed between them authorizing *The Advocates* to act as the TRC’s implementing partner in the Diaspora Project.⁷⁵

The Advocates were the ideal institution for this task due to their long-term engagement with the Liberian diaspora. They were a trusted, transparent, and neutral organization within the diaspora community.⁷⁶ The purpose was to give Liberians living outside a voice in the TRC Process, promote international justice and human rights, and raise awareness on transitional justice mechanisms.⁷⁷

Hence, the Diaspora Project was combined as part of the TRC’s overall work, whereby *The Advocates* consulted the Commissioners and the staff of TRC on the broad operation and structure of the Project. This Diaspora project became a groundbreaking initiative because for the first time the involvement of victims of human rights abuses outside their homeland were allowed to participate in the reconciliation and accountability process.⁷⁸

It also became a model for involving the Diaspora population in the TRC mechanisms that promote international justice, human rights and the rule of law. One Commissioner was in charge of this project, whilst the Chairman travelled to the U. S. to assist the training of the

⁷² Wiebelhaus_Brahm, Eric, “Exploring Variation in Diasporas’ Engagement with Transitional Justice Process,” *Journal of Peacebuilding & Development* 11, no. 3 (2016): 23–36. <https://www.jstor.org/stable/48602918>, downloaded on 30.05.2024

⁷³ Ibid:01

⁷⁴ Jonny Steinberg, ‘Diaspora and Conflict: The Liberians of Staten Islands’ (*Harry Frank Guggenheim Foundation*) <https://www.hfg.org/grant_summaries/diaspora-and-conflict-the-liberians-of-staten-island/> accessed 6 October 2023

⁷⁵ ‘Chapter 3, Diaspora Project Overview and Methods’ <<https://www.theadvocatesforhumanrights.org/res/byid/9354>> accessed 6 October 2023

⁷⁶ *ibid.*

⁷⁷ Ahmed Sirleaf and Laura Young, ‘The Liberian Truth & Reconciliation Commission’ *The Advocates for Human Rights* <https://www.theadvocatesforhumanrights.org/Res/general_trc_diaspora_ppt.pdf> accessed 6 October 2023

⁷⁸ *ibid.*

volunteers and plan future diaspora projects with funding handled independently by *The Advocates*.⁷⁹

'*The Advocates*' also created the project structure to ensure accountability to key stakeholders, by having a -

- pro bono management team - composed of representatives from law firms who had committed from the outset to provide volunteers and in-kind support to ensure the project's successful completion, and
- a national advisory committee – composed of the Liberian community leaders in the U.S, who represented the geographic and ethnic diversity of the Liberian society in order to provide input and strategic advice throughout the project.⁸⁰

The TRC had to approve the members of the national advisory team. The Diaspora Project Advisory Committee used the services of experts in critical areas, like the Centre for Victims on Torture and ICTJ for advice and training of volunteers in the undertaking of public hearings and on transitional justice concepts.⁸¹

The complexity and importance of coordination between in-country and diaspora processes were highlighted. There was news coverage of diaspora hearings in the United States, where high level witnesses came forward to testify, which in turn spurred many higher-level witnesses in Liberia to come forward.⁸²

Outreach, sensitization, statement taking, public hearings, report writing, were carried out by the committee and all tools and methodologies used were approved by the TRC prior to use.⁸³

This project was also one of the first truth commissions to systematically engage more than 600 extensively trained pro bono volunteers as statement takers, researchers, outreach workers, and to support witnesses.⁸⁴

Jurisdictional issues and protection for witnesses were some of the legal questions faced by this new project, since the TRC legislation had no mandate outside its territories.⁸⁵

To overcome this issue *the Advocates* had consulted experts in the field of immigration law, criminal and ethics to deal with the statement taking protocol. They developed a disclosure statement with an opportunity to consult a lawyer before deciding to give statements. '*Risks and requirements on conflict of interest, defamation was closely examined by the Advocates.*'⁸⁶

'All information gathered for the TRC Diaspora Project was taken as property of the TRC of Liberia and information provided to the Diaspora Project was subject to the same policy proscriptions as information gathered in Liberia.'⁸⁷

The report of the findings on the diaspora project portion of the TRC's work was published by the '*The Advocates for Human Rights*' under title "The House with Two Rooms."

⁷⁹ *ibid.*

⁸⁰ 'Chapter 3, Diaspora Project Overview and Methods' <<https://www.theadvocatesforhumanrights.org/res/byid/9354>> accessed 6 October 2023

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ *ibid.*

Diaspora Engagement in Rwanda

In Rwanda, the NURC⁸⁸ as per its mandate started holding National Summits from the year 2000. These Summits were forums for discussions held to give information to the public about the progress made so far, identify challenges and pursue the way forward on unity and reconciliation. These summits served as an opportunity to all Rwandans including the diaspora to participate in exchanging ideas, and promoting unity and reconciliation.⁸⁹

The first National Summit was held in October 2000 and it was a dialogue that explored the current challenges for the way forward in Rwanda. Topics that were raised during grassroots consultations were bad governance, the distorted Rwandan history, discrimination, ethnic hatred, and ignorance, were further deliberated at this Summit.⁹⁰

The Second National Summit that was held in October 2002 discussed 7 core topics including, National Unity and Reconciliation Policy; Democratization and decentralization; Justice in Rwanda; New Constitution for establishing the rule of law and strategies to end the transition period peacefully; and the Poverty reduction programme.⁹¹

The Third Summit held in May 2004 was organized for youth and children, to listen to their views in fighting division, genocide ideology and promotion of child rights.⁹²

NURC's tools in achieving their objectives involve civic education that target the Rwandan diaspora for programs on unity and reconciliation; combating poverty and ignorance by sensitizing the diaspora to participate actively in the economic development of the country.⁹³

Eliminating impunity was seen as an important part of reconciliation where Rwanda wanted to implement a robust programme to ensure perpetrators of crime are held accountable with regional or international assistance. The Diaspora community was seen as 'paramount in publicizing the fight against impunity.'⁹⁴

Another strategy of the NURC for unity and reconciliation was the solidarity camps called *Ingando*. These were schools that taught the virtues of patriotism and core values of human socialization in order to produce a 'good, capable, brave, honest and well-educated citizen.'⁹⁵ This brought together the perpetrators, survivors, refugees, returnees and the diaspora to give mutual insight into the unifying and reconciliatory vision of the new government becoming a tool of interaction between people and integration objective.⁹⁶ Other programs like the *Ndi Umunyanwanda* and *Itorero* targeted all Rwandans including the diaspora. The role of the diaspora was also seen as paramount in publicizing the fight against division and genocide, in adherence to the Constitutional provisions that emphasize the Rwandan core values. (Articles 9 & 11)⁹⁷

⁸⁸ NURC – National Unity and Reconciliation Commission of Rwanda.

⁸⁹ National Unity & Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 12 March 2024

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ *ibid.*

Sri Lankan diaspora

Sri Lanka too has a relatively large community of diaspora with Western Europe, Arab Gulf States and North America.⁹⁸ The UK diaspora is more heavily weighted towards the Tamil population although there are substantial Sinhalese members as well. France is also home to a large Tamil population, majority being refugees of the 1980's conflict in Sri Lanka. On the other hand, Italy is dominated by Sinhalese settlers mainly from the area north of Colombo.⁹⁹

With the Diaspora being divided as the Tamil Diaspora and the Sinhala Diaspora, they have to reconcile in order to address the issues that divide them. "*These divisions are at times so stark that ethnic communities appear to live parallel lives in diaspora hubs, clashing when they meet.*"¹⁰⁰ The Diaspora can play the role of a bridge in overcoming the existing divisions, by getting involved in the TRC process. This will lead to their potential as peacebuilders.

The ever expanding and well organised diaspora community also exert very strong influence on the international pressure groups and influence and lobby bilateral and multilateral agencies and government of host countries who are influenced by vote bank politics.¹⁰¹ The diaspora community has never been a homogeneous entity in terms of their political orientation, especially intra-community ethnic politics. They constitute a diverse segment ranging from hostility towards initiatives about ethnic reconciliation mostly represented and influenced by the Tamils based within the peninsular north to groups working with the government agencies and NGOs for various issues such as democratic rights, peace and development. It's against this background that the engagement with the diaspora gains significance as they can have an impact on ethnic harmony in the country and need to be engaged with. Given the diverse background and political orientations, it is also a major challenge to engage with them and gain their trust.¹⁰² Similar situations have been encountered in the case of the Truth Commissions in Rwanda, Liberia, East Timor, Canada and other jurisdictions.

This diversity also poses major challenges to engaging with the Tamil diaspora. It must also be pointed out that in addition to the Tamil migration, the youth violence in Southern Sri Lanka by the radical leftist People's Liberation Front, the JVP, also led to a substantial number of Sinhalese youth and their families migrating to various European capitals. Though fragmented, these multiple segments can be accessed through many community organizations and other INGOs who engage with them. There are organizations like International Alert, Global Tamil Forum, Non-Resident Tamils for Sri Lanka, Tamil Information Centre, Non-residents Sri Lankans in the UK, Batticaloa Underprivileged Development Society, Medical Institute of Tamils and others, only to name a few, in the UK and similar entities representing various all Sri Lankan Ethnic communities not only in the UK but also in countries such as France, Germany, and Scandinavian countries that could be approached by the proposed CTUR to engage in a constructive dialogue and participate in the proposed truth-seeking process.

⁹⁸ 'The Sri Lanka Diaspora' (*Pilot guides*) <<https://www.pilotguides.com/study-guides/sri-lankan-diaspora/>> accessed 9 January 2024

⁹⁹ *ibid.*

¹⁰⁰ 'What's Diaspora got to do with it?', Reflections on Engaging Sri Lanka's Diaspora Communities in Peacebuilding' International Alert, Background Paper, February 2015 <<https://www.international-alert.org/app/uploads/2021/08/Sri-Lanka-Diaspora-Engagement-EN-2015.pdf>> accessed 9 January 2024

¹⁰¹ Daniel, E. Valentine and Thangaraj, Yuvaraj. "TWELVE. Forms, Formations, and Transformations of the Tamil Refugee". *Mistrusting Refugees*, edited by E. Valentine Daniel and John Chr. Knudsen, Berkeley: University of California Press, 1995, pp. 225-256. <<https://doi.org/10.1525/9780520341234-015>> accessed on 05.06.2024

¹⁰² *ibid*

The diaspora communities have suffered in the conflict in some form and they are well aware of the ground realities. They have been in consultations with the reconciliation process as reported by the previous Commissions of Inquiries (COIs) such as the Lessons Learnt and Reconciliation Commission (LLRC) and Consultation Task Force, (CTF), where their recommendations and observations have been acknowledged. Getting them involved in this process would help them deal with their past and link individual sufferings with collective storytelling or truth telling and establish their identities as Sri Lankans. In addition, their role in the TRC can help international outreach and awareness raising.

Office for Overseas Sri Lankan Affairs (OOSLA)

Office for Overseas Sri Lankan Affairs is an independent agency that has been set up by a Cabinet Decision No.22/2104/619/009 to serve as a central nexus for coordination with overseas Sri Lankans. Though their primary aim is to engage with the diaspora to encourage diaspora investment in Sri Lanka, their link with Sri Lankan diaspora generates potential for engagement with Sri Lanka and work with local communities, indirectly facilitating reconciliation efforts. The agency formulates policy recommendations addressing the concerns of the overseas Sri Lankans.¹⁰³ OOSLA also acts as a one stop shop for clearing all investment requirements from the diaspora navigating through complex bureaucratic requirements.

6. TRAINING FOR COMMISSIONERS OF TRC

In the East Timor Truth seeking process, recognizing the unique nature of the Commission's work, commissioners and senior staff emphasized the importance of dynamic staff training strategies.¹⁰⁴ The initial design of truth-seeking, victim support, and community reconciliation programs were largely theoretical and lacked field trials.¹⁰⁵ However, practical experience gained during the program implementation in the districts proved invaluable for refining these initiatives in order to suit local needs.¹⁰⁶ Regular reviews, conducted every three months, ensured that field-learned lessons were incorporated into management practices, with an extensive institutional review conducted halfway through the operational period, providing an opportunity for staff input.¹⁰⁷

Given the absence of institutional precedent, planning and executing staff training presented a significant challenge.¹⁰⁸ Training, conducted from July to September 2002, was adapted based on lessons learned from pilot projects completed in August 2002.¹⁰⁹ Staff, including Regional Commissioners and district teams, had to undergo training in large groups, followed by a six-week period back in their districts for practical application before completing the final segment

¹⁰³ Office for Overseas Sri Lankan Affairs <<https://www.slcgmel.org/office-for-overseas-sri-lankan-affairs-oosla/#:~:text=OOSLA%20serves%20as%20the%20central.policy%20recommendations%20addressing%20OSLs'%20concerns>> accessed 16.05.2024

¹⁰⁴ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1, para 159, 39

¹⁰⁵ *ibid*

¹⁰⁶ *ibid*

¹⁰⁷ *ibid*

¹⁰⁸ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1, para 162, 40

¹⁰⁹ *ibid*

of the course.¹¹⁰ This phased approach allowed for the gradual development and understanding the practices in the field, in order to facilitate the refinement of operational plans.¹¹¹

Institutional development was coordinated by a small team comprising of international advisor and three East Timorese staff members, who navigated the challenging first year with dedication, resourcefulness, and a belief in the Commission's institutional growth potential.¹¹² Throughout its existence, the Institutional Development and Capacity Building team collaborated closely with the Senior Management Team to identify areas requiring international support, recruit qualified personnel, and provide ongoing training.¹¹³

The statement coders underwent extensive training on the legal aspects of specific human rights violations, equipping them to identify and categorize violations accurately.¹¹⁴ This training encompassed the elements of various violations and provided guidelines for determining whether certain circumstances constituted particular offenses, such as torture, as opposed to other forms of mistreatment. Additionally, coders were trained to discern distinctions between offenses like rape and sexual slavery.¹¹⁵

Significantly the Commissioners of the Liberian TRC underwent various types of trainings and courses on;¹¹⁶

- the history and origin of truth commissions as a form of transitional justice mechanisms, including their functions, goals and objectives;
- importance in post conflict countries;
- best practices approach and experiences of other truth commissions;
- human rights and humanitarian law training;
- investigations of human rights violations;
- technical issues in conducting public and in-camera hearings;
- psychosocial care and support for victims, and other individuals appearing before the TRC;
- conflict prevention and resolution;
- reparations; and
- other specialized topics of interest.

This enabled the Commissioners to function within the accepted operational standards of Truth Commissions.

Commissioners were also given the opportunity to meet and speak with former South African Commissioners, staff, human rights advocates, government officials and renowned South African persons on the impact of the TRC in South Africa. The training assisted Commissioners in expanding their knowledge about the practice of truth and reconciliation commissions and provided them with a broader understanding of what they would be encountering when

¹¹⁰ *ibid*

¹¹¹ *ibid*

¹¹² CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1, para 163,40

¹¹³ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1, para 165,40

¹¹⁴ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1, para 87,27

¹¹⁵ *ibid*

¹¹⁶ 'Truth and Reconciliation Commission of Liberia Mandate' (*TRC of Liberia*) <<https://www.trcofliberia.org/about/trc-mandate.html>> accessed 13 November 2023

functioning as Commissioners. Additional training continued on an ongoing basis throughout the process.¹¹⁷

Similar training to the Commissioners and other officials to be appointed for the proposed Truth Commission in Sri Lanka too would be of benefit.

Likewise in Canada, some shortcomings were noted, particularly regarding the lack of cultural competence among legal professionals to deal with the painful memories that the survivors were forced to reveal, which were highlighted during the TRC process. Thus, recommendations have been made to conduct training programs for lawyers and public servants in areas such as conflict resolution, human rights, and indigenous history as law reflects a proactive approach to addressing these deficiencies.¹¹⁸

Furthermore, the call for mandatory courses in 'Native History and Law' for all law students in Canadian law schools signifies a commitment to fostering a more informed and culturally sensitive legal profession. By honouring the voices of survivors, fostering collaboration, and advocating for systemic change, the TRC process plays a pivotal role in Canada's ongoing journey towards reconciliation.

The members of the diaspora community can be engaged to study the Truth Commission's approach in dealing with the historical violations in the context of the residential school and the methodology and approaches adopted by the TRC in the truth telling and the reconciliation process.

7. CAPACITY BUILDING FOR THE STAFF OF TRC

The domestic staff of the TRC in Liberia were given training in research, report writing, analysis, investigative techniques and management skills. In addition to participating in training programmes alongside the Commissioners, they were also trained independently. For example, in 2006, over three hundred staff members were trained as statement-takers, investigators, psycho-social support persons and county coordinators in preparation for the statement-taking, inquiry and hearing processes, and the creation of TRC offices in Liberia's fifteen counties.¹¹⁹

Data entry staff or coders entrusted to input information into the database from the statement-taking were provided specialized training in this area coordinated by Benetech, a Human rights data analysis group.¹²⁰ The data coders were trained in 2007 in the mechanics of data coding, categorizing of human rights violations, geography of victim communities and name codification.¹²¹

Over one thousand community mobilizers from various civil society organizations in the counties underwent three days of training in communications and social mobilization skills in order to assist in its outreach efforts. This was in preparation for the official launching of the TRC in the 15 counties of Liberia and the sensitization and awareness campaign associated with it. Staff associated with the Diaspora Project in the United States of America, Ghana and

¹¹⁷ *ibid.*

¹¹⁸ Sandy Lamalle, 'Founding a New Path in Canada: The conclusions of the Commission on Truth and Reconciliation', (2015)8 Indigenous L Bull 3, p.5

¹¹⁹ Republic of Liberia, Truth and Reconciliation Commission, *Volume II: Consolidated Final Report*, 2009 at page 40 <https://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf> accessed 2 March 2024

¹²⁰ For more information, see <https://Benetech.org>

¹²¹ *ibid.*

Nigeria, were similarly trained as coders and community mobilizers in order to ensure that TRC techniques were mainstreamed among all staff. All training programs focused on a gender dimension that included emphasis on issues faced by women and children's issues.¹²²

An extensive training for local journalists on the TRC process was conducted by the TRC in collaboration with the ICTJ, which culminated in a joint code of conduct being established to govern the media's coverage of the TRC process, and especially its hearings. Local and field staff also received training of various forms.¹²³

A uniform training program was designed with slight modification to suit the particular needs of the TRC Diaspora Project. Around two hundred individuals were recruited nationwide as statement-takers; mostly women, were trained to solicit the voluntary narratives of the public. The statement forms were specifically designed to be gender sensitive, victim friendly, while special forms were designed for child statement-givers. This method employed a confidential interview using probing questioning techniques that would assist the statement giver in recounting traumatic events or experiences in order to provide factual accounts or evidence of events that took place.¹²⁴

Recommendations for how the TRC should proceed with its work and its final report were also solicited from the participants and the public. As a result of its careful statement-taking approach, the TRC generated goodwill with the public and succeeded in obtaining over 20,000 statements from Liberians at home and in the Diaspora.¹²⁵

8. PUBLIC OUTREACH

The Liberian TRC launched a massive public outreach, awareness and sensitization campaign in collaboration with several civil society organizations, with the aim of introducing the Commission, explain its mandate, and educate the public about the pivotal role it could play in healing the nation, encouraging them to participate, garnering the support of the people and other partners in the process. This public awareness campaign took place throughout all the counties in Liberia.¹²⁶

The Liberian TRC also held special interactive outreach presentations on its programs and activities with the National Legislature and the Cabinet. About 15,000 copies of the TRC's informational questions and answers (Q&A) brochures were distributed together with 10,000 copies of the 1986 Constitution of Liberia to schools and communities for civic education in order to conduct sensitization and awareness workshops on the TRC process. The major support of the civil society enormously enhanced the Commission's work in accomplishing its mandate.¹²⁷

Public sensitization and awareness were a constant feature of the TRC process. Communication, sensitization and mobilization were designed to coincide with every stage of the TRC's activities. Sensitization and public outreach were a permanent feature of all TRC programs in

¹²² *ibid*

¹²³ *ibid*, p 41.

¹²⁴ *ibid*, p 41.

¹²⁵ *ibid*, p 42.

¹²⁶ *ibid*, p 42.

¹²⁷ *ibid*, p 43.

the fifteen counties, and were carried out through music, drama, town hall meetings, workshops, visitations of churches and mosques, presentations and media reports.¹²⁸

Other specialized modes of communication, including the non-traditional and conventional, were explored to maximize the outreach capacity and objectives of the TRC. These efforts were a result of extensive strategic planning¹²⁹

The Public Information and the Community Outreach Unit aimed to enhance awareness of the Commission and its endeavours among stakeholders and the public.¹³⁰ Strategies included fostering direct relationships, conducting public education initiatives, and launching media campaigns.¹³¹ Efforts targeted various levels of the community, from national decision-makers and NGOs to district administrations, local leaders and the general public. The outreach also extended to international audiences, encompassing UN agencies, donor countries, international organizations, and the global human rights and justice community.

The Commission in East Timor established a collaboration with the national television broadcaster, Television Timor-Leste (TVTL), and Radio Timor-Leste to extensively cover the seven national thematic hearings.¹³² Additionally, the Commission produced two videos detailing its work for dissemination to communities. District teams transported televisions and generators to rural areas to screen these videos, facilitating community engagement and information sharing.¹³³ The videos were also shown in West Timor as part of the Commission's outreach efforts. They were created in *Tetum*¹³⁴ with voiceovers in Indonesian and English to reach broader audiences.¹³⁵

Furthermore, the Commission developed a website to engage with the international community.¹³⁶ The website featured documents, regular bulletins on the Commission's activities, and event photos, attracting frequent visits from international media, human rights organizations, students, academics, and donor agencies. This report is accessible on the website.¹³⁷

In the reconciliation process of Canada, it is apparent that the Commission held different events¹³⁸ covering all the parts of the country to encourage the people to make their

¹²⁸ *ibid*, p 43.

¹²⁹ *ibid*, p 44.

¹³⁰ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1,212,48

¹³¹ *ibid*

¹³² CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1,203,46

¹³³ *ibid*

¹³⁴ Tetum or Tetun is the co-official languages of East Timor, <https://ulpa.edu.au/languages/individual/tetum>, <https://ulpa.edu.au/languages/individual/tetum>> accessed on 14.06.2024

¹³⁵ *ibid*

¹³⁶ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1, 211,48

¹³⁷ *ibid*

¹³⁸ During the six years of its operation, the Commission held events in all parts of the country. The largest and most visible of these were the National Events held in Winnipeg, Inuvik, Halifax, Saskatoon, Montreal, Vancouver, and Edmonton between June 2010 and March 2014. The Commission estimates there were as many as 155,000 visits to the seven National Events; over 9,000 residential school Survivors registered to attend them (while many others attended but did not register). To augment its statement-gathering activities and to help build public interest and participation in its National Events, the TRC organized Regional Events in Victoria and Whitehorse. It also held 238 days of local hearings in seventy-seven communities across the country. The Commission also sponsored "town halls" on reconciliation at its Victoria Regional Event in April 2012 and at subsequent National Events as a means to draw a greater number of visitors into conversation with the TRC about healing and reconciliation. Members of the general public were invited to come forward at the town halls to share information about what they are already doing to support reconciliation and to describe their ideas about what more needs to be done, 'Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada',

contributions towards the process during its tenure. Some events have been organized to draw the general public into conversation regarding the process of healing and reconciliation and the general public was invited to share information about their contributions and ideas about what more needs to be done for reconciliation. The Commission received expressions from the individuals, organizations, who wished to publicly state their commitment to the journey of healing and reconciliation. The documents and items related to each expression of reconciliation became part of the permanent legacy of the TRC housed in the National Centre for Truth and Reconciliation (NCTR)¹³⁹ The Commission also invited Canadians to make expressions of reconciliation at the National and Regional Events. Further, the IRSS Agreement also mandated to create a platform for the communities to share their experiences and the Commission has developed a Community Events Guide.¹⁴⁰

As discussed in the country chapter on Canada, it is apparent that the Commission was able to share its work with Canadians everywhere, and with a worldwide audience, through live streaming of the National Events on the internet and additional postings on the Commission's website and social-media platforms. Absolutely, adopting mechanisms similar to those utilized by Canada could significantly enhance awareness, public engagement and increase trust among the general public in reconciliation efforts in Sri Lanka.

Some ways that Sri Lanka could implement similar mechanisms:

- **National and Regional Events**-Organizing events where the public is invited to participate in discussions in relation to reconciliation and share their contributions;
- **Public Contributions**-Providing opportunities for individuals /organizations to publicly express their commitment to the reconciliation process, similar to how the TRC in Canada collected expressions of interest on the process of reconciliation;
- **Permanent Legacy**- Establishing a national repository, like the NCTR in Canada, to preserve documents, items, and expressions of reconciliation as a permanent legacy of the reconciliation process in Sri Lanka;
- **Community Events Guide**- Developing a guide to assist communities in hosting their own reconciliation events and providing a platform for sharing experiences, as outlined in the IRSS Agreement;
- **Live Streaming and Online Engagement**- Broadcasting national events live on the internet, share updates through the website and social media platforms.

By implementing these types of public-friendly mechanisms, Sri Lanka can enhance public awareness, trust towards the process, engagement, and participation in the reconciliation process, fostering a sense of ownership and collective responsibility for building a more inclusive and harmonious society.

https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf, accessed on 30/10/2023

¹³⁹ 'Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada', https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf, accessed on 30/10/2023

¹⁴⁰ Truth and reconciliation Commission of Canada, 'Truth and Reconciliation Commission of Canada : Interim Report 2012, https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf, accessed on 1/11/2023

9. TRC'S RELATIONSHIP WITH THE MEDIA

The media plays a crucial role in shaping public perception and fostering dialogue, which is essential for promoting national unity and reconciliation. In post-conflict societies, the media's ability to influence narratives and provide platforms for diverse voices can significantly impact the healing and rebuilding process. This section will examine the role of the media in promoting national unity and reconciliation and how Truth and Reconciliation Commissions (TRCs) can collaborate with the media to foster pluralism and prevent the recurrence of conflict.

One of the key lessons from Liberia is how the TRC and the media maintained mutual respect and a professional and cordial relationship. In the promotion of its mandate, the TRC enjoyed considerable support from the media. This rapport was built even before the launching of the TRC, when a broad-based approach was initiated for working with the media through meetings with editors, reporters and other media practitioners on how the media could facilitate appropriate coverage of the TRC.¹⁴¹

Furthermore, TRC worked with the Press Union of Liberia together with other media personnel to create a code of conduct to govern media coverage. As a result, many media outlets supported the TRC throughout its lifespan.¹⁴²

Media can either play a constructive role in a post-war society or fuel conflict during times of ethnic tensions as in the case with Rwanda. In East Timor, the CAVR was aware of the role of the media and worked closely to engage in reconciliation efforts. Casa de Produção Audiovisual, a media organisation run by the Jesuits have been engaged in audio-visual programmes to promote unity through a series that explores a common history of East Timor. History can be quite contested in its various perspectives. Hence, CPA is sensitive in its role as a media organisation in promoting conflict resolution:

“While adhering to the standards of accuracy, fairness and responsibility in the production of its own programmes, it also has clear-cut objectives regarding its role in conflict resolution.”¹⁴³

Building a rapport with the media is a concept that Sri Lanka too can learn from Liberia. Currently, the Sri Lankan government is facing criticisms over the proposed truth commission by multiple media outlets. In addition, formulating a code of conduct to govern media coverage of the CTUR would be a valuable element in order to ensure accurate, credible and transparent coverage.

The general response to the proposed new reconciliation mechanism has been one of interest, despite reservations expressed by some victims' groups and civil society organizations.¹⁴⁴ In this regard, CAVR holds the view that, “the media can play a very important role in facilitating this dialogue, fostering active participation of the public and promoting a pluralistic society.”¹⁴⁵ In this regard CPA explored issues such as, “national history and the search for identity by

¹⁴¹ Truth and Reconciliation Commission of Canada, ‘Truth and Reconciliation Commission of Canada : Interim Report 2012, https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf, p 49 accessed on 1/11/2023

¹⁴² *ibid*, p 49.

¹⁴³ Sachse, Henriette. “Reconciliation in Timor-Leste and the Role of the Media: The Casa De Produção Audiovisual”. *East-Timor*, edited by Frédéric Durand and Christine Cabasset-Semedo, Institut de recherche sur l’Asie du Sud-Est contemporaine, 2009, <https://doi.org/10.4000/books.irasec.656>.

¹⁴⁴ Jehan Perera, ‘Risk of Repeating Past Continues’ (*Colombo Telegraph*, 27 February 2024) <<http://www.colombotelegraph.com/index.php/risk-of-repeating-the-past-continues/>> accessed 3 March 2024

¹⁴⁵ Sachse, 2009.

fostering a culture of peaceful dialogue, discussion and active participation among its audiences.” Further, it also, “uses its own productions for educational purposes to sensitise teachers to more modern ways of teaching techniques.”¹⁴⁶

In Rwanda, the media's role was both detrimental and rehabilitative. The media in Rwanda created the conditions for discord amongst the Hutu and Tutsi communities by promoting inciting and racially motivated radio broadcasts that incited violence during the 1994 genocide. However, during the post-genocide period, the media was reformed to support peace-building by promoting messages of unity and reconciliation, countering hate speech, and educating the public about the consequences of the genocide (Thompson, 2007).

For example, the media, especially the radio was deployed as a weapon of war leading to killings.” The local media, particularly the extremist radio station Radio-Télévision Libre des Milles Collines (RTL), were literally part of the genocide. The “*genocidaires* used the media like a weapon.”¹⁴⁷ The violence was led by the elites who, for political purposes, demonised and dehumanised the group that was without power and used violence against them.¹⁴⁸ However, in post-war Rwanda, community radio stations played a crucial role emphasising, not the ethnic identity, but on location of the community and homogeneity emphasising the economy and society rather than ethnicity. While the post war state had very harsh laws to regulate media with a rigid legal media framework, community radio stations emphasised economic and social challenges and regular conciliatory messages through shared experiences.¹⁴⁹

Sri Lankan Scenario

In Sri Lanka, despite the seemingly difference of Tamil and Sinhala cultures and their expressions, there are many elements that unite both cultures. For example, both cultures have a common origin from India. There are elements of religion such as the Pattini cult that unite the two religious traditions. But, for political purposes these common elements are not acknowledged and indeed denied to have any common elements for the purpose of vote bank politics. The TRC could undertake to forge a common history emphasizing the common elements, not only among the Tamil and Sinhala cultures, but also Islamic cultures that have common elements. These common elements can be revived as unifying cultural factors.

However, the deep political divisions that exist between the Tamil and Sinhala communities is also reflected in the media field. The media largely tend to cater to the desire of the readers by engaging in narrow nationalist news items of the respective ethnic readership. As such, Sinhala media adopts and reflects a Sinhala nationalist perspective while the Tamil media takes a similar Tamil nationalist orientation. The post-war political reality is that the larger Sinhala polity seems to adopt a view that there is no political problem for the Tamils while the fundamental discrimination remains unresolved. Having had hopes pinned on military struggle and lost the ethnic war militarily, the Tamil polity seem to increasingly take refuge in a nationalist camp primarily influenced by the diaspora.

¹⁴⁶ *ibid*

¹⁴⁷ Dallaire, Roméo, and Kofi Annan. “The Media Dichotomy.” *The Media and the Rwanda Genocide*, edited by Allan Thompson, Pluto Press, 2007, pp. 12–19. *JSTOR*, <https://doi.org/10.2307/j.ctt18fs550.7>. Accessed 31 May 2024

¹⁴⁸ Caplan, Gerald, and Kofi Annan. “Rwanda: Walking the Road to Genocide.” *The Media and the Rwanda Genocide*, edited by Allan Thompson, Pluto Press, 2007, pp. 20–38. *JSTOR*, <https://doi.org/10.2307/j.ctt18fs550.8>. Accessed 31 May 2024.

¹⁴⁹ Mutasa, Isac. 2015. “Community media and peacebuilding in post-conflict Rwanda,” Malmö:Sweden: Malmö University.

The solution, according to the senior journalist is for the Sinhalese political community to understand that the Tamil people still feel as second-class citizens and they do have genuine grievances and agree for an accommodative political process while the Tamils need to accept that any political solution can only come with the support of the majority Sinhala community. The bravado of reviving the armed struggle and international intervention by Tamil political elements can only further divide the community.

However, both among the Tamil and Sinhala media outlets, there are segments who want to do the right thing by informing and educating the republic, particularly about the ethnic conflict and this segment can play a vital role in reconciliation. Additionally, social media can also play an important role particularly among young people who are a post-war generation with greater potential for harmonious inter-ethnic relations and reconciliation.

It is claimed that Sri Lanka is reportedly a pioneer in community radio (CR) broadcasting, having started the first CR in 1924.¹⁵⁰ Thus, CR has the potential for not only empowering marginal communities, but also engaging in conflict resolution and solving village level disputes. Similar roles of community reconciliation can be played by such radio stations. The Sri Lankan print media reflects a more complex scenario where journalists themselves believe that the media in Sri Lanka does not provide accurate, balanced and fair information. Indeed, the media is engaged in, “war mongering, racism and ignorance about the country's ethnic conflict.”¹⁵¹

According to a senior journalist, Sri Lankan media tend to reflect the deep divisions within the society. Thus, the Sinhala, Tamil and English news media both print and electronic, are divided along ethnic lines reflecting the political realities. The Tamil mainstream media takes a view that the Tamil people have been discriminated against and the majority population is not willing to accommodate the legitimate grievances of the Tamil minority. The Sinhala medium news media takes the view that since the war has been won and terrorism been defeated, there isn't any problem in the country. Thus, the end of the war is equated with the resolution of the ethnic problem. Social media also reflects this deep division. The Muslim community seem to reflect the view that they are victimised by both the Sinhalese and Tamil communities. Given this fissure that exists in the society, it is a challenge to forge a neutral space so that a healthy discussion can take place. Yet, there is some space within the media where there is space for such a conciliatory movement to be forged. Even though selected media outlets may be ready to play a constructive role, the tendency is to cater to the dominant view.

Therefore, it is important to constantly engage with the media to convince them that they can indeed play a positive role.

In the case of Rwanda, the state had strict control and closely regulated the media, monitoring it for any content that promotes hostility against an ethnic group. Sri Lankan state media is quite powerful and extensive and they can play a conciliatory role in bringing out the suffering which was brought about by the violence and the prospect for a conciliatory and harmonious future. That however, is predicated on the political reality of the country.

¹⁵⁰ Jayawardhana, Nisansala, 2019 “Radio Companion: The Role of Sri Lankan Community Radio in the Sphere of Empowering Marginalized in the Society,” *International Journal of Scientific and Research Publications*, 9 (12).pg.31-38. downloaded on 31.05.2024.

¹⁵¹ Gnanaseelan, J. (2012). “A Discourse Analysis of Ethnic Conflict and Peace in the Editorials of English Newspapers – A Case Study.” *The Sri Lanka Journal of Advanced Social Studies*, Vol.1, No 2. July-Dec 2011: the National Centre for Advanced Studies of the University Grants Commission, Sri Lanka.

Ensuring media access to Sri Lanka's transitional justice processes, such as the Office on Missing Persons (OMP) and any future TRC, can build public trust and engagement.

The Need for Media in Promoting Unity and Reconciliation in Sri Lanka

Therefore, in the context of transitional justice, the media may:

- **Promote Truth-Telling:** Accurate and unbiased coverage of past atrocities and ongoing justice mechanisms can inform and educate the public.
- **Facilitate Dialogue:** Media platforms can provide spaces for discussions between different ethnic and political groups, helping to bridge divides.
- **Highlight Victims' Voices:** Giving prominence to the stories of those affected by the conflict can foster empathy and understanding.
- **Support Legal and Institutional Reforms:** Sustained media coverage of transitional justice processes can build public support for necessary reforms and ensure accountability.

Responsibilities of the Media entails:

- To effectively promote national unity and reconciliation, the media in Sri Lanka must:
- **Adhere to Ethical Journalism:** Maintain impartiality, accuracy, and fairness;
- **Promote Pluralism:** Give voice to diverse groups and perspectives;
- **Support Truth-Telling:** Cover the activities and findings of transitional justice mechanisms comprehensively;
- **Combat Hate Speech:** Actively work against the dissemination of inflammatory or divisive content;
- **Collaboration Between TRCs and Media in Sri Lanka.**
- **Transparency and Accessibility:** Ensure media access to TRC proceedings and findings.
- **Joint Public Campaigns:** Collaborate on campaigns that promote reconciliation and educate the public.
- **Training Journalists:** Provide training on how to report on reconciliation processes sensitively and accurately.
- **Feedback Mechanisms:** Establish channels for public feedback through the media to inform TRC processes.
- **Counter Narratives:** To counter any disinformation or misinformation campaigns aimed at creating disunity and hamper the national reconciliation efforts. It is recommended to conduct campaigns based on the counter messaging spectrum which includes direct government communication, TRC communication, alternative narratives that provide stories on reconciliation and unity and counternarratives to thwart any disinformation or misinformation campaigns (Fuard, 2018)

Recommendations for Sri Lanka

- **Media Reforms:** Implement policies that ensure media independence and protect journalists from censorship and intimidation. This includes legal reforms and the establishment of regulatory bodies that uphold media freedom.

- **Ethical Journalism Training:** Provide training for journalists on ethical reporting, particularly on issues related to transitional justice and reconciliation. This will help ensure that media coverage is accurate, balanced, and constructive.
- **Collaborative Campaigns:** TRCs should collaborate with media houses on public education campaigns about the reconciliation process and its importance. Joint efforts can amplify the reach and impact of reconciliation messages.
- **Inclusive Reporting:** Encourage media to cover diverse perspectives and give voice to the marginalized and affected communities. This approach will help build a more comprehensive and inclusive national narrative.
- **Monitoring and Accountability:** Establish mechanisms to monitor media content for bias and hate speech, ensuring accountability and promoting responsible journalism. This includes both government oversight and independent watchdog organizations.

Therefore, the media's role in promoting national unity and reconciliation is indispensable. Through ethical reporting, fostering dialogue, and supporting truth-telling initiatives, the media can help heal divided societies and build a foundation for lasting peace. Collaboration between TRCs and the media is critical in ensuring these objectives are met, as seen in various case studies around the world. For Sri Lanka, a robust and responsible media landscape is essential to support its transitional justice efforts and pave the way for enduring unity and reconciliation.

10. RESTORATIVE JUSTICE

One of the biggest disputes in Liberia was to agree on the choice between a War Crimes Tribunal (WCT) and a Truth and Reconciliation Commission (TRC).¹⁵² Supporters of a retributive justice process, motivated by the chronic legacy of impunity and abuses in the country opted for the WCT; but others preferred a restorative justice process for reconciliation and offer healing, as a better way of breaking Liberia's cycle of violence and revenge, and to lessen the resentments within the society.¹⁵³

In Canada, its approach to resolving disputes through non-retributive methods offers valuable lessons for Sri Lanka as it navigates its own path toward reconciliation after 30 years of conflict. The TRC of Canada utilized various restorative justice processes to address the legacy of the country's residential school system and promote healing and reconciliation. As discussed in the country chapter here are some key components of the restorative justice processes adopted by the Canadian TRC:

- **Truth Gathering-** The TRC collected testimonies from survivors, their families, and communities affected by the residential school system and thereby made a platform for the victims to share their stories.¹⁵⁴
- **Public Hearings-** Public hearings were held across Canada to provide survivors and their families with an opportunity to share their stories and these hearings were open to the public

¹⁵² Aaron Sleh, 'Amnesty and the Liberian TRC: Who is Pardonable?' (*The Perspective*, 18 April 2006) <<https://www.theperspective.org/articles/0418200603.html>> accessed 5 October 2023

¹⁵³ *ibid.*

¹⁵⁴ Truth and reconciliation Commission of Canada, 'Truth and Reconciliation Commission of Canada : Interim Report 2012, https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf, accessed on 1/11/2023

- **Statement Taking**-Facilitated statement-taking sessions where survivors could provide their testimonies and allowed survivors to share their experiences in a safe setting.¹⁵⁵
- **Reconciliation Events**- Organized reconciliation events aimed at bringing together survivors, intergenerational survivors, community members, and perpetrators to engage in dialogue, healing, and reconciliation.¹⁵⁶
- **Education outreach**- Increased awareness about the history and legacy of the residential school system. It developed educational resources, including curriculum materials for schools and universities, in order to ensure that future generations learned about this dark chapter in Canadian history.¹⁵⁷

Overall, the restorative justice processes adopted by the Canadian TRC focused on truth-telling, acknowledgment, healing, and reconciliation. This approach focuses on repairing the harm caused by conflict through dialogue, accountability, and restitution, rather than solely punishing perpetrators. Introducing restorative justice principles can help Sri Lanka move away from punitive measures and move towards healing and reconciliation. By encouraging both victims and perpetrators in the process, restorative justice can facilitate meaningful reconciliation.

11. TEMPORAL MANDATE:

Although the TRC in Liberia narrowed the period of time for investigations of “*gross human rights violations and violations of humanitarian law, sexual violations, and economic crimes*” that occurred between January 1979 and 14th October 2003, it also welcomed the possibility of extending the commission's mandate to “any other period preceding 1979” (Article 4, section 4a).¹⁵⁸ However, in order to keep the workload manageable, it was recommended by Amnesty International that the Commission give priority to the period from January 1979 to 14th October 2003.

¹⁵⁵ Truth and reconciliation Commission of Canada, ‘Truth and Reconciliation Commission of Canada : Interim Report 2012, <https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf>, accessed on 1/11/2023

¹⁵⁶ During the six years of its operation, the Commission held events in all parts of the country. The largest and most visible of these were the National Events held in Winnipeg, Inuvik, Halifax, Saskatoon, Montreal, Vancouver, and Edmonton between June 2010 and March 2014. The Commission estimates there were as many as 155,000 visits to the seven National Events; over 9,000 residential school Survivors registered to attend them (while many others attended but did not register). To augment its statement-gathering activities and to help build public interest and participation in its National Events, the trc organized Regional Events in Victoria and Whitehorse. It also held 238 days of local hearings in seventy-seven communities across the country. The Commission also sponsored “town halls” on reconciliation at its Victoria Regional Event in April 2012 and at subsequent National Events as a means to draw a greater number of visitors into conversation with the trc about healing and reconciliation. Members of the general public were invited to come forward at the town halls to share information about what they are already doing to support reconciliation and to describe their ideas about what more needs to be done, ‘Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada’, <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf>, accessed on 30/10/2023

¹⁵⁷ ‘Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada’, https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf, accessed on 30/10/2023

¹⁵⁸ ‘Liberia: Truth, Justice and Reparation Memorandum on the Truth and Reconciliation Commission Act’ Amnesty International 22 June 2006 <<https://www.amnesty.org/en/wp-content/uploads/2021/08/afr340052006en.pdf>> accessed 1 March 2024

12. RELIGION, CULTURE AND TRADITION

The TRC was graced with reputable religious leaders who provided oversight leadership to ensure the Commission didn't lose sight of religion, culture and tradition that were an integral and essential part of Liberian society. The TRC established a Traditional Advisory Council of chiefs and elders from the counties to assist the commission in its work in the rural areas and advise the Commission on the approach needed to involve local inhabitants in the TRC process. Traditional methods of conflict resolution and peace building were also considered. During thematic hearings in the counties traditional elders lead their communities in presenting how the war affected their people and advanced recommendations to the TRC for appropriate redress.¹⁵⁹

13. CONFLICT MAPPING PROJECT (LIBERIA)

In support of the goals of national peace, security, reconciliation, unity and peacebuilding aspirations, a conflict mapping project was commissioned by the TRC for “mapping current and looming conflicts in order to ameliorate the potential for future violent conflicts and civil unrest.” The project was completed and measures were recommended to improve the effectiveness of policies and programme initiatives in contributing to conflict prevention and reduction in Liberia.¹⁶⁰

14. THEMATIC HEARINGS

Thematic hearings provide a way to generate public awareness of human rights concerns, educate the Commission on a specific topic and advocate for changes to law and policy. Such hearings highlight broader patterns of abuse and resistance, enabling conditions and social impact to be identified.

By highlighting critical issues in a country's history of human rights abuse, thematic hearings enable a broader public discussion on the structural conditions and key dimensions of conflict and the role of the various actors. Though specific issues may vary, thematic hearings often catalyze a dialogue about social structure and broaden understanding of accountability and victimization. They also personalize histories and widen the reach of individual narratives, as well as emphasize on the background of the conflict.¹⁶¹

In Liberia many thematic hearings were held with specific groups; others were heard on various themes that were relevant to the Liberian post conflict context.¹⁶²

Some of the specific groups to whom thematic hearings were held were:

- Women;
- Children;
- Youth;

¹⁵⁹ Republic of Liberia, Truth and Reconciliation Commission, *Volume II: Consolidated Final Report*, 2009 at page 51 <https://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf> accessed 2 March 2024

¹⁶⁰ *ibid*, p 64.

¹⁶¹ *ibid*, p 51.

¹⁶² ‘TRC Transcripts’ (*Truth and Reconciliation Commission of Liberia*) <<https://www.trcofliberia.org/transcripts.html>> accessed 3 March 2024

- Judiciary;
- Civil Society;
- People with Disabilities;
- Elders, Chiefs, Traditional and Religious Leaders, etc.,¹⁶³

Some titles considered under thematic hearings:

- Liberian Crisis;
- Reconciliation: the way forward to general peace in Liberia;
- Role of Educational Institutes in the National Reconciliation,
- Improvement of youth livelihood,
- Children and the Liberian Conflict: What does the future hold;
- Role of Mass Media in the Liberian Conflict, etc.,¹⁶⁴

The experiences shared were officially heard by the state and recognized as part of the Liberian national experience. These hearings also generated national empathy, and an understanding from the people, the Commissioners and policymakers of the conflicts and its varied trends. The hearings stimulated national public debates and pushed issues of the conflict, repairing victims, perpetrators' accountability, impunity, root causes of the conflict, etc. squarely into the public consciousness.¹⁶⁵

East Timor also had public national hearings which were also grouped into thematic hearings. The significance of these thematic hearings lay in providing a platform for diverse witnesses and experts to share their perspectives with the entire population.¹⁶⁶ The national hearings were chaired by the seven National Commissioners. While truth-seeking was a primary objective, it was also acknowledged that the program should be structured in a way that supports national reconciliation and advocates for the rights of victims.

These hearings focused on thematic area listed:

- Political Imprisonment (February 2003)
- Women and the Conflict (April 2003)
- Forced Displacement and Famine (July 2003)
- Massacres (November 2003)
- The Internal Conflict of 1974–1976 (December 2003)
- Self-Determination and the International Community (March 2004)
- Children and the Conflict (March 2004).

¹⁶³ *ibid.*

¹⁶⁴ *ibid.*

¹⁶⁵ Republic of Liberia, Truth and Reconciliation Commission, *Volume II: Consolidated Final Report*, 2009 at page 152 <https://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf> accessed 2 March 2024

¹⁶⁶ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1, 96, 29

15. ROLE OF WOMEN

The mandate of the TRC in Liberia made 9 provisions for dealing with gender issues, showcasing the need to deeply understand the concept of gender and its impact on Liberian society and the conflict, for the essential success of the TRC process.¹⁶⁷

The Gender Committee of the TRC exclusively focused on engaging women in the TRC process and mainstreaming them and their experiences. A gender policy was drafted that laid out a detailed plan with clear recommendations in each category of operation that the TRC was to engage in order to achieve the said goals. The greater portion of these recommendations were to be implemented by a gender expert/advisor, with periodic reviews and assessments.

The 'inquiry unit' of the TRC established the 'role of women and children' as one of their main thematic areas of investigation and research following up on gross human rights violations on women and children.¹⁶⁸

Liberian TRC was successful in getting a high turnout of women participation, compared to other truth commissions in the past. Outreach, awareness, sensitization of women on TRC and the pre-hearing support was seen as factors that encouraged women to speak about their experiences and engage extensively with the TRC.

It had been documented that the interpretation of 'gender' made women to be focused only as 'victims' although women have been recognized as combatants and supporters of war, however these identities were not explored fully.¹⁶⁹

At the outset, it was acknowledged that there are obstacles hindering women's equal participation in employment and political engagement in Timor-Leste, prompting the need for special considerations within institutions. Gender considerations were mandated by the UNTAET Regulation for all aspects of the commission's work. The commission's mandate stipulated that 30% of National and Regional commissioners must be women, resulting in two out of seven National commissioners and ten out of 29 regional commissioners being women.¹⁷⁰ While staff recruitment policies aimed for the same percentage among the staff; meeting this target was challenging due to the field activities requiring prolonged absence from home.

Additionally, there was a requirement for at least one woman to be on the CRP panel at hearings, and it was observed that these women often took on leadership roles, which were readily accepted by community members. Women were also included in all district statement-taking teams, and 21.4% of the individuals providing statements were women.¹⁷¹

A research project conducted by a team of six women over six months focused on the experiences of women during the conflict.¹⁷² Specific healing workshops and community

¹⁶⁷ 'Chapter 10, Women' The Advocates for Human Rights <https://www.theadvocatesforhumanrights.org/Res/chapter_10-women.pdf> accessed 6 October 2023

¹⁶⁸ Anu Pillay, 'Views from the Field, Truth Seeking and Gender: The Liberian Experience' AJCR 2009 <<https://www.accord.org.za/wp-content/uploads/2015/09/ajcr-2009-2-Truth-seeking-and-gender.pdf>> accessed 6 October 2023

¹⁶⁹ *ibid.*

¹⁷⁰ CAVR, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (CAVR) (2005) ch 1, para 173,41

¹⁷¹ *ibid* ch 1, para 174, 41

¹⁷² *ibid* ch 1, para 176, 42

profile workshops were designed exclusively for women. Women staff members informally engaged with rural women during visits and gatherings, encouraging their involvement in the commission's activities.¹⁷³ Overall, numerous efforts were made to document women's experiences and the impact of the conflict as perceived by female community members.

Moreover, it is also apparent that throughout the reconciliation process in Canada, the TRC prioritized the well-being of participants, ensuring that health-support workers, cultural support workers, and professional therapists were available at all times to provide support and counselling as and when necessary.¹⁷⁴

This commitment to providing emotional and psychological support underscores the TRC's recognition of the sensitive and potentially traumatic nature of the testimonies being shared. By offering a safe and supportive environment for individuals to share their experiences, the TRC facilitated a process of healing and reconciliation that honoured the resilience and dignity of survivors and affected communities.

16. CREATING A COMMON NATIONAL IDENTITY

Efforts to suppress ethnic identity in order to create a common national identity and 'one nation' has been one of the major concepts under the extensive reconciliation agenda of the post genocide government of Rwanda, in order to prevent the recurrence of violence.¹⁷⁵

To achieve such a common identity, the Rwandan government has banned the use of ethnic labels such as Hutu, Tutsi or Twa and compels its citizens to identify themselves as "Rwandans", and tries to build cooperation between formerly antagonistic groups through grassroots cooperative activities.¹⁷⁶

The Rwandan government is determined to downplay the social and political significance of ethnic identity or differences, and this approach is predicated on the belief that by creating a common identity as a Rwandan, the country will be able to heal the wounds of violence and roll back on polarization.¹⁷⁷

From the very inception of Rwanda's transitional justice process, various strategies and programs have been implemented emphasizing this concept.¹⁷⁸

¹⁷³ *ibid* ch 1, para 177, 42

¹⁷⁴ 'Honouring the truth , reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada', https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf, accessed on 30/10/2023

¹⁷⁵ 'Post Conflict Reconstruction and Reconciliation in Rwanda and Sri Lanka' (*ACCORD*, May 31, 2018) <<https://www.accord.org.za/conflict-trends/post-conflict-reconstruction-and-reconciliation-in-rwanda-and-sri-lanka/>> accessed 23 February 2024

¹⁷⁶ *ibid*.

¹⁷⁷ *ibid*.

¹⁷⁸ *ibid*.

Examples of such programs that restored a national and shared sense of identity and dignity¹⁷⁹ are:

- cooperatives (where people of a village work together for community development);
- the *Ndi umunyarwanda* programme (“I am Rwandan” campaign, where people talk about history, repent on past crimes committed on the other ethnic group, and heal);
- *Umuganda* (a day dedicated to collective community work such as cleaning infrastructure, repairing roads and so on, once a month);
- *Umugoroba w’ ababyeyi* (parents’ evening, where parents of the same village talk about various issues, from politics and development to family issues) and
- *Ijisho ryúmuturanyi* (eye of the neighbour), as well as many other measures intended to foster social reconciliation.¹⁸⁰

Sri Lanka too can create a common identity and work towards creating a society of equality on all fronts and address the majority – minority rule, by removing the term ‘minority’ to lend a better representation and acceptance of all communities.¹⁸¹

17. POLITICAL WILL/ STATE APOLOGY

It is the state’s responsibility to set the stage and promote national reconciliation. To be effective, leading by example or ‘walking the talk’ through an inclusive and democratic government is paramount. This required strong political will on the side of the post-violence (new) government.¹⁸²

In order to have a successful national reconciliation the state/ government and non-state actors must combine in putting in a genuine effort towards it. This must involve a safe space for dialogue between these actors reflecting the national (top), middle range (elites), and community/local (grassroots) levels. Rwanda’s experience with national and local summits and the establishment of the National Dialogue Council (*Umushyikirano*) advocates that the active engagement of actors from all walks of life from the top to the grassroots – including state institutions, the private sector, civil society, communities, and the general public – is vital. These actors needed to agree on core national reconciliation goals, priorities, and implementation mechanisms. One of the best benefits is Rwanda’s shared vision of the past and future that is acceptable to all; that is, a shared collective history and future.¹⁸³

Rwanda’s culture and customs of solidarity and community participation in solving their problems at village level was seen as a practical approach. Home-grown solutions were useful and constituted as an alternative to universal or liberal mechanisms in the promotion of reconciliation. The *Gacaca* mechanisms provide a lesson for divided societies. In fact, given their decentralized nature, the importance attached to local and entire community participation,

¹⁷⁹ Ezechiel Sentama, ‘National Reconciliation in Rwanda: Experiences & Lessons Learnt’ EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

¹⁸⁰ ‘Post Conflict Reconstruction and Reconciliation in Rwanda and Sri Lanka’ (*ACCORD*, May 31, 2018) <<https://www.accord.org.za/conflict-trends/post-conflict-reconstruction-and-reconciliation-in-rwanda-and-sri-lanka/>> accessed 23 February 2024

¹⁸¹ Kshama Ranawana, ‘Opinion: Building a Common Sri Lankan Identity Challenge’ (*Economy Next*, 14 January 2021) <<https://economynext.com/opinion-building-a-common-sri-lankan-identity-a-challenge-77825/>> accessed 28 February 2024

¹⁸² Ezechiel Sentama, ‘National Reconciliation in Rwanda: Experiences & Lessons Learnt’ EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

¹⁸³ *ibid.*

Gacaca courts represent a unique form of restorative justice. Rwanda has taught that successful national reconciliation depends on using the mechanisms that are rooted in a society's context, culture, traditions and customs.¹⁸⁴

The National Unity and Reconciliation Commission (NURC) of Rwanda was a mechanism mandated to coordinate, monitor, and integrate all efforts at national and local levels, aimed at promoting reconciliation.¹⁸⁵ Actors involved in national reconciliation should understand that national reconciliation remains a long, complex, and a dynamic process whose success should involve an inclusive and integrated approach.

For adopted initiatives to be successful, **a mechanism for integration and coordination is paramount**, as was the case with the NURC in Rwanda.¹⁸⁶ Embedded within a strong political will, these various mechanisms achieved important victories in the process of national reconciliation in Rwanda.¹⁸⁷

Approaches that are selective are a recipe for disaster (like for example, deliberately considering some injustices to the detriment of others) issues and factors related to conflict and violence should be taken into account and all parties' voices heard (victims/survivors, perpetrators, witnesses, bystanders). All national efforts must also resonate and/or concur with popular initiatives and approaches to reconciliation. Therefore, successful reconciliatory efforts have to be comprehensive.¹⁸⁸

Through research and experience sharing among stakeholders, it is important to regularly track the progress of reconciliation in order to revise the mechanisms and processes, or to create new ones, and so address any persisting challenges.¹⁸⁹

Currently in Sri Lanka, we have an Office for National Unity and Reconciliation (ONUR), The Office for Missing Persons (OMP), The Office for Reparations (OR) and the Interim Secretariat for Truth and Reconciliation Mechanisms (ISTRM) as mechanisms that look into reconciliation and Transitional Justice aspects. Sri Lanka can take lessons from Rwanda in establishing a coordinating point like the NURC of Rwanda to integrate all reconciliatory efforts and coordinate them in order to avoid overlaps and other practical challenges.

There has been scepticism with regard to the political will of Sri Lanka and the establishment of the ISTRM, that is seemingly overlapping with the jurisdictions of OMP and ONUR and considered it as 'showpiece' bodies.¹⁹⁰

The ISTRM has been set up since September 2023, and is laying the groundwork to build the necessary legal and policy framework, operational procedures and guidelines for the Commission. One of the tasks of this Interim Secretariat is to ensure stakeholder engagement, to create public awareness of the intended work of the proposed Truth and Reconciliation

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid.*

¹⁹⁰ Kishali Pinto-Jayawardena, 'Sri Lanka's 'fresh truth commission; so what else is new?' (*Sunday Times*, 7 January 2024) <<https://www.sundaytimes.lk/240107/columns/sri-lankas-fresh-truth-commission-so-what-else-is-new-544352.html>> accessed 28 February 2024

Commission and to consider their feedback and/or observations and/or concerns in connection to the establishment of such a mechanism.¹⁹¹

Pursuant to this ISTRM has had several consultations with key government stakeholders including, reconciliation mandated organizations namely, Office of Missing Persons, Office for Reparations and Office for National Unity and Reconciliation. The ISTRM is currently undertaking all island field visits to engage with the public, civil society representatives, religious leaders, parliamentarians and other stakeholders¹⁹² to ensure the Commission is built with their participation and consultation, shaping this transformative mechanism and ultimately paving the way for sustainable peace and national unity.¹⁹³

Certainly, reconciliation processes are not merely about removing the traumatic memories of the past, but also opening a pathway towards healing from the past and ensuring non-recurrence by acknowledging the past grievances and root causes. In Canada, this has been a crucial aspect of the reconciliation process, aiming not just to erase traumatic memories but to address their underlying causes. Similarly, in Sri Lanka, where a brutal armed conflict lasted for three decades, acknowledgment of past grievances and their root causes is paramount for true reconciliation. Despite the passage of nearly 15 years since the conflict's end, the scars remain, and the government holds a responsibility to acknowledge the violations and injustices that occurred. By acknowledging past grievances and root causes, the government can demonstrate its commitment to accountability and justice, which needs to be accompanied by ways of reparations for victims, institutional reforms, and efforts to promote inter-ethnic understanding. Moreover, acknowledging the past grievances is also about learning from the past to build a more just and peaceful future. Therefore, it is worth mentioning that the acknowledgment of the past grievances and the root causes is a crucial step towards genuine reconciliation and lasting peace.

18. POLICY ON NATIONAL UNITY AND RECONCILIATION

The post-genocide government of Rwanda was faced with the challenge of reconstructing the country's socioeconomic and political fabric and bringing about national reconciliation. To deal with the legacies of the genocide and civil war, in the words of the new government: national unity and reconciliation “was not an alternative; it was the only option to survival.”¹⁹⁴

The government of Rwanda put in place a number of policies and strategies, all aimed at fostering unity and social cohesion, and to ensure that Rwandans are treated equally regardless of individual difference. Rwanda's new constitution stipulates that peace, security, unity and reconciliation are essential pillars of development.¹⁹⁵

¹⁹¹ ‘Observations of the GoSL in response to Joint Communication (AL/LKA/2023) dated 13 September 2023 from 06 Special Procedures Mandate Holders’ (*OHCHR*, 16 November 2023)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37827>> accessed 18 March 2024

¹⁹² *ibid.*

¹⁹³ ‘Historic step towards setting up Independent Commission for Truth, Unity and Reconciliation’ (*DailyFT*, 9 December 2023) <<https://www.ft.lk/front-page/Historic-step-towards-setting-up-Independent-Commission-for-Truth-Unity-and-Reconciliation/44-756131>> accessed 9 January 2024

¹⁹⁴ Ezechiel Sentama, ‘National Reconciliation in Rwanda: Experiences & Lessons Learnt’ EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

¹⁹⁵ ‘Unity and reconciliation in Rwanda: A look at policy implications vis-a-vis social cohesion’ (*International Alert*, October 2018) <<https://www.international-alert.org/publications/unity-and-reconciliation-rwanda/>> accessed 23 February 2024

By keeping ‘unity’ and ‘reconciliation’ as inseparable concepts, the national policy on unity and reconciliation defines unity and reconciliation, as “*a consensus practice of citizens who have common nationality, who share the same culture and have equal rights; citizens characterized by trust, tolerance, mutual respect, equality, complementarity, truth, and healing of one another’s wounds inflicted by their dark history, with the objectives of laying a foundation for development in sustainable peace,*” thereby emphasizing the state responsibility for creating a culture of rights based upon an inclusive notion of shared identity.¹⁹⁶

As mentioned above, multiple programmes have been put in place to foster unity and reconciliation in Rwanda,¹⁹⁷ such as -

- promoting Rwandan identity and putting national interests first,
- combating genocide and its ideology,
- creating a nation governed by the rule of law and respect of human rights,
- combating divisionism and discrimination,
- promoting interdependence and synergy in nation-building,
- healing one another’s physical and psychological wounds,
- commemorating the genocide committed against the Tutsi with the aim of ensuring it never happens again, and, lastly,
- striving for self-determination and a passion for work.

Similarly, various other institutional and legal mechanisms have been established to foster unity and reconciliation.¹⁹⁸

Women’s participation in the country’s reconstruction was strongly supported by the government. They were present at every level of development activities: picking up trash, maintaining gardens and public buildings, security, business management, etc.¹⁹⁹

19. PERMANENT ENTITY TO DEAL WITH NATIONAL UNITY AND RECONCILIATION

For purposes of establishing the truth and encouraging the public to play their role in the justice process, a National Unity and Reconciliation Commission (NURC) was established in Rwanda.²⁰⁰

Primarily, the NURC was mandated with preparation and coordination of all country’s programmes on promotion of national unity and reconciliation, investigate and report on systematic patterns of abuse, recommend changes and help understand the underlying causes of serious human rights violations that occurred.²⁰¹

It also encouraged the public to tell the truth known to them about how genocide was perpetrated. To this end, great achievements have been attained by NURC in promoting

¹⁹⁶ Ezechiel Sentama, ‘National Reconciliation in Rwanda: Experiences & Lessons Learnt’ EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

¹⁹⁷ ‘Unity and reconciliation in Rwanda: A look at policy implications vis-a-vis social cohesion’ Policy Briefs, International Alert, October 2018 <<https://www.international-alert.org/app/uploads/2021/08/Rwanda-Unity-Reconciliation-Social-Cohesion-EN-2018.pdf>> accessed 23 February 2024

¹⁹⁸ *ibid.*

¹⁹⁹ Kladoumadje Nadjaldongar, ‘Lessons Learned from Post Conflict Reconstruction in Rwanda’ Sahel and West Africa Club/OECD & Economic Community of West African States, June 2008 <<https://www.oecd.org/countries/rwanda/41425587.pdf>> accessed 23 February 2024

²⁰⁰ *ibid.*

²⁰¹ *ibid.*

tolerance among all members of the population. Through NURC, Rwandans have come to understand and appreciate the value of coexisting and living in harmony with each other as they strive to build a peaceful nation that they will leave for their children. Indeed, very strong and useful social values and components are communicated through the Commission to all walks of Rwandans.²⁰² NURC was made a permanent body in 2002.

Although the proposed Truth-seeking mechanism in Sri Lanka is to be established for a specific duration, there is the establishment called the Office for National Unity and Reconciliation (ONUR) that is mandated with all the affairs pertaining to national reconciliation and comes under the purview of the Ministry of Justice. NURC of Rwanda is the mechanism that was tasked with the integrating and coordinating of the overall adopted reconciliatory initiatives in Rwanda.²⁰³ What Sri Lanka too needs is a centre-point that can coordinate the various organizations and programs that work on reconciliation and unity, for better monitoring and evaluation.

One of the strategic tools used by the NURC to achieve the objectives of the national policy in building a united Rwanda with equal rights to all is the process of Monitoring and Evaluation – to check if all partners are diligently implementing the national policy and if the resolutions are executed; put in place basic indicators for evaluation; effective mechanism for follow up to mitigate divisionism; denounce divisive activities or publications; build capacity of all partners in the areas of peace and unity.²⁰⁴

In order for Rwanda to recover its essence, the NURC considered that Rwandan people needed to make a thorough self-assessment and reconcile with their own conscience as Rwandans and discuss truly and openly about their cohabitation. It is in this very scope that in the second year of NURC's existence, *The Unity and Reconciliation Evaluation Day* was organized on November 23rd, 2001.²⁰⁵

It was organized to allow leaders and the citizens to set up strategies for strengthening progress made so far and to assess obstacles to harmonious coexistence of Rwandans.²⁰⁶

Sri Lanka too can follow this lead and hold discussions to gauge the public understanding on the various reconciliatory efforts taken by the government, and also to clarify any misunderstandings of the policies in place and voice their grievances. Regular consultations would make the population feel they are called upon to play their part in building unity and reconciliation.

²⁰² *ibid.*

²⁰³ Ezechiel Sentama, 'National Reconciliation in Rwanda: Experiences & Lessons Learnt' EUI Middle East Directions February 2002 <<https://cadmus.eui.eu/bitstream/handle/1814/74338/QM-09-22-105-EN-N%5B54%5D.pdf?sequence=1&isAllowed=y>> accessed 20 October 2023

²⁰⁴ National Unity & Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 12 March 2024

²⁰⁵ National Unity and Reconciliation Commission, *Report on the Evaluation of National Unity and Reconciliation* (Kigali, June 2002) <<https://repositories.lib.utexas.edu/bitstream/handle/2152/5515/2805.pdf?sequence=1>> accessed 29 February 2024

²⁰⁶ *ibid.*

20. INSTITUTIONAL REFORMS

“The building of our nation must be based on institutions rather than individuals if we are to make it sustainable”²⁰⁷ – President Paul Kagame.

Promoting Unity and Reconciliation was also enhanced by reforming state institutions directly delivering or contributing towards unity of Rwandans. A Constitutional amendment was brought in to establish a national fund for the support of genocide survivors.²⁰⁸

These reforms were a complete institutional overhaul in areas of gender, children and other special groups, institutions to combat corruption and injustice and ensuring state support for genocide survivors.²⁰⁹ After the genocide, the speed at which new institutions were established and former ones strengthened to hold the country together was reportedly commendable.²¹⁰

This overhauling of structural institutions was enhanced by establishment of relevant organs/institutions with specialized mandate of protection and promotion of human rights for better dispensation of justice.

These institutions include,

- The national fund for the support of Genocide survivors (GARG),
- National Unity and Reconciliation Commission (NURC),
- National Commission for Human Rights (NCHR),
- The Office of the Ombudsman,
- The National Commission to fight against Genocide (CNRG)
- Gender Observatory Monitoring Office (GOM),
- National Council for Women (NCW),
- *Itorero*,
- *Ingando* solidarity camps which has transformed itself into *Intore z'igihugu* (civic education program).²¹¹

All these institutions which are largely decentralized to the lowest administrative unit of the country have a legal duty to promote unity and reconciliation of Rwandans and to protect citizens from acts of human rights abuses.²¹²

21. PRESERVING HISTORY/ARCHIVING

One of the impressive initiatives of preserving history was from Canada. The Truth and Reconciliation Commission (TRC) in Canada spotlighted the pivotal role of the National Centre for Truth and Reconciliation (NCTR) in the country's path toward reconciliation, as mandated by the Commission.²¹³

²⁰⁷ National Unity & Reconciliation Commission, *Unity and Reconciliation Process in Rwanda*, December 2016 <<https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/UNITY-AND-RECONCILIATION-PROCESS-IN-RWANDA.pdf>> accessed 12 March 2024

²⁰⁸ 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 the Regional Forum on International and Transitional Justice organized by Avocats Sans Frontières-Uganda Mission and the Uganda Coalition of the International Criminal Court on 30th July, 2012 at Imperial Botanical Beach Hotel, Entebbe <<https://www.asf.be/wp-content/uploads/2012/10/Rwanda-Situation-Analysis.pdf>> accessed 23 February 2024

²⁰⁹ *ibid.*

²¹⁰ *ibid.*

²¹¹ *ibid.*

²¹² *ibid.*

²¹³ The TRC Report online, < <https://nevillepark.github.io/trc/commission-activities/>>, accessed on 20/12/2023

Through the TRC's directives, the NCTR emerged as a pivotal institution entrusted with safeguarding the narratives, documents, and testimonies gathered during the commission's proceedings. As stated in the country chapter, the NCTR found its permanent home at the University of Manitoba, following a thorough review process and it reflects the university's commitments/contributions to preserving these vital pieces of Canadian history. At its core, the NCTR operates under the guidance of a Trust Deed and Administrative Agreement²¹⁴ underscoring its commitment to accountability and transparency.

It is worth mentioning that two pivotal bodies, the Governing Circle and the Survivors Circle, actively participate in ensuring that the promises made to survivors are upheld. By engaging these circles, the NCTR not only acknowledges the importance of survivor voices but also embeds their perspectives into its operations, fostering a more inclusive and representative approach to reconciliation.

The NCTR plays the crucial role as the custodian of all materials gathered by the TRC and this responsibility underscores the NCTR's commitment to preserving the historical records for future generations and ensuring that the truth remains accessible to all Canadians. Further, a mechanism has been adopted to obtain the consent from the participants to have their statements archived for future reference.²¹⁵

Archiving is significant in the promotion of transparency, accountability and democratic development. Paper documents and digital records generated through any TRC will require an information management infrastructure for dissemination, the promotion of freedom of information, understanding the root of the conflicts and avoiding recurrence. Proper preservation of these documents are also essential in order to prevent the misuse of these records.²¹⁶

Liberia faced numerous challenges in the form of lack of functioning national information institutions, adequate personnel, information management skills, financial resources, internet diffusions and low levels of education in disseminating the information that was generated through the TRC report.²¹⁷

Liberia is a unique case, hence making history as the first sovereign state to hand over its entire truth commission's documentation for safe archive to a foreign power, making it inaccessible to the Liberians.²¹⁸ The Independent Human Rights Commission that was established to continue the work of the TRC and implement its recommendations does not have access to the archives.²¹⁹ The Chairman of the TRC stated that they had no other options since the government had no plans for these important documents. Due to this archiving process, there had been threats to the TRC at the end of its mandate. Financial problems too resulted in the

²¹⁴ The NCTR is governed by a Trust Deed and Administrative Agreement signed by the Commission and the university. A Governing Circle and Survivors Circle play important roles in ensuring the promises undertaken to Survivors are honoured. The NCTR also works in direct partnership with a growing number of universities, colleges, and other organizations across the country, The TRC Report online, <<https://nevillepark.github.io/trc/commission-activities/>> accessed on 20/12/2023)

²¹⁵ Truth and reconciliation Commission of Canada, 'Truth and Reconciliation Commission of Canada : Interim Report 2012, https://www.bishop-accountability.org/reports/TRC_Canada/TRC_Canada_Interim_Report_2012_02_24_Original.pdf, accessed on 1/11/2023

²¹⁶ Proscovia Svard, *Archiving challenges in Africa: The Case of Post- Conflict Liberia*, (2008) <https://www.iasa-web.org/sites/default/files/IASA_journal32_part7.pdf>accessed on 29.05.2024

²¹⁷ *ibid*

²¹⁸ Julia Crawford, *Why Liberia's TRC archives stay in a US University?*, Justiceinfo.net, 9th June 2020<<https://www.justiceinfo.net/en/44506-why-liberia-trc-archives-stay-in-us-university.html>>accessed on 29.05.2024

²¹⁹ The Liberian Truth And Reconciliation Commission Mittuniversitetet, Mid Sweden University, <<https://www.archivists.org.au/documents/item/1588#:~:text=The%20TRC%20entrusted%20all%20of,kept%20in%20a%20foreign%20country.>>accessed on 29.05.2024

threat of eviction as the government refused to pay the rent and leaving the archives there could have exposed them to insecurity and destruction.²²⁰

Georgia University of Technology (GIT) in the United States is the named ‘custodian’ for these archives under the agreement between GIT and the Liberian TRC; with the understanding that at the ‘right timing’ or when a ‘more responsible government’ is established, the archives would be returned to Liberia.²²¹

As the Information Management component was missing in the TRC budget,²²² there was no IM infrastructure in place to facilitate the management of documentation; no records manager or archivists but database managers; and there was no legal framework to promote information access.²²³

10,000 pages of the TRC report was assembled but the UNDP committed to only 1,500 pages. The rest remains unpublished.²²⁴

22. COMMEMORATION AND MEMORIALIZATION

The IRSSA in Canada, with its non-compensatory and compensation-related components, provides valuable lessons for Sri Lanka in its own efforts towards reconciliation and addressing historical injustices. The Common Experience Payment (CEP) in Canada recognized the shared experience of residential school attendance and provided compensation to survivors.²²⁵ Similarly, Sri Lanka could acknowledge the common experiences of victims of conflict and provide mechanisms for recognition and compensation.

Furthermore, the Independent Assessment Process (IAP) in Canada provided a formalized process for survivors to seek compensation for serious abuses suffered in residential schools.²²⁶ Sri Lanka could consider implementing a similar adjudicative process for survivors of human rights abuses during the conflict, ensuring fair and impartial assessment of claims. By learning from the IRSSA, Sri Lanka can develop a comprehensive approach to reconciliation that addresses the needs of victims and survivors, promotes healing and accountability, and contributes to lasting peace and stability.

²²⁰ Julia Crawford, *Why Liberia's TRC archives stay in a US University?*, Justiceinfo.net, 9th June

2020 <<https://www.justiceinfo.net/en/44506-why-liberia-trc-archives-stay-in-us-university.html>> accessed on 29.05.2024

²²¹ *ibid*

²²² Proscovia Svard, *Questionnaire by Proscovia Svard*,

<<https://www.ohchr.org/sites/default/files/Documents/Issues/Truth/CallLegacyColonialism/CSO/Proscovia-Svard.pdf>> accessed on 29.05.2024

²²³ The Liberian Truth And Reconciliation Commission Mittuniversitetet, Mid Sweden University,

<<https://www.archivists.org.au/documents/item/1588#:~:text=The%20TRC%20entrusted%20all%20of,kept%20in%20a%20foreign%20country.>> accessed on 29.05.2024

²²⁴ *ibid*

²²⁵ Compensation was provided up to \$275,000, based on nature of the abuse and the level of harm suffered by each student.⁷⁰ Once the IRSSA received Court approval, IAP applications from survivors were accepted from September 19, 2007 to September 19, 2012.⁷¹ As the IAP was framed as part of a settlement of a class action, it was no longer an “opt-in” alternative to litigation. With the Settlement Agreement, the IAP was now the only way to claim compensation for abuse at a residential school, other than for those who explicitly opted out of the class action settlement within the timeframe allotted by the Courts or those who, by the application deadline, had not filed claims in Court, the ADR or the IAP, Independent Assessment Process Oversight Committee-2021, ‘Independent Assessment Process’, https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/04/IAP_Final_Report_English_Feb-1678.pdf, accessed on 30/1/2024, pg.22

²²⁶ Independent Assessment Process Oversight Committee-2021, ‘Independent Assessment Process’, https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/04/IAP_Final_Report_English_Feb-1678.pdf, accessed on 30/1/2024, pg.22

Furthermore, the allocation of funds for commemoration initiatives under the IRSSA in Canada highlights the importance of remembering, and memorializing the experiences of the victims and witnesses. Apparently, the initiatives undertaken by the TRC by calling for project proposals and supporting community events played a significant role in promoting reconciliation in Canada.²²⁷ As discussed in the country chapter, the decision of the Government of Canada to memorialize the legacy of Indian residential schools through the installation of a stained-glass window in the Centre Block of Parliament Hill is a powerful example of Canadian commitment to recognizing and acknowledging the impact of residential schools on Indigenous communities.²²⁸ Significantly, the selection of an Indigenous artist to design the window further emphasizes the importance of Indigenous perspectives.

Hence, it is worth mentioning that by allocating resources for commemoration initiatives and supporting community-led events, Sri Lanka can honour the experiences of victims and witnesses and this process can contribute to the healing of individual and collective wounds, facilitating the rebuilding of trust and relationships.

23. SIGNIFICANCE OF RECONCILIATION AND TRUTH TELLING

In the case of Australia, reconciliation was all about strengthening relationships between Aboriginal and Torres Strait Islander peoples and non-indigenous people, for the benefit of all Australians.²²⁹ Truth telling in relation to their history is important to Australia as it reveals colonial oppression and dispossession, whilst acknowledging the resilience and strength of the Aboriginal and Torres Strait Islander peoples and their cultures throughout the centuries.²³⁰

For Australians, the truth is that the past is very much with them today. The devastation the indigenous community had suffered cannot be addressed unless the whole community engages fully and sincerely with the stories of the past and to understand and commit themselves to reconciliation. For many, the trauma of the sufferings has had lasting intergenerational impacts.²³¹

²²⁷ The Settlement Agreement allocated \$20 million for commemoration initiatives. These were defined as initiatives that would honour, educate, remember, memorialize, and pay tribute to former residential school students, their families, and their communities. The Commission issued two separate calls for commemoration project proposals. The maximum funding award for a project advanced by a single group was \$50,000. Up to ten communities could collaborate on a submission for a maximum contribution of \$500,000, and a commemoration project of national scope was eligible for a contribution of up to \$2 million. The Commission recommended 152 projects to the federal Department of Aboriginal Affairs and Northern Development for funding, and 143 projects were a

²²⁸ The Government of Canada's decision to memorialize the legacy of Indian residential schools through the permanent installation of a stained-glass window in the Centre Block of Parliament Hill. The design selected for the window was created by Aboriginal artist Christi Belcourt and is entitled Giniigaaniimenaaning or Looking Ahead, Honouring the truth, reconciling for the future- TRC Summary of the final report of the truth and reconciliation commission of Canada, https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2021/03/TRC_Summary-of-the-Final-Report-of-the-Truth-and-Reconciliation-Commission-of-Canada.pdf, accessed on 30/10/2023

²²⁹ What is Reconciliation? <<https://www.reconciliation.org.au/reconciliation/what-is-reconciliation/#:~:text=At%20its%20heart%2C%20reconciliation%20is,the%20benefit%20of%20all%20Australians>>, accessed on 29.05.2024

²³⁰ Reconciliation Australia, *Truth-Telling*, <<https://www.reconciliation.org.au/our-work/truth-telling/#:~:text=Telling%20the%20truth%20about%20our,Strait%20Islander%20peoples%20and%20cultures>> accessed on 29.05.2024

²³¹ Reconciliation, *Bringing them Home*, <<https://bth.humanrights.gov.au/healing/reconciliation>> accessed on 29.05.2029

“Reconciliation concerns both Indigenous and non-Indigenous Australians - we are bound to each other's fate. In order to achieve reconciliation, we must heal together...” Hence reconciliation is everyone's responsibility.²³²

24. VICTIM AND WITNESS PROTECTION

The Liberian TRC had a Security and Protection Unit that established a witness protection program with advice from the International Committee of the Red Cross. However, lack of financial resources meant that long term protection for witnesses was a concern.²³³ Nevertheless, private, in-camera hearings that were used guaranteed security for witnesses and dignity and protection for minors.²³⁴

In Rwanda the government employed a formal and informal mechanism to respond to threats against witnesses.²³⁵ Formal process included the government's principal organ for victim and witness protection, the Victim and Witness Support Unit (VWSU). It was established in 2006, which was housed within the National Public Prosecution Authority (NPPA).²³⁶ VWSU was in charge of investigating allegations of threats and harassment and also providing psychological support to victims and witnesses. This unit had seventeen staff members, with one officer in each of the former twelve provinces and five based in Kigali, including the coordinator, one member focusing on witness protection, one on victim protection, and a safe house manager. These staff members were of different professional backgrounds and included lawyers, sociologists, psychologists and social workers.²³⁷

The unit works closely with the police and local authorities to focus on the witnesses' basic rights, protection of mental and physical health. They are provided with legal aid and advice, in addition to teaching them auto protection or means of ensuring security to oneself, comfort and counselling.

Drawing on the existing state resources, neighbourhood security and self-protection were some of the unit's protective measures. State protection was provided as:

- local defence units at Gacaca hearings;
- use of police night patrols to prevent harassment of witnesses;
- police investigations of physical assault and homicide;

Whilst the neighbourhood security and self-protection relied on the local community supporting witnesses in providing testimony, the VWSU also responded to the traumatising and other needs of survivors arising from giving testimony.

²³² Tom Calma, 'National Day of Healing: Everyone's responsibility', Australian Human Rights Commission, 25 May 2005 <<https://bth.humanrights.gov.au/healing/reconciliation>> accessed on 29.05.2024

²³³ William J Long, Liberia's Truth And Reconciliation Commission: An Interim Assessment, <https://www3.gmu.edu/programs/icar/ijps/vol13_2/IJPS13n2%20LONG.pdf> accessed on 02.06.2024

²³⁴ *ibid*

²³⁵ Testifying to Genocide: Victim & Witness Protection in Rwanda, REDRESS, October 2012, <<https://redress.org/wp-content/uploads/2018/01/Oct-12-Testifying-to-Genocide-Rwanda.pdf>> accessed on 03.06.2024

²³⁶ *ibid*

²³⁷ *ibid*

The VWSU adopted a four stage²³⁸ response to threats and intimidation.

- In Stage One, when addressing low-level threats, the VWSU filed a formal complaint with local authorities – usually sector- councils at the sector level – who are tasked with investigating the threat and remedying the situation.
- A Stage Two response became necessary when Stage One threats continued or escalated. In such instances, the VWSU had to inform the local police, army or local administration, whose task was to post a guard or increase patrols around the threatened witness's home. If it is determined that the witness's neighbours are the source of the threat, local authorities convened a community meeting to warn neighbours that this behaviour will not be tolerated.
- In Stage Three, where threats persisted, a permanent police or military guard was placed at a witness's house. If the witness suffered further or more severe threats, the VWSU took the steps to temporarily move him or her to a safe house or another community.

At each of these stages, individuals found responsible for threatening genocide witnesses are liable to criminal sanctions.

The threat to the victims and witnesses were so significant that the Public Prosecutor's office had to direct all regional prosecutors to invite district mayors and other local authorities, including army and police commanders and district presidents, to discuss solutions to problems of threats and harassment against genocide witnesses. Common solutions were proposed across the majority of districts, including: arresting genocide suspects responsible for many threats against witnesses; holding regular community meetings to discuss the importance of witness testimony and problems of intimidation; encouraging further neighbourhood security; closing bars early because many threats against witnesses were perceived as happening after people had been drinking heavily at night; and encouraging witnesses to go home earlier in the evening.²³⁹

Research conducted stated that a lack of understanding and support at grassroot levels for victims suffering from trauma led to many being isolated. Resources being limited to offer psycho social support required the strengthening of possible avenues for trauma counselling and support.²⁴⁰

²³⁸ *ibid*

²³⁹ *ibid*

²⁴⁰ *ibid*