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TRANSITIONAL JUSTICE MECHANISMS UNDER THE AFRICAN HUMAN RIGHTS
SYSTEM: PROSPECTS AND CHALLENGES FOR COUNTERING MASSIVE HUMAN RIGHTS
VIOLATIONS IN CAMEROON

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF THE DEGREE OF
MASTER OF LAWS IN HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA

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DEDICATION

I dedicate this study to those who have lost their lives in the ongoing Cameroon anglophone conflict.

ACKNOWLEDGEMENT

The success and final outcome of this dissertation required a lot of guidance and assistance from many people and I am extremely privileged to have gotten that guidance during this study.

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Table of Contents

<u>PLAGIARISM DECLARATION.....</u>	<u>I</u>
<u>DEDICATION.....</u>	<u>II</u>
<u>ACKNOWLEDGEMENT.....</u>	<u>III</u>
<u>LIST OF ABBREVIATIONS.....</u>	<u>VII</u>
<u>LIST OF CASES.....</u>	<u>VIII</u>
<u>CHAPTER ONE.....</u>	<u>1</u>
1.1 BACKGROUND TO THE STUDY.....	1
1.2 PROBLEM STATEMENT.....	3
1.3 DEFINITION OF KEY TERMS.....	4
1.3.1 TRANSITIONAL JUSTICE.....	4
1.3.2 AFRICAN HUMAN RIGHTS SYSTEM.....	4
1.3.3 HUMAN RIGHTS.....	5
1.3.4 SERIOUS OR MASSIVE HUMAN RIGHTS VIOLATIONS.....	5
1.4 RESEARCH QUESTIONS.....	6
1.4.1 MAIN RESEARCH QUESTION.....	6
1.4.2 SPECIFIC RESEARCH QUESTIONS.....	6
1.5 RESEARCH OBJECTIVES.....	6
1.5.1 GENERAL OBJECTIVE.....	6
1.5.2 SPECIFIC OBJECTIVES.....	6
1.6 CHOICE AND RELEVANCE OF THE STUDY.....	7
1.7 METHODOLOGY.....	7
1.8 LITERATURE REVIEW.....	8
1.9 SCOPE AND LIMITATION OF THE STUDY.....	10
1.10 SYNOPSIS OF CHAPTERS.....	10
<u>CHAPTER TWO.....</u>	<u>13</u>
<u>UNDERSTANDING TRANSITIONAL JUSTICE AND ITS RELEVANCE TO HUMAN RIGHTS PROTECTION IN CAMEROON.....</u>	<u>13</u>

2.1 INTRODUCTION	13
2.2 THE HUMAN RIGHTS SITUATION IN CAMEROON.....	13
2.3 UNDERSTANDING TRANSITIONAL JUSTICE	16
2.4 THE AFRICAN UNION TRANSITIONAL JUSTICE POLICY.....	18
2.4.1 PRINCIPLES UNDERLING THE AFRICAN UNION TRANSITIONAL JUSTICE POLICY	19
2.4.2 INCLUSIVE ELEMENTS OF TJ.....	21
2.4.2 CONSIDERATION FOR CROSS-CUTTING ISSUES WHEN DEALING WITH TJ	22
2.4.3 ACTORS, PROCESSES AND IMPLEMENTATION MECHANISMS FOR TJ	23
2.4 CONCLUSION	24

CHAPTER THREE **26**

PROSPECTS OF PURSUING TJ UNDER THE AFRICAN COMMISSION FOR HUMAN RIGHTS VIOLATIONS IN CAMEROON..... **26**

3.1 INTRODUCTION	26
3.2 PROCEDURES TO PURSUE TJ UNDER THE AFRICAN COMMISSION FOR HUMAN RIGHTS VIOLATIONS IN CAMEROON	27
3.2.1 COMMUNICATIONS PROCEDURES.....	27
3.2.2 STATE REPORT REVIEW PROCESS	29
3.2.3 MISSIONS UNDERTAKEN BY THE AFRICAN COMMISSION	30
3.2.3.1 Protective mission	31
3.2.3.2 Promotional missions	31
3.2.4 ON-SITE INVESTIGATIONS AND GOOD OFFICE OF THE AFRICAN COMMISSION	32
3.2.5 STATEMENTS AND RESOLUTIONS.....	34
3.2.6 SPECIAL MECHANISMS	35
3.3 CONCLUSION.....	38

CHAPTER FOUR..... **40**

CHALLENGES IN PURSUING TRANSITIONAL JUSTICE FOR SERIOUS HUMAN RIGHTS VIOLATIONS IN CAMEROON..... **40**

4.1 INTRODUCTION	40
4.2 CHALLENGES IN PURSING TJ FOR SERIOUS HUMAN RIGHTS VIOLATIONS	40
4.2.1 CHALLENGES IN IMPLEMENTING TJ AT THE LEVEL OF THE AFRICAN COMMISSION.....	42
4.2.1.1 Lack of special state reporting procedures for fragile states.....	42

4.2.1.2 Lack of a clear and well-defined guideline for TJ 43

4.2.1.3 Political influence over the African Commission 43

4.2.1.4 Refusal of state parties to grant access to on-site investigations and visits 44

4.2.1.5 Lack of a special mechanism focusing on TJ at the African Commission 45

4.2.2 CHALLENGES AT THE LEVEL OF CAMEROON..... 46

4.2.2.1 Denialism of an anglophone problem 46

4.2.2.2 Continued armed violence and heavy militarisation of the English speaking regions..... 47

4.2.2.3 Weak and questionable institutions..... 48

4.2.2.4 The lack of political will 49

4.3 CONCLUSION..... 50

CHAPTER FIVE..... 51

CONCLUSION AND RECOMMENDATIONS 51

5.1 INTRODUCTION 51

5.2 CONCLUSION 51

5.3 RECOMMENDATIONS 52

BIBLIOGRAPHY 56

LIST OF ABBREVIATIONS

African Charter	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
AU	African Union
AUTJP	African Union Transitional Justice Policy
CACSC	Cameroon Anglophone Civil Society Consortium
CAR	Central African Republic
CHRDA	Centre for Human Rights and Democracy in Africa
CTPA	Committee for the prevention of Torture in Africa
DDR	Disarmament, Demobilisation and Reintegration
ECCAS	Economic Community of Central African States
ICTJ	International Centre for Transitional Justice
IDPs	Internally Displaced Persons
NGO	Non-Governmental Organisation
PCRD	African Union Policy on Post-Conflict Reconstruction and Development
PWDs	Persons with Disabilities
TJ.	Transitional Justice
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
NHRI	National Human Rights Institutions

LIST OF CASES

Communication 299/05, Anuak Justice Council v Ethiopia ACHPR 3 (2006).....	27
Communication N0.266/2003, Mgwanga Gunme v Cameroon ACHPR 99 (2009)	43
Communications N0s. 27/89, 46/91, 49/91 and 99/93, Organisation Mondiale Contre La Torture and Association Internationale des juristes Democrates, Commission Internationale des Juristes and Union Inter africaine des Droits de l'Homme v Rwanda, (1996).....	27

CHAPTER ONE

1.1 Background to the study

The protection of human rights is most challenged during conflicts.¹ Conflict situations present a threat not only to human rights per se but also greatly affects the work of organs and institutions charged with human rights protection. Observing human rights is often not a consideration for conflicting parties.² History has shown from the different conflict situations across the continent that we witness the most blatant and gruesome violations of human rights being perpetrated during times of conflict. The need to build back better from these violations through transitional justice (TJ) mechanisms cannot be overemphasised.

Under the African human rights system, the African Commission on Human and Peoples' Rights (African Commission) is mandated to respond to any serious and massive violations of human rights.³ This directive serves as the basis for operationalising the framework for protection during massive violations of human rights. As a primary human rights body in Africa, with a broad quasi-judicial mandate, the African Commission has the responsibility to use different mechanisms at its disposal to significantly deal with conflicts and other serious human rights violations.

TJ provides an opportunity to address serious human rights violations resulting from conflicts. The undercurrents of TJ and the resort to some forms of TJ processes by many member states has pushed the African Commission to act on its mandate,⁴ by passing a resolution on Transitional Justice in Africa.⁵ The resolution, "called for a study to be undertaken on TJ in Africa with the purpose of; identifying various existing TJ mechanisms in Africa; identify TJ legislative framework, in accordance with the African Commission's mandate to promote and protect human rights in Africa; determine the African Commission's role in implementing the African Union Transitional Justice Policy (AUTJP); analyse the opportunities and challenges of the African Commission in encouraging and supporting TJ processes and mechanisms in Africa, and analyse the possibility for the establishment by the African Commission, a special mechanism on TJ in Africa".⁶

¹ United Nations Human Rights Office of the High Commissioner (OHCHR) *International legal protection of human rights in armed conflict*, 2011 at 33.

² As above.

³ Article 58 (1) of the African Charter on Human and Peoples' Rights 1986.

⁴ Article 45 (African Charter)

⁵ Resolution 235 on transitional justice in Africa- ACHPR/Res.235(LIII) 2013.

⁶ As above.

A well developed and implemented TJ mechanism offers an avenue for countries gradually coming out of conflict situations, to design and implement policies to address the root causes of the conflict and rollout redress and reconciliatory procedures. The African human rights system presents both a legal and institutional framework for exploring TJ processes with the hope of rebuilding from the conflicts.

The development and origin of TJ processes within the African human rights system is therefore aimed at responding to serious human rights violations and the attendant injustices in societies emerging from armed conflicts, such as the ‘anglophone conflict’ in Cameroon.⁷ This can be achieved by establishing an inclusive political and socio-economic system that is able and willing to enforce human rights.⁸

Cameroon has been in the throes of a bloody conflict in the English-speaking regions since 2016. It is a conflict over political, cultural rights and identity.⁹ In 2016, lawyers and teachers from the English-speaking regions protested against the gradual erosion of the Common law and the Anglo-Saxon system of education practised in that part of the country.¹⁰ The crisis escalated in 2017 following the ban of the Cameroon Anglophone Civil Society Consortium (CACSC);¹¹ The arrest of the consortium leaders and the declaration of independence of a new state ‘Ambazonia’ by a group of separatist leaders who had emerged from these grievances.¹²

Since then, the conflict has deteriorated with government forces implicated in serious human rights violations such as extrajudicial and summary executions, torture, forced disappearances, arbitrary arrest and incommunicado detention,¹³ arson and destruction of villages.¹⁴ Talks around peace ring

⁷ The term anglophone conflict became prominent in 2017 following the widespread violence that broke out between state security forces and separatist fighters who are seeking to take control over the English part of Cameroon. Prior to 2017, the marginalisation of anglophones had been referred to as a ‘problem’ or ‘question’.

⁸ African Commission on Human and Peoples’ Rights ‘Study on transitional justice and human and peoples’ rights in Africa’ (2019) at 1.

⁹ E Lyombe, ‘The ‘anglophone problem’ in Cameroon: group identity, cultural and politics of nostalgia’ (2003) *Journal of Third World Studies* at 86.

¹⁰ International Crisis Group ‘Cameroon anglophone crisis at the crossroad’ (2017) available at: <https://www.crisisgroup.org/africa/central-africa/cameroon/250-camerouns-anglophone-crisis-crossroads> (accessed 24 September 2021).

¹¹ CACSC consisted of lawyers and teachers trade unions from the English regions of Cameroon. They opposed what they saw as threats against the language and common law system in the English regions, particularly the use of French in schools and courtrooms.

¹² France24 ‘Security tightens as anglophone separatists symbolically proclaim ‘independence’ (2017) available at: <https://www.france24.com/en/20171001-cameroon-security-anglophone-separatists-proclaim-independence-paul-biya> (accessed 23 July 2021).

¹³ Human Rights Watch ‘Cameroon: Routine Torture, incommunicado Detention’ (2019) available at: <https://www.hrw.org/news/2019/05/06/cameroon-routine-torture-incommunicado-detention> (accessed 24 September 2021).

¹⁴ Centre for Human Rights and Democracy in Africa ‘Cameroon: The Anglophone Crisis, 206 Villages burnt in the North West and South West Regions’ (2019) available at: <https://www.chrda.org/206-villages-raided-and-partially-or-severely-burnt-in-the-anglophone-regions-of-cameroon-since-2016/> (accessed 24 July 2021).

hollow, and the conflict has escalated mainly because of the harsh government response and constant denialism of the 'anglophone problem'. This has resulted in the unleashing of the full might of the military against unarmed and peaceful demonstrators. Separatist fighters have equally inflicted pain on civilians who do not support their agenda through kidnapping, maiming and targeted killings.

1.2 Problem Statement

The African human rights system through the different institutions such as the African Commission has made great strides in laying a foundation for TJ in Africa through useful pronouncements and policy adoptions such as Resolution 235.¹⁵ The African Union has also adopted the AUTJP.¹⁶ However, despite these steps taken, there is still a lack of direction on how the relevant human rights instruments and policies under the African human rights system best inform and shape TJ processes to ensure protection of the rights guaranteed. The adoption of policies and resolutions without a clear road map for implementation poses a challenge to TJ processes. In the event that these resolutions and guidelines are adopted, the lack of political will amongst member states may also result in a failure to explore TJ.

The peculiarity of the situation in Cameroon also poses potential problems for the prospects of TJ. Although the government has taken some cosmetic steps in an attempt to solve the conflict and restore peace such as organising a national dialogue,¹⁷ creating Disarmament, Demobilisation and Reintegration Centres (DDR) in the two English speaking regions,¹⁸ the continuous violence and military presence in the English speaking regions makes it difficult to explore and implement TJ.

Currently, very little has been done by the African Commission and other AU institutions to propose or pursue TJ mechanisms to address serious human rights violations in Cameroon. This inevitably raises issues concerning the TJ processes under the African human rights system and its applicability to addressing massive and serious violations resulting from conflicts.

This research recognises that TJ is still a recent concept within the African human rights system. The focus, however, is to highlight the implication of a continuing lack of comprehensive TJ implementation mechanisms while the human rights situation primarily resulting from conflict across the continent continues to deteriorate.

¹⁵ See n5 (Resolution 235).

¹⁶ African Union Transitional Justice Policy (2019).

¹⁷ Aljazeera News 'Cameroon to hold 'national dialogue' on separatist crisis (2019) available at: <https://www.aljazeera.com/news/2019/9/11/cameroon-to-hold-national-dialogue-on-separatist-crisis> (accessed 24 September 2021).

¹⁸ See Decree N0 2018/719 of 30 November 2018 to establish the National Disarmament, Demobilisation and Reintegration committee.

1.3 Definition of key terms

This study avers definitions of key terms to provide an understanding to some important concepts used in the research. These definitions includes transitional justice, the African human rights system, human rights and serious or massive human rights violations. The definition of TJ in this section only provides an introductory understanding of the term; the concept is dealt with extensively in the subsequent chapter.

1.3.1 Transitional Justice

The International Centre for Transitional Justice describes TJ as “the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response”.¹⁹

The United Nations has defined TJ as;

The full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliations.²⁰

1.3.2 African human rights system

The African human rights system is a regional human rights system created within the African Union. It contains human rights treaties between AU member states and mechanisms for monitoring compliance of these treaties.²¹ The principal human rights instrument in Africa is the African Charter on Human and Peoples' Rights, which protects civil and political rights and economic, social, and cultural rights.²² The African human system consists of regional instruments and mechanisms that play an important role in promoting and protecting human rights. These mechanisms include the African Commission, Special Rapporteurs and Courts, which help in the implementation of the various instruments.²³

¹⁹ International centre for transitional justice, available at: <https://www.ictj.org/about/transitional-justice> (accessed 24 September 2021).

²⁰ ‘The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para.8.

²¹ Women Enabled International Accountability toolkit, ‘African human rights system factsheet’ available at: <https://www.womenenabled.org/atk.html> (accessed 12 October 2021).

²² M Mutua, ‘The African human rights system; a critical evaluation’ (2000) *Human Development Report* at 1.

²³ Universal Rights Group Geneva, ‘A rough guide to the regional human rights systems’ (2020) at 6.

1.3.3 Human rights

Human rights are rights that everyone should have simply because they exist as human beings. These rights are inherent in all, regardless of any consideration such as nationality, sex, national or ethnic origin, colour, religion, language, or any other status. They include most fundamental right, which is the right to life, and other rights necessary for our everyday life such as the rights to food, health, and education.²⁴ Human rights can also be defined as claims which all human beings enjoy by virtue of their humanity,²⁵ or the manifestation of moral claims into positive law.²⁶

1.3.4 Serious or massive human rights violations

The term serious or massive violations of human rights are often used to refer to violations of sever gravity.²⁷ However, for the purpose of this research, the term serious or massive violations of human rights will be used for the sake of uniformity of terminology. The Africa Charter in Article 58 fails to define what a serious or massive violation of human rights entails. However, the scope of serious or massive violations may exceed civil and political rights and can also include violations of socio-economic and cultural rights.²⁸

When assessing the seriousness of a violation, various factors must be taken into consideration, such as the number of victims, the recurring violations and the failures of the state to take appropriate measures to redress such violations.²⁹ The violation of any human right can occasion or lead to serious violations. For instance, the impact of arms and their misuse on the enjoyment of human rights that primarily affect the rights to life, liberty, and security of persons will amount to serious or massive violations.³⁰

The 1993 UN Vienna Declaration and Program of Action in paragraph 30 provides that an acts should amount to serious or massive human rights violations if;

²⁴ United Nations Human Rights Office of the High Commissioner, 'What are human rights? Available at <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx> (accessed 11 October 2021).

²⁵ J Donnelly 'Human rights, democracy, and development' 21 (1999) *Human Rights Quarterly* at 615

²⁶ F Viljoen, *International human rights law in Africa* (2) (2012) at 1.

²⁷ T Karimova 'What amounts to a serious violation of international human rights law? An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty', (2014) *Academy Briefing N0 6, Geneva Academy of International Humanitarian Law and Human Rights*.

²⁸ Geneva academy briefing No.6, 'What amounts to 'a serious violation of international human rights law'? An analysis of practice and expert opinions for the purpose of the 2013 Arms Trade Treaty' (2014) *Geneva Academy of International Humanitarian Law and Human Rights* at 5.

²⁹ M Quiroga, 'The battle of human rights: Gross, systematic violations and the Inter-American system' (1988) at 11.

³⁰ R Liwanga, 'The meaning of gross violations of human rights: a focus on international tribunals' decisions over the DRC conflicts' (2020) *Denver Journal of International Law and Policy* at 71.

the gross and systematic violations... include torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.³¹

1.4 Research questions

1.4.1 Main research question

This study seeks to respond to this main question: to what extent can TJ mechanisms under the African human rights system address serious human rights violations in Cameroon?

1.4.2 Specific research questions

- a) What is transitional justice and how relevant is the African Union Transitional Justice Policy (AUTJP) in protecting human rights in Cameroon ?
- b) Does the African Commission have a mandate to implementing the AUTJP, if so, how has this mandate been used to respond to serious human rights violations in Cameroon and on the continent?
- c) What challenges is the African Commission facing in applying the AUTJP in Cameroon and are there any challenges with the state as primary responsibility bearer to explore TJ processes in response to serious human rights violations?
- d) What measures can be put in place to ensure an effective implementation of TJ in Cameroon?

1.5 Research objectives

1.5.1 General objective

The primary objective of this study is to investigate the prospects of TJ processes under the African human rights system in addressing serious human rights violations in Cameroon.

1.5.2 Specific objectives

To achieve the overall purpose of this research, the specific objective includes, to;

³¹ World conference on human rights, Vienna Declaration and Programme of Action, UN.Doc. A/conf.157/23(June 25, 1993).

1. Discuss TJ as described by the AUTJP and its relevance to protecting human rights in Cameroon;
2. Analyse the role of the African Commission in implementing the AUTJP as a response to combating human rights violations in Cameroon;
3. Identify the challenges faced by the African Commission and the government of Cameroon in exploring TJ process for serious human rights violations; and
4. Suggest measures for adoption to ensure an effective implementation of TJ in Cameroon.

1.6 Choice and relevance of the study

TJ has become an important tool to address the consequences of conflicts. Many states in Africa have either made use or are making use of different TJ mechanisms to recovery from and address conflict-related violations. This study is important as it aims to elaborate on the role of the African Commission in implementing TJ processes on the continent. Sharp notes that the conceptual framework to study African realities cannot be located outside the context of Africa,³² hence this study is important as draws on TJ literature in Africa, the various experiences of TJ and the unique mechanisms at the disposal of the African Commission to develop a comprehensive approach to TJ within its broader mandate of responding to serious human rights violations such as the case with Cameroon.

In addition, currently no measures are in place in Cameroon to discuss how the state will emerge and build back from the conflict. This research will be the first comprehensive study on the prospects of TJ in Cameroon.

1.7 Methodology

This research will adopt a doctrinal approach in analysing legal and policy texts at the regional level with the AU and at the national level with Cameroon. Primary and secondary sources shall inform the study. The primary sources encompass a systematic study of the conflict in Cameroon and relevant national and regional legal instruments and case laws relating to TJ. Secondary sources are based on desktop research, books, journal articles, news reports and other publications related to the study. The research shall also draw from some good practices of TJ from other countries, such as Rwanda, with an emphasis on how the policies and practices adopted to provide an effective TJ process can inform the TJ mechanism under the African human rights system to respond to serious violations in Cameroon.

³² D Sharp 'Addressing Dilemmas of the Global and the Local in Transitional Justice' (2014) *Emory International Law Review* at 78.

1.8 Literature review

TJ emanated from third wave of democratisation, offering insights on how the new democracies in Latin America and East and Central Europe will address serious human rights violations committed under previous authoritarian regimes.³³ Since then, the concept of TJ has developed enormously. Contemporary studies have demonstrated that TJ can contribute substantially towards peacebuilding.³⁴ It is also proven to be an efficient method of re-examining justice processes to address human rights violations, and more broadly, to address the root causes of conflict in ways that do not necessarily intend to occasion a political transition.³⁵

As a growing discipline, transitional justice does not only apply to post-conflict, where large scale violations have ended but no attempt has been made to address the violations that occurred.³⁶ It now also applies in contexts where human rights violations are still ongoing.³⁷ This helps to answer the question of when TJ should start and end and what kind of transition should be put in place.³⁸

McEvoy and McConnachie also contend that contrary to the traditional perspective that states are the only actors to initiate TJ, states are now only one among several actors relevant for promoting TJ.³⁹ TJ processes can be initiated with other bodies other than the state and this turns to answer the question as to who bears the responsibility in initiating TJ.⁴⁰ Local communities, civil society and regional and international organisations have emerged as key players in advancing TJ and this allows them to create and implement TJ where the national political leadership is incapable or unwilling.⁴¹

In his article, Wachira adopts an inclusive and participatory approach to TJ. To him, TJ has so far been determined by states with little or no inclusion and participation of the beneficiaries of those initiatives.⁴² He posits that lack of inclusive engagement and participation of beneficiaries in TJ

³³ S Huntington 'The third wave: democratisation in the late twentieth century', (1991) *University of Oklahoma Press* at 34.

³⁴ L Laplante 'Transitional justice and peacebuilding: diagnosing and addressing the socio-economic roots of violence through a human rights framework' *International Journal of Transitional Justice* (2008) at 331.

³⁵ C Lawther & L Maffett *Research handbook on transitional Justice* (2019).

³⁶ T Hansen 'The time and space for transitional justice' in Chery Lawther et al *Research handbook on transitional justice* (2017) at 51.

³⁷ As above.

³⁸ K McEvoy and L McGregor, 'Transitional justice from below: an agenda for research, policy and praxis' in K McEvoy and L McGregor (eds), *Transitional justice from below: grassroots activism and the struggle for change* (2008) at 1.

³⁹ K McEvoy & K McConnachie, 'Victims and transitional justice: voice, agency and blame' (2013) *Social & Legal Studies*, at 489.

⁴⁰ As above.

⁴¹ As above.

⁴² G Wachira 'The African Union transitional justice policy framework and how it fits into the African governance architecture; promise and prospects for the African Court of Justice and Human Rights' (2019) *Cambridge University Press* at 152.

encourages exclusion of victims and survivors of human rights violations. He underlines the importance of making victims and citizens the central point of any TJ conceptualisation, design and implementation in Africa to cure this deficit.⁴³ McEvoy and McConnachie affirm Wachira's position by noting that, TJ processes need to be informed by the perspectives of those who live in the affected communities to be effective.⁴⁴

Agbor and Njieassam hold that the conflict in Cameroon has gone beyond a normally political violence.⁴⁵ Employing TJ in a post or ongoing conflict state that has experienced or is experiencing serious human rights violations is paramount in attaining stability, peace and human rights.⁴⁶ Given the nature of the human rights violations in Cameroon, exploring TJ to address both the plights of victims and the responsibility of perpetrators will help guide Cameroon into an era of accountability and peacebuilding.

Imposing individual and collective responsibility will promote accountability.⁴⁷ However, this view by Agbor and Njieassam appears to be the desired outcome but fails to recognise the weak institutions and high levels of impunity in Cameroon that could make the imposition of criminal responsibility to government officials very difficult.

Westendorf holds that, TJ is the primary avenue to interact with the socio-political dynamics of violence to promote peace and prevent further conflict.⁴⁸ To him, TJ is credited with enabling peace because it looks at the legacy of past injustices by holding to account perpetrators of injustices. This attribute of TJ creates hope among many victims in the international community that "the global legal order may become rooted in justice than anarchy, economic gains or political-military power".⁴⁹

The study of TJ raises critical debates as to if it promotes democracy or reconciliation; if it facilitates the re-establishment of the rule of law, institutional reforms or a human rights culture; or provides an avenue where political leaders are inclined to use the process to offer public acknowledgement or mark a turning point in the state's history and a significant break from the past; or does it provide a political solution through reconstruction of the state; or is it more personal, in that it envisages restoring relationships between conflicting parties?⁵⁰

⁴³ As above at 156.

⁴⁴ See n41 (McEvoy & McConnachie).

⁴⁵ A Agbor and E Njieassam 'Beyond the contours of normally acceptable political violence: is Cameroon a conflict/transitional society in the offing?' (2019) *PER/PELJ* at 16.

⁴⁶ As above.

⁴⁷ As above.

⁴⁸ J Westendorf *Why Peace Processes Fail: Negotiating Insecurity After Civil War* (2015) at 23.

⁴⁹ As above.

⁵⁰ C Call 'Is transitional justice really just?'(2004) *The Brown journal of world affairs* at 11.

In addressing these questions on the role of TJ in peacebuilding and reconciliation, Agbor and Njeassam alluded to the legal and political developments that occurred in many post-conflict transitional societies as good examples of situations where TJ became a tool not only for accountability but also for initiating and managing reconciliation and peacebuilding such as the case of Rwanda and Sierra Leone.⁵¹

1.9 Scope and limitation of the study

This research focuses on TJ mechanisms under the African human rights system *vis-à-vis* the prospects of applicability in the context of the conflict in Cameroon. It analysis the AUTJP and the role of the African Commission in implementing TJ in Africa. This research will draw reference from best practices of TJ in Africa. However, it will be beyond the scope of this research to possibly look at all the countries in Africa that have exploited TJ mechanisms.

1.10 Synopsis of chapters

This research is organised into five chapters. The first chapter provides a background and introduction to the study. It contextualises the problem statements, research questions, and objectives, giving a clear outline of the scope and focus of the research. The chapter also defines the key concepts, methodology, and a review of existing and related literature to the study.

Chapter two discusses the human rights situation in Cameroon that makes TJ necessary to protect human rights and promote peacebuilding. It establishes a general understanding of what TJ is and the role it can play in human rights protection. The chapter will also discuss and analyse the African Union Transitional Justice Policy (AUTJP) as a principal document for TJ in African and the mechanisms put in place for the implementation of TJ.

Chapter three discusses the prospects for pursuing TJ under the African human rights system. This chapter examines how the African human rights system is applying the various regional human rights instruments to pursue TJ. It focuses on some of the mechanisms employed by the African Commission to guide its TJ response, such as communications procedure, state report review process, promotion missions, on-site investigations, resolutions and good office of the Commission, and special mechanisms.

⁵¹ See n47 (Agbor and Njeassam) at 17.

Chapter four focuses on the challenges in pursuing TJ under the African human rights system. This chapter discusses some of the challenges faced by the African Commission in exercising its TJ mandate. Some of these challenges include; failure of state parties to comply with state reporting procedures; lack of a clear and well-defined guideline for TJ; political influence over the Commission; the refusal of state parties to grant access to on-site investigations and visits; and the lack of a special mechanism focusing on TJ.

Chapter five contains the conclusion and recommendations of the research. This chapter presents a summary of the main findings of this research and recommendations for implementation to improve the TJ processes under the African human rights system and how it can address serious human rights violations resulting from conflicts.

CHAPTER TWO

UNDERSTANDING TRANSITIONAL JUSTICE AND ITS RELEVANCE TO HUMAN RIGHTS PROTECTION IN CAMEROON

2.1 Introduction

This chapter discusses the human rights situation in Cameroon that makes TJ necessary as a means to peace in the country. It seeks to establish an understanding of what TJ is and its role in protecting human rights. It will also discuss and analyse the African Union Transitional Justice Policy (AUTJP) as a principal document for TJ in Africa and how this policy can shape and inform the prospects of implementation in Cameroon.

2.2 The human rights situation in Cameroon

Cameroon has been facing a violent conflict in its English speaking regions since October 2016 following a protest by lawyers and teachers from the English speaking region against the erosion of the Common law and Anglo-Saxon system of education practised in those regions of the country. The conflict in the North West and South-west regions, otherwise known as the ‘Anglophone Conflict’ in Cameroon,⁵² is a consequence of the deep-rooted divergence in political stance regarding how the reunified Cameroon should be administered, and a question to the foundations laid during the colonial administration of the territory. This deep-rooted divergence has been referred to as the ‘Anglophone problem’ in Cameroon.⁵³

What was considered the ‘Anglophone problem’ or the ‘Anglophone question’,⁵⁴ took a drastic turn as violence erupted, provoking arguably Cameroon’s biggest crisis today. English-speaking lawyers called for a return to federalism.⁵⁵ They declared that the state exercises its constitutional duty to protect the Anglophone minority and, by so doing, preserve the history, heritage, education and cultural values.⁵⁶

⁵² P Konings and F Nyamnjoh ‘The anglophone problem in Cameroon’ (1997) *The Journal of Modern African Studies* at 35.

⁵³ As above.

⁵⁴ See n7 (Anglophone problem or question).

⁵⁵ C. Okereke, ‘Analysing Cameroon’s anglophone crisis’ (2018) *International Centre for Political Violence and Terrorism Research* at 9.

⁵⁶ As above.

The crisis escalated in 2016 following a brutal crackdown on protesters calling for an end to the French systems' acculturation and obliteration of the English cultures.⁵⁷ Teachers and common law lawyers staged peaceful protests and demonstrations to denounce the attempt to erode the English subsystems of education and the common law practice by the French subsystem of education and civil law practice. They denounced the appointment of French magistrates to the courts in North West and South West Regions and French-speaking teachers who did not have a mastery of the English language.⁵⁸

The advent of the conflict in Cameroon has been characterised by the wanton destruction of property and loss of lives. Numerous reports indicate that hundreds of villages and their inhabitants have been incinerated.⁵⁹ This has led to the homelessness of many with their homes erased through arson attacks from both the state forces and non-state armed groups.⁶⁰ Many others have fled to neighbouring countries with women and children forming the majority.⁶¹ The worsen conflict has led to a dysfunctional economic, political and social sector scaling up a full humanitarian crisis.⁶²

By June 2019, over 1.3 million people in the conflict regions needed humanitarian aid. Based on the report of the United Nations High Commissioner for Refugees (UNHCR) operations data portal lastly updated on 31 July 2021, there are an estimated number of 711,056 internally displaced persons (IDPs) from the Northwest and South regions and over 60,000 refugees in Nigeria.⁶³

At least 4000 people have been killed since 2017, including soldiers, police officers, separatist fighters and civilians.⁶⁴ During peaceful protests and demonstrations in the Bamenda and Buea, state security forces used live ammunition against protesters in the streets, stormed into villages and private homes and shot unarmed civilians.⁶⁵ Several reports implicate the Cameroon military for burning alive

⁵⁷ International Crisis Group 'Cameroon's anglophone crisis at the crossroad' (2017) available at: <https://www.crisisgroup.org/africa/central-africa/cameroon/250-camerouns-anglophone-crisis-crossroads> (accessed 10 October 2021).

⁵⁸ As above.

⁵⁹ Centre for human rights and democracy in Africa 'Cameroon: The Anglophone Crisis; 238 villages burnt in the North-west and South-west regions' (2020),

⁶⁰ As above.

⁶¹ Cameroon situation: responding to the needs of IDPs and Cameroon refugees in Nigeria (2019), available at: <https://reporting.unhcr.org/sites/default/files/UNHCR%20Cameroon%202019%20Supplementary%20Appeal%20%28March%202019%29.pdf> (accessed 10 October 2021).

⁶² France24 'Cameroon's isolated Anglophone face humanitarian crisis' (2018) available at: <https://www.france24.com/en/20180413-cameroon-isolated-anglophones-english-speaking-humanitarian-crisis> (accessed 10 October 2021).

⁶³ United Nations High Commissioner for Refugees 'Operational data portal on refugee situations' (2021) available at: <https://data2.unhcr.org/en/country/cm> (accessed 10 October 2021).

⁶⁴ International Crisis Group report on Cameroon, available at: <https://www.crisisgroup.org/africa/central-africa/cameroon> (accessed 10 October 2021).

⁶⁵ Centre for Human Rights and Democracy in Africa, 'Cameroon's unfolding catastrophe; evidence of human rights violations and crimes against humanity' (2019) at 14.

unarmed civilians in the English-speaking regions while setting fire on villages.⁶⁶ The population in the English speaking regions have been most at risk to torture facing violent attacks from both the Cameroon military and armed separatist.

From 2018 to 2020, human rights monitors have reported torture in detention centres perpetrated by security forces without fear of repercussion.⁶⁷ Cameroon has recently been dragged to the UN Committee against Torture for acts of torture perpetrated by security forces.⁶⁸ The victim in this case is one of many English-speaking Cameroonians tortured and accused of complicity with armed separatist groups.⁶⁹

More than 1,000 people were arrested during the 1 and 22 of October 2017 riots in the two English speaking regions, 125 of whom were held in Yaoundé Central Prison, 400 more detained in other prisons.⁷⁰ Thousands of others have been arbitrarily arrested and detained often incommunicado all across the country.⁷¹ They are mainly accused of terrorism, secession, and rebellion. Some have been detained for years, and others tried in military courts, and a majority remain in detention without charge or trial under very horrible conditions.⁷²

The impact of the conflict has been felt disproportionately by women and children. There are records of unattended violations against women in the course of the conflict. For instance, women in the conflict-hit regions have occasionally spoken out on sexual assaults and violence perpetrated by military personnel and armed separatist.⁷³ On 1 March 2020, Human Rights Watch reported that the Military raped over 20 women during the March 2020 attack in Ebam in the South West region.⁷⁴

⁶⁶ R Maclean 'Cameroon's military accused of burning alive unarmed civilians' (2018) *The Guardian*, available at: <https://www.theguardian.com/world/2018/jul/20/cameroon-military-accused-of-burning-alive-unarmed-civilians-villages-english-speaking> (accessed 11 October 2021).

⁶⁷ Human Rights Watch 'Cameroon: Routine torture, incommunicado detention; UN Security Council should condemn abuses, demand reforms' (2019) available at: <https://www.hrw.org/news/2019/05/06/cameroon-routine-torture-incommunicado-detention> (accessed 11 October 2021).

⁶⁸ World Organisation Against Torture (OMCT) 'Cameroon: A man tortured by security forces seek justice at the United Nations' (2021), available at: <https://www.omct.org/en/resources/news-releases/cameroon-a-man-tortured-by-security-forces-seeks-justice-at-the-united-nations> (accessed 11 October 2021).

⁶⁹ As above.

⁷⁰ International Crisis Group 'Cameroon's worsening anglophone crisis calls for strong measures' (2017) available at: <https://www.crisisgroup.org/africa/central-africa/cameroon/130-cameroon-worsening-anglophone-crisis-calls-strong-measures> (accessed 10 October 2021).

⁷¹ As above.

⁷² As above.

⁷³ Aljazeera News Report 'Sexual violence pervasive in Cameroon's Anglophone regions' (2021) available at: <https://www.aljazeera.com/news/2021/4/29/gender-based-violence-pervasive-in-cameroons-anglophone-regions> (accessed 11 October 2021).

⁷⁴ Human Rights Watch 'Cameroon: Survivors of military assault await justice; 20 women raped during March 2020 attack in Ebam' (2021) available at: <https://www.hrw.org/news/2021/02/26/cameroon-survivors-military-assault-await-justice> (accessed 11 October 2021).

Children have equally been left to face the brunt of the conflict as armed separatists continue to use them as bargaining chips with a series of kidnappings. For instance, over 170 students were abducted by armed separatists in Kumbo in the Northwest region to force a shutdown of all schools.⁷⁵ Unidentified gunmen equally stormed a private school in Kumba Southwest region on 24 October 2020, killed seven children and injured at least 13 others.⁷⁶

Cameroon's dire human rights situation calls for prompt action by all relevant stakeholders, both national and international, to seek peace and human rights protection and promote accountability through TJ.

2.3 Understanding transitional justice

The discussion on dealing with serious human rights violations resulting from conflict is not new.⁷⁷ Addressing past violations is now a useful tool in resolving conflict throughout the world.⁷⁸ Unaddressed human rights violations have the potentials of fuelling hate, thus, TJ acts as a useful tool to engineer healing and promote peacebuilding.⁷⁹ The theories and processes that explain and justify moral and social repair practices and the political and social movements dealings with past violations of human rights such as; truth commissions, special tribunals, administrative reorganisation, national building, commemoration and reparations, is what is today known as TJ.⁸⁰

The function of TJ is to exercise justice and provide healing in the wake of serious and massive human rights violations.⁸¹ TJ has been equated to an instrument of social transformation and rests on the premise that societies need to confront past abuses to come to terms with their past and create avenues for socio-economic development.⁸² As noted earlier, TJ emanated from the third wave of democratisation in Latin America,⁸³ and Eastern Europe, referring to TJ as a transition from dictatorial regimes towards liberal market democracies.⁸⁴ The collapse of communism and the end of Cold War

⁷⁵ Human Rights Watch 'Residents caught in the outbreak of violence in Cameroon; separatists abduct students, security forces burn homes and shops' (2019) available at: <https://www.hrw.org/news/2019/02/20/residents-caught-outbreak-violence-cameroon> (accessed 11 October 2021).

⁷⁶ Human Rights Watch 'Cameroon: Gunmen massacre school children' (2020) available at: <https://www.hrw.org/news/2020/11/02/cameroon-gunmen-massacre-school-children> (accessed 11 October 2021).

⁷⁷ N Arriaza & J Mariezcurrena *Transitional justice in the twenty-first century: beyond truth versus justice* (2006) at 29.

⁷⁸ As above.

⁷⁹ H Yusuf, & H Van der Merwe, *Transitional Justice: Theories, Mechanisms and Debates* (2021) at 125.

⁸⁰ M Juan, 'Accountability for past abuses' (1997) *Human Rights Quarterly*, at 255.

⁸¹ M Walker, 'The cycle of violence (2006) *Journal of Human Rights*, at 86.

⁸² United Nations Human Rights Office of the High Commissioner (OHCHR), *Transitional justice and economic, social and cultural rights* (2014).

⁸³ M Carmody, Human Rights, *Transitional Justice, and the Reconstruction of Political Order in Latin America* (2018) at 62.

⁸⁴ S Huntington 'The third wave, democratisation in the late twentieth century (1993) *University of Oklahoma Press*, at 167.

caused an increase in political democratisation and liberalisation and transition became a key notion in human rights discourse.⁸⁵

Although TJ seeks to address past violations, it is also forward-thinking. It insists that successive governments or institutional reorganisation must create an enabling environment that bring justice to victims of past violations while indicating commitment to good governance in the future. Justice in this case then “amounts to replacing violence with words of peace and terror with fairness, and finding a path between too much memory and too much forgetting”.⁸⁶

According to International Centre for Transitional Justice (ICTJ),

TJ is a response to systematic or widespread human rights violations. It seeks recognition for the victims and promotes possibilities for peace, reconciliation and democracy. TJ is not a special kind of justice, but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take over decades.⁸⁷

TJ has evolved over time, it has moved from being an instrument for democratisation and human rights to becoming an important module for peacebuilding operation.⁸⁸ TJ is now a tool within the wider peacebuilding agenda, confronting the past, which is considered necessary to foster a culture of human rights, reform state institutions, and rebuild civil society after serious and massive human rights violations.⁸⁹ As a discipline, TJ has developed from a retribution centred approach to a restorative process focussing less on the perpetrators and more on societal relationship, with an explicit goal of healing the victims.⁹⁰ More recently, TJ is also incorporating social justice, development and economic distribution.⁹¹

The paramount goal of TJ is to address past and ongoing human rights violations and establish the rule of law in democratic governance.⁹² Some classic examples of countries that experienced serious and massive human rights violations and resorted to TJ in Africa are South Africa, Sierra Leone, and Rwanda.⁹³ TJ arises from two dimensions: either as a matter of past or ongoing human rights violations

⁸⁵ R Teitel ‘Transitional justice genealogy’ (2003) *Harvard Human Rights Journal*, at 72.

⁸⁶ M Minow *Between vengeance and forgiveness* (1998) at 14.

⁸⁷ ICTJ ‘What is transitional justice’ (2008), *International Centre for Transitional Justice*.

⁸⁸ J Lederach ‘Building peace: sustainable reconciliation in divided societies (1997) *Oxford University Press*, at 146.

⁸⁹ As above.

⁹⁰ As above.

⁹¹ M Mamdani ‘Reconciliation without justice’ (1996) *Southern African Political and Economic Monthly*, at 24.

⁹² Why is transitional justice important? *Political Youth Network*, available at:

<https://politicalyouthnetwork.org/%EF%BB%BFwhy-is-transitional-justice-important/> (accessed 10 October 2021).

⁹³ Centre for the Study of Violence and Reconciliation, ‘Comparative study of transitional justice in Africa’ (2019) at 17.

in the context of armed conflict; or when dealing with past abuses committed by dictatorships or authoritarian regimes. The human rights situation in Cameroon warranting the deployment of TJ focuses on the former.

2.4 The African Union Transitional Justice Policy

The AUTJP was envisioned as a continental guideline for AU member states to help them develop a context-specific comprehensive policies, strategies, and programmes towards democratic and socio-economic transformation and to achieve sustainable peace, justice, reconciliation, and social justice cohesion and healing.⁹⁴ There are several challenges facing countries experiencing violent conflicts and serious violations of human rights, making it difficult for these countries to meet the above objectives. Thus, the AUTJP is meant to assist member states of the AU in addressing serious or massive human rights violations resulting from conflict and achieving sustainable peace.⁹⁵ Additionally, the AUTJP is a continental styled mechanism for dealing with unattended violations resulting from violent conflicts and dealing with issues of governance deficit and developmental challenges with the hope to achieve the AU's Agenda 2063.⁹⁶

African countries have had the experience of dealing with transitional processes for many decades following colonialism, apartheid, civil wars and systematic repressions. Since the 1990s, TJ processes have been implemented in several countries seeking to address serious and massive human rights violations resulting from conflicts.⁹⁷ Additionally, several AU instruments had envisaged issues of peacebuilding through TJ processes. For instance, the Constitutive Act of the AU “calls for peaceful resolution of conflicts, respect for the sanctity of human life and the condemnation and rejection of impunity.”⁹⁸ The AU also has powers to intervene within member states in cases of mass atrocities, grave human rights abuses, crimes against humanity and genocide.⁹⁹ The Protocol Relating to the Establishment of the Peace and Security Council of the AU equally “recommends peacekeeping and peacebuilding to restore the rule of law and establish conditions for post-conflict rebuilding of society.”¹⁰⁰

Further, the AU Policy on Post-Conflict Reconstruction and Development (PCRD) recognises the need to protect human and peoples' rights. “It allows the AU to develop mechanisms to deal with

⁹⁴ African Union Transitional Justice Policy (2019) at 10.

⁹⁵ As above.

⁹⁶ In January 2013, the African Union adopted Agenda 2063 ‘The Africa We Want’ as Africa’s blueprint and master plan for the continent’s sustainable development and economic growth.

⁹⁷ See n103 (AUTJP).

⁹⁸ Article 4(o) of the Constitutive Act of the African Union.

⁹⁹ As above (Article 4(h)).

¹⁰⁰ Protocol Relating to the Establishment of the Peace and Security Council of the AU, article 6 and 14.

past and ongoing grievances; provide opportunities for a context-based approach to the PCRD, and offer principled guidance on balancing the demands of justice and reconciliation. It also encourages and facilitates peacebuilding and reconciliation activities from national to grassroots levels, allow for opportunities to invoke traditional mechanisms of reconciliation and justice to be consistent with the African Charter on Human and Peoples' Rights. To establish efficient and independent justice sectors; and provide for the use of AU structures and other relevant AU shared-values instruments to reinforce human rights, justice and reconciliation.”¹⁰¹

For the purpose of the AUTJP, TJ means;

the various formal and traditional or non-formal policy measures and institutional mechanisms that societies, through an inclusive, consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation.¹⁰²

This definition goes beyond retribution. It highlights traditional justice approaches such as conciliation, community participation and restitution.¹⁰³ The conception of TJ advanced in the AUTJP seeks to address “African concerns on violent conflicts and impunity through a holistic procedure that considers the particular context and cultural nuances of affected societies and the gender, generational, ethnocultural, socio-economic and development dimensions of both peace and justice”.¹⁰⁴

2.4.1 Principles underling the African Union Transitional Justice Policy

The AUTJP is guided by principles that constitute the fundamental minimum values and standards that informs TJ processes. These principles are intended to ensure that TJ activities address the root causes of conflict and contribute to creating sustainable peace, accountability, social justice and transformative democratic and socio-economic reforms.

At the core of these principles is African leadership and the purpose of this is to ensure that TJ processes remain the primary responsibility of African governments. Secondary responsibility can be assumed by other stakeholders such as AU organs and institutions to provide support and solidarity to the countries implementing TJ processes.¹⁰⁵ The AUTJP also encourages TJ processes to align with local needs and aspirations to understand a shared vision and public support better. The reason behind

¹⁰¹ AU Policy on Post-conflict Reconstruction and Development, article 40-42.

¹⁰² African Union Transitional Justice Policy (AUTJP) (2019) at 4.

¹⁰³ United Nations Human Rights Office of the High Commissioner (OHCHR), Human rights and traditional justice systems in Africa, 2016 at 26.

¹⁰⁴ Para.19 (AUTJP).

¹⁰⁵ Para.27 (AUTJP).

this is to build a legitimate state authority. The AUTJP refers to this as the principle of national and local ownership.¹⁰⁶ To ensure the effective implementation of TJ in Cameroon, the government must assume its primary responsibility to initiate TJ processes and ensure human rights accountability with due consideration for the aspirations of the victims and the collective interest of all Cameroonians.

The AUTJP provides for the principle of inclusiveness, equity and non-discrimination, which addresses marginalization and unequal distribution of resources and wealth, which have been the root cause of the conflict. It also allows TJ processes to correspond to shared African principles relating to peace and security, justice or non-impunity, reconciliation and human rights.¹⁰⁷ Inequality, lack of inclusivity and discrimination are some of the factors behind the conflict in Cameroon.¹⁰⁸ Transitioning and rebuilding the nation will mean that claims of discrimination and inequality must be addressed to build a country that reflects these core African values.

Additionally, the AUTJP acknowledges that TJ processes, as envisioned by the AU, is not a one-size-fits-all approach. It must be applied to fit the country-specific context, and there must be a balancing element to TJ within that country-specific TJ setting.¹⁰⁹ Thus, to apply the AUTJP in Cameroon, the country must identify and acknowledge the root causes of the conflict, the violations it induced, including the situation of women and children and other groups of vulnerable persons. Further questions must be raised regarding the countries legal system, traditions and institutions. Also, any TJ process in Cameroon must strike a balance between peace and reconciliation and responsibility and accountability.¹¹⁰

As prescribed by the AUTJP, TJ processes must equally establish a medium to pay particular attention to the gender and generational dimension to violations. Given that women are often primary victims of any violent conflict, TJ processes must show interest to sexual and gender-based violence and patterns of gender inequality in society that enable gender-based violence.¹¹¹

Lastly, the AUTJP encourages cooperation, coherence and capacity building for sustainability during TJ processes. The implementation of TJ processes is always complex and with pressure to deliver on justice and accountability. The government of Cameroon must allow for cooperation with other stakeholders to optimise the use of resources, increase effectiveness and efficiency. It must also provide capacity building components that strengthens society to support and legitimise national processes.

¹⁰⁶ Para. 28 (AUTJP).

¹⁰⁷ Para. 34 (AUTJP).

¹⁰⁸ See n52 (P Konings and F Nyamnjoh).

¹⁰⁹ Para.38 (AUTJP).

¹¹⁰ As above.

¹¹¹ Para.39 (I) (AUTJP).

2.4.2 Inclusive elements of TJ

The main aims of TJ are to seek the truth, attaining justice, ensure reparations for victims and guarantee a non-recurrence. TJ is guided by five key processes, which includes;

- Truth and reconciliation commissions: These are established non-judicial national investigative bodies comprised of independent and reputable personalities who are tasked to probe and report on the nature and patterns of human rights violations over a certain period of time or in relation to a particular conflict.¹¹² At the level of the African Commission, it has the mandate to carry out investigations to establish the facts about the violation and ensure peaceful settlements.
- Accountability through prosecutions: This entails the use of criminal processes to establish accountability and rebuild the rule of law. This can be pursued through ordinary courts, special courts (Sierra Leone), or indigenous community-based jury processes (Rwanda).¹¹³ Through communications before the African Commission, it can also hear complaints to ensure massive human rights violations accountability.
- Reparations: A reparation is a form of restorative justice that aims to address the needs of the victims and restore social equilibrium. This process is important in repairing societal interactions and the interactions potentially between victims and perpetrators. At the level of the African Commission, the African Charter recognises the need to uphold African values of tolerance, dialogue, reparations and social solidarity.¹¹⁴
- Institutional reforms: This entails a broad range of initiatives aimed at creating political and institutional arrangements necessary for democratic and socio-economic renewal and transformation. Central to the idea of institutional reforms is the need to promote and sustain the accountability, transparency and respect for human rights in line with the African Charter.
- Traditional justice mechanisms: Although not typically a conventional TJ process, the inclusion of traditional African processes is to allow a more holistic approach where cultural values are incorporated into TJ mechanisms to address injustices. The African Charter affirms African

¹¹² See n8 (Transitional justice and human and peoples' rights in Africa).

¹¹³ See n102 (Comparative study of transitional justice in Africa).

¹¹⁴ Article 29 of the African Charter.

values of social cohesion and the right to culture, and this provides grounds for the use of traditional mechanisms.¹¹⁵

2.4.2 Consideration for cross-cutting issues when dealing with TJ

The AUTJP recognises the importance of addressing cross-cutting issues such as women and girls, children and youth, persons with disabilities, refugees and internally displaced persons (IDPs) and older persons when dealing with TJ.¹¹⁶

The Maputo Protocol envisages TJ processes to recognise the gendered nature of conflicts and how women and girls are disproportionately affected. Gender concerns must be mainstreamed during TJ processes as a cross-cutting issue. There are records of several human rights violations against women in the conflict in Cameroon. Amongst several other human rights concerns, women in the conflict areas continue to face sexual assaults and violence perpetrated by military personnel and armed separatist, some have been killed for having links with separatist and state security agents. Because of the disproportionate impact of conflict on women, they should form part of any discussion around TJ. The AUTJP also recognises that children are the most vulnerable and affected persons during conflicts, and all TJ processes must consider the disproportionate impact of violence on children and secure their best interest during transition.

Additionally, discussions around TJ processes must include IDPs and refugees, else it stands a risk of failure. Consideration must be made for this class of persons to inclusively participate in TJ discussions and programs. The conflict in Cameroon has resulted in an IDP and refugee situation. Appropriate measures must be put in place to secure the return of IDPs and refugees with different programmes such as rebuilding homes and restoring damaged property.

Lastly, due consideration must be placed to accommodate persons with disabilities (PWD) and older persons in TJ programs. As vulnerable persons, they face the risk of being unnoticed and ignored during TJ processes. TJ processes that marginalise these groups of people endanger resentment that perpetuates patterns of discrimination. A substantive inclusion of persons with disabilities is one of the prerequisites for any TJ process to enhance its transformative potentials towards a socially just democratic dispensation.¹¹⁷

¹¹⁵ E Asaala & N Dicker 'Traditional justice in Kenya and the UN Special Rapporteur on Truth and Justice: where to from here?' (2013) *African Human Rights Law Journal* 2.

¹¹⁶ AUTJP at 21.

¹¹⁷ Para. 109 (AUTJP).

2.4.3 Actors, processes and implementation mechanisms for TJ

The AUTJP encourages collective participation among key stakeholders and actors to achieve an effective TJ process. It identifies key actors such as the state concerned, regional economic communities, actors at the continental level and non-state actors.¹¹⁸

As earlier mentioned, the state concerned has the primary responsibility to pursue TJ processes. They carry the responsibility of eradicating political and social barriers to the effective pursuit of TJ processes, securing a space for dialogue and advocacy and mobilise the support of all sections of society towards TJ. Cameroon has made a couple of efforts that can be interpreted in line with TJ. For instance, in September 2019, the government organised a Major National Dialogue at the national capital Yaoundé to find a lasting solution to the Anglophone conflict in Cameroon.¹¹⁹ Although the dialogue has been described as a stage play that has yielded no fruits two years down the line,¹²⁰ the idea of having a dialogue was laudable. It can serve as a lesson to guide and inform future dialogue processes.

In her attempt to transition from war to peace, the government also created Disarmament, Demobilisation and Reintegration (DDR) centres in Buea and Bamenda, capital cities of the two English-speaking regions, for ex-combatants to be trained and reintegrated into society.¹²¹ However, the poor management of the centres resulted in protests by ex-combatant and clearly deterred others from dropping their arms. Other measures include creating the Common Law Bench and section at the Supreme Court and National School for Administration and Magistracy and creating regional councils as a form of decentralisation.¹²² The success of any TJ process is determined by the political commitment, leadership and capacity of national and local actors. Further opportunities exist to build on implementing these few changes made and to put in place structures and mechanisms that enhance a comprehensive and coherent TJ process.

At the regional level, Cameroon belongs to the Economic Community of Central African States (ECCAS), which still has a long way to prevent and address regional conflicts owing to challenges in

¹¹⁸ AUTJP at 25.

¹¹⁹ Aljazeera News 'Cameroon to hold 'national dialogue' on separatist crisis' (2019) available at: <https://www.aljazeera.com/news/2019/9/11/cameroon-to-hold-national-dialogue-on-separatist-crisis> (accessed 11 October 2021).

¹²⁰ Separatist fighting continues in Cameroon a year after major national dialogue, (2020), available at: https://www.voanews.com/a/africa_separatist-fighting-continues-cameroon-year-after-major-national-dialogue/6196733.html (11 October 2021).

¹²¹ See n18 (Decree N0 2018/719 of 30 November 2018 to establish the National Disarmament, Demobilisation and Reintegration committee).

¹²² Cameroon will hold first elections to form regional councils called for In Constitution (2020) Constitution Net, available at: <https://constitutionnet.org/news/cameroon-will-hold-first-elections-form-regional-councils-called-constitution> (accessed 11 October 2021).

its highly centralised and state-focused structure.¹²³ However, ECCAS can encourage Cameroon to pursue TJ processes that permanently remove or address the country's current instability. It can also avail regional diplomatic and resource support towards Cameroon's response to the conflict through TJ.

At the continental level, implementation of the AUTJP in Cameroon will not be successful without the overall strategic political leadership of the AU. The national and regional efforts towards TJ must be complemented by interventions of continental institutions. The AUTJP identifies potential implementation partners and actors for TJ on the continent. They include; “ the African Commission; the Peace and Security Council; the African Court on Human and Peoples’ Rights; the African Committee of Experts on the Rights and Welfare of the Child; the African Peer Review Mechanism; the Economic, Social and Cultural Council; and the Pan-African Parliament in collaboration with other continental bodies such as the African Development Bank and the African Capacity Building Foundation”.¹²⁴

Lastly, non-state actors such as civil society, community-based and media organisations can play a significant role in campaigning and facilitating national conversations and debates around TJ. Human rights documentation of incidents and violations published quarterly by the Centre for Human Rights and Democracy in Africa (CHRDA), a human rights organisation based in Buea, can help identify victims and perpetrators during TJ processes. Additionally, religious and cultural organisations can offer affected communities and individuals avenues for healing, reconciliation and local justice, which can be incorporated as part of the TJ program.¹²⁵

2.4 Conclusion

This chapter aimed to understand what TJ is and the role it can play in protecting human rights in Cameroon. To analyse the human rights situation in Cameroon that warrants the application of TJ processes and how the African Union Transitional Justice Policy as a principal document for TJ in Africa can inform and shape the prospects of applying TJ in Cameroon. In doing so, this chapter outlines practical lessons for adoption that fit squarely into Cameroon's context. It also highlights the need to pay attention to cross-cutting issues of the affected population and encourages collective efforts by actors within and outside the state to help drive TJ processes. The next chapter will focus on the African Commission on Human and Peoples Rights (African Commission) as a principal actor for the implementation of TJ in Africa. It will discuss the prospects of pursuing TJ under the African Commission for serious human rights violations in Cameroon.

¹²³ Institute for Security Studies, ‘Preventing conflict in Central Africa: ECCAS caught between ambitions, challenges and reality (2015), *Central Africa Report* at 3.

¹²⁴ Para. 126 (AUTJP).

¹²⁵ Para. 128 (AUTJP).

CHAPTER THREE

PROSPECTS OF PURSUING TJ UNDER THE AFRICAN COMMISSION FOR HUMAN RIGHTS VIOLATIONS IN CAMEROON

3.1 Introduction

This chapter focuses on the potentials of the available mechanisms for pursuing TJ within the African Commission on Human and Peoples' Rights. It examines the institutional mechanisms and procedures at the African Commission and how they can be tailored to shape and inform the TJ processes as a response to serious human rights violations in Cameroon and on the continent. In addition to identifying these mechanisms and procedures, this chapter also examines their prospect in informing the discourse of TJ in Cameroon with reference to the jurisprudence of the African Commission.

This chapter further highlights several points. Human rights concerns in TJ settings are exceedingly critical for any affected society; as such, it becomes difficult to address them through ordinary applicable human rights instruments and mechanisms used during 'regular times'. As seen in the previous chapter, the AU has developed a comprehensive TJ policy that helps to expand the conception of TJ in Africa. In outlining the actors for the implementation of the AUTJP, the AU acknowledges the African Commission as one of the principal organs to shape and implement the African Union Transitional Justice Policy (AUTJP).¹²⁶ In a study carried out by the African Commission on TJ,¹²⁷ the African Commission has interpreted its TJ mandate within its already existing mechanisms such as communication procedures, state reporting, fact-finding missions, resolutions and the use of special mechanisms.¹²⁸

However, acknowledging that the peculiarity of TJ makes it challenging to be addressed using ordinary applicable human rights instruments and mechanisms as during 'regular times', and with the African Commission interpreting its TJ mandate within its already existing 'regular' mechanisms, this chapter further seeks to analyse these mechanisms and provide practical approaches on how they should be tailored to fit the context of TJ.

¹²⁶ See para. 126 of the African Union Transitional Justice Policy.

¹²⁷ See n8 (Study on transitional justice and human and peoples' rights in Africa).

¹²⁸ As above.

3.2 Procedures to Pursue TJ under the African Commission for human rights violations in Cameroon

The African Commission exercises both a protective and promotional mandate. It has the express latitude to choose which mechanisms it will deploy to implement its mandate through the African Charter. As far as the protective mandate is concerned, the mechanisms include; communication procedures, fact-finding missions, resolutions and urgent letters of appeal.

Additionally, when one or more communications relates to special cases exposes gross and systematic human rights violations, the African Commission shall notify the Assembly of Heads of State and Government of such serious violations.¹²⁹ The Assembly of Heads of State and Government may request the African Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.¹³⁰ A case of emergency duly noticed by the African Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government, who may request an in-depth study.¹³¹ The promotional mandate of the African Commission is implemented through; examination of state reports;¹³² special mechanisms and promotional missions.

Under article 46 of the African Charter, the African Commission has a broad discretion to use any appropriate method to ensure the protection of human rights.¹³³ Although the African Commission has this broad discretion at its disposal, it is not always that the African Commission will, of its own volition, establish a case of serious and massive human rights violations raising prospects for TJ processes. It may identify these violations through one or more of the procedures discussed below.

3.2.1 Communications Procedures

Communications are one of the mechanisms employed by the African Commission to ensure state's compliance with the human rights enshrined in the African Charter.¹³⁴ The African Commission can receive complaints from states against another state (inter-state communications) or by individuals and

¹²⁹ Article 58(1) African Charter 1986.

¹³⁰ As above, Article 58 (2).

¹³¹ As above, Article 58 (3).

¹³² Article 62 African Charter and Article 26 of the Maputo Protocol on state reporting.

¹³³ V Nmehielle 'The African human rights system: its laws, practice and institutions (2021) International Studies in Human Rights Series, Vol.69, at 89.

¹³⁴ Centre for Human Rights, *A guide to the African Human Rights System (2017)* 17.

NGOs against one or more states (individual communications) on alleged violations of human rights according to its mandate under articles 48, 49 and 55 of the African Charter.¹³⁵

In the context of communications procedures relating to TJ, there are two ways in which the African Commission can address TJ processes.¹³⁶ The first is where the African Commission is faced with communications on violations of human rights relating to situations of violent conflicts.¹³⁷ The other instance refers to communications that challenge the adequacy of remedies provided as part of a country's implementation of TJ.¹³⁸ The focus here is on the first instance relating to situations of armed conflicts.

Mindful of the jurisprudence of the African Commission regarding communications procedures, the most helpful pronouncement relevant to TJ is the issue around exhaustion of domestic remedies provided for under article 56(5). For communications revealing mass violations of human rights, the African Commission held that;

“In accordance with its earlier cases of serious and massive violations of human rights, and in view of the vast and varied scope of the violations alleged and the large number of individuals involved, the African Commission holds that local remedies need not be exhausted and as such, declares the communications admissible”.¹³⁹

The African Commission has gone to confirm this decision in subsequent cases.¹⁴⁰ The exclusion of the requirement for domestic remedies indicates the seriousness with which the African Commission intends to deal with situations of massive violations of human rights concerned with TJ. This provides excellent prospects for victims of serious violations of human rights in Cameroon and for NGOs working on the frontline to monitor and document the massive violations in Cameroon to seek redress before the African Commission.

African Commissions decision to waive the exhaustion of local remedies highlights its willingness to deal with situations of serious human rights violations. However, there is still much to be done because when it outlines remedies for redressing such serious human rights violations, the scope of these remedies is either poorly developed, or no efforts are made to outline the modalities of

¹³⁵ As above.

¹³⁶ See n8 (Study on transitional justice and human and peoples' rights in Africa) at para 144.

¹³⁷ As above.

¹³⁸ As above.

¹³⁹ Communication 27/89-46/91-49/91-99/93, *Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission internationale des juristes, Union interafricaine des droits de l'Homme v Rwanda*, para. 18.

¹⁴⁰ Communication 299/05, *Anuak Justice Council v Ethiopia*, para. 59.

how such serious human rights violations can be dealt with by TJ.¹⁴¹ To better redress victims of massive human rights violations resulting from conflict, the African Commission must assess the alleged violations within the broader context of the conflicts. Upon establishing the existence of serious violations, the African Commission must elaborate on measures to be taken for remedying the violations through TJ and also set up a follow up mechanism to ensure that its recommendations are implemented.¹⁴²

3.2.2 State Report Review Process

State reporting is one of the means of measuring states compliance with their obligations under the African Charter.¹⁴³ States are required to submit a periodic report to the African Commission every two years.¹⁴⁴ Additionally, to give effect to the requirement of state reporting, the African Commission adopted in 1989 a general guideline on the form and content of state reporting, and in 1998 a more concise Guidelines to Periodic Reporting were also issued.¹⁴⁵

During communications procedure, the African Commission is limited to the issues presented in the communication, whereas with state reporting procedures, the African Commission is allowed to raise issues on its initiative.¹⁴⁶ Although these issues, if raised by the African Commission, are less binding in effects than the communication procedures, it provides an avenue to assess the human rights concerns raised in relation to TJ.¹⁴⁷ For instance, during the 42nd Ordinary Session of the African Commission when Algeria presented its third and fourth periodic reports, questions were raised to a call for justice related to persons' forced disappearance during the conflict. In its concluding observations, the African Commission also called on Algeria to “find an appropriate solution to the problem of the missing persons and ensure that fair compensation is paid to their legal successors”.¹⁴⁸

However, for the above process to be fully utilised to inform TJ processes in a country under review, the African Commission must be adequately informed beyond the state report of the prevailing situation in that country. This can be realized with the African Commissions review of the country situation, including submissions from civil society organisations (CSOs) through shadow reports and reports from National Human Rights institutions (NHRIs).¹⁴⁹

¹⁴¹ See n8 (Study on transitional justice and human and peoples' rights in Africa) at para. 149.

¹⁴² As above, at para. 207.

¹⁴³ See n142 (*A guide to the African Human Rights System*) at 27.

¹⁴⁴ Article 62 of the African Charter.

¹⁴⁵ Guidelines for national periodic reports under the African Charter (1998).

¹⁴⁶ F Viljoen 'State reporting under the African Charter on Human and Peoples Rights: A boost from the south' (2000) *Journal of African Law* 112.

¹⁴⁷ See n8 (Study on transitional justice and human and peoples' rights in Africa) at para. 158.

¹⁴⁸ African Commissions concluding observations on the 3rd and 4th combined periodic reports of The Peoples Democratic Republic of Algeria (2007) at para.33 (k).

¹⁴⁹ See n8 (Study on transitional justice and human and peoples' rights in Africa) at para. 160.

In the case of Cameroon, its National Human Rights Commission is questioned for its lack of independence and weak operational capacity.¹⁵⁰ Still, the CSOs can use the state report review process to raise human rights violations arising from the conflict in Cameroon. This can only be of material benefit if the shadow report submitted by the CSOs adequately capture critical concerns important to TJ.

Further, the African Commission has noted through concluding observations that conflict results in serious violations of human and peoples' rights and emphasise the need to resolve them.¹⁵¹ However, the delay in providing concluding observations by the African Commission also hinders a quick redress of serious violations. For instance, Cameroon has submitted on 3 January 2020 its 4th to 6th periodic report covering the period of 2015 to 2019 and was considered during the 67th Ordinary session on 3 December 2020.¹⁵² Some of the serious violations of human rights in Cameroon were recorded during this period, yet to date, the African Commission has not provided its concluding observations on the report. This undue delay in addressing the serious violations of human rights in Cameroon inevitably affects the prospects of triggering the TJ agenda in the African Commission. The African Commission should prioritize responding to member states afflicted by serious human rights violations.

Lastly, for the African Commission to effect the implementation of TJ, it can establish a special reports procedure for states facing violent conflicts and seeking transition. This will help the African Commission to provide guidance in the implementation of TJ processes.

3.2.3 Missions undertaken by the African Commission

Missions undertaken by the African Commission are in line with its primary mandate to enhance the promotion and protection of human rights in Africa and to ensure that member states comply with their obligation under the African Charter.¹⁵³ Missions are governed by the African Commission's Guidelines for Missions and the Format for Pre-mission Reports.¹⁵⁴ There are two categories of missions undertaken by the African Commission since its establishment; protective and promotional missions.¹⁵⁵

¹⁵⁰ S Effiom 'Human rights in Cameroon: a new framework for the National Commission for Human Rights and Freedom (2013) *E-journal of International and Comparative Labour studies* at 79.

¹⁵¹ African Commissions Concluding Observations on the Periodic Report, 11, 12, 13 of the DRC, 2005–2015.

¹⁵² Cameroon: 4th-6th periodic report, 2015-2019, available at: <https://www.achpr.org/states/statereport?id=130> (accessed 11 October 2021).

¹⁵³ See n142 (*A guide to the African Human Rights System*) at 34.

¹⁵⁴ See Rule of Procedure of the African Commission, 2020.

¹⁵⁵ As above.

3.2.3.1 Protective mission

A protective missions can either take the form of an on-site or fact-finding missions. The on-site mission is generally for states against whom several communications have been submitted. The purpose of the mission is to explore peaceful settlement avenues or investigate issues raised in the communications.¹⁵⁶ Fact-finding missions on the other hand occurs where there are allegation human rights violations issued against a state party. Fact-finding missions do not generally require any communication to be submitted prior to the mission being undertaken.¹⁵⁷

The African Commission has exploited this mechanism with some states after persistent allegations of serious human rights violations such as Sudan and Nigeria. In 1997 for instance, the African Commission undertook a mission to Nigerian to evaluate the 'Ogoni 19' situation relating to environmental degradation in the Delta region.¹⁵⁸ Another mission was undertaken in Sudan IN 2004 to verify allegations of international crimes and recommend solutions for addressing the situation.¹⁵⁹ Other missions undertaken include Mali, Mauritania, Saharawi Arab Democratic Republic and Zimbabwe.¹⁶⁰

3.2.3.2 Promotional missions

Promotional missions are undertaken by the African Commission to sensitise the state about the role of the African Charter, encourage ratification of the African Charter and other human rights instruments. The African Commission conducted its first promotion in Senegal in 1996, following allegations of serious and massive human rights violations following clashes between the Senegalese army and rebels in Casamance.¹⁶¹ Since then, the African Commission has conducted more than 30 promotion missions and made several follow up recommendations.¹⁶²

¹⁵⁶ As above.

¹⁵⁷ As above.

¹⁵⁸ See Report of the African Commission on Human and Peoples' Rights mission to Nigeria 7-14 March 1997, available at: https://www.achpr.org/public/Document/file/English/achpr25_misrep_promo_nigeria_1997_eng.pdf (accessed 11 October 2021).

¹⁵⁹ Sudan: fact-finding mission, 2004, available at: <https://www.achpr.org/states/missionreport?id=50> (accessed 11 October 2021).

¹⁶⁰ See 47th Activity of the African Commission on Human and Peoples Rights, available at: <https://www.achpr.org/public/Document/file/English/47th%20Activity%20Report%20%20ENGLISH.pdf> (accessed 11 October 2021).

¹⁶¹ See Senegal: Promotion mission, 1996, available: <https://www.achpr.org/states/missionreport?id=2> (accessed 11 October 2021).

¹⁶² See Rule of Procedure of the African Commission on Human and Peoples' Rights of 2020.

For instance, the African Commission on its concluding observations on a promotion mission to Burundi in 2000, recommended that “the state ensure civil society's greater involvement, especially the women and youth in the Arusha negotiations”.¹⁶³ It also recommended to the state that “in the implementation of the agreement, it should dismantle regrouping camps and ensure the reintegration of the people”.¹⁶⁴ Additionally, after a promotion mission to Sudan in 1996, the African Commission recommended that the government of Sudan should “intensify its efforts to bring an end to the war”.¹⁶⁵

The African Commission has over the last recent year provided more comprehensive recommendations to governments.¹⁶⁶ This appears to be a good step towards making recommendations on TJ, to have an all-inclusive process. Promotion missions are also vital in helping the African Commission to engage with different stakeholders and make specific recommendations on ending the conflict and incorporating TJ processes.

However, one limitation that inevitably hinders the efficacy of this mechanism is inability to undertake these missions without approval and support from the state concerned.¹⁶⁷ In most countries facing a conflict like Cameroon, the tendency is that the state will often not allow for such visits. This accounts for why the African Commission has not used this mechanism to its full potential, especially with states facing conflicts.

3.2.4 On-site investigations and good office of the African Commission

The African Commission has a responsibility to counter serious or massive human rights violations. As part of its protective mandate, African Charter lays down the procedures for responding to serious and massive human rights violations of the rights provided under the African Charter. Article 58 provides that;

1. “When it appears after deliberations of the Commission that one or more communications relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples’ rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases”.¹⁶⁸

¹⁶³ Burundi: Promotion mission, 2000, available at: <https://www.achpr.org/states/missionreport?id=13> (accessed 11 October 2021).

¹⁶⁴ As above.

¹⁶⁵ Sudan: Promotion mission, 1996, available a: <https://www.achpr.org/states/missionreport?id=17> (accessed 11 October 2021).

¹⁶⁶ See n8 (Study on transitional justice and human and peoples’ rights in Africa) at para. 171.

¹⁶⁷ T Mutangi 'Fact-finding missions or omissions: A critical analysis of the African Commission on Human and Peoples' Rights and Lessons to be learnt from the Inter-American Commission on Human Rights, Master's Thesis, University of Makerere, 2005 at 35.

¹⁶⁸ Article 58(1) African Charter on Human and Peoples’ Rights 1986.

2. “The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations”.¹⁶⁹
3. “A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairperson of the Assembly of Heads of State and Government, who may request an in-depth study”.¹⁷⁰

From the above, article 58 envisages the African Commission's option to undertake an in-depth study of serious human rights violations raised through communications and make a factual report. The African Union Assembly then picks up the responsibility upon referral by the African Commission to choose from various options, including requesting the African Commission to undertake an in-depth study or the AU can decide to intervene in situations of serious human rights violations including war crimes, genocide and crimes against humanity.¹⁷¹

Two concerns flow from the above paragraph. First, article 58 seems to imply that the African Commission can only undertake an in-depth study following serious violations of human rights raised from a communication. This literal interpretation can limit the African Communications mandate in responding to serious violations of human rights. Secondly, although the AU has the latitude to intervene in cases of serious or massive human rights violations, it has unfortunately made very little use of article 4(h) of the Constitutive Act amidst evidence of serious human rights violations in countries like Cameroon. This raises questions as to whether article 4(h) rest on a clear understanding of the AU.

Although the African Charter does not expressly provide a fact-finding mission by the African Commission, it can be read from the broad mandate of the African Commission to enhance human rights protection,¹⁷² and its authority to use any appropriate method of investigation.¹⁷³ The African Commission has conducted on-site visits to investigate human rights situations in Mauritania and Zimbabwe and has undertaken a mission of good office to Senegal.¹⁷⁴ The last investigation mission undertaken by the African Commission was to Burundi from 7 to 13 December 2015, following a request from the AU Peace and Security Council.¹⁷⁵ Very little has been done concerning Cameroon.

¹⁶⁹ As above, article 58(2).

¹⁷⁰ As above, article (58 (3)).

¹⁷¹ Article 4(h) Constitutive Act of the African Union (2001).

¹⁷² Article 30 of the African Charter.

¹⁷³ Article 46 of the African Charter.

¹⁷⁴ Report on the mission of good offices to Senegal of the African Commission on Human and Peoples’ Rights, 1-7 June 1996), available at: https://www.achpr.org/public/Document/file/English/achpr20_misrep_promo_senegal_1996_eng.pdf (accessed 11 October 2021).

¹⁷⁵ Report of the delegation of the African Commission on Human and People’s Rights on its fact-finding mission to Burundi, 7-13 December 2015, available at: <https://www.achpr.org/pressrelease/detail?id=149> (accessed 11 October 2021).

3.2.5 Statements and Resolutions

The African Commission has the latitude to respond to serious human rights violations and engage in TJ processes through the adoption of resolutions and statements. Through statements and resolutions, the African Commission highlights concerns and calls on the state concerned to take specific measures.

For instance, Resolution 235 called on the African Commission to carry out a study on TJ in Africa, covering both armed conflict and political crises in Africa. The study was also intended to cover serious human rights violations and the importance of TJ mechanisms in combating impunity and promoting reconciliations in countries emerging from violent armed conflicts.¹⁷⁶

The African Commission had equally issued out Resolution 8 in 1994 in line with the genocide in Rwanda, “calling on the parties to the conflict to immediately cease hostilities and work towards a peaceful settlement through dialogue between all the peoples of Rwanda”.¹⁷⁷ The African Commission has passed several other resolutions in countries such as Guinea Bissau,¹⁷⁸ DRC,¹⁷⁹ and Darfur Sudan;¹⁸⁰ and DRC.¹⁸¹ In each of these cases, the African Commission called on the parties to end the conflict and promote dialogue towards a peaceful resolution to the conflict.

To further strengthen its commitment to addressing serious human rights violations, Resolution 40 was adopted in 1999 on the human rights situation in Africa.¹⁸² Under this resolution, it established cooperation with the AU mechanism for Conflict Prevention, Management and Resolution. The African Commission also adopted Resolution 332 on human rights in conflict situations in collaboration with the AU Peace and Security Council to address human rights issues in conflict situations collectively.¹⁸³

In 2018, the African Commission adopted Resolution 395 on the human rights situation in Cameroon.¹⁸⁴ It raised concerns about the continuous deterioration of the human rights situation in Cameroon since October 2016 following brutal crackdowns of peaceful protests by lawyers, teachers and members of civil society of the English speaking regions of Cameroon. It also expressed deep

¹⁷⁶ See n5 (Resolution 235, transitional justice in Africa).

¹⁷⁷ “Resolution 8 on the Situation in Rwanda- ACHPR/Res.8(XV)94”.

¹⁷⁸ “Resolution 32 on the peace process in Guinea-Bissau- ACHPR/RES.32(XXIV)98”.

¹⁷⁹ “Resolution 44 on the peace process in the Democratic Republic of Congo-ACHPR/Res.44(XXVII)00”.

¹⁸⁰ “Resolution 74 on the human rights situation in Darfur, Sudan-ACHPR/Res.74(XXXVII)05”.

¹⁸¹ “Resolution 139 on the human rights situation in the Democratic Republic of Congo- ACHPR/Res.139(XXXIV)08”.

¹⁸² “Resolution 40 on the human rights situation in Africa-ACHPR/Res.40(XXVI)99”.

¹⁸³ “Resolution 332 on Human Rights in Conflict Situations - ACHPR/Res.332(EXT.OS/XIX)16”.

¹⁸⁴ “Resolution 395 on the human rights situation in the Republic of Cameroon-ACHPR/Res. 395(LXII)16”.

concerns about the allegations of cases of enforced disappearance, arbitrary arrest and detention, prohibition of peaceful demonstrations and constant insecurity.¹⁸⁵

The African Commission has called for “an impartial and independent investigation to identify perpetrators and bring them to justice. It also called on the parties to engage in dialogue towards saving lives and restoring security and peace”.¹⁸⁶ The African Commission also expressed its “willingness to undertake a general human rights promotion mission to Cameroon in collaboration with the government authorities”.¹⁸⁷ However, as of now, no report has been made of such visits. This further highlights the limitation faced by the African Commission to uphold its protective and promotional mandate through country visits when the country concerned does not consent to such visits.

Contrary to resolutions, press statements are issued constantly and are better efficient in dealing with emerging issues. The African Commission for instance in 2018 issued a press release on the human rights situation in Cameroon highlighting its deep concerns over Cameroon's worsening human rights situation.¹⁸⁸ It reminded the government of Cameroon of its obligation to protect its citizens from serious and massive human rights violations. It called on the government to end the use of force against unarmed civilians; ensure respect for freedom of expression and the immediate release of persons arbitrarily detained.¹⁸⁹

The above suffices that resolutions and statements have helped the African Commission engage in specific conflict cases and sets out its understanding of TJ by enhancing cooperation with other bodies working toward conflict resolution. However, most resolutions and statements only focus on the ongoing conflict with very little concern over the rebuilding process for states emerging from conflicts. This highlights failures on the African Commission to effectively use its statements and resolutions mechanisms for engaging with TJ processes.

3.2.6 Special Mechanisms

The African Commission has created subsidiary mechanisms to help in its protective and promotional mandate, such as special rapporteurs, committees, and working groups.¹⁹⁰ The African Commission

¹⁸⁵ As above.

¹⁸⁶ As above.

¹⁸⁷ As above.

¹⁸⁸ Press release on the human rights situation in Cameroon 2018, available at: <https://www.achpr.org/pressrelease/detail?id=63> (accessed 11 October 2021).

¹⁸⁹ As above.

¹⁹⁰ See African Commission special mechanisms, available at: <https://www.achpr.org/specialmechanisms> (accessed 12 October 2021).

determines the mandate of each special mechanism, and these special mechanisms can be useful to TJ processes.¹⁹¹

For instance, the Special Rapporteur on Freedom of Expression and Access to information can, in particular, help ensure the 'right to truth' in TJ. This special mechanism can also interact with issues around access to information during transition, mostly around the public access to information.¹⁹² The mandate of this special mechanism can be vital with the case of Cameroon, where there is constant denialism of the 'anglophone problem' and serious violations of human rights committed by state security forces. Ensuring that the right to freedom of expression and access to information is protected creates an atmosphere for truth-telling, which is vital for any potential TJ process.

The Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa has a mandate to monitor and raise concerns about the growing rate of refugees, asylum seekers and IDPs due to political instability and violent conflicts.¹⁹³ It highlights the difficulty of refugees and IDPs.¹⁹⁴ For instance, in January 2008, a statement was issued by the Special Rapporteur condemning the Kenyan post-election violence which led to the displacement of thousands, including women and children.¹⁹⁵ This special mechanism has the potential of underlining the plights of IDPs and refugees and their role in TJ processes.

The Special Rapporteur on women's rights in Africa is fully aware of the disproportionate impacts of armed conflict on women.¹⁹⁶ This special mechanism can be vital in responding to the concerns and violations of women's rights during conflict situations and their role in peacebuilding and TJ processes.

The Working Group on Economic, Social and Cultural Rights has issued several press statements regarding countries in conflict, calling on states to engage in a democratic transition and institutional reforms that are in line with economic, social and cultural needs of the population after open and free consultation.¹⁹⁷ The Working Group through country visits encourages governments and non-state actors to work together to foster economic prosperity and ensure equitable use of national

¹⁹¹ As above.

¹⁹² See n8 (Study on transitional justice and human and peoples' rights in Africa) at para. 185.

¹⁹³ See mandate of the Special Rapporteur on refugees, asylum seekers, internally displaced persons and migrant in African, available at: <https://www.achpr.org/specialmechanisms/detail?id=5> (accessed 12 October 2021).

¹⁹⁴ As above.

¹⁹⁵ "Statement by the Special Rapporteur on Refugees, Asylum Seekers, IDPs and Migrants on the Violence of the Republic of Kenya", (2008) available at: <https://www.achpr.org/specialmechanisms/detail?id=5> (accessed 12 October 2021).

¹⁹⁶ 29 Activity Report of the Special Rapporteur on the rights of women in Africa, para 129.

¹⁹⁷ Working Group's Intersession activity report to the 49th ordinary session para 4, available at <http://www.achpr.org/sessions/49th/intersession-activity-reports/escr/> (accessed 11 October 2021).

resources for the benefit of all, this was the case in DRC Congo.¹⁹⁸ This Working Group can play a role concerning TJ in Cameroon, especially with the socio-economic deficit created by the conflict.

The Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa has a mandate to address issues around death penalty and extra-judicial killings.¹⁹⁹ The Working group was part of the AU delegation to the Central African Republic (CAR) in 2014. The mission aimed to raise awareness about the need for collaboration to achieve a successful transition and to organise a democratic, transparent and inclusive elections, through a new constitution with the hope to rest peace, security and social cohesion in CAR.²⁰⁰

The Working Group has raised concern around extrajudicial, summary and arbitrary killings during times of armed conflict. It has expressed concern over the killing of civilians, including aid workers, by armed groups during intercommunal and ethnic violence in the CAR, Sudan, and Somalia.²⁰¹ The Working Group can improve its mandate by calling for redress and reparations for the victims of extrajudicial and summary executions as part of a TJ process, especially in Cameroon, where the state security forces have been implicated in several cases of extrajudicial and summary executions.

Lastly, the Committee for the prevention of Torture in Africa (CTPA), has a mandate in addressing issues relating to torture and ill-treatment.²⁰² It has developed a General Comment focusing on redress for victims of torture and ill-treatment in Africa.²⁰³ The General Comment has specific provisions on redress and TJ, thus, acknowledging large scale torture and ill-treatment occasioned by conflicts.²⁰⁴ In the case of Cameroon, state security forces have been implicated in several torture cases and, as already mentioned earlier, with a case pending before the UN committee against torture. Additionally, CSOs have taken the lead in Cameroon to discuss redress mechanisms for victims of torture in Cameroon at the African Commission.²⁰⁵ The CTPA can work with such organisations to ensure that victims of torture in the Cameroon conflict can find redress through an effective TJ process.

¹⁹⁸ Intersession activity report of the Working Group on Economic, Social and Cultural Rights, February 2012, paras 2 and 3.

¹⁹⁹ See mandate of the Working Group on Death Penalty, Extra-Judicial, Summary and Arbitrary Killings and Enforced Disappearances in Africa, available at: <https://www.achpr.org/specialmechanisms/detail?id=9> (accessed 12 October 2021)

²⁰⁰ “Intersession activity report of the 55th session”, para. 18, available at: <http://www.achpr.org/sessions/55th/intersession-activity-reports/death-penalty> (accessed 11 October 2021).

²⁰¹ As above, para 46-54.

²⁰² See mandate of the Committee for the Prevention of Torture in Africa, available at: <https://www.achpr.org/specialmechanisms/detail?id=7> (accessed 12 October 2021).

²⁰³ “African Commission General Comment N0.4 on the African Charter on Human and Peoples Rights: the right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment” (Article 5) 2017.

²⁰⁴ As above.

²⁰⁵ Centre for Human Rights and Democracy in Africa ‘Redress mechanisms at the African Commission on Human and Peoples Rights for victims of torture in Cameroon’ (2021) available at: <https://www.chrda.org/wp-content/uploads/2021/06/Redress-Mechanisms-at-the-African-Commission-on-Human-and-Peoples-Rights-for-Victims-of-Torture-in-Cameroon.pdf> (accessed 11 October 2021).

The success of the African Commission's special mechanisms lies in them focusing on different issues. If brought together, the result will present a holistic view for TJ with due consideration for cross-cutting issues. This will help the African Commission to make contributions and address specific concerns during TJ processes.

3.3 Conclusion

The aim of this chapter was to discuss the available mechanisms at the African Commission and how these institutional mechanisms and procedures can shape and inform the TJ processes to respond to serious violations in Cameroon. It studied the special mechanisms at the African Commission, such as communications procedures, State reporting procedures, promotion and investigative missions, statements and resolutions, and the various special mechanisms within the African Commission. The discussion in this chapter highlights the African Commissions contribution to TJ and the immense prospects for further application of these various mechanisms to current and potential TJ settings like Cameroon.

CHAPTER FOUR

CHALLENGES IN PURSUING TRANSITIONAL JUSTICE FOR SERIOUS HUMAN RIGHTS VIOLATIONS IN CAMEROON

4.1 Introduction

This chapter focuses on the challenges in pursuing TJ for serious human rights violations in Cameroon. It discusses the challenges in two parts; the first part addresses some of the challenges faced by the African Commission in exercising its TJ mandate. Some of these challenges include failure of state parties to comply with state reporting procedures; lack of a clear and well-defined guideline for TJ; political influence over the African Commission; the refusal of state parties to grant access to on-site investigations and visits; and the lack of a special mechanism focusing on TJ. The second part highlights the peculiarities of Cameroon and the potential challenges to implement TJ mechanisms. They include denialism of an anglophone problem, continuous armed violence and heavy militarisation of the English speaking regions; weak and questionable institutions; and the lack of political will.

4.2 Challenges in pursuing TJ for serious human rights violations

TJ mechanisms have become a vital part of the processes to end conflict and restore human rights protection. Peace agreements in Central African Republic (CAR),²⁰⁶ and Mali,²⁰⁷ included TJ tools as an avenue for peacebuilding and reconciliation. The UN also continues to play a principal role in fostering TJ processes. For instance in CAR, the UN is providing support to the authorities in the country in getting TJ mechanisms adopted in line with the ‘Republican Pact’ of May 2015.²⁰⁸

Although TJ processes are regularly included in peace agreements, the reality remains that several challenges may occasion the collapse of such peace agreements few years after they are signed. Continuing impunity that encourages new violence especially when a party to the conflict is no longer

²⁰⁶ Republican pact for peace, national reconciliation and reconstruction in the Central African Republic (2015), available at: <https://www.peaceagreements.org/viewmasterdocument/1442> (accessed 13 October 2021).

²⁰⁷ Agreement for peace and reconciliation in Mali resulting from the Algiers process (2014) available at: https://www.un.org/en/pdfs/EN-ML_150620_Accord-pour-la-paix-et-la-reconciliation-au-Mali_Issu-du-Processus-d%27Alger.pdf (accessed 13 October 2021).

²⁰⁸ Republican pact for peace, national reconciliation and reconstruction in the Central African Republic (2015), available at: <https://www.peaceagreements.org/viewmasterdocument/1442> (accessed 13 October 2021).

contented with the ‘deal’ is a major challenge.²⁰⁹ There is a strong desire to end such violent circle through reinforcement democratic values and the rule of law. This is now at stake with TJ processes, when considering truth and reconciliation commissions, international tribunals, reparations and disarmament, demobilisation and reintegration programs.

The challenges to TJ are even more apparent in situations where the conflict is still ongoing, and armed group have taken control over parts of the country. This makes it difficult to explore an effective TJ process without the full participation of the different factions. In the CAR for instance, TJ processes are being created despite the state remaining particularly weak in some parts of the country.²¹⁰ A similar challenge could be faced in Cameroon with non-state armed groups controlling some areas in the English-speaking regions.

Pursuing TJ requires a factual determination and the state's willingness to ensure a return to peace and pursue accountability for serious human rights violations. This means that it is vital to ensure its effectiveness by sharing TJ's goals with the population, including civil society and faith-based organisations, victims' groups, and human rights defenders. It also requires mobilising resources of the state and other partners to implement an effective TJ process. To achieve this, there is a need to develop strategies that gradually strengthen the state's authority in establishing special courts if the existing ones are weak and commissions to lead on TJ processes. The underlying causes of the conflict must be addressed through combating corruption, recognising the plights of minorities and providing community reparations to areas that state development programs had ignored.²¹¹

Several challenges exist in building social cohesion, re-establishing trust between the government and the citizens, and rebuilding the state generally. The threat to TJ mechanisms can also present a stumbling block to peace negotiations, particularly when those who might be found guilty and held accountable by such processes are asked to help establish them. Additionally, understanding that there is always a real threat to TJ addressing human rights violations when those who committed those violations cling to power.²¹²

The AUTJP, as seen in the previous chapters, presents prospects for African states to explore and implement the TJ processes as guided by the policy document. The AUTJP establishes a connection

²⁰⁹ P Hazan, ‘New challenges for transitional justice on the path to peace’ (2017) available at: <https://www.justiceinfo.net/en/32034-new-challenges-for-transitional-justice-on-the-path-to-peace.html> (accessed 4 October 2021).

²¹⁰ Norwegian Refugee Council Report ‘Where armed groups rule in Central African Republic’ (2018) available at: <https://www.nrc.no/where-armed-groups-rule> (accessed 13 October 2021).

²¹¹ As above.

²¹² P Lundy ‘Paradoxes and challenges of transitional justice at the local level: historical enquires in Northern Ireland (2011) *Journal of Contemporary Social Sciences* at 89.

between the state and AU organs and institutions to execute collective actions towards TJ. It highlights that the state has the primary responsibility to engineer TJ processes and acknowledges the possibility of states not being able or willing to initiate TJ processes. In the event of inability or unwillingness of the state, the AUTJP identifies key organs and institutions of the AU, such as the African Commission to help member states implement TJ. However, the reality remains that the African Commission faces its own challenges in upholding and enforcing the responsibility placed on her by the AUTJP. These challenges are discussed in the subsequent paragraphs.

4.2.1 Challenges in implementing TJ at the level of the African Commission

A comprehensive review of TJ efforts on the continent and the role of the African Commission demonstrates that although TJ measures have been implemented richly and diversely, the practice still remains ad hoc and uneven. The following reasons account for the challenges faced by the African Commission in implementing TJ on the continent.

4.2.1.1 Lack of special state reporting procedures for fragile states

As noted in the previous chapter, state reporting is necessary to guide any treaty body's workings. It presents an opportunity for the state party to demonstrate the extent to which its laws and practices comply with the human rights treaty, in this case, the African Charter.²¹³ To effectively utilise TJ processes, the African Commission must be informed through the state reporting process of the prevailing situation in the country. Following the argument raised in the previous chapter, the uniqueness of TJ makes it challenging to address it using ordinary applicable human rights mechanisms used during 'regular times'. There is a need to adopt a special state reporting procedure for fragile and conflict states to offer the African Commission an opportunity to gain a depth insight into the human rights situation resulting from the conflict and the measures adopted by the state to address those violations.

For instance, the 4th and 6th periodic report of Cameroon covering the period of 2015 to 2019 contains only a few paragraphs on the human rights situation of the conflict.²¹⁴ Although this report meets the traditional standards required under the state reporting procedure, it fails to afford the African Commission with the depth of information regarding the human rights violations stemming from the conflict. With the lack of hindsight on these violations due to a corresponding lack of particular state

²¹³ C Heyns 'Regional protection of human rights in Africa (2004) *Human Rights Law in Africa Online* at 129.

²¹⁴ See n160 (Cameroon: 4th- 6th periodic report 2015-2019).

reporting procedures for conflict states, the African Commission can be challenged in seeking justice and peace through its TJ mandate.

4.2.1.2 Lack of a clear and well-defined guideline for TJ

The AUTJP is, so far, the most comprehensive guideline for TJ on the continent. It sets out the modalities and processes of TJ and the considerations to be made when contemplating its implementation on the continent. As part of the implementation strategies, the AUTJP identifies key actors responsible for implementing the AUTJP. While many of the institutions and organs named as actors are still to develop a guideline for the implementation of TJ, the African Commission has moved a step ahead to carry out a study focusing on how the African Commission can identify the avenues and mechanisms for implementing TJ on the continent.²¹⁵

Through this study, the African Commission holds that the legal framework of TJ can be interpreted in the already existing human rights instruments on the continent. Such as the African Charter, the Maputo Protocol, the African Charter on the Rights and Welfare of the Child, the Constitutive Act of the African Union, and the Kampala Convention.²¹⁶ Additionally, and as discussed in the previous chapter, the African Commission has interpreted its TJ mandate with its existing mechanisms such as communication procedures, state reporting, fact-finding missions, resolutions and the use of special mechanisms.

These mechanisms have to be tailored to fit the context of TJ, as highlighted with state reporting procedures. Relying on existing measures that are not adequately conceived to fit the context of TJ is an signal that the African Commission is still to develop a clear and well-defined guideline for the implementation of TJ processes of the continent. While noting that this study was only carried out in 2019, there are certain areas of improvement on the African Commission work on TJ.

4.2.1.3 Political influence over the African Commission

The Executive Council of the AU systematically undermines the independence of the African Commission. For instance, in 2018, the Executive Council adopted three decisions with a motive to limit the powers and functions of the African Commission,²¹⁷ namely,

²¹⁵ See n8 (Study on transitional justice and human and peoples' rights in Africa).

²¹⁶ As above.

²¹⁷ See Decision EX.CLK/Dec.1015(XXVIII) 2018.

1. “The decision to review the interpretative mandate of the African Commission ‘in light of a similar mandate exercised by the African Court on Human and Peoples’ Rights and the potential for conflicting jurisprudence”;
2. “The directive to the African Commission to align its guidelines for granting observer status to NGOs with ‘the already existing criteria on the accreditation of NGOs to the AU’; and
3. “The directive to the African Commission to formulate a code of conduct, in consultation with the AU Legal Counsel”.²¹⁸

To the Executive Council, the African Commission's independence is only functional and not independent from the same organs that created it.²¹⁹ However, the African Commission should be more than functional and should enjoy complete institutional independence from external influences to fulfil its mandate.

Although these decisions seemingly have no bearing on the African Commissions work around TJ, the impact falls in the broader backlash against the African Commission as a primary human rights institution in Africa.²²⁰

Representatives of the various member states make up the AU Executive Council and Assembly. There is always the tendency for the political influence of the Executive Council and Assembly to be exercised over the African Commission. This undermines African Commissions TJ's mandate and its broader mandate of protecting human rights in Africa.

4.2.1.4 Refusal of state parties to grant access to on-site investigations and visits

One of the biggest challenges to the work of the African Commission is its inability to conduct on-site investigations and visits without the consent of the state concerned.²²¹ Even in the face of gross and systematic human rights violations, the rule of state consent still prevails. This inevitably affects the African Commissions mandate to implement TJ and protect human rights generally on the continent.²²²

²¹⁸ As above.

²¹⁹ As above in para.5.

²²⁰ J Biegon, ‘The rise and rise of political backlash: African Union Executive Council’s decision to review the mandate and working methods of the African Commission’ (2018) *European Journal of International Law* at 3.

²²¹ D Ingange ‘The African human rights system: challenges and prospects’ Doctoral thesis, University of South Africa, 2010 at 247.

²²² As above.

The African Commission, for instance, adopted a resolution in 2018 concerning serious human rights situation in Cameroon and opted to undertake promotion mission to Cameroon in partnership with the government authorities.²²³ However this never happened, and the situation continues to worsen despite the recommendations in the African Commission's 2009 *Gunme* decision,²²⁴ and in two earlier press releases, in 2016 and earlier in 2018.²²⁵

In this context, the African Commission can notify the AU Executive Council and Assembly on the serious human rights situation in Cameroon.²²⁶ It can assist with information at its disposal and collaborate with the AU Peace and Security Council to ensure that the fact-finding mission is undertaken.²²⁷

4.2.1.5 Lack of a special mechanism focusing on TJ at the African Commission

The African Commission has put in place several special mechanisms to help her promote and protect human rights. The mandates of the various special mechanisms' spreads to all AU member states who are parties to the African Charter.²²⁸ As discussed in the previous chapter, special mechanisms are committed to promoting and protecting specific rights through collecting and publishing information on respect for human rights.

However, no such special mechanism exists under the African Commission when it comes to TJ. The creation of a special mechanism on TJ is significant to demonstrate the African Commission's commitment to ensure justice and accountability for serious human rights violations, primarily resulting from Conflict situations.

Additionally, having a nominated focal point on TJ will expedite a more lucid response to serious human rights violations and enable a more effective commitment with other organs of the AU and stakeholders such as the UN Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence.

²²³ Resolution on the human rights situation in the Republic of Cameroon - ACHPR/Res. 395 (LXII) 2018.

²²⁴ *Mgwanga Gunme v Cameroon* (communication N0.266/2003) ACHPR 99,2009.

²²⁵ Press release on the human rights situation in Cameroon (2018), available at: <https://www.achpr.org/pressrelease/detail?id=63> (accessed 5 October 2021).

²²⁶ Centre for Human Rights 'Call on AU member states to recommit to independence of the African Commission' (2018) available at: <https://www.chr.up.ac.za/press-statements/1007-centre-calls-on-au-> (accessed 13 October 2021).

²²⁷ Article 19 of the AU Protocol establishing the Peace and Security Council 2003.

²²⁸ International Justice Resource Centre 'African human rights system' (2012) available at: <https://ijrcenter.org/regional/african/> (accessed 13 October 2021).

4.2.2 Challenges at the level of Cameroon

The AUTJP highlights the importance of the state to commit to the pursuit of TJ. It recognises the state as having the primary responsibility of removing all political and social barriers that impede the pursuit of TJ processes, safe spaces for knowledge sharing, debate and advocacy. It is ideal for a member state to exhibit and actualise its commitment to achieving justice, human rights and social cohesion. However, the reality remains that the state might be unwilling and unable to effectively pursue TJ processes, especially in cases where the state has been manifestly implicated in several human rights violations, as with the case of Cameroon. These pose a real threat to TJ, and Cameroon's challenges are even more apparent and unique.

4.2.2.1 Denialism of an anglophone problem

The Anglophone problem is a nationhood related problem that emerged after the unification of British Southern Cameroon and the Francophone Cameroun Republic in 1961. The problem has been caused by a systematic attempt by the Francophone led government to erode the identity of Anglophone Cameroon since 1961. For instance, Cameroon operates under a bi-jural legal system with the French civil law practised in the French regions of the country and the English common law in the English regions. The English regions also practice the Anglo-Saxon system of education as opposed to the French education system.

Despite this distinct colonial heritage and practice, several attempts have been made to erode the English Common law and Anglo-Saxon education system. This is done by appointing Civil law judges in the English regions who do not master the rules of procedure in common law jurisdictions. Common law principles are gradually being eroded from Cameroon legislation, primarily through the recent harmonisation of the Criminal Procedure Code, the Organisation for the Harmonisation of Business Law in Africa (OHADA) Uniform Act and the Inter-African Conference on Insurance Markets (CIMA) which all reflect the civil law system of practice.²²⁹

Anglophone teachers cry out for the redeployment of French-speaking teachers from the English regions. They maintained that the election and appointment of persons in the Anglo-Saxon universities of Bamenda and Buea should be strictly based on Anglo-Saxon norms.²³⁰ In addition to concerns over preserving the identity of the peoples of the English part of Cameroon, there have also

²²⁹ A Caxton' The Anglophone dilemma in Cameroon; the need for comprehensive dialogue and reform' (2017) *Conflict Trends* at 5.

²³⁰ As above.

been genuine grievances and claims of marginalisation and discrimination of the Anglophone community.

Decades of such institutionalised and even legal discrimination have birthed terrible biases and a toxic mutual suspicion. These differences morphed into a crisis, broadly defined, and now into a bloody conflict claiming the lives of innocent civilians every day. Five years have come and gone, but the barbarity of the murders is getting worse. Talks of peace and human rights ring hollow. The result has been the emergence of secessionist movements and a self-proclaimed state of *Ambazonia*.

Despite these concerns, the government has denied claims of an Anglophone problem asserting that the protests were ignited by political concerns and attitudes of violent extremism, quest for private gains against more moderate voices.²³¹ The President has also remarked that the protest is part of an insidious attempt by separatist movements to divide a country that remains 'one and indivisible'.²³² As mentioned earlier, this denialism of the Anglophone problem has resulted in the government unleashing its full military might on the English regions, preventing the end of the conflict. In which case it is difficult address peacebuilding and responsibility for human rights violations through TJ.

4.2.2.2 Continued armed violence and heavy militarisation of the English speaking regions

TJ is most challenged for states that are still experiencing protracted armed violence. Cameroon's conflict and human rights situation has continued to deteriorate since October 2018 with state security forces conducting large-scale security operations and separatists fighters carrying out several attacks.²³³ Between October 2018 to March 2019, over 170 civilians were killed in the Northwest and Southwest regions.²³⁴ In November 2018, security forces attacked Abuh villages in the Northwest and burned an entire neighbourhood.²³⁵ Satellite images and photographic evidence obtained by Human Rights Watch showed the destruction of over 60 structures.²³⁶

²³¹ As above.

²³² See Head of States message to the nation, 10 September 2019, available at: <https://www.prc.cm/en/news/speeches-of-the-president/3777-the-head-of-state-s-message-to-the-nation-10-sept-2019> (accessed 14 October 2021).

²³³ International Observatory Human Rights 'At least 170 civilians killed in the last six months in Cameroon' (2019), available at: <https://observatoryihr.org/news/at-least-170-civilians-killed-in-the-last-six-months-in-cameroon/> (accessed 13 October 2021).

²³⁴ Human Rights Watch 'Cameroon: new attacks on civilians by troops, separatists, at least 170 killed and hundreds of homes burned' (2019) available at: <https://www.hrw.org/news/2019/03/28/cameroon-new-attacks-civilians-troops-separatists> (accessed 5 October 2021).

²³⁵ As above.

²³⁶ As above.

More recently, suspected separatist fighters killed at least ten soldiers near Bamessing in the Northwest region of Cameroon in an attack on 16 September 2021, and the Prime Minister's visit to Bamenda in the Northwest region on 5 October 2021 was disrupted by gunfire from separatist fighters.²³⁷ In such a restive and volatile situation and the heavy militarisation of the English-speaking regions, it will be challenging to initiate an effective TJ process.

4.2.2.3 Weak and questionable institutions

The lack of strong and credible institutions in Cameroon can also pose a challenge to the prospects of TJ processes. The 1990 law reforms saw institutions introducing democracy, the rule of law, and human rights in Cameroon.²³⁸ The Cameroon Human Rights Commission (the Commission) was one of those institutions. Although created by the government, this institution is expected to exercise its mandate and function with utmost impartiality and independence.²³⁹ It has the mandate to ensure the promotion and protection of the fundamental human rights of Cameroonians.

However, this institution has proven over time to lack the requisite independence to monitor, report on human rights and exercise its duties accordingly.²⁴⁰ First, the institution lacks adequate resources to run its programs; it remains very weak in its operational capacity. Additionally, the government influence prevents the Commission from openly condemning and implicating that state for human rights violations in Cameroon, especially within the context of the conflict. The reason is simple: the Commission's personnel are appointed by the Head of State, and the effect is that, allegiance is paid to him instead of the population.²⁴¹

For instance, the Commission has done very little or nothing to caution the government on increased human rights violations perpetrated by the military despite the serious atrocities and killings going on in the English-speaking regions. This gives a clear insight into the challenges to implementing TJ in Cameroon when the national institutions that will aid the process are weak and unreliable.

²³⁷ 'Gunfire disrupts Cameroon Prime Minister's Visit to separatist region' available at: <https://www.reuters.com/world/africa/gunfire-disrupts-cameroon-prime-ministers-visit-separatist-region-2021-10-05/> (accessed 6 October 2021).

²³⁸ On 19 December 1990, the government scrapped the 1966 law and its subsequent amendments in 1987 and replaced it with Law No. 90/052 related to the freedom of mass communications.

²³⁹ B Dinokopila 'Beyond paper-based affiliate status: National human rights institutions and the African Commission on Human and Peoples' Rights' (2010)1 *AHRLJ* at 39.

²⁴⁰ See n158 (S Effiom 2013). Also see Human Rights Watch 'Protectors or pretenders? Government human rights commissions in Africa: Cameroon' (2001), available at: <https://www.hrw.org/reports/2001/africa/cameroon/cameroon.html> (accessed 13 October 2021).

²⁴¹ See Law N0 2019/014 of 19 July 2019 relating to the establishment, organisation and functioning of the Cameroon Human Rights Commission.

4.2.2.4 The lack of political will

The lack of political will in finding a lasting solution to the conflict in Cameroon's English-speaking regions can undermine the prospects for TJ processes. When there is political will, the state will approach the Anglophone conflict as a problem requiring an honest political solution instead of a military solution that has so far failed. The lack of political will by the state is equally seen in terms of cosmetic policies put in place. Such as creating a regional councils to promote decentralisation without making resources available for these institution to run, the national dialogue held in Yaoundé, a talking shop with no genuine intention to solve the conflict.

Additionally, more has been spent on military acquisition since the crisis started in 2016. In 2017 Cameroon reached its highest all-time expenditure on the military.²⁴² A strong indication that it prefers a military response to the Anglophone problem. Another manifestation of the government's lack of political will to resolve the conflict was at the UN draft meeting in preparation for the UN submit. During this meeting, Cameroon voted against implementing responsibility to protect (R2P).²⁴³ Although R2P is only a growing norm with several questions to the principle and mandate, it remains a useful tool in protecting civilians in conflict-stricken nations and save them in case of possible genocide.²⁴⁴ Despite being engulfed in a violent conflict in its English-speaking regions, Cameroon voted against R2P. This indicates bad faith and the unwillingness to ensure civilian protection. TJ's prospects are threatened when the state exercises such unwillingness to address the root causes of the conflict in Cameroon.

Additionally, the lack of political will can also be interpreted in Cameroons state reporting relationship with the African Commission. For instance, reference can be made with the denial of that state to grant the African Commission access to the country to investigate the human rights situation especially resulting from the conflict. This can fit into the broader perspective and possibility that Cameroon will be reluctant to produce a special state report in connection with the conflict even at the request of the African Commission. This poses a challenge not only for Cameroon but for the African Commission if a state party refuses to engaged in such special reporting procedures.

²⁴² Cameroon military expenditure reaches its all-time highest level in 2017 with over 422 million USD spent, available at: <https://tradingeconomics.com/cameroon/military-expenditure> (accessed 13 October 2021).

²⁴³ At the UN: Cameroon votes against the responsibility to protect', available at: <https://www.cawicameroon.org/at-the-un-cameroon-votes-against-responsibility-to-protect/> (accessed 13 October 2021).

²⁴⁴ Report of the UN Secretary-General 'Fulfilling our collective responsibility: international assistance and the responsibility to protect' 2014.

4.3 Conclusion

The purpose of this chapter was to discuss the challenges in pursuing TJ for serious human rights violations in Cameroon. The chapter highlights that while the AUTJP names the African Commission as a critical institution mandated to implement the TJ policy, the African Commission faces serious challenges in effectively executing this mandate. For a fragile and conflict-related state, there are enormous challenges to TJ. The state has the primary responsibility to take initiatives in implementing TJ. However, this chapter concludes that the state might be unwilling or unable to explore TJ processes, especially in circumstances where the state is actively involved in the conflict and is implicated in serious human rights violations.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

The chapter presents the conclusion and recommendations to the study. It concludes with remarks of the entire study and proposes recommendations to improve TJ mechanisms under the African human rights system in addressing serious violations of human rights in Cameroon. The recommendations are made to the African Commission and the state of Cameroon.

5.2 Conclusion

The purpose of this study was to discuss the extent to which TJ mechanisms under the African human rights system can address serious violations of human rights in Cameroon. In this line, the study established an understanding of TJ and how it is relevant to human rights protection in Cameroon; it discussed the human rights situation in Cameroon and the importance of the AUTJP in responding to serious human rights violations in Cameroon. Additionally, it looked at how the African Commission has interpreted and exploited its TJ mandate and the challenges faced in implementing this mandate. The study relied on a doctrinal approach by analysing legal and policy documents at the AU and the national level in Cameroon.

The human rights situation in Cameroon continues to deteriorate principally because of the conflict in the English speaking regions of the country. These regions have been ravaged by protracted armed violence and atrocities committed by the Cameroon military and the armed separatist, leading to a displacement of over one million inhabitants, with some as refugees in Nigeria fleeing from the scathing violence that has engulfed their communities. Women and children have been mainly left to face the brunt of the conflict. They constitute a majority of the persons either internally displaced or as refugees in neighbouring countries.

Five years have come and gone, but the barbarity and human rights violations are getting worst. Talks of peace and human rights ring hollow, a strong indication of the lack of serious efforts to address to underlying causes of the problem by the government. It also highlights the unwillingness to recognise the existence and gravity of the situation in Cameroon. Instead, the government has made recourse to a military solution and armed resistance insulting in the death of thousands of civilians. The violations in

Cameroon highlights the dire need to explore TJ as a measure to restore peace, build trust, reconciliation and healing.

The AUTJP avails a rich principle text or policy document, guides AU member states to develop country-specific and comprehensive programs towards peace, justice reconciliation and healing, especially within the context of a state experiencing or coming out of a conflict. The policy document is far-reaching and captures the African essence while incorporating continental-style mechanisms and principles to deal with unattended human rights violations.

The AUTJP recognises the disproportionate impact of conflict on women, children, persons with disabilities, refugees and IDPs, and older people and emphasises the need to consider these groups of persons when implementing TJ. More importantly, it encourages collective participation in implementation through key actors at the national, regional groups, and continental levels.

As a key continental implementation body of the AUTJP, the African Commission has interpreted its TJ mandate within the broad spectrum of its existing mechanisms such as communication procedures, state reporting, fact-finding missions, resolutions, and special mechanisms.

While the African Commission has a mandate to implement TJ among AU member states, the reality remains that it faces serious challenges that significantly limit its ability to execute this mandate effectively. Additionally, although the primary responsibility to the initiative and implement TJ mechanism rest with the state, the peculiarity of the situation in Cameroon, several identifiable challenges could hinder the prospects for TJ.

5.3 Recommendations

At the level of the African Commission, this dissertation finds that the African Commission has interpreted its mandate to implement TJ within its existing mechanisms used during 'regular times'. However, the peculiarity of fragile and conflict states makes it difficult to use these exact mechanisms in the context of TJ. Since this is already the case, this study recommends that the existing mechanisms be tailored to fit the context when used during TJ processes. For instance, there should be a special reporting procedure for states undergoing violent conflicts and seeking to rebuild through TJ. This report can either be a separate section in the regular state report or an entirely separate report dealing extensively with the conflict in Cameroon and its implications to human rights. Through this, the African Commission will be aware and can check the progress of the state to end the conflict and the measures put in place for rebuilding.

So far, the African Commission has only issued a couple of statements concerning the situation in Cameroon. It should take concrete steps in convincing Cameroon to let it do a country mission. It should also improve its engagement with the AU Executive Council, other AU organs and ECAS to convince Cameroon to consider TJ and include the African Commission in the process.

Regarding the issue of a dedicated mechanism for TJ, this study recommends that the African Commission create a continental focal point or establish a new mechanism on TJ. A focal point for TJ on the continent will ensure a more comprehensive response of the African Commission. The focal point will be able to efficiently engage with the organs of the AU and other external stakeholders. This will enhance the effectiveness and visibility of the African Commission on TJ. On the other hand, developing a new special mechanism or working group will enhance the African Commissions engagement with the protection of serious human rights violations emanating from conflicts and the rights to be protected during transition. Such a new mechanism can also act as a continental resources platform and achieve TJ documentation. This will be used by the African Commission or member states of the AU and researchers, practitioners, CSOs and students.

The AUTJP encourages collective participation among key actors in the process and implementation of TJ on the continent. At the continental level, there are several organs and institutions that can play a role in implementing the AUTJP. For instance, the AU Peace and Security Council through the Panel of the Wise can take initiatives to encourage the Cameroon government to engage with TJ as a means to restoring peace and security in the country. Additionally, this study finds that only the African Commission has carried out a study that guides its implementation of TJ on the continent. This study recommends that the other organs and institutions of the AU should explore avenues to improve the continental framework and implementation of TJ.

At the level of Cameroon, this study recommends that to resolve the conflict and address human rights violations through TJ, the government of Cameroon must start by acknowledging that there is an anglophone problem so as to explore legal and institutional reforms through TJ. It should seek a peaceful solution to the conflict in Cameroon by exploring a meaningful and effective TJ process in Cameroon.

The mechanisms for pursuing the peacebuilding element of TJ include peace negotiations and agreements. Any consideration for TJ in Cameroon must consist of negotiations and mediations processes. This study recommends that the government of Cameroon engages in a genuine and all-inclusive dialogue with all the different factions to initiate an effective peace process. During such a dialogue and peace process, there is a need to identify TJ as a broader mechanism to end the conflict in

Cameroon through establishing guarantees for non-repetition and ensuring the prevention of new violence.

Currently, there exists no truth and reconciliation commission to help address human rights violations in Cameroon. Seeing that this has not been done, this study recommends that the government creates a TJ commission to outline institutional responsibility for crimes, make recommendations to reforms and examine patterns of human rights violations over time. To guarantee the success of the commission, the selection of the commissioners must be transparent. Selected commissioners must be independent and impartial. Additionally, the commission can work to promote reconciliation and social cohesion. Reconciliation can be achieved through forgiveness between victims and perpetrators while social cohesion may entail healing which includes regard for each other's suffering; promoting shared truth; and overcoming a sense of victimisation.

Reparative justice stands as one of the most common forms of TJ, and it consists of adequate financial and non-financial redress for violations or losses suffered. This study recommends both individual and collective reparations to redress individual and communal destructions especially communal lands, buildings and other infrastructures.

Additionally, recognising the dead is also crucial for peace and reconciliation. Memorialisation can include commemorative activities, erection of monuments and symbols as a sign of respect for the dead and survivors of violence. This should be the case with the 21 persons killed in Ngarbuh and eight children killed in Kumba.

Diversity management is an essential element of TJ when addressing the group dimension of conflicts and violence, where violence is organised and perpetrated based on language, culture and political identity, as with the case of Cameroon. This study recommends that a TJ process in Cameroon consider establishing policies and institutions that promote national cohesion, tolerance, and accommodation between members of different communities. Regulatory measures must be established to combat hate speech based on ethnicity and language and similar acts that incite violence and fuel communal division and tension. Instituting educational programmes that target stereotypes and social prejudice and promote respect for ethnocultural diversity and the dignity of fellow human beings, irrespective of their origin, through school curricula, religious and cultural teachings, radio and television shows.

Justice and accountability are very crucial to TJ. It deals with the formal and traditional legal measures adopted for investigation and prosecuting the crimes perpetrated to establish accountability and provide remedy to the victims. Justice and accountability ought to be delivered based on the national

system through independent courts. However, because the national courts in Cameroon are incapacitated due to a lack of separation of the judiciary and possibly lack of confidence by affected communities, this study recommends that special courts and extraordinary chambers be put in place, mounted by independent and impartial personnel. Alternatively, where Cameroon cannot facilitate the prosecution of perpetrators, redress can be sought with relevant regional or international judicial institutions.

As an alternative to accountability through prosecution, provisions for pardons, mitigated sentences and amnesties can also prove relevant to any TJ process. Cameroon has taken steps to pardon some prisoners in connection to the conflict. In 2018 the President granted pardon to over 289 persons, and in 2019 over 333 prisoners were released in line with peace talks.²⁴⁵ However, this is just a small fraction of the number of persons arrested in line with the conflict. This study recommends that any TJ process in Cameroon should address the situation of persons still in detention. Mitigating sentences or outright amnesty can prove timely for peacebuilding and TJ in Cameroon.

(Word Count 19929)

²⁴⁵ Cameroon releases 333 prisoners amidst peace talks; separatists sat not enough (2019), available at: <https://www.reuters.com/article/us-cameroon-security-idUSKBN1WI23V> (accessed 13 October 2021).

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