

# Transitional Justice in Anglophone Cameroon: Perspectives and Lessons from South Africa and Rwanda

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## Abstract

Since the fall of 2016 Anglophone Cameroon has endured the stench of an internal political conflict between security forces and separatist militia groups, in which numerous human rights violations have been committed. Given the magnitude of these violations, they have been categorised as serious crimes in international law (crimes against humanity). While international law urges the prosecution of perpetrators, this paper acknowledging the rule of law as a relevant tool in transforming and shaping societies, but the responses of states in post-conflict scenarios are not always influenced by the rule of law as they sometimes involve factors that have no legal bearing or backing. These responses have been recognised generally to constitute components of transitional justice. This paper thus views transitional justice as comprising all the measures which states usually turn to in search of ways to respond to past atrocities, whether legal, non-legal or a combination thereof. This paper argues that the situation in Anglophone Cameroon has reached unprecedented levels of violence, and given the degree of victimisation and mayhem caused to society there is a need for transitional justice in order to give closure to victims and restore stability. To suggest the form such transitional justice may take, the paper uses a comparative methodological approach in examining the transitional justice perspectives of South Africa and Rwanda, to assess what lessons could be drawn from them in respect of how they dealt with their legacies of past abuses. The paper recommends the establishment of an Anglophone Cameroon Truth, Justice and Reconciliation Commission (ACTJRC).

## Keywords

Transitional justice; human rights violations; Anglophone Cameroon crisis; truth and reconciliation commission; criminal prosecution.

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## 1 Introduction

In the aftermath of violent conflicts (usually non-international in nature) involving heinous human rights violations, the decision concerning the type(s) of mechanisms to be designed to address past atrocities is usually one of great importance for future generations. While criminal trials, for example, have for decades been the most frequently advocated choice of responses (the rule of law way), they have often been viewed as posing a threat to such fragile democracies at this stage of their recovery.<sup>1</sup>

Transitional societies<sup>2</sup> usually resort to mechanisms that suit their context, and these mechanisms have not always been limited to those supported by the rule of law. Such mechanisms may be retributive (such as criminal prosecutions and punishment); restorative (such as truth commissions, reparations, institutional reforms, and even amnesties, blanket or conditional); or a combination thereof. Admittedly, the issues that ensue times of conflict transcend legal boundaries. Applying only legal mechanisms might thus be prejudicial to the needs of post-conflict societies. Under international law, however, the trend has been to move away from blanket amnesties, which do not leave room for individual criminal responsibility. Conditional amnesties, on the other hand, are given some degree of consideration. They are often the price paid for finding out the truth about what happened and the whereabouts of victims.

In the hope of initiating a conversation on "transitional justice in Anglophone Cameroon", this paper, using a comparative methodological approach, examines the transitional justice perspectives of South Africa and Rwanda, seeking to identify lessons that could be learned from their experiences in terms of mechanisms and how they could help Cameroon come to terms with the situation in Anglophone Cameroon. It considers the transitional mechanisms of these countries for a couple of reasons. Firstly, they constitute the most prominent situations of gross human rights violations in Africa whereafter concrete measures were taken to address past injustices. Secondly, the two countries applied different mechanisms. While South Africa adopted a restorative approach, Rwanda used a retributive approach to transitional justice. Cameroon could well learn from their distinct approaches. In addition, there are contextual similarities in all three contexts. All of them have colonial histories and minority and majority

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<sup>1</sup> Orentlicher 2007 *International Journal of Transitional Justice* 12-13; Malamud-Goti 1990 *Hum Rts Q* 5.

<sup>2</sup> Societies transitioning from periods of gross human rights violations, usually perpetrated by a dictatorial regime.

factions in the population. Also, there are two conflicting factions in all three contexts and there is animosity between them.<sup>3</sup>

While this paper does not advocate the replication of the South African and Rwandan transitional justice models in Cameroon, it nonetheless strongly holds that these models convey incredible lessons that Cameroon can learn from. Also, aspects of these two models, such as truth-seeking, reparation and memorialisation (from the South African model), and prosecutions (from the Rwandan model) may well be incorporated, or better still taken into consideration when coining a transitional justice response to the situation in Anglophone Cameroon.

At this point it must be acknowledged that while the Anglophone crisis is geographically limited to the Anglophone regions, it still constitutes a national problem pitting the two main factions of the country (the Anglophone population and the Francophone-led government) against each other. Just as in the cases of South Africa involving the Whites against the Blacks, and Rwanda involving the Hutus against the Tutsis, the Anglophone crisis presents a plethora of evidence upon which to view the Anglophone-Francophone rift. The Anglophone crisis as such is not limited to the Anglophone regions exclusively, given the complex national ramifications it poses, as it involves all factions of the Cameroon population even if it predominantly affects Anglophone regions. It remains a national crisis, although it is geographically limited to the English-speaking regions. To view it as a regional crisis not deserving full national attention would be a rather myopic position to take. This is why the transitional models of South Africa and Rwanda, which were nation-wide, may well be drawn from to inform the process of a transitional justice response to the Anglophone crisis.

This paper therefore suggests that there are valuable lessons to be learned from the South African and Rwandan transitional justice models that could help Cameroon in her quest for transitional justice. Although the situation in Anglophone Cameroon is ongoing, it is nevertheless relevant to suggest that pre-emptive conversations should take place on how the crisis could best be put to rest.

To put things into perspective, the paper begins by painting a picture of the Anglophone Cameroon transitional context and its evolution to the condition where a conversation on transitional justice has become inevitable. It then goes further to give a brief understanding of the notion of transitional justice before proceeding to examine the transitional justice models of South Africa and Rwanda and the lessons they offer.

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<sup>3</sup> In the South African case the conflict was between the Blacks (predominantly) and the Whites; in Rwanda, between the Hutus, and the Tutsis; and in Cameroon, between the Anglophones, and the Francophones.

## 2 The Anglophone Cameroon transitional context: A case for transitional justice

The current Anglophone crisis in Cameroon, which started in 2016, was initially grounded in the grievances of teachers and lawyers in the English-speaking (Anglophone) regions (the North West and the South West), who took to the streets to protest against a perceived marginalisation and assimilation of their much cherished, colonially inherited Anglo-Saxon educational and common law legal systems.<sup>4</sup>

When this happened most Anglophone people quickly identified with these grievances as they were akin to the long-standing common grievances and challenges of the larger Anglophone population. As a result, prominent Anglophone pressure groups such as the Southern Cameroons National Council (SCNC) and the Southern Cameroons Youth League (SCYL), which had previously led the agenda for a return to federalism or secession<sup>5</sup> but had been brutally suppressed and forced to go underground,<sup>6</sup> took advantage of the situation to mobilise the Anglophone people into resurrecting calls for federalism and secession.<sup>7</sup>

The government's repressive tactics further exacerbated the antagonism, fostering the idea among some Anglophones that a two-state federation or secession would be the best option.<sup>8</sup> Undoubtedly this led to the escalation of the crisis, with the emergence of separatist militia groups, including *inter alia* the Ambazonian Defence Forces (ADF), the Southern Cameroons Defence Forces (SOCADEF) and the Lebialem Red Dragons, who are often referred to by the general Anglophone population as the "Amba boys".<sup>9</sup> Since their emergence they have adopted both a defensive and an offensive stance against the government's security forces, comprising of the army, the gendarmes and other paramilitary units like the Rapid Intervention Battalion (generally referred to by its French acronym: BIR), as well as the police.<sup>10</sup> In addition, in a bid to implement their various dissident strategies,

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<sup>4</sup> See generally the following: Human Rights Watch 2018 [https://www.hrw.org/sites/default/files/report\\_pdf/cameroon0718\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/cameroon0718_web2.pdf); International Crisis Group 2017 [https://d2071andvip0wj.cloudfront.net/250-cameroons-anglophone-crisis-at-the-crossroads\\_0.pdf](https://d2071andvip0wj.cloudfront.net/250-cameroons-anglophone-crisis-at-the-crossroads_0.pdf); Amnesty International 2018 <https://www.amnesty.org/download/Documents/AFR1784812018ENGLISH.PDF>.

<sup>5</sup> Konings and Nyamnjoh 1997 *JMAS* 220-228.

<sup>6</sup> See generally Achankeng 2015 *The Round Table* 104 319-340; Pineteh 2005 *Journal of Intercultural Studies* 379-399; Konings "Anglophone University Students" 163-190.

<sup>7</sup> Pommerolle and Heungoup 2017 *African Affairs* 532.

<sup>8</sup> Cameroon-info.net 2016 <http://www.cameroon-info.net/article/cameroun-honorable-joseph-wirba-depute-du-bui-ceux-qui-affirment-que-le-cameroundoit-277266.html>.

<sup>9</sup> Dionne 2018 <https://www.nytimes.com/2018/10/06/world/africa/cameroon-election-biya-ambazonia.html>.

<sup>10</sup> *Battalion d'Intervention Rapide*.

including ghost town operations and boycotts, they have attacked anyone (civilians) who appears to be disobedient to or unsupportive of their mission.<sup>11</sup> They aim to achieve a new political order by force if necessary, their goals being either federation or the secession of Anglophone Cameroon to form a country on its own, which they call "Ambazonia", a name that was coined and used first by Gorji Dinka.<sup>12</sup> Meanwhile the government is bent on maintaining the political *status quo* of the country as a unitary state.

Both camps have committed acts of political violence that have resulted in abuses of the civilian population of Anglophone communities.<sup>13</sup> Civilian objects and populations have reportedly been targeted. The Anglophone population has been the victim,<sup>14</sup> suffering numerous human rights violations, including *inter alia* mass arbitrary arrests and detentions, arson and the vandalism of local communities. The abuses include mass displacements, extra-judicial killings, abductions, sexual violence and mutilations, torture and other cruel, inhumane acts.<sup>15</sup> In addition, the population has suffered from curfews, lockdowns, the restriction of movement, extortion and the destruction of schools, with the effect of terminating education for many learners.<sup>16</sup> To mention just a few effects of this crisis, one may refer to the loss of lives (over 3,000 individuals, predominantly civilians); the forced displacement of more than 500,000 people (Internally Displaced Persons (IDPs)) into nearby regions,<sup>17</sup> with many others seeking refuge in the forest lands of rural areas which are generally difficult to access, where they live in makeshift shelters; and the flight of over 50,000 refugees into neighbouring Nigeria.<sup>18</sup> There has also been an increase in crime, which is evident in the armed robberies, looting, kidnapping, hijacking and mutilations being committed by individuals who claim to belong to the "Ambazonia movement" as well as by criminal

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<sup>11</sup> Human Rights Watch 2019 <https://www.hrw.org/news/2019/03/28/cameroon-new-attacks-civilians-troops-separatists>.

<sup>12</sup> The name "Ambazonia" comes from a Portuguese appellation of Southern Cameroon: see Dinka "New Social Order" 91-105.

<sup>13</sup> Cho and Agbor 2022 *PELJ* 5.

<sup>14</sup> Human Rights Watch 2019 <https://www.hrw.org/news/2019/07/22/cameroon-security-forces-kill-civilians-rape-woman>.

<sup>15</sup> See generally Cho and Agbor 2022 *Journal of Nation-Building and Policy Studies* 5-29.

<sup>16</sup> These lockdowns were imposed on the population by the separatist leaders in order to make the Anglophone regions ungovernable.

<sup>17</sup> Longari 2018 <https://www.france24.com/en/20190911-cameroonian-president-biya-national-dialogue-anglophone-separatists>.

<sup>18</sup> Act Alliance 2019 <https://reliefweb.int/report/cameroon/act-alliance-appeal-cameroon-conflict-emergency-cmr1917>.

gangs.<sup>19</sup> As a corollary, the socio-economic life of the two Anglophone Regions has been greatly disrupted.

Unfortunately, no concrete moves have been made toward holding perpetrators accountable or compensating victims to ensure non-repetition.<sup>20</sup> There is thus a need for transitional justice to bring healing, restore peace and stability and re-establish a common ground for peaceful coexistence among all members of Cameroonian society (Anglophones and Francophones alike).

Two factors have been identified as constituting the major reasons why the Anglophone Cameroon situation might be deserving of transitional justice. These factors also suggest the *sui generis* nature of the conflict. Firstly, due to the organised nature, the degree of victimisation and the gross human rights violations committed therein, the crisis is seen to have gone beyond normally acceptable levels of political violence.<sup>21</sup> Secondly, this is the first time that Anglophones have taken up arms against the government in such a manner as to resist the same grievances that they had in the past addressed through diplomatic approaches. It seems in this instance that "the argument of force" had succeeded "the force of argument", the latter of which Anglophone people had always supported.<sup>22</sup>

### 3 The transitional justice conundrum

It is now widely accepted that transitional justice encompasses all measures that states may implement to achieve political change, and that this is characterised by legal responses to confront the crimes of the past.<sup>23</sup> While transitional justice for some has involved the concept of individual criminal responsibility, with the institution of criminal tribunals and the prosecution of perpetrators of past gross human rights violations, other jurisdictions, including South Africa, have based their responses to the legacy of past atrocities on other notions which seek reconciliation, forgiveness and the restoration of society. In such societies truth commissions, reparations, amnesties and different institutional reforms have often been the core transitional justice mechanisms. In some instances the rule of law and legalism have not always been the systems upon which societies have transitioned into peace and stability. Instead, other factors such as religion,

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<sup>19</sup> OSAC 2019 <https://www.osac.gov/Country/Cameroon/Content/Detail/Report/b1678858-8009-43c5-9c7b-160eea6972d9> 2; Amnesty International 2018 <https://www.amnesty.org/download/Documents/AFR1784812018ENGLISH.PDF> 8.

<sup>20</sup> Cho and Agbor 2022 *PELJ* 5.

<sup>21</sup> Agbor and Njeassam 2019 *PELJ* 3.

<sup>22</sup> The violence seems to have changed the motto of the Southern Cameroons National Council, which was previously "The force of argument, not the argument of force".

<sup>23</sup> Teitel 2003 *Harv Hum Rts J* 69.

tradition and the cultural beliefs of the people have often been the determinants of the type of transitional justice mechanisms to be adopted. As such, this paper views transitional justice as comprising all measures that states employ to address past atrocities and restore stability, including both legal and non-legal responses.<sup>24</sup> The African Union Transitional Justice Policy Framework recognises five mechanisms that transitional societies can adopt to address the legacies of past atrocities, namely: regional human rights litigation; domestic prosecutions; national reparations; truth telling; and community-based mechanisms.<sup>25</sup> These mechanisms echo the ideas of justice, truth, reparations and guarantees of non-repetition, which are at the core of the concept of transitional justice.

Kim and Hong have stated that the decision of transitional societies regarding what justice mechanism to utilise is determined by the outcome of the conflict or the situation.<sup>26</sup> Where there has been a one-sided victory it is easy to use prosecutorial mechanisms, as in the cases of Rwanda after the genocide, the former Yugoslavia, Cambodia after the Khmer Rouge atrocities, and Ethiopia,<sup>27</sup> whereas non-prosecutorial mechanisms such as truth commissions, reparations and amnesties have mostly been evident where no one party has emerged as the winner, resulting in a negotiated settlement,<sup>28</sup> like the transitions of post-apartheid South Africa and Latin America.<sup>29</sup>

Should Cameroon be able to break from a past characterised by political violence and a culture of impunity, this would be contingent on the mechanisms established. The choice of such mechanisms would largely depend on knowledge of their relative success in other countries. The transitional justice models of South Africa (a non-prosecutorial model) and Rwanda (a prosecutorial model) are worth examining.

#### **4 The South African transitional justice model: Amnesty for truth**

Like many other countries in the last decade of the 20<sup>th</sup> century, South Africa was confronted with the task of coming to terms with the legacy of the apartheid regime. Apartheid, unlike such racial discrimination in other countries, was characterised by its having been institutionalised and the application of violent tactics to enforce apartheid policies. Apartheid, meaning "apartness" in Afrikaans, was a policy instituted in South Africa by

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<sup>24</sup> Teitel 2003 *Fordham Int'l LJ* 893.

<sup>25</sup> Brankovic 2014 <https://www.csvr.org.za/african-union-transitional-justice-policy-framework-in-practice-implementing-accountability-measures/>.

<sup>26</sup> Kim and Hong 2019 *Journal of Conflict Resolution* 1165-1192.

<sup>27</sup> Legide 2021 *Journal of African Conflicts and Peace Studies* 8.

<sup>28</sup> Kim and Hong 2019 *Journal of Conflict Resolution* 1165.

<sup>29</sup> Kim and Hong 2019 *Journal of Conflict Resolution* 1165-1192.

the National Party when it took power in 1948. The aim was to promote the supremacy of the white minority over the black majority and other races including Asians and coloured people. This policy was legalised through the enactment of a set of discriminatory laws which sought to separate whites from blacks as well as to curtail some of the basic human rights of black South Africans.<sup>30</sup> In this system blacks were discriminated against regarding the type of services, facilities as well as social and public amenities that the apartheid government provided. Whites had the best quality in terms of education, jobs, and socio-economic and infrastructural development. Additionally, the government prohibited relationships between blacks and whites, allocated separate areas for black settlement, and instituted laws (the Pass Laws) to restrict and control the movements of black people into white areas and in white facilities such as buses. These laws were used against the black population to criminalise certain conduct as well as to brutally suppress any form of dissidence with the arbitrary policies of the government.<sup>31</sup>

The government employed ferocious tactics in order to maintain white supremacy and enforce its policies, including arbitrary arrests, detention, torture, assassinations, forced disappearances, forced displacement, land dispossession, and other forms of racial and ethnic discrimination which constituted crimes against humanity.<sup>32</sup> In the midst of the mayhem, liberation movements like the African National Congress (ANC) and the Inkatha National Cultural Liberation Movement (INCLM), now the Inkatha Freedom Party (IFP) emerged. Although their early strategies were non-violent and were characterised by strike actions, boycotts, and civil disobedience, these parties later adopted violent tactics, with the ANC forming a military wing called *uMkhonto we Sizwe* ("Spear of the Nation") that employed violence against the apartheid government. More than four decades of apartheid, which prevailed from 1948 until 1990, involving the commission of gross human rights violations, including *inter alia* assassinations, kidnappings and forced disappearances, destabilised the socio-political fabric of South African society. Admittedly, the traumatic experiences of victims of injustice and inequality inflicted psychological

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<sup>30</sup> Noteworthy are laws such as the *Prohibition of Mixed Marriages Act* 55 of 1949; the *Group Areas Act* 41 of 1950; the *Suppression of Communism Act* 44 of 1950; the *Reservation of Separate Amenities Act* 49 of 1953; the *Public Safety Act* 3 of 1953; the *Immorality Act* 23 of 1957; the *Terrorism Act* 83 of 1967; and the *Unlawful Organisations Act* 34 of 1960.

<sup>31</sup> For details on the apartheid laws, see: Berrisford 2011 *Urban Forum* 247-263; Dubow *Apartheid, 1948-1994* 32-99.

<sup>32</sup> See Art 1 of the *International Convention on the Suppression and Punishment of the Crime of Apartheid* (1973); Art 7(1)(j) of the *Rome Statute of the International Criminal Court* (1998).



wounds and mistrust between the whites and blacks of South Africa which are still evident to date.<sup>33</sup>

When the struggle finally ended it became incumbent on the new, transitional government that had taken power to confront the past abuses and heal the society that had been fragmented and ripped apart by racism.<sup>34</sup> They felt that if these divisions were not addressed, this could lead to vengeful violence from the blacks.<sup>35</sup>

It was against this backdrop that the Truth and Reconciliation Commission (the TRC or the Commission) was established, to restore and reconcile society through truth-telling rather than retribution.<sup>36</sup>

#### **4.1 The South African Truth and Reconciliation Commission (TRC)**

Informed by the *Ubuntu* philosophy which celebrates the values of solidarity, humanity, social cohesion and forgiveness,<sup>37</sup> and the idea that the acknowledgment of past abuses perpetrated by the apartheid regime would foster healing and the coexistence of all peoples in the future, the TRC was established as a third-option transitional justice mechanism (a "third way" in the often-cited words of Archbishop Desmond Tutu, the Chair of the TRC) between criminal prosecutions and blanket amnesties.<sup>38</sup>

The purpose of the TRC was to promote national unity and reconciliation in a way that surpassed the differences of the past, according to the *Promotion of National Unity and Reconciliation Act* 34 of 1995. The South African transitional justice model spearheaded by the TRC had as its mandate the following: To establish through investigations and hearings "as complete a picture as possible" of the root causes, context as well as perspectives of both victims and perpetrators of the human rights violations of the apartheid regime committed from the period of March 1960 to May 1994;<sup>39</sup> to facilitate the granting of amnesties to those responsible for the commission of politically motivated crimes who made "full disclosure" of the facts and political motives behind the commission of such crimes;<sup>40</sup> to compile a comprehensive report of the outcomes; to restore the dignity of victims by allowing them to tell their own stories of the violations they suffered and

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<sup>33</sup> Van der Merwe and Chapman *Truth and Reconciliation in South Africa* 6.

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<sup>35</sup> Van der Merwe and Chapman *Truth and Reconciliation in South Africa* 6.

<sup>36</sup> Van der Merwe and Chapman *Truth and Reconciliation in South Africa* 8.

<sup>37</sup> The term "*Ubuntu*" is generally understood to connote the phrase: "I am because we are".

<sup>38</sup> Tutu *No Future without Forgiveness* 30.

<sup>39</sup> Section 3(1)(a) of the *Promotion of National Unity and Reconciliation Act* 34 of 1995.

<sup>40</sup> Section 3(1)(b) of the *Promotion of National Unity and Reconciliation Act* 34 of 1995.

recommend reparation measures for victims; and to propose measures that would help prevent the recurrence of violence.<sup>41</sup>

As a result of this extensive mandate, the TRC was divided into three committees: the Human Rights Violations Committee; the Amnesty Committee; and the Reparations and Rehabilitation Committee.<sup>42</sup> These committees were assisted by an Investigation Unit and a Research Department.<sup>43</sup> Through these committees, the work of the TRC was made manifest.

Under the Human Rights Violations Committee, hearings were held where victims and their families could share their stories of human rights violations and receive support and sympathy.<sup>44</sup> In some cases hostility was also provoked.<sup>45</sup> The Amnesty Committee allowed perpetrators to apply for amnesty provided they complied with the requirements (full disclosure, including of the political motive).<sup>46</sup> Shocking confessions were made by perpetrators during these hearings.<sup>47</sup> Some even demonstrated how they had tortured their victims.<sup>48</sup> This evoked emotional responses as the survivors were reminded of their traumatic experiences. It is argued that the legalistic nature of the hearings might also have constrained the amnesty hearings and restricted the amount of truth revealed therein.<sup>49</sup>

The Reparations and Rehabilitation Committee made recommendations for reparations and awarded the victims monetary compensation,<sup>50</sup> directed social and health services towards the victims, awarded them education subsidies, and instigated institutional reforms to help victims move on from the atrocities they had suffered and to ensure non-recurrence.<sup>51</sup> Symbolic reparations and memorialisation through the naming of public places and the erection of statues also played a significant role in terms of reparation in post-apartheid South Africa. A good example is the Cradock Four Memorial, a monument erected in honour of four anti-apartheid activists (namely: Fort Calata, Mathew Goniwe, Siculo Mhlauli, and Sparrow

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<sup>41</sup> Section 3(1)(c) of the *Promotion of National Unity and Reconciliation Act* 34 of 1995.

<sup>42</sup> Byrne 2004 *Peace and Conflict* 237-256.

<sup>43</sup> Section 28 of the *Promotion of National Unity and Reconciliation Act* 34 of 1995. Also see TRC *Report Volume 1* paras 42-47, 48-51 addressing the activities of the Investigation Unit and the Research Department respectively.

<sup>44</sup> Van der Merwe and Chapman *Truth and Reconciliation in South Africa* 9.

<sup>45</sup> See generally Hamber *Transforming Societies*; Allan and Allan 2000 *Behavioural Science and the Law* 459-477.

<sup>46</sup> See SABC 2015 <https://social.shorthand.com/SABCNewsOnline/nyCsx09gnf/understanding-amnesty-in-south-africa>.

<sup>47</sup> Stevens 2005 *African Safety Promotion* 23-39.

<sup>48</sup> Gibson 2006 *Journal of Conflict Resolution* 416.

<sup>49</sup> Gibson 2006 *Journal of Conflict Resolution* 416.

<sup>50</sup> Backer 2005 *Journal of the International Institute*.

<sup>51</sup> See generally De Greiff *Handbook of Reparations*; Lykes and Mersky "Reparations and Mental Health" 589-622.

Mkhonto) assassinated by the Apartheid police on 27 June 1985.<sup>52</sup> Other apartheid-related memorials include *inter alia* Robben Island in Cape Town, the Bhisho Massacre Memorial in Bhisho, and the Langa Memorial in Uitenhage. Also public spaces in South Africa including hospitals, universities, and gardens have been named after some of the leaders of the struggle against Apartheid. Some examples include the Nelson Mandela University in Gqeberha (formerly Port Elizabeth), the Steve Biko Academic Hospital in Pretoria, and the Walter Sisulu Botanical Garden in Johannesburg.

Irrespective of its contribution to reforming South African society, the TRC was not without weaknesses.

One of the weaknesses had to do with the fact that the TRC did not address and settle key issues relating to apartheid such as racial segregation and the dispossession of land.<sup>53</sup> The failure to address these issues has contributed to the ongoing problem of racism and land dispossession in South Africa today, with the Economic Freedom Fighters (EFF), a leading opposition party, unflinchingly pushing the agenda for "the expropriation of land without compensation".<sup>54</sup>

Additionally, although the TRC's offer of amnesty motivated truth-telling and gave closure to the families of victims about the whereabouts of their families, it was criticised for granting amnesty to perpetrators of gross human rights violations, which was viewed as unacceptable under international law<sup>55</sup> and as fostering impunity in South Africa.<sup>56</sup> At the end of its work the TRC handed over hundreds of cases to the National Prosecuting Authority (NPA) for investigation and possible prosecution. 30 years later nothing substantial has been done in that regard.<sup>57</sup> Many South

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<sup>52</sup> Moyo 2022 <https://www.ru.ac.za/latestnews/rhodesuniversityhelpsbringshistorytothepresentthroughthedigitisation.html>.

<sup>53</sup> These include the various legal prohibitions and discriminations that were instituted against black people.

<sup>54</sup> See Merten 2021 <https://www.dailymaverick.co.za/article/2021-05-16-amending-constitutions-section-25-draws-to-a-close-but-eff-makes-last-stand-for-nationalisation/>. Also see Ndlovu-Gatsheni and Tafira "Land Question in South Africa" 135.

<sup>55</sup> See, for example, UN International Commission of Inquiry on Darfur 2005 <https://reliefweb.int/sites/reliefweb.int/files/resources/D2867CFA4E80B979C1256FC4005209FC-ici-sud-25feb.pdf>.

<sup>56</sup> See *UN Committee against Torture: Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Conclusions and Recommendations, South Africa* UN Doc CAT/C/ZAF/CO/1 (2006) para 18.

<sup>57</sup> In November 2022 the NPA contemplated reopening investigations on some TRC cases. 64 key matters have been registered for investigation, with the appointment of 25 prosecutors and 40 investigators. See NPA 2023 <https://www.npa.gov.za/media/npa-further-enhances-efforts-ensure-effective-handling-and-prosecution-trc-cases>.

Africans feel that those who committed heinous crimes should have been prosecuted and punished. This was demonstrated in some key cases.<sup>58</sup> This delay may well be viewed as a denial of justice, as the saying goes "justice delayed, is justice denied". Technically this reveals the failures of the NPA and the government.

Despite the weaknesses of the TRC, its role in making South Africa a more inclusive space for all to thrive in is undeniable. It has thus gained global recognition as the model truth commission that other countries tend to emulate.

#### **4.2 Lessons from South Africa**

Given the role of the South African TRC in restoring society, this paper suggests that establishing a truth commission in Anglophone Cameroon would go a long way toward achieving resilience, tolerance and social cohesion, and might foster a safe atmosphere for all factions of the Cameroon population to thrive in, despite their apparent historical, socio-political and cultural disparities.<sup>59</sup> The South African transitional model stands as a good example in terms of the shared memory it established through truth-seeking, as well as its reparations scheme. Cameroon may well emulate this, as there is a need for the truth to be told, for victims to be compensated and for society to be reconciled.

Also, the symbolic aspects that fostered memorialisation (such as the renaming of public places, erecting statues and opening museums), as well as reconstruction are worth emulating.

This paper, however, discourages the granting of amnesty (even as a motivation for telling the truth) to perpetrators of the most egregious human rights violations that constitute crimes against humanity.<sup>60</sup>

### **5 Rwanda's transitional model: Criminal prosecution**

In 1994 genocide shook the very fabric of Rwandan society, leaving the world astounded as to how ethnic animosity (between the Hutus and the Tutsis) could lead to the commission of such horrendous acts of violence.<sup>61</sup> In just one hundred days about one million persons were massacred.<sup>62</sup> In

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<sup>58</sup> See, for example, *AZAPO v Truth and Reconciliation Commission* 1996 8 BCLR 1015 (CC); *The Citizen 1978 (Pty) Ltd v McBride* 2011 8 BCLR 816 (CC).

<sup>59</sup> See Baines 1998 *Mots Pluriels* 1-10; Jablonski, Blum and Friedman *Colour of Our Future* 12.

<sup>60</sup> Ntoubandi *Amnesty for Crimes against Humanity* 151-183; Schabas 2004 *UC Davis Journal of International Law and Policy* 145; Scharf 1996 *Tex Int'l LJ* 1.

<sup>61</sup> Gahima *Transitional Justice in Rwanda* 128.

<sup>62</sup> Some sources say 800,000 people were killed, while to others it was approximately one million: see Ingelaere "Gacaca Courts in Rwanda" 29-30 (affirming that

the aftermath of the genocide, the necessity for justice was palpable and irrefutable.<sup>63</sup> It was unanimously agreed by all stakeholders that justice was the least they could do for the victims. The question, however, was what kind of measure of justice was most appropriate.

Clearly, given the freshness of the wounds of the genocide and the cries for justice, it was unrealistic to attempt to provide justice through any means short of criminal accountability. In the circumstances, in 1996 the government decided that criminal prosecution should be pursued through the country's domestic judicial system. Although this sounded like a welcome approach, the challenge was that the genocide had destabilised most if not all of the criminal justice system of Rwanda, which even before the genocide had been as described by Schabas "a corrupt caricature of justice"<sup>64</sup> lacking the qualities of independence and impartiality. In addition, given the large-scale, popular participation of many persons in the genocide, which resulted in many suspects being tried, questions were raised as to whether the criminal justice system would be able to adjudicate the enormous caseload.<sup>65</sup>

More significant was the question of whether universal accountability through criminal prosecutions alone was adequate, or whether there was a need to complement it with non-prosecutorial mechanisms.

It soon became evident that not only would the "recovering" criminal justice system be overwhelmed by the caseload, but that it also lacked the capacity, in terms of financial, material, and human resources, as well as the professional expertise to effectively deal with the legacy of the genocide.<sup>66</sup> Assistance was thus requested from the United Nations to try perpetrators of the genocide,<sup>67</sup> resulting in the creation of the International Criminal Tribunal for Rwanda (ICTR),<sup>68</sup> with the mandate of prosecuting and punishing those most responsible for the genocide,<sup>69</sup> leaving the lower-level perpetrators to be dealt with domestically.<sup>70</sup> It is against this backdrop that the modern *Gacaca* system had its genesis. Together with the ICTR, they constituted the main drivers of the Rwandan transitional justice.

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approximately 800,000 people were killed); Kagame Preface to Kaufman and Clark *After Genocide* xxi (claims that one million people died).

<sup>63</sup> Graybill and Lanegran 2004 *African Studies Quarterly* 8.

<sup>64</sup> Schabas "Post-Genocide Justice in Rwanda" 207, 212.

<sup>65</sup> About 120,000 suspects were arrested and detained pending trial: see Jones *Courts of Genocide* 83-84; Sarkin 2001 *JAL* 144.

<sup>66</sup> For details regarding the shortcomings of the initial national prosecution strategy see Gahima *Transitional Justice in Rwanda* 129-136.

<sup>67</sup> Schabas "Post-Genocide Justice in Rwanda" 209.

<sup>68</sup> Schabas "Post-Genocide Justice in Rwanda" 208.

<sup>69</sup> Nagy "Traditional Justice" 92.

<sup>70</sup> Ingelaere "Gacaca Courts in Rwanda" 35.

### 5.1 *International Criminal Tribunal for Rwanda*

Established in November 1994, the ICTR, was a mechanism designed to rescue the failed attempt of the Rwandan transitional government to address the legacy of the genocide through its domestic criminal justice system. In order to contribute to the restoration of social order as well as to put an end to the culture of impunity in Rwanda, the ICTR set out to prosecute

persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December.<sup>71</sup>

Several points may be advanced in considering whether the ICTR delivered justice to Rwandan society.

Firstly, the ICTR has been applauded for its role in preventing the recurrence of violence in Rwanda by punishing key perpetrators of the genocide,<sup>72</sup> thereby sending a strong message to the community regarding the intolerability of such conduct and thus deterring future violence.<sup>73</sup>

Secondly, the ICTR received support from the international community, which helped to locate and prosecute suspects who fled the country.<sup>74</sup>

Thirdly, the ICTR ensured that defendants received a fair trial and protected the rights of defendants and witnesses.<sup>75</sup> These aspects and the observance of the directives on the assignment of defence counsels,<sup>76</sup> as well as the observance of the code of professional conduct,<sup>77</sup> gave credibility to the trials.

In addition, the ICTR set precedents in the international criminal justice system by instituting a general deterrent towards the perpetration of heinous crimes globally,<sup>78</sup> and also by holding accountable those responsible for heinous crimes regardless of their official status or any immunities.<sup>79</sup> The practice and jurisprudence of the ICTR also provided valuable lessons for

<sup>71</sup> Article 3 of the *UN Security Council Resolution 955: International Criminal Tribunal for Rwanda* UN DOC S/RES/955 (1994).

<sup>72</sup> Jones *Courts of Genocide* 185.

<sup>73</sup> Ingelaere "Gacaca Courts in Rwanda" 38.

<sup>74</sup> For details, see Palmer 2020 *LJIL* 789-807; Trouille 2016 *JICJ* 195-217; Schabas 2003 *JICJ* 39-63.

<sup>75</sup> Articles 14, 19, 21 of the *UN Security Council Resolution 955: International Criminal Tribunal for Rwanda* UN Doc S/RES/955 (1994).

<sup>76</sup> ICTR 2008 [https://unictr.irmct.org/sites/unictr.org/files/legal-library/directive-assignment-defence-counsel\\_en\\_fr.pdf](https://unictr.irmct.org/sites/unictr.org/files/legal-library/directive-assignment-defence-counsel_en_fr.pdf).

<sup>77</sup> ICTR 2008 [https://unictr.irmct.org/sites/unictr.org/files/legal-library/directive-assignment-defence-counsel\\_en\\_fr.pdf](https://unictr.irmct.org/sites/unictr.org/files/legal-library/directive-assignment-defence-counsel_en_fr.pdf).

<sup>78</sup> Jones *Courts of Genocide* 185.

<sup>79</sup> Jones *Courts of Genocide* 185.

the establishment and operation of the International Criminal Court, which today constitutes a milestone achievement in the international criminal justice system.<sup>80</sup>

Despite its relevance to Rwanda and the international community, concerns have been raised concerning its inefficiency, its bureaucracy, the length of its proceedings, and its huge cost.<sup>81</sup>

A key issue raised related to the disconnectedness of the tribunal from Rwandan society. The ICTR has been criticised for taking justice far away from the people. With the seat of the tribunal being located in Arusha, Tanzania,<sup>82</sup> hundreds of miles away from Rwanda, many Rwandans felt that justice had been taken out of their reach, depriving them of the satisfaction that comes from seeing justice being done. Rwandans preferred the more proximate justice demonstrated through the *Gacaca* courts.<sup>83</sup>

## **5.2 *Gacaca* courts: Locally owned and controlled justice**

Traditionally, in the pre-genocide era, *Gacaca* courts (*Inkiko Gacaca*) were small community courts used for settling family disputes.<sup>84</sup> In the post-genocide period the transitional government modified the *Gacaca* courts as a transitional justice mechanism to deal with the large number of lower-level genocidaires who were not going to be tried by the ICTR. Organic Law No 16/2004 of 2004 gave *Gacaca* courts jurisdiction to try perpetrators of genocide and crimes against humanity committed between the 1<sup>st</sup> of October 1990 and the 31<sup>st</sup> of December 1994.<sup>85</sup> The use of *Gacaca* was well-received by Rwandans as it resonated with their local communities. The challenge, however, was that traditional *Gacaca* courts had never before dealt with serious crimes such as genocide and crimes against humanity.<sup>86</sup> The jurisdiction of *Gacaca* courts was thus amended to include some retributive elements, allowing them to pronounce penalties such as

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<sup>80</sup> Jones *Courts of Genocide* 185.

<sup>81</sup> See generally Steflja 2012 <https://www.africaportal.org/publications/challenges-of-transitional-justice-in-rwanda/>.

<sup>82</sup> *UN Security Council Resolution 977: Designation of Arusha as the Seat of the International Tribunal for Rwanda* UN Doc S/RES/977 (1995).

<sup>83</sup> See Ingelaere "Gacaca Courts in Rwanda" 51.

<sup>84</sup> *Gacaca* courts initially dealt with private local matters related to land, marriage, cattle, loans and property, before they were modernised and their jurisdiction was expanded to deal with genocide cases: see generally Kavuro 2017 SACJ 38-71. Also see Reyntjens 1990 *Politique Africaine* 40; De Jonge *Interim Report*.

<sup>85</sup> *Organic Law Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, Committed between October 1 1990 and December 31 1994* Organic Law No 16/2004 of 2004, as modified by Organic Law No 28/2006 of 2006 (*hereafter Gacaca Organic Law*).

<sup>86</sup> Lin 2005 *ILSA J Int'l & Comp L* 76.

imprisonment, correctional service and community service.<sup>87</sup> Formal rules of evidence and criminal procedure were also incorporated into the *Gacaca* system,<sup>88</sup> giving them a combined motive of retribution and reconciliation.<sup>89</sup> As such, the *Gacaca* courts may well be described as "domestic hybrid courts", given their blend of Rwandan cultural values and Western norms of criminal justice.<sup>90</sup>

The idea of using the *Gacaca* system was welcomed by Rwandans as it resonated with the local communities. The challenge, however, resided in the fact that the traditional *Gacaca* court had never dealt with serious crimes such as genocide and crimes against humanity.<sup>91</sup> The jurisdiction of the *Gacaca* courts, therefore, was amended<sup>92</sup> and modernised so that they could adjudicate genocide matters.<sup>93</sup> The *Gacaca* courts became charged with a combined mission of retribution and reconciliation, whereby an admission of guilt, confession, repentance and apology which under the traditional *Gacaca* courts would lead to forgiveness now served as mitigating elements in the new *Gacaca* system.<sup>94</sup>

Comparatively, the *Gacaca* courts have received more praise in Rwandan communities than the ICTR regarding their contribution to transforming Rwandan society,<sup>95</sup> given their truth-telling and reparative aspects that fostered healing and prevented vengeful violence.<sup>96</sup>

The *Gacaca* system disseminated a powerful message to future generations of Rwandans: forgiveness. Through the *Gacaca* courts, Rwandans were reminded of and remoulded in their traditional values of forgiveness and oneness, without which feelings of distrust and hatred could lead to the resurgence of violence.<sup>97</sup>

*Gacaca* had its weaknesses, however. Some authors have condemned the *Gacaca* court system as a political tool of the transitional government used

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<sup>87</sup> Kavuro 2017 SACJ 43.

<sup>88</sup> The Preamble, read together with Arts 1 and 30 of the *Gacaca* Organic Law provided for the adherence of the Rwandan penal code of criminal proceedings.

<sup>89</sup> See, for example, the following cases: *The Prosecutor v Paul Bisengimana* (Judgment and Sentence) 2006 ICTR 00-60-T paras 132, 145-150; *The Prosecutor v Vincent Rutaganira* (Judgment and Sentence) 2005 ICTR-95-1C-T para 149.

<sup>90</sup> Kavuro "Rwanda Reconciliation Process" 3.

<sup>91</sup> Lin 2005 *ILSA J Int'l & Comp L* 76.

<sup>92</sup> Kavuro 2017 SACJ 43.

<sup>93</sup> The Preamble, read together with Arts 1 and 30 of the *Gacaca* Organic Law provided for adherence to the Rwandan penal code of criminal proceedings.

<sup>94</sup> See, for example, the following cases *The Prosecutor v Paul Bisengimana* (Judgment and Sentence) 2006 ICTR 00-60-T paras 132, 145-150; *The Prosecutor v Vincent Rutaganira* (Judgment and Sentence) 2005 ICTR-95-1C-T para 149.

<sup>95</sup> Westberg 2010 *U Kan L Rev* 351.

<sup>96</sup> Westberg 2010 *U Kan L Rev* 351.

<sup>97</sup> Westberg 2010 *U Kan L Rev* 352.



to paint the Hutus as perpetrators of genocide rather than a forum for justice for all Rwandans.<sup>98</sup> This rationale is based on the government's allegation that all Hutus, without exception, were guilty of genocide.<sup>99</sup>

Furthermore, critics have raised the lack of legal training of the *Gacaca* judges (*Inyangamugayo*) as posing a legitimacy problem to the *Gacaca* system. The only training the judges had, was on the procedures of operating *Gacaca* courts.<sup>100</sup> It was unfathomable how the worst crimes in a state and even the international community could be handled professionally by persons who had no legal education or experience.<sup>101</sup> One author noted that "twenty years in prison is a long time and seems more unjust when handed down by a biased or unknowledgeable judge."<sup>102</sup>

Also detracting from the legitimacy of the *Gacaca* courts was the fact that a huge number of *Gacaca* judges were later discovered to have been involved in genocide themselves.<sup>103</sup> This discredited the legitimacy of the *Gacaca* system, causing many to lose confidence in its ability to provide justice for post-genocide Rwanda.

### **5.3 Lessons from Rwanda**

By interrogating the transitional justice model of Rwanda, this paper holds, given the existence of discrimination in Cameroon fuelled by the actions of the Francophone-led government against Anglophones, that the crisis has the potential to escalate into genocide-like violent clashes between the Anglophones and Francophones, if not addressed.

In Rwanda discrimination against the Hutu (regarding them as low-class people as opposed to Tutsis, who were regarded as high-class people) was initiated by the Belgian colonial government. This discrimination was entrenched and emulated by Tutsi governments, which led to a Hutu revolution against Tutsis, which eventually grew into a genocide. Cameroon should therefore learn from the Rwandan experience and deal with the root causes of the Anglophone crisis in order to foster reconciliation and unity.

Furthermore the Rwandan transitional model, which utilised both international and national (local) transitional justice mechanisms, demonstrated that local justice through the *Gacaca* courts had a more far-reaching impact on Rwandan society than international justice delivered

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<sup>98</sup> Kavuro 2017 SACJ 70.

<sup>99</sup> Human Rights Watch 2011 <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts> 36. Also see Mibenge 2004 *YIHL* 417; Amnesty International 2010 <https://www.amnesty.org/en/documents/afr47/005/2010/en/> 15.

<sup>100</sup> See Kaliisa *Internews Arusha* 1.

<sup>101</sup> Crawford *Hirondelle News Agency Lausanne* 2.

<sup>102</sup> Westberg 2010 *U Kan L Rev* 355.

<sup>103</sup> Ingelaere "Gacaca Courts in Rwanda" 38.

through the ICTR. As such, this paper suggests that Cameroon should strengthen its domestic judicial system (which is today better than that of Rwanda in the aftermath of the genocide) to enable it to address the crimes committed, rather than relying on an international response. Although there is a lack of trust in the current government institutions, any international involvement should be limited to facilitating and monitoring, while maintaining local control and ownership.

Additionally, if justice through human rights prosecutions is to be served in Cameroon, the powers of judicial bodies must be restored to adjudicate on cases without government interference in order to restore citizens' confidence in the judicial system's ability to provide justice, failing which only a caricature of justice would ensue.

## **6 Conclusion**

Having discussed the transitional justice perspectives of South Africa and Rwanda, this paper resolves that impunity for the human rights violations committed in the Anglophone crisis may be confronted through the institution of a transitional justice model which considers various aspects of post-conflict justice as portrayed in the South African and Rwandan responses to the atrocities committed in those countries.

It is thus submitted that, while the establishment of a truth commission would enable Cameroon to uncover the truth about the atrocities committed in the Anglophone crisis and the perpetrators thereof, as well as to interrogate the root causes of the Anglophone crisis and to offer victims the opportunity to tell their stories and claim reparations, the element of prosecution should not be overlooked. If the culture of impunity is to be eradicated and the rule of law strengthened, individuals (both state and non-state) responsible for the worst abuses must be prosecuted and punished. It is against this backdrop that this paper recommends the establishment of an Anglophone Cameroon Truth, Justice and Reconciliation Commission (ACTJRC) as a holistic transitional justice mechanism that combines both retributive and restorative justice techniques, in order not just to restore and reconcile society but also to make a strong statement of intolerance of impunity, thus deterring any future violence.

While this paper highlights the need for transitional justice for the situation in Anglophone Cameroon, it acknowledges the challenges that have obstructed the pursuit of justice, including the lack of political will, the lack of judicial independence, and the ongoing nature of the crisis. How to best surmount these challenges remains a matter for future research.

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*Prohibition of Mixed Marriages Act* 55 of 1949

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## List of Abbreviations

ANC	African National Congress
Fordham Int'l LJ	Fordham International Law Journal
Harv Hum Rts J	Harvard Human Rights Journal
Hum Rts Q	Human Rights Quarterly
ICTR	International Criminal Tribunal for Rwanda
IDPs	Internally Displaced Persons
ILSA J Int'l & Comp L	ILSA Journal of International and Comparative Law
JAL	Journal of African Law
JICJ	Journal of International Criminal Justice
JMAS	Journal of Modern African Studies
LJIL	Leiden Journal of International Law
NPA	National Prosecuting Authority
OSAC	Overseas Security Advisory Council
PELJ	Potchefstroom Electronic Law Journal
SABC	South African Broadcasting Corporation
SACJ	South African Journal of Criminal Justice
Tex Int'l LJ	Texas International Law Journal
TRC	Truth and Reconciliation Commission
U Kan L Rev	University of Kansas Law Review
YIHL	Yearbook of International Humanitarian Law