

Polish Journal of Political Science

Volume 5 Issue 4 (2019)



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Polish Journal of Political Science

Volume 5 Issue 4

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**Ministry of Science
and Higher Education**

Republic of Poland

eISSN 2391-3991

Original version: e-book

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Theorising truth and justice in governance: a study on truth commissions

ABSTRACT

Crime is everywhere. Demystifying the truth about the origin of a criminal activity against humanity may be difficult. The dilemma of truth is that half of the truth is no truth, a bit of truth is no truth and almost whole truth is no truth. Therefore, can truth be ever gotten from a matter whose stakeholders do not know the truth or deliberately conceal the truth? Can truth be ascertained when the truth is that there is no truth established in the matter? Then what can be done to get the truth from a matter that has no genesis of truth surrounding it? Therefore, wherever truth is compromised or not known, justice delivery will be hard to come by and in most cases justice delivery can never be ascertained. However, this does not mean that the truth of a matter can never be known and justice delivery can never be ascertained. This quest is what the truth commission seeks to demystify in every truth finding missions across the world. Game theory will be used to analyse the concept of truth in the process of demystifying the herculean task of justice delivery in governance of a political system. Sections will be created to discuss the quests for truth by the truth commissions across the world, theorising truth and justice using a truth searching model and conclusions will be based on the fact that truth brings justice, justice propels peace, and peace drives development in human endeavours.

Keywords: conflict, development, game theory, justice, peace, truth and truth commission.

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Introduction

Crime is ubiquitous. It is present everywhere. There is no part of the world that crime and criminalities are not present. The level of crime perpetration varies from country to country. The level of (in)-security is determined by the vibrancy of the government in curtailing the crime and unveiling the truth behind the matter. The quest of every government is to generate the facts by finding out the truth in every matter. Truth therefore must be ubiquitous at the end of the truth commission missions.

The herculean task of demystifying the truth about the origin of a violence or crime to humanity may be difficult to accomplished in many developing countries and less difficult in the developed countries. Several scholars opined that this is so because in the developed countries, the task is simplified by high intelligent personnel with sophisticated equipments other than the developing countries.¹ The dilemma of truth is that a little truth is no truth, a bit of truth is no truth and almost whole truth is no truth. This shows that truth is so complex to understand and decipher and in many cases it is referred to as a relative commodity.

The relativity of truth as a commodity is seen by divergent conceptions of people, that is what is truth to someone might seem not to be the whole truth to another person, and at the same time it might be a total falsehood to another person. This sounds as if the three personalities had different minds to an issue. Therefore, can truth be ever gotten from a matter whose stakeholders do not know the truth or

¹ Laplante, Theidon (2007); Niezen (2017); Nichols (2019); Aluko (2019a).

deliberately conceal the truth? Can truth be ascertained when the truth is that there is no truth established in the matter? Then what can be done to get the truth from a matter that has no genesis of truth surrounding it? These are compelling questions that truth commissions are saddled with to unravel in many situations.

Therefore, wherever truth is compromised or not known, justice delivery will be hard to come by and in most cases justice delivery can never be ascertained. However, this does not mean that the truth of a matter can never be known and justice can never be delivered. In many countries of the world, crimes against humanity had been committed by top government personalities and need to be unveiled for appropriate justice to be meted out. Due to the fact that they are top government personnel, government apparatus is also deployed to cover up their tracks from the public or sweep the hideous deeds under the carpet.²

Therefore, there must be an independent agency or group of people independent from the judiciary, such as the truth commission to champion the cause of delivering justice to the aggrieved persons. The iron law of oligarchy and the rule by the powerful few by trapping off the rights of the people must be refuted. This quest is what the truth commission seeks to demystify in every truth finding mission across the world. They are set up to inquire into an incident relating to crime against humanity usually involving the government, individuals and/or government personnel of any hierarchy.³

² Grunebaum (2017); Nichols (2019); Aluko (2019b).

³ Cole (2018); Skaar (2018).

Game theory will be used to analyse the concept of truth in the process of demystifying the herculean task of justice delivery in governance of a political system. Sections will be created to discuss the quests for truth by the truth commissions across the world, theorising truth and justice using a truth searching model, and conclusions will be based on the fact that truth brings justice, justice propels peace and peace drives development in human endeavours. Conclusions are premised on the need to enforce truth and make justice visible in the society.

Conceptual Clarification

Truth Commission

Truth commissions are non-judicial and independent panels of inquiry that are typically set up to establish the facts and context of serious or grievous violations of human rights or of international humanitarian law in a country's past.⁴ This implies that the past is revisited so that it can be corrected, at the same time to sanitize the present and secure the future.

A truth commission is a form of a quasi or non-judicial mechanism designed to investigate and report on past situations involving large-scale and often systematic atrocities. They are impartial and independent institutions that are often, but not always, government sponsored and may be of national, international, or mixed composition. They may be created by the State itself or under the auspices of the United Nations.⁵ Truth commissions focus on victims' needs rather

⁴ The International Center for Transitional Justice (2019).

⁵ Buergenthal (1994).

than on punishing perpetrators. They are non-judicial bodies that may make recommendations but do not themselves have the mandate or power to prosecute perpetrators.

What truth commissions do and their mandates vary, but they are generally empowered to collect statements from a broad array of stakeholders including victims, witnesses, and perpetrators. They collect information and documentation of past abuses; conduct public hearings; identify patterns and practices of abuse. They uncover the root causes of violence; and issue public reports with recommendations for future action to help prevent reoccurrence of violence and promote peace and stability.⁶ Truth commissions aim to generate an accurate record of what happened during a conflict or period of repression in order to provide a measure of justice for victims, prevent a recurrence of violence, reform institutions that enabled abuses, and create conditions to promote reconciliation, peace, and stability.

For a truth commission to promote justice, peace, and stability, it must be viewed as legitimate. It therefore should be designed and implemented in a way that demonstrates that it is free from political manipulation, treats all sides fairly, and is open to public scrutiny.⁷ A commission should have autonomy to control its resources, conduct inquiries, build relationships, and make recommendations. It needs a mandate and methodology that permits it to investigate all relevant parties and issues. It should conduct its business and manage its finances in a way that is transparent. Finally, it should be empowered to make its final report and recommendations public.

⁶ Hayner (2006); Aluko (2019).

⁷ TTorelly (2018).

There are three basic attributes of truth commissions; Consultation, Complementarities and Context. A process of consultation with a wide array of stakeholders, including civil society organizations, victims' groups, women, youth, and marginalized groups is essential at all stages of the commission's design, establishment, and operation. Consultation promotes stakeholder acceptability and ownership. It also educates the community about the process; it helps to set expectations and increases participation in the truth-seeking process. Complementarities, on the other hand, are most effective when they complement rather than replace other justice mechanisms. Revealing the truth about atrocities may frustrate victims and embitter local populations if it is not accompanied by steps to punish perpetrators, address the needs of victims, and promote institutional reforms. The Context attribute implies that truth commission should be context specific, reflecting on the local cultural needs, strengths and opportunities.

There are some key considerations in design and operations of a truth commission. These are: the temporal, geographic, and substantive scopes. This is in terms of start and end dates. Also the number, composition, and selection of commissioners and staff are important. Staffing a commission means how many commissioners should the commission have? Should there be some international commissioners? What process should be used to choose the commissioners? Furthermore, the powers with respect to cooperation and access to information of the truth commission are essential.⁸ What powers will the commission have to induce cooperation from all relevant actors? It is important to recognize the limitations

⁸ Johnston, Slyomovics (2016).

of the commission. Lastly, amnesty recommendations from prosecution must be determined: whether amnesties for the crimes in question are permitted under applicable law, as well as how to ensure that victims are consulted in any amnesty process.

Theoretical Framework

Game Theory

Game theory is the branch of decision-making theory concerning decisions that are interdependent. The main problem arises from the fact that various interests and multiple participants are involved. Each participant has individual objectives related to a common system or shared resources. The reason while it is called game theory is because it arose from the analysis of competitive scenarios, such as the scenario between truth and falsehood. The problems are called games and the participants are called players. However, these techniques apply to more than sports, truth inquiries and are not even limited to competitive situations. In game theory, the player one's strategy deals with any problem the other players' strategy depends on and what other players do. Situations involving interdependent decisions arise frequently, in all walks of life. It calls for strategic thinking and making use of available information to devise the best plan to achieve one's objectives.

Moreover, all players are intelligent in the sense that they understand the structure, the laws and the standing point of the truth commission and the panel set to inquire matters on hand. In the case of truth commission panels of inquiry, they need to be explicit about what every player can

conceivably do.⁹ This includes the capability and extent of threat they can foment against other players. Another component of game theory is the payoff function for each agent that specifies how each player evaluates every strategy profile. Myerson¹⁰ opined that the tradeoff or payoff includes what an actor loses in one thing and what he stand to gain in another. That is to figure out what each agent wants to do and what they should expect others to do. At this stage, the players or actors, that is the truth commission panel of inquiry and the crime perpetrator need to know the utility of every choice of the agent as well as every choice of everyone else.¹¹

In international politics and truth inquiry team, game theory operates as either a sequential game or a simultaneous game. In a sequential game, actors reacts basing on the information they have at hand over the other party in question. In this case, mapping out of all the possibilities is done by looking ahead to the very last decision, and assume that if it comes to that point, the deciding player will choose their optimal outcome. The truth commission will ensure for the truth of the matter, while an offender or defendant will stick with defensive cover ups. Actors at this point usually back up to the penultimate decision, and assume the next player would choose their best outcome. The inquiry will be treated strategically and also continue to reasoning back in this way until all decisions have been fixed.

A simultaneous game, on the other hand, involves quick decision making because there is not necessarily any last move. This is usually in cases that involve very high profiled personnel from a developed country of the world. Actors (the truth

⁹ Ichiishi (2014).

¹⁰ Myerson (2013).

¹¹ Aluko (2018b).

commission and the defendants) cannot look ahead and reason back, since neither decision is made first. They just have to consider all possible combinations. In the new world order and current realities in the truth commission of inquiries across the world, both sequential and simultaneous strategies are employed. In specific cases classified as 'strong', this involves inquiry on less powerful personnel, usually from a developing country, the sequential game model is used to relate with the less powerful states. They preempt their last outcome and present their joker to win the best of justice. However, in specific cases classified as 'very strong', this involves inquiry on powerful personnel, usually from a developed country, the simultaneous game which puts each actor (the truth commission and the defendants) in the dilemma of what the other might do if a certain decision is taken. This is because the last joker of the first actor is almost equal or equal to the others on the negotiation table. Therefore, there is no last move but consequential simultaneous actions.

Myth Of Truth And Justice In Governance

More than 30 countries in the world have created truth commissions to investigate and report on human rights abuses. These commissions of inquiry help to seek recognition for victims and promote possibilities for peace, reconciliation and democracy. This is a quest for truth, justice and equity to be entrenched in all situations in the society.¹² Truth commissions collect much of their primary information through statements taken directly from victims, witnesses and survivors of past violations, generally during a one-on-one private

¹² Hayner (2006); Hayner (2011); Shore (2016).

meeting with a staff statement-taker. Statement-taking is generally one of a truth commission's first major activities and usually lasts for at least several months and perhaps up to a year, depending on the length of the commission's mandate. The dilemma is that statements may be selective, untrue and fabricated in some cases.

Therefore, can truth be ever gotten from a matter whose stakeholders do not know the truth or whose respondents deliberately conceal the truth? The mode of operation of a truth commission is usually established by a legal connotation with a legal jurisdiction. The selection processes of the commissioner that will preside over the affairs of the truth commission in the purposed location are also selectively and carefully appointed. However, the process of such selection and membership inclusion in the commission is a major point of 'give and take' for most of the truth finding mission. This give-and-take phenomenon can make the process of unveiling truth to become a myth and not reality.

Furthermore, can truth be ascertained when the 'truth' is that there is no truth established in the matter? When the commission members have loopholes in their characters and blur track records, are corrupt and greedy, the resultant effect will be a wishy-washy, uncertain, unreliable fruitless truth searching endeavour. A politically motivated truth commission will breed politically modified truth. Of a certainty, there may be genuine outcry for justice from both the national and the international community due to various degrees of inhumane activities perpetrated by some individual or a particular governmental regime. However, the truth becomes mythical when the process had been politicized and biased. In response to the popular outcry, the government may set up a truth commission that will be saddled with

the role of investigating the crime related matter. However, can a government personnel set up a panel to investigate itself in a genuine manner? Therefore, truth cannot be ascertained in such truth commission because the motive and agenda behind the setting up of the commission is politically inclined and may lack the basic iota of truth but a mere response to a popular cry from both the national and international quarters.

Democratic regimes and governments in transition are major examples of governments that have the high tendency of setting up truth commissions because when people become agitated, their will is mostly satisfied.¹³ However, truth will become a relative commodity when the mission is more or less like a revenge and aggression mission. In this case, a popular noticeable symptom is that the majority of witnesses may come from a single section of the community, opposition political party or close alliance in favour of a group. Therefore, the research and investigation desk of such commission will be flooded with economical and political truth instead of the real truth and reality of the situation. In some cases, the set of people that has the real facts or dissenting view against the politicised group in witness may be sidelined from having regular access to the truth commission

Then, what can be done to get the truth from a matter that has no genesis of truth surrounding it? Whenever a commission is set up, the foundational flaw is the membership that constitutes the staff. This starts from the research staff to the administrative secretary(s) and the investigating unit. Also the core staff of interrogating and fact recommendation units are essential. There, membership must be objectively

¹³ Aluko (2018a); Torelly (2018).

selected. The alignment to a religious, ethnic, political or economic group will turn the truth into a commodity that can be negotiated on at the short and or long run. Also, the susceptibility of the truth commission team to be bought over by another group - international or national - will make the duty of the commission to be in futility. This implies that the foundation of the truth commission in terms of the staffing must be solidified with morality sub-consciousness, checks and balances from within and outside the group.

Flow Chain Of Truth

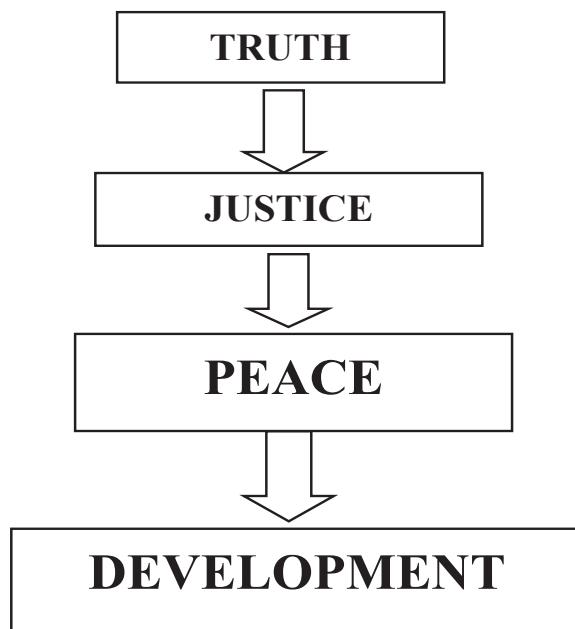
Truth as a relative concept is a basic commodity that leads to development in a society when it permeates the fabrics of the society. This means that where truth is established, justice is ensured. This is so because justice delivery depends on the level of truth established in a matter. In a state where justice is ensured by law, peace will be ensued. Justice, therefore, brings peace in the society. This is because it exerts positive satisfactory notion on the people. Truth and justice level in the society will have a notion of peaceful co-existence in the community. Also, the perception that no one is going to harm or injure their neighbour is a level of established peace due to the truth and justice ascertained in the society. Peace, on the other hand, ensures development. This is attained because more people will be ready to invest in a peaceful society than in a chaotic environment.¹⁴ Investment in turn will then bring development in the society.

Therefore, in a community where truth is upheld, development is eventually attained due to the presence of justice and

¹⁴ Aluko (2020).

peace attained in the community. On the other hand, where truth is not respected, justice will be denied; peace will not be established among the parties involved in a dispute. This will lead to protracted violence and, eventually, development will be a delusion. Figure 1 below further shows the flow chart of truth, which indicates that truth commissions search for truth based on the fact that truth brings justice, justice propels peace, and peace drives development in human endeavours.

Figure 1: Flow Chart of Truth



Source: Author 2019

Selected Truth Commission Across The World

Table I shows some selected truth commission expeditions across the world. It shows the period they were established, their years of operation, the legal framework that established

them and the violation of human rights that necessitated or prompted the setting up of the commission.

Table I. Selected Truth Commissions across the World

Country	Name of truth commission	Years of operation	Dates covered	Legal standing for the truth commission	Significant violations or acts not investigated
Argentina	National Commission on the Disappearance of Persons (Comisión Nacional sobre la Desaparición de Personas (CONADEP))	Established: 16 December 1983 Report completed: 20 September 1984	1976–1983	Decree No. 187 of 15 December 1983 by President Raúl Alfonsín	Killings by armed forces in real or staged “armed confrontations” Temporary disappearances, when person was released or body was found and identified Forced exile Detention and torture Acts of violence by armed opposition
Chile	National Commission on Truth and Reconciliation (Comisión Nacional para la Verdad y Reconciliación)	Inaugurated: 1990 Report completed: February 1991	11 September 1973 – 11 March 1990	Decree No. 355 of 25 April 1990 by President Patricio Aylwin	Torture not resulting in death Illegal detention if released and survived Forced exile

Country	Name of truth commission	Years of operation	Dates covered	Legal standing for the truth commission	Significant violations or acts not investigated
Chad	Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habre, His Accomplices and/or Accessories	Established: December 1990 Report completed: May 1992	1982 – 1990	Decree No. 014/ P.CE/CJ/90 of 29 December 1990 by President Idriss Déby	Killings, abductions and disappearances Detention, torture and ill-treatment Illegal seizure of properties
South Africa	Truth and Reconciliation Commission 3	Inaugurated: 1995 Primary reports completed: 1998 (commission continued to operate for several more years to complete amnesty hearings)	1960 – 1994	The Promotion of National Unity and Reconciliation Act No. 34 of 1995 by the South African Parliament	Forced removal and displacement of millions of people based on race Everyday policies and practices of apartheid that did not result in killings, abduction, torture or severe ill-treatment as defined by the commission

Country	Name of truth commission	Years of operation	Dates covered	Legal standing for the truth commission	Significant violations or acts not investigated
Nigeria	Human Rights Violations Investigations Commission (aka Oputa Commission)	Inaugurated: 14 June 1999 Report completed: June 2002	31 December 1983 – 29 May 1999	Created through presidential decree, 4 June 1999, by President Olusegun Obasanjo	
Sierra Leone	Sierra Leonean Truth and Reconciliation Commission 4	Established: 2000 Inaugurated: July 2002 Report completed: 5 October 2004	1991 – 2000	Truth and Reconciliation Act, enacted in 2000 by the Sierra Leone Parliament, implementing Art. XXVI of the Lomé Peace Agreement	Forced displacement Arbitrary detentions, abductions and killings, amputations of limbs Recruitment of children into armed groups Sexual slavery of girl children
Ghana	(covered above) Created by Ghana National Reconciliation Commission	Inaugurated: 6 May 2002 Report completed: mid-2004	7 March 1957 – 6 January 1993	National Reconciliation Commission Act 611 of 2002 by the Parliament of Ghana	Killings, abductions and disappearances Detention, torture and ill-treatment Illegal seizure of properties

Country	Name of truth commission	Years of operation	Dates covered	Legal standing for the truth commission	Significant violations or acts not investigated
Peru	Truth and Reconciliation Commission	Inaugurated: 13 July 2001 Report completed: August 2003	1980 – 2000	Supreme Decree No. 065-2001- PCM of 4 June 2001, amended by Supreme Decree No. 101-2001-PCM of 4 September 2001	Assassinations and massacres Forced disappearances Arbitrary executions Torture and cruel, inhuman or degrading treatment Sexual violence against women Violation of due process Abductions and taking of hostages Violence against children
Morocco	Equity and Reconciliation Commission	Inaugurated: January 2004 Report completed: December 2005	1959 – 1999	Created through a Royal Decree of King Mohammed VI	Insufficient attention to violations against minority populations (people of the Rif and Western Sahara) Assassinations and massacres Disappearances, torture and cruel, inhuman or degrading treatment perpetrated by the state Sexual violence against women Abductions and taking of hostages

Country	Name of truth commission	Years of operation	Dates covered	Legal standing for the truth commission	Significant violations or acts not investigated
Liberia	Truth and Reconciliation Commission of Liberia	Inaugurated: February 2006 Expected to conclude mid-2008	January 1979 – 14 October 2003	Truth and Reconciliation Act passed in June 2005 by the National Transitional Legislative Assembly, implementing Article XIII of the Comprehensive Peace Agreement of 18 August 2003	Gross human rights violations and violations of international humanitarian law. Massacres, sexual violations, murder, extrajudicial killings and economic crimes, such as exploitation of natural or public resources to perpetuate armed conflicts.

Country	Commissioners staff	Total # of cases presented	Budget		Public Hearings?	Final Report
Argentina	13 members (all national)	60				

Source: Researcher's compilation 2019

Model For Truth Commission Justice Findings

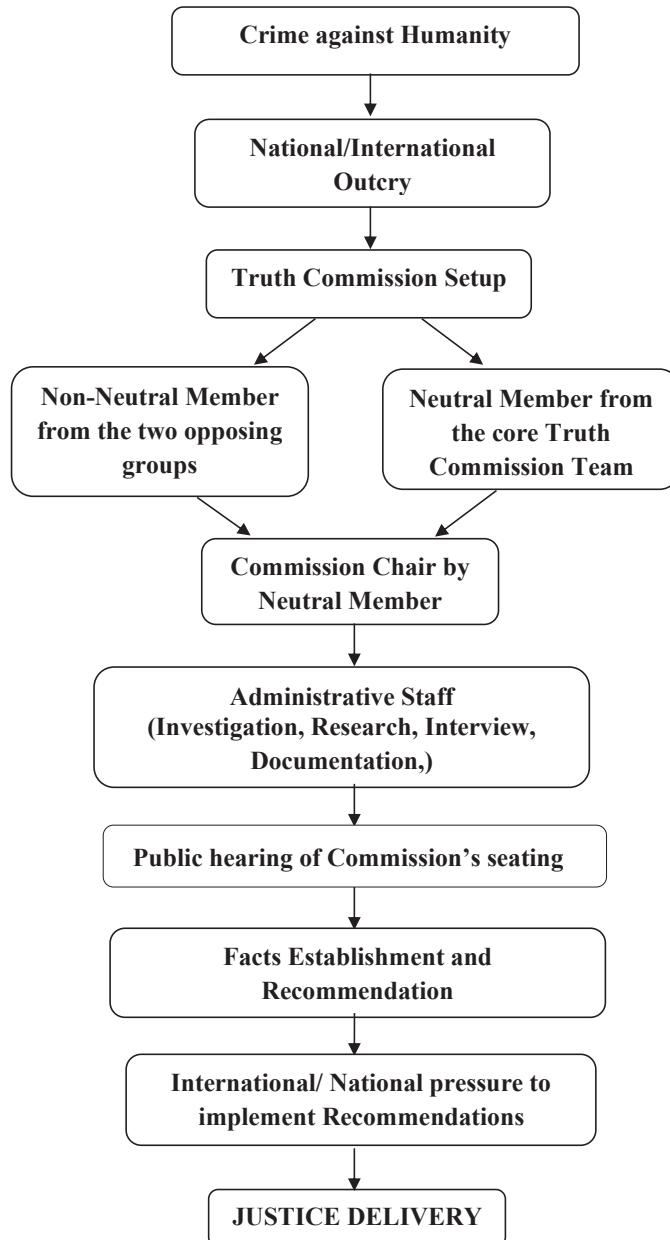
Justice delivery is the hallmark of all findings of truth commissions. However, truth commissions have no power to implement their recommendations. This singular limitation had crippled all the painstaking truth finding activities. The executive arm of the government may decide to jettison the report and or politicise the implementation by selecting what is 'suitable' to them.

This means that there is a need to factor in all the interests of the stakeholders into the debate and the justice mechanism. This implies having an inclusive truth commission panel which comprises of all the groups; the victims or victor, positive or negative and or the extreme right or extreme left groups. At the middle of the two parties in the truth finding matter will be the neutral party which should be the chair of the commission. The reason for including the two dissenting groups in the committee is to make the matter inclusive and objective to all the groups and not exclusive or subjective. This will promote openness in the fact finding mission, implementation and the objective of justice delivery will be fully achieved.

At the tail end of the model is a potential grid block against justice. This indicates delay in justice delivery by delaying or jettisoning the implementation process. The government agencies or personnel saddled with the implementation of the recommendations must not be left unchecked. They may decide not to implement the recommendations not because it was not proper but may be because it was not part of their main agenda for the period. Therefore, there is a need to quickly mount pressure on such persons from both national and international quarters so as not to waste

the human and intellectual resources invested into the truth searching process.

Figure 2: Model for Truth Commissions Justice Delivery



Source: Author (2019)

If the government implements some of the findings and recommendations in a selective manner, more pressure is needed to be mounted on them at this stage so as to be able to attain full justice. As incomplete truth is tantamount to falsehood so is incomplete justice tantamount to injustice. At the end of the process, justice will be delivered and the lesson of peaceful coexistence, love and harmony among the various groups in the country will be achieved. The future of the country will be secured as well because the rule of tyranny had been checkmated and brought to book through truth and justice delivery.

Conclusion

There is no country that had not passed through a measure of tyrannous rule in history. The quest for a just human community is not negotiable. Therefore, it implies that all countries deserve to support the truth finding missions of the truth commission. In the late 18th century till todate, several crimes against humanity have been committed and they should be investigated and the perpetrators, benefactors of crime and the networks of demand and supply of violence must be brought to book.

However, countries that have implemented some measures of the rule of law and are following the principles need to keep forging ahead instead of digging deep into the past centuries. The issue of implementing the findings and recommendations of truth commissions is expedient to the sustenance of law and order in the human societies. The level of implementation will deter the would-be tyranny or any form of inhumane behaviour such as kidnapping, human massacre, unlawful torture of the citizens or perceived enemies.

Citizens' advocacy is important to aid the outcry of the masses so as to protect their human dignity from a political demagogue leadership. Countries that had recently passed through such trauma need to look for national remedy by setting up a truth commission of inquiry into the hideous crime.¹⁵ If national advocacy is somewhat weak, there is a need to seek international collaboration to call on the government to set up a truth commission of inquiry so as to nip to the bud the perpetrators of the crimes against humanity.

The fact remains that truth brings justice, justice propels peace and peace drives development in human endeavours. The quest for justice delivery among the aggrieved persons is invaluable. This will propel peace among the various groups in the country. Harmonious relationship brings understanding and understanding drives in trust and trust among the various groups in a community will propel rapid development. Therefore, justice delivery by a truth commission will enhance good governance and a peaceful, equity and egalitarian society.

¹⁵ Aluko (2018a).

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