

# NON-PROSECUTIONAL AND RECONCILIATIVE SETTLEMENTS FOR GROSS HUMAN RIGHTS VIOLATION\*

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## **Abstract**

Today, the Criminal Court Procedure is not the sole mechanism to put the responsibility for the serious violence against human rights. The Truth and Reconciliation Commission (KKR) which has been developed is considered to be another procedure to overcome national problems, and also is expected to respond individual injustice among the victims.

*Keywords: Human Rights, Reconciliation, Rekonsiliasi, Truth And Reconciliation Commission*

## **Foreword**

In the last three decades there has been a shift of stigma –ones that is upheld in the present day, towards the need for accountability and in the effort to face a repressive past of a state. If in the past diplomats and negotiators ignores cases of crimes against human rights that has happened due to reasons of obstruction towards stability and conflict resolution, currently the mentioned ignored issue is seen as an integral and inevitable component in the road map to peace. For example, despite the agreement for cease fire in civil wars in El Salvador, Bosnia, and Guatemala, each of these agreements posses weaknesses in terms of accountability, although actually each of these agreements already reflects the shift of paradigm mentioned before. This is apparent in the inclusion of various mechanisms in the attempt to address gross human right violations in the past, and recognize that a long lasting peace condition will not be acquired without such accountability mechanisms.

In the second half of the current century, some states has rapidly developed the mechanism to ensure the accountability of gross human rights violations. The criminal court is no more the only mechanism that demands the accountability for gross human rights violation. Other mechanism have sprouted and showed growth outside the prosecution mechanism, for example the historic accountability in forming the Truth and Reconciliation Committee, lustration, and hybrid courts.<sup>1</sup> This journal will discuss the aforesaid non-prosecution mechanism, especially this is related to the Truth and Reconciliation Committee and lustration (non-criminal sanctions). Besides that, this journal will also analyze the effectivity of such approach.

## **The mechanism of lustration**

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<sup>1</sup> Prof. M. Cherif Bassioni shows with sharp analysis from the angle of International law about state responsibility in filling its international obligation if there is serious violations of human rights, and that responsibility can be in the form of: (a) international tribunals; (b) international and national inquiries; (c) truth commission; (d) national court; (e) lustration; (f) criminal trial; and (g) rehabilitation for victims. See paper, “Accountability for Violations of International Humanitarian Law and Other Serious Violations of Human Rights”, in M. Cherif Bassioni, *Post-Conflict Justice* (New York: Transnational Publishers, 2002). page 3-54.

Let's start with discussing the mechanism of lustration. In practice all cases of gross violation of human rights (massive in nature), accountability through the criminal code must be selective. Violations with massive amount of victims are usually done by a group of people. To try all the perpetrators (from the planner, command authority, up to the direct perpetrator) –added with all the people working cooperatively with them—can cause political instability, divides communities, and from logistics even economically is very hard to do. As a result, the community then chooses lustration in creating a remedy for their dark past.

Yang dimaksud dengan *lustration* adalah pemutihan dengan penghentian dini seseorang dari jabatannya. Because of the position that someone holds in the past regime, or because of the implications or his role in the violation, someone can be prevented in holding positions in the new administration. They can also be prohibited to hold positions outside governmental sector –that could have wide implications for the community (like senior positions in banking, press, even teachers)—which is relative to the state. This preventive action is usually temporary, as a “vacuum” time to regain trust towards the institution before letting people involved in the past regime to participate again.

There's vast examples that can be referred by states in selecting their lustration mechanism. In the Czech Republic, Lithuania, and Germany post communism, cleansing the administration is done by non-activating they who are affiliated with violations of the past from public positions for a temporary amount of time, especially those who were suspected to have worked for the secret police. In post-war France, the process of “epuration” affected thousands of people. Nearly 1,000 politicians, 6,000 teachers, and 500 diplomats was accused of having cooperation with the Vichy regime. Not only they who possess governmental positions that were affected, but also they who are in other sectors. The independent cleansing committee is composed for writers, composers, artists, and entertainers, as an example. The Italian government non-activated 1.600 government employees in the “epuration” process. The accountability process the government of Greece did in the military junta violations in 1967-1974, besides putting 400 ex-military members in trial, also non-activated nearly 100,000 people from their positions.

One of the clauses in the Dayton Agreement that is not so popular and not much noticed is the trust building that entails all parties to soon hold a “trial, non-activation or transfer, as necessary, towards military personnel, paramilitary and police, and other employees, that is accountable towards serious violations of the basic rights of ethnics or minority groups.”<sup>2</sup> It is necessary to highlight that this point for accountability covers more people than is investigated by the war crime investigation committee. This situation acknowledges the simple reality; although unnecessary or impossible to try all the perpetrators of the violation, how would the community feel the sense of security if a member of the police who tortured his child or raped his wife is still free? How would refugees that plans to return can trust the new regime if the head of village that was involved in burning down their house in the attempt of ethnic cleansing isn't even touched by the hands of the law?

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<sup>2</sup> General agreement on Peace in Bosnia and Herzegovina, 14 December 1995, attachment 7, article 1, paragraph 3(e), in 35 ILM 75, 137.

Despite the vast mechanism of accountability through lustration is applied, this mechanism lacks analysis and scientifically evaluated. For example, where lots of international scrutiny is given on the International Truth Committee on El Salvador, there is lack of attention given to the body of human rights violation in that state. The “ad-hoc” committee that was formed as part of the peace agreement, that composes of 3 civilian El-Salvadorians, evaluates the human rights record to military officials, and in a confidential report to the president and UN Secretary-General, advises the non-activation or demotion of more than 100 officials –including Minister for Defence and his Deputy—for their involvement in past violations. The application of these advises means that the level of accountability that he bears is bigger than what the El-Salvador community thought.

It is apparent that lustration will be used in the future. If used correctly, lustration can serve some important functions. What is clear is that lustration makes it plausible to process large numbers of cases. Lustration can provide a sense of justice and accountability to the community, and creates faith upon the credibility of institutions and officials in the new regime. This approach provides awareness for the victims that they who are responsible for their suffering will not be set free to roam with their positions.

The most obvious drawbacks of this approach is the level of unfairness in its application. They who are affiliated to past injustices are rarely prosecuted fairly. Because of its nature, administrative non-activation is usually conducted in a massive scale and ignores the law procedurals that are usually imposed to they who are prosecuted by a trial. Because this method lacks transparency and formality, the process is also prone to manipulations under political importance of the new regime, to consolidate its power. Lastly, if applied too widely, the cleansing can create an element of society that is huge, abandoned, and jobless, who in the end can create instability.

In his last report on the issues of impunity for perpetrators of human rights, Louis Joinet states that in a society that experienced past injustices, the officials “holding the power to make important decisions and therefore possess loyalty towards the ongoing process –especially those of the armed forces, police and court—can be non-activated from their positions, transferred, demoted, early retired or fired”.<sup>3</sup> This Joinet principle causes many questions on matters of effective use and its limits.

### **Mechanism of the Truth Commission**

In the last three decades, some countries that attempts to settle the atrocities of the past formed an investigative commission or usually called the Truth Commission, that usually is composed of community figures that is vested the duties to investigate the human right violations under the old regime (or in civil wars) and compose an official history of the violation. In that state, what actually happened is already known publically; what the Truth Commission does I give an official recognition towards those violations by an entity that is seen as official and neutral, both by domestic and international society.

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<sup>3</sup> *The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of violations of human rights (civil and political rights)*: final report by Louis Joinet following the sub commission resolutin, UN Doc. E/CN.4/Sub.2/1996/18 (29 June 1996), principle 48-50.

The Truth Commission is not a substitute for a court –it also does not provide procedural standards similar to courts—but it does have the ability to run some similar functions, like; (1) give mandate and authority for an official investigation on the violations that happened; (2) opens possibilities of katarsis openly on crimes and the suffering experienced, officially; (3) provide forums for victims and their affiliates to tell their stories, make it part of the official record and therefore as confessions of community upon their sufferings; and (4) in some cases, providing formal basis for victims' compensation,<sup>4</sup> and prosecuting the perpetrators. A standard characteristic of the Truth Commission's mandate is to analyze and compose a report not only on the individual violations, but also on the wider context of violations that happened and the structural elements of government, security forces, and community that made things possible for the violation to occur –this you cannot get from the criminal court. With this judgment, the commission then is vested the duties to determine the steps necessary to respond towards the past injustice and prevent history to repeat itself.

The advantage of an approach by the Truth Commission is that it can be formed and start working effectively at a fast rate. Different with the International Criminal Court such as the ones for the former Yugoslavia and Rwanda, it is obvious that the court takes years to enter into force effectively. Added with that, it takes tremendous amount of time to rebuild the system of domestic criminal court so that it can try war crimes or gross violations of human right in a credible manner. A Truth Commission can start hearing opinions and gather witness and documentation, which then can be used in trial. In this matter, the investigative commission can give a longer deadline for courts, reducing the pressure to act for the perpetrators of the crime, in the meantime that the court is assembled

On the other hand, in relativity with time, the mandate of the Truth Commission should be realistic and provide sufficient time for the commission to run its duties. The Clarification Commission in Guatemala, as a result of the peace agreement in 1996, had the heavy task of investigating “crimes against human rights and acts of violence” that was done in 36 years,<sup>5</sup> during the civil war, which resulted in 150.000 dead or missing and 1.000.000 fled from their homes by force.<sup>6</sup> The commission was expected to produce a report on “objective information on current times (including) all the factors, both internally or externally”, provide “specific suggestions in maintaining the memories upon the casualties, to grow solidarity and obedience towards human rights and to empower the process of democracy”<sup>7</sup> The commission is given 6 months to complete all these duties, a timeframe that is unrealistic if a serious result is expected. The working session of the committee can be extended for another six months, which will be definitely needed.

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<sup>4</sup> This approach for instance is in Chile. The identification of the TRC report automatically becomes evidence that someone is entitled the rights in the compensation program. This prevents the victims to have to go through the process of proving further on about their victimization.

<sup>5</sup> See the agreement on the formation of the History of Human Rights Violation and Violence Clarification Committee that impacted on the sufferings of the Guatemalan (23 June 1994) [Guatemalan Agreement]

<sup>6</sup> Lihat Larry Rohter, *Guatemalans Formally End 36-Year Civil War*, Central America's Longest and Deadliest, NY TIMES, 30 December 1996, page. A8.

<sup>7</sup> *Guatemalan Agreement*, *supra* footnote 17.

South Africa created a new breakthrough in its Truth Commission. Different with the major amnesties given by countries in Latin America post-repression, South Africa gave amnesties individually relative to the violation they conducted during the Apartheid. To acquire such amnesty, someone must register themselves and elaborate all the details of their crime to the Truth and Reconciliation commission<sup>8</sup> --a strong incentive to come forward and help out the commission. South Africa does not completely rely on amnesty and the Truth Commission, but also upon their court system. The reason why the commission is successful in pushing thousands of people in admitting their crime in the apartheid is because the court system still provides tangible threat.<sup>9</sup> Someone who does not apply for amnesty and admit their wrongdoings is threatened with heavier punishments, because of the large amount of evidence that could testify against them coming from the confessions of other people. How far the criminal court will exercise its duties after the application of amnesty is something that should be further observed.

It is necessary to note that the use of the Truth Commission is a relatively new phenomena.<sup>10</sup> Although some research and analysis on this mechanism of accountability, there is still a lot of assumptions on the effects and value of the Truth Commission. To fully understand the effects made by the Truth Commission, there should be more research and empirical evidence development of its reliability. What are the effects of the majority of the population in the state --either for victims, perpetrators, or common society--that does not take part in the investigation? What are the long term effects upon the accountability and reconciliation if the results from the commission cannot be tried with criminal accountability? Further investigations and time will provide a more reliable evaluation on the value of the Truth Commission compared to other mechanisms of accountability.

### **Efforts in Indonesia**

Like the experiences of states that has been mentioned above, a similar demand also occurs in Indonesia at this time of transition. The demand has successfully produced UU No 27/2004 on the Truth and Reconciliation Commission, although in the end the UU is trumped by the Constitutional Court.

It is interesting if we look back at this effort. Demands coming from victims, endorsers of human rights and community in general sprouts as a manifestation, one the ideas is the formation of KKR (Truth and Reconciliation Commission). The ideas of KKR occurs in the midst of the Indonesian public discussing a lot about the importance of National reconciliation.<sup>11</sup> In the middle of some ideas on reconciliation is the Human Rights Commission (Komnas HAM) coming up with the idea of KKR, and proposes this idea formally to President BJ Habbibie --the first

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<sup>8</sup> See Act of National Unity and Reconciliation, act 34/1995 (26 July 1995), Chapter 4.

<sup>9</sup> Until the end of August 1997, there are approximately 7 thousand amnesty applications. From the applications that have been processed, only about 3% actually granted amnesty. See *statement by Dr. Alex Boraine about the work of the Commission*. The TRC, 20 August 1997.

<sup>10</sup> The National Commission for missing persons in Argentina, that in general sense is seen as the first Truth Commission, formed in 1983.

<sup>11</sup> A lot of intellectual figures that is involved in this issue, among them are Nurcholish Madjid, Franz Magnis Suseno, Abdurachman Wahid, Mudji Sutrisno, Rudini. From the group of TNI retirees like Agum Gumelar, that proposes "National Reconciliation".

President of the reformation era. This idea is articulated further more by purveyors of Human Rights, who sees it as one of the accountability mechanism to complete the court. Not to replace it.

But this idea was not followed up into the form of policy, it is in the time of Abdurrahman Wahid (Gus Dur) that the implementation of the idea is formulated. The Minister for Law and Constitutional Affairs, Yusril Ihza Mahendra, asked the organizations of human rights purveyors to prepare the draft for RUU KKR. "Because the idea of KKR came from NGO, it is hoped that NGO can self-draft the RUU (Draft of Regulation). I do not wish to dictate" said the Minister for Judicial Affairs giving reason.<sup>12</sup> After receiving the draft of the regulation, the Minister for Law and Constitution then formed an inter-departmental team to polish the draft given by the NGOs. Besides that, to show the seriousness of his administration in settling conflicts and human rights violation in the past, President Abdurrahman Wachid visited South Africa to discuss and study the experiences of South Africa in implementing KRR there.<sup>13</sup>

The end product of all the efforts above is the birth of House Legislative decision No. V/2000 on Concreting the Unity of the NAtion.<sup>14</sup> House of Legislatives (as an institution that represents people's sovereign) has issued a political decision –that then indicates the accomplishment of a national consensus among political powers in the community on what must be done in relevance of past human rights violation—that must be done by Government and House of Representatives. One of the steps illustrated within is the formation of the KKR, that can be said to accelerate the process of drafting the Regulation on KKR.

But what is exactly drawn by MPR in its decision? Let's quote below;

"Form a Truth and Reconciliation Commission as an extra-judicial institution whose number of members and the criteria is according to the Constitution. This commission is vested duties to uphold truth by exposing the misuse of power and violations of human rights in the past, according to the regulations upon the law and constitution that applies. The steps after the revelation of truth, there can be measures that can be taken like admission of faulty, issuing public apology, granting apology, peace, law enforcement, amnesty, rehabilitation, or other alternatives that is beneficial in putting up unity of the nation with fully addressing the sense of justice in the community"

Pembentukan The formation of KKR (according to the above House of Legislative decision) is seen as a *prerequisite* for the next steps, in the form of (1) Admission of faulty, (2) issuing public apology, (3) Granting apologies, (4) Peace, (5) Law enforcement, (6) Amnesty, (7) Rehabilitation, or other alternatives. This "national policy" has been posted by the House of Legislatives as an answer towards the misuse of power and atrocities in the past. According to the people representation in the House, as an effect of the misuse of power and violations of

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<sup>12</sup> See *Kompas*, 25 November 1999, "Drafted RUU on the TRC".

<sup>13</sup> See *Kompas*, 10 April 2000, "Gus Dur and Presiden Afsel Thabo Mbeki discuss on the TRC".

<sup>14</sup> But it is also important to emphasize here, that before the decision of MPR it is already said on the need of the formation of KKR through UU No. 26/2000 on Human Rights Tribunal, in article 47 number 1 and 2, that states: "gross violations of human rights that has happened previously before this UU does not close the possibilities of the settlement through KKR. The KKR is as mentioned and formed with UU".

human rights in the New Order,<sup>15</sup> has occurred a danger that we know feel together, which is the threat to nation integration (unity of the Republic) and widening horizontal conflict. The formation of KKR is seen urgent as on the ways to overcome this national problem (macro), and also hoped to answer the individual injustices experienced by the victims (micro).

The formation of the Regulation on KKR is based on the considerations of (1) Gross violations of human rights before the application of UU No. 26 year 2000 on the Human Rights Tribunal which up until now has not been settled accordingly, so that victims or victims' families that is an heir still cannot attain clarity upon the background of the imposition of the gross violation of human rights experienced by the victim. Besides not receiving compensation, restitution, and/or rehabilitation for the suffering that they experienced, the negligence of this responsibility has grown dissatisfaction, Sinicism, apathies and major distrust towards institutions of law because it is seen that the state is giving liability towards the perpetrators. (2) The universal settlement for the gross violation of human rights before UU No. 26 Tahun 2000 on Human Rights Tribunal is very urgent to be conducted due to the dissatisfaction and political tension cannot be kept ongoing without clarity of its settlement. (3) With the revelation of truth on gross violations of human rights that happened before UU No. 26 Tahun 2000 on Human Rights Tribunal, it is hoped that national reconciliation can be attained through the Truth and Reconciliation Commission.

In the article 1, number 3 UU No. 27 year 2004 it is imposed, the Truth and Reconciliation Commission which is then referred to Commission, is an independent institution that is formed to reveal the truth on gross violations of human rights and conduct the reconciliation.

The Truth and Reconciliation Commission is formed on the basis; (a) independence;<sup>19</sup> (b) impartial and neutral;<sup>20</sup> (c) kemaslahatan; (d) justice; (e) honesty; (f) transparency;<sup>21</sup> (g) peace;<sup>22</sup> and (h) national unity.

The Commission sits in the Capital of the Republic with the working area that covers the whole territory of Indonesia. The membership of the Commission is acquired through selection and election from a list of nominees that are proposed individually, groups of individuals, or communal organizations. The selection and election of the Commission is considered based on the qualification of expertise and moral integrity of high levels and fulfilling the criteria, which among them are: (a) possess knowledge of passion in the field of human rights; (b) is not holding the status member of Army or Police; (c) willing to detach membership upon a political party, communal organization,

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<sup>15</sup> Based on TAP MPR V/2000, the misuse of power in the past is caused by factors, among them; (1) values of religion and culture cannot be the source of ethics in nation affairs; (2) Pancasila as the national ideology is interpreted one sided by people in power and misused to preserve power (3) social and cultural conflict has happened because the variety of culture, ethnicity and religion is managed well and fair by government and community; (iv) law has become a tool of power and the conduct have been derailed so that it has gone against the principles of justice; and (v) the conduct of social political role in the 2 functions of the Army and the misuse of the Army as a tool of power in the New Order have caused the derailing of the role of Army and Police that causes the non-development of democratic life.

<sup>19</sup> "Independence" is a principle that is used in the Commission to run its duties free from affects of many parties. See article 2 point a UU No. 27 year 2004.

<sup>20</sup> "Impartial and Neutral" is a principle that is used by the Commission to carry out duties in investigating cases with given facts and in a non-discriminative manner. See article 2 point b UU No. 27 year 2004.

<sup>21</sup> "Transparency" is the principle that give rights to the society to attain correct information, honest, and non-discriminative upon all things related with gross violation of human rights with keeping in mind personal rights, group rights, and national confidentiality. See article 2 point f UU No. 27 year 2004.

or NGO; and (d) never involved in violations of human rights. Besides fulfilling the criteria, the selection and election of the Commission members must be based on considerations of geography, ethnicity, religion, and expertise.

The Commission members are 21 people with the composition as such: (a) 3 (three) Chairmans; (b) 9 (nine) members of subcommission investigation and clarification; (c) 5 (five) people member of the compensation, restitution, and rehabilitation subcommission; and (d) 4 (four) people members of the amnesty consideration sub commission.

The Commission has an institutional function that is public in characteristic to reveal the truth upon gross violations of human rights and conduct reconciliation.<sup>23</sup> In running their function, the Commission is assigned to : (a) receive referrals or reports from perpetrator, victim, or victims' families that is an heir; (b) conduct investigation and clarification on gross violations of human rights; (c) provide recommendations to the President in pleads for amnesty; (d) provide recommendations to the Government in terms of providing compensation and/or rehabilitation; and (e) provide yearly report and end report on the carrying out of duties and authority in issues that it handles to the President and House of Representatives with a carbon copy to the Supreme Court.

In carrying out its duties, the Commission is authorized to: (a) conduct an investigation according to the rules of the constitution; (b) request clarification to the heir of the victim, perpetrator, and/or other parties, both in or outside the state; (c) request and acquire official documents from civil or military institutions or other institution, both in or outside the state; (d) conduct coordination with relevant institutions, both in or outside of the state to provide protection to victims, witness, report-er, perpetrator, and evidence according to the rules of the constitution; (e) call in relevant people to provide information or testimonial; (f) decide on the grant of compensation, restitution, rehabilitation or amnesty, if the case have been registered in the Human Rights Tribunal.

In some circumstances to carry out its mandate the Commission can request a court decision to conduct an act of force. In the case that the Commission asks for court decision, then the court is mandatory in providing the decision in the time frame of at most 7 (seven) days from the date the request for decision is received by the court.

The goals of the formation of the Commission are; (a) settle gross violations of human rights that happens in the past and settle it outside of court, to ensure peace and national unity; and (b) ensure reconciliation and national unity in the spirit of solidarity.

The UU on the KKR is substantially different with the regulations contained in the UU on Human Rights Tribunal. This UU does not regulate the process of legal pursue, but regulating process of: (1) Revelation of truth; (2) Provide compensation, restitution, and/or rehabilitation for victims and victims' families that is an heir; and (3) Consideration of Amnesty; all of this is hoped to open ways for the process of reconciliation and national unity.

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<sup>22</sup> "Peace" is a principle in settling dispute caused by gross violation of human rights based on the agreement os parties to settle it peacefully, for instance victim forgives perpetrator, and perpetrator restitutes victim See article 2 point g UU No. 27 year 2004.

<sup>23</sup> "Public institutional function" is a service and protection function to the community in giving authority for the revelation of truth on the happening of gross violations of human rights that is based on importance of the nation for the integrity and unity of the republic. See article 5 UU No. 27 year 2004.



Based on the facts found by the KRR, the party that must be held responsible for the gross violation of human rights in the past before the application of UU No. 26 year 2000 in Human Rights Tribunal must be identified. tentang Pengadilan HAM harus diidentifikasi. If the perpetrator admits guilt, admits the truthness of the facts, state his apologies for his actions, and is willing to apologize to the victims families, the perpetrator of the gross violation of human rights can plead for amnesty to the President. If the plead has reasons, the President may opt to grant the plead, and the victims must be compensated and/or rehabilitated. If the plead for amnesty is rejected then the compensation and/or rehabilitation is not given by the state, and the case is followed up according to the regulations of UU No. 26 year 2000 on Human Rights Tribunal. The source of funds for payment of compensations and/or rehabilitation becomes burndened to the state and is taken from the yearly state budget.

If towards the gross violation of human rights has been decided by the KKR, then the ad hoc Human Rights Tribunal is not in the authority to decide, unless if the amnesty is rejected by the President. Vice versa, upon gross violations of Human Rights that has been decide by the Human Rights Tribunal ad hoc then the KKR cannot decide. Therefore, the KKR or ad hoc Human Rights Tribunal decisionA is final and binding.

The materials contained in the UU KKR although not perfect but is actually a progress for Indonesia, because it is a step towards the actualization of a state with principles of law. Some of the weaknesses of the UU KKR that often becomes under public scrutiny especially Human Rights activists is the process of reconciliation that becomes the end goal of KKR. Critics that is mentioned especially related with the materials contained in article 24 and 29 that relates to the mechanism or the process of the grants for apologies itself.

In article 24 it is constituted, "In the events where the Commission has received reports on gross violations of human rights that is attached with a plead to acquire compensation, restitution, rehabilitation or amnesty, the Commission is obligated to provide a decision within 90 (ninety) days after the plea is received." The time limitation of 90 days for the KKR to make a decision reflects the working image of KKR that is in a rush that later on could not reveal the truth maximally, so that the victims will be at loss if in that time KRR failed to reveal the truth as truthfully as possible. Other weaknesses that occurs in article 29 imposes, "In the circumstance that the perpetrator admits guilt, admits the truth of the facts, state his apologies for what he has done, and is willing to apologize to the victim or heir to the victim, but the victim or the heir to the victim is unwilling to grant that apology then the Commission must decide on a recommendation of amnesty independently, and subjectively. In the events that the perpetrator is not willing to admit the truth and his crime then the perpetrator of the gross violation of human rights loses his right to acquire amnesty and can be prosecuted by the ad hoc Human Rights Tribunal" with the scenario of article 29 it will close the chances of victim opr heir to the victim to receive compensation. With that the victims are still at loss.

## **Conclusion**

There are big possibilities that there is necessity for not only one mechanism of accountability to achieve optimum solution. The challenges are to find the right combination: The Truth Commission followed by court like in Argentina?; Domestic and International Tribunals like Rwanda?; Trials for some figures and administrative sanctions for others like the post-World Was and post-communism? At the end of the day, there's no universal

one-size-fit-all mechanism that can be applied for all cases. With the help of International community, every society that just took a step outside genocide, war crimes or crimes against humanity will need an approach or a combination of approaches that are specific in attaining optimum truth and reconciliation.

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