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Confronting past atrocities: A critical analysis of the defunct Ethiopian Reconciliation Commission

MOGES ZEWIDDU TESHOME

Project Assistant, International Institute for Peace (Austria, Vienna); former Lecturer of Law, College of Law, Haramaya University (Haramaya, Ethiopia)

<https://orcid.org/0000-0001-7525-7001>

ABSTRACT

This article examines the rationale for the establishment of the defunct Ethiopian Reconciliation Commission (the Commission) and the challenges it faced in its efforts to help end impunity, restore the ruptured social fabric, and ensure democratic transition. To this end, the article relies on analysis of relevant literature, comparative case studies, and interviews with experts. Ethiopia is a deeply divided society, one characterised by ethnic division, cycles of violence, a pervasive culture of impunity for heinous crimes, competing historical narratives, and polarised political discourse. The Commission was bestowed with ambitious mandates and functions. Among its formidable challenges were a legitimacy deficit; the prevalence of competing narratives; vaguely defined mandates; and the complexity of the reconciliation process. Ultimately, the

Commission failed to deliver on any of its promises.

Keywords: The Commission; reconciliation; truth; legitimacy; mandate; transitional justice

1 INTRODUCTION

Ethiopia is one of Africa's oldest multicultural states, one in which various identities have been interacting for a long time, with different ethnic groups living together in relative harmony. It has also experienced a highly repressive regime in its recent political history and is currently grappling with a debilitating cycle of violence. Ethiopia's history is defined by a political culture of repression through successive regimes, systematic human rights abuses and structural violence, a pervasive culture of impunity, extreme political polarisation, sporadic ethnic conflict, and hijacked political transitions, among others. In 2018, thanks to well-organised, non-violent political movements across the country seeking freedom, democracy and justice, the repressive regime was brought to its knees. This was the dawn of a new era and presented a unique opportunity for the country to break with its turbulent past, a situation that necessitated transitional justice mechanisms and the establishment of the Truth and Reconciliation Commission (TRC).

Over the last four decades, Ethiopia failed to utilise two periods of political transition – that is, the interval between one political regime and another¹ – both of which were golden opportunities for breaking the cycle of violence and healing the nation. The first opportunity arose when the military government (the Derg) decided to establish a commission of inquiry in 1974, a body that turned out to be a political tool.² The second opportunity arose in 1992 when the Transitional Government of Ethiopia (TGE) set up the Special Prosecution Office (SPO)³ to prosecute Derg officials for “Red Terror crimes”,

¹ See O'Donnell G & Schmitter P (eds) *Transitions from authoritarian rule: Tentative conclusions about uncertain democracies* London: Johns Hopkins University Press (1986). Transition to democracy encapsulates liberalisation and democratisation as its core elements. Seen from this perspective, Ethiopia is currently experiencing a political transition in which a faction of a regime takes initiatives to open up political space and make institutional reform. O'Donnell & Schmitter observe that “[t]he typical sign that the transition has begun comes when these authoritarian incumbents, for whatever reason, begin to modify their own rules in the direction of providing more secure guarantees for the rights of individuals and groups”. There is ongoing debate as to whether Ethiopia has undergone a transition since 2018. For some, including the ruling party, it was a “deep reform”, while others refer to the period between April 2018 and October 2021 as a time of “thin transition”. The debates aside, the author of this article believes that there was indeed a period of transition, provided the term is interpreted narrowly. That is so because there was a change of regime, a rebranding of the ruling party, open recognition by the government that it lacked legitimacy until the election was held, legal and institutional reforms, and the emergence of new political dynamics. However, since then, the “transition” has been hijacked by the incumbent government.

² On 10 July 1974, the Derg, shortly after overthrowing the monarchy, established a commission of inquiry to investigate abuses of power and crimes committed by civil and military officials of the Emperor Haile Selassie I's regime. The Derg tainted the functioning of the infamous Commission by summarily executing 60 prominent officials without trial on 24 November 1974.

³ The TGE established the Special Prosecutor Office (SPO) by Proclamation 22/1992 on 8 August 1992. The SPO was mandated to investigate crimes and human rights abuses committed by Derg officials,

an initiative that many observers saw as a witch-hunting exercise.⁴ As Tronvoll observed, the Red Terror trials failed to adhere to the fundamentals of transitional justice, that is, revealing the whole truth, reflecting the will of the people, and ending the culture of impunity, and were instead used to legitimise the new order under the Ethiopian People's Revolutionary Democratic Front (EPRDF).⁵

Informed by these historical failures and in an endeavour to break the cycle of violence, the incumbent government has taken the bold initiative of establishing the Ethiopian Truth and Reconciliation Commission (the Commission),⁶ with the aims of seeking reconciliation based on truth and justice, investigating the nature, causes and dimensions of human rights violations, and providing a platform for victims to tell their stories. Although the main aim of the Commission is reconciliation, the nomenclature "Reconciliation Commission" is misleading in that it appears to eschew other aims such as truth-finding, justice restoration, and hearing the voices of victims.⁷ Be that as it may, this article discusses the structure, aims, mandates, functions, power and purported healing role of the Commission. It engages with the following issues: why coming to terms with the past is important; how best to ensure justice without compromising the foundations for lasting peace; the nature and complexity of truth and its central role in transitional justice; the efficacy of the Commission; the conditions necessary for the TRC to achieve its intended goals; and the interaction between the TRC and courts of law.

Accordingly, the remainder of this article is divided into five sections. The first provides a brief introduction. Section two discusses coming to terms with the past; effective mechanisms to break with the past, including the need for the establishment of the Commission; and the nature of truth in general and in the Ethiopian context. In section three, the legitimacy, functions, mandate, and powers of the Commission will be analysed in the light of the experiences of selected countries (South Africa, Rwanda,

make the findings public, and bring the perpetrators to justice. However, little of any factual accuracy was made known to the public, nor was the clamour for justice satisfied. This was due to two flaws in the TGE's mechanisms and procedures. First, it is not in the nature and mandate of the prosecution office to engage in fact-finding or investigation, which is instead for the police or a commission of inquiry. Secondly, the TGE manifestly disregarded due process and used its platform for harassment and witch-hunting.

⁴ Tessema M *Prosecution of politicicide in Ethiopia: The Red Terror trials* The Hague: TMC ASSER (2018) at 241.

⁵ See generally Tronvoll K "The quest for justice or the construction of political legitimacy? The political anatomy of the Red Terror trials" in Tronvoll K, Schaefer C & Aneme G (eds) *The Ethiopian Red Terror trials: Transitional justice challenged* (2009).

⁶ Reconciliation Commission Establishment Proclamation. No 1102/2018, *Federal Negarit Gazette*, 25th Year No. 27 (Addis Ababa, February 2019). The Commission was dissolved after three years during which it failed to bring about any noticeable change.

⁷ The experiences of other countries show that reconciliation is predicated on other requisite elements, such as thorough investigation of the truth, the dispensation of justice, the hearing of victims and perpetrators' stories, conditional amnesty procedures (as the case may be), and reparations to victims. As such, South Africa and Sierra Leone used the term "Truth and Reconciliation Commission", Kenya preferred the term "Truth, Justice and Reconciliation", and others (El Salvador, Ecuador) referred simply to a "Truth Commission".

Sierra Leone, and Kenya). Section four explores the intricate relationship between the Commission and courts of law. The final section provides concluding remarks.

2 WHY AND HOW TO DO DEAL WITH PAST ATROCITIES

2.1 Accountability mechanisms and the transitional justice framework

Societies that experience atrocities, massive human rights violations, civil war or ethno-religious conflicts, devise mechanisms to come to terms with societal trauma.⁸ As Kritz argues, in the same way that individuals who experience trauma find means to deal with it, “[s]ocieties shattered by the perpetration of atrocities need to adapt or design mechanisms to confront their demons, to reckon with these past abuses”.⁹ Consequently, any attempt to simply forget the past – which amounts to forgiveness without knowing the truth of what to forget and whom to forgive – provides fertile breeding ground for the recurrence of violence. As Minow observes, there is a danger in too much forgetting and too much vengeance,¹⁰ and thus a need to strike a delicate balance between them. To borrow Faulkner’s famous expression, “The past is never dead. It is not even past.”¹¹ This is particularly true for the society that strives to move forward while haunted by the horrors of its past. The question is: what mechanisms can a society in transition, such as Ethiopia, devise in order to confront past atrocities and make a democratic transition?¹²

For several reasons, there is no single answer. First, context does matter.¹³ Secondly, the legitimacy of the mechanism devised partly determines its outcome,¹⁴ and thirdly, the

⁸ Inasmuch as individuals suffer from past trauma, societies devastated by mass atrocities develop societal trauma in which they are haunted by the past, have an uneasy present, and face an uncertain future. One of the precepts of the *ubuntu* philosophy is that when society is ill, no individual is healthy.

⁹ Kritz N “Coming to terms with atrocities: A review of accountability mechanisms for mass violations of human rights” (1996) 59(4) *Law and Contemporary Problems* 127 at 127.

¹⁰ Minow M *Between vengeance and forgiveness: Facing history after genocide and mass violence* Boston: Beacon Press (1998) at 346.

¹¹ Faulkner W *Requiem for a nun* London: Vintage (1951).

¹² See generally O’Donnell & Schmitter (1986).

¹³ Ambos K “The legal framework of transitional justice” in Ambos K, Large J & Wierda M (eds) *Building a future on peace and justice* (2009) at 26. Ambos points out that “[t]he issue of how to come to terms with the crimes and perpetrators of a former regime is too difficult and complex as to lend itself to quick and easy solutions. Every transition is different and requires considering the specific circumstances of its context ...” The causes of massive violations of human rights or abuses can lie in ethno-religious civil war (as in Rwanda and the former Yugoslavia); systematic abuse or exclusion of an identified social group (as under apartheid in South Africa); repressive regimes (as in El Salvador and in Ethiopia under the Derg); or a combination of these factors (as in present-day Ethiopia).

¹⁴ If part or all of society perceives the mechanism not as a means to accountability or justice, but rather as a “witch-hunting” endeavour serving to impose “victor’s justice”, its ultimate impact will be limited. It has been noted that “the exclusion of crimes committed by Rwandan Patriotic Front (RPF) and its supporters ... created an impression of victors’ justice”. For the appraisal of *Gacaca* courts, see Longman T “An assessment of Rwanda’s *Gacaca* courts” (2009) 21(3) *Peace Review* 204 at 204.

goals to be pursued determine which mechanism best serves the purpose.¹⁵ Hence, each predetermined goal calls for a particular mechanism to achieve it, and this in turn poses challenges. For example, one of the difficulties the Government of Rwanda faced was the tenability of dealing with genocide through prosecutions. Due to the inherent limitations of trials in healing a divided society and ensuring accountability for mass perpetrators, the *Gacaca* court was established as a viable alternative.¹⁶ Countries have adopted various mechanisms to come to terms with their past. The notable ones include the prosecution of the most responsible Nazi officials at the Nuremberg Tribunal, where the principle of individual criminal responsibility was developed; the Ad hoc International Criminal Tribunal for former Yugoslavia (ICTY); the Ad hoc International Criminal Tribunal for Rwanda (ICTR); the TRC of South Africa; and the mixed approach¹⁷ of Sierra Leone (involving the parallel operation of the TRC and the Special Criminal Tribunal for Sierra Leone).

Even though ad hoc tribunals or special criminal courts have had their successes as well as shortcomings, with the advent of “transitional justice”, prosecution has lost its currency as a panacea for dealing with the legacy of the repressive past.¹⁸ Transitional justice has been defined in various ways and from different perspectives. For the purpose of this article, a widely used definition, one originally provided in a report of the UN Secretary-General to the UN Security Council (UNSC), is preferred for its comprehensiveness. The UNSC report defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation”.¹⁹

Justice in transitional contexts is not confined to narrowly retributive justice; rather, it is informed by notions of restorative justice and aims to do with reconstituting the broken threads of a community.²⁰ When asked about the role of South Africa’s TRC in dispensing justice, Archbishop Desmond Tutu explained that “retributive justice is

¹⁵ The goals of the mechanism may include combatting impunity for serious crimes; ensuring individual criminal responsibility; bringing an end to ongoing violence; discovering and telling the truth about past atrocities; and healing society through truth and reconciliation.

¹⁶ See Longman (2009).

¹⁷ For the mixed approach followed by Sierra Leone, see Schabas W “Conjoined twins of transitional justice: The Sierra Leone Truth and Reconciliation Commission and the Special Court” (2004) 2 *Journal of International Criminal Justice* 1082.

¹⁸ With the third wave of democratisation in the 1990s, there emerged the notion of transitional justice or justice in transition, in which the conventional way of settling past accounts was revisited. Transitional justice is an alternative to, or at times substitute for, trials. However, prosecutions or criminal trials should be regarded as an integral part of transitional justice, given that latter is a concept broad in nature and scope. For an in-depth understanding of transitional justice, see Teitel G *Transitional justice* (2002).

¹⁹ United Nations Security Council Report on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies (2004), UN Doc. S/2004/616, para 8 (emphasis added).

²⁰ See Ambos (2009) at 23.

primarily a Western conception of justice and [an] African way of understanding justice is more of [a] ... restoration of [a] broken social relationship ...".²¹

The measures taken to deal with the violent past under the rubric of transitional justice could be judicial, non-judicial, or a combination of these.²² Of the relevant mechanisms for confronting atrocities, the TRC has gained popularity.²³ As Lundy and McGovern note, "[b]y far the most popular transitional justice mechanism has been [the] Truth Commission".²⁴ Although some consider it "a second-best option",²⁵ others regard it as the best option owing to its multifaceted objectives of fact-finding, rendering justice, and achieving societal reconciliation and restoration.²⁶ Similarly, through the establishment of truth commissions, the normative importance of the "right to seek the truth" has been solidified. In other words, "the proliferation of truth commissions demonstrates the near-universal value placed on uncovering and documenting the truth about serious violations of human rights".²⁷

2.2 Why the Truth and Reconciliation Commission?²⁸

Why the TRC? The answer lies for the most part in identifying the distinctive features of a TRC. Thus far, the most comprehensive definition of a TRC is provided by Hayner:

A truth commission (1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorised or empowered by the state under review.²⁹

This definition mirrors the three pillars of transitional justice: pursuit of truth, vindication of justice, and reconciliation of the nation. Moreover, the nature of a TRC makes it preferable, or complementary, to prosecution as an accountability mechanism. As can be deduced from the definition, for a society grappling with a violent past, a TRC

²¹ See Rosenberg T "A reporter at large: Recovering from apartheid" (1996) *New Yorker* 18 November (paraphrased).

²² UNSC Report para 8.

²³ See O'Donnell & Schmitter (1986) at 6.

²⁴ Lundy P & McGovern M "Whose justice? Rethinking transitional justice from the bottom up" (2008) 35(2) *Journal of Law and Society* 265 at 270.

²⁵ Roht-Arriaza N "The new landscape of transitional justice" in Roht-Arriaza and Javier Mariezcurrena N (eds) *Transitional Justice in the twenty-first century: Beyond truth versus justice* (2006) at 3.

²⁶ See Minow (1998) at 346.

²⁷ Haldeman F & Unger T (eds) *The United Nations principles to combat impunity: A commentary* Oxford: Oxford University Press (2018) at 64.

²⁸ As the Commission was legally empowered to engage in a truth-finding mission and reconciliation, the nomenclature fails short of capturing the full purpose for which the Commission was established. As such, the term "the Commission" is used interchangeably with "TRC" in order to reflect its actual mandate.

²⁹ Hayner P *Unspeakable truths: Transitional justice and the challenges of truth commissions* 2nd ed. Oxfordshire: Routledge (2011) at 11–12.

investigates the general pattern of events or contexts within which massive violations of human rights have occurred. For the court, which is primarily concerned with establishing the criminal responsibility or otherwise of individuals (as its mandate is limited to rendering retributive justice³⁰ and circumscribed by procedural rigidity), historical facts and truths are “the by-product of particular moments of examining and cross-examining witnesses and reviewing evidence about the responsibility of particular individuals”.³¹

Moreover, unlike Courts, a TRC is victim-centred in that the affected population participate in the fact-finding and hearing processes not as informants or witnesses but as worthy human beings whose concerns are largely at stake. Moreover, the TRC has a comparative advantage vis-à-vis the Courts in that it is required to make its findings public in the form of a final report and to suggest measures to be taken to address the underlying causes of the problems owing to its broad mandates. That is to say, “[their] broader mandate to focus on the patterns, causes, and consequences of political violence allows truth commissions to go much further in their investigations and conclusions than is generally possible (or even appropriate) in a trial”.³²

Admittedly, it is impossible – particularly in cases of large-scale, systematic violence – to hold all perpetrators to account, given limited resources, concerns about due process,³³ the emotional costs of trials, and the wider consideration that in post-conflict societies everyone shares blame to varying degrees. Attempting to hold all perpetrators accountable would prove an utter failure³⁴ and result in selective justice. *Ergo*, even if courts were indeed well-equipped enough to bring every perpetrator to justice, they have inherent limitations in dealing with collective violence. As Minow notes, “If the goals are to gain public acknowledgment for the harms and accounts, as fully as possible, of what happened, the trial process is at best an *imperfect means*.”³⁵ Hence, for societies reckoning with their past wrongs and determined to settle past accounts, a TRC helps establish a platform of “naming, blaming and (re)claiming”.³⁶

The establishment of the Ethiopian Reconciliation Commission was necessary and timely. A transitional justice mechanism was warranted, given the longstanding public

³⁰ Tutu D *No Future without forgiveness* New York: Penguin (1999). As Tutu persuasively stated, “[J]ustice fails to be done only if the concept we entertain of justice is limited to retributive justice, whose chief goal is to be punitive. There is another kind of justice: restorative justice.”

³¹ See Minow (1998) at 325 (emphasis added).

³² Gonzalez E & Varney H (eds) *Truth seeking elements of creating an effective truth commission* New York: International Center for Transitional Justice (2013) at 13.

³³ Chapman R & Ball P “The truth of truth commissions: Comparative lessons from Haiti, Guatemala, and South Africa” (2001) 23(1) *Human Rights Quarterly* 1 at 2.

³⁴ See Longman (2009). The main reason that the Government of Rwanda established the *Gacaca* courts was to ease the burden of the regular courts and bring about reconciliation within the community.

³⁵ Minow (1998) at 325.

³⁶ In courts of law, the only aspect of dispute to be dealt with is “claiming”, which is the final stage of disputes. For a theoretical understanding of the “naming, blaming and claiming” process of dispute transformation, see Felstiner W, Abel R & Sarat A “The emergence and transformation of disputes: Naming, blaming, and claiming” (1980–1981) 15 *Law and Society Review* 631 at 631.

cry for accountability, fundamental reform, and democratisation of the country; a past mired in repression; cycle of violence and pervasive culture of impunity; and the existence of ethno-religious conflict and ideological divisions among political parties.³⁷ Consequently, the author contends that it is imperative to have an effective Reconciliation Commission because Ethiopia is not only grappling with past human rights violations, as many countries do, but also with ethno-religious conflicts that pose enormous challenges to the transition process, if it has not been derailed already.

2.3 The nature of truth

When one talks about TRCs, truth is mostly taken for granted, or, as in the case of the defunct Ethiopian Reconciliation Commission, presupposed as an implied precondition for reconciliation. It is correct that there is no reconciliation without truth, or the whole truth.³⁸ Truth, however, is not a guarantee for reconciliation.³⁹ The question to be asked is what form of truth, whose truth, and uncovered in what way?

To begin with, truth is not a monolithic concept,⁴⁰ and has multiple layers. Since we try to uncover truth from the debris of historical events that happened in their social, political, and economic contexts, it is not possible to put forward a single truth acceptable to all. Truth is highly related to and/or determined by identity; that is, “[w]hat you believe to be true depends, in some measure, on who you believe yourself to be”.⁴¹ Particularly challenging is the task of finding authoritative truth in divided nations, where various groups offer their own narratives about historical events.

In Ethiopia, this challenge is glaringly apparent to anyone with a basic knowledge of the competing narratives surrounding the country’s history, formation as a state, and contemporary politics: there is no consensus about the major historical facts of the last century, let alone about the legitimacy of the state. More often than not, myths passed from one generation to the next form part of the grand narratives associated with a particular group identity. Ignatieff, explaining the power of myth in the Balkan states, argues that “[t]he truth that matters to people is neither factual nor narrative truth but moral or interpretive truth”.⁴² This explanation is no less true in the Ethiopian political context when it comes to myths about historical events; that is, some of the matters at issue in Ethiopia are grounded in competing narratives and mythologies.

For instance, competing narratives frame Emperor Menelik II of Ethiopia as either genocidal or the founder of the modern Ethiopian state. Daly notes that “[p]erhaps the biggest problem with the truth is not that there are too many truths but rather that

³⁷ It is public knowledge that, in the past few years, Ethiopia has become a country where millions of people are internally displaced, political discourse is polarised, and parts of the territory experience unprecedented religious and ethnic conflict.

³⁸ See Tutu (1999) at 30.

³⁹ Daly E “Truth scepticism: An inquiry into the value of truth in times of transition” (2008) 2 *International Journal of Transitional Justice* 23 at 37.

⁴⁰ See Daly (2008) at 25.

⁴¹ Ignatieff M “Articles of faith” (1996) 5 *Index of Censorship* 110 at 114.

⁴² See Ignatieff (1996) at 114.

there is not enough truth".⁴³ Even if groups in a divided society are willing to hear the truth, they want to hear their version of the truth.⁴⁴ Thus, myths deeply held by many as a truth are one of the formidable challenges to uncovering the truth about past atrocities.

South Africa's TRC seemed to be cognisant of the multi-layered nature of the truth and the difficulties of reaching at shared truths from the outset, when it identified four forms of truth: forensic or factual; personal or narrative; healing or restorative; and social.⁴⁵ Factual truth can be established based on analysis, interpretation, and inference from concrete factual and documentary evidence, provided that that evidence is readily available. The TRC, to some extent, can also record narrative truth in the process of listening to the stories of victims and perpetrators. As personal pains and sufferings are shared with the wider community, so they form part of the nation's history; this form of truth-telling also has a cathartically healing effect on victims: as they relive trauma, so they are relieved of it. Occasionally, the TRC can go beyond the personal narratives of the victims and perpetrators and seek to locate narrative truth within broader social interaction. This is dialogic truth. Nonetheless, it must be noted that the effectiveness of the TRC in formulating social truth depends on the pre-existing social consensus on major issues,⁴⁶ which was the unique advantage of South Africa's TRC.

As to the healing truth, what really matters is not knowledge of the truth but sincere acknowledgment of the social truth.⁴⁷ But since the healing truth, as the name indicates, is purposive, it may lead to selective truth, which calls for caution. It is not that the healing truth is not important; instead, with excessive focus on it, the other aspects of truth should be well documented such that they form part of public memory. So, if truth is a precious value to have but the process for getting it is very demanding, what role can the TRC play in finding the truth? There is no better answer than Ignatieff's reasonable expectation of any truth commission: "[a]ll that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public

⁴³ See Daly (2008) at 27.

⁴⁴ See Ignatieff (1996) at 116.

⁴⁵ Report of the Truth and Reconciliation Commission of South Africa, Vol. 1 at 110. The Commission developed a framework encompassing four types of truth: factual or forensic truth – truth based on factual and objective information (basically, legally admissible evidence); personal and narrative truth – truth that, via storytelling, reflects the personal experiences and interpretation of reality of victims and perpetrators; social truth – truth that is established through interaction in social settings and everyday experience; and restorative truth – truth that contributes to societal reconciliation and reparation of damage inflicted on society (and especially so on victims of the repressive system).

⁴⁶ For example, in South Africa, in the build-up to the establishment of the TRC, extensive public debates were held in which compromises were reached in regard to the fact that both the government and its opponents had been involved in human rights violations.

⁴⁷ Judge Albie Sachs makes a distinction between knowledge of the past and acknowledgment of the past. He notes that once narrative truth is articulated, public denialism is rarely possible. His full speech is available at <https://www.cornell.edu/video/anti-apartheid-activist-albie-sachs-on-dealing-with-terrorism-and-torture> (accessed 28 December 2019).

discourse”.⁴⁸ Indeed, if a truth commission is able to reduce manifest lies and myths, it has accomplished its mission of truth-finding.

From the foregoing discussions, the lesson that the Ethiopian Commission could draw is that truth-finding is never an easy task. Moreover, due to the complex nature of the context within which it operated – a deeply divided society, with ethno-religious tension (where every group would like the Commission to listen only to its own truth) and limited resources – its task would inevitably become onerous and complicated. It is instructive to bear in mind that the Commission “must struggle with rampant lies and denials to uncover still-dangerous truths”.⁴⁹

In any event, what purpose does the truth serve? Is it a means to an end, an end, or perhaps both? Contemporary literature shows that truth has an intrinsic value, apart from being an impetus for reconciliation. Such an approach has been signalled in the United Nations’ basic principles and guidelines on a right to remedy and reparation for victims,⁵⁰ according to which victims of human rights violations are entitled to, inter alia, know the whereabouts of disappeared persons and facts about the causes and perpetrators of such violence.

However, it is not clear if there is an autonomous “right to truth” under the international human rights jurisprudence. As the *Basic principles and guidelines* have used it within the context of a right to remedy and reparation, it could be argued that knowing the truth about gross violations of international human rights and humanitarian law is not an autonomous right but forms an integral part of the right to remedy and reparation. That is to say, “the right to the truth has not yet been the object of a specific international convention”.⁵¹ Similarly, knowing the truth about the past atrocities, it is claimed, serves as a means to an end – to achieve an extrinsic greater purpose such as “helping the society to understand ... the causes of the past abuse and end it”,⁵² and restoring a broken system⁵³ through acknowledgment of the truth and reconciliation. Simply stated, “revealing is healing”,⁵⁴ whether the healing comes as a result of rewriting history, the reconciliation of victims and perpetrators, reconciliation of the society with its past, or reparation of victims and re-integration of the perpetrators. Therefore, truth has both intrinsic and extrinsic values.

⁴⁸ See Ignatieff (1996) at 113.

⁴⁹ See Gonzalez E and Varney H (2013) at 10.

⁵⁰ *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*, Res. 60/147, A/RES/60/147, 16 December 2005; see in particular paras 22 and 24.

⁵¹ See Gonzalez & Varney (2013) at 4.

⁵² See Gonzalez & Varney (2013) at 4.

⁵³ See TRC Report at 114.

⁵⁴ See Slovo G “Revealing is healing” *New Humanist* (2007) available at <https://newhumanist.org.uk/articles/585/revealing-is-healing> (accessed 3 January 2020).

The healing power of the truth and the tenability of reconciliation will be discussed in greater length in the following section, within the context of the mammoth task entrusted to the Ethiopian Reconciliation Commission.

3 LEGITIMACY AND MANDATES OF THE COMMISSION

3.1 Legitimacy

For any TRC to serve its purpose, it needs to be founded on a foundation of legitimacy as regards the process that brought it into existence and the faith the public has in its ability to carry out its tasks efficiently, independently, and transparently. A truth commission can only help a political transition to the extent that it possesses the necessary legitimacy. One aspect of legitimacy, namely procedural legitimacy, is embedded in its establishment, which encompasses factors such as public deliberation, institutional independence, and appointment of commissioners. Another aspect, substantive legitimacy, can be earned by a TRC in the course of discharging its tasks. Nichols identifies three components of a TRC's legitimacy: authority; fairness of practice; and transparency of the process.⁵⁵ The last two elements can be categorised under the substantive or functional legitimacy of TRCs.

South Africa's TRC is one of the few to have fulfilled most of the criteria above. From its inception, it was the result of a series of deliberations and political compromises,⁵⁶ and only after broad consensus on the need for its establishment was reached among various interest groups did it come into existence. Of course, it should be noted that, before, during and after the establishment of the Commission, there had been minority groups that had shown fierce opposition to it.

By contrast, there were no public deliberations conducted before the establishment of the Ethiopian TRC.⁵⁷ Even though the context differs in relation to the compromises to be reached (there were no warring parties in the Ethiopian context at the time), public deliberation on the need and form of the Commission would have enhanced the legitimacy of the Commission. In fact, among the public little is known about the existence of the Commission – for instance, for more than a year after its establishment, it did not have an official website. Regarding institutional and financial independence, article 3 of the Establishment Proclamation envisaged that the Commission would have its own legal personality, office, budget and personnel, and would be accountable to the Prime Minister. Again, nothing pertaining to the financial and institutional structure of the Commission was disclosed to the public, and nor was there much transparency in the appointment of Commissioners (the public was not given a chance to offer its opinions).

The original Head of the Kenya's Truth, Justice, and Reconciliation Commission, Bethuel Kiplangat, resigned from the Commission on 2 November 2010 due to mounting pressure

⁵⁵ Nichols *A Impact, legitimacy, and limitations of truth commissions* (2019) at 26.

⁵⁶ See Hayner (2011).

⁵⁷ Dersso S "Ethiopia's experiment in reconciliation" United States Institute of Peace (2019) available at <https://www.usip.org/publications/2019/09/ethiopias-experiment-reconciliation> (accessed 3 January 2020).

from civil society, the public and fellow commissioners when his credibility was called into question for his role in the 1984 Wagalla massacre. This would not have happened had it not been for the active participation of the various stakeholders. When it comes to the Ethiopian case, the Commissioners were appointed by the Prime Minister through a parliament entirely controlled by one party and without formally and actively involving relevant stakeholders.⁵⁸

Legitimacy also has much to do with perceptions of the people or ethnic groups. To be more precise, ethnic groups and political parties in Ethiopia have mixed perceptions about the legitimacy of the Commission. In a parliament entirely controlled by the ruling party, utter disregard for the views of the opposition parties is nothing but a recipe for undermining the legitimacy of the Commission. When asked about the legitimacy of the Commission, a leader of an opposition party replied that “the Commission was dead before it was even born”.⁵⁹ In this regard, South Africa’s experience may shed some light on the perceptions different ethnic groups had of the TRC. The findings of Jay and Erika Vora⁶⁰ show that Afrikaners and English-speaking participants in the TRC process had less faith in its effectiveness of the TRC than the Xhosa ethnic group.

The other determining factor of perceived legitimacy that needs consideration is whether the *ancien regime* believed in the credibility of the Commission. Since the temporal mandate of the Commission (discussed below) is not provided in the Establishment Proclamation, it is difficult to know how far back in history the Commission’s investigation of the previous regime’s abuses was meant to go. As it turned out, the perception of the ousted ruling elites—mostly from the Tigray People Liberation Front (the TPLF)—had become manifest once the Commission commenced its operation. Of course, it should have been obvious that the TPLF, which officially rejected the reform process and chose to stay out of the dissolution of the Ethiopian People Revolutionary Democratic Front (EPRDF) into the newly minted Prosperity Party (PP), did not show any sign cooperating with the Commission in its efforts to investigate past abuses. Thus, without remedying its legitimacy deficit and actively involving various stakeholders, the Commission decided to move to the next step, i.e., discharging its substantive functions, the factor that eventually contributed to its demise.⁶¹

3.2 Mandates of the Commission

The mandate⁶² of every TRC depends on its Enabling Act, which is mostly the outcome of political compromises and informed by the context of the country in question. A TRC should not be established for the sake of convenience, or for the political legitimacy of the new government; instead, it is part of a comprehensive transitional-justice response

⁵⁸ See Dersso (2019).

⁵⁹ Telephonic interview with two (anonymous) chairpersons of opposition parties, 12 March 2022.

⁶⁰ Vora J & Vora E “The effectiveness of South Africa’s Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaner, and English South Africans” (2004) 34(3) *Journal of Black Studies* 301 at 302.

⁶¹ Instead of engaging proactively with all major stakeholders, including TPLF officials, the Commission presided over a transition that deteriorated into outright civil war.

⁶² “Mandate” is used here to refer the objectives, functions, and powers of the Commission.

to a violent, repressive, and divisive past. The TRC of Sierra Leone was necessitated by the urgent need to end the protracted civil war that wrecked the country;⁶³ South Africa's TRC sought to investigate human rights violations under apartheid and foster societal transformation;⁶⁴ and Kenya's TRC sought to investigate post-election violence (ethnic conflict).⁶⁵ When it comes to the Ethiopian TRC, it was not established as a response to a particular social problem but to deal with "disagreement that developed among the peoples of Ethiopia for years because of different societal and political conflict".⁶⁶ However, nothing is provided in the Establishment Act as to the sources of disagreements among the peoples of Ethiopia. It may well be the case that, broadly speaking, such disagreements emanate from the cause and nature of the gross violations of human rights, and the lack of consensus about historical narratives.

Before examining the specific mandates of the Commission, it is worth shedding some light on the *ratione temporis* and *ratione materiae* of the Commission. It is baffling to observe that neither *ratione temporis*⁶⁷ nor *ratione materiae* is defined in the Establishment Proclamation. As the Commission cannot go back into eternity to make investigations, the cut-off period should have been clearly provided in the Establishment Proclamation – leaving this to subsidiary laws is implausible.⁶⁸ The experiences of other countries also show that a cut-off period is provided in the enabling legislation.⁶⁹

Regarding the *ratione materiae* of the Commission, apart from listing the objectives and functions of the Commission, pertinent concepts such as "gross violations of human rights", "victims", and "disagreement among peoples" are not defined. It is crucial to define these concepts as they determine the scope of the Commission's investigation. Let us consider the following scenario to illuminate this matter. Do sexual crimes, ordinary corruption, Red Terror crimes, the displacement of people that occurred during the Resettlement Programme of the Derg regime, and the "Irrecha Massacre" constitute gross violations of human rights? If yes, are they ordinary crimes, or international crimes such as crimes against humanity, war crimes or genocide? Who are the victims of such violations, and of them, who would be eligible for reparations, if any?

⁶³ Sierra Leone TRC, preamble.

⁶⁴ *Ibid.*

⁶⁵ Kenya TJRC, preamble.

⁶⁶ Establishment Proclamation, preamble, para 1.

⁶⁷ The Draft Regulation, which never came into force, made 12 September 1974 the starting-point of the gross violations of human rights that were to be investigated by the Commission. Had the Commission proceeded with this date, it could have ended up with the murky task of looking for a truth that would never satisfy any party.

⁶⁸ It is submitted that regulations ought to deal with procedural details rather than provide, extend or limit the substantive power of the Commission.

⁶⁹ For example, Kenya's TJRC under article 5(a) stipulated the period "between 12th December 1963 and 28th February 2008"; South Africa's TRC in its preamble provided a defined period between 1 March 1960 and the date last envisaged in the Constitution; article 6(1) of Sierra Leone TRC adopts the period between 1991 and the signing of the Lomé Peace Agreement.

Clearly, the Commission would not have had the time and resources to deal with every incident that occurred in the past. As such, it should have consulted the experiences of other countries extensively⁷⁰ and made use of international definitions (with necessary contextualisation) of the above-mentioned concepts. Regarding the objectives and functions of the Commission, one can safely argue that they are provided in general and vague terms. The objective of the Commission, as provided in the Establishment Proclamation, is “to maintain peace, justice, national unity, and consensus and also Reconciliation among Ethiopian Peoples”.⁷¹ This shows that the Commission was established to accomplish overarching (and, at times, conflicting) objectives, which are stated without any elaboration.

Most importantly, the Proclamation uses the singular noun “objective”, along with the verb “is”, as if all the items in the basket are the same. Ensuring peace is one objective but doing justice is another.⁷² Maintaining national unity is related to, but not the same as, bringing about national consensus and, above all, “reconciliation among the Ethiopian peoples”. As laudable as it seems, reconciliation is a grand objective by itself and is dependent on the revelation of truth (which is not easy to come by) and the dispensation of justice, which might not happen at all.⁷³ However, since the heading of article 5 uses the plural form, “objectives”, the singular could have been a simple slip of the pen.

The specific functions that shall be undertaken by the Commission to achieve its objectives are, inter alia, to “identify principles and values which will be [the basis] for national reconciliation”, “identify basic reasons of disputes and violations of human rights, visit premise of any institutions”, “collect information”, “notify conclusions” and “make reconciliation among peoples”.⁷⁴

To start with the first function of the Commission – identifying the underlying principles and values on which the reconciliation process is based – it is not an easy task to find a single unifying value in a culturally diverse and politically divided society. In South Africa, the TRC was able to identify and utilise the South African value of *ubuntu*,⁷⁵ the value of humanness and forgiveness that helped the Commission in the healing process. The difficulty for the Ethiopian Commission lay not in the absence of a unifying value but in the diversity of such values. Nonetheless, some of the traditional dispute

⁷⁰ For example, article 1 of South Africa’s TRC and article 2 of Kenya’s TJRC provide an extensive list of definitions in this regard.

⁷¹ See the Establishment Proclamation, article 5.

⁷² In the modern understanding of transitional justice, “peace” and “justice” are not at loggerheads with each other but complementary, as there is no lasting peace without justice. Nonetheless, they are considered as competing values to be balanced when devising transitional-justice mechanisms to settle past accounts and maintain peace. For further discussion, see Keller L “The false dichotomy of peace versus justice and the International Criminal Court” (2008) 3 *Hague Justice Journal*.

⁷³ See Daly (2008) at 38.

⁷⁴ See the Establishment Proclamation, article 6.

⁷⁵ In contemporary studies, *ubuntu* is regarded as an African philosophy that transcends South African culture. As such, it might have been beneficial if the Commission had adopted it.

resolution values in Ethiopia, such as *Shimgilina*, *Geda*, and *gereb*,⁷⁶ could be used in tandem with the overarching principles of *ubuntu*. Essentially, the commonality among all the traditional values could have helped the Commission to develop a unifying value.

A related challenge pertains to the fact that Ethiopia is a federal country with semi-autonomous regions and city administrations. This affects whether a TRC adopts a centralised approach or follows the existing federal structure in carrying out its functions. A tenable approach that should have been followed by the Commission would obviously be a decentralised one, with a national office at the federal level. In doing so, factors such as active participations of people (especially direct victims), at grass-roots level, the necessity to hold extensive hearings in local languages and the imperative to adapt to a local context, must be considered.

The second function of the Commission is to identify basic reasons for disputes and human rights violations. This task is just another expression of the truth-seeking mandate of the Commission. Identifying basic reasons about disputes and violations of human rights requires investigation into the causes, nature and dimensions of the disputes and the abuses, which entails uncovering the truth and weeding out myths. Yet, as pointed out above, the truth-finding process is a bumpy road to take and is costly to ignore. It seems that the truth-finding task of the Commission would get more complicated due to the polarised identity politics prevailing in the country and the absence of compelling incentives for the perpetrators to tell the truth. Arthur notes that “one of the crucial challenges of any transitional situation will go unmet if ethnic conflict is reduced to mere political violence”.⁷⁷ As a result, in a country like Ethiopia where virtually everything is defined in terms of ethnic identity, finding a shared truth about the past is a difficult task, if not an impossible one. Even if the Commission had been able to produce some sort of truth, the interpretation and acceptance thereof would have been bound to vary. Indeed, as Daly puts it, “establishing the truth about an event is no guarantee that beliefs and attitudes change”.⁷⁸

All the worse, nothing is provided in the Establishment Proclamation as to whether the Commission can grant amnesty to the perpetrators of human rights violations. Then, in the absence of *conditional amnesty*, that is, trading amnesty for truth, what incentives do the perpetrators have to come forward and tell the truth? One possible area of leeway for the Commission could have been to refer the perpetrators’ testimony to the Amnesty Board so that the latter would grant conditional amnesty to perpetrators who did not commit serious crimes listed under article 3(2) of the Amnesty Proclamation.⁷⁹

⁷⁶ For the nature and procedures of the grass-roots justice system in Ethiopia, generally see Assefa G & Pankhurst A (eds) *Grass-roots justice in Ethiopia: The contribution of the customary dispute resolution* Addis Ababa: Addis Ababa University Press (2008).

⁷⁷ Arthur P “Fear of the future, lived through the past: Pursuing transitional justice in the wake of ethnic conflict” in Arthur P (ed) *Identities in transition: Challenges for transitional justice in a divided society* (2010) at 273.

⁷⁸ See Daly (2008) at 38.

⁷⁹ A Proclamation to Provide for Granting of Amnesty to Outlaws Who Have Participated in Different Crimes, Proclamation No. 1096/ 2018, *Federal Negarit Gazette*, 24th Year, No. 59.

With the truth being fluid, the most difficult task of all to accomplish is “reconciling the Ethiopian peoples”. First, as mentioned above, the truth-finding process is not a guarantee for reconciliation. Secondly, attempting reconciliation without even defining who is in conflict with whom is folly. As Arthur asserts, “one of the main difficulties of resolving ethnic conflicts is the fact that arriving at a common framework of understanding of both the root causes of the conflict and the justice of those causes is challenging, if not impossible.”⁸⁰ Thus, the modest contributions that the Commission could have made towards national reconciliation would be rectifying lopsided political and historical narratives; making recommendations for reparation of victims of past injustice and reintegration of the perpetrators into the community; and restoring the broken system. Undertaking fundamental reforms of institutions, political participation, ensuring rule of law and making a transition towards democracy could have enabled the society to take “soft vengeance”⁸¹ against the repressive and divisive past.

In regard to visiting premises and collecting necessary information, the Commission lacked the means to compel non-cooperating individuals and institutions to comply with its requirements. It had no subpoena power to order documents and force persons to appear before it. Moreover, no penalty was provided in the Establishment Proclamation for crimes of non-cooperation with the Commission.⁸² It is also striking to note that, unlike other Establishment Acts which provide for a “default provision” for a TRC’s implied power, the Commission was not empowered with an implied mandate to pursue its ambitious objectives.⁸³

Finally, it is not clear whether the conclusions to be submitted by the Commission to the public and concerned government organs⁸⁴ included recommendations to pay reparations for the victims and policy actions to be taken to change the underlying economic patterns within society. It is good to know the truth; it is better to make reconciliation with the past and move forward; and it is best of all if both the perpetrators and the victims could share the same menu for lunch after reconciliation. The dilemma is this: What if the victim says, “your apology is not my lunch”?

It needs to be stressed that, at times, the priorities for the victims are improved standards of living, better education for their children, basic health services, and other means of regaining their dignity. In other words, socio-economic rights are as important

⁸⁰ See Arthur (2010) at 274 (emphasis added).

⁸¹ CBS News “Soft vengeance: Albie Sachs on loving your enemy into defeat” (2016) available at <https://www.cbc.ca/radio/ideas/soft-vengeance-albie-sachs-on-loving-your-enemy-into-defeat-1.3785689> (accessed 11 January 2020).

⁸² For example, obstruction of and non-cooperation with the Commission is a punishable offence pursuant to article 39 of South Africa’s TRC Act.

⁸³ For example, article 3(2) of South Africa’s TRC Act provides for the implied power of the TRC by stating that “[t]he provisions of subsection (1) shall not be interpreted as limiting the power of the Commission ...”. Similarly, article. 5(2) of Kenya’s TJRC states that subsection (1) shall not limit the power of the Commission to investigate or make recommendations concerning any other matter with a view to promoting or achieving justice, national unity and reconciliation within the context of this Act.

⁸⁴ See article 5(9) of the Establishment Proclamation.

as their civil and political counterparts. In this regard, Hayner observes that “[i]n many contexts, they [TRCs] have become the most prominent government initiative to respond to past abuses, and the starting point from which other measures for accountability, reparations, and reforms may be developed”.⁸⁵ Indeed, the main criticism of South Africa’s TRC concerned its limited role in fundamentally changing the underlying socio-economic relations and social structure of post-apartheid society, where former perpetrators still enjoy socio-economic privileges.

3.3 The relationship between the Commission and Courts of Law

From the nature of TRCs, it is evident that they are neither a prosecutorial body to charge perpetrators, nor judicial organs to try individuals for crimes they committed. Rather, “their role is ... documenting and acknowledging a legacy of conflict and human rights violations as a step toward healing wounds”.⁸⁶ TRCs should be seen as complementary to the criminal justice system, not as a substitute for it. As noted above, since transitional justice employs comprehensive accountability mechanisms, it should not be framed as an “either/or” dichotomy. Instead, accountability mechanisms involve legal, political, and ethical dimensions, which need to be addressed holistically.

From this it follows that the legal aspect of accountability can be dealt with in the main by courts of law, whereas the ethical dimension and, to some extent, socio-political matters, are left for the Commission to uncover. In this regard, the case of South Africa illuminates the issue at hand. As the TRC’s primary aim was centred on social reconciliation and restoration of broken relationships, perpetrators were, deliberately or inadvertently, legitimised through the humanisation process, which in effect led to perpetual immunity. Furthermore, the TRC is regarded as having been ineffective in rectifying the country’s inequitable social and economic relationships and underlying power structures, a consideration which appears to have tainted its success story.

However, the difficulty in carving out the proper functional relationship between the Commission and courts of law lies in delineating the boundary between the powers of the Commission and those of the courts of law. One way of making such a division of labour is to apply the “big fish vs small fish” approach, in which courts deal with the “big fish” (those most responsible for serious crimes), while the Commission focuses on the “small fish” (those bearing lesser moral and legal responsibility).

It seems that the Ethiopian government adopted this approach because few prominent suspects in human rights violations and economic crimes were brought to justice.⁸⁷ In fact, after the symbolic moves at the beginning, none of those “big fish” were brought to justice and the entire process was thwarted. This shows that, from its inception, the prosecution process was aimed at imposing selective justice, with the procedures that were followed having been marred by so-called witch-hunting. The ramifications for transitional justice in Ethiopia are crystal clear: the process did not follow the basic

⁸⁵ See Hayner (2011) at 20 (emphasis added).

⁸⁶ See Chapman & Ball (2001) at 2.

⁸⁷ The trial of prominent figures such as General Kifle Gagnaw, former Head of METEC, and Abdi Mohammed Omar (Abdi Illey), former Head of the Somali Regional State, is ongoing.

tenets of a transitional justice framework, which in turn contributed to the perpetuation of a culture of impunity and the cycle of violence.

Another area of relationship between courts and the Commission concerns the right against self-incrimination. Without such a guarantee, no one is willing to appear before a TRC to testify. To this end, the Establishment Proclamation provided that “[n]o one may be accused by the testimony given to the Commission as well as the testimony given before the Commission could not serve as evidence up on him”.⁸⁸ This legal safeguard would have helped witnesses and perpetrators reveal the truth without fear of future prosecution. In short, it was not within the realm of the Commission to name the names.

Lastly, the functional relationship between the two organs may arise in relation to the power to issue subpoenas for witnesses to appear before a TRC. A practical way to ensure that recalcitrant witnesses appear and testify before a TRC is to get a subpoena from the court, without which hearings before the TRC would be derailed. However, it can be argued that the Commission could summon witnesses to appear and testify by way of notice without a need to apply for subpoena, provided such a procedure was enshrined in a regulation issued by the Council of Ministers.

4 CONCLUDING REMARKS

Over the last century, the world has faced massive atrocities and social divisions caused, among others, by political unrest, civil wars, and repressive regimes. To come to terms with the past, societies in transition have devised accountability mechanisms, including criminal tribunals, special courts, traditional justice mechanisms, and TRCs. However, owing to the limitations of excessive reliance on retributive justice for societies in transition, the TRC has become the most popular transitional justice mechanism. The establishment of the TRC is part of the transitional justice mechanisms, not a panacea to settle all past accounts. Indeed, “Truth Commissions are most effective when integrated in a comprehensive transitional justice strategy that includes reparation policies, criminal prosecutions, and institutional reforms”.⁸⁹

The TRC is believed to heal the nation through truth-finding, full acknowledgment of the past, restoration of the broken social fabric, and reconciliation. Nonetheless, “truth commissions are difficult and controversial entities; they are given a mammoth, almost impossible task with usually insufficient time and resources to complete it”.⁹⁰ After all, truth-finding is a daunting task for a TRC owing to the subjective and multi-layered nature of the truth, particularly in a divided society.

In Ethiopia, the Commission was entrusted with the grandiose tasks of uncovering truth about past human rights violations, maintaining peace and facilitating reconciliation among the Ethiopian peoples. However, after two years, it was dissolved without being widely known among the general public or achieving its lofty objectives. From its

⁸⁸ See the Establishment Proclamation, article 18(1).

⁸⁹ See Gonzalez & Varney (2013) at 9.

⁹⁰ See Gonzalez & Varney (2013) at 18.

inception, the Commission was unable to achieve its objectives due to its inherent limitations and the many external pressures on it. Among other things, it was hobbled by its broad mandates, its legitimacy deficit, its scarcity of resources, and the social reality within which it operated.

First, the mandate of the Commission was not clearly defined. For example, no cut-off time was provided for its *ratione temporis*, and its *ratione materiae* (the nature of human rights violations, victims, issues of disagreement, etc.) was not well defined in the Establishment Proclamation. This made the task of the Commission challenging and complex. Moreover, the disjunction between the amnesty scheme and the reconciliation process tainted any hope of uncovering the truth about the past.

Secondly, the Commission failed to earn legitimacy from the public, which it lacked during its establishment, partly because widespread public deliberation among stakeholders had not been undertaken as to the need for the Commission and on the appointment procedure of the commissioners. The Commission should have engaged with peoples from all walks of life before it embarked on its actual work.

Thirdly, the Commission was given a task of finding the truth about the past, massive human rights violations and disagreements on historical issues, and facilitating the reconciliation of a divided society, in the atmosphere of highly polarised politics. Within this context, it would not be easy for the Commission to develop unifying values and principles to guide its work. The prevailing political polarisation dictates that each group approve only its truth, not the whole truth. Nevertheless, “both the process and the product of a truth commission can make a critical contribution in the midst of a difficult transition, fundamentally changing how a country understands some of the most contentious aspects of its recent history”.⁹¹ As to reconciliation, it all depends on who is to be reconciled with whom. If it is reconciliation with history by way of reducing official myths and acknowledging some historical facts, it is possible. But if reconciliation includes reconciliation of the Ethiopian peoples, it would be expecting too much of the Commission. Even the successful TRC of South Africa stated the caveat that “knowing the complete picture of past gross human rights violations, or even the facts of each case, may not lead to reconciliation. Truth may, in fact, cause further alienation.”⁹²

So, what lessons can we draw from the now defunct Truth Commission? One broad lesson with policy implications for the future can be put forward. If a similar commission is to be established in the future, issues pertaining to the nature of the truth as well as to such a commission’s legitimacy, mandate, and relationship with other institutions, including the courts of law, must be fully and promptly addressed.

⁹¹ See Gonzalez & Varney (2013).

⁹² See South Africa’s TRC Report at 107.

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