Transitional Justice and Truth Commissions in Ethiopia: A Comparative Analysis

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Abstract

Ethiopia has implemented different transitional justice measures to deal with gross violations of human rights committed in different periods. A recent initiative in this regard is the one that began following the conclusion of the conflict between the Ethiopian federal government and Tigray regional state in November 2022 with the signing of the Pretoria agreement (COHA). This article analyzes the evolution of truth commissions in Ethiopia by focusing on the emerging Ethiopian Truth and Social Cohesion Commission. It analyzes the adequacy of the draft law establishing the Commission by using doctrinal and comparative methodology. The key argument of the article is that the draft law establishing the Ethiopian National Truth and Social Commission has many gaps in it when it is analyzed in light of international standards and best practices of other jurisdiction. In order to ensure the effectiveness of the Commission in the future, the gaps identified in the paper should be rectified.

Keywords: Transitional Justice, Social cohesion commission compensation.

1. Introduction

The term transitional justice refers to a set of measures that aim to redress gross and massive violations of human rights committed in the context of conflict or dictatorship.[1] The mechanisms include truth seeking (establishing truth commission), criminal accountability, reparation and institutional reform among others. Many literature sources trace the origin of the notion of transitional justice to the 1970s and 1980s to the era referred to by Huntington as the third

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1. Olivera Simić (eds), An Introduction to Transitional Justice, (Routledge Taylor and Francis Group 2021)

wave of democratization.[2] During this period many states transitioned from dictatorship to democracy, particularly in Latin America. One of the challenges these states faced at that time was how to deal with the gross violations of human rights and provide justice to victims. This led to the establishment of truth commissions in countries like Argentina to investigate gross violation of human rights such as enforced disappearances.[3] Further, in jurisdictions like Brazil truth commissions were also mandated to administer the provision for reparation to victims. The reports issued by these commissions were very crucial in ensuring accountability of perpetrators and bringing closure to the victims.

Since then, truth commissions have been established in all regions of the world with a similar purpose.[4] Ethiopia is no exception in this regard. When one looks at the history of Ethiopia one could see different periods where gross and massive violations of human rights were committed. To just mention a few, one could start from the grave human rights violations committed during the Derg regime from 1974-1991 that includes arbitrary deprivation of life, enforced disappearance and torture. [5] The recent war between the Ethiopian Federal Government and the Tigray Regional State from November 2020-November 2022 also claimed the lives of thousands of individuals. Gross violations of human rights including torture and grave forms of sexual violence were committed that could constitute war crimes and crimes against humanity.[6]

There were attempts to respond to these gross violations of human rights. Following the downfall of the Derg regime in 1991, several members of the Derg and military as well as security officers were charged with crimes against humanity and genocide.[7] The prosecutions were mainly handled through the

2 Samuel P. Huntington, *The Third Wave: Democratization in the Late 20th Century*, (University of Oklahoma Press, 1991).

3 Simić (n1).

4 Charles Manga Fombad, 'Transitional Justice in Africa – The Experience with Truth Commissions', <https://www.nyulawglobal.org/globalex/africa_truth_commissions1.html> accessed on 17 March 2025.

5 Amnesty International, Human Rights Violations in Ethiopia < https://www.amnesty.org/es/wp-content/uploads/2021/06/afr250101978en.pdf >, Jacob Wiebel, 'Atrocities in Revolutionary Ethiopia 1974-79: Towards a Comparative Analysis' (2022)24 Journal of Genocide Research, 134–147.

6 Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia, November 3, 2021, < https://ehrc.org/download/ehrc-ohchr-joint-investigation-report-on-tigray-conflict/ > accessed 17 March 2025

7 Marshet Tadesse, *Prosecution of Politicide in Ethiopia: The Red Terror Trials*, (Asser Press, 2018).

special prosecutions office established for this purpose. Though this could be considered as something positive, there were several criticisms against the process. One of them was lack of comprehensiveness.[8] To adequately respond to gross violations of human rights a comprehensive approach that includes truth telling, criminal accountability, reparation and institutional reform is necessary.[9] Yet, the attempt to redress violations committed during the Derg regime mainly focused on criminal accountability by neglecting other TJ mechanisms. Further, the prosecution itself was selective and it did not ensure accountability for violations committed by actors other than Derg members.

Without proper stock taking from this exercise, another transitional justice process was launched in 2018 following the political reform that started with the coming into power of Prime Minister Abiy Ahmed. In his inaugural speech before the Parliament, the Prime Minister openly admitted the wrongdoings and human rights violations committed in the past and apologized to the public.[10] Subsequently, the Ethiopian Reconciliation Commission was established in 2018 with a broad mandate of facilitating dialogue, identifying causes of disagreement among different groups, promoting reconciliation and forwarding possible recommendations on how these issues should be addressed.[11] Yet, there was a lack of clarity on what the commission was supposed to do.

When we look at the experience of other jurisdictions' similar situations, institutions are mandated to establish truth and decide whether it would be appropriate to resolve the matter through prosecution or reconciliation. This kind of mandate was not given to the Ethiopian Reconciliation Commission.[12] Furthermore, the period the commission would focus on was also not clearly stipulated in the proclamation. As such, one cannot tell whether its focus would include issues that go back to the formation of the Ethiopian state or address only the incidents which took place after the adoption of the current

8 *Ibid*.

9 Guidance Note of the Secretary-General United Nations Approach to Transitional Justice, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TJ_Guidance_Note_March_2010FINAL.pdf >accessed 3 March 2025.

10 Ethiopia PM: Security agencies committed 'terrorist acts' June19, 2018 <https://www.aljazeera.com/news/2018/6/19/ethiopia-pm-security-agencies-committed-terrorist-acts > accessed 3 March 2025.

11 Reconciliation Commission Establishment, Proclamation No.1102 /2018

12 Moges Zewdu Teshome, 'Confronting past atrocities: A Critical Analysis of the Defunct Ethiopian Reconciliation Commission' (2022) 26 Law democr. Dev., 342-362, Solomon Ayele Dersso, 'Ethiopia's Experiment in Reconciliation' September 23, 2019, <https://www.usip.org/publications/2019/09/ethiopias-experiment-reconciliation > accessed March 3, 2025

Constitution. Accordingly, the commission finished its three-year term without achieving anything.

The war between the Ethiopian federal government and the Tigray regional state which ended with the signing of the Pretoria or Cessation of Hostilities Agreement (COHA) in November 2022 triggered another transitional justice process. One of the provisions of the peace agreement states that the human rights violations committed in the civil war will be addressed through transitional justice mechanisms.[13] Accordingly, the Ministry of Justice set up a group of experts to prepare a transitional justice policy that was adopted by the Council of Ministers in April 2024. The policy states that its core objective is to respond to gross violations of human rights committed in the past and create a platform for democratic system of government.[14] It also mentions that truth seeking, reconciliation, criminal responsibility, reparation and institutional reform mechanisms will be implemented. A special prosecution and a special bench will also be established to undertake prosecution. As per the policy, truth seeking, reparation and reconciliation measures will be handled by a new institution i.e. a truth and reconciliation commission. At the time of writing this paper, draft laws that establish the truth commission, a special prosecution office, a transitional justice special bench and an institutional reform commission as well as a draft law on international crimes had been prepared.

Yet, this process has received severe criticism. One of the main points is that ensuring accountability through this process is impossible as many of the perpetrators of gross violations of human rights are in a position of political power.[15] When we look at the experience of other cases, a successful transitional justice process was undertaken following a power transition or change of regime. The other problem with the ongoing transitional justice process is its legitimacy. At the time of writing this paper active conflicts[16] are taking place in different parts of the country and there is a serious security problem. Further, the transitional justice process that is being implemented so far is primarily led

13 Agreement for Lasting Peace Through a Permanent Cessation of Hostilities Between the Government of Ethiopia and the Tigray People Liberation Front (TPLF) November 2022, article 2(*f*).

14 *Ibid*.

15 Zekarias Beshah Abebe, 'As Ethiopia Moves Forward with Its Transitional Justice Initiative, Challenges Abound', April 2, 2024 < https://theglobalobservatory.org/by/zekarias-beshah-abebe/ > March 3, 2025.

16 Tadesse Simie, Tessema Simachew and Wubeshet Kumelachew (*et al*), 'Without peace in Ethiopia, transitional justice will be difficult'03 July 2024 < https://issafrica.org/iss-today/without-peace-in-ethiopia-transitional-justice-will-be-difficult > accessed 3 March 2025

by the government and lacks buy-in from opposition parties as well as armed groups.[17]

With this context in mind, this short paper attempts to analyze the adequacy of the emerging truth and national cohesion commission in Ethiopia by using international standards and relevant comparative experience of other jurisdictions. Accordingly, the next section will briefly highlight factors that contribute to the success and failure of the truth commissions, taking insights from relevant transitional justice experiences of other jurisdictions. The third section will examine the provisions of the draft law on the Ethiopian Truth and National Cohesion Commission, considering international standards. The fourth and the final section will focus on highlighting lessons and the way forward.

2. What makes or breaks truth commissions: Lessons from comparative experience

As mentioned in the previous section, many states across the globe have established truth commissions since the 1980s with the purpose of investigating gross violations of human rights, promoting reconciliation and recompensating victims. Though each country has its own unique social, political and economic context that contributed to conflict and massive violation of human rights, there are also common patterns that are shared across jurisdictions. As such, learning from the experience of other jurisdictions that have gone through a transitional justice process is very crucial for Ethiopia. Accordingly, this section will try to identify factors that contribute to the success or failure of truth commissions in general, taking insights from comparative experience. To make the discussion more structured, the focus will be on issues like composition and set-up of truth commissions, mandates as well as time and resources needed. Further, specific issues such as amnesty, reparation, interaction with accountability and traditional dispute resolution mechanisms will be analyzed.

(a) Composition and set-up

One of the factors that determines the success and failure of truth commissions is the way there are established and composed. As many scholars that conducted a thorough investigation on truth commissions highlight, commissions that were

17 'Political parties oppose ongoing consultations on transitional justice policy options, urge priority for peace, national dialogue, 13 March 2023 https://www.google.com/amp/s/addisstandard.com/news-political-parties-oppose-ongoing-consultations-on-transitional-justice-policy-options-urge-priority-for-peace-national-dialogue/ accessed 3 March 2025.

established through consultation and engagement of the relevant stakeholders are found to be more successful than those that were solely created by the regime in power.[18] A good example of the former is the Truth and Reconciliation Commission of South Africa which is notable for active involvement of the public, political parties and civil society organizations in its formation.[19] This contributed greatly to the legitimacy of the commission and its effectiveness when it started its functions. In contrast, in Burundi the ruling party in power was responsible in setting up the truth commission.[20] The limited participation of the opposition parties and CSOs in its formation severely undermined the legitimacy of the institution.

Regarding the composition of a truth commission, TJ scholars state the importance of ensuring diversity and representativeness besides qualification and neutrality.[21] Accordingly, truth commissions are expected to reflect the ethnic, religious and geographic diversity of a country. Good comparative examples that demonstrate this are the cases of Mali and Gambia.[22] In these two jurisdictions, members of the truth commission were recruited from all regions/states and adequately reflect the ethnic and religious composition of the society. This is critical to ensure the representativeness of the commission.

In relation to neutrality, members of truth commissions are expected to be politically neutral. The experience of truth commissions that are perceived to lack political neutrality in their membership is negative.[23] This in turn would affect the effectiveness of the commissions. Besides the issue of political neutrality, the relationship between different ethnic or political groups in a certain country may be problematic due to mistrust and divisions in these societies. To address the impact of such issues on the TJ process, some jurisdictions like Kenya or Sierra Leone have established truth commissions that include foreigners.[24] Such

18 Simić (n1).

19 Desmond Tutu, 'Truth and Reconciliation Commission, South Africa South African History, <https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa> accessed 3 March 2025.

20 Epherem Rugiririza, 'Burundi: A Truth Commission as political diversion' November 1, 2018, <https://www.justiceinfo.net/en/39395-burundi-a-truth-commission-as-political-diversion.html> accessed 3 March 2025.

21 Fombad (n4).

22 *Ibid*.

23 Rugiririza (n20).

24 AU Panel of Eminent African Personalities on the appointment of Kenya's Truth, Justice and Reconciliation Commission 5 August 2009, <https://www.kofiannanfoundation.org/publication/statement-issued-by-the-au-panel-of-eminent-african-personalities-on-the-appointment-of-kenyas-truth-justice-and-reconciliation-commission/ > accessed 3 March 2025.

practices may be vital to ensure political neutrality and enhance the capacity of the commission to discharge its responsibility.

(b) Mandate

The other factor that determines the effectiveness of truth commissions is the mandate given to them.[25] As much as possible their mandate should be clear and manageable. This means the time frame they would cover as well as the tasks they would perform should not be too broad. Further, whether economic crimes should be investigated by truth commissions or not should be given serious consideration given their complexity. The experience of other jurisdictions on this issue differs from one to the other depending on their context. In countries like the Gambia, different commissions were established to investigate gross violations of human rights and economic crimes.[26] The justification given for this is the special expertise required, and complexity involved in investigating the latter. Efforts to trace assets located abroad is another difficult exercise. In contrast to the Gambia, Liberia and Sierra Leone have mandated their truth commissions to investigate economic crimes like embezzlement besides gross violations of human rights.[27] This was done with the belief that there is an interconnection between the two and investigating them together will help to better understand the root cause of conflict and violation of human rights. That said, the separate approach the Gambia followed to investigate economic crimes seems more effective than in its Sierra Leone and Liberia counterparts.

(c) Time and Resources

The other critical factor that determines the effectiveness of truth commissions is the time and resources allotted to them to accomplish their task. As literature on the subject indicates, the time given to truth commissions should be reasonable to perform their task effectively.[28] If the time given to them is too short, they may not be able to investigate and report their findings properly. Similarly, if the time frame is too long the process may lack political momentum. A good example for this is the experience of the truth commission of Uganda which is one of the earliest on the continent. When the commission was established, it was not given a specific time frame to finish its task. In the end, it took the commission

25 Simić (n1).

26 Fombad (n4).

27 *Ibid*.

28 Simić (n1).

more than nine years to issue its report.[29] By this time the public and the victims by and large had lost interest in the process. Further, a truth commission that is established without the necessary financial and human resources is doomed to fail. One of the reasons why the truth and reconciliation commission of South Africa was successful was because of the adequate resources allocated to it. The commission had an annual budget of 18 million USD and around 300 staff.[30] This could be contrasted with the experience of other jurisdictions that had limited success in the truth commissions they established due to financial shortage.

(d) Traditional mechanisms

In jurisdictions where the local culture and custom is deeply rooted, closer working relations between truth commissions and customary institutions was found to be vital to promote reconciliation. The experience of Sierra Leone and Liberia is notable in this regard.[31] In both systems, customary mechanisms played a key role in the truth-telling process. The implementation of customary reconciliation rituals was also vital in providing closure and healing to victims. The only issue raised here is the claim that traditional mechanisms are not very gender-friendly and may not adequately protect the rights of women.[32] To remedy these deficiencies, open dialogue with the community and capacity building training for elders and clan leaders was found to be useful.[33]

(e) Amnesty

Amnesty is a core transitional justice mechanism that is applied in many jurisdictions. In the literal sense, amnesty refers to forgetting past misdeeds and exonerating perpetrators from criminal accountability.[34] Amnesty could be granted to individuals to achieve different goals. One of these goals could be achieving peace by disarming and reintegrating combatants. In addition, amnesty could be used to encourage perpetrators to speak about their involvement in human rights violation without fearing criminal responsibility. The information

29 *Ibid*.

30 Truth Commission South Africa, December 1, 1995 < https://www.usip.org/publications/1995/12/truth-commission-south-africa> accessed on 3 March 2025.

31 Simić (n1).

32 'Localizing Transitional Justice: Community-Based Approaches to the African Union Transitional Justice Policy in the Horn of Africa' Workshop Report, on 4 December 2024.

33 *Ibid*.

34 Simić (n1).

obtained from them would be vital to establish truth about the past. This does not, however, mean that states should be at liberty to grant amnesty without any condition. This is because there is a duty to prosecute intranational crimes such as genocide, crimes against humanity and war crimes.[35] Failure to do so would promote impunity and deprive victims their right to truth, justice and reparation. Accordingly, under international law only a conditional type of amnesty is permitted. This means that the state cannot issue blanket amnesty to perpetrators of gross violation of human rights. Granting amnesty may be justified for less serious crimes and on the condition that the accused collaborates in the establishment of truth. The experiences of South Africa, Liberia, Sierra Leone and the Gambia are relevant here. In South Africa, amnesty was given to those who assisted the truth commission in the discovery of truth and were involved in committing crimes with a political motive.[36] Here, it is important to note that there was no requirement to show remorse on the part of the perpetrators to benefit from the amnesty proceedings. The major justification for excluding remorse in the case of South Africa was to prevent fake apologies.[37] This could be contrasted with the experience of Liberia and Sierra Leone which required remorse as a precondition for securing amnesty. The purpose of putting these conditions seems to be promoting reconciliation and encouraging forgiveness on the part of the victim.

(f) Compensation

Another parameter for assessing the successfulness of truth commissions is the adequacy of reparation and compensation given to victims. In order to assess the adequacy of reparation, looking at the design and implementation is very critical. Accordingly, when reparation programs are designed by the truth commission they must put victims at the center. They must also not give the impression that the harm the victim endured is something which could be remedied by paying/giving them an amount of money.[38] As such, compensation should only be provided in addition to other transitional justice measures such as truth-telling, and establishment of the gross human rights violations committed. Further, the amount of compensation paid should not be grossly

35 *Ibid*.

36 Therese Abrahamsen & Hugo van der Merwe, 'Reconciliation through Amnesty? Amnesty Applicants' Views of the South African Truth and Reconciliation Commission', 2005 <reconciliationthroughamnesty.pdf > accessed on 3 March 2025.

37 Fombad (n4).

38 Simić (n1).

nominal. It should rather be something that aims to make up for their loss and enable victims to lead or start a decent life. Here, it is important to note that paying reparations to victims is an expensive undertaking and many states may find it difficult to provide victims an adequate compensation. Yet, they must do everything possible to provide victims an appropriate compensation by using local sources and seeking assistance from other jurisdictions. Further, the assets of those individuals who participated in human rights violation could be used for this purpose. In addition, the major challenge observed in many jurisdictions is the inadequate implementation of reparation programs.[39] Thus, truth commissions are expected to devise appropriate mechanisms to ensure the adequate implementation of the reparation program by coordinating with the government and other relevant stakeholders.

(g) Interaction with prosecution and TJ courts

The other factor that determines the success of truth commissions is its interaction and relationship with prosecution and TJ special courts. In many jurisdictions that have undergone a successful TJ process, there is a clear sequencing between different mechanisms. As such, they will start with the truth commissions and later proceed to prosecution based on the recommendations that emerge. The experience of the Gambia and Liberia is notable in this regard. Contrary to these, in Sierra Leone, the truth commission and the special court were operating side by side.[40] This created a great deal of confusion and overlap of mandates. In addition, perpetrators were reluctant to come and testify before the truth commission for fear of criminal prosecution. Further, the issue of which institution should decide on sending an individual to the truth commission or to the court is equally controversial. In Burundi there was a debate between the government and the United Nations on this topic.[41] According to the Government of Burundi, the truth commission should have had the mandate to decide on individuals who should be prosecuted. In contrast, the position of the UN was for the prosecution to decide on which individuals should go to court, and which ones should go to the truth commission.[42] The important lesson to be learned here is that as much as possible, prosecution and truth-seeking process should not be undertaken simultaneously. The successful experience of

39 *Ibid*.

40 Paul James-Alen (*et al*), *Sierra Leone's Truth & Reconciliation Commission and Special Court: A Citizen's Handbook* (2003), 38, 37.

41 Fombad (n4).

42 *Ibid*.

many jurisdictions demonstrates the importance of doing truth-seeking and investigation by truth commissions first before embarking on prosecution. This approach avoids unnecessary overlap and ensures complementarity between the two processes.

3. How adequate is the draft law establishing Ethiopian National Truth and Social Cohesion Commission?

(a) Nomenclature, Mandate and appointment of commissioners

To begin with is the nomenclature of the new commission. The draft law names it as 'Ethiopian National Truth and Social Cohesion Commission'. The choice seems to be informed by the desire to distance the new commission from the former Ethiopian Reconciliation Commission which completed its term without achieving much. Further, the new commission is also given a new mandate to promote social cohesion by building a common narrative about the past. This may have shaped its nomenclature as well.[43] Another notable departure regarding the new Truth and Social Cohesion Commission in comparison to its predecessor is the specification of the time frame which the commission covers. The draft legislation uses the year 1974 as a starting point to determine and define the nature of its function.[44] Accordingly, the legislation gives a broader mandate to the commission to investigate gross violations of human rights and injustices committed before 1974. Here, the purpose of the exercise seems to be historical clarification and promoting a common historical narrative.

This mandate of the commission also aligns with its objective of promoting social cohesion. Two questions could be raised in connection with this mandate of the commission. The first concerns the issue of evidence. Though 1974 is the starting period, it is not clear in the law how far back the commission can go to investigate issues. Given the presence of contentious historical claims and injustices alleged to have been committed since the formation of the Ethiopian state, it would be very difficult to establish that with concrete evidence. The second issue here is the possibility of building a common narrative and acknowledgment of suffering by all. It is well known that there are contradictory theses propagated by different political groups about the formation of the Ethiopian state and the injustices committed over the years i.e. the colonial thesis, and the nation building and national oppression thesis. Some

43 Proclamation No. ___ 2025 Federal Democratic Republic of Ethiopia Transitional Justice Code (DRAFT)

44 *Ibid*.

of them even have informed the design of the current Ethiopian Constitution.[45] Considering this fact, it is unrealistic to expect the commission to investigate and establish a common historical narrative. As such, this specific mandate of the commission should be seriously reconsidered to ensure its effectiveness.

The other function which the draft legislation gives to the commission is investigation and documentation of gross violations of human rights committed by state and non-state actors after 1974.[46] This also includes examining the root cause of the violations, their nature and magnitude. Here, it is important to investigate whether it is appropriate to make 1974 a starting period for this exercise. As mentioned in the second section of the paper, the Derg regime which assumed political power in 1974 was involved in gross violations of human rights. There were also some attempts to ensure criminal accountability of perpetrators when change of regime happened in 1991. Yet, the prosecution undertaken was selective and it did not have a truth-seeking aspect. As such, covering the period after 1974 within the mandate of the commission is justified.

Another issue that could be raised here is the conflict that took place between the federal government and Tigray regional state which was "concluded" for the time being with the signing of the COHA/Pretoria agreement in November 2022. For some scholars, the Pretoria agreement is the key factor which triggered the ongoing transitional justice process in Ethiopia.[47] According to them, the focus of the truth commission should be investigating incidents which took place from November 2020 up to November 2022. This proposal could be useful to allow for a deeper investigation of the violation that took place in this period. Yet, the finding of the commission will most probably not be comprehensive. This is because there were gross violations of human rights that were committed in different parts of Ethiopia from 1991 - November 2020 which were not properly investigated and redressed.[48]

In addition, even after the signing of the Pretoria agreement ongoing conflicts and violations of human rights are continuing in different parts of Ethiopia (in Amhara and Oromia regions in particular). Excluding the violations which

45 *Ibid*.

46 *Ibid*.

47 *Ibid*.

48 'Ethiopia: 25 Years of Human Rights Violations', <https://www.amnesty.org/en/documents/afr25/4178/2016/en/ > 2 June 2016, Fisseha Tekle, '28 years later, Ethiopia's ruling party must end impunity for human rights abuses' 28 May 2019, <https://mg.co.za/article/2019-05-28-00-28-years-later-ethiopias-ruling-party-must-end-impunity-for-human-rights-abuses/> accessed on 26 April 2025

took place post-2022 from the ambits of the truth commission's investigation will undermine the credibility of the entire process. It would also not make sense to establish another truth commission in the future to investigate these violations. Similarly, ignoring the violations and injustices committed in the aforementioned period will not promote peace and social cohesion in Ethiopia. As such, the proposal to cover the period after 1974 until now within the work of the commission in the draft legislation is a sensible move. This would also enable the commission to identify the root cause of the conflict which took place in the northern part of Ethiopia recently. The term limit which is given to the commission to accomplish these tasks is five years, and it could be renewed as needed.

As per the draft law on truth commission, the commission will have seven members in total.[49] They will be appointed by Parliament after the selection committee submits the short-listed candidates. The draft law gives the mandate of establishing a selection committee for commissioners to the Speaker of the Parliament. Regarding the composition of the committee, the draft law stipulates representatives from Inter-religious Council of Ethiopia, Ministry of Peace, House of Peoples Representatives, House of Federation, Traditional Justice Systems, civil society structures representing victims (1), women (1), and persons with disability and other vulnerable groups (1) as well as an expert possessing the relevant experience and expertise.[50] The major issue with this arrangement is the question of independence and inclusiveness. This is because the composition of the committee is considerably dominated by government affiliated entities. The committee does not also include representatives of other political parties. Here, it is important to note that the current Ethiopian Parliament is totally controlled by the ruling prosperity party (98%). The independence of Inter-religious council and Traditional Justice system is also questionable because they are presumed to be influenced by the government.[51]

It is also important to note that the same issue was raised when the commissioners of the Ethiopian National Dialogue Commission were appointed in February 2022. Many political parties at that time raised questions

49 Draft Transitional Justice Code (n43), art 43(4).

50 *Ibid*.

51 Tsion Zerayakob, *Post-Conflict Peacebuilding by the Inter-Religious Council of Ethiopia (IRCE): The Case of Agaro*, A thesis Submitted to the School of Graduate Studies Institute for Peace and Security Studies of Addis Ababa University in Partial Fulfillment of the Requirements for the Degree of Master of Arts in Peace and Security Studies June 2022, 43-44, Assefa Tasgara, 'Challenges and Opportunities of Homegrown Ways of Peace Building: The Case of Gada System in Borana Community of Southern Ethiopia' (2021) 6 International Journal of Systems Science and Applied Mathematics 9-21.

about the independence and transparency of the appointment process.[52] Some of them even decided not to engage with it. To address this issue looking at the experience of countries like South Africa may be useful. When the Truth and Reconciliation Commission of South Africa was established, there was widespread public participation. NGOs and political parties were also active participants in the appointment process. This helped a lot in enhancing credibility as well as the effectiveness of the commission.

The Regional Composition of the commissioners is another concern worth raising here. In the draft legislation, regional diversity is not mentioned as a criterion to be considered when commissioners are appointed. This may undermine the legitimacy of the commission, especially in regions like Tigray, Amhara, Oromia and Afar which have been affected by serious violation of human rights in recent years. In this regard, the experience of Gambia's Truth and Reconciliation and Reparation Commission may be useful to consider as it attempted to reflect the prevalent diversity in the country.[53] In the Ethiopian case, though it may be difficult to represent more than eighty ethnic groups inhabiting the country, it would be possible to appoint one commissioner representing each region by increasing the number of commissioners.

(b) Definition of 'gross violation' of human rights and determination of 'most responsible'

As per the draft law, the commission is empowered to investigate gross violations of human rights. The term gross violation of human rights was defined broadly to include war crimes, genocide, crimes against humanity as well as economic crimes such as embezzlement.[54] This kind of formulation deviates from international standards. As discussed in the second section of the paper, different jurisdictions have different approaches when it comes to the investigation of economic crimes like embezzlement by truth commissions. While some

52 'National Dialogue Commission 'failed before formation' – Balderas Party' <https://addisstandard.com/news-national-dialogue-commission-failed-before-formation-balderas-party/ >Ethiopian Political Parties Joint Council request Parliament to temporarily halt National Dialogue commissioners' selection, resume process in inclusive, trustworthy manner 14 February 2022 <https://addisstandard.com/news-ethiopian-political-parties-joint-council-request-parliament-to-temporarily-halt-national-dialogue-commissioners-selection-resume-process-in-inclusive-trustworthy-manner/ > accessed on 3 March 2025.

53 UNDP, Role of the Truth, Reconciliation and Reparations Commission in promoting national reconciliation and peace in The Gambia, December 13, 2021, <https://www.undp.org/gambia/news/role-truth-reconciliation-and-reparations-commission-promoting-national-reconciliation-and-peace-gambia > accessed on 3 March 2025.

54 Draft Transitional Justice Code (n43), art 39(3) d.

establish specific commissions to investigate economic crimes others mandate ordinary truth commissions to handle it. When we come to the Ethiopian case, considering the broad mandate given to the commission to investigate violations before and after 1974, adding the investigation of economic crimes would make the task too cumbersome. Further, the experience of other jurisdictions on investigation of economic crimes shows that the area is too technical as well as complex. As such, it is better to give this task to a special body having the appropriate expertise.

Another controversial issue in the draft law is the term 'most responsible'.[55] As per the draft legislation, amnesty cannot be granted to those that are most responsible for gross violations of human rights. The law has also attempted to provide a definition that includes political and military leaders as well as those perpetrators who committed grave/heinous violation of human rights directly. The challenge, however, is how to determine this concretely, leaving aside if this would be possible at all while potential perpetrators are still in power. As one can see from the experience of the special court for Sierra Leone, making such determination is extremely complex as different benches reached different conclusions on the same case.[56] The standard of proof to be applied in such case also needs to be determined precisely i.e. whether it is preponderance standards (lower threshold) or whether one applies a stricter beyond reasonable doubt standard. It is also not clear in the draft how the commission is going to make such determination.

(c) Link with prosecution/accountability

Another gap in the draft proclamation is its failure to grant the commission the power to recommend individuals for prosecution. This is contrary to the mandate given to the South African Truth and Reconciliation Commission and the Gambian Truth, Reconciliation, and Reparation Commission.[57] In these systems, the truth commission would conduct investigations about gross violations of human rights within a certain period and identify the responsible perpetrators. They would also decide who should get amnesty and who should be sent to prosecution. In addition, the experience of jurisdictions like Sierra Leone demonstrates the inadequacy of undergoing truth-seeking

55 *Ibid.*

56 Charles Chernor Jalloh, 'Prosecuting Those Bearing "Greatest Responsibility": The Lessons of the Special Court for Sierra Leone' (2013) 96 Marq. L. Rev. 863.

57 Truth, Reconciliation and Reparations Commission Bill, 2017, Promotion of National Unity and Reconciliation Act, No. 34 of 1995.

and prosecution processes at the same time. Contrary to this approach, in the Ethiopian transitional justice process the two mechanisms seem to go parallel without a clear connection. As mentioned in the previous section of the paper, in terms of sequencing truth-telling should come first and it should be followed by prosecution. This is what happened in countries like Liberia and the Gambia. Such an approach helps in using the inputs and evidence obtained from the truth commission's investigation to be later used for prosecuting the most responsible perpetrators.

(d) Amnesty and Reparation

One of the responsibilities given to the truth commission in the draft law is deciding on amnesty applications and proposing recommendations for reparation.[58] It is also important to note that the draft legislation only recognizes a conditional form of amnesty for those who are not 'most responsible' for gross human rights violations. The conditions attached include full disclosure of truth, reparation, and provision of community service. In addition, since the term gross violation of human rights is defined broadly in the law, crimes like embezzlement may be grounds to deny someone amnesty (if one literally reads the law). To avoid such absurdity, it would be good to specifically indicate grave crimes that should not be considered for amnesty. The experience of the Gambia may be relevant here. As per article 19(3) of the TRRC Act 'amnesty shall not apply to acts which form acts of crime against humanity'. This formulation is clearer, and it would be good to have a similar provision in the Ethiopian Truth and Social Cohesion law.

Concerning reparation, the draft law provides for administrative types that include individual, collective and interim forms.[59] It also recognizes restitution, rehabilitation, compensation, satisfaction and guarantee of non-repetition in a comprehensive manner. Yet, the law does not provide criteria for assessing the adequacy of compensation such as its effectiveness and proportionality. Further, in other jurisdictions institutions like the Ethiopian Human Rights Commission are mandated to check or supervise the adequacy of remedies provided to victims.[60] Having a similar arrangement in the draft law would be important. In addition, the draft law only provides compensation for certain categories of victims such as those who suffered sexual and gender-based violence and those

58 Draft Transitional Justice Code (n43),art 40(11), 40(14).

59 *Ibid*.

60 UN Office of High Commissioner for Human Rights Guidance Note on National Human Rights Institutions and Transitional Justice, 27 September 2008.

that sustained bodily injury and lost their means of livelihood.[61] Individuals who lost their property because of conflict or gross violation of human rights will not get compensation. The law may have been formulated in such a way under the assumption that resources are limited, and compensation cannot be provided for each kind of human rights violation. Yet, this approach would raise issues of fairness and adequacy.

It is also important to note that in implementing amnesty and reparation National Human Rights Institutions (NHRIs) should play a considerable role that includes:[62]

- Intervening on behalf of victims when the state adopts measures like pardon and amnesty that encourage impunity.
- Establishing a comprehensive database that supports the reparation of victims.
- Development of a reparation plan that attends to the material, physical, psychological and medical needs of the victim.
- Monitoring the sufficiency and fairness of compensation for victims and following up on its implementation. The active engagement of the Moroccan NHRIs is notable here.

Yet, the draft law seems to neglect the role of NHRIs with respect to amnesty and reparation.

(e) Regional States and Traditional Mechanisms

The draft law recognizes the role of regional states and traditional mechanisms in truth-seeking commemoration and reconciliation. Yet, the regional presence of the commission is not clearly provided. This may make the operations of the commission difficult. Further, actively engaging regional as well as local governments in the activities of the commission is extremely crucial to ensure public ownership and legitimacy of the process. The experience of Nepal clearly demonstrates the importance of actively involving regional and local governments to effectively address the needs of victims.[63] Thus, it would be good to provide a platform in the law for the commission to work closely with the regional and local governments on issues of truth seeking, reparation as well as amnesty. Similarly, though the draft legislation recognizes the role of traditional justice systems in the truth seeking and reconciliation process, it

61 Draft Transitional Justice Code (n43), art 85(1).

62 OHCHR Guidance Note (n60).

63 Sujit Mainali, Transitional Justice: Tasks Local and Provincial Governments Can Undertake in Nepal, Wisdom of Worthy Research Journal, 3(2), 91–99.

does not properly address questions of inclusiveness and gender sensitivity that is often raised against them. Accordingly, it would be good to indicate in the law that traditional justice systems will be employed in the process by ensuring respect for the equal rights and participation of women. The experience of the Rwandan NHRI in monitoring the compliance of traditional TJ mechanism with international human rights standards and ensuring their gender sensitivity is exemplary here.[64]

(f) Coordination with the Ethiopian Human Rights Commission (EHRC)

The other gap in the draft legislation is its failure to clearly articulate the relationship between the Truth, Reparation and National Cohesion Commission and the EHRC. Over the past few years, the EHRC has done a commendable job in investigating and documenting human rights violations.[65] The draft law does not seem to give recognition to this, and the law anticipates the truth commission to do a fresh investigation. This approach may have been adopted by the drafters to distance the new commission from EHRC to avoid allegations made by some reports that the EHRC was biased in its investigation of the conflict in Tigray.[66] Yet, this could not be an excuse to dismiss all the important work the commission has done so far. Also, what we can see from the experience of other countries is the active involvement of human rights commissions in the truth-seeking process design and implementation. This includes ensuring the establishment of truth and reconciliation commissions in an independent, impartial and inclusive manner.[67]

As such they may engage in setting criteria which members of the commission must fulfil to take the position as well as making sure that the

64 OHCHR Guidance Note (n60)

65 Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia (2021), EHRC, Report on Violations of Human Rights and International Humanitarian Law in Afar and Amhara Regions of Ethiopia Published on 11 March 2022

66 Omna Tigray, 'Ethiopian Human Rights Commission – A Call for Impartial and Credible Investigations in Tigray' https://omnatigray.org/a-call-for-impartial-and-credible-investigations-in-tigray/#:~:text=The%20EHRC%20is%20not%20an,the%20beginning%20of%20the%20conflict, World Peace Foundation,'Neither Impartial nor Independent:The Joint UN-EHRC Human Rights Investigation in Tigray' 11 Oct 2021< https://worldpeacefoundation.org/blog/neither-impartial-nor-independent-the-joint-un-ehrc-human-rights-investigation-in-tigray/> 3 March 2025

67 OHCHR Guidance Note (n60).

commission has a sufficiently wide mandate and time to discharge its responsibility adequately. Here one can mention the experience of Kenyan and Moroccan NHRIs as examples.[68] Assisting in the discovery of truth by conducting a special investigation and sharing information obtained from previous investigations is another important intervention by NHRIs. The contribution of the Guatemalan NHRI in forced disappearance cases could be mentioned here as an illustration.[69] Preserving evidence obtained from a truth -seeking process for the purpose of prosecution and monitoring the entire truth-seeking process is another responsibility which NHRIs could discharge.

4. Conclusion and the way forward

The draft legislation on an Ethiopian National Truth and Social Cohesion Commission has many progressive provisions when it is compared to its predecessor (the proclamation establishing the former Ethiopian Truth and Reconciliation Commission.) These include the comprehensive power given to the new commission to investigate gross violations of human rights as well as its mandate to manage amnesty and reparation. The attempt to specify the time frame which the commission covers is also good. Yet, there are also considerable gaps in the draft law that may affect the effectiveness of the emerging Truth and Social Cohesion Commission. These include the limited inclusion of relevant stakeholders in the appointment process of commissioners and the broad mandate given to it to investigate both economic crimes and gross violations of human rights committed before and after 1974. In addition, lack of clarity on its relationship with the special court/prosecution, traditional mechanisms, the Ethiopian Human Rights Commission and regional states is another challenge. Further, the kind of procedure the commission follows to determine the 'most responsible' perpetrators as well as implementation of its amnesty and reparation mandates is not specifically provided in the law.

There are several lessons which Ethiopia could learn from the experience of other countries that have undertaken a successful transitional justice process, and which could strengthen the emerging Ethiopian Truth and Social Cohesion Commission. The first is ensuring the appointment of the commissioners in an inclusive, participatory and legitimate manner. This requires revisiting the composition of the selection committee for commissioners in the draft law that is primarily dominated by government affiliated entities and ensuring its

68 *Ibid.*

69 *Ibid.*

representativeness. The experience of South Africa could be a good model in this regard. Second, the mandate given to the commission should be manageable. For this, revisiting the responsibility given to the commission to investigate injustices committed before 1974 and establish a common historical narrative is necessary. Given the contentious nature of the issue in Ethiopia, it would be wise to exclude such responsibilities from the commission's mandate. Similarly, it is advisable to have economic crimes that are too complex handled by specialized entities instead of the truth commission. The emerging truth commission should rather focus on gross violation of human rights as established and defined in international law. The experience of the Gambia is relevant in this regard.

Third, the draft legislation should clearly specify the relationship of the emerging truth commission with the prosecution, regional states, traditional justice systems and the Ethiopian Human Rights Commission. This helps to ensure better coordination and complementarity. In addition, it would be commendable if the truth commission finishes its task of investigation and documentation before the prosecution phase commences. The emerging truth commission should also learn from the challenges countries like Sierra Leone faced when they tried to implement truth-telling and prosecution processes simultaneously. In addition, Ethiopia can learn a lot from the experience of Liberia, Rwanda and Sierra Leone on how to use traditional mechanisms in the truth-telling and reconciliation process in a gender sensitive and human rights-compliant manner. The experience of jurisdictions like Nepal, Morocco and Kenya also demonstrates how to effectively engage local governments and national human rights institutions in the truth-seeking process.

Fourth, the failure of the draft law on the truth commission to provide a procedure for determining who are the 'most responsible perpetrators' should be rectified. For this, the experience of Sierra Leone's truth commission and special court is relevant. Finally, the draft law should regulate the issue of amnesty and reparation in detail. As it stands now, the law lacks a clear procedure on conditions that need to be fulfilled to benefit from amnesty, such as remorse and apology to victims. Similarly, the provision of the draft law on reparations is crafted in a manner that excludes a considerable number of victims. In addition, there is no adequate mechanism to ensure the adequacy and sufficiency of reparations. To address this gap, examining the experience of jurisdictions like South Africa and involving the Ethiopian Human Rights Commission in the process is critical.