

SEEKING TRANSITIONAL JUSTICE THROUGH RECONCILIATION IN A TROUBLED TRANSITION: THE LEGITIMACY, PERFORMANCES, AND LIMITS OF THE ETHIOPIAN RECONCILIATION COMMISSION

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ABSTRACT

The Ethiopian People's Revolutionary Democratic Front ("EPRDF") succeeded the ruthless Marxist Derg regime in May 1991 and ruled Ethiopia for nearly three decades until May 2018. Beginning in 2015, however, the EPRDF regime witnessed the outbreak of unprecedented violent popular protests due to various grievances which profoundly resulted in the ambiguous demise of the regime in 2018. Subsequently, the so-called new "reformist coalition" emerged from within and took some initially commendable political and judicial measures. To address Ethiopia's challenges, which are rooted in its contested past and current troubled political situation, the Ethiopian Reconciliation Commission was established in December 2018, for a three-year term, as a key transitional justice measure through which the country sought to investigate the root causes of past violence and conflicts, probe historical injustices, and ensure peace and reconciliation.

Such Truth and Reconciliation Commissions ("TRCs") have proliferated as a standard global measure for effectively addressing challenges of conflict and post-conflict settings. The role of TRCs is particularly important in reconciling deeply divided societies that have experienced ethnopolitical conflicts. But there is a persistent lack of certainty and empirical assessment about the actual processes and impacts of TRCs, especially in illiberal contexts. When the Ethiopian Reconciliation Commission is viewed by conventional standards, there are serious gaps regarding the manner in which it was established, how its material and

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temporal jurisdiction is determined, and how it maintains its independence and autonomy. Nevertheless, this topic is not treated seriously in light of the comparative experiences of other relatively successful jurisdictions. Therefore, this Article attempts to address how the Ethiopian Reconciliation Commission emerged and fared in Ethiopia's constrained and unstable political environment. Specifically, this Article argues that given Ethiopia's prevailing, precarious political situation, pursuing restorative justice through the Reconciliation Commission was a step in a positive direction. However, a closer assessment reveals that its establishment process was deeply flawed given that it did not involve the participation of important wider actors, has been a hollow process, was implemented in a top-down and exclusionary manner, and was manifestly driven by instrumentalist motives rather than as a reflection of honest political commitment to genuine political and societal reconciliation. Ultimately, these factors culminated in an institution whose legitimacy, credibility, and performance are questioned. This fact became palpable when the Commission was unceremoniously dissolved in March 2022 without achieving any of its declared institutional goals and was replaced with the National Dialogue Commission. Ultimately, this Article recommends that Ethiopia carefully learn from other "successful" TRC experiences and from its own past failure when erecting similar TRC institutions that aim to transform the country from the reigning political abyss to a peaceful, reconciled, and democratic polity. Until TRCs are established based on correct diagnoses of prevailing problems and can be adequately supported by negotiated, inclusive, and genuine political commitments, the proliferation of transitional justice institutions in different names will fail to successfully address Ethiopia's multifarious challenges.

I. INTRODUCTION

There was a very real risk that the country would stumble down a path of bloody and prolonged conflict, as has been the experience of so many nations struggling to overcome internal divisions. With the eyes of the world on this country . . . the people of South Africa initiated the Truth and Reconciliation Commission, eschewing revenge and violence in favor of truth and forgiveness, and ultimately, the reconstruction of our country. As a result, South Africa today stands as a model of merciful justice; of what can be achieved when enemies choose dialogue over violence.¹

¹ Desmond M. Tutu, *Reflections on Moral Accountability*, 1 INT'L J. TRANSNAT'L JUST. 6, 6-7 (2007).

– Archbishop Desmond Tutu,
Chairperson of the South African
Truth and Reconciliation
Commission

The above quote by Archbishop Desmond Tutu is about South Africa during its transition into a post-apartheid society. It generally and aptly pinpoints the puzzling challenges and dire political situations many post-conflict or transitioning States face during their transitional political period in the process of the searching for justice and peace. Today, Ethiopia finds itself at a critical juncture like that which Archbishop Desmond Tutu described regarding the South African case which took place before a Truth and Reconciliation Commission three decades ago. However, the situation in Ethiopia differs from those of other contemporaneous transitions in Africa and elsewhere. Specifically, it differs from the rampant abuse perpetrated under South Africa's apartheid regime and the type of transition that took place there.² It also differs from the transition which took place after the Rwandan genocide and the subsequent justice measures taken by the Rwandan Government.³ South Africa's political change towards democracy and transition to a "stable and just society" was mediated through the efforts of its famous institution, the Truth and Reconciliation Commission, which was established in 1995.⁴ Despite varying perceptions of what it entails, a democratic government, led by charismatic leader Desmond Tutu, was South Africa's preferred institutional design to respond to its unjust past.⁵

² Compare *Transitional Justice in South Africa*, FACING HIST. & OURSELVES (May 12, 2020), <https://www.facinghistory.org/resource-library/transitional-justice-south-africa> ("[A]fter nearly 50 years of apartheid and hundreds of years of racial violence and oppression, South Africa made a peaceful transition to a more democratically elected government . . ."), with *Ethiopia is in Transition Defined by No Clear Direction*, ETH. OBSERVER (Jan. 8, 2019), <https://www.ethiopiaobserver.com/2019/01/08/ethiopia-is-in-transition-defined-by-no-clear-direction-tsadikan-gebretensae/> (noting that transition in Ethiopia has no direction at all).

³ See generally Kari Costanza, *Rwanda: 20 Years Later*, WORLD VISION (last visited Jan. 21, 2023), <https://www.worldvision.org/disaster-relief-news-stories/rwanda-20-years-later> (noting that the Rwandan genocide began in 1994 shortly after the murder of Rwanda's president, Juvenal Habyarimana, a Hutu—in the following 100 days, 20% of Rwanda's population, one million Tutus and moderate Hutus, were brutally murdered); see also Outreach Programme on the Rwanda Genocide and the United Nations, Background Note on the Justice and Reconciliation Process in Rwanda (Mar. 2012), <https://www.un.org/en/preventgenocide/rwanda/pdf/bgjustice.pdf> (highlighting that the primary responsibility for reconciliation in Rwanda belongs to the National Unity and Reconciliation Commission which is focused on reconstructing the Rwandan identity and encouraging perpetrators and victims to live side-by-side in peace).

⁴ See François du Bois & Antje du Bois-Pedain, INTRODUCTION TO JUSTICE AND RECONCILIATION IN POST-APARTHEID SOUTH AFRICA 1, 1 (François du Bois & Antje du Bois-Pedain eds., Cambridge Univ. Press) (2009).

⁵ See Alma Diamond, *Burying the Past and Building the Future in Post-Apartheid South Africa*, BRITANNICA, <https://www.britannica.com/story/burying-the-past-and->

As noted, on the other hand, the nature of the current transition and associated justice measures exhibit some differences from those typical in Africa, as introduced above. The transitional justice measures differ in at least two respects. Firstly, unlike injustice perpetrated by South Africa's colonial Apartheid regime, Ethiopia's political problem is endemic, and thus cannot be attributed to colonial legacies. Secondly, the transition did not come out of clear regime change, and during its early phase, it largely remained a political reform from within. Related to the first factor, Ethiopia boasts itself as one of only two uncolonized African states that heroically preserved its survival as an independent state for the longer part of its history.⁶ Ethiopia's current political problem is largely a political predicament that is rooted in its own history. The past exploitation and violence which occurred during the country's long and controversial history of state-building in the 19th Century continues to divide its political elites and haunt its present.⁷ Moreover, Ethiopia's tumultuous political climate has also worsened on account of the authoritarian political tradition of successive rulers.⁸ Over the years, the violent process of "nation-building,"⁹ the over-centralization of political power,¹⁰ an exploitative political and extractive economic system,¹¹ and

building-the-future-inpost-apartheidsouthafrica (last visited Feb. 8, 2023).

⁶ Titus Kivite, *Liberia and Ethiopia; the Never Colonized African Countries*, AFR. GLOB. NEWS (Apr 21, 2019), <https://africaglobalnews.com/liberia-and-ethiopia-the-never-colonized-african-countries/>. On Ethiopia's preservation of its independence, see SVEN RUBENSON, *THE SURVIVAL OF ETHIOPIAN INDEPENDENCE* (1976), and HAGAI ERLIKH, *ETHIOPIA AND THE CHALLENGE OF INDEPENDENCE* (1986).

⁷ See generally Berihu Asgele Siyum, *Underlying Causes of Conflict in Ethiopia: Historical, Political, and Institutional?*, WORLD CONF. ON SOC. SCIS. STUD., 13, 18–20 (2021) (providing background information into Ethiopia's history with recurring conflict, especially that which is the result of governance by de facto leaders and the presence of divided political and social interests in the nation).

⁸ Asafa Jalata, *The Ethiopian State: Authoritarianism, Violence and Clandestine Genocide*, 3 J. PAN AFR. STUD. 160, 180–81 (2010).

⁹ See Estifanos Balew Liyew, *GERD: A Catalyst for Nation-Building Process in Ethiopia*, QEIOS (Oct. 3, 2022), <https://www.qeios.com/read/LJ39BR> ("Nation building primarily refers to a domestic process when political elites . . . strive to construct a national identity by bridging existing cultural, ethnic, linguistic, or religious divides."); see also Endalcachew Bayeh, *Post-2018 Ethiopia: State Fragility, Failure, or Collapse?*, HUMANS. & SOC. SCIS. COMMC'NS. 1, 2 (2022) (noting that state fragility and failure is common in African countries that have engaged in nation-building as this process has resulted in "unending ethnic conflict.").

¹⁰ Christophe Van der Beken, *Ethiopia: From a Centralised Monarchy to a Federal Republic*, 20 AFRIKA FOCUS 13, 14 (2007).

¹¹ See generally DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* 376 (2012) (discussing how extractive politics paves the way for conflict); see Fikremariam Molla Gedefaw, *For Prosperity, Ethiopia Needs Institutional Not Individual Strength*, ETH. INSIGHT (Sept. 15, 2020), <https://www.ethiopia-insight.com/2020/09/15/for-prosperity-ethiopia-needs-institutional-not-individual-strength/> (analyzing how extractive institutions played a huge role in tilting Ethiopia's economic playing field).

suppression of diverse identities¹² characterized the Ethiopian State. These widespread ethnic grievances generally gave rise to the emergence of what later came to be regarded as the “nationality question,”¹³ whose proponents themselves understand it divergently and provide varying solutions to the issue.¹⁴ After the Derg regime hijacked the 1974 Revolution, it introduced “Scientific Socialism” and attempted to build a socialist state profoundly marked by over-centralization of the Government and the suppression of diverse ethnonational groups.¹⁵ The years of murderous campaigns against intelligentsia and opposition heightened during the rule of the Derg regime, and violent ethno-regional wars finally led to its demise in May 1991, paving the way for a political transition in the context of rebel military victory.¹⁶

Though the Ethiopian People’s Revolutionary Democratic Front (“EPRDF”), a coalition of four ethnonational parties, controlled political power in Ethiopia after the demise of the Marxist Derg regime, the party failed to transform the country towards liberal democracy and decent political order.¹⁷ Unfortunately, the euphoria of the post-1991 transition, which well coincided with the “third wave of democratization,”¹⁸ was simply stifled by political wrongs gradually leading Ethiopia towards the resurgence of (semi-)authoritarianism under the centralized vanguard

¹² Kidane Mengisteab, *Ethiopia’s Ethnic-Based Federalism: 10 Years After*, 29 AFR. ISSUES 20, 21 (2001) (emphasizing the role that the marginalization of ethnic groups in Ethiopia played in exacerbating violence and bloodshed in the country).

¹³ See generally Tefera Assefa, *The Imperial Regimes as a Root of Current Ethnic Based Conflicts in Ethiopia*, 9 J. ETHNIC & CULTURAL STUD. 95, 120–21 (2022) (pinpointing the fact that “the Ethiopian conflict possess[es] a mythically created historical discourse of cultural dominance, still claimed by elites of the ethnic core of imperial regimes.”).

¹⁴ Sarah Moody, “Prison of Nations?” An Examination of the Ideological Roots of Contemporary Ethiopia’s Nationality Policy (Mar. 21, 2023) (Global Honors Thesis, University of Washington, Tacoma) (Digital Commons) (specifying the various ideological differences between the Eritrean and Tigrayan People’s Liberation Fronts’ perspectives of the nationality question in post-Derg Ethiopia).

¹⁵ ALÉMÉ ESHÉTE, THE CULTURAL SITUATION IN SOCIALIST ETHIOPIA 19 (1982); Jon Abbink, *The Ethiopian Revolution After 40 Years (1974–2014): Plan B in Progress?*, 31 J. DEV’G SOC’YS. 333, 344 (2015) (discussing how centralization under the Derg stifled the Ethiopian economy); see Jacob Wiebel, *Atrocities in Revolutionary Ethiopia, 1974–79: Towards a Comparative Analysis*, 24 J. GENOCIDE RSCH. 134, 135–36 (2022) (explaining how the Derg regime largely targeted multi-ethnic groups during the Red Terror).

¹⁶ Alemseged Abbay, *Diversity and State-Building in Ethiopia*, 103 AFR. AFFS. 593, 606–07 (2004).

¹⁷ See Jean-Nicolas Bach, *Abyotawi Democracy: Neither Revolutionary nor Democratic, a Critical Review of EPRDF’s Conception of Revolutionary Democracy in Post-1991 Ethiopia*, 5 J.E. AFR. STUD. 641, 642–43 (2011) (noting that though the EPRDF initially announced liberal policies between 1991 and 1995, it ultimately stuck to the ideological line for the rest of its rule).

¹⁸ Larry Diamond, *Is the Third Wave of Democratization Over? An Empirical Assessment* 32 (Helen Kellogg Inst. for Int’l Stud., Working Paper No. 236, 1997).

party of EPRDF.¹⁹ For most of its tenure, the regime was led under what has been infamously called the ideology of “revolutionary democracy,” which according to Nicholas Batch, was neither revolutionary nor democratic, and operated as an exact opposite to liberalism.²⁰ Formal power decentralization through federalism was given effect in the post-1991 period, at least constitutionally speaking.²¹ Yet, the old problems of centralized, hegemonic authoritarian rule persisted.²² Therefore, it is widely recognized that the EPRDF’s rule was chiefly characterized by authoritarian repression, human rights violations with impunity, deep-rooted and detestable economic crimes, and the marginalization of diverse people (especially from economic benefits), which resulted in an uneven share of Ethiopia’s resources.²³ These and other interrelated factors gradually precipitated political grievances among the wider public.²⁴ The ultimate political consequence was the eruption of the unprecedented, massive, and violent anti-government protests, which originated in the Oromia Region and later expanded to different parts of the country.²⁵ Thus, from mid-2015 to April 2018, Ethiopia underwent one of the most violent and destructive political periods in its recent history.²⁶

The violent public protest and deadly state response threatened the survival of the country²⁷ and resulted in an unprecedented—though unascertainable—loss of human lives as extra-judicial killings and forced disappearances occurred with impunity and were justified under the vaguely defined state of emergency laws, which were renewed for an

¹⁹ ADDIS STANDARD, *TRANSITION TO DEMOCRACY IN DEEPLY DIVIDED ETHIOPIA: MISSION IMPOSSIBLE?* 2 (2021) (explaining that the Ethiopian People’s Democratic Front’s transition to power in 1991 led to a de facto authoritarian rule); see Alex de Waal, *Ethiopia: Transition to What?*, 9 *WORLD POL’Y J.* 719, 731 (1992) (“The EPRDF blatantly manipulated the elections”); see also Toni Weis, *Vanguard Capitalism: Party, State, and Market in the EPRDF’s Ethiopia* (2016) (Ph.D. thesis, University of Oxford) (on file with the Oxford University Research Archive).

²⁰ Bach, *supra* note 17, at 641.

²¹ See KJETIL TRONVOLL, *ETHIOPIA: A NEW START?* 18–19 (2000) (explaining that the EPRDF Constitution of 1994 established a federal state, contrary to the unitary state which existed under the two former regimes).

²² See generally Tobias Hagmann & Jon Abbink, *Twenty Years of Revolutionary Democratic Ethiopia, 1991 to 2011*, 5 *J.E. AFR. STUD.* 579, 582 (2011) (indicating that the “old problems” of Ethiopia’s authoritative history include tensions pertaining to land ownership, agrarian policies, violent abuse, and top-down rule).

²³ See *id.*

²⁴ Mebratu Kelecha, *A Critique of Building a Developmental State in the EPRDF’s Ethiopia*, *CAN. J. DEV. STUD.* 1, 5 (2022).

²⁵ *Id.* at 14–15.

²⁶ See *id.*

²⁷ See BERTELSMANN STIFTUNG, *BTI 2018 COUNTRY REPORT: ETHIOPIA* 34 (2018) (discussing factors which lead to Stiftung’s conclusion that “Ethiopia cannot continue to be a stable authoritarian state”).

extended period.²⁸ After the violent security crackdown, the EPRDF's internal political cohesion and a trust among the coalition members—previously maintained by dominant party control—collapsed, intra-party animosity resurged, and party structure succumbed to accept the enforced reform agenda.²⁹ In its final days, the EPRDF's regime therefore, was forced to pave the way for ambiguous political deals and subsequent reforms, which led Ethiopia to its current political period. The most politically significant measure was the forced resignation of Prime Minister Hailemariam Desalegn.³⁰ Prime Minister Desalegn was replaced by Abiy Ahmed of the Oromo Democratic Party (“OPDO”), which is affiliated with the EPRDF's coalition.³¹ In this regard, Abiy's ascendancy to power from a region home to violent protest, and his initial pacifying and unifying speeches as founding narratives³² brought about a much-needed hope and ‘unguarded’ optimism and heralded a moment for real political change towards peaceful democratic rule in Ethiopia.³³

However, the perplexing questions of how to deal with Ethiopia's violent, abusive, long, and more recent past and how to design a legitimate path to a just and peaceful future remained challenging. The answer to this question differed considerably among the various societal and political groups. And different alternative views were aired from different contending political actors and societal groups.³⁴ More worryingly, the transition period has not been smooth and rather proved to be a tortuous political journey.³⁵ Unfortunately, in the post-EPRDF period, Ethiopia's much dreamed political reform was plagued by various complex

²⁸ See *id.* at 10, 13; see also *Legal Analysis of Ethiopia's State of Emergency*, HUM. RTS. WATCH (Oct. 30, 2016, 11:00 PM), https://www.hrw.org/news/2016/10/31/legal-analysis-ethiopias-state-emergency#_ftn1.

²⁹ See generally INT'L CRISIS GRP., *MANAGING ETHIOPIA'S UNSETTLED TRANSITION* i–ii (2019) (providing background information into the frictions and history which resulted in Prime Minister Abiy's assumption of power).

³⁰ See Kelecha, *supra* note 24, at 14; Bach, *supra* note 17, at 649.

³¹ Salem Solomon, *Ethiopia's Ruling Coalition Paves Way for Abiy Ahmed as New PM*, VOA NEWS (Mar. 27, 2018, 6:27 PM), <https://www.voanews.com/a/ethiopia-ruling-coalition-approves-abiye-ahmed-as-new-prime-minister/4319778.html>.

³² See Kim Searcy, *The Ethiopian Civil War in Tigray*, ORIGINS (Oct. 2021), https://origins.osu.edu/article/ethiopian-civil-war-tigray?language_content_entity=en.

³³ Yohannes Gedamu, *A Blessing in Disguise for Ethiopia's Abiy Ahmed*, AL JAZEERA (Apr. 15, 2018), <https://www.aljazeera.com/opinions/2018/4/15/a-blessing-in-disguise-for-ethiopias-abiye-ahmed>; see *Ethiopia's Abiy Ahmed: The Nobel Prize Winner Who Went to War*, BBC NEWS (Oct. 11, 2021), <https://www.bbc.com/news/world-africa-43567007>.

³⁴ See, e.g., Laetitia Bader, *To Heal, Ethiopia Needs to Confront Its Violent Past*, HUM. RTS. WATCH (May 28, 2020), <https://www.hrw.org/news/2020/05/28/heal-ethiopia-needs-confront-its-violent-past> (discussing how Ethiopians have called for a chance to tell their stories while Prime Minister Abiy has focused on reconciliation to deal with the country's violent past).

³⁵ Birhanu Bitew & Asabu Sewenet Alamineh, *The Theory and Practice of Political Transition in the Post-2018 Ethiopia*, 67 INNOVATIONS 1727, 1737 (2021).

predicaments, and the country experienced new waves of intercommunal violence.³⁶ Thus, rather than addressing past wrongs, in the years since the EPRDF was weakened and gradually dissolved, new challenges and complexities have emerged in Ethiopia, which have seemingly doomed the promise of the transitional moment and long-awaited political reforms in the country.³⁷ To make the matter even worse, the transition process unfolded without a broader transitional justice roadmap and was compounded by political ruptures on diverse flashpoints.³⁸ The shifting ways in which the contradictory political measures were implemented caused some of them to backfire, ruining peaceful transition.

In many transitioning societies that have undergone prolonged violent conflicts and/or authoritarian repression, key questions of how to address the largescale past abuses and how to transform a society to a peaceful order in a non-violent means remained perplexing.³⁹ Transitional justice emerged at the end of the Cold War period as a key *lingua franca* of the International Community to provide judicial and non-judicial mechanisms to respond to large-scale human rights violations and to ensure non-reoccurrence of such violations in the future.⁴⁰ Historically, it mostly relied on the prosecution of predecessor officials, which, in the end, is a narrow and legalistic mechanism.⁴¹ Gradually, therefore, it came to be understood that only single or narrow approaches may not be successful in redressing the multiple challenges and deep wounds of widespread past human rights violations.⁴² Thus, it has been suggested

³⁶ Tegbaru Yared, *Conflict Dynamics in Ethiopia: 2019–2020*, INSTIT. FOR SEC. STUD., Dec. 2021, at 1, 4, 10; see Allard Duursma, *Non-State Conflicts, Peacekeeping, and the Conclusion of Local Agreements*, 10 PEACEBUILDING 138, 140 (2022) (“Communal conflict involves armed fighting between non-state groups that are organised along a shared communal identity, such as an ethnic or religious identity.”).

³⁷ Kinkino Kia Legide, *Exploring the Challenges and Limits in the Compliance with Transitional Justice Norm in Non-Regime Transitions: The Case of Post-2018 Ethiopia*, 13 J.L. & CONFLICT RESOL. 20, 22 (2022); see *id.* at 1, 14.

³⁸ *Id.* at 14.

³⁹ See Anna K. Jarstad & Timothy D. Sisk, *Introduction*, in FROM WAR TO DEMOCRACY: DILEMMAS OF PEACEBUILDING 1, 1–2 (Anna K. Jarstad & Timothy D. Sisk eds., 2008).

⁴⁰ See Catherine Turner, *Transitional Justice and Critique*, in RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE 52, 52–53, 55, 70 (Cheryl Lawther, et al. eds., 2017).

⁴¹ See RENÉE JEFFERY & HUN JOON KIM, TRANSITIONAL JUSTICE IN THE ASIA-PACIFIC 9, 10 (2013) (ebook).

⁴² See DANIEL PHILPOTT, JUST AND UNJUST PEACE: AN ETHIC OF POLITICAL RECONCILIATION 3, 3 (2012) (discussing how approaches only focusing on truth or justice have been respectively criticized by victims); see also Pádraig McAuliffe, *Transitional Justice’s Expanding Empire: Reasserting the Value of the Paradigmatic Transition*, J. CONFLICTOLOGY, NOV. 2011 at 32, 33 (explaining how transitional justice incorporates many various disciplines); see also Naomi Roht-Arriaza, *The New Landscape of Transitional Justice*, in TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE 1, 8–9 (Naomi Roht-Arriaza & Javier Mariezcurrena eds., 2006) (describing how “truth” and “justice” moved to be no-longer considered mutually exclusive).

that this can be mainly achieved through a process of political reconciliation along with other restorative justice mechanisms.⁴³ Generally, reconciliation has a good reputation in transitional justice of restoring communal peace and ensuring peaceful coexistence, especially in a deeply-divided societies and nations that have experienced ethnonational conflicts.⁴⁴ As Catherine Lu observes, in the wake of those political catastrophes, and more commonly—state perpetrated violence—a call for justice and reconciliation has become a widespread phenomenon in contemporary world politics.⁴⁵

From 2018 onwards, Ethiopia has been undergoing a chaotic, complex, and troubled political process, which makes the agenda of justice and reconciliation imperative. But the reconciliation rhetoric only lately became the key policy measure of the new ruling elites in post-2018 transitional period in Ethiopia. The resort to reconciliatory measure seems to arise from the unwelcome experience of the previously used retributive approach following post-1991 transition, whose impact remained largely contested. As a part of the deliberate effort to pacify interparty, inter-communal, and inter-elite antagonism in the post-2018 period, the Ethiopian Government established the Reconciliation Commission with Proclamation No. 1102/2018.⁴⁶ The Proclamation's overall mission is to ascertain and identify the nature, causes, and dimensions of repeated gross human rights violations in Ethiopia; to provide for the full protection of human rights in the country; and to achieve durable peace and reconciliation.⁴⁷ Thus, the Reconciliation Commission was established as the preferred institutional mechanism through which to address past wrongs by means of a restorative approach.⁴⁸ However, a closer examination of the circumstances in which the Commission evolved reveals that it had several inherent institutional deficits. Principally, it only came out of a narrowly designed “top-down” and exclusionary decision pursued by the Ethiopian Government, which,

⁴³ See PHILPOTT, *supra* note 42, at 9–12.

⁴⁴ See Martina Fischer, *Transitional Justice and Reconciliation: Theory and Practice*, in *ADVANCING CONFLICT TRANSFORMATION: THE BERGHOF HANDBOOK II* 406, 415 (Beatrix Austin et al. eds., 2011); see also *Transitional Justice and Reconciliation: Thematic Overview*, SIDA, <https://cdn.sida.se/app/uploads/2020/12/01125338/transitional-justice-and-reconciliation.pdf> (last visited Mar. 7, 2023); Rudolf Schüssler, *Reconciliation, Morality and Moral Compromise*, in *NEGOTIATING RECONCILIATION IN PEACEMAKING: QUANDARIES OF RELATIONSHIP BUILDING* 27 (Valerie Rosoux & Mark Anstey eds., 2017).

⁴⁵ CATHERINE LU, *JUSTICE AND RECONCILIATION IN WORLD POLITICS*, 29, 33 (2017).

⁴⁶ Despite its narrow English rendering, the official Amharic phrase “*Erqe-selam* commission” can be broadly translated as “peace and reconciliation” Commission. See *Reconciliation Commission Establishment Proclamation*, Proclamation No. 1102/2018, Fed. Negarit Gazette, Year 25, No. 27 (Eth.) [hereinafter *Reconciliation Commission Establishment Proclamation*, 2018].

⁴⁷ *Id.*

⁴⁸ See *id.*

in the end, casts doubt on its institutional legitimacy and the government's real intentions.⁴⁹ As can be observed, what has transpired over the past couple of years—the continued civil war in the north (previously in Tigray and currently in Amhara though the latter erupted after the Commission's dissolution), widespread inter-communal violence, and multiple flashpoints of prevailing antagonism within and outside the government circles—clearly show that the Reconciliation Commission's efforts have been unsuccessful.⁵⁰ To be fair, some of these challenges are beyond the Commission's capacity. As a natural course of events, the Government officially declared the Commission a failure and took another legislative measure to replace it with the new *National Dialogue Commission*, which was established in December 2021.⁵¹ But it is apparent that a series of measures to erect institutional facades without a real diagnosis of what accounted for the reported failure of the previous institutions and how to address them simply does not mend prevalent challenges which required adequate reckoning.

Ultimately, despite Ethiopia's dire political situation, successive institutional failures, and the urgency of peace and justice, the topic does not get adequate academic attention. Moreover, while the contestations and controversies surrounding the emergence, legitimacy, and performance of the Commission remains as highlighted above, a serious academic interrogation of these issues surrounding the Commission is largely absent. But critical analysis of those points is important to understand the challenges giving rise to and also constraining TRC's operation in Ethiopia. Given Ethiopia's current complex predicaments, the study of this kind will help gain new comparative insights in the process of designing future TRCs in the search for accountability and sustainable peace in the country. In light of the low visibility of the topic in the Ethiopian academic debate, this Article deliberately makes a relatively extensive discussion of the available literature, hoping to connect it to the Ethiopian reality and help inform academic and policy debate. Thus, in light of the above, this Article attempts to assess the contested paths to seeking transitional justice in the post-2018 period of troubled transition in Ethiopia and assesses *the legitimacy and operation* of its TRC in light of the accepted standards. Further, this Article will also

⁴⁹ Hagmann & Abbink, *supra* note 22, at 579, 582, 584, 586 (2011).

⁵⁰ See Center for Preventative Action, *Global Conflict Tracker: War in Ethiopia*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ethiopia> (last updated Mar. 31, 2023); see also Moges Zewiddu Teshome, *Confronting Past Atrocities: A Critical Analysis of the Defunct Ethiopian Reconciliation Commission*, L. DEMOCRACY & DEV., 2022, at 342, 358–59.

⁵¹ See *The Ethiopian National Dialogue Commission*, STRATEGIC INITIATIVE FOR WOMEN IN THE HORN OF AFR. (Feb. 23, 2022), <https://sihanet.org/the-ethiopian-national-dialogue-commission-2/>.

discuss the Commission's formative and operational limits in achieving its overall mandates in a comparative perspective. Additionally, this Article conceives legitimacy of a certain institution as a juridical entity that is generally accepted by the wider public and other contending actors as a credible body capable of achieving its objectives. This Article analyzes the Ethiopian Reconciliation Commission in light of other Truth and Reconciliation Commissions, which have been used to advocate for and advance peace and reconciliation in various conflict-ridden societies. In assessing the legitimacy and performance of the Ethiopian TRC, this Article will employ some of the framework elements such as public participation in the establishment process, greater degrees of authority and independence, a clean break with the past, transparency and accountability during investigations and findings, institutional and financial autonomy, and the selection process of the Commission's members to assess the measures of the Ethiopian TRC. Ultimately, this Article attempts to respond to the following questions. First, what domestic situation necessitated the establishment of the Commission? Second, what are the achievements and limits of the Reconciliation Commission? Third, what legal and extra-legal factors account for contestations over the Commission's legitimacy and its low visibility and performance from comparative experiences? Though comparison with specific TRC cases is not opted, the attempt is made to draw important insights from some relevant TRC cases, including from other African jurisdictions. This Article has nine Sections. Following the Introduction, Section II briefly discusses the conceptual understanding of transitional justice in post-conflict societies. Section III includes a relatively extended discussions on Truth and Reconciliation Commissions as well as reconciliation processes. Section IV generally presents the political transition and emergence of reconciliation narratives in the post-2018 period in Ethiopia. Section V specifically discusses the emergence of the Ethiopian Reconciliation Commission and is followed by Section VI which analyzes the legitimacy of the same. Section VII briefly presents the performance and limitations of the Commission and is followed by Section VIII which discusses the factors responsible for the Commission's poor performance and limitations. The last Section concludes this Article.

II. TRANSITION AND TRANSITIONAL JUSTICE IN POST-CONFLICT SOCIETIES

The world has witnessed turbulent mass violence committed by state and non-state actors over the years.⁵² In the words of Bill Kissane, "the [20th] [C]entury was very violent and civil wars have, increasingly, played

⁵² See BILL KISSANE, *NATIONS TORN ASUNDER: THE CHALLENGE OF CIVIL WAR* 66 (2016) (ebook).

a large role in that violence, happening in every region of the world at some point, and seemingly growing in destructiveness.”⁵³ The devastation brought about by civil wars is on a scale traditionally associated with international conflicts.⁵⁴ According to scholars in the field, at the root of most of these civil conflicts lies political exclusions and economic inequalities that generate deep-rooted grievances wherein a relationship between ethnonationalism, or group identities, and inequalities helps give rise to organized violence and civil wars by ethnic rebels.⁵⁵ In some situations, the conflicts perpetuate, and States may be forced to live under “conflict traps,” which produce tragic consequences and in which it becomes “harder to distinguish causes from consequences.”⁵⁶ The atrocities committed during violent conflicts around the world involved the perpetration of serious crimes such as mass murder, forced disappearances, war crimes, mass rape, ethnic cleansing, acts of genocide, and crimes against humanity, among others.⁵⁷

In periods of political transition—which occur after large-scale human rights violations due to state violence, authoritarian repression, or prolonged violent conflicts⁵⁸—there are pressing issues which governments and policymakers must resolve.⁵⁹ Such issues include how to deal with, or address, the serious human rights violations committed by the predecessor regime and long-lasting conflicts and how to stop another one from erupting or ensure durable peace and decent civil order in a non-violent means.⁶⁰ Thus, according to Colleen Murphy, attempts to deal with these questions are riddled with “prominent and recurring issues” in many post-conflict societies, and although they display some form of similarities, they are also “not identical.”⁶¹

The key response mechanism mainly involves taking transitional justice (“TJ”) measures, which emerged at the end of the Cold War period.⁶² Generally, transitional justice as a distinct field of inquiry is concerned with addressing the question of how States (1) attempt to deal with the legacies of large-scale past human rights violations and (2)

⁵³ *Id.*

⁵⁴ *Id.* at 66, 67.

⁵⁵ LARS-ERIK CEDERMAN ET AL., *INEQUALITY, GRIEVANCES, AND CIVIL WAR* 3–4 (2013); ANDREAS WIMMER, *WAVES OF WAR: NATIONALISM, STATE FORMATION, AND ETHNIC EXCLUSION IN THE MODERN WORLD* 145 (2012).

⁵⁶ KISSANE, *supra* note 52, at 171–72.

⁵⁷ NEVIN T. AIKEN, *IDENTITY, RECONCILIATION AND TRANSITIONAL JUSTICE: OVERCOMING INTRACTABILITY IN DIVIDED SOCIETIES* 1 (2013).

⁵⁸ KISSANE, *supra* note 52, at 68–69.

⁵⁹ AIKEN, *supra* note 57, at 1.

⁶⁰ Jarstad & Sisk, *supra* note 39, at 1–2.

⁶¹ COLLEEN MURPHY, *THE CONCEPTUAL FOUNDATIONS OF TRANSITIONAL JUSTICE* vii (2017).

⁶² AIKEN, *supra* note 57, at 1.

transform their nation into a peaceful political order in the wake of political turmoil, violent armed conflicts, or authoritarian repression.⁶³ Various definitions have been provided for it by scholars, policy makers, and advocacy groups. Ruti Teitel defines transitional justice as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.”⁶⁴ In his 2004 widely known report, the U.N. Secretary-General Kofi Annan further defines it as:

[T]he full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice[,] and achieve reconciliation. [This] may include both judicial and non-judicial mechanisms [such as] individual prosecutions, reparations, truth-seeking, institutional reform, vetting[,] and dismissals or a combination thereof.⁶⁵

The International Center for Transitional Justice (“ICTJ”) also provides broad definitions for the subject.⁶⁶ These above-cited definitions do not garner universal consensus, and thus they may stir debates with respect to the scope, processes, aims, and outcomes of transitional justice. However, the integration of TJ into the United Nations system as a self-standing field signals that transitional justice has made significant progress.⁶⁷ According to McAuliffe, it was once thought to be marginally attached only to negotiated transitions and peace mediations as a subsidiary element but now has “moved from the exception to the norm.”⁶⁸ Some transitional justice theorists, such as Christine Bell, questioned the

⁶³ *Id.*; TRICIA D. OLSEN ET AL., TRANSITIONAL JUSTICE IN BALANCE: COMPARING PROCESSES, WEIGHING EFFICACY 11 (2010); see RUTI G. TEITEL, *Transitional Justice and the Transformation of Constitutionalism*, in GLOBALIZING TRANSITIONAL JUSTICE: CONTEMPORARY ESSAYS 195 (2014).

⁶⁴ Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 69 (2003).

⁶⁵ U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 4, U.N. Doc. S/2004/616 (Aug. 23, 2004).

⁶⁶ REBECCA GIDLEY, ILLIBERAL TRANSITIONAL JUSTICE AND THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA 18–19 (2019). According to the ICTJ, transitional justice involves “the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response.” Sergio Triana-E et al., *Law and Order: The Evolution of Transitional Justice in Colombia from the Peace Process with the AUC (2003) to the FARC (2015)*, 51 IBEROAMERICANA: NORDIC J. LAT. AM. & CARIBBEAN STUD. 79, 80 (2022).

⁶⁷ Cheryl Lawther & Luke Moffett, *Introduction—Researching Transitional Justice: The Highs, the Lows and the Expansion of the Field*, in RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE, *supra* note 40, at 1–2.

⁶⁸ See PADRAIG MCAULIFFE, TRANSFORMATIVE TRANSITIONAL JUSTICE AND THE MALLEABILITY OF POST-CONFLICT STATES 40 (2017).

claim that transitional justice is a separate field of inquiry. Bell argued instead that it “does not constitute a coherent ‘field’” but rather involves a set of broader political bargains in response to the past.⁶⁹ While those contentions remain, it is clear that TJ has emerged to be a key normative and policy object in post-conflict contexts.

As Leena Grover observes, while the UN gradually accepted TJ’s normative prescriptions, the latter’s relationship with the international law within the United Nations system has not been linear process. Rather, it has passed through several stages, currently arriving at a stage where TJ commands an obligation of compliance by the States.⁷⁰ Today, it is claimed to be a *lingua franca* of the International Community and has been taken as a normative commitment by global policymakers both “as a [] field of study and practice.”⁷¹ As such, its wider acceptance emanates from the fact that it involves crucial mechanisms for closure and condemnation of the old violent or authoritarian political order and the opening of a new chapter of rule of law and rights protection. It additionally involves reaching middle ground, which again requires taking measures that comply with national needs and international standards and incorporates notions of restorative and retributive justice. Thus, originating after the Cold War as a narrow measure, TJ has gradually emerged as a field of constant growth and expansion; its meanings and the subjects it pertains to have also expanded considerably over the years.⁷²

However, dealing with past wrongs in the post-conflict state in a fragile political context poses serious challenges with respect to issues such as difficulty of exploring the optimum mechanisms and standards to achieve the goal of transition and sustaining the State.⁷³ According to Nir Eiskovitis, these contestations require exploring and addressing questions like (1) what is the optimum strategy to close past chapters and transition to decent civil order, and (2) what strategies should the parties pursue in this endeavor once the conflict has subsided?⁷⁴ Eiskovitis further states that the field of transitional justice “involves the philosophical, legal, and

⁶⁹ Christine Bell, *Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’*, 3 INT’L J. TRANSITIONAL JUST. 5, 6 (2009).

⁷⁰ Leena Grover, *Transitional Justice, International Law and the United Nations*, 88 NORDIC J. INT’L L. 359, 361 (2019).

⁷¹ Lawther & Moffett, *supra* note 67, at 1; *see id.* at 392; *see also* PHILIPP KASTNER, LEGAL NORMATIVITY IN THE RESOLUTION OF INTERNAL ARMED CONFLICT 21 (2015).

⁷² *See* McAuliffe, *supra* note 42, at 33–34, 38; *see also* Joanna R. Quinn, *The Development of Transitional Justice*, in RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE, *supra* note 40, at 11–12, 29.

⁷³ RENÉE JEFFERY & HUN JOON KIM, TRANSITIONAL JUSTICE IN THE ASIA-PACIFIC 1 (2013) (ebook).

⁷⁴ Nir Eiskovits, *Transitional Justice*, STAN. ENCYCLOPEDIA PHIL., <https://plato.stanford.edu/entries/justice-transitional/> (last updated Apr. 4, 2014).

political investigation of the aftermath of war.”⁷⁵ Addressing those issues requires taking not only legal measures but also involves the “questions of ethics, memory[,] and forgiveness that are as old as mankind.”⁷⁶

As noted, violent conflicts are accompanied by mass atrocities with which a State has to reckon. Scholars such as Dianne Orentlicher and Naomi Roht-Arriaza contend that under international law, the State has a duty to investigate, prosecute, and provide some kind of redress in the case of serious crimes such as disappearances, systematic summary executions, crimes against humanity, and torture.⁷⁷ As such, the central precepts of the State obligation is that there should be mechanisms for ensuring accountability and that the State is prohibited from granting blanket amnesty to perpetrators of violence.⁷⁸ Fulfilling the obligation of the State involves taking wide range of measures depending on the particular circumstances of each case.

Prosecution for past abuses has been a dominant redress measure for long. It is one of the oldest mechanisms used to deal with past atrocities as it dates back to at least 14th Century.⁷⁹ As Renée Jeffery and Hun Joon Kim noted, from the inception of the discipline of transitional justice in 1980s, transitional states have increasingly relied on criminal accountability as the most important measure for human rights violations.⁸⁰ This has been a result of what William Schabas calls the “lasting legacy of the Nuremberg Tribunal” in the post-WWII period.⁸¹ According to its proponents, in transitional justice processes, trials and prosecutions are thought to be the most meaningful and legitimate measures to deal with past atrocities.⁸² Cheryl White argues that “[t]he rationale informing the choice of trials as post-conflict justice mechanisms . . . was that of accountability and deterrence of perpetrators.”⁸³ Accordingly, its proponents stress the view that the legitimacy of the new order can only be maintained by disallowing

⁷⁵ *Id.*

⁷⁶ KISSANE, *supra* note 52, at 175.

⁷⁷ Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537, 2540 (1991); Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CAL. L. REV. 449, 492 (1990).

⁷⁸ See Roht-Arriaza, *supra* note 42, at 451; see also Louise Mallinder, *Peacebuilding, the Rule of Law and the Duty to Prosecute: What Role Remains for Amnesties?*, BLDG. PEACE IN POST-CONFLICT SITUATIONS, June 1, 2012, at 1, 1.

⁷⁹ See Roht-Arriaza, *supra* note 42, at 2.

⁸⁰ See JEFFERY & KIM, *supra* note 73.

⁸¹ William Schabas, UNIMAGINABLE ATROCITIES: JUSTICE, POLITICS, AND RIGHTS AT THE WAR CRIMES TRIBUNALS 1 (2012).

⁸² See James Gallen, *The International Criminal Court: In the Interests of Transitional Justice?*, in RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE *supra* note 40, at 305, 306.

⁸³ CHERYL S. WHITE, BRIDGING DIVIDES IN TRANSITIONAL JUSTICE: THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA 19 (2017).

impunity on the basis of the strict adherence to criminal law provisions and principles. The concept of impunity is defined in a 2005 report by the United Nations Human Rights Commission as:

[T]he impossibility, *de jure* or *de facto* of bringing the perpetrators of violence to account—whether in criminal, civil, administrative[,] or disciplinary proceedings—since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.⁸⁴

Both impunity and collective condemnation are unjustifiable measures. Thus, a transitioning State is expected to balance between serving justice and at the same time ensure that the process does not lead to other new grievances. The crucial point to be stressed, therefore, is that while collective punishment of the vanquished *en masse* would precipitate discontent and breed the seeds of resentment, individualization of responsibility through judicial courts would “secure in the person punished the conviction of guilt.”⁸⁵ On the other hand, strict adherence to the requirements of punishment of perpetrators in the context of societies coming out of extended violence may prove difficult partly due to weak judicial institutions or resource shortages.⁸⁶ So, in order to address the inherent inadequacies of criminal trials and complex post-conflict challenges of States characterized by weak political and judicial institutions and weak security systems,⁸⁷ TJ also gradually incorporated other diverse measures.⁸⁸ Thus, the States also increasingly engaged with other holistic measures which involved truth telling; lustration; security sector and judicial reforms including police, reparations, and

⁸⁴ Hum. Rts. Comm’n, Rep. on the Work of Its Sixty-First Session, U.N. Doc. E/CN.4/2005/102/Add.1, at 6 (2005) (emphasis added).

⁸⁵ Eisikovits, *supra* note 74. As Abdoueldahab notes, about 85 heads of state have been prosecuted since 1990 and numerous political and military leaders were put on trial in Latin America, Europe, Africa, and Asia for their role in massive human rights violations. NOHA ABDOUELDAHAB, TRANSITIONAL JUSTICE AND THE PROSECUTION OF POLITICAL LEADERS IN THE ARAB REGION: A COMPARATIVE STUDY OF EGYPT, LIBYA, TUNISIA AND YEMEN 8 (2017).

⁸⁶ See Natalia Szablewska & Sasha-Dominik Bachmann, *Current Issues and Future Challenges in Transitional Justice*, in CURRENT ISSUES IN TRANSITIONAL JUSTICE: TOWARDS A MORE HOLISTIC APPROACH 339, 344 (Natalia Szablewska & Sasha-Dominik Bachmann eds., 2015).

⁸⁷ U.N. SECRETARY-GENERAL, UNITED NATIONS APPROACH TO TRANSITIONAL JUSTICE: GUIDANCE NOTE BY THE SECRETARY-GENERAL (Mar. 2010), <https://digitallibrary.un.org/record/682111?ln=en>.

⁸⁸ Roht-Arriaza, *supra* note 42, at 9–10.

reconciliations, memorialization; and other traditional processes in an attempt to guarantee non-repetition of the past atrocities.⁸⁹

Generally, among the diverse claims about the mechanisms and outcomes of transitional justice mentioned above, justice (accountability), truth, reparation, and reconciliation are generally seen as the most widely cited measures,⁹⁰ or they constitute “the ideal-type [of] transitional justice policy objectives.”⁹¹ Moreover, rather than relying on a “one size fits all” approach, which is restrictive, there has been a call for a holistic approach and recognition that there is a need to strike a balance between various measures.⁹² As Roht-Arriaza convincingly puts it, “[o]nly by interweaving, sequencing[,] and accommodating multiple pathways to justice could some kind of larger justice in fact emerge.”⁹³ In this way, it is believed that these mechanisms holistically contribute to meaningful change and assist further consolidation of peace and institutions of the rule of law.⁹⁴ But it has also been emphasized that some of these measures may contradict each other. It has been held for long that there is an uneasy relationship between criminal prosecution and peace, giving rise to the infamous “peace-justice dilemma.” This phenomenon in turn suggests that they have to be implemented with careful strategy, prioritization, and sequencing which are in turn highly contextual and “resist easy generalization.”⁹⁵ Moreover, taking holistic measures does not designate only using different measures combined, but it also requires paying attention to local realities.⁹⁶

On the other hand, there are several criticisms raised in relation to TJ’s measures, approaches, and outcomes. TJ’s constant horizontal growth also broadened its scope and the subjects and activities it deals with.⁹⁷ It is argued that this fact renders the subject of transitional justice

⁸⁹ *Id.* at 2, 8; see Louis N. Bickford, *Entries on Transitional Justice Methods, Processes, and Practices*, in 1 ENCYCLOPEDIA OF TRANSITIONAL JUST. 1, 24 (Lavinia Stan & Nadya Nedelsky eds., 2014).

⁹⁰ See Bickford, *supra* note 89, at 57–58; Elin Skaar, *Reconciliation in a Transitional Justice Perspective*, TRANSITIONAL JUST. REV., Jan. 2013, at 54, 63–64, 68.

⁹¹ STEF VANDEGINSTE, STONES LEFT UNTURNED: LAW AND TRANSITIONAL JUSTICE IN BURUNDI 238 (2010).

⁹² See TEITEL, *supra* note 63, at 18–19; Fischer, *supra* note 44, at 411.

⁹³ Roht-Arriaza, *supra* note 42, at 8.

⁹⁴ Anja Mihr, *Regime Consolidation Through Transitional Justice in Europe: The Cases of Germany, Spain, and Turkey*, 11 INT’L J. TRANSITIONAL JUST. 113, 113 (2017).

⁹⁵ Paul Gready & Simon Robins, *Transitional Justice and Theories of Change: Towards Evaluation as Understanding*, 14 INT’L J. TRANSITIONAL JUST. 280, 289 (2020).

⁹⁶ Louis Francis Monroy-Santander, *Bosnia and Herzegovina: The Challenges and Complexities of Transitional Justice*, in TRUTH, JUSTICE AND RECONCILIATION IN COLOMBIA: TRANSITIONING FROM VIOLENCE, 220, 220 (Díaz Pabón & Fabio Andrés eds., 2018).

⁹⁷ See Thomas Obel Hansen, *The Vertical and Horizontal Expansion of Transitional Justice: Explanations and Implications for a Contested Field*, in TRANSITIONAL JUSTICE THEORIES 105, 105–106 (Susanne Bucklet-Zistel et al. eds., 2013).

complex and increasingly contested by academics, practitioners, and policymakers.⁹⁸ There is also a considerable debate about TJ's main goals, directions, and achievements. As Lars Waldorf observed recently, "[I]t makes promises that will be hard, if not impossible, to meet in the resource-poor environments where most transitional justice takes place"⁹⁹ Criticisms also abound that the process of knowledge, production, and consumption in the field is dominated by the prescriptions from the Global North and that there remains a grassroots contestations and resistance with those prescriptions by the local African consumers.¹⁰⁰ In sum, today, more criticisms are emerging on the theory and practice of transitional justice, and attempts are being made to rectify its "limitations and deformations" through the "the application of the notion of transformative justice."¹⁰¹

III. THE TRUTH AND RECONCILIATION COMMISSIONS ("TRCs") IN TRANSITIONING STATES

As highlighted above, violent conflicts are accompanied by mass atrocities—the fact of which obligates States to take certain kinds of measures to aid the victims and to ensure non-repetition of the same in the future. As such, the growing international view is that there should be accountability for deliberate wrongs through prosecutions and that the State should not grant blanket amnesty for perpetrators of violence.¹⁰² Beyond prosecutions, further studies in the field of transitional justice revealed, that a single approach to reckoning with the largescale past wrongs has proved inadequate.¹⁰³ Thus, seeking to deal with past wrongs has increasingly been approached through the intermediary of Truth Commissions as an alternative to, or together with, criminal trials.¹⁰⁴ Truth Commissions are one of the many ways in which the broader idea

⁹⁸ Monroy-Santander, *supra* note 96.

⁹⁹ Lars Waldorf, *Expanding Transitional Justice*, in AN INTRODUCTION TO TRANSITIONAL JUSTICE, 311, 311 (Olivera Simic eds., 2d ed. 2017).

¹⁰⁰ See Jasmina Brankovic & Hugo van der Merwe, *Editors' Preface to ADVOCATING TRANSITIONAL JUSTICE IN AFRICA: THE ROLE OF CIVIL SOCIETY* x–xi, xiv (2018).

¹⁰¹ Matthew Evans, *In, Against, and Beyond Transitional Justice: Themes and Dilemmas for the Field (or Non-Field)*, in BEYOND TRANSITIONAL JUSTICE: TRANSFORMATIVE JUSTICE AND THE STATE OF THE FIELD (OR NON-FIELD) 3, 5 (Matthew Evans ed., 2022); Paul Gready, *Introduction*, in FROM TRANSITIONAL TO TRANSFORMATIVE JUSTICE 1, 1–2 (Paul Gready & Simon Robins eds., 2019).

¹⁰² See Paul Gready, *Introduction*, in FROM TRANSITIONAL TO TRANSFORMATIVE JUSTICE, *supra* note 101, at 1–2; Mallinder, *supra* note 78, at 13–14, 23.

¹⁰³ Naomi Roht-Arriaza & Javier Mariezcurrena, *Preface to TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE*, *supra* note 42, at i; OLSEN ET AL., *supra* note 63, at 6–7.

¹⁰⁴ See OLSEN ET AL., *supra* note 63, at 134.

of transitional justice is put into action.¹⁰⁵ When a conflict lingers for long periods of time—years or even centuries—anger, hatred, resentment, grudges, and grievances permeate into the society, which makes the idea of sustainable peace “elusive and unrealistic.”¹⁰⁶ Truth and Reconciliation Commissions assist societies in looking beyond these traumatic pasts and moving toward healing and living together peacefully.¹⁰⁷ According to Priscilla Hayner, Truth Commissions generally refer to “official bodies set up to investigate and report on a pattern of past human rights abuses.”¹⁰⁸ They share the following characteristics:

- (1) [T]ruth [C]ommissions focus on the past; (2) they investigate a pattern of abuses over a period of time, rather than a specific event; (3) a [T]ruth [C]ommission is a temporary body, typically in operation for six months to two years, and completing its work with the submission of a report; and (4) these [C]ommissions are officially sanctioned, authorized, or empowered by the [S]tate (and sometimes also by the armed opposition, as in a peace accord).¹⁰⁹

Over the past three decades, more than forty Truth and Reconciliation Commissions have been established by States undergoing transition from its atrocious past to some form of peaceful future.¹¹⁰ Such Commissions proliferated as lawyers, scholars, and policymakers grappled with addressing what role law should play when a country transitions from violent conflict to peace or from authoritarian repression to democracy.¹¹¹ However, its proliferation cannot be treated separately from the underlying concept of transitional justice as highlighted by the

¹⁰⁵ JAMIE ROWEN, SEARCHING FOR TRUTH IN THE TRANSITIONAL JUSTICE MOVEMENT 2–3 (2017).

¹⁰⁶ Ani Kalayjian & Raymond F. Paloutzian, *Back Cover Synopsis* of FORGIVENESS AND RECONCILIATION: PSYCHOLOGICAL PATHWAYS TO CONFLICT TRANSFORMATION AND PEACEBUILDING X (Daniel J. Christie ed., 2009).

¹⁰⁷ Paula Green, *Reconciliation and Forgiveness in Divided Societies: A Path of Courage, Compassion and Commitment*, in FORGIVENESS AND RECONCILIATION: PSYCHOLOGICAL PATHWAYS TO CONFLICT TRANSFORMATION AND PEACEBUILDING, *supra* note 106, at 251.

¹⁰⁸ PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY 5 (2002).

¹⁰⁹ Quinn, *supra* note 72, at 21 (emphasis omitted).

¹¹⁰ PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS xiv (2d ed. 2010); GABRIELLE LYNCH, PERFORMANCES OF INJUSTICE: THE POLITICS OF TRUTH, JUSTICE AND RECONCILIATION IN KENYA 91 (2018); Bonny Ibhawoh, *Do Truth and Reconciliation Commissions Heal Divided Nations?*, THE CONVERSATION (Jan. 23, 2019, 3:44 PM), <https://theconversation.com/do-truth-and-reconciliation-commissions-heal-divided-nations-109925>.

¹¹¹ ROWEN, *supra* note 105, at 3.

section above.¹¹² Actors who rally for different goals such as fighting impunity, achieving redress, or knowing truth about what happened to whom, all support the utilization of Truth Commissions, though concerns exist that the use of such Commissions may open new wounds and make reconciliation difficult.¹¹³ Thus, over the years, Truth and Reconciliation Commissions increased in prominence becoming what Rosalind Shaw calls “a standard part of conflict resolution”¹¹⁴ and represent “the latest example of the globalization of institutions.”¹¹⁵ At any rate, in post-war settings, “[T]ruth [C]ommissions stand out as a very common choice of [S]tates haunted by their own histories.”¹¹⁶ According to William Schabas, even though it has not been clearly stipulated under foundational international human rights instruments, “there is a growing recognition of a fundamental ‘right to truth.’”¹¹⁷ As per the office of the High Commissioner for Human Rights, it is often invoked in the context of serious violations and breaches of international law such as “summary executions, enforced disappearance, torture, sexual violence, and child[] abduction.”¹¹⁸

Doubts remain as to how or when the TRC first emerged. According to Joanna Quinn, the Ugandan Commission of Inquiry into Disappearance of People, established in 1974, was the first Truth Commission which was authorized to investigate the cases of hundreds of missing people.¹¹⁹ However, it has also been asserted that the organized attempt for the use of Truth and Reconciliation Commissions as an alternative, or complement, to criminal prosecutions first began in Chile.¹²⁰ Chile experienced brutal military repression during the seventeen-year-long dictatorship of Augusto Pinochet until the country peacefully returned to

¹¹² *See id.*

¹¹³ *Id.* at 4–5.

¹¹⁴ ROSALIND SHAW, RETHINKING TRUTH AND RECONCILIATION COMMISSIONS: LESSONS FROM SIERRA LEONE 1 (2005).

¹¹⁵ Catherine Jenkins, *A Truth Commission for East Timor: Lessons from South Africa?*, 7 J. CONFLICT & SEC. L. 233, 239 (2002).

¹¹⁶ James L. Gibson, *On Legitimacy Theory and the Effectiveness of Truth Commissions*, 72 L. & CONTEMP. PROBS. 123, 123 (2009).

¹¹⁷ William A. Schabas, *Time, Justice, and Human Rights: Statutory Limitation on the Right to Truth?*, in UNDERSTANDING THE AGE OF TRANSITIONAL JUSTICE: CRIMES, COURTS, COMMISSIONS, AND CHRONICLING 37 (Nanci Adler ed., 2018).

¹¹⁸ Press Release, Office of the High Commissioner for Human Rights, “The Truth About Gross Rights Violations Must Be Unveiled”—UN Expert Reminds States of Their Obligation (Mar. 24, 2020).

¹¹⁹ QUINN *supra* note 72, at 22. However, the Ugandan Commission of Inquiry into Disappearance of People was criticized for being an “artificial enterprise from the start” and was obliged to report to the President, who was dubbed a perpetrator. The Commission’s work remained a secret and the findings were not disclosed to the public. *Id.*

¹²⁰ *See* MELISSA S. WILLIAMS ET AL., TRANSITIONAL JUSTICE 3 (2012).

democracy in 1990.¹²¹ As Hugo Rojas and Miriam Shaftoe observe, the subsequent Chilean presidents remained committed to their famous declaration: “*Nunca Mas*” roughly meaning “[n]ever again will the [S]tate commit human rights abuses against its people.”¹²² It is reported that the famous South African TRC of 1995 drew a lesson from the Chilean experience.¹²³ On the other hand, TRCs are less popular within the European States. According to Nico Wouters, “no European country installed a fully-fledged” state-sponsored truth-seeking commission due to the legacy of the “Nuremberg model” wherein the (legal) truth is solely established through the criminal judicial system.¹²⁴

Recourse to TRC measures can be necessitated by various factors. Margaret Popkin and Naomi Roht-Arriaza identify three key factors which persuade governments to choose a Truth and Reconciliation Commission as a centerpiece of its efforts in confronting its repressive past.¹²⁵ Firstly, the nature of human rights violations committed under the predecessor regime during the time of conflict is determinant.¹²⁶ Violence; massive disappearances of persons by military regimes at unknown places; secrecy and denial of those crimes; and “the shadowy nature of the killings instilled a climate of fear, suspicion, and social withdrawal” and official acknowledgements have not been received with optimism.¹²⁷ Secondly, they hold that normal criminal investigations pose difficulties in some situations and TRCs may help “short-cut” those difficulties.¹²⁸ Popkin and Roht-Arriaza note, “indeed, if the judiciary had fulfilled its function, an *ad hoc* commission would not be necessary.”¹²⁹ The third factor, according to Popkin and Roht-Arriaza, is related to political constraints resulting from the continued existence of a powerful presence of predecessor elites in the new fragile order.¹³⁰ In these circumstances, “the room to maneuver will be limited by the still powerful presence of those responsible for the violations but in different ways,” so Truth Commissions remain an attractive policy option.¹³¹ One may also add that

¹²¹ HUGO ROJAS & MIRIAM SHAFTOE, HUMAN RIGHTS AND TRANSITIONAL JUSTICE IN CHILE v (2022).

¹²² *Id.*

¹²³ See HAYNER *supra* note 108, at 97. But more than its Chilean counterpart, the South African TRC provided a forum for victims and perpetrators to publicly speak out—a feat that no other TRC had yet achieved—which popularized this body. See *id.* at 41, 97, 99, 100.

¹²⁴ NICO WOUTERS, TRANSITIONAL JUSTICE AND MEMORY DEVELOPMENT IN EUROPE (1945-2013) 410 (2014).

¹²⁵ See Margaret Popkin & Naomi Roht-Arriaza, *Truth as Justice: Investigatory Commissions in Latin America*, 20 L. & SOC. INQUIRY 79, 81–83 (1995).

¹²⁶ *Id.* at 81.

¹²⁷ *Id.* at 81–82.

¹²⁸ *Id.* at 82.

¹²⁹ *Id.*

¹³⁰ *Id.* at 83.

¹³¹ Popkin & Roht-Arriaza, *supra* note 125, at 83.

even if the above challenges are absent, the deep divisions in the polarized society necessitates TRC processes.

TRCs are known by different names in various jurisdictions.¹³² However, Truth Commissions generally represent the common name to designate to all of its variants.¹³³ They can be formed in different ways such as by unilateral decision of the government, through either mere presidential decrees or approval by parliaments, or through peace accords with rebel groups.¹³⁴ The only exception is the case of the Canadian Truth and Reconciliation Commission which was established through a court-mediated negotiation process to investigate the so-called “Residential Schools Case.”¹³⁵ The Commission on the Truth for El Salvador was the first ever TRC created by a negotiated settlement through the brokerage of the United Nations in 1992.¹³⁶ It was then followed by the Guatemalan Historical Clarification Commission established under similar circumstances in 1994.¹³⁷ The Colombian TRC came after the 2016 peace settlement between the Colombian Government and the Revolutionary Armed Forces of Colombia (“FARC”).¹³⁸ Beyond the above mechanisms, several Commissions were established by a U.N. Resolution in the exercise of its mandate under the U.N. Charter to maintain international peace and security.¹³⁹

Moreover, States have options about the role to be played by their respective TRCs. TRCs can be established in conjunction with other TJ measures or as a self-standing measure to document the patterns of past violence and ensure reconciliation.¹⁴⁰ For instance, Argentina, Chile, and

¹³² AMNESTY INT’L, *LIBERIA: A BRIEF GUIDE TO THE TRUTH AND RECONCILIATION COMMISSION 1* (2006) (ebook); Priscilla B. Hayner, *Fifteen Truth Commissions—1974 to 1994: A Comparative Study*, 16 HUMAN RIGHTS Q. 597, 601–603 (1994).

¹³³ AMNESTY INT’L, *supra* note 132, at 5.

¹³⁴ Agata Fijalkowski, *Truth and Reconciliation Commissions*, in AN INTRODUCTION TO TRANSITIONAL JUSTICE, *supra* note 99, at 94–95.

¹³⁵ AMNESTY COMM’N OF THE MINISTRY OF JUST. OF BRAZ. ET AL., *TRUTH SEEKING: ELEMENTS OF CREATING AN EFFECTIVE TRUTH COMMISSION 10* (Eduardo González and Howard Varney eds., 2013).

¹³⁶ Michal Ben-Josef Hirsch et al., *Measuring the Impacts of Truth and Reconciliation Commissions: Placing the Global ‘Success’ of TRCs in Local Perspective*, 47 COOP. & CONFLICT 386, 400 (2012).

¹³⁷ *Id.*

¹³⁸ Sergio Triana-E et al., *supra* note 66, at 79, 80, 89.

¹³⁹ See Catherine Harwood, *Contributions of International Commissions of Inquiry to Transitional Justice*, in RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE, *supra* note 40, at 401, 405. These included: “[f]or example, Yugoslavia Commission, [Security Council Resolution] 780 (1992); Commission of Experts concerning Rwanda, [Security Council Resolution] 935 (1994); International Commission of Inquiry concerning Burundi, [Security Council Resolution] 1012 (1995); Darfur Commission, [Security Council Resolution] 1564 (2004); CAR Commission, [Security Council Resolution] 2127 (2013).” *Id.* at 405 n.29.

¹⁴⁰ Anna Triponel & Stephen Pearson, *What Do You Think Should Happen? Public Participation in Transitional Justice*, 22 PACE INT’L L. REV. 102, 104–105 (2010).

Liberia established their TRCs as the only transitional justice measures to reckon with their past, while Sierra Leone, East Timor, and Rwanda, among others, have used TRC methods combined with other trial-type measures.¹⁴¹

There are some desirable qualities of Truth and Reconciliation Commissions when compared to other TJ measures. They include that TRCs are less confrontational, do not ignore the violations perpetrated, and make efforts to do something in the form of reparations for the victims.¹⁴² Murphy observes that Truth Commissions “do not focus primarily on individual perpetrators and victims in isolation, but rather on patterns of interaction and structures of institutions that permit, sanction, or promote such patterns.”¹⁴³ Truth Commissions help to neutralize and mediate the competing contradictions between “forces of denial and acknowledgement.”¹⁴⁴ Thus, Truth Commissions are recognized for their contribution which marks the move away from the prosecution model to a wider “effective and necessary component of peacebuilding.”¹⁴⁵ According to Rotberg, while the earlier TRCs were more constrained, the later emerging ones, the prime example being the South African TRC, have had wider powers, mandates, and “extensive goals.”¹⁴⁶ As Luc Huyse summarizes, therefore, “Truth Commissions should unearth and reveal the whole truth—or as much as is possible to find.”¹⁴⁷

With regard to their composition, tasks and operation, Truth Commissions can be national, international, and hybrids, which may include both national and international staff.¹⁴⁸ The most notable hybrid TRC was the South African Truth and Reconciliation Commission established with Act 34 of 1995.¹⁴⁹ The South African TRC was charged with “establishing as complete a picture as possible of the causes, nature[,] and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date.”¹⁵⁰ Moreover, it the South African TRC was mandated with “facilitating the granting of amnesty” and “restoring the human and civil dignity of . . . victims

¹⁴¹ *Id.* at 105.

¹⁴² Roht-Arriaza, *supra* note 42, at 3.

¹⁴³ COLLEN MURPHY, *THE CONCEPTUAL FOUNDATIONS OF TRANSITIONAL JUSTICE* 11 (2017).

¹⁴⁴ Cheryl Lawther, *Transitional Justice and Truth Commissions*, in *RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE*, *supra* note 40, at 342.

¹⁴⁵ *Id.*

¹⁴⁶ Robert I. Rotberg, *Truth Commissions and the Provision of Truth*, in *TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS* 3–4 (Robert I. Rotberg & Dennis Thompson eds., 2000).

¹⁴⁷ LUC HUYSE, *ALL THINGS PASS EXCEPT THE PAST* 189 (2009).

¹⁴⁸ Agata Fijalkowski, *Truth and Reconciliation Commissions*, in *AN INTRODUCTION TO TRANSITIONAL JUSTICE*, *supra* note 99, at 91, 95, 96.

¹⁴⁹ ANTJE DU BOIS-PEDAIN, *TRANSITIONAL AMNESTY IN SOUTH AFRICA* 19 (2007).

¹⁵⁰ *Id.*

by . . . recommending reparation measures in respect of them.”¹⁵¹ According to Nir Eiskovitis, the South African TRC was the result of a political compromise meant to avoid both retributive punishment and impunity. The African National Congress’s preferred demand for retributive justice was rejected because it was feared that it would derail the “chance for a democratic South Africa.”¹⁵²

IV. TOWARDS RECONCILIATION: THE MEANS AND END OF TRANSITIONAL JUSTICE?

Since the mid-1990s, there has been a dramatic increase in the reconciliation endeavors across the world.¹⁵³ Numerous States enacted their laws to promote reconciliation and provided it with institutional arrangements particularly through prominent TRCs as discussed above. Reconciliation has also become a part of peace agreements in post-conflict settings.¹⁵⁴ Among diverse claims, as noted, reconciliation also stands out as one of the key policy objectives of transitional justice.¹⁵⁵ It is especially imperative that when the goal of transitional justice is conceived to be leading towards democracy and peaceful political order (“liberalizing transition”),¹⁵⁶ then political reconciliation should be the central component of the whole process.¹⁵⁷ According to the Swedish International Development Cooperation Agency (“SIDA”) reconciliation can be viewed as:

the process of building or rebuilding relationships damaged by violent conflict, between individuals or groups within the society, or between the population and the [S]tate The reconciliation process can take place within a state as well as outside of the [S]tate’s boundaries. The objective of the engagement in reconciliation processes is to prevent the conflict from re-escalating into violence and create sustainable peace and can be viewed as both a long-term goal and a process.¹⁵⁸

¹⁵¹ *Id.*

¹⁵² Eiskovitis, *supra* note 74.

¹⁵³ ERIN DALY & JEREMY SARKIN, RECONCILIATION IN DIVIDED SOCIETIES: FINDING COMMON GROUND 3 (2010).

¹⁵⁴ *Id.*

¹⁵⁵ See *Reconciliation in a Transitional Justice Perspective*, *supra* note 90, at 54; see also VANDEGINSTE, *supra* note 91, at 7.

¹⁵⁶ MCAULIFFE, *supra* note 68, at 180.

¹⁵⁷ Chum Chandarin, *Transitional Justice and Political Reconciliation in Cambodia*, 4 J. HUM. RTS. & PEACE STUD. 35 (2018).

¹⁵⁸ *Transitional Justice and Reconciliation: Thematic Overview*, SIDA, <https://cdn.sida.se/app/uploads/2020/12/01125338/transitional-justice-and-reconciliation.pdf> (last visited Mar. 7, 2023).

Generally, political reconciliation has long been associated with transitional justice and it is also one of its major goals, but it is a vague and controversial concept.¹⁵⁹ According to Nevin Aiken, there has been an emerging consensus which claims that there exists a causal relationship between transitional justice, reconciliation, and durable peace.¹⁶⁰ This is because transitional justice measures can serve as a tool to “facilitate societal reconciliation by helping those divided by past violence to put aside their antagonisms and to begin to build new, more conciliatory relationships with one another.”¹⁶¹ In a related fashion, Daniel Philpott holds that reconciliation has been widely understood both as a mechanism and the ultimate end of the transitional justice process.¹⁶² It is broadly seen as the ultimate goal towards which other transitional justice measures such as truth finding, trials, amnesties, and other measures should strive to achieve.¹⁶³ Ultimately, as Martina Fischer argued, reconciliation is a necessary requirement for lasting peace since it mainly prevents return to violence.¹⁶⁴ According to SIDA, reconciliation is sometimes seen as related to forgiveness, a concept rooted in Judeo-Christian traditions and which is ultimately understood as “reconciliation with God and the ‘restoration of . . . dignity.’”¹⁶⁵ Specifically, in local contexts, culture and religion may put great influence on the process of reconciliation.

Despite the crucial role of reconciliation, Aiken argues that the relationship between transitional justice and reconciliation remained undertheorized, partly due to lack of sufficient dialogue between transitional justice scholars and conflict transformation theorists.¹⁶⁶ Much also depends on the respective contexts of given societies. As Paul Seils puts it, the degree to which transitional justice and reconciliation relate

¹⁵⁹ PAUL SEILS, *THE PLACE OF RECONCILIATION IN TRANSITIONAL JUSTICE: CONCEPTIONS AND MISCONCEPTIONS* 1 (2017); see Skaar, *supra* note 90, at 69–70.

¹⁶⁰ AIKEN, *supra* note 57, at 2.

¹⁶¹ *Id.*

¹⁶² Daniel Philpott, *An Ethic of Political Reconciliation*, *ETHICS & INT’L AFFS.*, Winter 2009, at 389, 390; SIDA, *supra* note 158.

¹⁶³ See, e.g., Skaar, *supra* note 90, at 54.

¹⁶⁴ See Martina Fischer, *Advancing Conflict Transformation: The Berghof Handbook II*, in *TRANSITIONAL JUSTICE AND RECONCILIATION: THEORY AND PRACTICE* *supra* note 44, at 405, 406.

¹⁶⁵ Melody Mirzaagha, *Striving Towards a Just and Sustainable Peace: The Role of Reconciliation*, FICHL POL’Y BRIEF SERIES, 2016, at 1, 1. Mirzaagha also notes that “[r]econciliation finds its roots in the non-political domain, in particular the realm of religion and interpersonal relationships.” *Id.* Additionally, “[a]lthough rooted in various religious traditions and languages, these conceptions contribute—albeit at an abstract level—to a broader understanding of reconciliation, one that emphasizes the establishment of harmony, the restoration of relationships, or a return to a more complete state.” *Id.* at 1–2.

¹⁶⁶ See AIKEN, *supra* note 57, at 3.

to each other depends mainly on context.¹⁶⁷ In the light of the above, reconciliation is suggested especially for deeply divided societies or contested societies.¹⁶⁸ Deeply conflicted societies are generally understood as societies that have a “deep-seated and sharp division in the body politic, whether on ethnic, racial, religious, class, or ideological grounds” and such division is “so acute as to have resulted in or threaten[ed] significant political violence”¹⁶⁹ Furthermore, a “deeply divided society” can also be characterized as a “societ[y] in which there [are] no transcendent democratic principle that enable[] legitimate, collective decisions to be taken on anything like a consistent basis.”¹⁷⁰ The need for reconciliation is, therefore, strongly felt in societies that have undergone ethnopolitical conflicts. This is because “these are marked by a loss of trust, intergenerational transmission of trauma and grievances, and negative interdependence.”¹⁷¹

Over the course of violent history, these societies are marked by violent conflict, repression, injustice, and cleavages which are engrained into its history and which also create a considerable challenge for the actors engaged in reconciliation efforts.¹⁷² The violence in these societies are not linear but “multilayered and multifaceted, making it virtually impossible to determine which wrongs can feasibly be addressed, what this process might entail, and how to prioritize such efforts.”¹⁷³ Those who have engaged in violent conflict are also bound to live in a closer geographic proximity and live as neighbors, but locked into long-standing cycle of hostile interaction.¹⁷⁴ This makes reconciliation and conflict transformation a necessary endeavor.¹⁷⁵ Failure to achieve this may lead again to what Fischer terms “new spirals of violence” and, therefore, reconciliation serves a necessary role to prevent or reduce “the desire for revenge.”¹⁷⁶ Beyond the above contexts, reconciliation also becomes imperative in another related circumstances. For instance, Seils argues that the importance of reconciliation is more sensed “in settings where the previous regime has been removed but significant continuities persist or

¹⁶⁷ See SEILS, *supra* note 159, at 2.

¹⁶⁸ DALY & SARKIN, *supra* note 153, at 225.

¹⁶⁹ See Fionnuala Ní Aoláin & Colm Campbell, *The Paradox of Transition in Conflicted Democracies*, 27 HUM. RTS. Q. 172, 176 (2005).

¹⁷⁰ Duncan Morrow, *Breaking Antagonism? Political Leadership in Divided Societies*, in POWER SHARING: NEW CHALLENGES FOR DIVIDED SOCIETIES 45, 45 (Ian O’Flynn & David Russell eds., 2005).

¹⁷¹ Fischer, *supra* note 164, at 415.

¹⁷² SARAH MADDISON, CONFLICT TRANSFORMATION AND RECONCILIATION: MULTI-LEVEL CHALLENGES IN DEEPLY DIVIDED SOCIETIES 21 (2016).

¹⁷³ *Id.*

¹⁷⁴ See Fischer, *supra* note 164, at 415.

¹⁷⁵ See *id.*

¹⁷⁶ *Id.*

where notions of reconciliation are prominent within the culture.”¹⁷⁷ In these contexts, political reconciliation figures prominently as an objective of transitional justice.

While there is no consensus among scholars and practitioners alike about the linear approach to reconciliation, it is well-established fact that there is no single model for it.¹⁷⁸ According to Paul Lederach, it is a “encounter,” or meeting place, for individuals and activities, over the concerns of past and future in which the “values of truth, mercy, forgiveness, and peace compete with each other.”¹⁷⁹ Thus, it is a complex process largely marked by “paradoxes, tensions, and even contradictions.”¹⁸⁰ Karen Brounéus pointed out that reconciliation should be viewed from pragmatic and societal perspectives.¹⁸¹ It is a pragmatic exercise in which effort is made to find a way to balance competing issues such as truth and justice which, in the end, result in the change of behaviors, attitudes, and relationships among former actors, or enemies, involved in the conflict.¹⁸² Elin Skaar further notes that the reconciliation has “thick” and “thin” conceptions.¹⁸³ According to Skaar, the thin side of reconciliation may be simply understood as “nothing more than ‘simple coexistence’” between previous enemies who would agree to live together without resorting to killing each other.¹⁸⁴ In the context of deeply divided societies, simple coexistence may be “a sufficient goal to maintain peace and prevent revenge.”¹⁸⁵ On the thick side, it includes some wider elements such as forgiveness, a shared and comprehensive vision about the future, processes of mutual healing, and enhancing individual and societal harmony.¹⁸⁶ Ultimately, however, each case is different and one must focus more on deeper contextual factors rather than a “one-size-fits-all” approach.¹⁸⁷ The comprehensive approach to reconciliation efforts must give due consideration to local “connecting tissues” or “social fabrics” that provide various entry points in the process.¹⁸⁸ SIDA, moreover,

¹⁷⁷ SEILS, *supra* note 159, at 4.

¹⁷⁸ Simon Keyes, *Mapping on Approaches to Reconciliation*, NETWORK FOR RELIGIOUS & TRADITIONAL PEACEMAKERS, March 2019, at 1, 7.

¹⁷⁹ *Id.* at 8; JOHN PAUL LEDERACH, BUILDING PEACE: SUSTAINABLE RECONCILIATION IN DIVIDED SOCIETIES 35 (1997).

¹⁸⁰ Brandon Hamber & Gráinne Kelly, *The Reconciliation Paradox*, INT’L CONFLICT RSCH. INST., June 2018, at 1, 2.

¹⁸¹ Karen Brounéus, *Reconciliation and Development*, in BUILDING A FUTURE ON PEACE AND JUSTICE 203, 203, 205 (Kai Ambos et al. eds., 2009).

¹⁸² *Id.* at 205.

¹⁸³ See Skaar, *supra* note 90, at 65.

¹⁸⁴ *Id.*

¹⁸⁵ KEYES, *supra* note 178, at 9.

¹⁸⁶ See Skaar, *supra* note 90, at 65.

¹⁸⁷ Int’l J. of Transitional Just., *Editorial Note*, 8 INT’L J. TRANSITIONAL JUST. 1, 3 (2014).

¹⁸⁸ SIDA, *supra* note 44.

proposes that the human rights-based approach should be integrated in the reconciliation process, though it should not be imposed on the victims or survivors.¹⁸⁹ According to Philpott, a holistic attempt to achieve reconciliation to address atrocities committed during war, genocide, and authoritarianism should go beyond activities centered on legal mechanisms, human rights, and humanitarian laws.¹⁹⁰ Aiken suggests that a strategy for strong dialogue should be sought as part of transitional institutions which contribute to reducing group antagonisms related to group identifications on ethnonational and racial lines which may incite future violence.¹⁹¹

Despite those attempts, as in any other TJ measures, there are serious debates as to the nature and success of reconciliation efforts.¹⁹² Importantly, the relationship between transitional justice and wider goals such as reconciliation remained debatable. This is because some argue that transitional justice has been viewed as a threat to reconciliation as exemplified by the tensions between them.¹⁹³ As Audrey Chapman further notes in this regard, “there is little agreement on how to promote reconciliation or on how to conduct research to assess the status of the reconciliation process in deeply divided societies undergoing transitional justice processes.”¹⁹⁴ Moreover, Elin Skaar argues that reconciliation still is “one of the most contested concepts on the scholarly debate on [] transitional justice” and its exact contributions are generally held to be “inconclusive.”¹⁹⁵ Paul Gready and Simon Robins further argue that the claim that holds that “truth-telling contributes to reconciliation” is a “sweeping claim[]” rather than an empirically rooted assessment. They further argue that the operational compatibilities between truth-telling and reconciliation are not well investigated.¹⁹⁶ In the context of transitional justice, the drawback is that reconciliation is easily invoked and promoted. But scant attention is paid to serious questions such as the complex ways of how reconciliation relates with other measures of transitional justice, its specific frameworks, the possibility of justice after

¹⁸⁹ *Id.*

¹⁹⁰ Philpott, *supra* note 162, at 390.

¹⁹¹ See AIKEN, *supra* note 57, at 3 (arguing that “theoretical cross-fertilization and interdisciplinary analysis,” in addition to other fields of scholarship, should be considered when to addressing ethnicity-based violence).

¹⁹² See Ambika Satkunanathan, *The Politics of Reconciliation in Transitional Justice*, 8 INT’L J. TRANSITIONAL JUST. 171, 171 (2014).

¹⁹³ *Id.*

¹⁹⁴ Audrey R. Chapman, *Approaches to Studying Reconciliation*, in ASSESSING THE IMPACT OF TRANSITIONAL JUSTICE: CHALLENGES FOR EMPIRICAL RESEARCH 143, 143 (Hugo Van Der Merwe et al. eds., 2009).

¹⁹⁵ See Skaar, *supra* note 90, at 54–57, 70, 102.

¹⁹⁶ See Gready & Robins, *supra* note 95, at 282, 288.

an evil past, and issues about the (re-)distribution of wealth, among others.¹⁹⁷

Moreover, reconciliation should be understood and approached as a long-term process. As experiences show, it may also take “years or even generations” to materialize.¹⁹⁸ According to Nevin Aiken, the cases of South Africa and Northern Ireland, which are mostly cited as success stories, “serve as cautionary reminders of the fact that post-conflict reconciliation must be understood as a long-term endeavor that can take generations to unfold, and that there are no ‘quick fixes’ or ‘miracle cures’ when it comes to repairing relationships between former antagonists in deeply divided societies.”¹⁹⁹ To rectify those challenges, other authors suggest that the countries embarking on reconciliations processes should identify the level at which reconciliation is sought, and therefore, such reconciliation should “be well targeted to the specific problems of the society”²⁰⁰

V. SEEKING TRANSITIONAL JUSTICE THROUGH RECONCILIATION IN ETHIOPIA POST-2018

A. *The Ethiopian Post-2018 Troubled Transition in Context*

After the demise of the Marxist *Derg* regime in 1991,²⁰¹ and in the face of the collapsing socialist world, the Ethiopian People’s Revolutionary Democratic Front, a coalition of ethno-regional forces, controlled political power in Ethiopia.²⁰² However, the new EPRDF regime was not successful in transforming the country towards liberal democracy and decent political order.²⁰³ Gradually, the country headed toward authoritarian resurgence under the centralized vanguard party of EPRDF under the ideology of “revolutionary democracy.”²⁰⁴ The post-1991 period succeeded in ending civil wars and decentralizing power through federalism, at least

¹⁹⁷ See *id.* at 7–8.

¹⁹⁸ DALY & SARKIN, *supra* note 153, at 252.

¹⁹⁹ AIKEN, *supra* note 57, at 195.

²⁰⁰ DALY & SARKIN, *supra* note 153, at 42.

²⁰¹ Abbink, *supra* note 15, at 340.

²⁰² See Jason Burke, *Rise and Fall of Ethiopia’s TPLF—From Rebels to Rulers and Back*, THE GUARDIAN (Nov. 20, 2020, 12:00 PM), <https://www.theguardian.com/world/2020/nov/25/rise-and-fall-of-ethiopia-tplf-tigray-peoples-liberation-front> (discussing how by the end of the 1980s, the TPLF became one of the most effective rebel groups that united under the EPRDF who, with the help of Eritrean forces, seized control of Ethiopia’s capital, leaving Meles Zenawi in power).

²⁰³ See Emmanuel Yirdaw, *Liberal Democracy is No Liberator*, ETH. INSIGHT (Nov. 3, 2019), <https://www.ethiopia-insight.com/2019/11/03/liberal-democracy-is-no-liberator/>.

²⁰⁴ Bach, *supra* note 17, at 646–47.

constitutionally speaking.²⁰⁵ But as pointed out in the introduction, the old problems of centralized, hegemonic, authoritarian rule persisted,²⁰⁶ and detestable economic crimes prevailed leading to a political crisis during the EPRDF's final days in power.²⁰⁷ Declaring poverty as an existential threat, the regime made efforts to oversee impressive but centrally planned, economic development under the developmental state policy introduced from the early 2000s.²⁰⁸ Thus, Ethiopia has gone through a controversial political period of semi-authoritarianism and of economic growth for nearly three decades in the post-1991 period under the EPRDF.²⁰⁹ While formal political opposition existed only in name, the EPRDF also battled with ethnic insurgencies from the early days of its rule.²¹⁰ However, the unprecedented political opposition against its repressive system came during the first ever democratically contested election of 2005.²¹¹ However, this in turn simply heralded the regime's vulnerability. So, the regime met with frustration for its initial gesture of opening-up the political space, and this episode marked its gradual and deliberate retrenchment towards a "rule by law" state.²¹² Following this, the regime returned to its increasingly authoritarian behavior,²¹³ which

²⁰⁵ See *Ethiopian Civil War*, NEW WORLD ENCYC., https://www.newworldencyclopedia.org/entry/Ethiopian_Civil_War (last visited Mar. 24, 2023); see also Christopher Clapham, *The Ethiopian Developmental State*, 39 THIRD WORLD Q. 1151, 1154 (2018) (stating that the TPLF created a federal system that eliminated top-down governance).

²⁰⁶ Hagmann & Abbink, *supra* note 22, at 582.

²⁰⁷ See *id.* at 582, 588 (questioning the EPRDF's human rights record, mounting corruption, and the country's top-down economic policies); see also Alexandra M. Dias & Yared Debebe Yetena, *Anatomies of Protest and the Trajectories of the Actors at Play: Ethiopia 2015-2018*, in POPULAR PROTEST, POLITICAL OPPORTUNITIES, AND CHANGE IN AFRICA 181, 181 (Edalina Rodrigues Sanches ed., 2022) (highlighting the political protests that emerged in Ethiopia as a result of the country's economic issues and dissatisfaction with the EPDRF).

²⁰⁸ Fana Gebresenbet, *Securitisation of Development in Ethiopia: The Discourse and Politics of Developmentalism*, 41 REV. AFR. POL. ECON. 64, 67–68 (2014), see Clapham, *supra* note 205, at 1157, 1162 (stating that Ethiopia has successfully implemented "poverty reduction programmes" in an effort to eradicate extreme poverty and reduce child mortality in the country).

²⁰⁹ See Samuel Getachew, *A Controversial Regional Election Win in Ethiopia Has Raised the Stakes for Its Federal System*, QUARTZ (Sept. 12, 2020), <https://qz.com/africa/1902614/ethiopia-tigray-tplf-party-wins-controversial-election> (indicating that the ERPDF governed Ethiopia for almost three decades and though it has been dismantled since 2019, Ethiopia continues to endure a contentious political period).

²¹⁰ See *Ethiopia: A Real New Dawn?*, ALJAZEERA CTR. FOR STUD. (Aug. 26, 2019), <https://studies.aljazeera.net/en/reports/2019/08/190826085843635.html>; see also Hagmann & Abbink, *supra* note 22, at 584 (stating that Ethiopia's political landscape consisted of political polarization and ethnic competition during the EPRDF's political control).

²¹¹ See Hagmann & Abbink, *supra* note 22, at 585.

²¹² See Adem Abebe, *Rule by Law in Ethiopia: Rendering Constitutional Limits on Government Power Nonsensical* 5 (Ctr. of Governance & Hum. Rts., Working Paper No. 1, 2012).

²¹³ Hagmann & Abbink, *supra* note 22, at 585.

again was legitimized by a gradual yet systematic resort to the developmental state policy.²¹⁴ This policy shift again arguably gave primacy for socioeconomic development and thereby marginalized the protection for fundamental human rights and basic liberties.²¹⁵ And also its compatibility with the principles of federalism, which is in place to safeguard the interests of various ethnonational groups, remained frictional and a political crisis gradually ensued leaving the situation in dilemma.²¹⁶ So, numerous deep-rooted and interrelated factors, such as increasingly repressive behavior of the regime, gross human rights violations with impunity, as well as inequitable benefit from economic development, gradually precipitated political grievances among the wider public.²¹⁷

Thus, from mid-2015 to April 2018, Ethiopia underwent one of the most destructive political periods in its recent history.²¹⁸ The violent and deadly state response resulted in unprecedented but unascertained loss of human lives, extra-judicial killings, and forced disappearances purposely justified under the vague state of emergency laws which was applied and renewed for an extended period.²¹⁹ Moreover, violent popular protests and the regime's deadly response also crucially threatened Ethiopia's continued survival as a State.²²⁰ After the violent security crack-down, the regime's internal political cohesion maintained by dominant party control collapsed, and party structure succumbed to accept enforced reform

²¹⁴ See Sarah Vaughan, *Federalism, Revolutionary Democracy and Developmental State, 1991–1992*, in UNDERSTANDING CONTEMPORARY ETHIOPIA: MONARCHY, REVOLUTION AND THE LEGACY OF MELES ZENAWI 283, 303–05 (Gérard Prunier & Éloi Ficquet eds., 2015).

²¹⁵ Assefa Fiseha Yeibyio, *Ethiopia: Development with or without Freedom?*, in HUMAN RIGHTS AND DEVELOPMENT: LEGAL PERSPECTIVES FROM AND FOR ETHIOPIA 101, 103 (Eva Brems et al. eds., 2015).

²¹⁶ See Assefa Fiseha, *Federalism and Development: The Ethiopian Dilemma*, 25 INT'L J. ON MINORITY & GRP. RTS. 333, 335–36 (2018) (“[K]ey sources of the emerging political tension in the ideology of the developmental state and its focus on centrally designed state led development that compromised the autonomy of the states in a context of growing ethnonationalism unleashed by self-rule.”).

²¹⁷ See Jon Abbink, *Ethiopia's Unrest Sparked by Unequal Development Record*, GLOB. OBSERVATORY (Sept. 13, 2016), <https://theglobalobservatory.org/2016/09/ethiopia-protests-amhara-romiya/>; René Lefort, *Unrest in Ethiopia: The Ultimate Warning Shot?*, OPENDEMOCRACY (Feb. 2, 2016), <https://www.opendemocracy.net/en/unrest-in-ethiopia-ultimate-warning-shot/>.

²¹⁸ See Kelecha, *supra* note 24, at 13–14.

²¹⁹ See STIFTUNG ET AL., *supra* note 27 at 3–4 (stating that gross human rights violations began after Ethiopia officially declared a state of emergency in response to large-scale protests).

²²⁰ See *id.* at 34 (“Ethiopia cannot continue to be a stable authoritarian state. The [G]overnment needs to take positive steps toward opening up the political system and implementing the [C]onstitution.”). See *id.* at 3–4. Large-scale protest, beginning in November 2015, lead to violent confrontations between the Ethiopian Government and local farmers. See *id.*

agenda.²²¹ It therefore paved the way for ambiguous political deals and subsequent reforms leading towards current political transition operating in a troubled environment. In a beleaguered atmosphere, the most significant measure taken was the forced resignation of then-Prime Minister Hailemariam Desalegn who was replaced by Abiy Ahmed of the OPDO, which is affiliated with the EPRDF coalition.²²² In this regard, Abiy's ascendancy to power, his unifying and pacifying speeches, and promise to ensure lofty goals such as justice, rule of law, and democracy as founding narratives brought about much optimism for real political change towards peaceful democratic rule.²²³

However, the perplexing issue of how to deal with Ethiopia's violent and abusive past and how to design a legitimate path to usher the chaotic present towards a peaceful future remained challenging. The answer to this question differed considerably and different alternative views were aired from different societal and political groups.²²⁴ Amidst the pressure and political uncertainty, the Prime Minister continuously delivered reconciliatory speeches,²²⁵ but he also vowed to bring the members of former officials to the might of justice.²²⁶ Both measures appeared to represent a contradiction during this critical period. Waves of arrests and the vetting of security officials took place swiftly.²²⁷ Some established researchers applauded the Prime Minister's reforms as "unprecedented and highly innovative programmes of reform," which according to them marks a significant departure from the preceding EPRDF's rule.²²⁸

The current change was brought about by the civilian revolt, which protested violently against authoritarian repression, alienation, and marginalization.²²⁹ But thereafter, a number of new controversies and troubles emerged. Much of the controversy has to do with the nature of the unfinished transition, which has encompassed both changes and continuities. Ultimately, the transition neither came after military

²²¹ See Dias & Yetena, *supra* note 207, at 182.

²²² See Kelecha, *supra* note 24, at 14; Bach, *supra* note 17, at 649.

²²³ See Gedamu, *supra* note 33; see also Jon Abbink, *Hopes Dashed: Sabotage and Mayhem in Ethiopia*, AFR. STUD. CTR. LEIDEN (Jan. 18, 2021), <https://www.ascleiden.nl/content/ascl-blogs/jan-abbink/hopes-dashed-sabotage-and-mayhem-ethiopia>.

²²⁴ See, e.g., Bader, *supra* note 34; see also Abbink, *supra* note 223 (noting tension between Prime Minister Abiy Ahmed's policies to reconcile Ethiopia in 2018 and political groups who opposed those policies).

²²⁵ See Abbink, *supra* note 223 (discussing how Abiy's tone differed from the previous Prime Minister's in that Abiy encouraged camaraderie and reconciliation rather than conjuring up enemies and using threatening language).

²²⁶ See Burke, *supra* note 202 (explaining how Abiy removed top officials from key security posts, arrested generals on graft charges, and introduced new military changes).

²²⁷ *Id.*

²²⁸ Abbink, *supra* note 223.

²²⁹ See Dias & Yetena, *supra* note 207, at 186–87 (describing the violent protests that led to Prime Minister Hailemariam Desalegn's resignation).

victory, nor political settlement and it defied the conventional means of regimes changes.²³⁰ Thus, the transition was an ambiguous transition and exhibited new reformist measures, but its unfolding was highly constrained by the pre-existing political-legal atmosphere.²³¹ Thus, the transition period has not been smooth and has rather proved to be a tortuous political journey. Due to the desire to dominate the transitional political power, the initial solidarity of the so called ‘reformist’ coalition did not last long as intraparty and interparty rivalries dominated the fluid transitional political moment.²³² After some gestures of the relaxation of the authoritarian grip following the collapse of the party founded on hegemonic centralized rule, it was followed by “outbreaks of violence, mass displacement of people, and other issues that tarnish the hope that has been created by these changes.”²³³ As the Armed Conflict Location & Event Data Project’s *Change and Continuity* report puts it, “Ethiopia can anticipate continued instability.”²³⁴ Therefore, in the post-2018 transition period as well, rather than addressing past wrongs, again new challenges and new complexities emerged.

Moreover, the chaotic yet promising transition was further compounded by the acute lack of political settlement among the major contending actors and a serious lack of a transitional justice roadmap.²³⁵ Thus, every political move revolved around the Prime Minister, which the critics have viewed as problematic as it opens the door for a “new dictatorship.”²³⁶ These combined factors seemed to overshadow the rare

²³⁰ See *id.* at 187 (stating that Prime Minister Desalegn voluntarily stepped down in 2018); see also Abbink, *supra* note 201, at 334, 339 (referencing the military-led revolution of 1974 and the Red Terror trials which transpired in the wake of the nation’s 1991 revolution).

²³¹ See Abbink, *supra* note 223 (providing that Prime Minister Abiy Ahmed’s enthusiastic reforms placed large demands on the Ethiopian people who were mostly stuck in “past models of sectarian and eternal grievance politics”).

²³² See Takele Bekele Bayu, *Fault Lines Within the Ethiopian People Revolutionary Democratic Front (EPRDF): Intraparty Network and Governance System*, 10 INT. J. CONTEMP. RSCH. & REV. 20592, 20592 (2019) (suggesting that some EPRDF intraparty networks have severely limited democratization within the party and throughout the country). One significant result of this power struggle is that Ethiopia is reportedly hosting over two million internally displaced people—the largest in the world. *Over 2 Million People Displaced by Conflict in Ethiopia’s Tigray Region—Local Official*, REUTERS, <https://www.reuters.com/article/uk-ethiopia-conflict/over-2-million-people-displaced-by-conflict-in-ethiopia-tigray-region-local-official-idUSKBN29B1N7> (last updated Jan. 6, 2021, 8:23 AM).

²³³ Logan Cochrane & Bahru Zewde, *Discussing the 2018/19 Changes in Ethiopia: Bahru Zewde*, 1 NOKOKOPOD 1, 11 (2019).

²³⁴ HILARY MATFESS & DAN WATSON, CHANGE AND CONTINUITY IN PROTESTS AND POLITICAL VIOLENCE IN PM ABIY’S ETHIOPIA (2018), <https://acleddata.com/2018/10/13/change-and-continuity-in-protests-and-political-violence-pm-abiy-ethiopia/>.

²³⁵ See *id.*; Legide, *supra* note 37, at 16–18.

²³⁶ See Simon Tisdall, *If Ethiopia Descends into Chaos, It Could Take the Horn of Africa with It*, THE GUARDIAN (Nov. 22, 2020, 12:45 AM), <https://www.theguardian.com/commentisfree/2020/nov/22/if-ethiopia-descends-into-chaos-it-could-take-the-horn-of-africa-with-it>.

promises of the transitional political reforms in Ethiopia. In this climate, divergent views about the transition and the pertinent justice measures were forwarded severally by different actors.²³⁷ These suggested measures ranged from a mix of restorative and accountability measures to severe retributive measures at the other extreme.²³⁸ These contrasting views indicated the polarized views of elites, and the diverse challenges the vulnerable government faced in reckoning with past wrongs and handling current predicaments.²³⁹ Amidst this troubled period, shifting, inconsistent, and contradictory measures were implemented. Early massive and aggressive lustration, vetting and security sector reforms, and prosecutions of predecessor Tigrayan civilian and security sector officials, were swiftly carried out.²⁴⁰ This already brewed new discontent and “siege mentality” ultimately led to the violent civil war which has ravaged Ethiopia since November 2020.²⁴¹

*B. The Justifications for Adopting Reconciliation
Narrative in Contemporary Ethiopia*

In the post-2018 period, the new leadership unequivocally acknowledged that there were massive human rights violations, tortures in infamous prison chambers, forced disappearances, and detestable economic crimes.²⁴² What remained more controversial, as noted, is how to address them in light of the abusive past, tumultuous present, and uncertain future. During his inaugural speech, Prime Minister Abiy Ahmed characterized the acts of the predecessor EPRDF regime as “state terrorism” and he gave a public, official apology.²⁴³ Despite the official rhetoric, however, the Ethiopian Government lacked even rudimentary transitional justice frameworks and policy direction.²⁴⁴ In his inaugural speech, the Prime Minister said, “[t]he coming time in Ethiopia will be a time of love and forgiveness. We desire our country to be one of justice,

²³⁷ See Legide, *supra* note 37, at 42.

²³⁸ See *id.* at 13.

²³⁹ See *id.* at 4, 13 (indicating that while Ethiopia’s transitional justice system initially relied on criminal trials to reckon past wrongs, the nation has gradually incorporated transitional justice measures which focus on accountability, peace, and reconciliation instead).

²⁴⁰ *Id.* at 16–18.

²⁴¹ See *id.* at 3, 19; see also Center for Preventive Action, *War in Ethiopia*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ethiopia> (last updated on Mar. 21, 2023).

²⁴² See Legide, *supra* note 37, at 15.

²⁴³ Maggie Fick, *As Forgiveness Sweeps Ethiopia, Some Wonder About Justice*, REUTERS (Aug. 14, 2018, 7:49 AM), <https://www.reuters.com/article/us-ethiopia-torture/as-forgiveness-sweeps-ethiopia-some-wonder-about-justice-idUSKBN1KZ19E>.

²⁴⁴ Legide, *supra* note 37, at 14.

peace[,] and freedom and where its citizens are interconnected with the unbreakable chord of humanity and brotherhood.”²⁴⁵

Thus, the Prime Minister, for reasons of convictions or political pragmatism, officially apologized on behalf of the Ethiopian Government for the past crimes of the State.²⁴⁶ The rhetoric won the ears of the wider audience along with his lately introduced “philosophy” of “*medemer*,” which is literally understood as “adding together” for better or “synergy.”²⁴⁷ In transitional justice discourse, public apology and acknowledgement of the abuses and acceptance of the responsibility for the human rights violations of the past regime are considered important steps. Traditionally, during times of transition, governments use reconciliatory narratives for the purposes of nation-building, building political legitimacy, and peacebuilding by disallowing a culture of secrecy during the fragile political situation.²⁴⁸ However, it is held that an official apology is meaningful only when there is “[v]erification of the facts and full and public disclosure of the truth’ and ‘guarantees of non-repetition’; [i.e.,] all aspects of a complete and satisfactory apology.”²⁴⁹ Empty and rhetorical apology remains far from producing meaningful outcomes.

According to some commentators, a government’s recourse to reconciliation discourse might draw from the search for legitimacy of the new order. According to Lyons, the transition from war to peace three decades ago by Tigray People’s Liberation Front (“TPLF”)/EPRDF drew its legitimacy from the sacrifices paid in abolishing the old order which gradually faded away and led to a popular protest which started in 2015

²⁴⁵ TERRENCE LYONS, *THE PUZZLE OF ETHIOPIAN POLITICS 1* (2019). The Prime Minister further urged Ethiopians toward reconciliation in saying, “I call on us all to forgive each other from our hearts—to close the chapters from yesterday, and to forge ahead to the next bright future through national consensus.” Bader, *supra* note 34. Nearly six months into his rule, a support rally was organized for Prime Minister Abiy. There, he repeated his earlier restorative speeches and said that “love, forgiveness, unity[,] and harmony [should be taken] as our defining values” which were again presented by the Prime Minister as “the key pathway to prosperity.” Abiy Ahmed, Prime Minister of Ethiopia, Speech at the Rally for Forgiveness and Togetherness in Meskel Square (June 23, 2018) (transcript available online at <https://www.ethioembassy.org.uk/pm-abiy-meskel-square-full-speech/>) [hereinafter Abiy’s Inaugural Address].

²⁴⁶ Legide, *supra* note 37, at 15.

²⁴⁷ Middle East North Africa Center, *A Changing Ethiopia: Understanding Medemer*, U.S. INST. PEACE, at 09:08 (Feb. 13, 2020), <https://www.usip.org/events/changing-ethiopia-understanding-medemer>.

²⁴⁸ Lia Kent, *Beyond ‘Pragmatism’ Versus ‘Principle’: Ongoing Justice Debates in East Timor*, in *TRANSITIONAL JUSTICE IN THE ASIA-PACIFIC* 157, 158 (Renée Jeffery & Hun Joon Kim eds., 2014); cf. U.N. DEP’T POL. & PEACEBUILDING AFFS., *CONSTITUTIONS AND PEACE PROCESSES: A PRIMER* 22 (2020) (providing that large scale constitutional changes after violent conflict can build a nationally shared identity that has reconciliatory effects).

²⁴⁹ Rhoda E. Howard-Hassmann, *Official Apologies*, in *FACING THE PAST: AMENDING HISTORICAL INJUSTICES THROUGH INSTRUMENTS OF TRANSITIONAL JUSTICE* 247, 247 (Peter Malcontent ed., 2016).

and has continued in the current crisis.²⁵⁰ In the post-2018 new order, there is still a need for new elites to establish legitimacy—albeit on new narratives. In this vein, instead of focusing on a wide range of transitional justice measures, “forgiveness,” and rhetoric of reconciliation gradually became a new discourse.²⁵¹ Still, it was a hollow and unpredictable measure to many, and which mainly draws from, argues Lyons, the new leadership’s want of legitimacy.²⁵²

As noted, there are also other compelling circumstances for resorting to a reconciliation agenda rather than pursuing other TJ models. Much of the decisions are constrained by the nature of the transition itself. In the words of a prominent historian, the present change in Ethiopia “remains reform from within, rather than change from the outside.”²⁵³ Generally, it is acknowledged that attempting to employ transitional justice in the context of absence of fundamental political transition and political settlements produces multiple challenges. As Hansen argues, in these kinds of vulnerable and insecure times, the new regimes may take transitional justice measures as half-hearted attempts.²⁵⁴ These rationales include attempting to stop ongoing abuses; making some level of governance reforms; revealing and creating a certain image (particularly as to who is responsible for the past abuses) in an attempt to avoid external interference; and targeting power contenders or opponents.²⁵⁵

As noted, the post-2018 early political reform period in Ethiopia in which the measures were attempted, the situation was insecure and challenging.²⁵⁶ Owing to the mode of incomplete transition, the “old guards”, the former powerful officials who maintain their stronghold in economy, military, and security were not easily contained and there was continued unpredictability.²⁵⁷ In the absence of a clean break with the past, the balance of power between the new reformist elite and old EPRDF

²⁵⁰ See LYONS, *supra* note 245, at 6–7.

²⁵¹ Solomon Ayele Dersso, *Ethiopia’s Experiment in Reconciliation*, U.S. INST. PEACE (Sept. 23, 2019), <https://www.usip.org/publications/2019/09/ethiopias-experiment-reconciliation>.

²⁵² See LYONS, *supra* note 245, at 1, 7 (sharing Abiy’s desire for forgiveness in Ethiopia and stating that the protest in 2016, which resulted in new leadership in 2018, occurred in part because of a decline in the Government’s legitimacy).

²⁵³ Cochrane & Zewde, *supra* note 233, at 7.

²⁵⁴ Hansen, *supra* note 97, at 225.

²⁵⁵ *Id.*

²⁵⁶ See generally Worku Dibu & Ephrem Ahadu, *Post 2018 Political Reforms in Ethiopia: Its Achievements and Challenges*, 11(1) INT’L REV. HUMANS. & SOC. SCIS. 439, 445–449 (2020) (discussing the political, economic, and ethnic disunity that challenged Abiy’s reforms).

²⁵⁷ See Daniel R. Mekonnen, *Ethiopia’s Transitional Justice Process Needs Restoration Work*, ETH. INSIGHT (Feb. 1, 2019), <https://www.ethiopia-insight.com/2019/02/01/ethiopias-transitional-justice-process-needs-restoration-work/>.

guards remained precarious and marked by contestations, tensions, and attempt to outbid each other.²⁵⁸ In this unpredictable political environment, the challenge was not linear and deep divisions on ethnic and linguistic lines posed serious additional obstacles. Olsen, Payne, and Reiter demonstrate that countries exhibiting “high ethnic and linguistic fractionalization” and facing challenges of transitional justice choice are less likely to pursue prosecution, Truth Commissions, and reparations.²⁵⁹ However, it should still be kept in mind that those measures are mostly outcomes of negotiated political settlement, just as they took place in South Africa and Latin America.²⁶⁰ Ethiopian political observers resent, however, that this negotiated settlement on important political matters is non-existent in Ethiopia’s “vicious cycle of authoritarian” political tradition, the tradition of which is rooted in either “domination or submission.”²⁶¹

The early political measures were broadly interpreted as a “bold reform effort.”²⁶² However, such hopes were gradually replaced by an ominous environment. Thus, the period was symbolized by significant intraparty competition among the elites from major ethnic groups to assume or dominate top political power among EPRDF-affiliated parties.²⁶³ The founding core members of the ruling EPRDF and their inter-elite relationship was reportedly marked by historical animosities. And it was also marked by heightened hostilities, including those pertaining to territorial claims (specifically among Amhara and Tigrayan elites) and the exchange of old communal grievances which characterized the political affair.²⁶⁴ The period has thus been marked by explosive

²⁵⁸ See Abbink, *supra* note 223 (indicating that critics believed that Prime Minister Abiy erred in unconditionally welcoming back all oppositional groups to participate in the governance of Ethiopia).

²⁵⁹ Legide, *supra* note 37, at 15.

²⁶⁰ See generally Nam Kyu Kim & Mi Hwa Hong, *Politics of Pursuing Justice in the Aftermath of Civil Conflict*, 63(5) J. CONFLICT RESOL. 1165–1992 (2019) (discussing that Truth Commissions tend to occur after negotiated settlements); see also Yoseph Badwaza, *Ethiopia: Restoring Peace and Democratic Reforms*, FREEDOM HOUSE (Dec. 3, 2020), <https://freedomhouse.org/article/ethiopia-restoring-peace-and-democratic-reforms>.

²⁶¹ See Walleign Shemsedin, *Peaceful Transition to Democracy in Ethiopia: Why is It So Enigmatic?*, ADDIS STANDARD (Aug. 26, 2020), <https://addisstandard.com/op-ed-peaceful-transition-to-democracy-in-ethiopia-why-is-it-so-enigmatic/>; see also Badwaza, *supra* note 260.

²⁶² Nizar Manek, *Abiy Ahmed's Reforms Have Unleashed Forces He Can No Longer Control*, FOREIGN POLY (July 4, 2019, 11:13 AM), <https://foreignpolicy.com/2019/07/04/abiy-ahmeds-reforms-have-unleashed-forces-he-can-no-longer-control-ethiopia-amhara-asaminew-adp-adfm/>.

²⁶³ See *id.* (explaining the EPRDF’s strategy to appease the “hard-liners” within the Amhara Democratic Party).

²⁶⁴ See Yohannes Y. Gedamu, *Understanding Ethiopia’s Survivalist EPRDF Coalition and Recent Political Changes*, 12 INT. J. ETH. STUD. 97, 106–07 (2018) (explaining how the

intercommunal violence and interparty rivalry to dominate the transitional political scene.²⁶⁵ Thus, contrary to the initial lofty aims, the transitional moment unleashed a “bitter power struggle” within in the coalition and threatened the survival of coalition and constituent units.²⁶⁶ This was further exacerbated by the invited return of contending armed ethnic rebel groups without prior appropriate steps.²⁶⁷ The important measures of disarmament, demobilization, and reintegration of the regular and armed forces is “perhaps the single most important precondition for post-war stability . . . and for more ambitious attempts to facilitate the society’s transition from conflict to normalcy and development.”²⁶⁸ Nevertheless, in most cases of transition, the integration of armed groups has materialized following peace accords or agreements arrived prior to integration.²⁶⁹ Contrary to the above acceptable steps, the massive influx of armed groups who lived in exile in some neighboring countries, such as Eritrea, took place in the absence of clear and carefully crafted programs, including disarmament.²⁷⁰ The result was chaos as they started to operate and compete in different constituencies rather than working in alliance with the government. To make it worse, the period was additionally marked by high-profile assassinations, including the president of the Amhara regional government and the Chief of Staff of National Armed Forces.²⁷¹ The period, therefore, challenged the regime and its stability to the core, and significantly shaped the priority of the regime.²⁷² Therefore, it spurred fear that given its ethnolinguistic political arrangement, Ethiopia may face the fate of disintegration, like former the Yugoslavia, since times of liberalization turnout to be explosive.²⁷³ This explosive period prompted the International Crisis Group’s July 4, 2019

TLPF split after a destructive war over territory that lasted between 1998 and 2000, but the party’s ruling elite later consolidated into the newly formed EPRDF).

²⁶⁵ See *id.* at 113.

²⁶⁶ Manek, *supra* note 262.

²⁶⁷ See Gedamu, *supra* note 264, at 98–99.

²⁶⁸ Mats Berdal & David H. Ucko, *Introduction: The Political Reintegration of Armed Groups After War*, in *REINTEGRATING ARMED GROUPS AFTER CONFLICT: POLITICS, VIOLENCE AND TRANSITION* 1, 2 (Mats Berdal & David H. Ucko eds., 2009).

²⁶⁹ Suzanne Ghais, *Consequences of Excluding Armed Groups from Peace Negotiations: Chad and the Philippines*, 24 *INT. NEGOT.* 61, 62 (2019).

²⁷⁰ See Ayenat Mersie et al., *Dual Agenda: In Ethiopia’s War, Eritrea’s Army Exacted Deadly Vengeance on Old Foes*, *REUTERS* (Nov. 1, 2021, 11:00 AM), <https://www.reuters.com/investigates/special-report/ethiopia-conflict-eritrea/>.

²⁷¹ See Manek, *supra* note 262.

²⁷² See Mersie et al., *supra* note 270 (suggesting that the conflict between Tigray and Ethiopia’s central government began when roughly 20,000 Eritrean refugees were living in two refugee camps in Ethiopia’s Tigray province).

²⁷³ Florian Bieber & Wondemagegn T. Goshu, *Don’t Let Ethiopia Become the Next Yugoslavia*, *FOREIGN POLY* (Jan. 15, 2019, 6:25 AM), <https://foreignpolicy.com/2019/01/15/dont-let-ethiopia-become-the-next-yugoslavia-abiy-ahmed-balkans-milosevic-ethnic-conflict-federalism/>.

report, which warned that while Abiy's role in laying foundations for political reforms has been laudable, "his immediate priority must be restoring security."²⁷⁴

Thus, the quest for accountability, though attempted in a 'hit-and-run' style, seems to have been sacrificed because of other equally important, but countervailing, circumstances: those of peace and national integrity imperatives that are at stake. As such, in the situation of continued communal violence and wide-ranging instability, "[a]chieving stability and security may be seen as more pressing needs in such [highly instable] situations."²⁷⁵ This makes it imperative that the response to human rights abuses may draw on international norms and inspirations, but it is shaped by local contexts and also requires localized solutions.²⁷⁶ In this kind of situation, there exists a justified ground to give priority to ensure peace and coexistence among diverse peoples in the polity and to ensure the survival of the state before embarking on justice measures or re-establishing the rule of law.²⁷⁷ Unlike established democracies, no dependable democratic institutions exist in Ethiopia. And according to one commentator, "In no other time than the present is our future together brutally questioned . . .".²⁷⁸ This statement tells much about deep desperation.

Restorative measures, such reconciliation, were hoped to help mend those vulnerabilities.²⁷⁹ Generally, political reconciliation has a good reputation, especially in transitional justice, as it facilitates transitional processes and supposedly helps heal the wounds of victims and social fractures which took place during atrocities.²⁸⁰ In this way, Rudolf Schussler puts it, "political reconciliation seems to require perpetrators and victims to engage in moral compromise which help[s] them to live together in peace and standoffish cooperation."²⁸¹

On a broader level, Ethiopia also seriously lacked international support in its transitional justice process, whether such process is officially admitted or not.²⁸² Conventionally, international actors employ both coercive and soft diplomatic pressures on States to ensure compliance

²⁷⁴ INT'L CRISIS GRP., TIME FOR ETHIOPIA TO BARGAIN WITH SIDAMA OVER STATEHOOD 11 (2019).

²⁷⁵ Hansen, *supra* note 97, at 115.

²⁷⁶ See Legide, *supra* note 37, at 6.

²⁷⁷ *Id.* at 20.

²⁷⁸ Belachew Mekuria, *Saving Ethiopia from Its Enigmatic Present*, ADDIS STANDARD (Oct. 21, 2019), <http://addisstandard.com/oped-saving-ethiopia-from-its-enigmatic-present/>.

²⁷⁹ See Legide, *supra* note 37, at 2, 6, 12, 19.

²⁸⁰ Rudolf Schüssler, *Reconciliation, Morality and Moral Compromise*, in NEGOTIATING RECONCILIATION IN PEACEMAKING, *supra* note 44.

²⁸¹ *Id.* at 48.

²⁸² See Legide, *supra* note 37, at 21.

with international human rights norms.²⁸³ In the words of one author, despite the large-scale human rights violations which occurred during the TPLF/EPRDF rule, the “[I]nternational [C]ommunity[, including the United States,] has . . . maintained a pointed silence about the TPLF since Abiy took power.”²⁸⁴ The International Community has also been accused by rights groups of being a keen supporter of the past repressive State, in the name of development and stability²⁸⁵ and their involvement in the past rule, according to one academic, is “negative.”²⁸⁶ Moreover, Ethiopia’s transitional justice process acutely lacks the involvement of domestic civil society coalitions, which Jelena Subotić calls justice “true believers,”²⁸⁷ or its views are not well articulated.

On top of those contestations, justice and political measures were understood diversely, and alternatives are proposed by some and fiercely resisted by others. On the parallel, as noted, there has been a widespread resentment on the part of Tigrayan politicians and the ethnic constituency after the 2018 reform.²⁸⁸ Their contested interpretation of everyday political processes invited a fierce opposition and resultant powerful resistance.²⁸⁹ According to news reports, Abiy’s reform measures “threaten powerful interests among the old guard.”²⁹⁰ High ranking Tigrayan elites vocally interpreted the process as a political purge, and they believed that despite their positive contributions, the federal government “has made them scapegoats for all of [the] Ethiopia[n] problems.”²⁹¹ The justice process and related measures were therefore interpreted as a one-sided campaign of prosecution against leading Tigrayans.²⁹² In this situation, pushing the agenda of ensuring accountability to the extreme point was feared to provoke fierce opposition, which unfortunately happened later.

²⁸³ See Sonia Cardenas, *Norm Collision: Explaining the Effects of International Human Rights Pressure on State Behavior*, 6 INT. STUD. REV. 213, 218, 222 (2004).

²⁸⁴ Bronwyn Bruton, *Calls for Negotiation Are Driving Ethiopia Deeper into War*, AFRICA SOURCE (Nov. 13, 2020), <https://www.atlanticcouncil.org/blogs/africasource/calls-for-negotiation-driving-ethiopia-deeper-into-war/>.

²⁸⁵ See *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, HUM. RTS. WATCH (Oct. 19, 2010), <https://www.hrw.org/report/2010/10/19/development-without-freedom/how-aid-underwrites-repression-ethiopia>.

²⁸⁶ See Abbink, *supra* note 223.

²⁸⁷ JELENA SUBOTIĆ, HIJACKED JUSTICE: DEALING WITH THE PAST IN THE BALKANS 12, 16 (2009).

²⁸⁸ See Legide, *supra* note 37, at 14.

²⁸⁹ See *Ethiopia’s Tigray War: The Short, Medium and Long Story*, BBC NEWS (June 29, 2021), <https://www.bbc.com/news/world-africa-54964378>.

²⁹⁰ Legide, *supra* note 37, at 19.

²⁹¹ *Voices Critical of PM Abiy Persists in Ethiopia’s Tigray Region*, AFRICANEWS (July 10, 2019), <https://www.africanews.com/2019/07/10/voices-critical-of-pm-abiy-persists-in-ethiopia-tigray-region/>.

²⁹² See INT’L CRISIS GRP., MANAGING ETHIOPIA’S UNSETTLED TRANSITION 18 (2019).

VI. THE ESTABLISHMENT OF THE ETHIOPIAN RECONCILIATION COMMISSION

Since the 1980s and following the “waves” of democratization in Latin America and Africa, there has been an increasing focus on the institutionally addressing the past to create fortune futures.²⁹³ More often than not, countries adopt different families of transitional justice sequentially or together.²⁹⁴ The persistence of unresolved historical injustices and conflicts necessitates the demand for the establishment of a certain form of Truth and Reconciliation Commissions throughout the world.²⁹⁵ The wider work of Truth and Reconciliation Commissions typically results in a well-founded public work to “make it part of the permanent, unassailable public record.”²⁹⁶ This is because transitional justice is different from judicial legal records and its narratives which are not to be abided by rules of criminal law, criminal procedure, and evidence.²⁹⁷ The fact that TRCs do not abide by these rules “allows for a broader perspective on the pattern and causes of “violence.”²⁹⁸ Generally, political reconciliation has a good reputation, especially in transitional justice, as it facilitates transition processes and supposedly helps heal the wounds of victims and social fractures which took place during atrocities.²⁹⁹ As previously noted, political reconciliation represents the “comprehensive view of transitional justice.”³⁰⁰

In recent years, Ethiopia is experiencing a highly precarious political situation and is in a deeply divided political state. The deep and controversial scars from past evils and lack of political settlement amongst the inter-elites appear to necessitate restorative justice endeavors through a Truth and Reconciliation Commission to address past wrongs and ensure societal stability in Ethiopia. Given the above discussed predicaments, it is argued that there is an “urgent and unequivocal need for reconciliation” and to come to terms with a brutal past.³⁰¹ How that can be achieved remains a serious challenge. Solomon Dersso suggests, for instance, that the Ethiopian transitional justice process should take into account such factors including: (1) the type of

²⁹³ Nanci Adler, *Introduction: On History, Historians, and Transitional Justice*, in UNDERSTANDING THE AGE OF TRANSITIONAL JUSTICE: CRIMES, COURTS, COMMISSIONS, AND CHRONICLING, *supra* note 117.

²⁹⁴ *See id.*

²⁹⁵ Ibhawoh, *supra* note 110.

²⁹⁶ *Id.*

²⁹⁷ Hirsch et al., *supra* note 136, at 387.

²⁹⁸ *Id.*

²⁹⁹ Rudolf Schüssler, *Reconciliation, Morality and Moral Compromise*, in NEGOTIATING RECONCILIATION IN PEACEMAKING, *supra* note 44.

³⁰⁰ Monroy-Santander, *supra* note 96, at 221.

³⁰¹ Dawit Yohannes & Fana Gebresenbet, *Dealing with a Difficult Past: Time to Revitalise the Ethiopian Reconciliation Commission?*, 39 E. AFR. REP. 1, 3 (2021).

injustice to be addressed, (2) the temporal scope to be subjected to transitional justice measures, and (3) consideration of various approaches and how to determine the balance between them, among others.³⁰²

As a positive note, the post-2018 period is perhaps the only significant political period in Ethiopia's recent history in which political reconciliation has been officially sought and provided with legal and institutional arrangements. Previously in the post-1991 period, when the leaders of the transitional government of Ethiopia were asked about the then Transitional Government's approach, then leader, Meles Zenawi said, "[w]e [] didn't think of a [T]ruth and [R]econciliation [C]ommission" adding that doing so would have sent a bad signal to the perpetrators and the wider Ethiopian society.³⁰³ In the subsequent years as well, the EPRDF regime consistently rebuked the call for national reconciliation by simply saying it that it was the shortest means of satisfying envy for political power.³⁰⁴ The spontaneous demise of the EPRDF's centralized party apparatus has brought with it both optimism towards post-authoritarian democratization,³⁰⁵ and at the same time, has cultivated a serious fear about the fate of the country due to continued violence and civil war.³⁰⁶ As noted elsewhere in this Article, until the establishment of the Reconciliation Commission, a range of competing measures were attempted, some of which ruined the reconciliation spirit in Ethiopia.

In this contested political climate, the most noteworthy transitional justice measure in Ethiopia came with the establishment of National Reconciliation Commission eight months after the new leadership took office.³⁰⁷ The Commission was established by Proclamation No. 1102 /2018.³⁰⁸ The Commission was established with the stated objective of identifying the root causes of past conflicts, investigating human rights violations, conducting hearings, and contributing to lasting peace and reconciliation.³⁰⁹ According to the Preamble of the Proclamation, the Commission is officially viewed as a "[f]ree and independent institution that inquire[s] and disclose[s] the truth of the sources[,] causes[,] and extent of conflicts and that takes appropriate measures and initiate[s] recommendation[s] that enable . . . lasting peace and . . . prevent the

³⁰² Solomon A. Dersso, *Pursuing Transitional Justice and Reconciliation in Ethiopia's Hybrid Transition*, ADDIS STANDARD (Dec. 14, 2018), <http://addisstandard.com/oped-pursuing-transitional-justice-and-reconciliation-in-ethiopia-hybrid-transition/>.

³⁰³ Kjetil Tronvoll et al., *The Context of Transitional Justice in Ethiopia*, in THE ETHIOPIAN RED TERROR TRIALS 1, 12–13 (Kjetil Tronvoll et al. eds., 2009).

³⁰⁴ See *id.* at 13; INT'L CRISIS GRP., *supra* note 292, at 7.

³⁰⁵ See INT'L CRISIS GRP., *supra* note 292, at i.

³⁰⁶ See *id.* at ii.

³⁰⁷ See *id.* at i, 26.

³⁰⁸ *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, art. 3, § 1.

³⁰⁹ *Id.* at para. 1–4.

future occurrence of . . . conflict.”³¹⁰ Despite many odds, today, the Reconciliation Commission, which was replaced by a recently introduced National Dialogue Commission, stands out as Ethiopia’s preferred transitional justice mechanisms through which the nation has sought to reckon with its contested historical past and transform itself from its deadly and violent present to a peaceful future.³¹¹ Unlike some other TRCs that came only after pressure by the United Nations or the wider International Community, the Ethiopian Commission came after Ethiopia’s own precarious search for domestic policy preference.³¹² In the following Section, this Article will attempt to assess the legitimacy, capacity, and limits of the Commission in light of some internationally acceptable standards.

VII. ON THE LEGITIMACY OF THE ETHIOPIAN RECONCILIATION COMMISSION

As noted, Truth and Reconciliation Commissions, being independent and non-judicial bodies, play a significant role in efforts to “restore the rule of law in post-authoritarian and post-conflict societies.”³¹³ While many TRCs have been established over the years, the achievements and legitimacy of all or some of them remains debatable.³¹⁴

The legitimacy of such TRCs attracts considerable attention because of their vital influence on a particular matter and because they wield important authority on the issues pertaining to a given society during challenging times.³¹⁵ The concept of legitimacy has been understood in different ways. Sometimes, it is presented and understood interchangeability with legality, and according to Bodansky, the Latin root of the term legitimacy meant “lawful.”³¹⁶ Legitimacy is also defined in the Oxford Dictionary as “[c]onformity to the law, to rules, or to some recognized principle.”³¹⁷ Bodansky maintains, however, that from the international law perspective, legitimacy is something that is a “much broader concept than legality” and “the criteria of legitimacy and legality

³¹⁰ *Id.* at para. 4.

³¹¹ See Hakeem O. Yusuf, *Truth Commissions*, in *TRANSITIONAL JUSTICE: THEORIES, MECHANISMS AND DEBATES* 95, 95 (Hakeem O. Yusuf & Hugo van der Merwe eds., 2022).

³¹² See Tronvoll et al., *supra* note 303, at 5–6 (describing the extensive, though minimally supported, arrests made by the Derg regime close to the government turnover).

³¹³ Yusuf, *supra* note 311.

³¹⁴ See *id.* at 95, 104, 116–18 (explaining that the findings of TRCs are often ignored by the controlling governments).

³¹⁵ See *id.* at 120.

³¹⁶ Daniel Bodansky, *The Concept of Legitimacy in International Law*, in *LEGITIMACY IN INTERNATIONAL LAW* 309, 311 (Rüdiger Wolfrum & Volker Röben eds., 2008).

³¹⁷ *Legitimacy*, OXFORD ENGLISH DICTIONARY (2023).

are not exactly the same.”³¹⁸ From the Metacoordination view of institutional legitimacy, Allen Buchanan holds that,

legitimacy assessments are part of a social practice that aims at achieving consensus on whether an institution is worthy of our moral reason-based support—support that does not depend solely on the fear of coercion or on a perfect fit between our own interests and what the institution demands of us.³¹⁹

Allen Buchanan and Robert Keohane, moreover, argue that the meaning of legitimacy of a certain institution has both normative, or legal, and sociological dimensions.³²⁰ From the normative point of view, an institution is legitimate when it has asserted that it has “the right to rule” through promulgation of rules and a subsequent obligation to comply with those rules with accompanying costs in the case of non-compliance.³²¹ From the sociological viewpoint, on the other hand, an institution is said to be legitimate when “it is widely believed to have the right to rule.”³²² Broadly, the legitimacy of a given institution can be influenced by the political reality.

Specifically, according to the ICTJ, the perception of the legitimacy of Truth Commissions is very important to successfully carry out its mandates.³²³ Legitimacy is important to build the public confidence in that the institution is genuine. This again helps to engage diverse actors and secure their cooperation such as victims, witnesses, and the public to participate widely in the provision of information and the facilitation of the Commission’s investigative and truth-finding processes. Moreover, legitimacy and public confidence can “protect the [C]ommission from political opponents invested in maintaining silence or denial about past abuse.”³²⁴

Angela Nichols also provides a theoretical lens through which to examine the legitimacy of TRCs.³²⁵ She argues that since TRCs are *ad hoc* institutions that operate in post-conflict environments, they are better positioned to shape the transition process and to create an optimum space where former adversaries and new actors can negotiate as to how to move

³¹⁸ Bodansky, *supra* note 316, at 311.

³¹⁹ Allen Buchanan, *Institutional Legitimacy*, in 4 OXFORD STUDIES IN POLITICAL PHILOSOPHY 53, 53 (David Sobel et al. eds., 2018) (ebook).

³²⁰ Allen Buchanan & Robert O Keohane, *The Legitimacy of Global Governance Institutions*, in LEGITIMACY IN INTERNATIONAL LAW, *supra* note 316, at 25.

³²¹ *Id.*

³²² *Id.*

³²³ AMNESTY COMM’N OF THE MINISTRY OF JUST. OF BRAZ. ET AL., *supra* note 135, at 15.

³²⁴ *Id.*

³²⁵ ANGELA D. NICHOLS, IMPACT, LEGITIMACY, AND LIMITATIONS OF TRUTH COMMISSIONS 25 (2019).

forward to a peaceful future.³²⁶ To play this important role, TRCs should display a certain degree of legitimacy which can be reflected by possession of certain “institutional” features.³²⁷ Furthermore, according to Nichols, these are the “characteristics that send important political signals to the [S]tate and broader society alike.”³²⁸ Thus, according to Nichols, TRCs are said to command legitimacy if they signal the following institutional characteristics: (1) “some degree of independence” from both predecessor regime officials and new regimes; (2) fairness in its undertakings, practices and performances; and (3) transparency in its practices, including during investigation of the facts and cases.³²⁹ Accordingly, if TRCs possess these qualities, it can be taken that they enjoy “social and political legitimacy” and can impact a given society during its operation, investigations, and ultimately by its findings.³³⁰ Moreover, it is also imperative that the contribution of those institutions should be that the States adopting them more likely respect human rights and that they experience low levels of violence.³³¹ According to the ICTJ, moreover, the following yardsticks can be used as a standard to ensure the public perception about the legitimacy of TRCs: (1) the presence of limited, but direct, public participation, or the consultative approach; (2) political and operational independence of the Commission; (3) financial and operational autonomy; and (4) mechanisms and criteria of the selection of Commissioners, among others.³³² The African Union Transitional Justice Policy (“AUTJ” or “AUTJ Policy”) similarly requires that TRCs and its Commissioners should be independent, impartial, and that the selection process of its Commissioners “should [also] be open and transparent.”³³³ From the above, there appears to be a consensus about some of the yardsticks to be used in assessing its legitimacy. Thus, in the following Section, this Article will employ the AU Transition Justice Policy’s standards to assess the legitimacy of the Ethiopian Reconciliation Commission.

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.* at 26.

³³⁰ *Id.*

³³¹ See generally NICHOLS, *supra* note 325, at 28.

³³² AMNESTY COMM’N OF THE MINISTRY OF JUST. OF BRAZ. ET AL., *supra* note 135, at 15–17.

³³³ African Union, Transitional Justice Policy, Feb. 2019, 11 (available online at https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf).

A. Clearly Defined Mandate Concerning Material-Temporal Jurisdiction

Careful design of the mandate of a TRC is an important step in the process. As part of an official government measure, the mandate of a given TRC is determined by legislation or through peace settlements with non-state actors.³³⁴ In the context of an abusive historical past and lack of clear democratic transition, the transitional justice measures and political reconciliation endeavors in Ethiopia require an investigation of the nation's "multi-layered past."³³⁵ And, it should deal with the "multiplicities of violence."³³⁶ It is amidst controversies regarding those matters that Ethiopia's Reconciliation Commission was established. The reasons for the establishment of Commission are provided under the Preamble of Proclamation No. 1102/2018 which lays down broad visions and policy priorities.³³⁷ Accordingly, the Preamble provide that the Commission has the following mandates:

[(1)] to reconcile based on truth and justice the disagreement that developed among peoples of Ethiopia for years because of different societal and political conflict.

[(2)] to identify and ascertain the nature, cause[,] and dimension of the repeated gross violation of human rights so as to fully respect and implement basic human rights recognized under the [FDRE] constitution, international[,] and continental agreements

[(3)] to] provid[e] victims of gross human rights abuses in different time[s] and historical event[s] with a forum to be heard and perpetrators to disclose and confess their actions as a way of reconciliation and to achieve a lasting peace.³³⁸

In the context of the Latin American TRCs, Popkin and Roht-Arriaza describe four main goals for Truth Commissions: (1) TRCs help create an authoritative record of what happened in the past; (2) TRCs provide a forum for the victims to tell their stories of abuse and provides them with some form of redress, or reparation; (3) TRCs can recommend different measures such as legislative, structural, and other reforms to ensure nonrecurrence of past abuses in the future; and (3) TRCs can help by authoritatively establishing who the perpetrators were and the level of

³³⁴ See Dersso, *supra* note 251.

³³⁵ See *id.*

³³⁶ *Id.*

³³⁷ See *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, para. 1–4.

³³⁸ *Id.* para. 1–3.

their involvement and thus provide mechanisms to ensure their accountability.³³⁹

As noted elsewhere in this Article, some TRCs have expansive and complex mandates. According to the International Center for Transitional Justice, drafting the mandate of a TRC is a critically important step in the truth and reconciliation process.³⁴⁰ For instance,

[a] mandate that is incomplete, obscure, or contradictory to fundamental human rights standards can cripple a [T]ruth [C]ommission in many ways, forcing it to waste valuable time and resources in defining the parameters of its task, causing critical contradictions within the [C]ommission, and diminishing the capacity of key stakeholders to cooperate effectively with the [C]ommission.³⁴¹

As such, it should be “undertaken in a serious, well-thought-out manner” and should conform to international human rights norms.³⁴² Though much depends on the domestic context of the State, TRC mandates also need to incorporate certain important elements to underline that the [C]ommission is “fair, effective, and objective.”³⁴³ Conventionally, determining the mandate of the Commission should address four important focuses of the TRC investigation such as (1) what happened, (2) who is responsible for those acts, (3) what time span is relevant for investigations, and (4) territorial jurisdiction as to what territory is relevant, among others.³⁴⁴ From them, material and temporal jurisdictions are crucial in TRC work. However, as this Article discusses below, closer scrutiny shows that there are serious gaps in the Ethiopian Reconciliation Establishment Proclamation with respect to demarcating material-temporal jurisdiction.

1. Difficulty of Determining the Material Mandate of the Ethiopian Commission

Material jurisdiction mostly refers to the subject-matter to be dealt with by the Commission.³⁴⁵ Material jurisdiction is about the acts, crimes in the given conflicts, or historical experiences as happened in a given

³³⁹ See Popkin & Roht-Arriaza, *supra* note 125, at 93, 99–102, 105.

³⁴⁰ EDUARDO GONZÁLEZ, DRAFTING A TRUTH COMMISSION MANDATE: A PRACTICAL TOOL 1 (2013).

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.* at 3.

³⁴⁴ *Id.* at 9–11.

³⁴⁵ See *id.* at 9.

society which can also be broad or narrow.³⁴⁶ In the same vein, it has also been suggested that the objective part of a TRC mandate should be drafted in such a way as to at least establish the truth about the crimes, events, and persons involved; explain the causes of abuses; and provide historical explanations which provide descriptive fact-finding through exhaustive reconstruction of events as well as explanatory accounts about historical, institutional, cultural, and other contextual explanations.³⁴⁷ The second important objective of the TRC objective concerns “protecting, recognizing[,] and restoring the rights of victims.” This can be achieved through a mechanism of dignifying the victims and providing reparation and redress.³⁴⁸

As noted, the Preamble of the Proclamation is the place where one can trace the overall goals of the legal instrument which establishes the TRC, understand the intention of the legislature, and get guidance for interpretation.³⁴⁹ However, the Preamble of the Ethiopian TRC is poorly drafted and imprudently crafted. From the wording of the paragraphs in the Preamble, one can see points like redress for “victims of gross human rights abuses in *different time[s]* and *historical event[s]*.”³⁵⁰ As such, lack of clarity on the types of conflicts, the time of their occurrence, and whether it also concerns the most recent conflicts or only older conflicts affects its operational effectiveness.

a. ON TRUTH FINDING

As noted elsewhere, truth-finding is the most important task of TRCs in general. While this goal figures prominently in other successful TRC cases such as in South Africa, it is not clearly incorporated in the material mandate of the Ethiopian Reconciliation Commission. The objectives of the Ethiopian Reconciliation Commission are stated under Article 5 of the establishing law which states, to “maintain peace[,] justice, national unity and consensus[,] and also Reconciliation among Ethiopian Peoples.”³⁵¹ Its power and duties are further provided under Article 6 of the same law.³⁵² Moreover, contrary to the experiences of other notable TRCs, the Ethiopian Reconciliation Commission has a less visible role when it comes to the truth-finding process. It is conventional that the TRC needs to make as much of an effort as possible to elicit different kinds of truths: factual,

³⁴⁶ GONZÁLEZ, *supra* note 340, at 9.

³⁴⁷ *Id.* at 5–6.

³⁴⁸ *Id.* at 6.

³⁴⁹ AMNESTY COMM’N OF THE MINISTRY OF JUST. OF BRAZ. ET AL., *supra* note 135, at 23.

³⁵⁰ *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, para. 3 (emphasis added).

³⁵¹ *Id.* art. 5.

³⁵² *Id.* art. 6.

social, forensic, and personal.³⁵³ Thus, to be successful, though divergently understood, some argue that the Commission should find ways to articulate “various, and perhaps competing, truths about the past.”³⁵⁴

b. ON GROSS HUMAN RIGHTS VIOLATIONS

Furthermore, what constitutes “*gross violations of human rights*” is not provided in the Proclamation.³⁵⁵ Many decisions of the international judicial bodies also fail to establish what constitutes massive or widespread violations of human rights and they also use inconsistent language when referring to the issue of “gross violations” of human rights.³⁵⁶ The definition is not contained in a binding international treaty, but it can be contained in a soft declaration. According to the World Conference on Human Rights, gross and systematic violation of human rights is defined as

torture and cruel, inhuman[e] and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.³⁵⁷

Moreover, according to the United Nations Special Rapporteur, “serious violations of human rights and humanitarian law [include] brutal atrocities such as genocide, crimes against humanity, and war crimes” in which the State has a duty under international human rights law to investigate and prosecute.³⁵⁸ However, from the mandate of the Ethiopian Commission, it is not clear whether it concerns violation of only civil and political rights or if other economic rights are also conceived.³⁵⁹ The

³⁵³ See Bert Ingelaere, *Assembling Styles of Truth in Rwanda’s Gacaca Process*, 2 J. HUMANITARIAN AFFS. 22, 22 (2020).

³⁵⁴ Solomon Ayele Dersso, *supra* note 251.

³⁵⁵ See *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, art. 2 (emphasis added).

³⁵⁶ Roger-Claude Liwanga, *The Meaning of “Gross Violation” of Human Rights: A Focus on International Tribunals’ Decisions Over the DRC Conflicts*, 44 DENVER J. INT’L L. & POL’Y 67, 68–70 (2015).

³⁵⁷ World Conference on Human Rights, *Vienna Declaration and Programme of Action*, ¶ 30, U.N. Doc. A/CONF.157/23 (July 12, 1993).

³⁵⁸ *Accountability for Gross Violations is an Obligation—U.N. Expert*, U.N. OFF. HIGH COMM’R FOR HUM. RTS. (Oct. 12, 2021), <https://www.ohchr.org/en/stories/2021/10/accountability-gross-violations-obligation-un-expert>.

³⁵⁹ See *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46,

conventional understanding of transitional justice focuses mostly on the violation of civil and political rights by using the language of human rights.³⁶⁰ Critics therefore argue that while violation of civil and economic rights is at the forefront of TJ discussions, “issues of equally devastating economic and social justice have received little attention” and, thus, the mandate of the Ethiopian Commission should also be viewed as pertaining to what Dustin Sharp calls economic violence.³⁶¹ Moreover, it is becoming increasingly common that mandates of recent TRCs “explicitly mention violations committed against women, children, and other vulnerable groups in order to prevent them from being ignored.”³⁶² Furthermore, the TRC task in Ethiopia shall go beyond narrowly focusing on individual rights and should be construed to encompass the violation of collective rights or identity rights. This is the interpretation of its mandate as indicated by a report of the United Nations Committee on the Elimination of Racial Discrimination.³⁶³ But this later view can also be questioned given its expansive claims. Moreover, since transitional justice is invoked in the context of the violation of more than just ordinary human rights laws,³⁶⁴ according to the ICTJ, the violation needs to be so serious and widespread that it may not be dealt with by the regular judiciary mechanisms.³⁶⁵

c. ON RECONCILIATION

As noted, reconciliation is a prominent objective in many TRCs, but not all of them contain reconciliation as their primary objective. For instance, the mandates of the El Salvadorian and Guatemalan Commissions of 1992 and 1994, respectively, had a very narrow scope which stated only that the “fact-finding process [was] aimed at the

para. 2–3.

³⁶⁰ See Tine Destrooper, *Neglecting Social and Economic Rights Violations in Transitional Justice: Long-Term Effects on Accountability. Empirical Findings from the Extraordinary Chambers in the Courts of Cambodia*, 37 J. CURRENT SE. ASIAN AFFS. 95, 98 (2018).

³⁶¹ Dustin N. Sharp, *Addressing Economic Violence in Times of Transition: Towards a Positive-Peace Paradigm for Transitional Justice*, 35 FORDHAM INT’L L.J. 780, 813 (2012); see also Dustin N. Sharp, *Introduction: Addressing Economic Violence in Times of Transition*, in JUSTICE AND ECONOMIC VIOLENCE IN TRANSITION 1, 1-3 (Dustin N. Sharp ed., 2014).

³⁶² GONZÁLEZ, *supra* note 340, at 9.

³⁶³ See Kjetil Tronvoll, *Human Rights Violations in Federal Ethiopia: When Ethnic Identity Is a Political Stigma*, 15 INT’L J. MINORITY & GRP. RTS. 49, 50 (2008).

³⁶⁴ Jens Iverson, *Contrasting the Normative and Historical Foundations of Transitional Justice and Jus Post Bellum: Outlining the Matrix of Definitions in Comparative Perspective*, in JUS POST BELLUM: MAPPING THE NORMATIVE FOUNDATIONS 80, 89–90 (Casten Stahn et al. eds., 2014).

³⁶⁵ *What is Transitional Justice*, INT’L CTR. FOR TRANSITIONAL JUST., <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> (last visited Feb. 8, 2023).

disclosure of previously unknown or suppressed information.”³⁶⁶ Thus, reconciliation was by no means the main goal of these Commissions as reflected by their mandates and reporting. Moreover, some would emphasize its truth-finding role over reconciliation processes. According to Jerome Verdier, the chairman of the Liberian TRC,

[t]he focus of the TRC will be on the truth more than on reconciliation. Forgiveness is a very personal individual process. The Commission cannot compel anyone to forgive. What Liberia needs to focus on is finding a way to live together as one people in one country. The TRC can help us to live together—it is a step in the right direction.³⁶⁷

By this, Chairman Verdier is referring to the “thin” concept of reconciliation in such a way as to enable peaceful coexistence of the people and previous enemies in one polity. Thus, it does not represent a thicker understanding of TRC roles such as reconciliation and healing.

The Proclamation that established the Ethiopian TRC provides, rather, a thicker definition for reconciliation in Article 2(3).³⁶⁸ Accordingly, “[r]econciliation’ means establishing [the] values of forgiveness for the past, lasting love, solidarity[,] and mutual understanding by identifying reasons of conflict, animosity that . . . occurred due to conflicts, misapprehension, developed disagreement[,] and revenge.”³⁶⁹ While this definition may be helpful in providing some entry points, it is ambiguous and incorporates concepts which are not defined in the law. For instance, questions as to what constitutes “forgiveness,” “lasting love,” and “mutual understanding” remain unclear—at least for the purpose of legal understanding. While it also provides for identifying reasons for conflicts,³⁷⁰ the Proclamation does not provide any clues about what types of conflicts it is purportedly pertains to: interethnic, intercommunal, or insurgency wars against the center or those conducted during the older nation-building process. The Ethiopian Commission cannot address this multitude of historically rooted conflicts within its short and constrained mandate, and thus, the law should have clearly stated the key focus of the Commission which can be achieved realistically.

³⁶⁶ Hirsch et al., *supra* note 136, at 400 n.1.

³⁶⁷ AMNESTY INT’L, *supra* note 132, at 7.

³⁶⁸ See *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, art. 2, § 3.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

2. Challenges Regarding the Temporal Jurisdiction of the Commission

The other gap in the Ethiopian TRC concerns the temporal span with which it conducts its truth-finding investigations. The enabling law does not precisely determine the beginning and the ending period of investigation for the purpose of producing its expected authoritative historical record.³⁷¹ When one looks at the statutes which establish other TRCs in post-conflict societies, the temporal jurisdiction of the mandates therein are clearly stipulated. For instance, whereas the apartheid abuse and colonization lasted for over 300 years in South Africa,³⁷² the mandate of its famous TRC was limited to a relatively short period—it had a mandate to investigate human rights abuses committed between 1960 and 1994.³⁷³ Similarly, though gross human rights violations have a long history in East Timor,³⁷⁴ the mandate of its TRC in 2002 was only framed to deal with abuses committed during the Indonesian Occupation from 1974 until its departure in 1999.³⁷⁵ A bit differently, the Kenyan TJRC of 2009 also had a mandate to address the human rights violations which were committed as a result of the 2007 electoral violence in the country.³⁷⁶ But its mandate indirectly extended as far back as crimes committed during the colonial period and thus constituted “the most expansive mandate.”³⁷⁷ The mandate of the TRC of Sierra Leone deals with a period from the outbreak of the civil war in 1991 to the signing of the *Lomé Peace Agreement* in July 1999, though it would also inquire into events which took place prior and subsequent to 1991.³⁷⁸

The Ethiopian reconciliation effort should deal with “multiplicities of violence” that may extend into the distant past, and it should consider the violence that was committed in recent decades as well. However, the nature of abuses committed in both the distant past and more recent past are hotly contested. But when one looks at the mandate of the Ethiopian TRC in light of the above challenge, it is poorly drafted and imprudently crafted. It does not clearly specify the temporal span of “the social and political conflicts” it purports to address. From the language of the Preamble, one can see references to redress for “victims of gross human

³⁷¹ See *id.* art. 6, § 4.

³⁷² See *History*, S. AFR. GOV'T, <https://www.gov.za/about-sa/history> (last visited Mar. 14, 2023).

³⁷³ See Yusuf, *supra* note 311, at 106.

³⁷⁴ Jenkins, *supra* note 115, at 234.

³⁷⁵ *Id.*

³⁷⁶ RONALD C. SLYE, THE KENYAN TJRC: AN OUTSIDER'S VIEW FROM THE INSIDE 57–58 (2018).

³⁷⁷ See *id.* at 62 n.29.

³⁷⁸ William A. Schabas, *The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone*, 25 HUM. RTS. Q. 1035, 1036 (2003).

rights abuses in *different time[s]* and *historical event[s]*.”³⁷⁹ As such, one of the critical challenges for the Ethiopian justice measures, which have been attempted through the Reconciliation Commission, is determining what temporal span of the past should be subjected to its mandate. This kind of question emerged in the transitional justice process in the post-Soviet Union era.³⁸⁰ Ethiopia’s past is highly contested, and the modern history of its making is subjected to contradictory interpretations and narratives, which stokes the country’s current upheaval.³⁸¹ Nothing explains it more aptly than the Prime Minister Abiy’s speech at the Meskel Square rally in June 2018: “[I]n the past one hundred years, hatred has reigned over us; has spread its veil over us; self-absorption, greed[,] and conceit have harmed us a great deal.”³⁸² It remains unclear to what extent TJ processes can be extended back to heal those deep-rooted historical wrongs.

In Ethiopia’s case, it has been suggested that important historical episodes would be considered in demarcating temporal jurisdiction of the TRC.³⁸³ This may roughly involve taking stock of ranges of such historically eventful periods including: (1) from the 19th Century violent imperial state building campaign,³⁸⁴ (2) from the 1931-era of modern written constitution,³⁸⁵ (3) from the 1974 Revolution until the demise of the Derg in 1991,³⁸⁶ and (4) from the 1991 change of the Ethiopian Government to present.³⁸⁷ These, according to this author, are the crucial stocks of historical frame of references from which possible reconciliation endeavors should be taken into consideration in Ethiopia. However, in this climate of contestation of the remote past, there remains a divergent understanding of the present and differing aspirations of different groups about the future. Given these, how to specify the mandate of the defunct, or any other future, Reconciliation Commission and ensure its effectiveness may surely remain a daunting task and needs to be addressed with a careful forward-looking approach.

³⁷⁹ *Reconciliation Commission Establishment Proclamation*, *supra* note 308, para. 3 (emphasis added).

³⁸⁰ Lavinia Stan, *Limited Reckoning in the Former Soviet Union: Some Possible Explanations*, in *TRANSITIONAL JUSTICE AND THE FORMER SOVIET UNION: REVIEWING THE PAST, LOOKING TOWARD THE FUTURE* 19, 40 (Cynthia M. Horne & Lavinia Stan eds., 2018).

³⁸¹ See Dersso, *supra* note 334.

³⁸² Abiy’s Inaugural Address, *supra* note 245.

³⁸³ See Tom Bentley, *A Line Under the Past: Performative Temporal Segregation in Transitional Justice*, 20 *J. HUM. RTS.* 598, 600 (2021).

³⁸⁴ Muktar Ismail, *Ethiopian Nation-Building Is Haunted by Its Troubled History*, ETHIOPIA INSIGHT (Jan 22, 2023), <https://www.ethiopia-insight.com/2023/01/22/ethiopian-nation-building-is-haunted-by-its-troubled-history/>.

³⁸⁵ See Tsegaye Beru & Kirk W. Junker, *Constitutional Review and Customary Dispute Resolution by the People in the Ethiopian Legal System*, 43 *N.C. J. INT’L L.* 1, 7 (2018).

³⁸⁶ See Tronvoll, *supra* note 363, at 53.

³⁸⁷ See *id.* at 49.

Generally, in the absence of the determination of temporal jurisdiction of the Reconciliation Commission in the enabling law, two competing views exist in Ethiopia. The first view claims that the mandate of the Commission should extend relatively to the remote historical past.³⁸⁸ On the other hand, others claim that the past should be glossed over and that the temporal mandate should focus more on the episodes of only the relatively recent past.³⁸⁹ According to the first view, establishing TRCs to address atrocities of the remote historical past is becoming common in developed democracies.³⁹⁰ Many western democracies are implementing different transitional justice measures, in the absence of any transition.³⁹¹ This is mainly to reckon with their historic infliction of violence and subjugation of the indigenous or oppressed peoples during colonialism.³⁹² This shows that countries are committed, at least at official level, to address their abusive past despite the case that it happened during the distant past. In this regard, while the above is done, it is important to keep in mind that there is a distinguishing characteristic of the Truth and Reconciliation Commissions from the Parliamentary Commissions of Inquiry. This is due to the fact that the latter tends to focus on single cases or circumstances of a specific event, whereas the former tends to cover relatively longer periods or even decades to “identify historical patterns of violence and systematic violations.”³⁹³ In this line, defining the mandate which extends to the relatively remote historical past may be justified though this is not without serious challenges.

In Ethiopia’s case, it is often held that the past history of the imperial state building process lies at the root of the current crises and ethnic conflicts.³⁹⁴ But this view is also countered by others who maintain positive view about the same past. So, it is also a subject of serious political and academic contestations broadly between “pan-Ethiopian nationalists who spare the past evils” and “ethnic nationalists.”³⁹⁵ The latter want adequate reckoning or at least recognition of their pains in the historical past and call for a new social contract. On the other hand, some would opine, however, that it is important to gloss over history and to forget it

³⁸⁸ See Dersso, *supra* note 334.

³⁸⁹ See Amnesty Int’l et al., *Ethiopia: Extend the Expert Commission’s Mandate*, HUM. RTS. WATCH (Sept. 2, 2022, 12:00 AM), <https://www.hrw.org/news/2022/09/02/ethiopia-extend-expert-commissions-mandate>.

³⁹⁰ See Lawther & Moffett, *supra* note 67.

³⁹¹ See *id.*

³⁹² Australia, USA, Canada, Belgium, among others, established their TRCs and effected official public apology over their colonial legacies and subsequent violence. See *Truth, Reconciliation, and Healing: Toward a Unified Future: Briefing of the Security and Cooperation in Europe*, 116th Cong. 8, 32 (2019).

³⁹³ AMNESTY COMM’N OF THE MINISTRY OF JUST. OF BRAZ. ET AL., *supra* note 135, at 11.

³⁹⁴ Assefa, *supra* note 13, at 95–96.

³⁹⁵ *Id.* at 96, 110–13.

so that Ethiopia can build a peaceful future.³⁹⁶ However, this latter view is also problematic in some respects. TRC authorities, such as Hayner, warn that a nation cannot build a peaceful future based on a “blind deni[al and] forgotten history.”³⁹⁷ To this end, Jovanovic adds,

[h]istory matters. It matters whether we tell the truth about what happened centuries ago, and it matters whether we tell the truth about more recent history. It matters because if we can't, we will never be able to face the present, guaranteeing that our future will be doomed.³⁹⁸

Patricia Campbell further expounds this position in saying, “Reconciliation is impossible if a segment of society wants to remain conveniently ignorant about its past while another segment has never had its suffering acknowledged. . . . To ignore it breeds resentment and has the potential to engender revenge violence.”³⁹⁹ Therefore, the glance at the longer past becomes so important in the sense that the roots of the current crisis may be rooted in the past. For instance, in its final report in 2009, the Liberian TRC found out, among others, that “[t]he conflict in Liberia has its origin in the history and founding of the modern Liberian State.”⁴⁰⁰ Similarly, well-established political historians such as John Markakis argued that the political crisis in Ethiopia is rooted in “the legacy of Ethiopian modern history, inherited from the empire’s authoritarian and repressive past.”⁴⁰¹ In Ethiopia, therefore, while dwelling in the past is dangerous, and agreement on all historical paths may not be attained, recognizing past pain and suffering and arriving at mutual understanding is still important. As one commentator observed, “it should be approached in a way that past truth is not suppressed, lessons learned from [the] past guide present life and shape . . . the future.”⁴⁰²

On the contrary, the second view argues that extending the mandate of the Commission to older historical periods or past centuries would cause huge substantive and technical difficulties to the work of the

³⁹⁶ HAYNER, *supra* note 108, at 5.

³⁹⁷ *Id.*

³⁹⁸ Dieudonne Nsom Kindong Jr., *Reconciliation in Cameroon*, BEYOND INTRACTABILITY (May 14, 2020), <https://www.beyondintractability.org/casestudy/kindong-cameroon>.

³⁹⁹ Patricia J. Campbell, *The Truth and Reconciliation Commission (TRC): Human Rights and State Transitions—The South Africa Model*, 4 AFR. STUD. Q. 41, 49 (2000).

⁴⁰⁰ TRUTH & RECONCILIATION COMM’N OF LIBERIA., FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF LIBERIA (TRC) VOLUME I: FINDINGS AND DETERMINATIONS 9 (2009), <https://reliefweb.int/report/liberia/liberias-trc-presents-final-report>.

⁴⁰¹ See generally JOHN MARKAKIS, ETHIOPIA: THE LAST TWO FRONTIERS 1, 3 (2011).

⁴⁰² Girma Gadisa, *Reconciliation: Underrated Element in the Transitional Justice Process of Ethiopia*, ADDIS FORTUNE (Jan. 16, 2021), <https://addisfortune.news/reconciliation-underrated-element-in-the-transitional-justice-process-of-ethiopia/>.

Commission.⁴⁰³ Moreover, as noted in the preceding sections, arguments can be made that eliciting much historical injustice may open new wounds and exist in tension with the desire for post-conflict stability, which is sometimes in “contradiction with the demands of justice.”⁴⁰⁴ This tension between peace and justice in the field of transitional justice has been explored and debated by scholars, practitioners, and policymakers.⁴⁰⁵ The contestation also arises when the reach of transitional justice is overstretched away from juridical measures and employed into historical narratives. As much attention as is paid to longer periods, so goes the argument, the other possible danger may be that it may become difficult, or impossible, to determine the perpetrators and the victims. That is why scholarship on transitional justice suggests that the investigation by the TRCs in general should extend mostly to the “relatively recent past.”⁴⁰⁶ Thus, the favored view in this Article is to reconcile these competing views and take the positives from each.

Moreover, the Commission is authorized only to conduct investigations on events that took place before it was established.⁴⁰⁷ Thus, it was designed in a way that it takes on a constrained role in resolving the conflicts and violence that erupted after and during its establishment and in the future, which also limits its achievements in ensuring peace in Ethiopia.⁴⁰⁸ Generally, TRCs attempt to create certain historical narratives to apply a temporal categorization to past events by connecting the societal ruptures which took place both in the remote and recent past.⁴⁰⁹ While closing the book on the State’s abusive past is often implored, it is difficult to arrive at “a discernible break from [a] past” that is guilty and at another part that dissociates itself from the past crimes.⁴¹⁰

Furthermore, as far as its mandate is concerned, the enabling law of the Ethiopian Reconciliation Commission does not address some challenging questions. Some of them include: (1) How is it possible to maintain peace or in what ways? (2) How to ensure justice when the

⁴⁰³ See Yusuf, *supra* note 311, at 117.

⁴⁰⁴ Félix Krawatzek, Book Review, 73 EUR.-ASIA STUD. 410, 411 (2021) (reviewing TRANSITIONAL JUSTICE AND THE FORMER SOVIET UNION, REVIEWING THE PAST, LOOKING TOWARD THE FUTURE (Cynthia M. Horne & Lavinia Stan eds., 2019)).

⁴⁰⁵ Louise Mallinder, AMNESTY, HUMAN RIGHTS AND POLITICAL TRANSITIONS: BRIDGING THE PEACE AND JUSTICE DIVIDE 3 (2008); Thomas Obel Hansen, *Transitional Justice: Toward a Differentiated Theory*, 13 OR. REV. INT’L L. 1, 19 (2011).

⁴⁰⁶ Seils, *supra* note 159, at 2.

⁴⁰⁷ See *Reconciliation Commission Establishment Proclamation*, *supra* note 308, para. 3, §§ 2(3), 6(4); see also Dersso, *supra* note 334.

⁴⁰⁸ *Transitional Justice Contribution to Sustaining Peace and Realizing SDG 16 in Ethiopia*, ELIZKA RELIEF FOUND., <https://www.ohchr.org/sites/default/files/2022-01/Elizka-Relief-Foundation.docx> (last visited Mar. 30, 2023).

⁴⁰⁹ Zinaida Miller, *Temporal Governance: The Times of Transitional Justice*, 21 INT’L CRIM. L. REV. 848, 848, 875 (2021).

⁴¹⁰ Bentley, *supra* note 383, at 599.

Commission has no power to summon or subpoena perpetrators or witnesses or when it is not authorized to conduct trials or refer the same to the judicial authorities? (3) How do the declarations ensure such ideals as to ensure justice, reconciliation, and consensus among the Ethiopian public can be achieved within the constrained political, transitional, and economic environment? These and other questions make it evident that the mandate of the Ethiopian Reconciliation Commission was not designed in a thoughtful manner. And they foretell the Commission's failure as its mandate begins with everything and ended up with nothing in the end (as will be discussed in the subsequent section).

B. Public Participation and Consultation in its Establishment: The Design Stage

Public participation has been increasingly understood to be one of the most important ingredients of assessing the legitimacy and success of transitional justice processes in a given country.⁴¹¹ At an operational level, public or community participation “refers to an effort to involve people who have experienced periods of conflict and/or human rights violations, and who are supposed to be the principal beneficiaries of transitional justice strategies, in the design and implementation of those strategies.”⁴¹² According to the United Nations Office of the High Commissioner for Human Rights, “[n]ational consultations are a critical element as successful transitional justice programmes necessitate meaningful public participation, particularly of victims.”⁴¹³ Different mechanisms of transitional justice are in the end political institutions, and these mechanisms, including TRCs, should be formulated based on consultations and political bargaining between different actors who want to maximize their protection.⁴¹⁴ Increasingly, it has also been stressed that public consultation should be undertaken beginning from the early steps in implementing the transitional justice process.⁴¹⁵ As such, public consultation can be equated with local or bottom-up approaches which contrasts with state-driven, top-down, or legalistic approaches in the design and implementation of the proposed transitional justice mechanisms, including TRCs.⁴¹⁶ The famous South African TRC, for instance, “grew out of an elaborate political compromise that rejected the

⁴¹¹ Afr. Union, *supra* note 333, at 5.

⁴¹² USAID, COMMUNITY PARTICIPATION IN TRANSITIONAL JUSTICE: A ROLE FOR PARTICIPATORY RESEARCH 1 (2014).

⁴¹³ U.N. Off. of High Comm'r for Hum. Rts., *Guidance Note on National Human Rights Institutions and Transitional Justice* (Sept. 27, 2008), http://w02.unssc.org/free_resources/UNDP-OHCHRToolkit/pdf/NHRIs_Guidance_Note_TJ_Oct_08.pdf.

⁴¹⁴ See NICHOLS, *supra* note 325, at 2.

⁴¹⁵ Triponel & Pearson, *supra* note 140, at 140.

⁴¹⁶ See *id.* at 131 (suggesting that input from the community can lead to the creation of systems that are fair and respond appropriately to local needs).

outgoing regime's demand for blanket amnesty and no retribution in exchange for a mechanism . . . that could grant amnesty for political acts."⁴¹⁷ Furthermore, in the case of establishment of the South African TRC, its Chairman states,

The Truth and Reconciliation Commission (TRC) was born [out] of a spirit of public participation, as the new [G]overnment solicited the opinions of South Africans and the [I]nternational [C]ommunity regarding the issue of granting amnesty as well as the issue of accountability in respect to past violations and reparations for victims. Civil society, including human rights lawyers, the religious community, and victims, formed a coalition of more than 50 organizations that participated in a public dialogue on the merits of a [T]ruth [C]ommission. This consultative process lasted a year and culminated in the legislation, the Promotion of National Unity and Reconciliation Act 34 of 1995 (the Act), that established the TRC.⁴¹⁸

Similarly, the East Timorese Commission for Reception, Truth, and Reconciliation, which echoes the South African TRC, also emerged in the participatory process with the involvement of NGOs, the Catholic Church, and the Office of the United Nations High Commissioner for Human Rights ("OHCHR") where community consultations were conducted between 2000 and 2001 to discover if there was public support for the Commission.⁴¹⁹ In this particular case, the role and influence of NGOs in shaping the trajectory of the TRC measure became very relevant during the period of lobbying the draft TRC legislation.⁴²⁰ The process generally helps to incorporate the views of the diverse stakeholders in the process. In the case of transitional justice in Burundi, the United Nations, for instance, recommended, that there should be

a broad-based, genuine[,] and transparent process of consultation . . . with a range of national actors and civil society at large, to ensure that, within the general legal framework for the establishment of judicial and non-judicial accountability mechanisms acceptable to the United Nations and the

⁴¹⁷ Rotberg, *supra* note 146, at 5.

⁴¹⁸ Desmond Tutu, *Truth and Reconciliation Commission, South Africa*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa> (last visited Mar. 22, 2023).

⁴¹⁹ Jenkins, *supra* note 115, at 237.

⁴²⁰ Hugo Van Der Merwe et al., *Non-Governmental Organizations and the Truth and Reconciliation Commission: An Impact Assessment*, 26 *POLITIKON* 55, 58–60, 62 (1999).

Government [of Burundi], the views and wishes of the people of Burundi are taken into account.⁴²¹

Beyond contributing for TJ's legitimacy, the participatory process also has imperative on peace and stability. In a Guidance Note on post-conflict measures, the United Nations Secretary General Kofi Annan emphasized that the maintenance of peace and stability is unthinkable without the due participation of the concerned public in such measures.⁴²² In his words, peace and reconciliation cannot be achieved in the long run "unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice."⁴²³

While consultations may be facilitated by different actors, such actors should be those who do not have political stakes in the outcome of the public consultation process. One important body in a better position to conduct public consultations is the well-respected national human rights body (if it exists). But this body should still maintains its independence and "compl[ies] with [the] relevant standards of good practice (the so-called Paris Principles) [which] also provides the reassurance that the process will be conducted on the basis of human rights standards and with respect for the rights and the dignity of the consultees."⁴²⁴ Depending on the contexts, the United Nations and other regional actors may also be of some help during the design process of the transitional justice alternatives as has occurred in many post-conflict contexts.

Ultimately, the lofty goals of transitional justice, such as providing recognition for victims, fostering interpersonal and intercommunal trust, and strengthening the rule of law institutions, cannot succeed in the absence of the "meaningful" transformative participation of the victims.⁴²⁵ This "meaningful participation" in the process may take different forms. According to Pablo de Greiff's *First Report on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, it includes active

⁴²¹ U.N. Secretary-General, *Report of the Assessment Mission on the Establishment of an International Judicial Commission of Inquiry for Burundi*, ¶ 75, U.N. Doc S/2005/158 (Mar. 11, 2005). This agreement, known as the Arusha Peace and Reconciliation Agreement for Burundi, was signed in 2000 and recommended the establishment of a truth and reconciliation commission along with international judicial commission of inquiry. Triponel & Pearson, *supra* note 140, at 105.

⁴²² U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 5, 17, 44, 64(h), U.N. Doc S/2004/616 (Aug. 23, 2004).

⁴²³ *Id.*, ¶ 3.

⁴²⁴ OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *RULE OF LAW TOOLS FOR POST-CONFLICT STATES: NATIONAL CONSULTATION ON TRANSITIONAL JUSTICE*, at 18, U.N. Doc. HR/PUB/09/2 Sales No. 09.XIV.2 (2009).

⁴²⁵ Pablo de Greiff (Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence), *First Rep. on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, ¶ 54, U.N. Doc. A/HRC/21/46 (Aug. 9, 2012).

participation of victims and affected communities in truth-seeking and investigative processes, involvement in the design of reparative mechanisms, and the involvement of the public in the institutional reform and design of the TJ mechanisms.⁴²⁶ Thus, public participation and participation of victims contributes to rectify challenges of possible exclusion of certain groups and remedy for previously prevailing power imbalances. Moreover, it helps garner public support for the effectiveness of TRC's tasks. It has been shown that “[c]ommunities are more likely to support initiatives that they themselves are involved in, lending legitimacy to transitional justice processes. In addition, this approach means that root causes of [] violence are more likely to be addressed, leading to longer-term stability and peace.”⁴²⁷ Moreover, providing opportunities for public participation during the design of transitional justice processes also assures the continued participation of the society during its operation. According to the U.N. Secretary General's 2004 *Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, “[T]he most successful transitional justice experiences owe a large part of their success to the quality and quantity of public and victim consultation carried out.”⁴²⁸ In the case of Brazilian TRC of 2011, which was established after a successful parliamentary debate and participation of other actors, one study found that the extended dialogue during its creation and public support from different social actors were “reflected in the strong political legitimacy and positive public opinion now enjoyed by the [C]ommission.”⁴²⁹ Thus, the citizens' deliberation together in an inclusive and bottom-up approach about confronting the legacy of past violence should be highly emphasized. As Diane Orentlicher conclusively observes, “No set of principles could or should displace the quintessentially local project of communal reckoning.”⁴³⁰

In light of the foregoing, it can be observed that the Ethiopian (disorganized) transitional justice processes in general and the National Reconciliation Commission specifically do not have a track record of even

⁴²⁶ *Id.* ¶ 54–55.

⁴²⁷ JENNIFER TSAI & SIMON ROBINS, STRENGTHENING PARTICIPATION IN LOCAL-LEVEL AND NATIONAL TRANSITIONAL JUSTICE PROCESSES: A GUIDE FOR PRACTITIONERS 9 (Int'l Coal. of Sites of Conscience eds., 2017).

⁴²⁸ U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, *supra* note 422, ¶ 16. In January 2007, the United Nations High Commissioner for Human Rights, while reporting to the Human Rights Council on the situation in Nepal, also emphasized the importance of consultations. U.N. High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of her Office, Including Technical Cooperation, in Nepal*, ¶ 42, U.N. Doc. A/HRC/4/97, (Jan. 17, 2007).

⁴²⁹ AMNESTY COMM'N OF THE MINISTRY OF JUST. OF BRAZ. ET AL., *supra* note 135, at 15–16.

⁴³⁰ Diane Orentlicher, *Prologue* to THE UNITED NATIONS PRINCIPLES TO COMBAT IMPUNITY: A COMMENTARY 1, 2 (Frank Haldemann & Thomas Unger eds., 2018).

symbolic public consultation in the process of its creation. While the establishment of the National Reconciliation Commission is a step in the positive direction, much is unknown about how and under what circumstances it emerged. According to one close observer and later its Commissioner, “[q]uestions abound as to whether relevant stakeholders such as victim groups, civil society organizations[,] and the legal community will be afforded the opportunity and platform to take part in the planning and formulation of the transitional justice process and in its monitoring.”⁴³¹ By considering the general political atmosphere in which the National Reconciliation Commission was erected, it can be argued that it solely emerged from the decision of the central Government. Thus, it never involved public inputs and other stakeholders in the process.

Many of the challenges can be attributed to the constraints posed by the nature of the violent and unfinished transition itself wherein the ruling elites struggled to ensure their survival in power. Some other significant pitfalls and challenges in the design and participation relate to weak or absent civil society in the country. As Jasmina Brankovic and Hugo van der Merwe observed recently, the subject of transitional justice has been a field prominently shaped by the civil society organizations (“CSOs”) and they have been key actors behind its development and “dogma.”⁴³² In weak States wrecked by conflicts, normally the civil society participates in drafting legislation, establishing and designing commissions, accessing the victims, and assisting vulnerable communities to seek justice.⁴³³ CSOs are crucial not only for advocating for transitional justice, but also in overseeing the attempt of the political elite to capture the justice process for their own political benefits.⁴³⁴ In addition to the formative phase, the role of CSOs is also strongly felt in the peacebuilding phase where they help fill gaps by linking high level political negotiations to people at the grassroots level.⁴³⁵ Though CSOs can have divergent policy preferences, they played a significant role, for instance, in designing the

⁴³¹ Solomon A. Dersso, *Pursuing Transitional Justice and Reconciliation in Ethiopia's Hybrid Transition*, ADDIS STANDARD (Dec. 14, 2018), <http://addisstandard.com/oped-pursuing-transitional-justice-and-reconciliation-in-ethiopias-hybrid-transition/>.

⁴³² Makau Mutua, *Foreword* to *ADVOCATING TRANSITIONAL JUSTICE IN AFRICA: THE ROLE OF CIVIL SOCIETY* v, viii (Jasmina Brankovic & Hugo van der Merwe eds., 2018) [hereinafter *ADVOCATING TRANSITIONAL JUSTICE IN AFRICA*].

⁴³³ *See id.*

⁴³⁴ *See* Naomi Roht-Arriaza, *The New Landscape of Transitional Justice, in TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE*, *supra* note 42, at 2–3; *see also* VANDEGINSTE, *supra* note 91, at 224–26 (2010).

⁴³⁵ *See* Raymond Andaya, *Unarmed Civilian Peacekeeping as a Transformative Justice Concept: Civilian Protection and Everyday Justice in the Bangsamoro*, 9 *ASIAN J. PEACEBUILDING* 279, 288 (2021).

South African TRC⁴³⁶ and the TRC in Burundi.⁴³⁷ Moreover, according to Ronald Slye, one of its international Commissioners, the Kenyan TRCJ is mostly crafted by a local CSO.⁴³⁸ Even in the case of recent transitional justice in North African countries, Noha Aboueldahab notes that “civil society was and continues to be a crucial driving force.”⁴³⁹ In Ethiopia, CSOs are weak due to the culture of closed political space and resultant absence of vibrant civil society. Additionally, CSOs are also repressed and have been decimated by the repressive civil society law passed by Proc. No 621/2009.⁴⁴⁰ Thus, the role of CSOs in Ethiopia has been sadly and severely curtailed, which limits their potentially important contributions in the transitional justice process.⁴⁴¹ But some available local assets such as the Inter-Religious Council and prominent traditional elders from different ethnic communities could be used in the effort to foster dialogue and reconciliation, both at the governmental and grassroots level.⁴⁴²

In sum, it is worthy to stress that the recent AUTJ Policy of 2019 provides that open and effective public participation in the design and implementation of reconciliation is the single most important factor in the success of transitional justice measures. However, such public participation was not evident in the design and implementation of the Ethiopian TRC on account of the top-down, narrow, government ownership of the transition process which has caused the TRC to lack broad grassroots support. On a more critical note, its establishment simply signaled part of a routine of “political posturing,” which makes it susceptible to not achieving its broader tasks.⁴⁴³ Therefore, the establishment of the Ethiopian reconciliation process lacks legitimacy due to absence of “meaningful” public participation during its formation. Generally, a top-down process, absence of political compromise, lack of good faith negotiations, lack of consultation and consensus among the contending actors in its establishment and its mandate haunt the

⁴³⁶ Jasmina Brankovic & Hugo van der Merwe, *Editors’ Preface* to *ADVOCATING TRANSITIONAL JUSTICE IN AFRICA*, *supra* note 100, at vii.

⁴³⁷ See VANDEGINSTE, *supra* note 91, at 213–15.

⁴³⁸ See SLYE, note 376, at 56.

⁴³⁹ Noha Aboueldahab, *Navigating the Storm: Civil Society and Ambiguous Transitions in Egypt, Libya and Tunisia*, in *ADVOCATING TRANSITIONAL JUSTICE IN AFRICA*, *supra* note 432, at 183.

⁴⁴⁰ See *generally Charities and Societies Proclamation*, Proclamation No. 621/2009, § 7, Fed. Negarit Gazeta, Year 14, No. 25 (Eth.) (regulating civil societies in numerous ways, including the following: compelled production of documents; financial and employment regulations; empowerment to remove or replace officers; suspension or cancellation licenses; dissolution).

⁴⁴¹ See Gebre Yntiso, *Reality Checks: The State of Civil Society Organizations in Ethiopia*, 20 AFR. SOCIO. REV. 2, 6 (2016).

⁴⁴² INT’L CRISIS GROUP, *KEEPING ETHIOPIA’S TRANSITION ON THE RAILS* 15 (2019).

⁴⁴³ Andrew G. Reiter, *Measuring the Success (or Failure) of Transitional Justice*, in *AN INTRODUCTION TO TRANSITIONAL JUSTICE*, *supra* note 99, at 269, 276.

Ethiopian Commission's legitimacy and thereby constrain its performance. As such, it did not win the requisite level of legitimacy among the contending actors, civil societies, and wider members of the Ethiopian society, generally. Ultimately, the lack of legitimacy and the TRC's creation through a unilateral government decision partly and critically constrained its success; made its very existence invisible; and made its works, if there is any, questionable.

C. Independence and Financial Autonomy of the Commission

The characteristics of independence and impartiality stand out as one of the most important standards for successful completion of the mandates of TRCs.⁴⁴⁴ As the Commission is a non-judicial organ mostly responsible for producing only findings and recommendations, as Harwood argues, a semblance of trust is crucial and any perceived or real bias "can damage credibility and therefore their influence and legitimacy."⁴⁴⁵ The impartiality of a given TRC is highly emphasized so that "their investigations [are] even-handed and findings [] rest on objective criteria."⁴⁴⁶

Archbishop Desmond Tutu has a telling story about the experience of independence of the Commission when he was the Chair of the South African TRC. As he briefly narrates in his foreword to *Forgiveness and Reconciliation: Religion, Public Policy and Conflict Transformation*, there was a concern that one of the Commissioners was implicated in the previous human rights violations which occurred during the Apartheid rule.⁴⁴⁷ In short, after the Commission organized to make inquiry into the case and summarily produced its reports to the President, Mandela told the anxious suspect Commissioner that he was exonerated by the Commission.⁴⁴⁸ Desmond Tutu was offended by the decision and went to speak to the secretary of the President because he believed the President had interfered in the TRC's work, or that the Chairman of the Commission should have known about the decision first.⁴⁴⁹ As Mandela learned about this event, he immediately phoned Desmond Tutu to say "Mpilo, you are quite right. I am sorry." However, Tutu himself believes that such an

⁴⁴⁴ Harwood, *supra* note 139, at 404.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

⁴⁴⁷ Desmond M. Tutu, *Foreword* to *FORGIVENESS AND RECONCILIATION: RELIGION, PUBLIC POLICY AND CONFLICT TRANSFORMATION*, at x (Raymond G. Helmick & Lodney L. Petersen eds., 2001).

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

“exceedingly humbl[e]” apology requires “being [the] kind of person [Mandela] is”⁴⁵⁰ and may not be readily available everywhere.

According to Article 13 of the Proclamation, the Ethiopian Commission is independent organ, and it “performs its activities freely and independently.”⁴⁵¹ However, the law does not provide a specific set of rules under which the independence of the Commission should be maintained. It neither provides any safeguard mechanisms in any instances where it may not be maintained. Thus, the key challenge is that there is no mechanism to ensure the neutrality and independence of the Commission. Several factors account for questioning its independence.

For one thing, the members draw entirely from domestic nationals most, or all, of whom were handpicked by the Executive without the participation of the public.⁴⁵² The appointment of the Commissioners by the Executive, or the Prime Minister of Ethiopia, is not an endemic problem by itself. For instance, the Chairperson and other members of the South African TRC were selected by President Nelson Mandela but with one condition—that they were selected only after public deliberation.⁴⁵³ But the Commission functioned independently to produce one of the most influential and authoritative texts ever produced by a Truth and Reconciliation Commission. While it is not aimed to romanticize the South African TRC, it is clear that this fortune of independence and impartiality is not to be taken for granted in many post-conflict cases. To make up for this, many States attempt to design different mechanisms to ensure a semblance of independence and neutrality. In the case of the TRC in Burundi, for instance, Stef Vandeginste observes that “to make up for the absence of international Commissioners, it suggests an international consultative council composed of five eminent personalities of high moral standing,” though the tasks it is endowed with lack substantive elements and are largely ceremonial.⁴⁵⁴ In the case of the Kenyan TJRC, there were three non-Kenyan Commissioners from Zambia, Ethiopia, and the United States to compensate for the vulnerability which arises when TRCs solely rely on domestic Commissioners.⁴⁵⁵ It is not claimed here that the presence of international commissioners will guarantee the immunity from political interference, but their presence may play some kind of

⁴⁵⁰ *Id.*

⁴⁵¹ *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, art. 13

⁴⁵² See Tamene Ena Heliso, *Critical Appraisal of the Ethiopian Reconciliation Commission: A Comparative Study*, 11 *J.L. & Conflict Resol.* 15, 21–22 (2020).

⁴⁵³ See Arvind Kumar Yadav, *Nelson Mandela and the Process of Reconciliation in South Africa*, 63 *INDIA Q.* 49, 68 (2007).

⁴⁵⁴ Stef Vandeginste, *Burundi’s Truth and Reconciliation Commission: How to Shed Light on the Past While Standing in the Dark Shadow of Politics?*, 6 *INT’L J. TRANSITIONAL JUST.* 1, 10 (2012).

⁴⁵⁵ See SLYE, *supra* note 376, at 9.

balancing role. Despite the claim that the Ethiopian Commission acts independently, its Proclamation does not provide practical, legal, or procedural mechanisms through which to ensure its independence and neutrality. In the absence of those mechanisms, one may be readily tempted to question its legitimacy, processes, and outcomes.

Financial autonomy also stands as one of the important indicators of the success of a given TRC. Generally, transitional justice, as a whole, is a costly political process. For instance, the United Nations allocated billions of dollars for the prosecution of single cases in international tribunals.⁴⁵⁶ On the other hand, the South African TRC has had an annual budget of 18 million U.S. Dollars.⁴⁵⁷ According to Getahun Tsegaye,

During its three years in office, the [Ethiopian] [G]overnment allocated millions of birr annually. In the last fiscal year alone, the Commission . . . had a total budget of over ETB 21.4 million. From July 2021 until the end of its term last January, the Commission had spent more than four million ETB on its budget. It is now [ordered by the Parliament] to hand over the remaining budget[, documents and offices to its successor institution, the newly established National] Dialogue Commission. “Accordingly, the Office of the Federal Auditor General [is instructed to] review the account before it is transferred to the new Commission.”⁴⁵⁸

The point can be made that it is not only about availability of adequate financial resources, but it is also about the proper use of it. If the Commission is acting vigilantly and actively to maximize its efforts, the budget may be a crucial element of its success or failure. On the other hand, in the context where the Commission is not making vigorous efforts to execute its mandates, budget constraint cannot be invoked as a critical issue.

D. Questions Over Membership in the Commission

Selection of members, their composition, qualification, and political insulation are crucial elements in the success or failure of a TRC. Therefore, the process needs considerable public input. Though there may not be hard and fast rules, it is highly determined by the political condition of a given country. Moreover, its composition should balance the political divides prevailing in the country at the moment. As noted above, before commencing the activities of a given TRC, it is imperative to establish

⁴⁵⁶ See Rupert Skilbeck, *Funding Justice: The Price of War Crimes Trials*, 15 HUM. RTS. BRIEF 6, 6 (2008).

⁴⁵⁷ U.S. INST. PEACE, TRUTH COMMISSION: SOUTH AFRICA (1995), <https://www.usip.org/publications/1995/12/truth-commission-south-africa>.

⁴⁵⁸ Getahun Tsegaye, *Ethiopian Reconciliation Commission Dissolves*, ADDIS STANDARD (Mar. 1, 2022), <https://addisstandard.com/news-ethiopian-reconciliation-commission-dissolves/>.

whether there is a public support from CSOs, ordinary members of the society, and survivors of the atrocity in question for such an exercise.⁴⁵⁹ Careful and open process of selection of the members of the Commission is crucial in ensuring credibility of the Commission wherein the Commissioners are required to display “excellent moral and professional reputations.”⁴⁶⁰ TRC formation should reflect a broad range of ideas, diverse perspectives, and affiliations to ensure that no members of the political society feel excluded.⁴⁶¹

The Ethiopian Reconciliation Commission has been previously criticized in this Article for its several flaws. And it is also criticized in relation to the process of selection and composition of its membership.⁴⁶² As it is the case with its establishment, the membership of the Commission was not the result of wider public consultation.⁴⁶³ More surprisingly, it has been reported that some of the Commissioners learned of their appointment from social media and some complained because they were appointed as Commissioners without their consent or knowledge.⁴⁶⁴ In the words of one of its Commissioners, “there was no public participation . . . in the nomination and appointment of the Commission’s members. These deficiencies could imperil the [C]ommission’s legitimacy.”⁴⁶⁵ This is a clear departure from the normative requirement in the establishment of TRCs across various jurisdictions. For instance, the process of selection of South African TRC Commissioners came after an open, countrywide consultation and nomination process.⁴⁶⁶ As Archbishop Desmond Tutu later explained, independent selection panels were organized which comprised of all existing political parties, civil society, and religious entities in the country.⁴⁶⁷ In the case of the Liberian TRC, key Commissioners were appointed “after a comprehensive national vetting process.”⁴⁶⁸ However, this level of independent selection and nomination process is not visible in all jurisdictions. There are also instances of failed and susceptible processes of the selection of Commissioners. For instance, in the case of the Democratic Republic of the Congo’s in 2002, Commissioners were selected and appointed by the Executive even before the enabling act of the TRC was passed and before

⁴⁵⁹ SHAW, *supra* note 114, at 2.

⁴⁶⁰ AMNESTY COMM’N OF THE MINISTRY OF JUST. OF BRAZ., *supra* note 429, at 11.

⁴⁶¹ Hayner, *supra* note 132, at 654; MAX DU PLESSIS, TRUTH AND RECONCILIATION PROCESS: LESSONS FROM ZIMBABWE? 7 (2010).

⁴⁶² Yohannes & Gebresenbet, *supra* note 301, at 8.

⁴⁶³ *See id.* at 11, 14.

⁴⁶⁴ *Id.* at 11.

⁴⁶⁵ Dersso, *supra* note 354.

⁴⁶⁶ Tutu, *supra* note 418.

⁴⁶⁷ *Id.*

⁴⁶⁸ TRUTH & RECONCILIATION COMM’N OF LIBER., *supra* note 400, at 12.

it had its legal personality.⁴⁶⁹ This sends an early signal that the Commission is neither independent nor neutral, but that the appointment of the TRC's Commissioners is subject to their political affiliations.⁴⁷⁰ Unlike the South African TRC Commissioners and its other counterparts, the Commissioners of Ethiopian Reconciliation Commission were not selected from a countrywide nomination process and no independent body existed to screen their integrity, moral standing, or relevance for the position.⁴⁷¹ There are rare claims that a committee composed of 18 members was involved in selecting and appointing the Commissioners,⁴⁷² but that claim has been unsustainable.

1. Too Many Commissioners?

There are 41 Commissioners of the Ethiopian TRC.⁴⁷³ When the Commission commenced its work, it had internally organized itself into five main standing committees whose Chairs shall, together with the Chair and Vice Chair of the Commission, constitute the Executive Committee of the Reconciliation Commission.⁴⁷⁴ The Executive Committee was led by the head of the Ethiopian Catholic Church, Cardinal Berhaneyesus Demerew Souraphiel.⁴⁷⁵ This measure appears to emulate the South African TRC as it was led by the South African Anglican Archbishop, Desmond Tutu.⁴⁷⁶ As exemplified by Archbishop Desmond Tutu, who is praised for his remarkable and charismatic leadership of the South African TRC, religious non-state actors are crucial in the transitional justice process.⁴⁷⁷ According to Philpott, some fifteen

⁴⁶⁹ AMNESTY COMM'N OF THE MINISTRY OF JUST. OF BRAZ., *supra* note 429, at 15.

⁴⁷⁰ See *generally id.* at 16–17 (explaining that a transparent and consultive truth commission selection process helps maintain the perception of independence and avoid political biases).

⁴⁷¹ Compare Tutu, *supra* note 418, with Yohannes & Gebresenbet, *supra* note 301, at 4.

⁴⁷² Moges Zewdu Teshome, *Ethiopia Must Give Transitional Justice a Chance. The Challenges of Reconciliation in a Deeply Divided Nation*, VIENNA INST. FOR INT'L DIALOGUE & COOP., <https://www.vidc.org/en/detail/ethiopia-must-give-transitional-justice-a-chance-the-challenges-of-reconciliation-in-a-deeply-divided-nation> (last visited Feb. 27, 2023).

⁴⁷³ Yohannes & Gebresenbet, *supra* note 301, at 4.

⁴⁷⁴ See *generally id.* (explaining that the Ethiopian Reconciliation Commission [ERC] “has five standing committees charged with specific tasks” and that the thirteen member “executive committee” is composed of the ERC chair and deputy chairpersons, the non-voting executive director of the secretariat, and the chair and deputy chairperson of each standing committee).

⁴⁷⁵ Di Trapani, *Cardinal Souraphiel, Member of the Congregation of the Mission, Designated President of the Ethiopian Truth and Reconciliation Commission*, FAMVIN (Feb. 18, 2019), <https://famvin.org/en/2019/02/18/cardinal-souraphiel-member-of-the-congregation-of-the-mission-designated-president-of-the-ethiopian-truth-and-reconciliation-commission/>.

⁴⁷⁶ See U.S. INST. PEACE, *supra* note 457.

⁴⁷⁷ See Danile Philipott, *When Faith Meets History: The Influence of Religion on*

transitional justice initiatives saw “strong” to “moderate” involvement of religious non-state actors.⁴⁷⁸ The Ethiopian TRC involved key personalities of all religious orders, including Orthodox, Catholic, Protestants, and Muslims, as well as other traditional religions.⁴⁷⁹ Thus, the Ethiopian TRC should be added to Philpott’s list as transitional justice initiative to involve religious non-state actors. While their involvement in past abuses or their victimization may frustrate transitional justice processes, their presence in a time when state institutions are weak or when state machinery is not trusted helps to increase capacity and to ensure legitimation, beyond reconciliation and forgiveness.⁴⁸⁰

The famous South African TRC was constituted of 17 members organized into three main committees, namely the human rights violations committee, the amnesty committee, and the reparation committees.⁴⁸¹ These Committees had different but interrelated tasks.⁴⁸² The Commission as a whole was assisted by 300 support staff.⁴⁸³ In the case of the Commissioners of Liberian TRC, nine key Commissioners—five men and four women—were appointed in 2005.⁴⁸⁴ The TRC of East Timor was composed of seven national Commissioners and led by Aniceto Guterres Lopes, a prominent Timorese human rights activist.⁴⁸⁵ In Chile, president Aylwin appointed eight Commissioners by balancing different sides of the political divide.⁴⁸⁶ In the Ethiopian case, 41 members are arguably too many for the Commission. While its incorporation of a large

Transitional Justice, in THE RELIGIOUS IN RESPONSES TO MASS ATROCITY: INTERDISCIPLINARY PERSPECTIVES 190 (Thomas Brudholm & Thomas Cushman eds., 2009).

⁴⁷⁸ *Id.* at 177–78.

⁴⁷⁹ See Lulseged Abebe & Berhanu Mengistu, *National Reconciliation Commission for Ethiopia*, 13 INT’L J. ETH. STUD. 153, 159 (2019) (explaining that the current Ethiopian administration has attempted to establish truth commissions in various forms, including the Inter Religious Council—composed of Orthodox, Catholics, Evangelicals, and Muslims—and the Truth and Reconciliation Commission composed of forty-one Commissioners).

⁴⁸⁰ See Ioana Cismas, *Reflections on the Presence and Absence of Religious Actors in Transitional Justice Processes: On Legitimacy and Accountability*, in JUSTICE MOSAICS: HOW CONTEXT SHAPES TRANSITIONAL JUSTICE IN FRACTURED SOCIETIES 302, 308–09, 328 (Roger Duthie & Paul Seils eds., 2017).

⁴⁸¹ Proclamation of National Unity and Reconciliation Act 1995, GN 1111 of GG 16579 § 2-3(3) (26 July 1995).

⁴⁸² The Human Rights Violations Committee was tasked with investigating human rights violations between 1960 and 1994. Their findings were to be referred to the Reparation and Rehabilitation Committee, which was responsible for providing redress for victims and their rehabilitation. Thirdly, the Amnesty Committee was established to review amnesty applicants and ensure that once amnesty is granted (subject to final approval by the president), “the applicant would not be subject to future prosecution” in either criminal or civil courts. See Campbell, *supra* note 399.

⁴⁸³ U.S. INST. PEACE, *supra* note 457, at 2.

⁴⁸⁴ U.S. INST. PEACE, TRUTH COMMISSION: LIBERIA (2006).

⁴⁸⁵ Jenkins, *supra* note 115, at 233–34.

⁴⁸⁶ U.S. INST. PEACE, TRUTH COMMISSION: CHILE 2 (1990).

number of Commissioners can help it to be inclusive of diverse peoples, it may create difficulty from the perspective of expediency.

2. Professional Background

Commissioners are expected to represent a broad range of professional and regional backgrounds. The members of the Ethiopian Commission included people with different backgrounds including politicians, religious leaders, intellectuals, artists, athletes, and others.⁴⁸⁷ But all of them work on a voluntary and part-time basis.⁴⁸⁸ It has been argued that drawing members from such diverse backgrounds will help the Commission to be representative of “the true face” of Ethiopian diversity.⁴⁸⁹ However, as some commentators observe, on the other hand, “commensurate attention was not given to [the] inclusion of individuals with certain technical competencies to fulfill the [Ethiopian Reconciliation Commission’s] immensely complex [] mandates.”⁴⁹⁰ The exercise of reconciliation is complex and concerns more than the issue of “representation” of diversity and requires that people from diverse professions such as law, human rights, justice, and reconciliation be involved in the process. In a tense transition period, the role of lawyers is important, especially when prosecuting perpetrators and granting amnesty.⁴⁹¹ On the other hand, there exists a tension about the role of the legal profession in TRCs as that role is “neither evident nor clear” because “[a TRC is neither] a legal process nor a judicial body that is given the task of dealing with the past.”⁴⁹²

Thus, post-conflict States include members from diverse professional backgrounds, with a particular preference that Chairs have human-rights-focused exposures. But this is not always a precondition. For instance, the Liberian TRC was led by Jerome Verdier who was “a leading human rights and civil society activist” prior to his appointment.⁴⁹³ The Liberian TRC was supported by an internal technical support committee, which was composed of three advisors.⁴⁹⁴ According to Article 5(8)–(9)(a) of the Liberian TRC’s mandate, the Liberian TRC was comprised of a selection committee composed of three representatives from CSOs, two representatives from political parties, one representative from the United

⁴⁸⁷ For the full list of the members and their relevant backgrounds, see *Ethiopia Named Members of National Reconciliation Commission*, BORKENA (Feb. 5, 2019), <https://borkena.com/2019/02/05/ethiopia-named-members-of-national-reconciliation-commission/>.

⁴⁸⁸ Yohannes & Gebresenbet, *supra* note 301, at 10.

⁴⁸⁹ *Id.* at 8.

⁴⁹⁰ *Id.*

⁴⁹¹ See HEIDY ROMBOUITS, *THE LEGAL PROFESSION AND THE TRC: A STUDY OF THE TENSE RELATIONSHIP* (2002).

⁴⁹² *Id.*

⁴⁹³ TRUTH & RECONCILIATION COMM’N OF LIBER., *supra* note 468.

⁴⁹⁴ AMNESTY INT’L, *supra* note 132, at 5.

Nations, and one representative from the Economic Community of West African States (“ECOWAS”), the latter being the selection committee’s coordinator.⁴⁹⁵ According to Article 5, Section 10 of the mandate of the Liberian TRC, there should also be an International Technical Advisory Committee, composed of two representatives from ECOWAS and one from OHCHR.⁴⁹⁶ This appears to be at least a successful attempt to balance professional backgrounds and engage diverse actors in the transitional justice process. However, one cannot see even such modest kinds of efforts being used to balance the reigning imbalance regarding representation in the Ethiopian case. It can be argued that much emphasis has been placed on selecting famous personalities and less attention has been given to those with substantive, professional relevance and technical capabilities, which may implicate the performance of the Commission.

3. Implications in Previous Human Rights Violations and Political Insulation of the Members

Beyond controversies surrounding professional and technical concerns, the Ethiopian Commission comprises of some members with clearly disputed political neutrality.⁴⁹⁷ It also incorporated individuals who were still active politicians and largely affiliated with the ruling groups.⁴⁹⁸ Moreover, some of them happen to be the former leaders under whose command mass murder and violence occurred.⁴⁹⁹ This is one of the critical factors which befell the Kenyan TJRC. As Ronald Slye observed, its Chairman was an individual suspected to some degree of his association with prior human rights violations, political assassinations, and massacres.⁵⁰⁰ Emphasizing the importance of the integrity of the TRC’s members, Desmond Tutu notes that “even the best-designed institutions are dependent on the character and integrity of those chosen to serve them.”⁵⁰¹

⁴⁹⁵ An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia (2005) Art. V §§ 8–9(a) (Liber.).

⁴⁹⁶ *Id.* § 10.

⁴⁹⁷ See Yohannes & Gebresenbet, *supra* note 301, at 10–11.

⁴⁹⁸ See *id.*; see also Moges Zewiddu Teshome, *Confronting Past Atrocities: A Critical Analysis of the Defunct Ethiopian Reconciliation Commission*, 26 L. DEMOCRACY & DEV. 342, 353 (2022).

⁴⁹⁹ See SLYE, *supra* note 376, at 84, 86–87 (explaining that the chairman of the Kenyan Truth Commission, Ambassador Bethuel Kiplagat, had served under the Moi government official, a de-facto dictatorship in which “numerous gross violations of human rights were committed under the administration of President Jomo Kenyatta”).

⁵⁰⁰ *Id.* at 84, 90–91.

⁵⁰¹ Archbishop Desmond Tutu, *Foreword to SLYE, THE KENYAN TJRC*, *supra* note 376, at xvii.

It is clear, therefore, that the independence and political insulation of Commissioners is very important in accomplishing their tasks. As noted, in the Ethiopian case, the members' neutrality is contested given, for instance, the secretive means through which the Commissioners were selected.⁵⁰² Moreover, the political insulation of such selection was seriously tested during the violent civil war fought with the Tigrayan forces.⁵⁰³ Inescapably, during this time, the Tigrayan forces complained that the Commissioners have supported the war of "law enforcement" in Tigray.⁵⁰⁴ In a video posted on the Commission's social media platform on November 18, 2020, Commissioners chanted the slogan "I will stand for the honor of the Defense Forces," with a headline which read, "the members of the Reconciliation Commission showed their support for the [D]efense [F]orces."⁵⁰⁵ Thus, it can be observed that this act may have seriously endangered the credibility of the Commission, especially when viewed from the perspective of the antagonistic parties to the conflict. For instance, the Tigrayan elites already explained their concern that the Commission assisting national reconciliation meant supporting a deadly campaign of violence in the country and involved a divisive narrative.⁵⁰⁶ The support for the national cause may not be dismissed simply as political affiliation, but the proponents of such should be ready to accept what consequences it entails.

E. Lack of Prosecutorial, Subpoena Power, and Reparation Scheme

As it is well established, Truth and Reconciliation Commissions have powers of hearing, investigating, and producing final findings and recommendations.⁵⁰⁷ Most Truth Commissions have no prosecutorial power, but some may have the power and mandate to refer cases for prosecution.⁵⁰⁸ In this process, TRCs may be authorized to employ subpoena power.⁵⁰⁹ According to Mark Freeman, the subpoena power of

⁵⁰² Yohannes & Gebresembet, *supra* note 301, at 11.

⁵⁰³ *Id.* at 9–11.

⁵⁰⁴ *Ethiopian Reconciliation Commission Expresses Support for the War on Tigray*, TGHAT (Nov. 18, 2020), <https://www.tghat.com/2020/11/18/ethiopian-reconciliation-commission-expresses-support-for-the-war-on-tigray/>.

⁵⁰⁵ Ethiopian Reconciliation Commission, FACEBOOK (Nov. 18, 2020), https://fb.watch/ePzEq1z_As/ (stating the following caption: "ለመከላከያ ሠራዊት ከብር አቆማለሁ" በሚል መሪ ቃል የዕርቀሰላም ኮሚሽን አባላት ለሠራዊቱ ያላቸውን ድጋፍ አሳይተዋል።, which translates to "[t]he members of the Peace Commission showed their support for the army with the slogan 'I will stand for the honor of the defense army.'").

⁵⁰⁶ *Ethiopian Reconciliation Commission Expresses Support for the War on Tigray*, *supra* note 504.

⁵⁰⁷ AMNESTY COMM'N OF THE MINISTRY OF JUST. OF BRAZ., *supra* note 429, at 23–24.

⁵⁰⁸ *Id.*

⁵⁰⁹ Priscilla B. Hayner, *Truth Commission*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/truth-commission> (last updated Sept. 18, 2008).

Truth Commissions can be understood in two ways. The first understanding is that the subpoena power helps compel giving testimony, and the second understanding is that subpoenas are issued to compel the production of important documents and objects that are in control of a given person.⁵¹⁰ In ordinary cases of court proceedings, “the purpose of a subpoena is . . . to compel the disclosure of evidence ‘under penalty’ (*subpoena*) for failure to comply.”⁵¹¹ Most of the time, Truth and Reconciliation Commissions may have both powers.⁵¹² For instance, the Liberian TRC has the power to request any documents and records from individuals and state authorities and interview them when needed.⁵¹³ Moreover, the TRC has the power to compel, whenever necessary, the production of such information under the risk of penalty when defaulted.⁵¹⁴ In Liberia, a Special Magistrate was established to summon and conduct quasi-judicial inquiries under the guidance of the Commission.⁵¹⁵ According to Freeman, the subpoena power should be referenced in the design stage of the TRC because the TRC cannot create its subpoena power later.⁵¹⁶ The AUTJ Policy of 2019 requires that States should ensure that TJ Commissions should have “appropriate powers enabling them to complete their work, such as powers of subpoena.”⁵¹⁷ This may give rise to the usual friction existing between the criminal justice system and TRCs. According to William Schabas, a tension arises where the materials developed by the TRC’s processes are reused for subsequent criminal prosecution.⁵¹⁸ If this is to be allowed, it is feared that this process would reduce the status of the TRC to simply that of a pretrial

⁵¹⁰ MARK FREEMAN, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 188 (2006).

⁵¹¹ *Id.* at 190.

⁵¹² Subpoena power is also known as the power to summon, which is common in most legal systems. According to Freeman, the following TRCs have subpoena power: Uganda, Chad, Sri Lanka, Haiti, South Africa, Nigeria, Grenada, Timor-Leste, Ghana, Sierra Leone, Liberia, and the DRC. *Id.* at 189. The Truth Commission of the Republic of Korea also has a power akin to subpoena power, which is an imposition of a fine on persons who refuse to appear before it. *Id.* The Canadian Truth and Reconciliation Commission has no subpoena power to identify perpetrators or judge whether physical or biological genocide happened in the Indian Residential Schools case. See SELEN KYAZAN, YELLOWHEAD INST., RESIDENTIAL SCHOOL GRAVES CANADA’S ‘SLOW’ GENOCIDE AND THE INTERNATIONAL CRIMINAL COURT 1 (2022), <https://yellowheadinstitute.org/2022/05/04/residential-school-graves-canadas-slow-genocide-the-international-criminal-court/>.

⁵¹³ AMNESTY INT’L, *supra* note 132, at 8.

⁵¹⁴ *Id.*

⁵¹⁵ TRUTH & RECONCILIATION COMM’N OF LIBER., *supra* note 400, at 21.

⁵¹⁶ FREEMAN, *supra* note 510.

⁵¹⁷ AFR. UNION, TRANSITIONAL JUSTICE POLICY 11 (2019).

⁵¹⁸ William A. Schabas, *Introduction* to TRUTH COMMISSIONS AND COURTS: THE TENSION BETWEEN CRIMINAL JUSTICE AND THE SEARCH FOR TRUTH 2, 2 (William A. Schabas & Shane Darcy eds., Kluwer Acad. Publishers 2004).

chamber, devalue the whole exercise, and discourage cooperation with it.⁵¹⁹

The other matter surrounding the power of TRC relates to reparation schemes. In the transitional justice field, reparation is often hailed as the victim-centered approach which tailors TJ measures with the needs of the victims.⁵²⁰ According to Hamber, reparations are understood as “things done or given as an attempt to deal with the consequences of political violence.”⁵²¹ Pablo de Greiff holds that though reparation plays an important role in transitional justice, mainstream TJ studies have given little attention to reparations for victims of human rights violations.⁵²² However, it plays a more important role than other transitional justice measures because it has at least a direct (positive) impact on the victims.⁵²³ However, the key feature of reparation measures is that they only provide material benefits in the form of compensation “for what in many cases is irreparable harm.”⁵²⁴ Reparation measures vary across transitioning societies in terms of the population or victims covered and the amount of compensation delivered.⁵²⁵ Disparities exist with respect to the reparations that are implemented by a particular TRC. According to Priscilla Hayner, “it takes a number of years before a reparations program is put into place, and often these years are filled with frustration and even anger from victim communities.”⁵²⁶ Despite these challenges, reparations have an important component in that they “symbolically acknowledge and recognize the individual’s suffering . . . [and] help concretize a traumatic event, aid an individual to come to terms with it[,] and help label responsibility.”⁵²⁷ Moreover, there is no formulaic approach for dealing with reparations and, as such, much depends on the socioeconomic context and resources of a given State. But reparations must be conducted through a “remedial human rights approach.”⁵²⁸

The Ethiopian Reconciliation Commission was designed to have neither prosecutorial nor reparative mandates.⁵²⁹ Thus, it only serves as a symbolic forum for public hearings,⁵³⁰ and so, it betrays the causes and

⁵¹⁹ *Id.*

⁵²⁰ Lawther & Moffett, *supra* note 67, at 377.

⁵²¹ BRANDON HAMBER, TRANSFORMING SOCIETIES AFTER POLITICAL VIOLENCE: TRUTH, RECONCILIATION, AND MENTAL HEALTH 97 (2009).

⁵²² Pablo de Greiff, *Introduction* to HANDBOOK OF REPARATIONS 1, 1 (Pablo de Greiff ed., 2006).

⁵²³ HAMBER, *supra* note 521, at 98.

⁵²⁴ MURPHY, *supra* note 143.

⁵²⁵ De Greiff, *supra* note 522, at 6, 10.

⁵²⁶ HAYNER, *supra* note 110, at 163.

⁵²⁷ Brandon Hamber, *Repairing the Irreparable: Dealing with the Double-Binds of Making Reparations for Crimes of the Past*, 5 ETHNICITY & HEALTH 215, 218 (2000).

⁵²⁸ Lawther & Moffett, *supra* note 67, at 379.

⁵²⁹ Dersso, *supra* note 251; Teshome, *supra* note 498, at 357.

⁵³⁰ Teshome, *supra* note 498, at 358–59.

sufferings of the victims. Thus, even assuming that it had never dissolved, the Ethiopian TRC's impacts would have remained far from meaningful.

VIII. AN OVERVIEW OF THE PERFORMANCE AND LIMITATIONS OF THE ETHIOPIAN TRC

Generally, the success and failure of transitional justice mechanisms has stirred debates at academic and policy levels and its real outcome remains unclear. In a later phase, apart from its popularity and ambitious claims, transitional justice has reached what Dustin Sharp calls a “critical turn,”⁵³¹ reflecting a tension between its ambitious goals and a growing doubt about its efficacy.⁵³² In the end, however, its proponents hope that by its balancing, interweaving, sequencing, and designing multiple “pathways to justice” would result in some kind of “larger justice.”⁵³³ The holistic approach and the host of measures taken in transitional justice by mutually reinforcing processes can contribute, it is held, to political change and further consolidation of peace and rule of law institution. This approach broadly aims to facilitate rebuilding the trust of citizens in state institutions and augment the rule of law, guaranteeing fundamental human rights, and developing fundamental rights, especially in States committed to liberal democracy.⁵³⁴

On the other hand, there are concerns regarding transitional justice measures and their contributions in peacebuilding and conflict transformation. Critics of such transitional justice measures contend that academics and practitioners who support the implementation of such measures have paid “less attention to attempts of institutions themselves in these settings to address contextually defined root causes of conflicts.”⁵³⁵ According to Friedman, while TRCs in many settings have contributed to establishing accountability and the rule of law and addressing structural economic and social problems, a combination of inter-communal violence and contextual social and political realities shape and constrain the success and impact of TRCs on a given society.⁵³⁶ For transitional justice to become more relevant in the 21st Century, Dustin Sharp recommends, among other things, that “it should strike a

⁵³¹ Dustin N. Sharp, *What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice*, 13 INT'L J. TRANSITIONAL JUST. 570, 570 (2019).

⁵³² McAuliffe, *supra* note 68, at 41, 180.

⁵³³ Roht-Ariazza, *supra* note 42, at 8.

⁵³⁴ McAuliffe, *supra* note 42, at 32.

⁵³⁵ REBEKKA FRIEDMAN, *COMPETING MEMORIES: TRUTH AND RECONCILIATION IN SIERRA LEONE AND PERU* 22 (2017).

⁵³⁶ *Id.* at 22–23.

better balance between retributive, restorative, and distributive justice”⁵³⁷

Thus, generally, the performance and success of a given TRC has to be viewed from the broader goals of transitional justice, such as contributing to sustainable peace and efforts to prevent the recurrence of violence in the future.⁵³⁸ TRCs make investigations into the situations surrounding conflicts and mass atrocities and issue findings and recommendations for follow-up actions to be taken by the national governments in their efforts to remedy past violence and prevent the recurrence of the same in the future.⁵³⁹ However, there is less consensus at the empirical level as to whether TRCs can actually deliver on the promises of societal transformation and political reconciliation in post-conflict settings.⁵⁴⁰ While they are truth-finding bodies in theory, “[i]n fact, the truth-seeking capabilities of [Truth Commissions] are constrained by the investigative power or reach determined by [their] mandate[s],”⁵⁴¹ among other factors. Kissane suggests that peace must also to be understood as more than a state of non-violence and must be alternatively explained as conflict resolution.⁵⁴² Thus,

[c]onflict resolution implies that the underlying issues have been resolved; that the parties will tolerate each other’s existence and commit to pursuing their goals peacefully. These three elements also require a nurturing environment in which peace can grow over time.⁵⁴³

In the light of the foregoing, the efforts and limits of the Ethiopian TRC is presented below.

A. *Practical Efforts to Implement Its Mandate*

According to Proclamation No. 1102/2018, the life span of the Ethiopian Reconciliation Commission is three years.⁵⁴⁴ At the time of this writing, though the Commission has not submitted its final findings and recommendations, it was dissolved by legislation passed in December

⁵³⁷ DUSTIN N. SHARP, *RETHINKING TRANSITIONAL JUSTICE FOR THE TWENTY-FIRST CENTURY: BEYOND THE END OF HISTORY* 156 (2018).

⁵³⁸ Hugo van der Merwe et al., *Measuring Transitional Justice: Impacts and Outcomes*, in *TRANSITIONAL JUSTICE: THEORIES, MECHANISMS AND DEBATES*, *supra* note 311, at 281.

⁵³⁹ Harwood, *supra* note 139, at 401.

⁵⁴⁰ KISSANE, *supra* note 52, at 186.

⁵⁴¹ NICHOLS, *supra* note 325, at 2.

⁵⁴² KISSANE, *supra* note 52, 186.

⁵⁴³ *Id.* at 186–87.

⁵⁴⁴ *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, art. 14, § 1.

2021.⁵⁴⁵ Until the Commission's final report is available, it will be difficult to provide a complete assessment of its performance from an official perspective. Thus, this Section attempts to provide an assessment of the Commission's work from available sources. Those are viewed against the *raison d'être* of the Commission's establishment. The reasons for the establishment of Ethiopian Reconciliation Commission are provided under the Preamble of Proclamation No. 1102/2018, which lays down broad visions and policy priorities.⁵⁴⁶ Accordingly, it can be summarized that the Commission's performance or achievements must be examined in light of the broader objectives underlying its establishment. Such objectives include identifying causes of the conflicts, identifying the cause and dimensions of past gross human rights violations to ensure reconciliation, and achieving lasting peace.⁵⁴⁷ It is not clear from the law or the Commission's practical understanding as to which issues the Commission should prioritize in its investigations. According to available resources, the first year of the Commission was supposed to focus on preparatory works, such as strategic plan development, and the installation of necessary institutional structures.⁵⁴⁸ For instance, in some early instances, the Chair of the Commission said that it focuses on studying root causes of the conflicts in Ethiopia.⁵⁴⁹ In other instances, especially recently, the Commission expressed to the media its readiness to conduct investigations into human rights violations.⁵⁵⁰

Given the urgent circumstance in which the Commission was established, it announced its "three-year plan" only four months after its establishment in December 2018.⁵⁵¹ In a press conference on April 30, 2019, its chairperson announced that identifying the root causes of the conflict in Ethiopia would be the main focus of the Commission in the coming three years.⁵⁵² In his words, "[t]he Commission is making preparation[s] to discharge the responsibilities that the people and government of Ethiopia entrusted to it."⁵⁵³ The critics were wary that the

⁵⁴⁵ Tsegaye, *supra* note 458.

⁵⁴⁶ *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, para. 1–4.

⁵⁴⁷ *Id.* para. 2–4.

⁵⁴⁸ *Term of Reference for Senior Researcher on Transitional Justice and Reconciliation (National)*, U.N. DEV. PROGRAMME, https://procurement-notices.undp.org/view_file.cfm?doc_id=222531 (last visited Jan. 20, 2023).

⁵⁴⁹ *Ethiopian Reconciliation Commission Announces Three-Year Plan*, EZEGA NEWS (Apr. 30, 2019), <https://www.ezega.com/News/PrintNews?newsID=7075> [hereinafter *Three-Year Plan*].

⁵⁵⁰ *Reconciliation Commission Working to Ensure Transitional Justice, Requests Extension of Term*, ETH. NEWS AGENCY (Jan. 15, 2022), <https://www.ena.et/en/?p=32558> [hereinafter *Commission Requests Extension of Term*].

⁵⁵¹ *Three-Year Plan*, *supra* note 549.

⁵⁵² *Id.*

⁵⁵³ *Id.*

Commission had not been seen doing visible activities given the urgent circumstances of the day.⁵⁵⁴ The Commission later reported that it had invested its first year in institutionalizing itself and fulfilling necessary staff.⁵⁵⁵ Following this, according to the Commission's Chairperson, the Commission planned to invest much of its remaining time to studying the root causes of the conflict in Ethiopia, focusing on the important task of promoting national consensus, and creating a favorable environment for dialogue by engaging a wide range of actors.⁵⁵⁶ A Memorandum of Understanding was reportedly signed between State Minister at the Ministry of Peace, Almaz Mekonnen, and Reconciliation Commission Chairperson Cardinal Berhaneyesus Souraphiel to enable the two sides to exchange information and work together in capacity building.⁵⁵⁷ Whether those claims were realized in practice remained questionable. Moreover, given that reconciliation has multiple layers,⁵⁵⁸ it is not clear where the focus of the Ethiopian Commission is on inter-personal, inter-communal, or reconciliation at a national level. But it can be supposed that the intention of lawmakers seems to be that the TRC focuses on reconciliation at inter-communal and national levels.

Generally, due to different interrelated factors, the Commission has not been able to make its work visible to the wider Ethiopian public.⁵⁵⁹ One rare report about the performance of the Commission portrayed its fragile effort to mediate growing political frictions between the Ethiopian central government and defiant Tigrayan regional leaders before the outbreak of a civil war.⁵⁶⁰ The Commission's efforts were noted but, whether such mediation efforts fall under its mandates is not clear as Proclamation No. 1008/2018 is silent about the Commission's role in investigating or resolving conflicts that arise after the establishment of the Commission.⁵⁶¹ The Commission disclosed in 2020 that the mediation effort was jeopardized, and the deadly violent conflict broke out, because

⁵⁵⁴ *Id.*

⁵⁵⁵ *See generally id.* (reporting that from December 2018 to April 2019, the Ethiopian Reconciliation Commission set up its administrative structure and consulted with stakeholders).

⁵⁵⁶ Brad Settlemeyer, *Ethiopia and the Failure of National Dialogue*, REALIST REV. (Sept. 11, 2021), <https://realistreview.org/2022/02/02/ethiopia-and-the-failure-of-national-dialogue/>.

⁵⁵⁷ *Reconciliation Commission, Ministry Agree to Work in Collaboration for Peace*, THE REP. (Aug. 22, 2020), <https://www.thereporterethiopia.com/10053/>.

⁵⁵⁸ *See LEDERACH, supra* note 179, at 25–26.

⁵⁵⁹ *See Reconciliation Commission Requests Extension of Term*, FANA BROAD. CORP. (Jan. 15, 2022), <https://www.fanabc.com/english/reconciliation-commission-requests-extension-of-term/>.

⁵⁶⁰ Yonas Abiye, *Pre-Conditions Impede Commission's Reconciliatory Efforts*, THE REP. (Oct. 24, 2020), <https://www.thereporterethiopia.com/10311/>.

⁵⁶¹ *See id.*

both parties were reported to have set their respective, yet insurmountable, preconditions before they got to table for negotiations.⁵⁶²

Additionally, one other rare activity of the Commission was an attempt to draw experience from other TRC cases in African countries such as Kenya and South Africa.⁵⁶³ For example, the Commissioners' trip to Kenya was assisted by Conciliation Resources, a UK-based international peacebuilding forum.⁵⁶⁴ On this trip, the Commissioners of the Ethiopian TRC attempted to draw experiences from the Kenyan TJRC by meeting with the Commissioner of Kenya's National Cohesion and Integration Commission ("NCIC"), its CSOs, and other Commissioners.⁵⁶⁵ The objective of the meeting was reportedly "to share the Commission's mandate and insights surrounding conflict mitigation and reconciliation mechanisms."⁵⁶⁶ The Commission also attempted to learn from its South African counterpart through experience sharing in June 2019.⁵⁶⁷ The South African TRC remains an influential mechanism of TJ throughout the African continent and is a resource from which the Ethiopian TRC can important draw lessons.⁵⁶⁸ There was also an attempt to ensure executive follow-up to the Commission's work. In February 2020, the Commission reported the work it has conducted, including on such issues as the "development of the strategic plan," forging relations with other stakeholders, and conducting stakeholders consultations.⁵⁶⁹ According to information from the Office of the Prime Minister, the Prime Minister "provided direction in how to further strengthen activities by focusing on the capacity [and] potential of the [C]ommission to execute key activities through creating goodwill."⁵⁷⁰ Beyond those listed above, there were no clear and significant reports of reconciliation works conducted by the

⁵⁶² According to the Ethiopian newspaper *The Reporter*, the Chairman declined to comment on the details of the position of the respective parties. *Id.*

⁵⁶³ *Members of Reconciliation Commission Arrive in Kenya to Draw Lessons*, WALTA MEDIA & COMM'N CORP. (June 11, 2019), <https://waltainfo.com/41746/> [hereinafter *Commission in Kenya*].

⁵⁶⁴ *Id.*

⁵⁶⁵ In the words of its Commission Secretary, Mohamed Hassen, the NCIC is a body that was "created as a peace institution to stand and combat all forms of discrimination . . . as well as inter-community conflicts that end up dividing people and causing violence." *NCIC Hosts the Ethiopian Reconciliation Commission*, NAT'L COHESION & INTEGRATION COMM'N KENYA, <https://cohesion.or.ke/index.php/media-center/latest-news/260-ncic-hosts-the-ethiopian-reconciliation-commission> (last visited Feb. 5, 2023, 11:56 AM).

⁵⁶⁶ *Id.*

⁵⁶⁷ *Commission in Kenya*, *supra* note 563.

⁵⁶⁸ Jasmina Brankovic & Hugo van der Merwe, *Editors' Preface* to *ADVOCATING TRANSITIONAL JUSTICE IN AFRICA*, *supra* note 99, at viii.

⁵⁶⁹ *Abiy Meets Ethiopian Reconciliation Commission Members*, NEW BUS. ETH. (Feb. 22, 2020), <https://newbusinessethiopia.com/politics/abiy-meets-ethiopian-reconciliation-commission-members/>.

⁵⁷⁰ *Id.*

Commission, which is felt within the wider society. More operational details may emerge if the defunct TRC produces a report in the future.

B. When Do We Say that the Reconciliation Has at Least Succeeded?

“Getting to the truth was hard but getting to reconciliation will be harder.”⁵⁷¹

Though reconciliation in transitional justice is accepted as a fundamental endeavor, debates abound as to the nature and success of reconciliation efforts. According to Elin Skaar, “[r]econciliation is one of the most contested concepts in the scholarly debate on transitional justice” and it is very “difficult to measure empirically.”⁵⁷² Its exact contributions are generally held to be “inconclusive.”⁵⁷³ To view its success, one must consider the context in which it operates so as to frame any discussion related to the concept. A range of views exist as to when it is possible to say that there has been an effective reconciliation. On the one hand, reconciliation has to be viewed as constituting the re-establishment of relationships between previous adversaries, which implies a coexistence between people who previously considered themselves enemies.⁵⁷⁴ It is argued that this concept “is a more realistic goal in countries that are trying to come to terms with mass atrocities, genocide[,] or other highly divisive conflicts.”⁵⁷⁵ On the other hand, it is held that the above concept mentioned above is insufficient to say that there is an impactful reconciliation. Thus, reconciliation broadly “implies the desire to see relationships transformed from “resentment and conflict to friendship and harmony.”⁵⁷⁶ But Paul Seils cautions that identifying the real context where reconciliation is attempted plays a very crucial role in assessing the processes, aims, and outcomes of reconciliation.⁵⁷⁷ So, it has to be assessed on case-by-case basis. Accordingly, “fragile settings may emphasize resilience[,] conflict settings may emphasize peaceful coexistence[,] and massive displacement settings may emphasize return and

⁵⁷¹ TRUTH & RECONCILIATION COMM’N OF CAN., HONOURING THE TRUTH, RECONCILING FOR THE FUTURE: SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA vi (2015).

⁵⁷² Skaar, *supra* note 90, at 54 (evaluating transitional justice approaches to reconciliation).

⁵⁷³ *Id.* at 102.

⁵⁷⁴ *Id.* at 65; *see also* Melody Mirzaagha, *supra* note 165, at 1–2 (discussing the interplay of reconciliation and relationships).

⁵⁷⁵ Mirzaagha, *supra* note 165.

⁵⁷⁶ *Id.* (quoting Hizkias Assefa, *The Meaning of Reconciliation*, in PEOPLE BUILDING PEACE 37, 38 (1999)).

⁵⁷⁷ SEILS, *supra* note 159 (2017).

reintegration.”⁵⁷⁸ Citing Boraine, Fischer makes the following observation,

[There is] a need to achieve at least a measure of reconciliation in a deeply divided society by creating a common memory that can be acknowledged by those who created and implemented an unjust system, those who fought against it, and the many more who were in the middle and claimed not to know what was happening in their country.⁵⁷⁹

In Ethiopia’s ambiguous transition, the Reconciliation Commission was established as a flagship institution to herald reconciliation and sustainable peace in Ethiopia in certain ways.⁵⁸⁰ Provided that the country faces complex political problems, it has been urged that “[i]nstead of separately addressing [] human rights violations, the Commission must put such violations in a historical, political, social[,] and economic context and examine their root causes.”⁵⁸¹ As we noted in the preceding Sections, the establishment of the Reconciliation Commission is the step in a positive and restorative direction. However, for some time, the preceding hostile measures, such as prosecution, vetting, lustration, and security reform measures, were taken. While they can be important, they were also in contradiction with or ruined the spirit of forgiveness and reconciliation. According to a commentator, those measures “undermined Abiy’s message of love and reconciliation.”⁵⁸²

Yet, on a general account about its survival for three years, the Ethiopian Reconciliation Commission had a very poor track record of performance due to institutional and external factors. It has not conducted comprehensive investigations into the root causes of the conflict and also has not been seen attempting to bring about reconciliation despite its mandate.⁵⁸³ Since the establishment of the Ethiopian TRC, except minor public appearance and meager efforts, it has not made its presence felt

⁵⁷⁸ *Id.*

⁵⁷⁹ Fischer, *supra* note 44, at 411–412 (quoting Alexander L. Boraine, *Transitional Justice: A Holistic Interpretation*, 60 *J. INT’L AFFS.* 17, 22 (2006)) (discussing reconciliation and what the process would entail).

⁵⁸⁰ *Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, art. 5.

⁵⁸¹ Elizka Relief Foundation, *Transitional Justice Contribution to Sustaining Peace and Realizing SDG 16 in Ethiopia to the U.N. Office of the High Commissioner for Human Rights*, <https://www.ohchr.org/sites/default/files/2022-01/Elizka-Relief-Foundation.docx> (last updated Jan. 11, 2022) (responding to the OHCHR’s Call for Input to assist in the preparation of an HRC-mandated report regarding transitional justice).

⁵⁸² Daniel R Mekonnen, *Ethiopia’s Transitional Justice Process Needs Restoration Work*, *ETH. INSIGHT* (Feb. 1, 2019), <https://www.ethiopia-insight.com/2019/02/01/ethiopias-transitional-justice-process-needs-restoration-work/>.

⁵⁸³ *See* Tsegaye, *supra* note 458.

among the Ethiopian public.⁵⁸⁴ Related to its institutional mandate, as can be viewed from Proclamation 1102/2018, it has neither prosecutorial nor reparative mandates.⁵⁸⁵ Thus, it has no mandate of recommending trials and it has no scheme of reparations for victims whose cause remained neglected.⁵⁸⁶ As such, it is aimed only to serve as a symbolic forum for public hearings, whose impacts would remain far from meaningful. In his annual report in 2019, the Prime Minister explained to the Ethiopian Parliament that the Commission would play a key role in discovering and resolving both known and untold traumatic histories and an urge for violent revenge and would replace such animosities with forgiveness and trust-building among the public.⁵⁸⁷ Prime Minister Abiy also vowed to extend continued support, in a meaningful respect, to the efforts of the Commission in attaining its goals.⁵⁸⁸ Whether that promise is implemented in practice cannot be verified. In the end, it became clear that the Commission neither produced nor finalized the reports of its meager work, which became a bitter reality during and after the Commission's dissolution.

Thus, compared to some other successful cases, the Ethiopian TRC's engagement with the public has not been noted. In the end, in January 2022, around which time its mandate neared lapse, the Commission declared that it was not able to achieve its mandate due to different factors.⁵⁸⁹ In the words of its Chairperson:

⁵⁸⁴ *See id.*

⁵⁸⁵ *See Reconciliation Commission Establishment Proclamation*, 2018, *supra* note 46, art. 6.

⁵⁸⁶ *See id.* for a list of the Commission's powers and duties, which notably does not include a responsibility to prosecute perpetrators or provide reparations to victims.

⁵⁸⁷ Abiy Ahmed, 2019 Fiscal Year Government Performance Report 6 (2019) (transcript in Amharic on file with author) (explaining that the goals and work of the Commission will be to improve the country and prevent chaos and destruction).

⁵⁸⁸ *Id.* at 16 ("We will continue our efforts to strengthen the [C]ommission and bring the appropriate results.").

⁵⁸⁹ *Commission Requests Extension of Term*, *supra* note 550.

Since March 2019, we have made preliminary steps to resolve conflicts, address significant human rights violations, provide transitional justice, carry out participatory activities, and build national consensus in the future of Ethiopia.

. . . .

[But] [a]s the work is new and developing not only in our country but also in the world, we faced many legal loopholes as well as internal and external challenges such as war, conflict, and the COVID-19 pandemic in our country.⁵⁹⁰

The Chairman also mentioned the Commission's readiness to conduct investigations about serious human abuses in Ethiopia and ensure transitional justice in the country.⁵⁹¹ In the face of such failure, the Commission again called for increased governmental support and extension of the term of the mandates.⁵⁹² By this, it is crystal clear that the Commission miserably failed to accomplish even part of its objectives.

C. *The Dissolution of the Commission*

During the establishment of the Ethiopian Reconciliation Commission, the expectation was both high, given Ethiopia's dire situation, and mild, due to legitimacy concerns and the capacity and commitment of the government.⁵⁹³ Customarily, the findings of Truth and Reconciliation Commissions are helpful in identifying the scope and breadth of the patterns of abuses, informing to the public, establishing and acknowledging the human rights violations committed by the State that is often denied, and giving recognition and becoming a voice of the victims. By doing so, it is hoped that TRCs "help to give shape to other justice mechanisms that may follow, such as trials or reparations."⁵⁹⁴ As one element of "a much broader accountability package" and not taken as an alternative to judicial measures, nor to escape responsibility, TRCs help to achieve a break with the country's abusive and violent past and movement toward a more peaceful political future.⁵⁹⁵

In December 2021, Tesfaye Dhaba, the Ethiopian Government's Cabinet Affairs State Minister appeared on national television to

⁵⁹⁰ *Id.*

⁵⁹¹ *Id.*

⁵⁹² *Id.*

⁵⁹³ See Tadesse Simie Metekia, *Ethiopia Urgently Needs a Transitional Justice Policy*, ALLAFR. (Aug. 1, 2022), <https://allafrica.com/stories/202208020003.html>.

⁵⁹⁴ Priscilla Hayner, 55th Annual DPI/NGO Conference Rebuilding Societies Emerging from Conflict: A Shared Responsibility, *Justice in Transition: Challenges and Opportunities* 5 (Sept. 9, 2002).

⁵⁹⁵ *Id.* at 6.

announce that the Commission had “failed” to accomplish its tasks.⁵⁹⁶ As such, in a move to replace it, the Council of Ministers passed a draft bill to establish the new “National Dialogue Commission” on December 10, 2021.⁵⁹⁷ Following this, the National Dialogue Commission was established with Proclamation No. 1265/2021,⁵⁹⁸ and thus, replaced the previous TRC. Mentioning numerous internal and external challenges such as war, conflict, and the COVID-19 pandemic, the TRC’s Chair requested an extension of its term limit.⁵⁹⁹ An extension of a given TRC’s term limit is also common across post-conflict societies. For example, Liberia and South Africa, among others, extended the respective term limits of their TRCs.⁶⁰⁰ The initial term limit of the South African TRC was only from 1995 to 1998, but its term was extended until 2002.⁶⁰¹ Similarly, the Liberian TRC was extended until 2008.⁶⁰² But it appears that the term limit can only be extended when there is a credible ground that a TRC would make reasonable progress to finalize its work. But as can be understood from the foregoing, this is not the case with the Ethiopian TRC. It can be observed that it is due to the poor performance of the Commission over the years that the National Parliament rejected the request by the Commission to extend its term limits.⁶⁰³ By these latest legislative measures and political decisions, the Commission was dissolved, and was summarily requested to handover offices, equipment,

⁵⁹⁶ Love Addis, *EBC Latest News Special Ethiopian News December. 20.2018 (ETV Live)*, YOUTUBE (Dec. 20, 2018), https://www.youtube.com/watch?v=R62hBKjeHuQ&ab_channel=LoveAddis; Legide, *supra* note 37, at 1, 17 (2022).

⁵⁹⁷ *Council of Ministers Approves Draft Proclamation to Form National Dialogue Commission*, ADDIS STANDARD (Dec. 10, 2021), <https://addisstandard.com/news-alert-council-of-ministers-approves-draft-proclamation-to-form-national-dialogue-commission/>; *see also* Tsegaye, *supra* note 458.

⁵⁹⁸ *The Ethiopian National Dialogue Commission Establishment Proclamation*, Proclamation No. 1265/2021, Fed. Negarit Gazette, Year 28, No. 5 (Eth.) [hereinafter *Dialogue Commission Establishment Proclamation*, 2021].

⁵⁹⁹ *Reconciliation Commission Requests Extension of Term*, *supra* note 559.

⁶⁰⁰ *See* TRUTH COMMISSION: SOUTH AFRICA, *supra* note 457; *Truth or Reconciliation Mechanism: Accra Peace Agreement*, KROC INST. FOR INT’L PEACE STUD., <https://peaceaccords.nd.edu/provision/truth-or-reconciliation-mechanism-accra-peace-agreement> (last visited Feb. 27, 2023) [hereinafter *Truth or Reconciliation Mechanism*].

⁶⁰¹ TRUTH COMMISSION: SOUTH AFRICA, *supra* note 457.

⁶⁰² *Truth or Reconciliation Mechanism*, *supra* note 600.

⁶⁰³ Local Media reported that:

[i]n a letter to the Reconciliation Commission in February, the House of Peoples’ Representatives stated that the [C]ommission’s term in office had expired and urged it to submit a summary of its activities over the past three years The report by the local radio indicated that the Commission is currently handing over the office to the NDC after it has received a verbal note from the Parliament to hand over not only the office materials but also the budget allocated to it by the [G]overnment.

Tsegaye, *supra* note 458.

and remaining budgets to its successor, the newly established National Dialogue Commission.⁶⁰⁴ Still, this latest measure also does not appear to be promising given that the government unilaterally replaces one institution with the other without a serious consideration of factors which led to the failure of the pre-existing one. This is not to undermine the role of the new Commission. Especially in the post-conflict environment, the broader aim of the National Dialogue Commission is to expand the scope of the political negotiations beyond political and military leadership “with the aim of being more inclusive of society in general” and “away from elite-level deal making.”⁶⁰⁵

It is true that TRCs generally are *ad hoc* in the sense that they investigate a particular matter and “dissolve upon the presentation of their reports,”⁶⁰⁶ but it is very uncommon to dissolve a TRC before the finalization of its investigations.⁶⁰⁷ Thus, Ethiopia represents a rare case wherein it dissolved its TRC before the Commission finalized and submitted its truth finding reports. It perhaps marks the Government’s dissatisfaction with its works or absent achievements. This is in sharp contrast to the performance of the Special Prosecutor’s Office (“SPO”), which was established in 1992 to prosecute Derg regime officials for the crimes they committed during the Red Terror.⁶⁰⁸ Though it was not a full-fledged truth-finding body, it established a 441 paged volume in 2010 about its findings, processes, and decisions.⁶⁰⁹ Because of SPO’s work, the

⁶⁰⁴ *Id.* According to the United States Institute of Peace, national dialogue is “a dynamic process of joint inquiry and listening to diverse views, where the intention is to discover, learn[,] and transform relationships in order to address practical and structural problems in a society.” Maria Jessop & Alison Milofsky, *Dialogue: Calming Hot Spots Calls for Structure and Skill*, U.S. INST. PEACE (May 1, 2014), <https://www.usip.org/publications/2014/05/dialogue-calming-hot-spots-calls-structure-and-skill>.

⁶⁰⁵ IBRAHIM FRAIHAT, UNFINISHED REVOLUTIONS: YEMEN, LIBYA, AND TUNISIA AFTER THE ARAB SPRING 75 (2016).

⁶⁰⁶ Catherine Harwood, *Contributions of International Commissions of Inquiry to Transitional Justice*, in RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE, *supra* note 40, at 401, 403.

⁶⁰⁷ See generally HAYNER, *supra* note 108, at 14 (noting that despite the temporary duration of TRCs, the work of such commissions traditionally culminates in the submission of a report prior to its dissolution).

⁶⁰⁸ *Special Public Prosecutor’s Office Establishment Proclamation*, Proclamation No. 22/1992, Fed. Negarit Gazette, Year 51, No. 18, art. 6 (Eth.). The Mandate of the SPO was to “conduct investigations and institute proceedings in respect of any person having committed or responsible for the commission of an offense by abusing his position in the party, the [G]overnment or mass organization under the Dergue-WPE regime.” *Id.*

⁶⁰⁹ MARSHET TADESSE TESSEMA, PROSECUTION OF POLITICIDE IN ETHIOPIA: THE RED TERROR TRIALS 172, n.1 (2018).

world has become better informed about the Derg-era atrocities and crimes of Red Terror in Ethiopia.⁶¹⁰

While the Ethiopian Reconciliation Commission was mandated to identify the root causes of the conflict, identify perpetrators and victims, and ensure reconciliation and lasting peace as per Proclamation 1102/2018, it ended with the saddest conclusion as explained by its Chair that “the [C]ommission was unable to enter into full implementation activities due to internal and external factors.”⁶¹¹ As such, the Ethiopian Government ordered the handing over of its office, documents, and budget to the newly established National Dialogue Commission.⁶¹² Therefore, according to a commentator, “its term ended without any significant or visible achievement so far.”⁶¹³ Conventionally, TRCs are expected to submit reports about the performance before their resolution.⁶¹⁴ But it is to be underscored that the failure of the Ethiopian TRC is caused by complex exogenic and endogenic factors, and, hence, the blame should not be wholly attributed to its internal weakness alone, as discussed below.

IX. WHAT FACTORS EXPLAIN THE POOR PERFORMANCE OF THE COMMISSION?

It is argued that the poor performance of the Reconciliation Commission in attaining its grand ambitions should not be treated in isolation from other broader tradition of the political-institutional predicaments in Ethiopia. It simply reveals the wider patterns of the weak and dysfunctional institutional landscape in the country. Some of those political institutions are arguably erected on instrumental motives only for political posturing, and, thus, the requisite political commitment to their actual functionality remains hollow. More paradoxically, in the context of the ongoing violence in a deeply divided state, the incapacitated Reconciliation Commission is already an ill-fated institution. Viewed from this general pattern of fragile political atmosphere, inherent institutional weaknesses and gaps in its mandate and power, among other factors, its success was doubtful from the very beginning. But the challenging time in which it emerged does not wholly justify its miserable failure in achieving at least some of its goals. Prudently implemented TRCs in similar situations have rescued their countries from the risk of

⁶¹⁰ See generally *id.* (discussing how the Ethiopian Special Prosecutor’s report sheds light on the crimes committed by the Derg regime, including genocide, war crimes, unlawful detention, and other abuses of power).

⁶¹¹ *Reconciliation Commission Requests Extension of Term*, *supra* note 559.

⁶¹² Tsegaye, *supra* note 458.

⁶¹³ *Id.*

⁶¹⁴ Catherine Harwood, *Contributions of International Commissions of Inquiry to Transitional Justice*, in RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE, *supra* note 40, at 403.

descending into further chaos and turmoil—the South African one being a prime example—though the contexts of the Ethiopian transition and that of other post-conflict societies differ. Moreover, the government could have acted more reasonably and with a cautious approach to bolster its success and reduce its gaps, detriments, and challenges. At any rate, the Commission has unquestionably fallen short of achieving its policy objectives. Thus, while its mandates lapsed without any achievement, which lead to its dissolution, Ethiopia still finds itself in a desperate political situation and reconciliation remains a distant desire. In the remainder of this Section, this Article will briefly look at some of the factors which constrained the already problematic institution.

A. Delicate Transitional Moment and Ongoing Conflicts

As shown in the introduction, the post-2018 change initially brought hope and optimism so that the country would transition towards a political order of better human rights protections, a prevalence of peace, and societal harmony. Contrary to the optimistic expectations, however, it unfolded in the troubled climate, and Ethiopia descended into unimagined political chaos and violent civil conflict. Therefore, even though the Reconciliation Commission was erected, the current TJ period has been stained with another round of violent conflicts, inter-communal violence in different regions, resulting massive human rights violations.⁶¹⁵ Following the Government crackdown with cruelty in the above cases, many voiced their concerns about authoritarian resurgence and renewed waves of human rights violations.⁶¹⁶ But the Government denies such allegations and insists that human rights conditions in Ethiopia have improved.⁶¹⁷ However, the claims of the Government's critics should not be easily dismissed. Massive displacements, killings, politically motivated attacks, and high profile assassinations were consistently reported and gross violence in the name of security measures has become common practice.⁶¹⁸ Bolstered by the commonly voiced claim of ensuring the rule of law, security forces tend to take excessive measures.⁶¹⁹ Reports of human rights violations abound in regions where the Government conducted anti-

⁶¹⁵ See Bader, *supra* note 34.

⁶¹⁶ See *Ethiopia: Freedom in the World 2021 Country Report*, FREEDOM HOUSE, <https://freedomhouse.org/country/ethiopia/freedom-world/2021> (last visited Mar. 11, 2023).

⁶¹⁷ See Fred Harter, *Can Ethiopia's Government be Held Accountable for Crimes in the Civil War After Complaint Filed at the A.U.?*, AFR. REP. (Feb. 23, 2022, 3:34 PM), <https://www.theafricareport.com/179151/can-ethiopias-government-be-held-accountable-for-crimes-in-the-civil-war-after-complaint-filed-at-the-au/>.

⁶¹⁸ See HUM. RTS. WATCH, ETHIOPIA: EVENTS OF 2020 (2021), <https://www.hrw.org/world-report/2021/country-chapters/ethiopia>.

⁶¹⁹ See U.S. DEP'T OF STATE, ETHIOPIA 2021 HUMAN RIGHTS REPORT 1–2 (2021).

insurgency operations such as in Western Oromia; Benishangul; Somali; Southern Nations, Nationalities, and People's Region; and Amhara.⁶²⁰ The war in Tigray, which took place from November 2020 until 2 November 2022, has already produced unprecedented atrocities.⁶²¹ Beyond war casualties, this period also saw the widespread operation of a hostile propaganda war on both sides eroding the shared values. According to the Global State of Democracy Initiative, the Ethiopian democratic backsliding mimics the global trend in democratic down-sliding.⁶²² According to Anthony Oberschall, collective threat propaganda is argued to promote more violence and blocks pathways to reconciliation.⁶²³ Moreover, Lawther notes that “[i]n a context of contested victimhood and an unresolved past, the ‘political currency’ of victimhood may lead to the domination and embellishment of certain voices and narratives and the concurrent silencing of others.”⁶²⁴

It is acknowledged that the period of transition in Ethiopia and elsewhere is delicate and challenging. Handling this delicate moment requires “a great deal of principled care, wisdom[,] and [a] sense of responsibility.”⁶²⁵ However, from the beginning, the Commission was bound to face different challenges and, true to the Ethiopian political tradition, authoritarian climate is bequeathed to the new order. As one observer notes,

[t]o try to do reconciliation under authoritarianism is only to exculpate the very authoritarian regime we are just trying to electorally replace by a democratic regime. This becomes a face, especially when, as we see in . . . [the] Reconciliation Commission, the very people who perpetrated the atrocities are the Commissioners.⁶²⁶

⁶²⁰ *Id.*

⁶²¹ See Press Release, Office of the High Commissioner for Human Rights, U.N. Experts Warn of Potential for Further Atrocities Amid Resumption of Conflict in Ethiopia (Sept. 19, 2022), <https://www.ohchr.org/en/press-releases/2022/09/un-experts-warn-potential-further-atrocities-amid-resumption-conflict>.

⁶²² See INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE & GLOB. STATE OF DEMOCRACY INITIATIVE, GLOBAL STATE OF DEMOCRACY REPORT 2022: FORGING SOCIAL CONTRACTS IN A TIME OF DISCONTENT (2022), <https://idea.int/democracytracker/sites/default/files/2022-11/the-global-state-of-democracy-2022.pdf>.

⁶²³ See ANTHONY OBERSCALL, CONFLICT AND PEACE BUILDING IN DIVIDED SOCIETIES: RESPONSES TO ETHNIC VIOLENCE 31 (2007).

⁶²⁴ Cheryl Lawther, *Let Me Tell You: Transitional Justice, Victimhood and Dealing with a Contested Past*, 30(6) SOC. & LEGAL STUD. 890, 892 (2021).

⁶²⁵ Dersso, *supra* note 302.

⁶²⁶ Tsegaye R. Ararssa, *What Went Wrong, Where? - Making Sense of the Faltering Transition (Part II)*, (Feb. 18, 2019), <https://www.batipost.com/what-went-wrong-where-making-sense-of-the-faltering-transition-part-ii/>.

The Ethiopian Reconciliation Commission came during the time when “the rhetoric of war” were highly militated in the country’s transitional political process.⁶²⁷ It also saw the raging civil war in the northern part of the country. The division, defamation, and collective condemnation of the predecessor elites fundamentally based on ethnic lines meant that the widening of political fragmentation was inevitable.⁶²⁸ It marked the time when everyone at both sides of the political stages started to perceive others as their “political enemy.”⁶²⁹ As this Article discusses below, in the face of the above realities, many of the reconciliatory efforts and rhetoric ended up without success and made little impact on the political lives of Ethiopians.

B. Lack of Public Involvement in its Design and Operation: The Legitimacy Crisis

The Commission was created in a troubled and uncertain time. Above all, it has been demonstrated above that it was not a result of a wider bargaining among contending actors, and it did not involve the wider consultation of wider actors from the Ethiopian community, civil societies, victims, or international actors, which could have helped the Commission to win public trust and rally support for its much-needed restorative work. There was no critical institutional mechanism designed to maintain the Commission’s independence and, beyond mere institutional posturing, crucial political commitment is severely lacking amidst the hostile and faltering political periods. As discussed in the preceding Sections, some of the challenges relate to the institutional domain of the Commission while others relate to the diversity of the interests at stake and the period of the time to be investigated by the Commission. The diverse backgrounds of the members of the Commission are itself a challenge further compounded by the challenges of the outbreak of a new and violent civil war.⁶³⁰

⁶²⁷ See *Bereft of Popular Mandate, Hard to Keep the State Viable*, ADDIS FORTUNE (May 31, 2020), <https://addisfortune.news/bereft-of-popular-mandate-hard-to-keep-the-state-viable>.

⁶²⁸ See generally Mekonnen, *supra* note 582 (“[T]he kind of retributive justice in action appears to be selective: picking a certain category of offenders and ignoring other without sufficient explanation,” which creates a cause for concern regarding political stability).

⁶²⁹ See generally Declan Walsh & Abdi Latif Dahir, *Why is Ethiopia at War in the Tigray Region?*, N.Y. TIMES (Mar. 16, 2022, 20:21), <https://www.nytimes.com/article/ethiopia-tigray-conflict-explained.html> (Prime Minister Abiy encouraged ordinary citizens who already harbored grudges and hostility toward various ethnic groups to take up arms saying “[n]othing will stop us. The enemy will be destroyed.”).

⁶³⁰ Abebe & Mengistu, *supra* note 479, at 162–63.

C. Retributive Criminal Justice Ruined the Reconciliation Spirit

Until the establishment of the Reconciliation Commission, a range of competing measures were attempted. Of these measures, some of the prosecution measures mainly against prominent TPLF civil, military, and security officials along with massive vetting and lustration measures were viewed as partial measures and as a part of a politicized retributive campaign.⁶³¹ Expectedly, such tensions aroused a serious doubt about the intention of the reform measures and created a “siege mentality” among the Tigrayan politicians and their mobilized ethnic constituency,⁶³² which already ruined the reconciliation spirit. In transitional justice literature, it has been held that the wisdom of prosecuting the rival predecessor elites while simultaneously attempting to maintain peace is questionable, especially in a “conflict-ridden societ[y].”⁶³³ Some criticize that though the Commission could have played a positive role in mending the precarious political situation, it came late and only after the Government took drastic measures of prosecuting top regime officials and security personnel.⁶³⁴ This “contradict[s] the spirit of national reconciliation [and] undermined Abiy’s message of love and reconciliation.”⁶³⁵ The peace-justice dilemma required a more robust reckoning than what unfolded.⁶³⁶ Vetting, lustration, and official condemnation of the predecessor elites and their gradual deliberate abandonment from the new political elites, and processes gave birth to a feeling of exclusion, sentiment, and a “siege mentality” among the Tigrayan elites and their wider public.⁶³⁷ This confrontation (and also exclusion), which was handled imprudently, led to one of the most deadly conflicts of recent memory—derailing hopes for a reconciled transition.⁶³⁸ It largely constrained the efforts and prospects of the reconciliation at the time the Commission embarked on its task. Though the Commission was erected as part of the Government’s policy, its establishment was not capable of protecting the country from being engulfed by a new spiral of violent civil conflict, mainly with its

⁶³¹ See *Preventing Further Conflict and Fragmentation in Ethiopia*, INT’L CRISIS GRP. (2019), <https://www.crisisgroup.org/africa/horn-africa/ethiopia/preventing-further-conflict-and-fragmentation-ethiopia>.

⁶³² Kjetil Tronvoll, *Tigray: Towards a De-Facto State?*, ERITREA HUB (May 14, 2020), <https://eritreahub.org/tigray-towards-a-de-facto-state>.

⁶³³ Geoff Dancy & Eric Wiebelhaus-Brahm, *The Impact of Criminal Prosecutions During Intrastate Conflict*, 55(1) J. PEACE RSCH. 47, 47 (2018).

⁶³⁴ Mekonnen, *supra* note 582.

⁶³⁵ *Id.*

⁶³⁶ *Id.*

⁶³⁷ See Tronvoll, *supra* note 632.

⁶³⁸ See *Turning the Pretoria Deal into Lasting Peace in Ethiopia*, INT’L CRISIS GRP. (Nov. 23, 2022), <https://www.crisisgroup.org/africa/horn-africa/ethiopia/turning-pretoria-deal-lasting-peace-ethiopia>.

predecessor political elites. Thus, the Ethiopian experience suggests that the potential role of an incautious justice process through retributive prosecutions can be an obstacle in ensuring reconciliation. As Luc Huyse observed, “[t]rials have the potential to thwart reconciliation processes.”⁶³⁹ While the reconciliation process has a wider societal role to operate beyond the political rifts between the central government and Tigrayan elites, the conflict between them derailed its success as the country mobilized its available resources for war efforts in the north.

D. *Lack of International Support in the Process*

Elsewhere, in addition to the State’s own transitional justice, external pressures have been instrumental in ensuring compliance with transitional justice norms.⁶⁴⁰ The International Community would be a great asset when the domestic political condition is conducive in undertaking transitional justice measures. Peaceful, and at a times, coercive pressure from the Internal Community is important, while also controversial, in “bringing about state compliance with international . . . human rights norms.”⁶⁴¹ The role of international actors has also been prominent especially where there is lack of ability or domestic political will in taking measures.⁶⁴² Intervention for the protection of human rights may also be informed by political, economic, and geo-strategic imperatives.⁶⁴³ However,

[i]n Ethiopia, no visible international pressure was originally exerted to adopt a transitional justice framework. The topic became relevant only after horrendous atrocities were committed in the current escalated war in the Tigray region of northern Ethiopia. However, some international human rights groups claimed that the Government should have given attention to serving justice in response to the massive human rights violations.⁶⁴⁴

Elsewhere, the absence of adequate international justice mechanisms has resulted in creative mechanism of what McEvoy and McGregor called

⁶³⁹ Luc Huyse, *Justice, in RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK* 97, 97 (David Bloomfield et al. eds., 2003).

⁶⁴⁰ Andrew G. Reiter, *External Actors and Transitional Justice in a Reunified Korea, in TRANSITIONAL JUSTICE IN UNIFIED KOREA* 35, 35 (Baek Buhm-Suk & Ruti G. Teitel eds., 2015); see also SUBOTIĆ, *supra* note 287.

⁶⁴¹ Albrecht Schnabel, *International Efforts to Protect Human Rights in Transition Societies: Right, Duty, or Politics?, in HUMAN RIGHTS AND SOCIETIES IN TRANSITION: CAUSES, CONSEQUENCES, RESPONSES* 141, 141 (Shale Horowitz & Albrecht Schnabel eds., 2004).

⁶⁴² See Hansen, *supra* note 97, at 207, 228; Reiter, *supra* note 640.

⁶⁴³ Schnabel, *supra* note 641.

⁶⁴⁴ Legide, *supra* note 37, at 21.

justice “from below.”⁶⁴⁵ In those societies where the national justice infrastructure has been weak, corrupt, ineffective, and overwhelmed or simply incapable of adequately responding to the “needs of transition,” it is frequently “victims and survivor groups, community and civil society organizations, human rights non-governmental organizations, church bodies[,] and others that has been the engine of change.”⁶⁴⁶ In Ethiopia, some of these bodies are in short supply. In the absence of strong rights groups and an assertive civil society, the voices seeking justice for victims or pushing towards robust measures remained few.⁶⁴⁷ This reflects that the transitional justice effort, if any, remained only associated with the nation’s formal institutions and mechanisms, which creates a disconnect between the TJ efforts in Ethiopia and local ownership and thus makes TJ “even more distant.”⁶⁴⁸ Engaging indigenous mechanisms can also support the process today or in the future, but they are also poorly understood and researched.

According to the final conclusion of the Commission’s Chairman, which is quoted above, Ethiopia has neither achieved reconciliation, nor ensured accountability by checking impunity.⁶⁴⁹ Additionally, the Commission did not succeed in achieving sustainable peacebuilding.⁶⁵⁰ The 1992 report of the United Nations Secretary General Boutros Gail defined peacebuilding as “action to identify and support structures which will tend to strengthen and solidify peace in order to prevent a relapse into conflict.”⁶⁵¹ However, what Ethiopia found itself absorbed in was new conflict. In this circumstance, despite the success or failure of the Commission, some doubt the prudence of entirely relying on reconciliation and setting aside other crucial measures, such as measures to ensure accountability and redress for victims. As Human Rights Watch’s Director for East Africa, Laetitia Bader, explained, it is difficult to ask people to

⁶⁴⁵ Kieran McEvoy & Lorna McGregor, *Transitional Justice from Below: An Agenda for Research, Policy and Praxis*, in TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 1, 3 (Kieran McEvoy & Lorna McGregor eds., 2008).

⁶⁴⁶ *Id.*

⁶⁴⁷ See generally Felix Horne, *Moving on from Ethiopia’s Torturous Past*, ETH. INSIGHT (July 2, 2019), <https://www.ethiopia-insight.com/2019/07/02/moving-on-from-ethiopias-torturous-past/> (noting the lack of resources and organizations focused on seeking justice in Ethiopia, other than the Reconciliation Commission, which beyond rarely met or made an impact for survivors).

⁶⁴⁸ Kieran McEvoy, *Letting Go of Legalism: Developing a ‘Thicker’ Version of Transitional Justice*, in TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE *supra* note 645, at 15, 17.

⁶⁴⁹ *Reconciliation Commission Requests Extension of Term*, *supra* note 559 (“[T]he [C]ommission was unable to enter into full implementation activities due to internal and external factors.”).

⁶⁵⁰ See *id.*

⁶⁵¹ U.N. Secretary-General, *An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peace-Keeping*, ¶ 21, U.N. Doc. A/47/277-S/24111 (June 17, 1992).

simply forgive and move on when they have deep scars from past violence.⁶⁵² Bader further emphasized that the quest of citizens for meaningful justice and the nation's attempt to provide them with forums to tell their stories should be carefully addressed.⁶⁵³ Though it can be argued that a Truth and Reconciliation Commission "could advance important goals . . . it does not replace the need for fair, credible trials before courts of law and does not satisfy victims' rights to have access to justice".⁶⁵⁴

X. CONCLUSION

In this Article, a modest attempt has been made to analyze the transitional justice efforts in Ethiopia, which was approached institutionally through the use of a Reconciliation Commission. This Article aimed to elucidate the political underpinnings surrounding the Commission's establishment, highlight underlying justifications for its creation by disregarding other measures, and assess the Commission's performance and failure in light of other contemporaneous experiments in transitional societies. Hoping to provide sufficient background understanding, it conducted a literature review on such concepts as TJ and TRCs, and it also provided conceptual discussions on reconciliation. It is well accepted that transitional justice has been broadly conceived to involve judicial and non-judicial mechanisms to reckon with an evil past. Despite the proliferation of different transitional justice mechanisms and the expansion of the transitional justice field in post-conflict settings, there is, however, "a persistent lack of certainty" and empirical assessment about the actual impacts of these instruments.⁶⁵⁵ Reconciliation stands as one of the key means and ends of transitional justice, but it is also complex, both as a concept and also as a process. While it is broadly taken as a key means to durable peace, it is also a long, complex, and ongoing endeavor which could transcend decades or even generations to materialize while the possibility of recurring violence remains active in the minds of those at home in a divided community.⁶⁵⁶ Despite those shortcomings, the establishment of Truth and Reconciliation Commissions represent a standard global justice measure.

⁶⁵² Bader, *supra* note 34.

⁶⁵³ *Id.*

⁶⁵⁴ *Ethiopia: Abiy's First Year as Prime Minister, Review of Accountability and Justice*, HUM. RTS. WATCH (Apr. 8, 2019, 12:00 AM), <https://www.hrw.org/news/2019/04/08/ethiopia-abiy-first-year-prime-minister-review-accountability-and-justice>.

⁶⁵⁵ Elizabeth Bunselmeyer & Philipp Schulz, Abstract, *Quasi-experimental Research Designs as a Tool for Assessing the Impact of Transitional Justice Instruments*, 23 INT'L J. HUM. RTS. 1, 1 (2019).

⁶⁵⁶ See Antti Pentikäinen, *Foreword to SIMON KEYES, MAPPING ON APPROACHES TO RECONCILIATION* 3, 3 (2019).

But, in order for TRCs to play their desired role, TRCs should display some crucial requirements to ensure its legitimacy and guarantee their success.

Almost five years after regime change, Ethiopia is still going through a series of complex and troubled political trajectories, such as intercommunal violences and deadly civil war. While the preceding abuses required real reckoning, these latter episodes of conflicts and violences also make the agenda of justice and reconciliation increasingly imperative. The Reconciliation Commission was established as the preferred institutional mechanisms to address past wrongs in a restorative approach away from the narrow retributive justice model. Since numerous political problems in Ethiopia take wider patterns, which are rooted in history, it has been suggested that the Ethiopian TRC's investigation consider the wider historical, political, social, and economic conditions rather than focusing on human rights violations alone. In the context of divided elite politics and the fluid transitional moment, there are deeper cases to be settled in this critical time in Ethiopia.

However, compared to some other successful cases, the Ethiopian TRC's engagement in relation to its mandates and its public expectations remained very minimal due to different constraints. Significant challenges can be attributed to the instable political period and question of its political commitment to its operation with full capacity. It has been argued, therefore, that the Commission was established not in the presence of honest political will. Rather, critics maintain that it was erected mostly in want of the Prime Minister's want of personal, domestic, and international legitimacy to appear as a reformist peacemaker which has led the Government to focus on a rather hollow rhetoric of "forgiveness" and "reconciliation."⁶⁵⁷ Moreover, the reconciliation endeavor has not been aligned and synergized with other equally pressing questions of justice, which appear to have been sacrificed. Moreover, this Article identified that there are acute, inherent problems in the institutional choice and design of the mandate of the Reconciliation Commission in addressing Ethiopia's violent and abusive past. These factors are responsible to varying degree for its failure to lead Ethiopia toward a peaceful future. Although reconciliation and forgiveness are preached in rhetoric and although the Reconciliation Commission was erected symbolically, it was not possible to avoid the reigning danger of war and violence in Ethiopia. The subsequent outbreak of civil war between the Ethiopian Government and the Tigrayan forces in early November 2020 and the continuation of violence in other parts of Ethiopia,

⁶⁵⁷ See generally LYONS, *supra* note 245 (explaining that the prior regime utilized mass arrests and silencing of dissenters, but in 2018 the new Prime Minister made public statements and actions indicating a focus on peace, love, freedom, and reconciliation).

such as the Western Oromia region, shattered the hope generated by Ethiopia's quasi-transition. But that alone even is not the beginning and the end of the problem itself and there were practical deficits in conceiving the reconciliation process. Available works suggest that a reconciliation effort should be viewed broadly and as a wider political exercise rather than as purely a narrow moral and legal endeavor.⁶⁵⁸

The constraints that led to the poor performance of the Commission have to do with both institution-specific and wider extra-institutional political dimensions. A closer examination of the circumstances in which the Commission evolved reveals that it came only out of a narrowly designed "top-down" decision of the new ruling elite which, in the end, casted doubt on its legitimacy. Moreover, elite intransigence, lack of political compromise on fundamental national issues, and transition roadmap, and a lack of good faith engagement by contending actors on major issues highly constrained the Commission's performance and ability to achieve its expected outcomes. Furthermore, the Commission emerged only after the spirit of reconciliation and forgiveness was largely ruined by the allegedly hostile, drastic preceding political measures such as "selective prosecution," vetting, and lustration, which produced a siege mentality and affected much needed reconciliatory moves.⁶⁵⁹

To be successful and contribute to consolidation of democratic institutions, the transitional justice process should be inclusive. It should include all parties who were involved in the past wrongs in different capacities, as perpetrators, victims, bystanders, and regardless of their ethnic, linguistic, or religious backgrounds with the "aim [of making] politics different and more democratic than the previous regime."⁶⁶⁰ In the Ethiopian case, the exclusionary and authoritarian political culture bequeathed from the past—which disregards credible political negotiation—does not provide room for honest engagement on key matters of national political importance. Such a hostile political environment generally "mean[s] that political opponents view each other as enemies that could never be accommodated or tolerated."⁶⁶¹ Ultimately, the

⁶⁵⁸ See generally CLAIRE MOON, NARRATING POLITICAL RECONCILIATION: SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION 24–25 (2d ed. 2008) ("[A] truth commission is becoming an almost mandatory requirement of any state in transition. It . . . signals to the national and international community that it is incorporating human rights concerns into its political remit and on these grounds attempts to secure recognition and legitimization.").

⁶⁵⁹ See Mekonnen, *supra* note 582.

⁶⁶⁰ Anja Mihr, *An Introduction to Transitional Justice*, in AN INTRODUCTION TO TRANSITIONAL JUSTICE, *supra* note 99, at 1, 3.

⁶⁶¹ *This Desperate Moment Calls for Strategic Dialogue for Ethiopia*, ADDIS FORTUNE (Oct. 10, 2020), <https://addisfortune.news/this-desperate-moment-calls-for-strategic-dialogue-for-ethiopia/>.

Reconciliation Commission played weakly amidst these troubled and unpredictable periods.

Overall, as can be seen, the continued civil war, and multiple flashpoints of prevailing antagonism clearly show that the efforts of the restorative approach expected from the Reconciliation Commission were unsuccessful. Thus, while its mandates lapsed without any achievement leading towards its dissolution, Ethiopia still finds itself in a desperate political situation and reconciliation remains a distant desire. Since the problems lie in the deep-rooted past and present predicaments, the blame should not be disproportionately attributed to the Reconciliation Commission alone. Institutions do not operate in the vacuum, and their performance is highly constrained by the political contexts.

Ultimately, the new Dialogue Commission is said to have fared better, especially in its effort to secure legitimacy given that it emerged through a certain semblance of public participation during its formation and member selection process. However, the unguarded hope that it will succeed in achieving peace, justice, and reconciliation is partly questionable and the recurring gaps shows that Ethiopia should learn do more.

During the writing of this section earlier, the worrying development came with the resumption of a new wave of violent armed conflict between the Ethiopian Government and Tigrayan forces.⁶⁶² This latest event shattered the remaining, but slim, optimism that the Dialogue Commission would preside over the transition towards peace and mutual understanding in a way that would engage contending actors in the process. The conflict between the Ethiopian Government and Tigrayan forces halted a after temporary truce was declared in March 2022, which paved the way for a window of opportunity for peace talks.⁶⁶³ However, the AU-brokered Pretorial Peace Accord was signed between the Ethiopian federal government and TPLF leaders on 2 November 2022, leading to the peaceful culmination of the two-years' deadly conflict.⁶⁶⁴ While the majority of Ethiopians and the international community expressed their happiness regarding the peace deal, it also caused distress among the Amhara constituency and its armed militia who fought in Tigray conflict alongside the federal Government. Their grievance emerged in relation to the above peace deal and that their political expectations were not met.

⁶⁶² See Nosmot Gbadamosi, *Ethiopia's Civil War: As Cease-Fire Collapses, Fighting Resumes in Tigray*, FOREIGN POL'Y (Aug. 31, 2022, 1:00 AM), <https://foreignpolicy.com/2022/08/31/ethiopia-tigray-civil-war-abiy-obasanjo-au-us-cease-fire-hunger/>.

⁶⁶³ Alex de Waal, *Ethiopia Civil War: Why Fighting has Resumed in Tigray and Amhara*, BBC (Sept. 1, 2022), <https://www.bbc.com/news/world-africa-62717070>.

⁶⁶⁴ *Turning the Pretoria Deal into Lasting Peace in Ethiopia*, INT'L CRISIS GRP. (Nov. 23, 2022), <https://www.crisisgroup.org/africa/horn-africa/ethiopia/turning-pretoria-deal-lasting-peace-ethiopia>.

As the violent attack has been launched by armed militia, the federal parliament, upon the regional government, declared the infamous State of Emergency on 14 August 2023.⁶⁶⁵

In this light, contrary to expectations that past wrongs would be addressed, it is clear that Ethiopia continues to face series of violence and instability adding complications to the already prevailing challenges. Ethiopia's political predicament will not come to an end "until the Ethiopian tradition of 'hegemonic control' from the center has finally been replaced by genuine political pluralism."⁶⁶⁶ It is only wide-ranging and all-inclusive peaceful dialogues, credible inter-elite negotiated settlements entered into in good faith, with the support of the International Community and civil societies, and above all, the determined commitment of Ethiopians themselves, which will sustain Ethiopia's continued transition toward a reconciled, peaceful, and democratic order. Until such is done, the erection of one institution after another or proliferation of institutions does not serve any meaningful and transformative role. To use the familiar Ethiopian proverb, "The change of stove does not make stew sweeter."

⁶⁶⁵ Sisay Sahlu, *Parliament Approves State of Emergency Following Intense Debate*, REPORTER (Aug. 14, 2023), <https://www.thereporterethiopia.com/35979/>; see also *Ethiopia Declares a State of Emergency in Amhara amid Increasing Violence*, GUARDIAN (Aug. 4, 2023), <https://www.theguardian.com/global-development/2023/aug/04/ethiopia-declares-a-state-of-emergency-in-amhara-amid-increasing-violence>.

⁶⁶⁶ David Turton, *Introduction to ETHNIC FEDERALISM: THE ETHIOPIAN EXPERIENCE IN COMPARATIVE PERSPECTIVE* 1, 29 (David Turton ed., 2006).