

Transitional Justice through 'Reconciliation Commission' in Post-2018 Ethiopia: A Critical Examination on its Viability

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Abstract

In a country that has been beset by gross human rights violation, repression, and violent conflict, transitional justice measures constitute a powerful tool to promote reconciliation, end impunity, and ensure peace. However, if transitional justice measures are to achieve their objective, their design, implementation, and administration must correspond with specific realities on the ground. On the 25th day of December 2018, the Ethiopian parliament ratified a 'Reconciliation Commission' proclamation, which acclaimed by many as a landmark. Yet a big question is: how far the move corresponds with the country's specific realities? The alignment of the measures with Ethiopia's historical and socio-political specificities remains an unsettled issue. Thus, this article, through a theoretical analysis and interpretative perspective, critically examines the viability of the measure in light of the specific realities that are unfolded in the country. The article argues that the 'nature of post-2018 regime', 'contested past', and the problem of 'sequencing and politicization' of the transitional justice measures are specific contexts that could derail the effectiveness of the measures and hence, require closer scrutiny.

Keywords: Transitional Justice, Human Rights Violation, Authoritarian Regime, Ethiopian Reconciliation Commission

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1. Introduction

Although international and domestic criminal justice for violations against human rights started with the Nuremburg and Tokyo trials and arguably even prior to that¹, the contemporary practice of transitional justice (TJ) is generally understood to have begun in response to drastic political changes in the form of democratic transitions in Latin America in the 1980s and in Eastern Europe after the fall of the Union of Soviet Socialist Republics (USSR) in the 1990s.² As such, the concept, in its early usage, is used to refer to the judicial process of addressing human rights violations committed by dictatorial or authoritarian regimes and in the course of democratic transition. It, in particular, laid its focus on countries in transitions from one political system to another.³

Following the United Nations' (UN) involvement in the aftermath of the Balkan wars and the Rwandan genocide, scholars on TJ began to focus on post-conflict justice.⁴ Thereafter, the field and its practice expanded dramatically. The term has become to be used for processing war crimes and massive human rights abuses committed in violent conflicts.⁵ It was normatively adopted and expanded by international agencies working on the field and applied to a far wider range of

¹Mouralis G., The Invention of "Transitional Justice" in the 1990s. In: Israël L., Mouralis G. (eds) *Dealing with Wars and Dictatorships*. (T.M.C. Asser Press, The Hague, 2014), available at https://doi.org/10.1007/978-90-6704-930-6_6, Retrieved 20 December 2020; Domingo, P., *Dealing with legacies of violence: transitional justice and governance transitions*, (Overseas Development Institute Background Note, 2012) available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7686.pdf>, Retrieved 20 December 2020; International Centre for Transitional Justice (ICTJ), 'What is transitional justice,' New York, NY: ICTJ (2009), available at <http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>, Retrieved 20 December 2020; Kritz, N. J. (ed.), *Transitional justice: how emerging democracies reckon with former regimes* (Washington, DC: US Institute of Peace, 1995, Vol. I: General Considerations)

² Though abundant literatures suggest that the contemporary practice of TJ has begun in the late 1980s and early 1990s, TJ has a long history that predates even the twentieth century forms. For that matter, writers like Jon Elster dates the origin of TJ back to ancient Greece (see Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004). Ruti Teitel, on the other hand, suggests that the origins of modern transitional justice can be traced to World War I (see Ruti G. Teitel, 'Transitional Justice Genealogy,' (2003), *Harvard Human Rights Journal* 16 (Spring): 70

³Mouralis n1

⁴Bassiouni, M Cherif (ed.), *Post-Conflict Justice*. (Ardsey: Transnational Publishers, 2002)

⁵*Ibid*

contexts than those characterized by regime transformation. Since then, the term has come to describe an ever-expanding range of mechanisms and institutions.⁶ This expansion was rooted in rapidly shifting Post-Cold War global politics and international norms.⁷ In line with this, Teitel has identified three generations of TJ: the first generation is the one that begins and ends with the Nuremberg Military Tribunals; the second generation is characterized by a move toward national-level prosecutions as well as a shift from retributive justice to questions of restorative justice; and the third generation is characterized by the move of TJ discourse from exception to the mainstream.⁸ Today, international legal frameworks dictate that TJ is an 'almost automatic response to conflict and human rights violations'.⁹ It covers wide range of activities including the establishment of tribunals, truth commissions, lustration of state administrations¹⁰, and settlement on reparations. It also includes political and societal initiatives devoted to fact-finding, reconciliation and cultures of remembrance.

Above all, TJ is used to build a shared national identity. In building same, it endeavors to overcome the legacies of repression and domination usually associated with a past that should be rectified. The methods to achieve these aims, over time, have shifted as new voices that have entered the field calling for more holistic approaches. Now a days, the concept is increasingly gaining importance,

⁶Andrieu, K., *Civilizing Peacebuilding: Transitional justice, civil society and the liberal paradigm*, (2010) *Security Dialogue*, 41 (5): 537–58, available at <http://dx.doi.org/10.1177/0967010610382109>

⁷ *Ibid*

⁸ Teitel n 2

⁹ United Nations, 'Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies' S/2004/616 UN. (New York: United Nations, 2004).

¹⁰Lustration in its broader usage in TJ refers to a measure of barring officials and collaborators of a former regime from positions of public influence in a country. It is somehow related to the process of "vetting", which is, in general terms, evaluation and examination process in order to eliminate abusive and corruptive officials through due procedure. As a rule vetting is used as the tool in post-conflict situations in order to rebuild the society based on democratic values. Various states adopted various laws relating to lustration, some of which were significantly stricter than others. For a further reference on the issue see Roman David, *Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)*, (2003) *Law & Social Inquiry*, 28(2):387-439

and is being widely discussed by peacebuilding agencies engaged in war-torn societies.¹¹ In general, the contemporary TJ constitutes an umbrella term for an ever-expanding field of approaches to redress legacies of human rights violations, repressions and violence.¹²

Like wise, in Ethiopia, the concept has been given a nod at different times. Following the regime change in 1991, for instance, the Transitional Government of Ethiopia (TGE) established the Office of the Special Prosecutor (SPO) in an attempt to prosecute those guilty of human rights abuse and to bring those criminally responsible for human rights violations and/or corruption to justice.¹³ However, despite the change of regime and formal TJ process, the process hardly succeeded in creating lasting peace and restoring victims' losses.¹⁴ Moreover, systematic violations of human rights and abuses have widely continued.¹⁵ Once again, following the change in the political landscape in the country in April 2018, the concept has gained momentum in the country's political and public discourse. However, given the loftiness of the task, its success hinges on a thoughtful consideration of a wide array of measures. In light of such context, this article examines the effectiveness of the TJ mechanisms adopted by the country in bringing about the reconciliation necessary to facilitate democratization and respect for human rights. It shall be viewed, in particular, within the framework of the

¹¹In line with that, president of the International Center for Transitional Justice (ICTJ), Juan Méndez, has described TJ as becoming 'a sort of term of art to describe how we help societies leave behind a legacy of massive and systematic human rights violations and start on the path to a more humane dispensation of rights and a more democratic society.' See Juan Méndez, Lou Henkin, *Transitional Justice, and the Prevention of Genocide*, (2007) *Columbia Human Rights Law Review* 38 (3): 479.

¹² Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun, Friederike Mieth (eds.), *Transitional Justice Theories*, (Routledge Publication, 2014)

¹³Dadimos Haile, *Accountability for Crimes of the Past and the Challenges of Criminal Prosecution: the Case of Ethiopia*, (Leuven, Leuven University Press, 2000:31-33).

¹⁴ *Ibid*

¹⁵ See Amnesty International, *Ethiopia: 25 Years of Human Rights Violation*. (Index number: AFR 25/4178/2016, June 2016). Available at: <http://www.amnesty.org/en/documents/afr25/4178/2016/en> Retrieved 20 January 2021. See also Divide, Develop, and Rule: Human Rights Violations in Ethiopia (Center for International Human Rights Law and Advocacy University of Wyoming College of Law, June 2018).

country's historical and socio-political specificities as well as the difficult transition process that has been already characterized by multifaceted factors.

In order to arrive at a sound conclusion, the study employed a theoretical analysis and interpretivist methodology. Thus, the viability of the TJ mechanism which has been given a shot in post-2018 in Ethiopia is examined through a rigorous analysis of pieces of literatures on TJ vis-a-vis the historical and socio-political specificities.

2. Conceptual Clarification and Basic Pillars of TJ

2.1. Definition

The definition of TJ is not a settled concept because the boundaries of TJ change constantly in response to conceptual developments, country-specific experiences of TJ and the ever-changing expectations of victims and other actors about what it should comprise. In line with this, Rhot-Arriaza notes that the term TJ itself may be misleading simply because TJ deals incidents that may/may not take place in the immediate period after conflict.¹⁶ She discusses that there is no blanket model of TJ that can be applied to every post conflict society; every society and every conflict is different, thus yielding a different set of circumstances for transitioning to peace and stability.¹⁷ Consequently, TJ has been defined in various instruments and literatures in different forms, but the widely used definition is provided by UN. The United Nations Secretary General's (UNSG) report on the rule of law and TJ in conflict and post conflict societies broadly defines TJ as:

The full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation. These may include both judicial and non-judicial mechanisms and individual

¹⁶Roht-Arriaza, Naomi, The new landscape of transitional justice, In Naomi Roht-Arriaza& Javier Mariezcurrena (eds) *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*. (New York: Cambridge University Press, 2006, 1-16).

¹⁷Ibid

*prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissal, or a combination thereof.*¹⁸

The definition by the UNSG gives the understanding that TJ comprises both judicial and non-judicial processes and mechanisms. Moreover, one can also grasp from the definition that TJ is both backward and forward looking in the sense that addressing the past is used as a political measure to construct the political and social infrastructure of the society for a better future. Olsen et al, on the other hand, define TJ as ‘the array of processes designed to address past human rights violations following periods of political turmoil, state repression, or armed conflict.’¹⁹ What is beneath in this definition is that it encompasses different transitional settings and is modestly descriptive, but it also avoids the pitfalls of making causal assumptions about the outcomes of TJ. This definition also does not limit the scope of TJ to situations where the state is seen as the only relevant violator of rights or the only provider of justice.

Today, TJ as a discourse has become globalized. It is concerned primarily with gross human rights violations such as torture, summary executions, forced disappearances, prolonged arbitrary detention, genocide, and serious violations of the laws and customs applicable in armed conflicts, whether of national or international character.²⁰ It includes a series of actions or policies, which may be enacted at a point of political transition from violence and repression to societal stability.²¹ Furthermore, the International Center for Transitional Justice (ICTJ) message on state duty reads that: *...because systemic human rights violations affect not just the direct victims, but society as a whole, in addition to*

¹⁸ United Nations (2004) n 9

¹⁹ Olsen, T., Payne, L. and Reiter, A. (eds), *Transitional justice in the balance: comparing processes, weighing efficacy*. (Washington, DC: US Institute of Peace, 2010).

²⁰ Patel, Ana Cutter, "Transitional Justice and DDR" in Muggah, Rubert (eds.): *Security and Post-conflict Reconstruction: Dealing with the fighters in the Aftermath of War*, (Taylor & Francis e-Library, Routledge Publisher, 2008)

²¹ Cobban, H. *Amnesty After Atrocity: Healing Nations after Genocide and War Crimes*. (Boulder: Paradigm Publishers, 2007).

*satisfying these obligations, states have duties to guarantee that the violations will not recur, and therefore, a special duty to reform institutions that were either involved in or incapable of preventing the abuses.*²²

In this thought, TJ appears as ‘a common lens to examine democratizing states.’²³ The UN has also acknowledged the increased focus on questions of TJ and rule of law in post-conflict and post-transition societies.²⁴ This acknowledgment is founded on the assumption that in the wake of gross human rights violations, victims have well-established rights to find out the truth, to see the perpetrators punished, and to be compensated for their sufferings and losses.

2.2. Basic Pillars of TJ

Countries emerging from periods of state repression and violent conflict have pursued a variety of processes intended to address past human right violations and impunity. As stated above, the array of mechanisms available to states consists of be both judicial and non-judicial processes and mechanisms. However, determining which TJ mechanism or combination of mechanisms is appropriate for a given country depends on the specific objectives to be achieved through the process, the society seeking justice, and by popular priorities and demands.²⁵

Each of these and other local context specificities may play an important part of an overall TJ. It appears, therefore, for a given TJ to achieve its objective the most important point shall be a careful assessment about the historical and socio-political specificities, the positions and interests of the victims, leaders, and the general public.²⁶ In this regard, the United States Institute of Peace has noted that:

²²ICTJ (2009), n 1

²³ See Simon Robins, ‘Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Post-conflict Nepal,’ (2011), *International Journal of Transitional Justice* 5(1): 75.

²⁴ United Nations (2004), n 9

²⁵ ICTJ (2009), n 1

²⁶ Olsen et al. (2010), n 19

‘the best way to determine different groups’ needs and positions is thorough consultations and, ideally, public debate about different transitional justice options.’²⁷ In this process, the UN Secretary General Guidance Note identifies four substantive pillars of TJ: the right to justice, the right to truth, the right to reparations, and the guarantees of non-recurrence of violations.’²⁸ Even though, this article acknowledges that the pillars are neither exhaustive nor independently exclusive, the following section devotes to a brief discussion of these four pillars.

a. The Right to Criminal Justice:

This is a case where the TJ process aims to hold perpetrators of human rights violations criminally accountable in a court of law.²⁹ In other words, it refers to a judicial investigation of those accused of human rights violations. Advocates of this legalist approach to TJ basically emphasise on criminal justice as a means to deter future human rights violations and to support peacebuilding.³⁰ They also support their argument in that criminal justice will stigmatise the elites who perpetuate conflict, and help separate individual from collective guilt, breaking the cycle of violence.³¹ In this regard, criminal trials during TJ can be pursued through national courts, including ordinary courts, special courts/procedures and hybrid courts.³² Moreover, during the process of criminal

²⁷ United States Institute of Peace, September, *Transitional Justice: Information Handbook*, (September 2008)

²⁸ United Nations Approach to Transitional Justice Guidance Note of the Secretary General, (March 2010)

²⁹ Olsen et al. (2010), n 19; ICTJ (2009), n 1; Roht-Arriaza (2006), n 16

³⁰ See Bell, Christine. *Peace Agreements and Human Rights*. (Oxford: Oxford University Press. 2000). See also Minow, Martha. *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*. (Boston: Beacon Press. 1998).

³¹ Ibid

³² For investigating and prosecuting violations perpetrated during the Dergue regime, for instance, Ethiopia established a special prosecution office in the aftermath of the fall of the regime in 1991. Cote d’Ivoire established the special investigative unit for investigating and prosecuting violations perpetrated during the 2010 post-election violence. A hybrid court was used in Africa for the first time in Sierra Leone so that to address past violations. Most recently, Central African Republic initiated the establishment of a hybrid court in 2016 and such a court is proposed as part of the TJ component of the 2015 South Sudan peace agreement. For a further reference on same, see Study on

prosecution, prosecutors are generally supposed to emphasise investigations of the “big fish”; suspects considered most responsible for massive or systematic crimes.³³ Critics to this approach, however, are skeptical if criminal prosecution can achieve all this.³⁴ The earlier debate especially see bargains and amnesties than criminal prosecutions as the best ways to achieve peace because of the need to contain ‘spoilers’ in many post-conflict regions.³⁵ Later advocates of TJ nonetheless have come to reject the idea of total amnesties and began to emphasise that amnesties, if applied at all, should be introduced as partial and conditional.³⁶

b. The Right to Truth /Truth Commissions/

Currently, truth commissions have been promoted as important mechanisms for counteracting cultures of denial.³⁷ A truth commission, especially after violent conflicts between ethnic and religious groups, is considered as a means ‘to engage and confront all of society in a painful national dialogue, with serious soul-searching, and attempt to look at the ills within society that make abuses possible.’³⁸ Otherwise, a country has ‘merely a nice history lesson, destined for the bookshelf.’³⁹ Those who argue for truth commissions suggest that it can foster a common understanding and acknowledgement of an abusive past, and if they are effectively embedded in a comprehensive justice perspective, they can provide a foundation for building a strong and lasting peace. It has been also argued that

Transitional Justice and Human and Peoples’ Rights in Africa. African Commission on Human and Peoples’ Rights. (2019)

³³Olsen et al. (2010), n 19; ICTJ (2009), n 1; Roht-Arriaza (2006), n 16

³⁴ In South Africa, for instance, criminal prosecution was not the main mechanism of TJ. It was envisaged only as a conditional measure to be used for those who did not apply to receive amnesty or to whom the Truth and Reconciliation Commission (TRC) refused to grant amnesty.

³⁵ See Marthina Fisher. *Transitional Justice and Reconciliation. Theory and Practice*. In B. Austin, M. Fischer, H.J. Giessmann (eds.). *Advancing Conflict Transformation*. (The Berghof Handbook II. Opladen/Framington Hills: Barbara Budrich Publishers. 2011).

³⁶Hayner, Priscilla. *Negotiating Justice: Guidance for Mediators*. Geneva: Humanitarian Dialogue Centre. 2009. Available at www.hdcentre.org/files/negotiating%20justice%20report.pdf. Retrieved 15 February 2021)

³⁷Olsen et al. (2010), n 19; ICTJ (2009), n 1; Roht-Arriaza (2006), n 16

³⁸Kritz, n 1

³⁹Ibid

public and official exposure of truth provides redress for victims and may contribute to individual and social healing and reconciliation.⁴⁰ Its importance has been particularly advocated for divided societies where nationalist myth-making, based on historical distortion, regularly fuel violence. Hence, efforts to prevent the instrumentalisation of facts and history are needed to prevent a vicious cycle of violence.⁴¹

On the other hand, scholars have also revealed considerable limitations to truth commissions and what needs to be done so that truth commissions yield some fruits. It has been particularly propagated on the importance of establishing strong civil society as well reliable governments and administrations who are willing to engage in institutional reforms and establish the rule of law.⁴² The existence of a transparent and participatory process in the establishment of such commissions is very crucial.⁴³ In the absence of such transparent system, the success of a truth commission would be in vain. Here, many of the transitional arrangements in Africa have given rise to a truth recovery process either in the form of a truth commissioner, in some instances, to a truth commission operating side by side with a criminal justice mechanism.⁴⁴ How far they have given regard to those recommendations is, however, dubious. To the contrary, establishing truth commissions in many transitioning countries has become an almost routine and standard practice without analysing the context. Kritz notes that many countries in

⁴⁰ See Hayner, Priscilla. *Unspeakable Truths. Confronting State Terror and Atrocity.* (New York/London: Routledge. 2001).

⁴¹Mendeloff, David. Truth-Seeking, Truth-Telling, and Post-Conflict Peacebuilding. *Curb the Enthusiasm?*, *International Studies Review.* (2004) 6 (3): 355-380.

⁴²Marthina, n 35

⁴³Ibid

⁴⁴ Yasmin Sooka, *Dealing with the past and transitional justice: building peace through accountability.* *International Review of the Red Cross.* (June 2006) 88 (862)

transition decide to have truth commissions merely based on instinct than research without any clear understanding of what such endeavours are about.⁴⁵

c. The Right to Reparations and Compensation Programmes

Currently, the idea of reparations for victims of human rights violations has garnered more interest especially in response to the growing number of international, regional and national frameworks attempting to recognise reparations programmes. Reparations programmes are, in general, systematic compensations for those who have suffered from wide spread human rights abuses or victims of violent conflict.⁴⁶ These cover a range of measures including official initiatives to provide material or symbolic reparations to victims or relatives of victims (e.g. financial compensation or official apologies), memorialization activities, such as museums and memorials to preserve the memory of victims and raise awareness about past abuse.⁴⁷ It, generally, consists of civil remedies (as opposed to criminal remedies) that are designed to redress harm resulting from an unlawful act that violates the rights of a person. Actually, reparations typically distribute a mix of material and symbolic benefits to victims that help repair the material and moral damages of past abuse.

Found in several multilateral treaties, the right to reparation is well established in international law. Internationally, the recognition of the right to reparation has been solidified most notably in 2005 when the United Nations General Assembly (UNGA) approved the 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Survivors of Violations of International Human Rights and

⁴⁵Kritz, Neil J. Policy Implications of Empirical Research on Transitional Justice, in: Hugo van der Merwe, Victoria Baxter and Audrey R. Chapman (eds.). *Assessing the Impact of Transitional Justice. Challenges for Empirical Research.* (Washington DC: USIP. 2009: 13-22).

⁴⁶Olsen et al. n 19; ICTJ n 1; Roht-Arriaza n 16

⁴⁷Ibid

Humanitarian Law'.⁴⁸ At regional level, the African Charter on Human and Peoples' Rights in its General Comment No. 4 can be read noting that, the right to redress encompasses "the right to an effective remedy and to adequate, effective and comprehensive reparation."⁴⁹ Furthermore, on February 2019, the Africa Union (AU) adopted a transitional justice policy (TJP) that is conceived as a continental guideline for African Union (AU) Member States to develop their own context-specific comprehensive policies, strategies and programmes.⁵⁰ Accordingly, the Member States are expected to develop comprehensive and holistic policy frameworks that not only provide for public reparation programmes, but also encourage non-governmental reparation initiatives along with transparent and administratively fair procedures to access reparation, and institutions to administer them effectively.⁵¹ Today, at national level, not less than 14 countries in Africa have prescribed reparation initiatives.⁵²

While these frameworks indicate, the acceptance of the imperative of reparation, the design and implementation of reparation regimes is often fraught with challenges. In line with this, different studies reveal that, when seen through the victims' point of view, few reparations programmes are fully satisfactory.⁵³ Some studies even go to claim that such programmes may have 'unintended consequences that frustrate or even exacerbate the struggles of communities

⁴⁸ United Nations. 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Survivors of Violations of International Human Rights and Humanitarian Law', U.N. Doc. A/RES/60/147, 21 March 2006.

⁴⁹ ACHPR, "General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)." (2017).

⁵⁰ Transitional Justice Policy. Assembly/AU/Decl.1 (XXVII) Rev.1. Adopted February 2019.

⁵¹ *Ibid*

⁵² See Study on Transitional Justice and Human and Peoples' Rights in Africa. (2019), n 32

⁵³ Waterhouse, C.M. 'The Good, the Bad and the Ugly: Moral Agency and the Role of Victims in Reparations Programs', University of Pennsylvania Journal of International Law, (2009). 31 (1): 257-294.

emerging from mass violence or from a period of repression.’⁵⁴ This especially happen due to the fact that most TJ experiences per se are not victim friendly or even victim centric.⁵⁵ There is also challenge of determining the criteria for identifying the category of people entitled to reparation.⁵⁶ Determining the nature and scope of reparation as well as the process and the necessary considerations for making such a determination is another challenge observed from different countries experiences.⁵⁷ Hence, it has been suggested for a careful design on what stage the reparation justice aims to reach, and then to clearly articulate the goals.⁵⁸ A failure to do so could mean that the programmer’s public message may not match the actual results, resulting in victim frustration and rejection of programmes.

d. The Guarantees of Non-recurrence of Violations

The Guarantees of Non-recurrence of Violations include policies that seek to cleanse or purge the government structures and institutions of the individuals or parties that were responsible for a violence, repression, or human rights abuses.⁵⁹ Hence, it basically can be put as an effort to spread institutional reform and remove individuals associated with human rights abuses from office so that abuses are not repeated. This can involve the mass disqualification of those associated with abuses under a previous regime, which is known as ‘lustration’.⁶⁰ These policies do not necessarily determine individuals’ responsibility for specific acts, they may, however, hold them accountable for groups with which they are associated (for

⁵⁴ Fletcher, L.E. ‘Institutions from Above and Voices from Below: A Comment on Challenges to Group-Conflict Resolution and Reconciliation’, *Law and Contemporary Problems*. (2009:52). 72 (2): 51–55

⁵⁵ See Lisa J. Laplante. *The Plural Justice Aims of Reparations*. In *Transitional Justice Theories* (eds), edited by Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun and Friederike Mieth, (Routledge publication, 2014).

⁵⁶ See Study on Transitional Justice and Human and Peoples’ Rights in Africa n32

⁵⁷ Ibid

⁵⁸ Lisa n 55

⁵⁹ Olsen et al. n 19; ICTJ n 1; Roht-Arriaza n 16

⁶⁰ Ibid

instance, their association with political party, ethnic or religious group, membership in the security forces etc).

3. TJ in Ethiopia

3.1. Brief Historical Overview

Post-2018 Ethiopia is not the first time where TJ was given a shot in Ethiopia. There was an attempt to deal with past human rights wrongs in the country after 1991. Following the down fall of the *Derg* regime in 1991, the Transitional Government (TG), for instance, established a special prosecutor's office (SPO) to investigate and prosecute the massive human right violations during the seventeen years of *Derg* rule.⁶¹ The Office of the Special Prosecutor was mandated (1) to bring those criminally responsible for human rights violations and/or corruption to justice, and (2) to establish for public knowledge and for posterity a historical record of the abuses of the *Derg* regime.⁶² The Transitional Government of Ethiopia (TGE), therefore, chose the 'prosecution model'/judicial approach/closing all other alternatives and without, at least publicly, discussing other models of transitional justice, not to mention amnesty and reconciliation.⁶³ After its establishment, the SPO instituted charges against members of the ousted regime before the Federal High Court and Regional Supreme Courts through delegation.⁶⁴

From the reading of the preamble of the proclamation establishing the SPO, one can fairly deduce that among many drives to employ the prosecution model

⁶¹Girmachew Alemu Aneme, 'Apology and trials: The case of the red terror trials in Ethiopia,' (2006) African Human Rights Law Journal 6(1) : 67

⁶² Proclamation No. 22/1992, A Proclamation for the Establishment of the Special Prosecutors Office, Negarit Gazeta, (1992, Article 6).

⁶³Chuck Schaefer, The *Derg* Trial Versus Traditions of Restorative Justice in Ethiopia, in Kjetil et al. (eds.), The Ethiopian Red Terror Trials: Transitional Justice Challenged, (Oxford, James Currey Publishers, 2008:88)

⁶⁴ See Alebachew Birhanu Enyew, Transitional Justice and the Creation of a Human Rights Culture in Ethiopia, Norwegian Centre for Human Rights, (Law Faculty, LL.M thesis, University of Oslo, 2008).

included, the need to bring the perpetrators to trial so as to educate the people and make offenders aware of their heinous and horrendous offences to prevent recurrence of fascist rule of the previous government.⁶⁵ Dadimos, on the other hand, wrote on the contributory factors for the choice of criminal prosecution: the legacy of the past, the entire shift of balance of power and the international context of at time of the transition.⁶⁶ In general, though the success of the effort in ushering a viable democratic order in the country has been remarked by many to the negative, the type of justice it has attempted to meet out to perpetrators of human rights abuse has been described as 'fascinating'.⁶⁷ In this regard, Tronvoll said that: 'the Red Terror Trials of Ethiopia are considered as Africa's glaring example of retributive justice; as the Truth and Reconciliation Commission (TRC) was Africa's contribution to restorative justice.'⁶⁸

3.2. TJ through 'Reconciliation Commission' in Post-2018 Ethiopia: A Viable Option?

Since January 2018, Ethiopia has experienced a head-spinning series of events. In January 2018, the former ruling party, the Ethiopian People's Revolutionary Democratic Front (EPRDF), declared that it would pursue reforms in response to intensifying antigovernment protests that began in November 2015. In April 2018, a new Prime Minister sworn in and he introduced different reform agendas, which included releasing political prisoners, revising repressive laws, admitting systemic human rights violations and rallying for national consensus and reconciliation.

⁶⁵Girmachew, n 61

⁶⁶Dadimos Haile, *Accountability for Crimes of the Past and the Challenges of Criminal Prosecution: the Case of Ethiopia*, (Leuven, Leuven University Press, 2000:31-33).

⁶⁷ See Sarkin Jeremy, "Transitional justice and the Prosecution model: The experience of Ethiopia." *Journal of Law, Democracy and Development* 3(20) (University of the Western Cape (1999:252-266), See also Mayfield JF., "The prosecution of war crimes and respect for human rights: Ethiopia's balancing act" (Fall 1995) *Emory International Law Review* 9 (553)

⁶⁸KjetilTronvoll et al, 'The Red Terror Trials: the Context of Transitional Justice in Ethiopia', in Kjetil et al. (eds.), n 13

As part of the reform agenda, on 25th December 2018, the Ethiopian parliament ratified a proclamation to establish a reconciliation commission.⁶⁹ The proclamation was referred as a landmark because it is the first-ever such institution in Ethiopia.⁷⁰ With the objectives of maintaining peace, justice, national unity, consensus and also reconciliation among Ethiopian peoples the commission has been made to compose members from diverse background, in terms of religion, ethnicity, experience, age and gender.⁷¹ Though the measure can be lauded as one of the concrete steps the current government is taking in order to address the national issues, the viability of the measure in light of certain specificities remains an unsettled issue. For that matter, the success or failure of the TJ measure in the country hinges strongly on whether or not Ethiopia's complexities are accurately mirrored. This part, by critically examining the historical and socio-political realities in the country vis-à-vis the theoretical set marks, attempts to scrutinize the possible effectiveness of the measure thereof.

a. Problem with the Post-2018 'regime nature'

It has been implied in the preceding section that there is no one size fit all TJ mechanism. TJ mechanisms in post-conflict scenario, for instance, might not fit to TJ mechanisms in post-authoritarian states. Some interventions may require a focus on restoring trust in state institutions and their capacity to re-establish the rule of law while some other interventions, like in post-authoritarian states, may aim at overcoming societal divisions as opposed to forgiveness with the old regime.⁷² According to Sarkin, the type of TJ that is pursued in a given country is dependent

⁶⁹ Proclamation No.1102 /2018, Reconciliation Commission Establishment Proclamation, Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, (25th Year No. 27, Addis Ababa 5th, February 2019)

⁷⁰ See Solomon AyeleDersso, Ethiopia's Experiment in Reconciliation. (USIP, September 2019). Available at: <https://www.usip.org/publications/2019/09/ethiopias-experiment-reconciliation> Retrieved 22 December 2020

⁷¹ Proclamation No.1102 /2018, n 69

⁷² Clara Ramírez-Barat and Roger Duthie, Transitional justice and education: learning peace, edited by Clara Ramírez-Barat and Roger Duthie, (2018) *Democratization* 25(4) 747-748)

on the nature of the transitions which fall under three broad types: Overthrow, reform and compromise.⁷³ Overthrow is described as a case where opposition forces become stronger and finally topple the old order.⁷⁴ In this regard, the new government is understood that it is playing the critical role in the shift to democracy. In the case of reform, the old government is regarded as playing the critical role in the shift to democracy.⁷⁵ In countries where change is the result of compromise, the existing regime and opposing forces are equally matched and cannot make the transition to democracy without each other. The South African case was mentioned here as a typical example.⁷⁶

In this regard, the problem in Ethiopia relates to the nature of the 2018 political transition. The present situation in Ethiopia can be put as defying the conventional theoretical constructions of transition as it does not fit well into any of the prominent models as described above. Although the post-2018 government ascribes itself as a 'reformist', it is difficult to set a clearly defined status between the pre-2018 regime and post-2018 regime. PM Abiy's rise to power in 2018 did not engender clear regime status.⁷⁷ Despite the political liberalization and the removal of numerous state officials, seen beyond that, however, it appears hardly possible to draw a clear cut status between the 'new regime' and the 'old regime'. Suspects of human rights abuses either remained in power, or continue enjoying a

⁷³Sarkin J. "The trials and tribulations of South Africa's Truth and Reconciliation Commission" (1997) South African journal on Human Rights 12 (61)

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ As to the nature of the post-2018 transition in Ethiopia some prefer to put it as a 'hybrid transition' to mean it is a transition that resulted from the ad hoc alliance of members of society who mobilized in public protest against the prevailing regime of the ruling EPRDF and a portion of the membership of the EPRDF. As such, they qualify it as a transition which is not a negotiated transition like the transition in South Africa in the early 1990s or not either a transition that resulted from the overthrow of the old regime like the transitions Ethiopia witnessed in 1974 and in 1991. See Solomon n 70

considerable amount of political and economic influence.⁷⁸ The setup of institutions and those in office have also largely remained the same.⁷⁹

These create a hindrance to effective TJ because a thorough confrontation with the past and an honest reflection of present actions become a difficult balancing act, especially in view of key actors' political stakes. This in turn undermines the political consensus about the TJ mechanism which is an essential prerequisite for the success of the mechanism and their contribution to stability and peace. That is so because, as Opalo notes, attaining mass buy-in to particular measures of TJ necessitates key political actors' agreement and commitment.⁸⁰ Given the specific realities as discussed above, the situation in the Ethiopia's case hardly enables the same. It rather is most probable that it increases the likelihood of a social and political cost of non-compliance to the measure. Politicians and civil servants accused of wrongdoings and injustices are unlikely to support TJ mechanisms, let alone participate. A lack of political consensus, on the other hand, risks counteracting efforts of reconciliation and unification, thereby destabilizing fragile societies instead.

Furthermore, given the blurred line on the nature of Ethiopia's transition, institutions that either perpetrated violence under the pretext of government order or neglected their duties to citizens out of ignorance may constitute obstacles for successful interventions. This complicates efforts to build national reconciliation as well as to hold those responsible for human rights violations accountable. With all

⁷⁸Mekonnen, D. R. Ethiopia's transitional justice process needs restoration work. Ethiopia Insight (2019) available at: <https://www.ethiopia-insight.com/2019/02/01/ethiopias-transitional-justice-process-needsrestoration-> work, Retrieved 25 December 2020

⁷⁹Allo, A. K. Why Abiy Ahmed's Prosperity Party could be bad news for Ethiopia. Aljazeera (2019b) available at: [https://www.aljazeera.com/indepth/opinion/abiy-ahmed-prosperity-party-bad-news-ethiopia-](https://www.aljazeera.com/indepth/opinion/abiy-ahmed-prosperity-party-bad-news-ethiopia-191204130133790.html) 191204130133790.html, Retrieved 20 December 2020

⁸⁰Opalo, K., 'The Contingent Role of Political Parties in Transitional Justice Processes' in Duthie, R. and Seils, P. (eds.) *Justice Mosaics. How Context Shapes Transitional Justice in Fractured Societies.* (New York: International Centre for Transitional Justice, 2017:278-301)

these notes, one could plausibly argue that the present political situation in Ethiopia renders effective TJ very problematic.

b. The contested past

It goes without saying that truth is a central component of the concept of TJ. With that regard, Susanne Buckley-Zistel notes that:

*Truth provides the basis for judgments in court. Truth helps to establish a historical record of human rights abuses during violent conflicts or repressive regimes. It plays a key role in the acknowledgment of victims' suffering. Truth may serve as a foundation for future coexistence.*⁸¹

So, when a country aspires to find the truth during a TJ process, the aim thereunder is to ascertain the facts and causes of systemic abuse in the most objective way possible. In other words, it meant to serve as a way for all of society to explore exactly what kind of abuses occurred and why, and how to prevent their recurrence in the future.⁸² Creation of a common narrative is, therefore, crucial for a country to start rebuilding a new social solidarity.

But the big question is what the truth about the past is? It is a difficult question because the truth about the past is subject to an argument. There are often competing and conflicting memories about the violent events of the past.⁸³ The word 'truth' is also misleading as it is often interpreted as the finding of a single

⁸¹ Susanne Buckley-Zistel, 'Narrative Truths On the Construction of the Past' in truth commissions. In *Transitional Justice Theories* (eds), n 55.

⁸² With this regard the preamble of the proclamation that established the 'Reconciliation Commission in Ethiopia' (proclamation No. 1102 /2018, n 69) reads on the reason for the establishment of the Commission as: WHEREAS, it is necessary to reconcile based on **truth** and justice the disagreement that developed among peoples of Ethiopia for years because of different societal and political conflict...

⁸³ Jelin, E., Public memorialisation in perspective: truth, justice and memory of past repression in the southern cone of South America. *International Journal of Transitional Justice*, (2007). 1: 138–156.

truth of what happened? Who was responsible? And why?⁸⁴ But, in the actual set up, memories and ‘truths’ are frequently interpreted and re-interpreted through the often highly politicised lens of the present thereby invoking its own tension.⁸⁵

Moreover, though searching for truth about the past are generally assumed to have a positive impact on conflict torn societies by promoting reconciliation and peaceful coexistence⁸⁶, some have cautioned against over-optimism. Hence, it is necessary to question on the appropriate timing to grapple with this potentially divisive and challenging issue. In line with that Mendeloff has wrote that:

*Truth telling is likely to be most effective when states are relatively stable; truth-seeking is more likely to be effective if states have a minimum level of democracy to sustain public debate; truth-telling is likely to be most effective when groups want to discuss the past-it cannot be forced and finally truth-telling probably needs to be accompanied by an apology or some form of restitution.*⁸⁷

Examining the specific socio-political realities in Ethiopia in light of the assertions made above, none of the pre-requisites seems to exist leaving a huge mark on the possible effectiveness of the measure. It is undeniable fact that post-2018 Ethiopia is marked by upsurge of violent conflicts throughout the country, arguably as never seen before.⁸⁸ While many factors could attribute to the plethora of violent conflicts in post-2018 Ethiopia, one thing clear is in no measurement it is possible to put the country at state of ‘relative stability’. For that matter, it is important to consider that such missions (‘truth’ seeking) may in certain cases even have a detrimental impact on peace. The argument here is that when a truth commission is

⁸⁴ Michael Ignatieff, “Overview: Articles of Faith” (Index on Censorship, 1996. Vol. 25)

⁸⁵ Brewer, J. D. Peace processes: a sociological approach. (Cambridge: Polity, 2010).

⁸⁶ Susanne n 55

⁸⁷ Mendeloff, n 41.

⁸⁸ See Semir Yusuf, Drivers of ethnic conflict in contemporary Ethiopia, (ISS, Monograph 202, 2019)

held in polarized political contexts marked by strong group identities it would make the commission to overlook the grey zone in which the lines between perpetrators and victims are blurred. In other words, such scenarios might make the search to overlook that there were victims and perpetrators possibly on more than one side. With that, it can potentially inflame pre-existing ethnic prejudices and exacerbate social divisions, thereby threatening the peace and stability of the state.⁸⁹

What actually defines the contemporary Ethiopian state is nothing short of those elements that call for a caution against optimism. The country is characterized by highly polarized political landscape; the society is fragmented and marked by division (which is defined by strong group identities) more than ever.⁹⁰ What is creating violence and mistrust between different ethnic groups is also the result of this polarization.⁹¹ As such, an attempt to seek for a 'truth' which is an elusive concept by itself could further exacerbate social division which is why the article calls for a caution against optimism.

The need to have a minimum level of democracy to sustain public debate cannot be put separately from the above stated fact. It shall be only in the presence of 'relative stability' that one may speak of a democracy that could sustain public debate. Another very crucial issue here would be the fact that 'truth' is not something that we could force it and hence, requires groups' willingness to discuss the past. In the absence of such willingness there would be little chance for a society to confront and address the legacy of its troubled history in a

⁸⁹Subotic J, *Hijacked justice: dealing with the past in the Balkans*. (Cornell University Press, Ithaca, 2009:55)

⁹⁰Addisu Lashitew, *Ethiopia Will Explode if It Doesn't Move Beyond Ethnic-Based Politics* (2019), available at <https://foreignpolicy.com/2019/11/08/ethiopia-will-explode-if-abi-ahmed-doesnt-move-beyond-ethnic-based-politics/> Retrieved 28 December 2020; see also Merera Gudina, *Party Politics, Political Polarization and the Future of Ethiopian Democracy*, International Conference on African Development (Archives, Paper 108, 2007).

⁹¹ See Alemseged Abbay, *Diversity and Democracy in Ethiopia*. (Journal of East African Studies, (2009). 3 (2): 175-201. See also Merera Gudina (2007), *Ibid*

comprehensive way and understand what, how and why abuses occurred.⁹² The problem becomes concrete especially in a country where every ethnic group has their own narratives, making it hardly possible to come up with a truth acceptable to all. Meaning, each group's version of the truth happens to be limited to its own victimization, possibly denying the reality of abuses committed against others. The reality on the ground in the Ethiopian context with this regard unfortunately helps little. The interpretation of the Ethiopian past is dominated by widely un-matching discourses⁹³ leaving little room to come in to a common ground.

So, one of the key challenges the Commission faces in envisaging truth and reconciliation would be with regard to history of the past and groups' willingness to discuss the past. While a TJ is envisaged so as to trace gross human rights violations and violence in the effort to acknowledge past abuses, to what moment can the country's social and political conflicts and gross human rights violations be traced remains an unsettled point. For instance, if the formation of the unitary state structure in Ethiopia is a key point of departure as some contemplate, then it may be necessary to consider human rights violations as far back as the late 19th and early part of the 20th century. But given the wide contestation on the interpretation of the country's past and a deeply divided society on history, it will be logical to be skeptical on the possibility of creating a common memory that can be acknowledged by all groups of the society. It goes without saying, therefore, that this deep contestation on the past leaves little room to allow the people of Ethiopia

⁹² Cheryl Lawther, *Truth, Denial and Transition Northern Ireland and the Contested Past*, (Routledge Publication, 2014), See also Cheryl Lawther, 'Let Me Tell You': Transitional Justice, Victimhood and Dealing with a Contested Past, (2020) *Social and Legal Studies*, XX (X)

⁹³ The history of modern Ethiopia was recorded for some as glories of victory and conquest and hence, was all a normal process of 'nation building'; while for some others it is a history of exclusion and marginalization. Some political elites even went further to state that it must be seen as a form of 'internal colonialism'. See Bahru Zewde, *The History of Modern Ethiopia, 1855–1974*. (London: James Carrey, 1991); Teklestadi, M., *AtseYohannesena Ye Ethiopia Andinet* (Amharic, 1982 E.C); Assefa, J. , *Oromo Nationalism and Ethiopian Ethnocratic Politics*, (2002) *Horn of Africa*, 20 (5),11-45; Markakis, J., *Ethiopia: Anatomy of a traditional polity*, (Oxford: Clarendon Press, 1974); C. Clapham, 'Rewriting Ethiopian history', *Annalesd'Éthiopie*, 18, 38 (2002); D. Crummey, 'Ethiopian historiography in the latter half of the twentieth century: a North American perspective', (2008) *Journal of Ethiopian Studies*, 34 (8)

to look the past in terms of a shared suffering and collective responsibility. Reconciliation, on its part, must be accompanied by acknowledgement of the past, the acceptance of responsibility and steps towards (re-) building trust.⁹⁴ But within this difficulty of creating a common memory, restoring the confidence in the society, which is among the prime purpose of the reconciliation commission proclamation, appears improbable.

c. Problem with 'Sequencing' and 'Politicization' of the Commission

Another important but often-neglected consideration of TJ in a given country is the issue of 'sequencing.' In the normal course of things, sequencing describes situations in which states deal on the idea of 'what comes first' or the selection of one instrument over another, or perhaps in tandem with another. Sequencing is a concept borrowed from the democratization literature and a democratic sequentialism considers that it is a mistake to assume that democratization is always a good idea.⁹⁵ The argument is, that when countries are poorly prepared for it, democratization can and often does result in bad outcomes. Thus, it is recommended that certain preconditions especially the rule of law and a well-functioning state should be in place before a society democratizes to prevent such bad results.⁹⁶ When brought to the realm of TJ, the idea is that TJ involves a 'difficult, sensitive, perhaps even agonizing, balancing act between the need for justice to victims and the need for reconciliation and rapid transition to a new future'.⁹⁷ Thus, it actually requires a careful sequential activity in dealing with the past and building peace and reconciliation for the future. A careful sequencing of

⁹⁴ United Nations n 28

⁹⁵ Carothers, Thomas "How Democracies Emerge: The 'Sequencing' Fallacy."(2007) *Journal of Democracy* 18 (1) 12-27

⁹⁶Ibid

⁹⁷Azanian Peoples Organization (AZAPO) and Others v The President of the Republic of South Africa, CCT 17/96 Constitutional Court, 25 July 1996 (Chief Justice of South Africa, Justice Mohamed, writing for the South African Constitutional Court)

activities has also been promoted by the former United Nations Secretary General Kofi Anan where he argued that:

*Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. Advancing all three in fragile ... settings requires **strategic planning, careful integration and sensible sequencing of activities**. Approaches focusing only on one or another institution, or ignoring civil society or victims, will not be effective. Our approach to the justice sector must be comprehensive in its attention to all of its interdependent institutions, sensitive to the needs of key groups and mindful of the need for complementarity between transitional justice mechanisms.*⁹⁸ (Emphasis added)

Subsequently, the important discussion is how and when TJ measures should take place or a conversation as to the design, implementation and administration of TJ should take a central stage. This, however, does not mean that there is an agreed magic step that equally applies in all settings. Nevertheless, a general perception could be held that a sequence of activities ‘each with its own logic’ and the ‘ingredients’ of which are ‘assembled one at a time’ rather than storming everything at a time. While one can safely deduce from the preamble of reconciliation proclamation (proclamation No. 1102 /2018) that it meant to advance all the aspects of TJ in the country,⁹⁹ but, little regard seems to have been given to sequencing of activities in general, and possibly putting its mark on the effectiveness of the measures. This can also be viewed together with the frequent and sweeping changes the country has witnessed in post 2018 and the confusion

⁹⁸ United Nations n 9

⁹⁹ With that regard, a reading can be made to the preamble of the proclamation where it depicts the purpose statement of the reconciliation proclamation so as to advance justice, democracy as well as peace in the country. While a note could be made on the intertwined nature of justice, peace and reconciliation in general, there can be witnessed, however, fuzziness in determining the specific path to take the particular TJ measure in contexts of the needs, expectations and experiences of the perpetrators, victims, survivors and other members of society directly affected by the ‘gross human rights abuses’ as implied in the Proclamation.

and division it has brought among the high government officials as well the ordinary citizens.¹⁰⁰

A discussion on 'what comes first' is also important so as to protect the process from later politicization and de-prioritization. For that matter, TJ justice processes are inherently political in that they involve often-contentious decisions and actions based on power, interest and prudence.¹⁰¹ Politicians may have an interest in a given TJ mechanism; let's say on truth commission, only to delegitimize their opponents or to delegate responsibility for difficult tasks, or to avoid pursuing criminal prosecutions. That is also why due care should be taken from giving rise to the perception that a TJ in a given country is just a political agenda. Such fears can be minimized, if not eliminated, only if there is a chance to generate public ownership of the process, able to foster full transparency or participation. In the absence of proper protection, politicization of the TJ could appear as a proper nock to the success of the measure. Experience from Africa and other parts of the world also shows that for a TJ approach to be successful as well as legitimate in delivering its objectives, the process of its design and implementation has not only to be transparent and independent but also in compliance with the minimum requirements of due process.¹⁰²

¹⁰⁰ An important explanation for same, among others, could be the tension created in the country following the rift between Prime Minister Abiy Ahmed and the then defense Minister, Lemma Megerssa, due to the move taken by the Abiy government to transform Ethiopian Peoples' Revolutionary Front (EPRDF) in to Prosperity Party (PP). The 'sequencing of tasks' was one of the major claims aired by the latter in his interview with VOA (December 2019) as well as the once dominant party under EPRDF, Tigray People's Liberation Front (TPLF), for not buying the EPRDF's move towards PP. See <https://amharic.voanews.com/a/5168431.html>, (17 December 2019), Retrieved on 02 January 2021; See also Lemma Megerssa dismisses Medemer, Prosperity Party (Translation of the full Interview), (November 29, 2019), available at: <https://addisstandard.com/news-alert-lemma-megerssa-dismisses-medemer-prosperity-party/>, Retrieved on 02 January 2021

¹⁰¹ Vinjamuri, Leslie and Snyder, Jack L., *Law and Politics in Transitional Justice*, (May 2015). *Annual Review of Political Science*, 18 (1) 303-327, available at SSRN: <https://ssrn.com/abstract=2605446> Retrieved 26 December 2020

¹⁰² In line with that, Freeman notes that, such commissions tend to enjoy much public and international support where its members are selected via a wider process of consultation aimed at

In this regard, selecting the members of the reconciliation commission in the Ethiopian case has proved controversial,¹⁰³ with the process can be put as non-transparent and rushed, giving way to perceptions of political manipulation and possible illegitimacy. There was no public participation in the development of the commission's enabling law, nor in the nomination and appointment of the commission's members. As a result, it has left huge assignment on the commission to win the trust of Ethiopia's diverse social and political groups. The Ethiopian government also favored direct selection process than a more transparent and participatory process of selection.¹⁰⁴ Even in an environment with little debate on the integrity of the selected commissioners, it is important to take note that the political nature of the selection process by itself might impact the commission's effectiveness and legitimacy.

Furthermore, as can be read from the preamble as well as article 5 of the 'reconciliation commission' proclamation, the commission was established with very broad objectives including achieving lasting peace, justice, national unity and reconciliation among Ethiopian Peoples. This indicates the absence of clarity on whether the focus of TJ in Ethiopia's case is on perpetrators of violations, and hence punishment; or the political system and hence building a system of governance based on constitutionalism, rule of law and respect of the rights of all; or on victims and hence recognition of the injustice they suffered and healing; or combinations of them. It is important to take note here that, while seeking the truth, as discussed above, is daunting enough, seeking to go further and aim to reconcile

securing fair balance in the representations of political constituencies, ethnic or religious groups or gender. Furthermore, Hayner advises on involving the public in the form of public debate and discussion in crafting the terms of reference for the truth commission as well as in selecting the commission's members. See Freeman M., *Truth Commissions and Procedural Fairness* (Cambridge University Press: New York, 2006); Hayner PB, *Fifteen-Truth Commissions-1974 to 1994: A Comparative Study*. (1994) *Human Rights Quarterly* 16 (4)

¹⁰³ See Ethiopia Press Agency, *Scholars raise concern on some members of reconciliation commission*, (February 17, 2019), available at <https://www.press.et/english/?p=2628#>, Retrieved 02 January 2021

¹⁰⁴ Proc. No. 1102/2018, n 69, Article 4

like adding a task of immeasurably greater complexity. Consequently, reconciliation is by nature inter-subjective and multiple as well as a very long and complex process.¹⁰⁵ Furthermore, it is important to note that such commission needs to be formed on the basis of extensive public consultations and often work best when their activities include significant public outreach and engagement.¹⁰⁶ The question, therefore, remains on how far this was done with regard to the establishment of the reconciliation commission in the Ethiopian case. Within this complexity and given a very broad objective, the commission assumed, the quest for a balancing act between the need for justice to victims of past abuses and the need for reconciliation and rapid transition to a new future appears improbable. Therefore, 'sequencing' appears relevant as it, for instance, allows amnesties to be granted to facilitate peace agreements or democratic transitions without abandoning the idea of justice.

Concluding Remark

TJ as an approach to deal with the past in the aftermath of violent conflict or authoritarian regimes has gained a global significance. It is becoming common to see countries promoting a TJ mechanism in their vow towards democracy, preventing conflict and building sustainable peace. However, TJ should not happen just as routine and standard practice. While it can be argued that TJ approaches are based on a fundamental belief in universal human rights, any TJ mechanism, however, need to consider realities on the ground in a given country. At the same time, it appears essential to identify a suitable starting point (sometimes there may be sound reasons not to create one or to delay its establishment) which is dependent

¹⁰⁵ With this regard, Lederach has argued that reconciliation requires the presence of four ingredients: truth, mercy (or forgiveness), justice, and peace. If we have to look in to the "peace" element, for instance, Lederach intends the notion of "positive peace" as an important ingredient for reconciliation. The argument, therefore, is that a peace beyond the mere absence of direct violence but also of structural violence is one of the important ingredients for reconciliation to take effect. In other words, in the absence of same the effectiveness of an attempt of reconciliation in a given country would be futile. See Lederach, J. P., *Building peace: Sustainable reconciliation in divided societies*, (Washington, DC: United States Institute of Peace, 1997).

¹⁰⁶ United Nations (2010), n 28

on the specific situation in a society. In the end, each society, should indeed, must choose its own path basing on specific contexts on the ground. The post-2018 Ethiopian case should be viewed with same note. When the Ethiopian government decided to establish a reconciliation commission in February 2019, a question not to miss is how far the TJ measure was free from mere instinct and bases on clear understanding of such endeavors. This is because of certain options that are more viable than others depending on the specific local contexts in the country. If justice has to be sought to the multi-layered realities of the Ethiopian case, context analyses need to be done. Not only that there need to determine different groups' needs and positions in the country, a chosen TJ measure needs consideration and alignment with the specific contexts for its palpability. That would be possible through assessment of the various realities on the ground as possible. This applies to the capturing and interpretation of the complex and interdependent factors at play in the country's pre and post-2018. In this regard, this article argued that the TJ measures in the country lacked detailed context analysis in light of 'the post-2018 regime nature' as well as 'the contested past'. It also implicated issues like lack of focus to 'sequencing' and possible 'politicization' of the TJ mechanism as having all the potential to impact the viability/effectiveness of the process.

Therefore, if the TJ measure in the country has to end up with a success story, first, conceptualizing it in light of the post-2018 regime nature in the country appears imperative. This requires acknowledging the unique nature of the post-2018 political change in the country and devising a system where social and political compliance to the measure can be best achieved. Second, it is important to make a rational judgment of realities on the ground and caution against optimism. This necessitates setting the ground where public debate can be sustained with a minimum level of democracy in the country. This in turn urges to look for the right, if not the perfect, opportunity by ensuring 'relative stability' in the country. Third, careful sequencing of tasks and rendering a mechanism that potentially