

Full Length Research Paper

Critical appraisal of the Ethiopian Reconciliation Commission: A comparative study

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This paper examined the Ethiopian Reconciliation Commission establishment proclamation with a view to assessing the Commission's probable effectiveness to attain its short, medium and long-term goals as a transitional justice accountability measure. For the purpose of critical appraisal, different factors which appear in the literature to be crucial to the effectiveness of truth commissions such as selection, appointment, removal and composition of commissioners, overall mandate given to commission, adequate financial resources and staff capacity, ensuring security and cooperation from the incumbent government, public engagement in course of investigation, report and recommendation and political will were used as comparable variables. Through a critical analysis, this paper has revealed that the Commission has the following strong dimensions that could contribute to its effectiveness, namely, a solid institutional set-up, a budget source, powers and duties endowed, security guarantee and cooperation from the incumbent government and its opportunities to engage the public in its work. Moreover, it has further pinpointed and analysed different drawbacks related to selection, appointment, removal and composition of commissioners, accountability structure and lack of clarity in its mandates including the period to be covered under investigation and final report dissemination strategy that could definitely affect the Commission's effectiveness. Finally, despite its imperfections, the Ethiopian Reconciliation Commission could be workable as a transitional justice accountability measure. However, sustained political will and commitment is indispensable to capitalizing on the strengths and rectifying the weaknesses of the Commission to ensure its ultimate effectiveness.

Key words: Transitional justice, truth commission, truth, peace, reconciliation, Ethiopia.

BACKGROUND AND JUSTIFICATIONS OF THE STUDY

Any country under transition, after protracted civil war or dictatorial regime, usually has a mandatory homework to deal with its terrible past for the sake of its bright future-*respice-prospice*. Thus, a country under transition has to address all tragedies and egregious human rights violations that happened in the past for its smooth move forward. Although it is challenging for a country under

struggle with many problems to fix up and thereby to walk forward, it is equally required to unravel the truth, to rectify the victims and to make perpetrators accountable (Arriaza, 2006). It is with this understanding that the concept of transitional justice (TJ) emerged. TJ "comprises the full range of process and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past human rights abuses, in order to ensure accountability, justice and achieve reconciliation (UN Secretary General Report on

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Transitional Justice Summary, 2004). It wants to address multi-dimensional objectives and interests of the victims, societies in transition, international community and the perpetrators (Kirchhoff, 2009). Accordingly, victims mostly want to know the truth and justice. Societies in transition want truth, justice, reconciliation and sustainable peace. Similarly, the International community want to see that those who commit crimes of universal concern such as crime against humanity are held accountable for their actions and thereby to fight impunity as well (Kritz, 2009). Perpetrators also want to disclose the truth to escape from moral questions and for reconciliation. To meet these multi-faceted objectives, transitional justice accountability mechanisms (TJAMs) are used. TJAMs include prosecution, truth commissions, reparations, lustration, amnesty, pardon, memorialisation in museums, official apologies, building hospitals and schools, acknowledging the mistakes, renaming streets, institutional reforms, and *inter alia*, etc.

A country could use a combination of any of these mechanisms, as its milieu requires and permits; hence, there is no 'one-size fits for all' approach in dealing with country's past for sake of its future. For example, it is hardly possible to use prosecution in a country where the former military leaders and perpetrators have considerable influence and power over the new government. This is because seeking accountability through prosecution in that context might affect fragile peace or even might lead to abusive and worst military dictatorship (Sirram, 2005). Thus, prosecution mostly traded-off for peace and reconciliation due to probable backlash, by giving either blanket or conditional amnesty in one hand (Baker, 2009). On the other hand, Truth Commission is the most frequently used TJAM in countries under transition after protracted civil war or dictatorial regime. This is mainly because; it provides room for negotiated settlement and political compromise among previous military government and incumbent ones (Merwe et al., 2009). Since the 1974 Uganda's Truth Commission, which is the pioneer in the history of Truth Commission, number of Truth Commissions had been established in various countries under transition. Ethiopia has recently joined those countries as well.

The Ethiopian scenario does not perfectly fit into the common trends of transition where a country make a direct transition from dictatorial regime to a democratic government or from continued civil war to peace. However, in recent time, the Ethiopian government is undertaking a deep reformation. One of the core aims of this reformation is to ensure perpetual peace, justice, democracy, national unity, consensus and reconciliation among Ethiopian peoples. With a view to achieving this aim, on December 25, 2018, the Ethiopian parliament has established Reconciliation Commission after a series of arguments against a need to establish it, especially from the incumbent political party, the Ethiopian People's Democratic Revolutionary Front (EPDRF) (Parliaments

Approval of the Ethiopian Reconciliation Commission, 2019). In Ethiopia, there were long time legacies of egregious human rights violations that remain unaddressed from the time of modern state formation in Ethiopia. They are either committed during imperial period that ended in 1974 or under the Derg regime from 1974-1991. After the downfall of Derg, the first attempt to bring justice by prosecuting Derg officials via 'Red-Terror' trial for gross human rights violations was unsuccessful. Regrettably, despite a promised democratization, gross human rights violations have continued by changing its form under the incumbent government, which has been ruling a country since 1991 up-to-date. The EPDRF government that established Red Terror Martyr's Museum with the motto, 'Never Ever Again' to remember Derg time egregious human rights violations, has continued the practice of torture and other human rights violations. It has been committed under various government owned prison and detention centers, such as Ma'ekelawijail (Addis Standard Report, 2019), Ogaden and many other illegal private detention centers at the federal and regional levels (Mehalet and Yared 2018). These politicized human rights violations, coupled with ethnic based federalism, resulted in the belief that ethnic groups in power have violated the rights of others not in power, and this in turn caused a number of inter-ethnic conflicts and disagreements. From the beginning of 2018, inter-ethnic conflicts became common incident here and there in the country, which resulted in internal displacements for millions (International Crisis Report, 2019). On the contrary, there is high level of continued denials, silence and claims on what happened in reality under various regimes due to distortions, lack of a proper and genuine clarification and recordings of incidents in the country. Thus, the establishment of Ethiopian Reconciliation Commission is a matter of urgent necessity. However, its establishment is not an end *per se*. Rather, like in the case of many other truth commissions, what matters ultimately is its success and effectiveness by attaining its short, medium and long-term goals as a transitional justice accountability measure.

Objective of the study

This paper aimed at drawing scientific and constructive lessons for the effectiveness and success of newly established Ethiopian Peace and Reconciliation Commission.

Research question

This study seeks to answer whether the newly established Ethiopian Peace and Reconciliation Commission is equipped with the basic factors that determine the success and effectiveness of TCs.

METHODOLOGY

In this study, a doctrinal research method is used. In discipline of Law, doctrinal research methodology refers to a systematic analysis of statutory provisions, cases and legal principles (Hatchinson and Duncan, 2012). Under this methodology, a comparative critical assessment method was employed by using the recent Ethiopian Reconciliation Commission establishment proclamation as a benchmark. For the purpose of comparison, the South African Truth and Reconciliation Commission is selected due to: the availability of plentiful literatures both as an appreciation and criticism; the fact that it is used as a model for many other truth commissions established thereafter; and reconciliation is an ultimate target for both commissions. Comparable variables such as selection, appointment, removal and composition of commissioners, overall mandate given to commission, adequate financial resources and staff capacity, security and cooperation from the incumbent government, public engagement in course of investigation, report and recommendation, and political will were referred.

CONCEPTUAL AND LEGAL FRAMEWORKS OF TRUTH COMMISSION

Truth Commissions (TCs) lack consistent definitions and nomenclatures. This is partly due to the difference in a prevailing context of a country under transition that determine TC's mandate, specific objectives, organ that establishes them and to whom they report (Brahm, 2009). For instance, South Africa called it Truth and Reconciliation Commission, Guatemala named it Historical Clarification Commission, Kenya called it Truth, Justice and Reconciliation Commission, and many others called it just Truth Commission (Hayner, 2006). Moreover, the notion of a Truth and Reconciliation Commission (TRC) recently developed and secured more popularity based on the well-known South African Truth and Reconciliation Commission (Woody, 2009). The inclusion of reconciliation alongside truth has become a common feature in the definition and mandate of truth commissions that have come after THE South African TRC, for example, the Sierra Leone and East Timor Truth and Reconciliation Commission, the Kenyan Truth, Justice and Reconciliation Commission, the Ghanaian National Reconciliation Commission and the Liberian Truth and Reconciliation Commission.

Their mandates and focuses also have not been similar. Many of the early TCs, like the South African, Chilean, Argentinean and others used to focus on addressing egregious human rights violations involving 'physical violence'. On the other hand, the recent ones such as the Kenyan, Liberian, Sierra Leonean and Ghanaian have been given the mandate to look into both 'physical and economic violence' (Sharp, 2014).

Freeman defines TC in a comprehensive way as:

an ad hoc, autonomous and victim-centred commission of inquiry, set-up and authorized by state to investigate principal causes and consequences of broad and

relatively recent patterns of gross human rights violence that had occurred in the state during determinate period of abusive rule or conflict; prepare and publicize its final report and as well as make recommendations for their redress and future prevention (Freeman, 2006).

A TC may have unique objectives specified in its mandate depending on the specific context of a particular country under transition. However, "clarifying and officially acknowledging the truth about gross human right abuses and establishing a record; paving the way for peace and justice in the new society; healing the wounds of the past violence; preventing future recurrence and facilitating reconciliation in the society" are the common goals that many TCs strive to attain (Woody, 2009; Freeman, 2006). Thus, ensuring the right to truth and thereby taking all the necessary measures such as reparation to the victim, prosecuting perpetrators and facilitating reconciliation are the core reasons why most TCs are established.

The right to truth is contained in different international and regional human right legal instruments in part which provide for the right to seek, receive and impart information (Article 19 of Universal Declaration to Human Rights, 1948; Article 13(1) of American Convention to Human Rights, 1969). Accordingly, the public and private individuals are entitled to have access to information regarding actions and decision-making process of the government (Para 3 of the Human Rights Council Resolution 12/12 October 12, 2009). This in turn, shows that state have a duty to take number of steps to determine past gross human rights violations since a state is a principal duty holder to protect, fulfil and promote fundamental human rights (Art 2 of International Convention on Civil and Political Rights, 1966). Moreover, the truth had been affirmed in case law. For example, in the *Velázquez case*, the Inter-American Court of Human Rights (IAHRC) has laid a foundation for the recognition and protection of the right to truth of the individual victims and society whose human rights were violated. In the case *Velázquez V Honduras*, the IAHRC boldly stated as victim's family has right to know the whereabouts of the disappeared by stressing on the state of Honduras's duty to ensure the fulfilment of this right. The four core duties indicated under this case are the duty to investigate the involuntary disappearance; punish the perpetrators; condemn the practice through public statement; and pay both material and moral compensation (Velázquez V Honduras, 21 July, 1989). Furthermore, the IACHR, in the case of *Barrios Altos v Peru*, clearly re-affirmed the victims' or next of kin's right to truth and right to obtain clarification of the events that violated human rights. In this case, the Court established the incompatibility of blanket amnesty law enacted by Peru, with the American Convention on Human Rights (ACHR) on the following grounds: amnesty was intended to prevent clarification, investigation and punishment of

those perpetrators of serious human right violations; and to promote the culture of impunity (Barrios Altos V Peru, 14 March, 2001).

RATIONALES FOR THE FREQUENT USE OF TCs COMPARED TO OTHER TRANSITIONAL JUSTICE ACCOUNTABILITY MECHANISMS (TJAMS)

A single TJAM cannot fully respond and satisfy multiple interests of the transitioning country. They may vary depending on the context and nature of interest targeted to achieve. Sometimes, the objective that a society want to achieve and interests involved may conflict each other. In that case, it is expected to balance the interests involved and make decisions to prioritize. None of the TJAM is substitutive or alternative to one another; rather they are complementary to each other. Another may not achieve what one TJAM could achieve.

TC is frequently used TJAM compared to others such as prosecution, lustration and so on. This is because TC has multi-dimensional advantages. First, it helps to make an official acknowledgement and apology about the sufferings that the victim has gone through and incorrectness of the conduct. This can enable a psychological healing of the victims when truth is disclosed, admitted and recognised after a long time of denial and silence (Hayner, 1994). Second, the overall truth established serve as a forum for giving conditional amnesty or instituting prosecutions against perpetrators of gross human right abuses. Giving conditional amnesty on the full disclosure and admission of the mistake by the perpetrators in front of the truth commission, like that of South African TRC supported by naming of the perpetrators would play tangible deterring role, besides providing an opportunity for restorative justice and reconciliation (Ntsebeza, 2000). TCs are not a substitute for prosecution. Thus, based on its findings, the TCs can play the role of determining those individuals to be prosecuted (Hayner, 2011). For example, the Liberian TC had also named about 116 persons, the most notorious perpetrators and suggested for prosecution by the special hybrid courts and another 44 perpetrators to be prosecuted domestically. Furthermore, the commission had included list of 38 individuals whom the commission did not deem prosecutable because of their great cooperation with TRC and for showing remorse (Hayner, 2011). Thirdly, overall truth established can serve as a basis for lustrations or vetting. Lustration measures, if arbitrarily used, will more likely make the new hope of making peace and reconciliation be aborted. However, if the government uses the overall truth supported by relevant and justifying evidence produced by TC and goes for lustration or vetting in a transparent way with objective criteria's, the society will accept the action by the government. Finally, the overall truth established by TC could facilitate ultimate reconciliation over deeply

divided societies under transition by increasing legitimacy and trust for the incumbent government.

FACTORS DETERMINING THE EFFECTIVENESS OF TCs

TCs gained increased acceptance as a means to address legacies of violence under dictatorial regimes or during violent conflicts (Sharp, 2014). In spite of their popularity and acceptance, their success was seriously questioned. What does it take the commission to be deemed successful in serving the purpose for which it has been established? Against which criteria should a commission be judged for its success or failure? There are no clear-cut standards or parameters to measure success or failure of TCs. This has opened a door to different side of arguments. Some scholars argue that TCs, which are able to complete their final report, can be considered successful. Others argue that TCs will be considered successful by not only the mere production of reports, but also when they contribute towards accountability for the gross human rights violations and other substantive outcomes like reconciliations (Gaker, 2009). For instance, Elisabeth Gurake uses three fairly comprehensive criteria to test the success of TCs, namely, fulfilment of the objectives stated in the mandate- investigation and report; implementation of the recommendations; and pursuit of reconciliation (Gaker, 2009). The writer of this article suggests the following parameters to be used to test the success or otherwise of TCs:

- i) As an investigating institution, how far does TC disclose the whole truth by following due process?
- ii) how far should the report include detailed facts indicating who did what to whom, and including the names of the most responsible individuals for the gross violation of human rights;
- iii) How far the recommendations regarding administrative, legislative, judicial and institutional reform measures were specific and direct for the concerned organ;
- iv) How far the TC complied with its overall mandate as provided in the terms of reference;
- v) How far the recommendations provided are implemented; and
- vi) Their level of contribution to the overall reconciliation and social reintegration.

Although TCs are established with a high expectation to unravel the truth and promote reconciliation, the yield is not usually very satisfactory except for very few effective ones (Hayner, 1994). Their ineffectiveness is attributed to various factors. There is no universally accepted set of standards that has to be fulfilled to ensure the effectiveness of TCs. This is partly because TCs work based on the peculiarity of each country except for those

indispensable criteria to be met, such as their mandate, adequate resources, independency of the commissioners and accessibility to necessary information in course of investigations. Those factors that appear in the literature to be crucial to the effectiveness of TCs such as selection, appointment, removal and composition of commissioners, the mandate, necessary budget, ensuring security and cooperation from the incumbent government, report dissemination strategies and recommendations are discussed in detail below by giving much emphasis to the case of the South African Peace and Reconciliation Commission.

Selection, appointment, removal and composition of commissioners

The manner in which commissioners are selected and the involvement of the societies, especially victims in their selection process, are basic factors for their success or failure. Because the commission tend to enjoy much public and international support where its members are selected via a wider process of consultation aimed at securing fair balance in the representations of political constituencies, ethnic or religious groups or gender (Freeman, 2006). For example, in the case of the South African TRC, the members of the commission were well recognised, having good reputation and acceptance in the community. It is even advisable to involve 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 (Hayner, 1994). In instances where there is less probability to find such recognized and trusted impartial persons, it is possible to compose the commission with foreign nationals as was the case in El Salvador TC; though such composition has its own demerits such as lack of local knowledge, experience and sense of belongingness (Buergethal, 2006).

The mandate

The power given to the TCs shapes the extent to which they have legal muscle to attain their objectives (Stan and Nedelsky, 2012). Thus, the terms of reference to TCs should be sufficiently broad enough to allow investigation into allforms of rights abuses. It would also be beneficial to allow the commission to identify the most relevant cases to investigate (Hayner, 1994). The mandate part is the main area where those who establish TCs either paralyse or give life to the TCs. TCs are inherently political enterprises, and sometimes may be created with diverse motives, like political manipulation (Freeman, 2006). Thus, the negotiators while establishing TCs may draw many red lines in areas where TCs should not go for investigation, and may specify only certain areas to be

investigated. For example, in the case of Bolivia and Uruguay, TC was expressly told to investigate only cases of disappearances, but illegal imprisonment, torture that are common violations of human rights there, were overlooked. Again, the Chile's Retting Commission was granted the authority to investigate only human right abuses that resulted in the death or disappearance of the victim.

On the other hand, other truth commissions are given much wider power but denied the means to exercise such power such as a big enough budget, subpoena, search and seizure power. For example, the Guatemalan Clarification commission was given a wide mandate to investigate all human right violations in that specified period, but lacked powers of subpoena, search and seizure that could have enabled the clarification commission to secure testimonies, and gain access to institutions and documents to carry out investigation. Furthermore, the commission was expressly told not to publicise names of those responsible individuals (Tomuschat, 2001). Again, the perpetrators dictated the terms of reference to the commission. In the case of the South African TRC, though it is much appreciated for its wide mandate of subpoena, search and seizure power, it was much blamed for its wider mandate, particularly with regard to the power to give conditional amnesty even to those individuals who had committed egregious human right violations, having the status of *erga omnes*. Though the qualified amnesty may be allowed depending on the context for the better result that a country wants to achieve such as peace and reconciliation, those heinous crimes should always fall outside the mandate of the TCs to give amnesty (Gaker, 2009). On the contrary, the South African TRC mandate was such overstretched to give a conditional amnesty even for international crimes. It can be argued that it does not affect the jurisdiction of any other special court or any other national court that wants to prosecute those perpetrators on the ground of universal jurisdiction for the fact that such amnesty is purely dealt under domestic laws of South Africa (Special Court for Sierra Leone: Prosecutor Kallon and Kamara, 13 March, 2004). However, still the intention of the negotiators should be taken into account and that is to place a complete ban on prosecution including prosecution of international crimes. Moreover, once the perpetrators get amnesty they are completely immune from prosecutions and civil suits. Again, the suspected individuals in police custody were given priority right to apply for the amnesty (Article 18(2) of the South African Promotion of National Unity and Reconciliation Act, 1995).

Failure to give sufficient reparation to the victims on the one hand and treating the perpetrators with soft hand on the other hand, defeats the very nature of TCs. That is, "victim-centred approach which pre-supposes that most of the TCs' time and attention focuses on victims-experience, views, needs and preferences" (Freeman,

2006). For the South African TRC, it is much easier to talk as more of perpetrator-centred than victim-centred.

The power to address and investigate both kinds of violence involving first and second generation human rights, also determines success of the TCs. Earlier, TCs focused on investigating gross human right violations involving civil and political rights of individuals commonly called physical violence; and economic violence and economic injustice have sat at the periphery of the TC's work (Sharp, 2014). Thus, the economic violence-including violations of economic and social rights, corruptions and plunder of natural resources had not been within the clear mandate and attention of the TCs. The problem of focusing only on physical violence resulted in the development of culture of impunity for the corrupt state officials by encouraging economic delinquency. For example, the previous apartheid government left South Africa with a loan of twenty-one billion US Dollars, and again, the new government, including higher government officials, were criticised for being involved in grand corruption (BBC News, 2016). In general, the marginalization of economic violence made the information from TCs incomplete and distorted in the policy choices of the transitioning state (Sharp, 2014).

Necessary budget

Availability and control of budget by the TC contribute to the effective discharge of its mandate. A Commission can hire enough staff, conduct inclusive investigation and then, produce a more comprehensive truth report. Only very few TCs have enjoyed sufficient budget like the TCs of South Africa, El Salvador (Brahm, 2007). Most of the TCs' success was undermined by lack of sufficient resources and because of budget constraints. For example, Bolivia and Philippines closed down the work early due to lack of funds and commissioners resigned in disgust due to lack of cooperation from different stakeholders (Brahm, 2007). Regarding the source of budget for TCs, there is no uniform standard. International organisations, national government and private foreign donors among others support TCs (Freeman, 2006). The national government's budget allocation trend has not been understood as part of states' duty to ensure individuals' right to truth by investigating and reporting. Allocating a budget to the TCs by the government should not be seen as a charity but part of its duty to investigate and prosecute those individuals who have been suspected of committing grave human right violation and provide other effective remedies as well (Brahm, 2007; Freeman, 2006).

Ensuring security and cooperation from the incumbent government

Security issues and lack of cooperation from governments

are other factors that affect success of the TCs. For example, the El Salvador Truth Commission had faced serious security concerns and had to physically move its place of operation out of the country (Freeman, 2006). Similarly, the Chad TC received threats from former security personnel who had been rehired into the new intelligence service (Hayner, 1994). In case of the Guatemalan Commission, there was lack of complete cooperation and political support. Instead, the military even contended that the Commission has no right to see the archives because most of the information was secret (Tomuschat, 2001). The same is true for Bolivian Truth Commission. Thus, the TCs fail to establish the required truth and uncover it due to the security issues and lack of cooperation.

In a situation where TCs emerge out of political negotiation, the probability of focusing on the interest of the victims and society by TCs is minimal. As rightly stated by some NGOs "a commission that is a product of the negotiation of the two sides of an armed conflict is not going to be the best mechanism to respond to the needs of society" (Cuevas et al., 2019). Thus, the genuineness or pretention of TC work has to be always carefully followed-up.

Report, recommendation and dissemination strategies

Reporting and recommendation part by the TCs involve various issues. These include: how far the report is comprehensive enough to disclose the whole truth; naming of specific perpetrators who are found to be the most responsible to egregious human right violations; observing the right of due process of law to those whose name is included as the most responsible perpetrator in the report; imposing and requiring specific duty or measures over state to be discharged as recommendation; publishing the final report and its accessibility to any interested person in a language that the society can understand; suggesting the establishment of a monitoring organ for following up the implementation of the recommendations; and the level of recommendations implemented by the government.

Reporting and recommendation are the main areas where the ultimate success or failure of TCs is judged. TCs were not established just for the sake of formality and then to keep the final report on the shelf. Report is a legacy and summary of the key findings that provide recommendations for rebuilding a society (Brahm, 2004). It is a part where the long-time denials, sufferings and gross human right violations of individuals and group rights, interests of society and the international community at large get life or dies. It is a point where the *'malice intention of government in choosing TC as response to the need of the society in transition for atrocities of the past gross human right violation, is not*

due to its moral superiority but because of political profits that can be reaped from the approach'(Gaker, 2009).

Thus, the government may continue its non-cooperation act by either failing to acknowledge the report or by failing to publish a report. It may be a continued act of the government after paralysing the commission by way of minimizing its mandate, denying the subpoena, search and seizure power to relevant documents and witnesses, refusing budgetary support, and denying cooperation from different organs. For example, as per the Uganda's TC report after eight years of difficulties with budget shortage, the president did not publish the report (Hayner, 1994). The same is true for Zimbabwe where the president had failed to publish a report in spite of the push from the victims and NGOs. The Bolivia and the Philippines have also failed to publish their final report (Sharp, 2014). Thus, all the TC's findings and recommendations have to be disseminated, and cascaded to all public at grass root level, so that it could clarify unnecessary denials in the past and serve as a lesson for future. The government has to show a persistent commitment in devising different commission's report dissemination strategies as well as means to monitor and follow up a proper implementation of the recommendations suggested (Odartey-Wellington and Alhassan, 2016).

ESTABLISHMENT OF THE ETHIOPIAN RECONCILIATION COMMISSION

The need to establish the "Ethiopian Reconciliation Commission" (ERC) as a means to promote national reconciliation and consensus had been a long-time proposed view in the country. Different opposition political parties, scholars and human rights activists have raised it repeatedly on different occasions. However, the idea was neglected by the incumbent political party-EPDRF. EPDRF used to argue, as there is 'no ethnic group or public' in conflict for reconciliation (Para 2 of the ERC establishment Proclamation Legislative History, 2018). Different politicians and scholars used to argue that the EPDRF reject the issue of national consensus and reconciliation because it is contradictory to EPDRF's ethnic based division policy while political affiliated gross human rights violations, internal division and suspicion based on ethnicity, language and religion had been so visible in the country (ESAT News, 2019a, b). This had been openly witnessed by internal displacement of millions in different parts of the country (International Crisis Report on Ethiopia, 2019). As opposed to EPDRF's long-time ethnic based division policy, the new Prime Minister, Abiy Ahmed (Dr.) came up with a policy direction called-Medemer (መደመር) that paved a suitable ground for initiating a long time rejected view of national consensus and reconciliation. Thus, the establishment of

ERC forms part of the overall government reformation measures to ensure national unity, democracy and protection of fundamental human rights. As it appears from the preamble to the ERC Establishment Proclamation, the underlying reasons for its establishment are to:

- a) ensure reconciliation based on truth and justice by settling long time disagreements developed among Ethiopian people because of social and political conflicts;
- b) identify and ascertain the nature, cause and dimension of the repeated gross violations of human rights so as to promote reconciliation and develop culture of respect and implement basic human rights recognized under domestic laws of the country as well as those ratified by Ethiopia;
- c) provide a forum for victims to be heard and perpetrators to disclose and confess their actions as a way of reconciliation and to achieve lasting peace;
- d) conduct inquiry and disclose the truth of the sources, causes and extent of conflict, take appropriate measures, initiate recommendations for lasting peace and prevent future recurrence of such (Paragraphs 1-4 of the ERC Establishment Proclamation, 2018).

The objectives of the ERC encompass "maintaining peace, justice, national unity and consensus and reconciliation among Ethiopian Peoples." (Article 5 of the ERC Establishment Proclamation, 2018).

FEATURES OF THE ERC IN THE LIGHT OF FACTORS DETERMINING THE EFFECTIVENESS OF TCs

Selection, appointment and composition of commissioners

The manner in which the higher executive officials are appointed or removed from office has a crucial impact on the effectiveness of TCs. Often; the appointing organ decides the overall function of the TCs. At the higher executive level, the ERC has two major positions, namely, the Chairperson of the Commission and the Deputy Chairperson of the Commission (Articles 8 and 9 of the ERC Establishment Proclamation, 2018). The House of Peoples Representatives upon recommendation by the Prime Minister, appoint Chairperson, Deputy Chairperson and other members of the Commission (Article 4(2) of the ERC Establishment Proclamation, 2018).

The appointment and selection process of commissioners should be open to secure fair balance in the representation of political constituencies, ethnic or religious groups. Appointment by the parliament would have been way better had there been diverse political parties in Ethiopia to minimize opportunities for biases. However, in the current Ethiopian context, it is hard to believe that leaving the whole appointment and selection

process to the parliament and the Prime Minister could gain much public support and fair representation. This is because the ruling party (EPRDF) has almost full control in the Ethiopian Parliament as Vanguard Party, of which the Prime Minister is a member. It has been a common trend that the parliament simply endorses matters suggested by the Prime Minister on various issues. By the same vein, there would be no serious scrutiny by the members of the parliament over the recommendations made by the Prime Minister regarding commissioners to be appointed. In addition, the ERC Establishment Proclamation does not provide objective qualification criteria for the commissioners' to be appointed. As such, the parliament had approved the appointment of all 41 individuals to the ERC membership as recommended by the Prime Minister (List of 41 individuals appointed as commission members by Parliament, 2019). The existing Ethiopian parliaments simply endorse the recommendations from the Prime Minister, which is apparently witnessed in its appointment of the former Prime Minister, Haile Mariam Desalegn as Commission Member. Haile Mariam used to lead the country and under his leadership, various egregious human rights violations were committed. This casts doubt on the independency of the overall Commission's work.

The good thing regarding the establishment of the ERC is that the new Prime Minister himself is a leading person as to the whole transformation in the country. In various instances, the PM has shown that he has a genuine interest in the whole work of ERC. Accordingly, the overall composition of the commissioners was good as the individuals are drawn from different faith groups, thought leaders, intellectuals, artists, actors, authors, legal experts, philanthropists, politicians and elders, among others. Although Ethiopia is deeply divided on different basis currently, The ERC composed of individuals whose work could be taken as representative and dependable and thereby to attain the overall objectives of the Commission such as long-lasting peace building, national consensus and reconciliation.

Removal of chairperson and deputy chairperson of the ERC is another crucial issue that needs to be seen in connection with their appointment for the overall success of TC. The ERC establishment proclamation is completely silent about the possibility of the removal of chairperson or deputy chairperson of the commission. At the same time, it does not state anything as to the possible grounds for their removal from their post. However, like that of the South African TRC Establishment Act (Art 41(2) of the South African National Unity and Reconciliation Promotion Act, 1995), the ERC establishment proclamation makes the commission accountable to the Prime Minister (Article 3(4) of the ERC establishment proclamation, 2018). As stated earlier, the commission is answerable to the same person who initially recommended them (Article 4(2) of the ERC Establishment Proclamation, 2018).

Powers and duties of the ERC

The objectives of the ERC are to maintain peace, justice and national consensus and thereby promote reconciliation among Ethiopian Peoples (Article 5 of the ERC Establishment Proclamation, 2018).

In order to attain these objectives, the ERC is entrusted with powers and duties to:

- i) announce its work; make every concerned person or body to present his ideas and thereby make necessary registration;
- ii) make its work accessible, participatory by using technology; organize reconciliation workshop in which all parties need to be aware of;
- iii) identify principles and values on which national reconciliation should be based by making discussion with groups of society which have different view;
- iv) make examination to identify the basic reasons of disputes and violations of human rights by taking into consideration political, social and economic circumstances as well as victims and offenders;
- v) take or order presence of any document or information from government or anybody which the commission deemed necessary for its work except those that are given legal protection as confidential for the sake of national security;
- vi) visit premise of any institutions and to take copy of any information and document found by its visit;
- vii) collect information through interview either individually or in a group in secret or in an open way to the public; order the presence of anyone through summon and require to give his statement through oath;
- viii) get support from federal or regional state police to execute its duties depending on the situations;
- ix) notify the public and concerned government organs of the conclusions reached through the examination as appropriate; and
- x) make reconciliation among peoples to narrow the difference created and create consensus (Art 6 of the ERC Establishment Proclamation, 2018).

Powers and duties given to TC should allow investigation into all forms of rights abuses both physical and economic violence. TC should be selective to the most important cases in course of its investigation. TC should be given the necessary powers such as subpoena, search, and seizure as well as means to exercise such powers like required budget. It should involve the public in course of its investigation to produce a reliable report (Art 6 of the ERC Establishment Proclamation, 2018). A pooled reading of the overall objectives why the ERC is established as it stated in the preamble to the establishment proclamation and list of powers and duties given to the ERC, the following brief conclusions could be reached regarding the mandates of the ERC. The ERC establishment proclamation does not state as the ERC is

given a mandate to investigate both physical and economic violence, rather it states in general terms as gross human rights violations. It is allowed to inquire basic reasons for those gross human rights violations, by taking into account political, social and economic circumstances and the victims and offenders. Here, the ERC has to be creative enough to understand and interpret as it is entrusted with a power to investigate both physical and economic violence and should not follow the old path of only addressing physical violence by TCs. However, the time or period that has to be covered under the ERC investigation is not specified. Rather, it simply states as repeated gross human right violations. This could make the work of the ERC overstretched and tiresome; as there were long time unaddressed human rights violations and disagreements since from the Ethiopian State formation.

Ensuring security and cooperation from the incumbent government

The ERC is given the power of subpoena as well as search and seizure (Articles 6(5)). To make these powers more practicable, the ERC has been given power to get the necessary support from federal or regional state police depending on the situations (Art 6(8) of the ERC Establishment Proclamation). Furthermore, any person in Ethiopia is legally obliged to cooperate with the ERC to answer any legal questions necessary to enable the commission to undertake its responsibilities. The inclusion of federal as well as regional police duty to provide the necessary support guarantees the commission personnel to perform their responsibilities without security fears. The limitation clause incorporated into the subpoena powers of the commission stating that 'those information that are given legal protection as confidential for the sake of national security' (Articles 6(5) of the ERC Establishment Proclamation) has to be interpreted narrowly. Otherwise, the Commission might face the contention that it has no right to see this and that archives because the information has to be kept secret like that of the Guatemalan Clarification Commission earlier discussed.

Availability and control of budget

Availability and control of budget by the TC is at the heart of effective discharge of its mandates. A Commission can hire enough staff, conduct inclusive investigation and then, can produce a more comprehensive truth report if it is given the necessary budget as earlier discussed. The Ethiopian government assumed responsibility to allocate the ERC budget (Art 16 of the ERC establishment Proclamation). Although it is too early to judge on the sufficiency of the budget being allocated, at least the

Commission can have sustained budget to discharge its duties. Moreover, the allocation of budget for the Commission by the government can be taken as a step forward in the act of government's admission of its responsibility to conduct the investigation as to the gross human rights violations and thereby to enforcing the right to truth.

Report, recommendation and dissemination strategies

This is the phase at which a comprehensive conclusion as to the overall truth was disclosed including all the list of responsibilities and activities that should be taken to compensate already happened violations and prevent recurrence of the same in the future. The ERC has given a mandate to the public and concerned government organs with the conclusions reached through the examination (Art 6 of the ERC Establishment Proclamation, 2018). It has been given a mandate to disclose the truth of the sources, causes and extent of conflict and thereby to take appropriate measures and initiate recommendations for lasting peace and prevent future recurrence of the same (Para 4 to the Preamble of the ERC Establishment Proclamation, 2018). The ERC establishment proclamation also provides that overall truth to be reported has come through a wide participation of all concerned individuals and groups of society via workshops, public discussions, providing a forum for victims to be heard and perpetrators to disclose and confess their actions (Articles 6(1)-(3) and Para 3 of the Preamble to the ERC Establishment Proclamation, 2018). This ensures the due process principles that have to be followed by TCs in course of investigations to reach into the required overall truth. However, there is no express indication that the ERC is given a mandate to disclose specific perpetrators who have been found to have committed gross human rights violations. The ERC establishment proclamation in general term state that the Commission has a mandate to disclose its findings, take appropriate measures and initiate recommendations so as to ensure lasting peace and prevent future recurrence of the same (Para 4 to the Preamble of the ERC Establishment Proclamation, 2018). The term 'appropriate measures' under ERC's mandate part is vague and hence, subject to interpretation. That interpretation could be either wide or narrow. Thus, the commission, in the course of interpreting this term as to its mandate, should consider its overall objective. Otherwise, it could be a barrier to its effectiveness.

The final investigation report of TC should not be left on shelf. All its findings have to be disseminated and cascaded to all public. The strategies devised for disseminating the report should be accessible to every individual in the country. It should be also transmitted by various local languages so every individual could

understand. The ERC establishment proclamation provides for the possibility of involving public in course of conducting its investigation and hearings. Furthermore, it provides that the public and concerned organs have to be notified about the findings and conclusion of ERC. However, the establishment proclamation is completely silent regarding various report dissemination strategies. At this stage, the author of this article hope that the subordinate legislation, that is, regulation will come up with detailed report dissemination strategies such as briefly including its findings in education curriculum, transmitting its report via media with wide national coverage such as televisions and radios. Finally, there should also be means to follow up timely implementation of different transitional measures recommended by ERC as means to prevent the recurrence of various human rights violations and facilitate national reconciliation.

CONCLUSION AND RECOMMENDATIONS

The Ethiopian government established the ERC under its overall government reformation measures to ensure national unity, democracy and protection of fundamental human rights in December 2018. The ERC is specifically preordained to maintain peace, justice, national unity, consensus and reconciliation among Ethiopian Peoples. Thus, this paper has examined ERC to effectively attain its short, medium and long-term goals as a transitional justice accountability measure in the light of different factors, which appear from the literature to be crucial to the effectiveness of TCs such as selection, appointment, removal and composition of commissioners, overall mandate given to commission, adequate financial resources and staff capacity, ensuring security and cooperation from the incumbent government, public engagement in course of investigation, report and recommendation, and political will.

This paper has also revealed, through critical analysis, that the ERC has the following strong dimensions that could contribute to its effectiveness, namely, a solid institutional set-up, a budget source, powers and duties endowed, security guarantee and cooperation from the incumbent government and its opportunities to engage public in its work. Moreover, this paper has further pinpointed and analyzed a number of drawbacks that may affect the ERC's effectiveness. They are related to selection, appointment, removal and composition of commissioners, accountability structure and lack of clarity in its mandates (including the time period to be covered under investigation).

Finally, despite its imperfections, the ERC could be workable as a transitional justice accountability mechanism. However, sustained political will and commitment is indispensable to capitalizing on the strengths and rectifying the weaknesses of the ERC to

ensure its ultimate effectiveness, that is, starting from providing necessary budget, cooperation and protection up to making the final accessible to whole public and implementing the recommendations.

The author, therefore, recommends that the current ERC establishment proclamation should be amended to rectify major defects identified in this paper such as selection, appointment, removal and composition of commissioners, accountability structure and time period to be covered under investigation which could affect the ultimate acceptance of commission work by the public. Additionally, the author recommends that a series of consideration has to be taken to clarify in detail on matters relating to meaning of core terminologies such as human rights violations that whether it includes physical violence alone or both physical and economic violence, and also the term 'appropriate measures' under ERC's mandate has to be clarified in detail to avoid it being a bottle neck when presenting the Commission's final report and recommendations. The government should show a genuine and persistent political determination to advance the effectiveness of the ERC in the course of its work.

CONFLICT OF INTERESTS

The author has not declared any conflict of interests.

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