

Some comments and contributions to the TJ Policy preparation process

Fana Gebresenbet

7 December 2022

It goes without saying that there is the urgent need to address the grievances and challenges we as a society and state ‘inherited’ from the past and open a new chapter of stability, peace and prosperity. TJ would play an irreplaceable role and as such I want to commend the MoJ for taking this initiative for a serious process of drafting a policy context to it. I also thank for the invitation extended to me, and share my comments and contributions with the hope of contributing to the process.

I’ve structured my contribution in three. The first relates to timing and ‘ownership’ of the process; the second relates to conceptual issues; and the third on technical/procedural issues.

All my comments and contributions are premised on the firm belief that TJ plays an irreplaceable role to ensuring the resolution and transformation of the violent conflicts we experience in Ethiopia and to making elite contestations/conflicts less intense. By contributing to this, TJ will contribute a significant share of paving the path towards democratizing the state, and creating a more equal (in terms of status) society. My contributions are made with the pre-assumption that TJ in any country-context should play a political objective. I have no illusion that it must be as technical and bureaucratic process as possible, but this will not mean that there is no political objective for any ruling party/government choosing to go with a TJ process. My argument then is that the major decisions regarding Ethiopia’s TJ policy should be made after a clear articulation of the political objective and what the major challenges we want to address through TJ, and over what time period (Ex: Commission I, Commission II...?). It will especially be important to fully understand that the success of the war effort on the ground and the peace agreement in Pretoria could only be sustained if there is a genuine healing and reconciliation in Tigray. Otherwise, secessionist politics will remain and will continue inviting more political violence for years to come (at the least). I will not be further commenting on this here, but by foregrounding this assumed political objective, I will raise my contributions below:

I: Timing and ‘Ownership of the Process’

Timing: The second presenter was suggesting different ‘start dates’ for a possible future TJ work. While the concern and debate on the ‘start date’ is necessary, I would highlight that it is equally important to have an end date. Such a determination of ‘end date’ will also give a commission the nearest cases it could examine, otherwise considering that such a commission will work for two/three years (and the possibility of some more violent conflicts and human rights violations after its establishment) a commission will be forced to add new cases. That will practically make the mandate even more challenging. Some commissioners of the previous Ethiopian Reconciliation Commission (ERC) used to say that we can investigate cases ‘from queen of Sheba times to yesterday’, which illustrates the breadth of mandate and with that the impossibility of covering all these.

A more important challenge related to the same issue of ‘end date’ is the assumption that the proposed ‘end date’ is a good enough time line to clearly demarcate where cases will be examined by TJ. In the case of other/pre-existing TRCs (for sake of brevity I will call all previous commissions working on TJ TRCs) the ‘end date’ is the date a peace agreement is signed/a new political settlement is reached/a new government comes to power. Therefore,

the pre-assumption is that after that date the gross human rights violations (GHRVs) will cease.

If we bring this to our case, the implications are that (1) can we really start thinking about TJ related works now while violence rages in different parts of the country; and 2) should we start thinking about starting with Tigray (as the Cessation of Hostilities Agreement/Pretoria Agreement already provides for this). In my view, starting with doing TJ throughout the country will be a challenge before a political solution is found to stop violent political actions and to bring the rebels/armed actors to civic politics. If there is agreement on the general logic of it, this would require a political decision to either: (1) wait until a peace deal is reached/political solution is reached with other rebels and the ‘guns get silenced’ throughout the country. Perhaps hasten the process as well? OR (2) Start with Tigray/North Ethiopia, take lessons from there and implement in other parts of the country.

Ownership of the TJ process: From the presentations and attendees of the workshop, I have the strong impression that the process is ‘lawyer heavy’. While I agree that TJ could be a primarily legal issue, it is also important that considerations of healing, reconciliation, compensation/reparation, peace, truth, and reconciliation are interdisciplinary. Successful TRCs had an interdisciplinary team of commissioners, and the law/policy guiding their actions should also allow for this. Thus, my question is thus if the process is benefitting from inputs by political scientists, psychologists, anthropologists, sociologists... Otherwise, the document will be deficient, and some of the issues I raise below also could be obvious to someone coming from these disciplinary perspectives.

II: Conceptual Issues

Context: As it was stressed by Dr. Mareshet, understanding the context is crucial. From the presentations it seems that there is relatively limited contextualization of the TJ policy to beyond violence related to wars of recent decades, and slightly to state-expansion processes of the second half of the 19th C. There should be a strategy which balances urgency of addressing some issues (recent GHRVs lets say over the past decade) with the need to address issues/concerns/GHRVs inherited from the past (Ex: state expansion and associated violence/GHRVs). This also relates to the effectiveness of a potential commission and how many years it works before delivering its reports? Moreover, considering that the National Dialogue Commission (NDC) will also be working on similar issues related to historical GHRVs, it might be worth also to consider the possible linkages between the TJ policy and the NDC. [In answering these questions, it might be important to consider Commission I, to work on most recent cases, and Commission II older historical cases]

In understanding the context, it is also crucial that the TJ Policy does not make the fault of reducing the very complex reality of Ethiopian politics and security landscape. One tendency I see from the presentations is to link the causes to the political center. The last slide/issue by the second presenter touches on issues of federalism and related procedural issues, but not going in depth. But some issues are more localized. For example, if we need to consider enslavement and slave raiding in southwestern and western Ethiopia would be consider Aba Jiffar and rulers of Kaffa area for the violations? Would the commission help understand and redress intra-Somali (inter-clan [for example in Somali region]) related issues and topics? Similarly, if the commission is going to address GHRVs during the 1970s and 1980s, will it consider intra-party/intra-rebel group killings of the time?

In my view, it will be important to list the major issues for discussion and prioritisation of the issues to be handled in consultations with political parties, communities and personalities. Moreover, despite the genuine concern of fatigue by the public, it is important to consider dividing the task to two (or more commissions). Other countries did that (Chile and Germany(?) if I am not mistaken). This would help address particular issues seriously, and by ensuring success of the first, the legitimacy of the second will be heightened. Fatigue should only be an outcome of failure of past commissions.

Truth: Starting with a clear (political) objective will help clarify what type of truth is valued. I agree with the suggestion of getting to ‘forensic’/‘legal’/‘factual’ truth in some cases, but in my view the primacy should not be on this. If the political objective of the TJ Policy is to promote stability and peace, then more attention should be on ‘social/dialogic’ truth. Even in cases of seeking ‘factual’ truth, there should be an attempt to ‘socialise’ that truth and unearth it in a manner which produces a ‘social truth’. In effect, it would be wise to avoid dichotomies.

When it comes to the issues from the past which continue affecting politics and violent conflicts in Ethiopia, the truth-seeking process will not be done by ‘ordinary people’ sharing their experience or interviewing alleged perpetrators. Thus, there should be space for a serious attempt to develop a process for a shared history development by bringing historians from differing epistemic positions together. The aim here should not be to agree on all things, but to start the process, and more importantly to reduce the deniability of confirmed events.

The search for the truth should be complemented by the recognition that some of the contestations over the past could not be addressed by a genuine search and discovery of the truth. There are pains and emotions which also need a reaction in the same sphere of action, through a politics of empathy. Thus, even after discovery of the truth and compensation/reparation, the emotions (of grievances) will persist. Therefore, there should be readiness from all sides to live through moments of high emotions, at times after properly addressing the issue in an objective manner.

There should also be the openness to have reconciliation before/without discovering the truth. There is at least one case (Mozambique?) where communities chose not to dig the past, and agreed to reconcile. If there is a culture which goes for doing some form of reconciliation before/without searching for the details of the truth, will the TJ policy allow it?

Give commissioners the room: In setting the TJ Policy and perhaps in establishing a commission, it would be advisable to leave some particulars and details for interpretation and determination by the commissioners. This could range from letting commissioners interpret what reconciliation is and how to realise it; to determining acceptability of some cases from outside the temporal scope of the commission; and what truth is and what type of truth is valued by the commission.

Material scope: It is also worth exploring if the TJ policy and proclamation should cover the material scope of the work of the commission too. I don’t think that this is well considered in the current version presented. Even if we determine the temporal scope of the commission, many types of atrocities would have been committed in the same period. Would the commission take all or would it focus on the most pressing ones? It would be useful to start discussions on the material scope of the work with political parties, CSOs and relevant actors.

Non-recurrence and Institutions: Non-recurrence is a major goal of such processes, and on way of achieving this is through reform of important institutions. This is perfectly captured by the team, but my observation here is that the team limited the ‘institutions’ (based on my inference from the presentations obviously) to the security and justice sectors. I would advise that, assuming that there will be buy in from them, there be reform and internal discussions within the major religious institutions of the country. Although we need our religious leaders to be independent voices of calm, reason, cooperation and love, more often than not we see religious leaders acting more or less like cadres. If they don’t reclaim their rightful place by cleansing themselves, then they cannot serve as moral compass of the society and government. When a government adopts such a tendency in the future who will stand up to it? Can we genuinely imagine our CSOs to be strong and independent enough, and grow ‘a backbone’ soon enough? In my view, if religious institutions and elders do internal processes and become the example for other institutions, parties and individuals it will clean a lot from the challenges of taking this momentous step. Religious institutions, if they do this, will have the potential of encouraging their followers to share their truth, forgive and reconcile with others and reduce the pain of opening the lid on emotions/pains bottled up for some time. So I suggest that this be taken seriously as well.

Technical/Procedural issues

Composition and appointment of commissioners: There are obvious improvements in the establishment of commissions and appointment of commissioners (from Ethiopian Reconciliation Commission and Boundary and Identity Commission established in 2019 TO the National Dialogue Commission, NDC, established in 2022). However, experiences of the NDC also show that there is a lot to be desired in terms of legitimacy and getting popular support. The extent of engagement to a possible TRC depends on the extent to which the process is trusted. Why would people come and tell secrets/pains they have kept to themselves for some time to a certain panel if they don’t genuinely feel that there will be some personal/national good? If trust comes primarily on ethnicity, it will be a problem, as one will be hard pressed to tick boxes related to ethnicity, gender, and professional expertise. What I would suggest is a genuinely consultative process which makes different ethnic and political groups main actors, and then the selection of the commissioners to be primarily based on expertise. Moreover, a vetting process to exclude individuals who have supported/committed some acts of violence/HR violation/atrocity for whatever reason should also be availed.

In terms of expertise, I would suggest that there be a combination of different expertise with the inevitable consideration of (1) law/criminal justice/HR; (2) gender; (3) sociology/culture..

Media: New and Old: If the primary objective is to help close the chapter of violence and mayhem, it is important that a new truth, a new vision should be shared and commonly created, i.e., ‘social truth’. This would necessitate that the media should have a wider coverage of the public events in all corners of the country, with multiple language translation. The goal should not be to just aim one’s bottled-up emotions and pains and experiences, but needs to aim for that pain to be shared by Ethiopians in different corners of the world. This would require the active engagement of national media (including regional as well as private media). Keeping them engaged needs a serious strategic communication plan as well as resources.

A corollary of this is what could be done about the social media. Previous TRCs did not have this challenge, but the social media could have a destructive role to play. Positive stories

geared/narrated to promote reconciliation will not sell as much on the popularity market. Moreover, disgruntled politicians will have the possibility of disturbing the process is high. This is crucially important if there is a vision of establishing a 'social truth'. This calls for a well-oiled communication team, with a clear communication plan, always staying ahead of the curve and functioning in different languages.

Territory: What I see as an additional challenge is delimitation of territorial scope of the work. Will the commission be responsible for atrocities/violations committed by the Ethiopian government/political groups in neighbouring countries, say in Kenya or Sudan? What about possible atrocities/violations committed by rebel groups outside the Ethiopian territory?

What is more important to consider is the role to be played by the diaspora. Given the important role played by the diaspora in current political and (violent) conflict dynamics and considering that the Ethiopian diaspora is mainly conflict generated, it is not advisable to simply ignore them. Will the commission do the hearing among the diaspora OR work with some other group to do it (see Liberia's case)? If the commission is going to do it, what are the cost/foreign currency implications? All these need to be thought out and to be detailed!

Pre-establishment processes: What happens before the commission is established is as important (if not more than) what the commission could do after its establishment to meet its objectives. A commission established without a consultative process only could go some distance. Similarly, the composition of the commissioners determines the quality (to expert readers) of the reports. Consider the quality of the Institute of Nationality Studies works (although I did not read these, I am assuming based on what I heard), its continued importance is due to the scholarly/expert qualities of the individuals leading the process.

Pre-establishment processes also include peace processes which create 'good enough peace' for TJ processes to happen. Any agreement with armed groups/political groups for creating a 'good enough stability' should also pre-assume the conduct of TJ (as the Pretoria agreement did). As such, it will be important to make the political decision on when the TJ processes start and where (first Tigray then ... ; or national level at once)? In either case, my belief is that there should be peace in Oromia (and Benishangul-Gumuz) before seriously considering doing TJ there. Thus, there should be an informed political discussion and decision on this.

There should also be discussion among political groups on the material and temporal scope of the commission. Although some GHRVs (such as ethnic cleansing, massacres, ...) are clear enough to be included, others (Ex: land alienations, marginalisation in infrastructure/service/employment, and slave trade) could not be as obvious. The political groups know the atrocities they committed, those committed against them and their constituency. As such, they will have the evidence to support 'truth seeking' and at the end of the day without their good will there will not be genuine remorse, forgiveness, and starting the process of reconciliation.

Therefore, serious attention and care should be paid to the pre-establishment period too.

