

Truth-seeking processes in Africa: Lessons from the South African Truth and Reconciliation Commission and the Ethiopian Red Terror trials

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Summary

This article demonstrates the significance of truth-telling to post-conflict and post-authoritarian societies in coming to terms with their violent past and building a better social and political system. It argues that the truth not only enables individuals and communities to understand and properly address the past, but also contributes towards building social harmony and lasting peace. In order to achieve its objective, the article engages in a comparative study of transitional truth-seeking processes by focusing on the experiences of the South African Truth and Reconciliation Commission and the Ethiopian Red Terror trials. The article utilises both primary and secondary sources, and critically analyses existing literature, relevant national and international law, official and non-official reports and other relevant information. A closer examination of the experiences of South Africa and Ethiopia demonstrates that, irrespective of differences in local contexts, truth or truth-telling is an essential element of justice during transition. Hence, the article recommends truth to be pursued as a critical condition of reconciliation and social and political transformation.

Key words: *transitional justice; truth; truth-telling; reconciliation; Ethiopia; South Africa*

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1 Introduction

The article discusses the significance of truth-telling processes in post-conflict and post-authoritarian societies in coming to terms with the past and enabling a better future. A truth-seeking (or truth-telling) process simply refers to a process of search for and establishing the truth about past violence. The article critically examines the experiences of South Africa and Ethiopia, two countries that emerged out of repressive authoritarian regimes almost at the same time. Irrespective of the difference in approaches and institutions, both countries recognised truth as an essential element of transitional justice. While the work of the South African Truth and Reconciliation Commission (TRC) is widely known, the Ethiopian Red Terror trials remain rarely addressed in academic literature. Hence, it would be useful to mention a few points about the Ethiopian transitional justice context and process.

Violence and violations have been part of the political history of Ethiopia. One of the dark sides of the history of Ethiopia is that its population suffered under the absolute power of successive imperial and military regimes. The popular uprising against the last emperor, King Haile Selassie, eventually led to its demise in 1974 through a *coup* orchestrated by a military junta called the Derg, meaning 'committee'.¹ The military regime of the Derg, under the leadership of Colonel Mengistu Haile-Mariam, ruled the country based on an asserted socialist ideology until 1991.² Its era of violence commenced with summary executions of top officials of the imperial regime and the secret killing of the emperor and the patriarch of the Ethiopian Orthodox Church.³ In 1976, the Derg launched what was called the Red Terror Campaign to eliminate opposition groups characterised as 'counter-revolutionaries'. This resulted in the killing, detention, torture and disappearance of many thousands of people.⁴

Opposition political groups were also involved in violence and violations. Some declared the 'white terror' as a response to the red terror, and others raised arms against the Derg. Various political groups, in the context of their confrontational opposition to the Derg and to each other, committed violations. In May 1991, the military regime was overthrown by a coalition of armed political forces, especially by the Ethiopian People's Revolutionary Democratic Force

1 See B Zewde *A history of modern Ethiopia, 1855-1991* (1991).

2 Zewde (n 1 above) 229.

3 Zewde 238.

4 Zewde (n 1 above). See also A de Waal *Evil days: Thirty years of war and famine in Ethiopia* (African Watch Report) (1991) <http://www.hrw.org/sites/default/files/reports/Ethiopia919> (accessed 31 July 2017).

(EPRDF). Subsequently, the Transitional Government of Ethiopia (TGE) was established, which began preparing to deal with past violations.⁵

In 1992, the TGE established the Special Prosecutions Office (SPO) with a mandate to investigate and prosecute former Derg officials, members of the military and security forces and their 'auxiliaries'.⁶ The aim of this office was to bring perpetrators to trial; to record the history of past violations (establishing the truth); as well as to educate the public and make them aware of the past and, thereby, preventing its recurrence.⁷ The process took almost two decades. A document issued by the SPO provides details of the number of victims, witnesses and documentary evidence, suspects prosecuted, convicted or otherwise acquitted.⁸ Of the 16 496 alleged victims, 12 733 were established in court; 16 107 witnesses were documented; of these 8 047 testified. The SPO submitted 15 214 pieces of documentary evidence. Among the suspects, 5 119 were prosecuted and tried (some *in absentia*); of these 3 583 were convicted and sentenced while 1 539 were acquitted. This illustrates the scale of the process of administration of justice, which also had the mandate to seek and record the truth.

While the South African process is the subject of extensive research, there are only a few works in existence on the Ethiopian Red Terror trials. In response, the article is a comparative study of the Ethiopian and the South African processes focusing on truth-telling. It considers truth-telling as a tool for reconciliation and social harmony.

The article adopts an interdisciplinary and multidisciplinary research approach and uses both primary and secondary data. It critically reviews existing literature on transitional justice, truth or truth-telling, and reconciliation. It also analyses relevant international and national laws, court cases, and state and non-state reports. It argues that truth is an essential element of justice during transition and, hence, should be pursued as a critical condition for social and political reconstruction. The article first discusses the meaning and significance of transitional justice and truth, and the different modalities of uncovering truth. Thereafter, it deals with a comparative study of the South African and Ethiopian experiences based on relevant themes of analysis. Finally, it provides concluding remarks and lessons drawn.

5 K Tronvoll 'A quest for justice or the formation of political legitimacy? The political anatomy of the Red Terror trials' in K Tronvoll et al (eds) *The Ethiopian Red Terror trials: Transitional justice challenged* (2009) 1.

6 Proclamation for the Establishment of the Office of Special Prosecutor, 1992 Proclamation 22/1992, *Federal Nagarit Gazette* 8 August 1992.

7 Proclamation (n 6 above) para 5.

8 See SPO Report (January 2002 EC); *Dem Yazele Dose* (Amharic word translated as 'a file containing blood'); Addis Ababa SPO Chart III.

2 Transitional justice and truth: A general overview

This section discusses the meaning and significance of transitional justice in general and truth or truth-telling in particular. The different ways of truth-telling are also presented as background.

Post-conflict or post-authoritarian societies face the fundamental challenge of dealing with past violence, a question comprising two broader and interrelated components. The first is the backward-looking demand to settle the past. The second is the forward-looking need for social and political transformation into a harmonious and peaceful society that embraces the rule of law, human rights and democracy. Indeed, the way in which a society deals with its past affects its transition to sustainable peace, stability, the rule of law and democracy.⁹ There is a general tendency to consider both judicial and non-judicial responses to violations of international human rights and humanitarian law.¹⁰ This tendency may be termed a 'revolution in accountability' or a 'justice cascade'.¹¹ More commonly, it is called 'transitional justice'. The United Nations (UN) offers a broad definition of the term as

the full range of processes and mechanisms associated with a society's attempt 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, reparations, truth-seeking, institutional reforms, vetting and dismissals, or a combination thereof.¹²

Societies in transition may want to achieve various objectives, which includes punishing perpetrators; establishing the truth; reparation; paying respect to victims; deterrence; promoting reconciliation; and highlighting the commitment for human rights and winning the favour of the international community.¹³ The most common objectives include justice; truth; reparation; and reconciliation. According to Louis Joinet, the first three have evolved into rights – a 'right to justice', a 'right to know' and a 'right to reparations' – implying that states should adopt various measures to fulfil them.¹⁴ Reconciliation also constitutes an essential goal.¹⁵ In a transitional context, justice encompasses 'a plurality of complementary ways of

9 J Sarkin 'Promoting justice, truth and reconciliation in transitional societies: Evaluating Rwanda's approach in the new millennium of using community-based *Gacaca* tribunals to deal with the past' (2000) 2 *International Law Forum* 112.

10 LM Olson 'Provoking the dragon on the patio. Matters of transitional justice: Penal repression vs amnesties' (2006) 88 *International Review of the Red Cross* 276.

11 ONT Thoms et al *The effects of transitional justice mechanisms: A summary of empirical research findings and implications for analysts and practitioners* (2008) 15.

12 UN Security Council 'The rule of law and transitional justice in conflict and post-conflict societies' S/2004/616 3 August 2004.

13 PB Hayner *Unspeakable truths: Transitional justice and the challenge of truth commissions* (2001) 10.

14 See Olson (n 10 above) 282.

15 Sarkin (n 9 above) 115.

reaching continued stability, peace and reconciliation'.¹⁶ Arguably, reconciliation constitutes the culmination of transitional justice processes as it is with healing and reconciliation that harmony and peace can be sustained, embracing all the virtues of modern, democratic and inclusive society. Reconciliation, therefore, arguably is the outcome of the proper conduct of truth, justice and reparation processes.

Exposing the truth is extremely important to societies in transition: Individuals and society at large need to understand the past in order to construct a better future. How we see and articulate our past also determines the transitional framework of settling our past. For example, the designation of a particular group as the sole perpetrators or wrongdoers may lead to their incarceration or elimination. However, the African conception of justice, embedded in *ubuntu*,¹⁷ calls for a different approach. Despite cultural and contextual differences, the way in which a society understands, constructs and deals with its history determines its transformation. The truth or history shapes our lives in complex ways, be it at the level of individual, family, community or nation.¹⁸ It shapes the way in which we view the present and, thereby, dictates the answers we offer to existing problems.¹⁹ History offers people and society the opportunity to know and learn from the past and, thereby, determines future actions. Hence, it is imperative to devise mechanisms that enable the widest possible narration of memory and truth-telling and, thus, the establishment of a shared truth and history.

Truth is not only about facts; it is also about justice in its broadest sense – perhaps as reparatory justice. Truth is about knowing and about the official acknowledgment of past human rights abuses, thus forming what is termed 'historical justice'.²⁰ Arguably, victims or their relatives and the public have the right to know the truth. The question remains: What is 'truth'?

16 E Mobbek *Transitional justice in post-conflict societies: Approaches to reconciliation* 279 http://www.bmlv.pv.at/pdf-pool/publikationen/10_wg12_psm_100.pdf (accessed 31 August 2017).

17 *Ubuntu* is an African ethic and humanistic philosophy entrenched in cultures of African societies. It embodies the notion of human interconnectedness and offers an alternative to the dominant Western conception of justice. *Ubuntu* emphasises the restoration of social relations and social harmony. As Nussbaum noted, African culture and principles of justice are founded in supposition of companionship, reciprocity, dignity, harmony and humanity in the interests of building and maintaining a community characterised by justice and mutual caring. Perhaps '[t]he primary goal of the African indigenous justice systems is the restoration of victims, the community, and also the offender'. See MA Schoeman 'Philosophical view of social transformation through restorative justice teachings: A case study of traditional leaders in Ixopo, South Africa' (2012) 13 *Phronimon*.

18 L Jardonova 'How history matters now' (2008) <http://www.historyandpolicy.org/papers/policy-paper-80.html> (accessed 31 August 2017).

19 D Crabtree 'The importance of history' Institute of Gutenberg College (1993) <http://msc.gutenberg.edu/2001/02/the-importance-of-history/> (accessed 31 August 2017).

20 RG Tietel *Transitional justice* (2000).

Notwithstanding attempts by successive generations to answer the question as to what truth is, it remains a subject of theoretical disagreement. Nevertheless, in a transitional context, truth is a social matter and may be understood as 'the agreement of the mind with reality'.²¹ An associated complex question relates to the nature of truth – whether it is objective or subjective. Following the Aristotelian conception of truth as a comparison of propositions with reality, Kiraly observes:²²

Truth is objective in the sense that it expresses reality, that it has a content independent of the cognising subject; this is a content of our knowledge, which does not depend on the subject. The recognition of objective truth is closely connected with the reflection theory on the reflective capacity of reality, and with the view that man is capable of perceiving the truth; these capacities practically materialise in objective truth.

This is an expression of faith in the objectivity of truth and that there is no truth without objectivity.

However, others challenge the notion of objective truth. According to Derrida '[t]here is nothing outside the text; all is textual play with no connection with original truth'.²³ This view implies that the truth as an official account of the past may or may not correspond to past events.²⁴ The central argument here is that truth is not objective. The subjectivity of interpretation of the past and truth is encapsulated in the words 'history is exploring historical truths of the past out of a present interest'.²⁵

For post-modernists, truth is 'the construct of the political and economic forces that command the majority of power within the societal web'.²⁶ This contests objectivity, viewing truth as a product of power relationships in the sense that the truth is what the speaker of power says is so.²⁷ Thus, Foucault argues that truth 'is produced only by virtue of multiple forms of restraint' and is to be conceptualised as 'a system of ordered procedures for the production, regulation, distribution, circulation and operation of statements'.²⁸ This subjective post-modernist account of truth and power may be critical and relevant in the context of the 'propositions' that set out a public truth or memory where the whole process of 'truth-telling' (voices and silences) is controlled by one group. Nevertheless, extreme relativism hinders a common understanding and shared history, perpetuating conflict over the past and preventing transformation. The problem is

21 Y Naqvi 'The right to truth in international law: Fact or fiction?' (2006) 88 *International Review of the Red Cross* 250.

22 T Kiraly *Criminal procedure, truth and probability* (1976) 96.

23 J Derrida, cited in Naqvi (n 21 above).

24 Naqvi (n 21 above) 250-251.

25 J Derrida, cited in Naqvi (n 21 above) 251.

26 Naqvi (n 21 above) 252.

27 M Foucault, cited in Naqvi (n 21 above).

28 As above.

that such a philosophy will lead to the rejection of truth and extreme relativism.²⁹

The meaning and nature of truth certainly are debatable. The article uses the commonly-accepted definition of truth, namely, the correspondence between a proposition and reality. Therefore, truth in a transitional context relates to the search for and establishment of what happened in the past, more precisely to the determination of the perpetrators and victims of past abuses and the circumstances surrounding them. This requires an impartial and comprehensive mechanism for disclosure of the truth. This pursuit about the past is informed by a present need to settle the past and build a better future.

According to Naqvi, there is a right to truth with a corresponding obligation on states.³⁰ Similarly, Henkin stresses that

[s]uccessor governments have an obligation to investigate and establish the facts so that the truth be known and be made part of the nation's history. There must be both knowledge and acknowledgment: The events need to be officially recognised and publicly revealed. Truth-telling ... responds to the demand of justice for the victims and facilitates national reconciliation.³¹

Exposure of the truth prevents the recurrence of past violations and contributes to the reinstatement or maintenance of peace. It also gives victims a sense of satisfaction and justice. Knowledge of the truth can also lead to reconciliation by allowing divided societies to re-establish their relationships. As emphatically noted, 'only upon a foundation of truth will it be possible to meet the basic demands of justice and create the necessary conditions for achieving true national reconciliation'.³² Reconciliation requires victims' knowledge of the past and acknowledgment, particularly on the part of the wrongdoer, and, therefore truth may be viewed as a prerequisite for reconciliation.³³

In addition, public exposure to past atrocities and their perpetrators also constitutes a form of accountability. Because of the significance of truth to ensure accountability and fight impunity, some argue 'truth reports should replace trials'.³⁴ Moreover, truth can also facilitate the

29 Naqvi (n 21 above) 252.

30 As above.

31 AH Henkin (ed) *State crimes: Punishment or pardon* (1989) 4-5, cited in Tietel (n 20 above) 69.

32 The Chilean National Commission on Truth and Reconciliation Supreme Decree 355, cited in Naqvi (n 21 above) 247.

33 Nevertheless, there are controversies on the relationship between truth, peace and reconciliation.

34 Olson (n 8 above) 278, citing C Krauthammer 'Truth not trials: A way for the newly liberated to deal with the crimes of the past' *Washington Post* 9 September 1994 A27.

'[reconstruction] of national identities because it unifies [people] through dialogue about shared history'.³⁵ Similarly, the truth may contribute to 'the settling down of a historical record'.³⁶ Knowledge about the past is also a form of reparatory justice for victims. Finally, the pursuit of truth enables victims, relatives and the public to access public documents which otherwise may have been kept secret.

The UN Commission on Human Rights recognised the right to truth by adopting Resolution 2005/66. This Resolution underlines 'the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights'. Joinet, at the time UN Special Rapporteur on the Impunity of Perpetrators of Violations of Human Rights (Civil and Political Rights), has unequivocally affirmed this right in his 1997 final report, which states as follows:³⁷

Every people have the inalienable right to know the truth about past events and about circumstances and reasons, which led, through the consistent pattern of gross violations of human rights, to the perpetration of aberrant crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of such acts in the future.

The right to truth is not merely an individual right – it is a right to which individual victims, their families and society as a whole are entitled.

States have a duty to create conditions that enable truth to flourish, and a 'duty to remember'.³⁸ The principles enshrined in Joinet's report were updated by Professor Orentlicher, appointed for this purpose by the UN Commission on Human Rights in 2004. These updated principles incorporate the inalienable right to know the truth and guarantee to give effect to the right to know.³⁹ Naqvi argues as follows:⁴⁰

The right to truth has emerged as a legal concept at the national, regional and international levels, and relates to the obligation of the state to provide information to victims or to their families or even society as a whole about the circumstances surrounding serious violations of human rights.

Having investigated and clarified the meaning and significance of truth, I now turn to the modalities of enabling truth.

A closer examination of transitional justice processes reveals two main modalities. One is the institution of truth commissions or truth and reconciliation commissions. Irrespective of differences in

35 Naqvi (n 21 above) 247.

36 As above.

37 Naqvi (n 21 above) 259.

38 As above.

39 UN Commission on Human Rights Report of the Independent Expert Diane Orentlicher 'Updated set of principles for the protection and promotion of human rights through action to combat impunity' 8 February 2005 E/CN.4/2005/102/Add.1.

40 Naqvi (n 21 above) 252.

nomenclature, various such commissions have been created in different parts of the world with a mandate to discover the truth. Mobbek observes that 'the demand for truth and truth-telling after conflict has grown and the international community has sought to strengthen the emphasis on truth commissions'.⁴¹ Perhaps this derives from a belief that truth commissions, as their name indicates, are best suited to establishing the truth.⁴²

The other modality is the pursuit of truth through criminal trials. This may be referred to as judicial or legal truth as it results from legal proceedings and is pronounced upon by courts. Such a mechanism was adopted in some transitional contexts, including that of Ethiopia, with courts having the dual mandate of trying the case and recording the truth. A case study into whether and how these mechanisms enable the truth becomes essential to understanding society's transition and to draw lessons for the future.

3 Comparative analysis

This section undertakes a critical examination of the South African and Ethiopian truth-telling processes. Irrespective of historical, social, legal and institutional differences, truth has been set as an objective of the two transitional justice processes. Considering the essentiality of truth, it is important to understand the way in which both countries dealt with truth by critically analysing both experiences based on relevant thematic issues. Hence, the following analysis is based on (i) transitional context and institutional setup for truth-telling; (ii) inclusiveness of the truth-seeking process; (iii) procedural flexibility; (iv) victim participation; (v) offender participation; (vi) time frame; and (vii) outcome. The objective is to understand their relative strengths and weaknesses and to draw lessons for future transitional justice processes in Africa.

3.1 Transitional context and institutional setup for truth-telling

Despite South Africa's long history of violence and discrimination, the country's transitional justice focused on contemporary history dating from 1960 – the crimes committed during apartheid.⁴³ All forms of violations and crimes were committed, including racial oppression; torture; massacres; forced disappearances; and economic

41 Mobbek (n 16 above) 264.

42 The very complexity of truth creates serious problems in disclosing the truth through truth commissions. However, it creates similar, if not worse, problems in other mechanisms.

43 See the Promotion of National Unity and Reconciliation Act 34 of 1995. See also B Leah & C Villa-Vicencio *Truth commissions: A comparative study* (2011). See also the Report of the Truth and Reconciliation Commission, Vol 1 paras 1 & 2.

deprivation.⁴⁴ To deal with this past, South Africa established the Truth and Reconciliation Commission (TRC) with the underlying philosophy of national unity and reconciliation contained in the epilogue to the Constitution.⁴⁵ The transition itself resulted from political negotiations that commenced in the late 1980s, as opposed to the radical revolution in Ethiopia. In negotiated transitions, the different parties may hold different conceptions of justice and present themselves as struggling for justice.⁴⁶ In such cases, 'the question of how to see that justice is done is itself usually a matter of political negotiation and compromise'.⁴⁷ In explaining the different choices available to society, Sarkin observed:⁴⁸

The type of justice that is pursued is dependent on the type of transition of which there are three broad types: overthrow, reform and compromise. Being overthrown is the fate of a regime that has refused to reform: opposition forces become stronger and finally topple the old order. When reform is undertaken, the old government plays a critical role in the shift to democracy. 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. Such was the case in South Africa.

Hence, the TRC resulted from South Africa's negotiations. The TRC was formally established by a democratically-elected parliament through the Promotion of National Unity and Reconciliation Act.

The objective of the TRC was to promote

national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights ... including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings.⁴⁹

The TRC had a further mandate of

establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are

44 E Stanley 'Evaluating the Truth and Reconciliation Commission' (2001) 39 *Journal of Modern African Studies* 525-546.

45 See Promotion of National Unity and Reconciliation Act (n 43 above).

46 D Pankhurst *Conceptualising reconciliation, justice, and peace in issues of justice and reconciliation in complex political emergences* (1999) 239-256.

47 As above.

48 J Sarkin 'Transitional justice and the prosecution model: The experience of Ethiopia' (2011) 3 *Journal of Law, Democracy and Development* 252-266 http://www.ldb.org.za/images/stories/Ready_for_publication/V32_Transitional_justice_prosecution_model.pdf (accessed 31 August 2017).

49 Sec 3(1)(a) Promotion of National Unity and Reconciliation Act (n 43 above).

the victims, and by recommending reparation measures in respect of them.⁵⁰

The TRC also had the power and duty of 'compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission ... and which contains recommendations of measures to prevent the future violations of human rights'. To facilitate truth-telling, the TRC was empowered to grant amnesty to people involved in political violence upon fully disclosing their participation.⁵¹ This power drew some criticism. Unconditional amnesty has lost legitimacy in the contemporary international legal order and also lost favour at national level.⁵² It is considered a refutation of justice, and only a few scholars defend this in a restricted and qualified way and when the public supports it.⁵³ According to the TRC Act, the granting of amnesty exonerates a suspect from criminal and civil liability in respect of an act, omission or offence subjected to amnesty.⁵⁴ It also exonerates the state and other organisations that may have been vicariously liable. This was not acceptable to many victims and relatives, and its constitutionality was seriously challenged in light of access to justice (section 22 of the Constitution).⁵⁵ Nevertheless, the Constitutional Court in its decision of 1996 upheld the constitutionality of the amnesty-granting power of the TRC, by invoking that the Preamble to the Constitution (national unity and reconciliation) limits the right of access to courts.⁵⁶ The underlying reasoning is that truth was essential for building national unity and reconciliation and that without amnesty, offenders would not disclose the truth about past violence. The Constitutional Court also noted the negotiated nature of the transition, and that the Constitution itself would not have been possible without such amnesty. The Court recognised the dissatisfaction of victims at seeing offenders go free. However, in its judgment, the Court noted:⁵⁷

The result, at all levels, is a difficult, sensitive, perhaps even agonising, balancing act between the need for justice to victims of past abuse and the need for reconciliation and rapid transition to a new future; between encouragement to wrongdoers to help in the discovery of the truth and

50 Sec 3(1)(c) Promotion of National Unity and Reconciliation Act. The TRC was also tasked with the power and duty of 'compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission ... and which contains recommendations of measures to prevent the future violations of human rights'.

51 Sec 3(1)(b) Promotion of National Unity and Reconciliation Act.

52 J Dugard 'Dealing with crimes of a past regime: Is amnesty still an option?' (1999) 12 *Leiden Journal of International Law* 1001.

53 Thoms et al (n 11 above) 25.

54 Sec 20(7) Promotion of National Unity and Reconciliation Act, read with secs 20(8), (9) & (10)

55 *Azanian Peoples Organisation (AZAPO) & Others v President of the Republic of South Africa & Others* 1996 CCT 17/96.

56 As above.

57 *AZAPO* (n 55 above), para 21 of the judgment.

the need for reparations for the victims of that truth; between a correction in the old and the creation of the new.

The victims' interests were thought to be addressed through the compensatory benefit of discovering the truth and state reparation processes. The argument in South Africa is that amnesty was conditional and was decided on an individual basis; it did not allow perpetrators simply to go free, unlike the blanket amnesty in countries such as Chile. Neither did South Africa opt for prosecution, which basically embraces the Western conception of retributive justice; instead, it adopted the 'third way' of dealing with its past.⁵⁸

At this juncture, it is interesting to highlight a few points about the *Gacaca* system in Rwanda for its unique approach of dealing with the past and establishing the truth. Rwanda demonstrates the co-existence of different levels of transitional processes involving the International Criminal Tribunal for Rwanda (ICTR), the formal courts of Rwanda, and the *Gacaca* courts. The latter had their roots in Rwandan tradition and were later reinvented as distinct quasi-judicial institutions of addressing past violence. The *Gacaca* system was launched as a response to the logistical and other challenges of bringing many thousands of suspects to justice. It has been noted:⁵⁹

Based on traditional practices of communal reconciliation, the *Gacaca* hearings were officially instituted as an elaborate and sustained exercise of transitional justice in local settings with grass-root participation ... the *Gacaca* hearings took place in local Rwandan communities.

Therefore, in Rwanda, one finds a mixture of transitional justice processes operating at different levels and emphasising different elements of transitional justice. The *Gacaca* represents a community truth-telling and reconciliation process.⁶⁰

The TRC has been described as

the most ambitious and organised attempt to deal with crimes of a past regime through a concept of truth ... A political strategy to acknowledge past suffering whilst promoting a future based on the concerns of social justice, the rule of law and reconciliation.⁶¹

Nevertheless, certain limitations of this model should be noted. One problem, as discussed above, was the amnesty itself which was viewed as the refutation of natural justice. It may, however, be said that South Africa adopted a different conception and process of justice. The

58 The Commission's investigative mandate relates to gross violations of human rights, defined as 'the killing, abduction, torture, or severe ill-treatment of any person'. The TRC also had the mandate of 'restoring the human and civil dignity of ... victims ... by recommending reparation measures in respect of them', and provided a broad definition of reparation. See Promotion of National Unity and Reconciliation Act (n 43 above).

59 F du Toit 'Reconciliation and transitional justice: The case of Rwanda's *Gacaca* courts' Institute of Justice and Reconciliation Africa Programme Occasional Paper 2 (2011) 15 <http://www.ijr.org.za> (accessed 31 August 2017).

60 Du Toit (n 59 above) 15-16.

61 Stanley (n 44 above).

truth-finding process had further limitations. These included the mandate of the TRC (restricted to certain crimes only); the need for objectivity and the absence or inadequacy of cross-examination; the lack of corroboration of amnesty statements; and the inability to reach apartheid beneficiaries.⁶²

Many commentators believe that 'the TRC had contributed to the healing process in South Africa. It gave people a voice to be heard and it was a vehicle to peaceful co-existence in South Africa.'⁶³ Despite its limitations, the TRC has offered a unique opportunity of dealing with a legacy of violence by placing truth-telling at the centre of social healing and reconciliation.

As in South Africa, the people of Ethiopia throughout their history had witnessed extreme atrocities under different forms of government. However, Ethiopian's transitional justice process dealt only with the recent past. Spearheaded by the SPO, the process was introduced by the transitional government (TGE), following the defeat of the repressive military regime. The TGE was not an elected government and its legitimacy may be questioned. However, it may derive its legitimacy from being a representative of various political groups; a case of truncated democracy pending elections. Nevertheless, critics argue that some political groups deliberately were excluded from the transitional government, rendering it flawed.⁶⁴

The SPO had a mandate to investigate and institute criminal proceedings against Derg officials and their affiliates.⁶⁵ Retribution was the dominant motive and formed the transitional justice process. This resulted from the nature of the transition: the revolutionary overthrow of a repressive military regime as opposed to a negotiated transition as in South Africa. However, the issue remains not whether prosecution was possible, but whether it was desirable.

Nevertheless, the importance of truth and truth-recording was recognised in the legal framework. The law states:⁶⁶

It is in the interest of a just historical obligation to record for posterity the brutal offences ... perpetrated against the people of Ethiopia and to educate the people and make them aware of these offenses in order to prevent the recurrence of such a system of government.

62 V Jardine 'The Truth and Reconciliation Commission: Success or failure' MHCS dissertation, University of Pretoria, 2010 4 <http://repository.up.ac.za/bitstream/handle/2263/23111/dissertation.pdf?sequence=1&isAllowed=y> (accessed 27 August 2017).

63 As above.

64 AG Selassie 'Ethiopia: Problems and prospects for democracy' (1992) 1 *William and Mary Bill of Rights Journal* 212 <http://scholarship.wm.edu/cgi/viewcontent.cgi?article=1542&context=wmborj&sei> (accessed 31 August 2017).

65 SPO Proclamation (n 6 above) art 6. See also para 4 of the Preamble. It also states the 'historic mission of EPRDF', implying the role of EPRDF in shaping the transitional justice process.

66 SPO Proclamation (n 6 above) para 5 of the Preamble.

This conforms to Tietel's term 'historical justice', namely, that the truth must be known and recorded. Interestingly, the proclamation describes the wrongdoings that are to be recorded and made known. This recording is a matter of historical obligation rather than preference, suggesting the existence of a rights holder. The truth so discovered and recorded was thought to advance public education and public awareness and, in so doing, deterring the recurrence of further violations. Hence, the Ethiopian framework recognises the importance of truth and history to individual victims, family and relatives as well as the public – both current and future generations. As will be discussed, truth-telling through the adversarial judicial process is problematic. In addition, the process excluded reconciliation and the role truth plays in it. For some, reconciliation should have offered the ultimate solution for Ethiopian society, which had experienced deep divisions and polarisation, a lack of trust and animosity.⁶⁷

3.2 Inclusiveness of the truth-seeking process

Societies in transition should provide an inclusive general framework for the operation of the transitional process. The truth or history, though essential to coming to terms with the past and building a better future, remains a contested issue during transition. It is argued that 'there is frequently little consensus even among family members on the key stories and their interpretation, and there may not be a shared account about the nature and time of key events'.⁶⁸ The argument goes on that just as in families, so in large groups, there can be little consensus on major events, their meanings and any actions they might imply.⁶⁹ How can a truth-telling process overcome this problem – of contested truth? In transitional societies, there may not be a consensus about the history of past violence – the nature and magnitude of violence, its duration, the perpetrators, the victims and the reasons behind past violence. Individual experiences and emotions coupled with myth provide various presentations of what happened. It has been said that 'in all cases of transition from a repressive regime to a non-authoritarian system, the interpretation of history has been an important and disputed subject'.⁷⁰ This speaks to both the necessity and the difficulty of providing a general and impartial narration within which the transitional justice process should operate.

67 For a detailed analysis, see DS Reta 'National prosecutions and transitional justice: The case of Ethiopia' PhD thesis, Warwick University, United Kingdom, 2014 166-178. An example of this view is that 'there were many requests for all round reconciliation within the country with the victims of the Red Terror, between perpetrators of these crimes and victims if they are alive or their relatives; and the conflict has been going on for a long time in Ethiopia now. So, it is a society which is living in conflict to this day because of lack of reconciliation, because no effort has been made on reconciliation.'

68 Jardonova (n 18 above).

69 As above.

70 Tronvoll (n 5 above) 94.

Consequently, it can be said that non-discriminatory transitional justice processes allow 'all parties to be treated justly irrespective of the side they come from'.⁷¹ Therefore, society should formulate a comprehensive framework to enable the various narrations and interpretations about the past.

The South African truth-telling framework was all-inclusive, that is, no individual or group was exempt. The mandate of the TRC was broad enough to investigate violations committed by both the previous government and the different freedom-fighting groups, such as the African National Congress (ANC), the Pan-Africanist Congress (PAC) and the Afrikaner Weerstandsbeweging or Afrikaner Resistance Movement (AWB).⁷² This made it possible to expose more truth. The Commission noted that '[a] gross violation is a gross violation, whoever commits it and for whatever reason. There is thus legal equivalence between all perpetrators. Their political affiliation is irrelevant.'⁷³ In fact, this even-handedness is reflected in the findings of the TRC.⁷⁴

However, the Ethiopian framework provided a selected narration of historical violence and, therefore, an incomprehensive truth-telling and recording framework. It provides that 'the people of Ethiopia have been deprived of their human and political rights and subjected to gross oppression under the yoke of fascistic rules of the Dergue-WPE regime for the last seventeen years'.⁷⁵ It also states that

heinous and horrendous criminal acts which occupy a special chapter in the history of the peoples of Ethiopia have been perpetrated against the people of Ethiopia by officials, members and auxiliaries of the security and armed forces of the Dergue-WPE- regime.⁷⁶

These provisions embody the official and legislative declaration of the past. Is it then logical to claim that one is pursuing truth while the truth has already been declared? And if this is the truth and therefore known, what else is there to be discovered and recorded? This predetermination, perhaps, was possible because of the nature of the transition itself and thus may be viewed as a victor's justice and truth.

The contestation about this narration is not so much about the designation of the Derg as a violator or the nature of its crimes. The fact that the Derg was a killing machine is undeniable.⁷⁷ It relates to

71 Y Sooka 'Dealing with the past and transitional justice: Building peace through accountability' (2006) 88 *International Review of the Red Cross* 313.

72 DP Willemien 'The South African Truth and Reconciliation Commission: "The truth set you free"' in M-C Foblets & T von Trotha (eds) *Healing the wounds. Essays on the reconstruction of societies after war* (2004) 170.

73 TRC Report (n 43 above) 12 para 2.

74 Leah & Villa-Vicencio (n 43 above).

75 SPO Proclamation (n 6 above).

76 As above.

77 For details, see De Waal (n 4 above). B Zewde 'The history of the Red Terror: Contexts and consequences' in Tronvoll et al (n 5 above) 56. See also Y Haile-Mariam 'The quest for justice and reconciliation: The International Criminal

the role of other political groups in past violence. Historical accounts indicate that various opposition groups committed human rights violations in the course of their violent opposition to the Derg and to each other. In the course of these conflicts, opposition political groups also committed violations irrespective of whether these violations are comparable to those of the Derg or not.⁷⁸ The Ethiopian People's Revolutionary Party (EPRP) and Me'ison (the All-Ethiopian Socialist Movement) are just two examples. The EPRP-Derg urban clash in the name of white terror/red terror claimed the lives of thousands of Ethiopians. Zewde has observed that 'the labels "white terror" and "red terror" ... [were] intended to condemn one form of terror and justify another'.⁷⁹ For example, it was alleged that in Addis Ababa alone the EPRP killed 1 319 people believed to be Derg members or supporters.⁸⁰ What is the truth about this? The EPRP and Me'ison were not the only opposition political groups involved in past abuses. The most radical account unequivocally concludes that '[all] armed groups which opposed and eventually overthrow the Dergue, killed [as] deliberately, indiscriminately and ruthlessly as the Dergue did'.⁸¹ If so, why were these political groups excluded from the transitional justice process?⁸² What is the implication of this exclusion for victims, relatives and society? De Waal noted that '[t]here is no impartial history of Ethiopia; every presentation of historical facts is laden with modern-day political implications'.⁸³ However, this is exactly what the transitional justice process should have addressed and clarified by adopting some process of truth-telling.

The incomprehensiveness of the framework, first, questions the impartiality and legitimacy of the process. Second, it limits the exposure and recording of the truth, thus limiting society's prospect of coming to terms with its past and transforming to a better future.

3.3 Procedural flexibility

A transitional justice process may be analysed based on the flexibility it allows for uncovering the truth. In fulfilling its mandate, the TRC opened many offices and devised various mechanisms and procedures to reach as many citizens as possible.⁸⁴ The techniques employed included, but were not limited to, taking statements from victims and

Tribunal for Rwanda and the Ethiopian High Court' (1999) 22 *Hastings International and Comparative Law Review* 676. See also A Matsuoka & J Sorenson *Ghosts and shadows: Construction of identity and community in an African diaspora* (2001).

78 E Kissi *Revolution and genocide in Ethiopia and Cambodia* (2006) 82. See also Zewde (n 2 above) 25.

79 Zewde (n 1 above) 25.

80 A preliminary objection presented against SPO charges, SPO File 62/85.

81 Kissi (n 78 above) 112.

82 The author believes that the Chief Special Prosecutor was in fact a former member of the EPRP.

83 De Waal (n 4 above) 19.

84 Leah et al (n 43 above) 19.

establishing the forensics for dealing with factual truths.⁸⁵ An interesting aspect of the TRC's operation was its transparency. It held public hearings that gained extensive media coverage, enabling it to reach as many people as possible.⁸⁶ It was noted that 'establishing a public awareness and record of the TRC's work was important to reach the goal of societal acknowledgment of the country's past, which created space for healing and restorative truth'.⁸⁷

In contrast, uncovering and recording the truth in Ethiopia was part of a criminal justice process. We may concur with Tibor that the exposure of the truth is an essential element of criminal justice.⁸⁸ However, the suitability of courts to establish the truth is debatable, especially in a transitional context of dealing with atrocities committed in a relatively distant period. Truth as a by-product of a criminal justice process, contained in court judgments and sentences, can be contested because of the inherent procedural restrictions. While the TRC was more flexible in its approaches, the Ethiopian judicial approach involved too formal and less flexible processes that made it difficult to enable the widest search for truth.⁸⁹ Moreover, an adversarial justice process requires the parties to establish their case or truth while the judge acts as a neutral arbiter. The limited role of judges and the adversarial nature of the process restrict the disclosure of the truth through a court.⁹⁰ In addition, the credibility and legitimacy of a transitional justice process depend on the independence and impartiality of the institution undertaking such task. This is true of the credibility and legitimacy of truth-telling through Ethiopian courts.

3.4 Victim participation

Victims should be at the centre of all efforts of a society in dealing with the past.⁹¹ Hence, one may question the extent to which victims are identified and recognised as central subjects of truth-telling processes. The TRC process offered victims the opportunity to narrate their sufferings and experiences. This was believed to 'facilitate a cathartic experience for victims who were finally able to tell their stories, establishing a personal and narrative truth'.⁹² The victims' perception of what happened to them forms part of the public report

85 As above.

86 As above.

87 As above.

88 Kiraly (n 22 above).

89 WL Kidane 'The Ethiopian "Red Terror" trials' in MC Bassiouni (ed) *Post-conflict justice* (2002) 688, cited in FK Tiba 'The trial of Mengistu and other Derg members for genocide, torture and summary executions in Ethiopia' in C Murungu & J Biegon (eds) *Prosecuting international crimes in Africa* (2011) 176.

90 Kiraly (n 22 above) 93.

91 D Bloomfield et al (eds) *Reconciliation after violent conflict: A handbook* (2003) 54.

92 Leah et al (n 43 above) 19.

and also needs to be respected.⁹³ The ability to tell one's story in public without fear of reprisal is symbolic of the end of violence and the beginning of a new system. It also invites acknowledgment on the part of the offender. Therefore, victim narration contributes to the establishment of the truth, acknowledgment, forgiveness and reconciliation.

Compared to the TRC, Ethiopian's prosecution process focused on perpetrators and, therefore, did not allow victims to tell their stories. With this, the cathartic effect of truth-telling was lost. Victims were able to relate their experiences only if they had been introduced as witnesses. The SPO tried to use the witness hearing process as a means of achieving two things. The first was to produce evidence against the accused, while the second was to enable victims to tell their stories although the story may not have had relevance to establish individual guilt. Firew noted:⁹⁴

It appears that the SPO, by choosing this strategy wanted to create a forum for witnesses, most of whom were affected in some way, to vent their sorrow and testify in public against leaders who were responsible for some of the most atrocious crimes. In a sense, it is like trying to 'kill two birds with one stone' at the expense of a speedy trial.

The defence counsel objected to this strategy by arguing that a victim's narration would better suit a truth commission than an adversarial courtroom.⁹⁵ In one of the trials, the prosecutor had called 500 witnesses and promised to call another 500, in addition to adducing physical evidence.⁹⁶ Expressing displeasure, one defence counsel noted that 'if what SPO is trying to do is record keeping, it could be done more effectively by a truth commission; it need not be done in a court room'.⁹⁷ Even when called as witnesses, because of the judicial nature of the proceedings and due process requirements, victims were procedurally restricted in their narration. For example, they were limited to the issues framed at the criminal trial, which did not allow for investigation into the causes of the conflict, the political environment that enabled the violations or institutional failures. This denied victims the personal satisfaction of telling a personal story and prevented the uncovering of the truth.

3.5 Offender participation

The voluntary participation of offenders in the truth-telling process is essential to the process of healing and reconciliation. Though discomfiting and agonising to many,⁹⁸ the TRC's power to grant

93 Bloomfield et al (n 91 above) 65.

94 Tiba (n 89 above) 175-176.

95 Tiba 176.

96 Haile-Mariam (n 77 above) 679.

97 Kidane (n 89 above) 688.

98 AZAPO case (n 55 above).

amnesty to perpetrators also expedited the truth-telling process. As Leah et al note:⁹⁹

Truth-telling was further promoted through amnesty hearings at which applicants for amnesty were required to make full disclosure of the gross human rights violations they had committed, their motives and perspectives, and evidence of the authorisation of such violations as required in the TRC Act.

Perpetrators had the incentive of voluntarily disclosing the truth as the amnesty hearing was not a process intended to determine guilt or punishment. In Ethiopia, the process basically involved determining the guilt or innocence of individuals following strict procedures and the satisfaction of the standard of proof. Wrongdoers, therefore, had no incentive to disclose the truth. The system depended on the ability to produce evidence, which evidence was 'contested, put into question, or interpreted in different ways to win a case'.¹⁰⁰ The confrontational nature of criminal trials highly restricts, if not prevents, perpetrators' voluntarily disclosing the truth about the past. As is often said, 'in court you win a case, not the cause'. Interestingly, 33 high-level former officials wrote to the Prime Minister of the country requesting a forum whereby they 'beg the Ethiopian public for their pardon for the mistakes they have done knowingly and unknowingly'. This forum never realised, and with it was lost the partial opportunity for disclosure, acknowledgment and reconciliation.¹⁰¹

3.6 Time frame

Transitional justice may be viewed as a continuous process. Nevertheless, the time frame within which the major tasks are completed determines its relevance and significance to society. Accordingly, the TRC completed its tasks within a relatively short period, with the result that its findings were relevant to both victims and society. It took the TRC three years to finalise its work and issue its interim and final reports. In contrast, as noted previously, at the outset the Ethiopian trials took more than 15 years (closer to two decades), rendering it less useful. This delay led the late Ethiopian Prime Minister, Meles Zenaw, to acknowledge that 'the exercise became more and more irrelevant'.¹⁰²

3.7 Outcome

A final point worth considering is the outcome of truth-telling processes: To what extent did the TRC and the Red Terror trials uncover the truth? This question is too complex to answer in this

99 Leah et al (n 43 above) 19.

100 Naqvi (n 21 above) 246.

101 GA Aneme 'Apology and trials: The case of the Red Terror trials in Ethiopia' (2006) 6 *African Human Rights Law Journal* 67.

102 Interview with Prime Minister Meles Zenawib by Kjetil Tronvoll, 16 January 2002 in Tronvoll et al (n 5 above) 69.

article. The TRC has produced several reports about its working procedures and findings. It is noted:¹⁰³

The Commission found that the majority of gross human rights violations were committed by the state through its security and law-enforcement agencies ... At the same time, however, the Commission found that the liberation forces were guilty of acts of human rights violations.

As the TRC operated openly and publicly, many of these findings were already in the public domain.

Clearly, in uncovering and recording the truth, the TRC undertook a far-reaching enterprise.¹⁰⁴ Although this story may not be complete, it uncovers a broader narration of 'truths' that allows society to come to terms with its past and move forward. As the Chairperson of the Commission noted:¹⁰⁵

[The report] is not and cannot be the whole story; but it provides a perspective on the truth about a past that is more extensive and more complex than any one commission could, in two and a half years, have hoped to capture ... We hope that many South Africans and friends of South Africa will become engaged in the process of helping our nation to come to terms with its past and, in so doing, reach out to a new future.

The TRC has been subjected to various criticisms relating the negotiated nature of the transition itself that restricted its mandate to uncover the truth about human rights violations.¹⁰⁶ Apart from these issues relating to truth, the South African transitional justice process has been criticised for not incorporating the ideas of criminal justice and social justice in its mandate and procedures.¹⁰⁷ While the issue of social justice is too broad to be covered in this article, one may note the importance of taking appropriate measures, including those recommended by the TRC, to ensure social and economic justice and tackle the structural problems of inequality. This, of course, highlights the importance of adopting a holistic and continuous approach.

There is also the matter of prosecution, the significance of which remains controversial. The pro-prosecution argument is consequentialist, based on the need to deter similar violations and counter impunity. Thus, Professor Orentlicher expresses the opinion that 'the fulcrum of the case for criminal punishment is that it is the most effective insurance against future repression'.¹⁰⁸ Because of these benefits associated with prosecution, we now have the controversial notion of a duty to prosecute under international law – especially under international humanitarian and human rights law. On the other hand, the anti-prosecutionists reject prosecution as an

103 Leah et al (n 43 above) 19.

104 TRC Report (n 43 above).

105 As above.

106 Stanley (n 44 above) 526.

107 As above.

108 DF Orentlicher 'Settling accounts: The duty to prosecute human rights violations of a prior regime' (1991) 100 *Yale Law Review* 2537.

inappropriate modality because of its emphasis on retribution. Thus, Asmal argues that 'given the complexity of justice in transitional situations, the simplifications insisted up on by penal law fundamentalists are helpful neither to South Africa, nor to transitions elsewhere'.¹⁰⁹ It is useful to note that the TRC process did not entirely preclude prosecution. The Ethiopian experience also suggests that prosecution – wholesale prosecution – is neither possible nor desirable. Some critics point out the 'limited value' of the truth uncovered, which does not entirely dismiss the TRC's work.¹¹⁰ Despite these criticisms, the TRC has uncovered and recorded the widest possible truth. The TRC's extensive and successive reports, widely available to the public, demonstrate its achievements.

In Ethiopia, whether there was successful truth-telling is a subject of intense debate. For some, the process was a success. Recognising the limitation but emphasising the success, a former Supreme Court judge noted:¹¹¹

Many people were convicted in both Federal and regional courts. At least as far as these people are concerned the facts were established. I guess there might be facts we have not discovered. Did we reveal the whole account, the whole picture of every individual crime? The courts were presented with detailed accounts of what happened ... Well, according to estimates, about 500 000 people were killed. I do not think we have an account of each of the 500 000. However, I think a fairly good picture of what happened has been discovered.

These points, while appreciative of the process, also reveal limitations. The judicial process is even presented as superior to truth commissions in establishing genuine or real facts.¹¹² Nevertheless, critics dismiss the judicial process for not yielding the truth. An exemplary view is that

[t]here is no truth. Truth is indivisible. You cannot be partial to the truth and be just ... right from the beginning, they [those in power] were not interested in being truthful, they were not interested in being just, and they were interested in expedient process by which they could establish themselves in this country. To this day, there is no truth.¹¹³

This view questions the very motivation and legitimacy of the Ethiopian process because of its partiality and failure to deliver the truth. In addition, there were problems arising from the inadequacy of courts to establish the truth. Moreover, there is a lack or inadequacy of publication of the findings. A former special prosecutor noted:¹¹⁴

109 K Asmal 'Truth, reconciliation and justice: The South African experience in perspective' (2000) 63 *Modern Law Review* 13.

110 Stanley (n 44 above) 525.

111 Anonymous respondent in *Reta* (n 67 above) 222. For more on pro-prosecution arguments, see 221-230.

112 *Reta* (n 67 above) 225.

113 *Reta* 231-239.

114 *Reta* 226.

Publication is very important ... there is a publication problem; we have not made our discoveries public. These efforts and works should not all remain secret. Today, I speak about it. Maybe no one speaks tomorrow ... A lot of work was done. But it is not known much ...

Hence, the truth established and embedded in judicial documents remains unpublicised and, even worse, kept secret.¹¹⁵ Thus, the truth loses its significance to the victims or relatives and its potential to transform society.

4 Conclusion

The article shows that societies emerging out of conflict or from an authoritarian regime should confront the legacy of past conflicts and atrocities. Although transitional justice processes are context-dependent and partly determined by the nature of transition, society should seek not only what is possible but also what is desirable. The article asserts that truth should be pursued as an essential element of promoting healing and reconciliation. A society cannot move forward on the basis of an unknown past. The exposure of the truth is meant to promote unity and reconciliation, not to sustain division and vengeance. Indeed, reconciliation and social harmony should be the ultimate goal of transitional justice processes.

Despite its significant limitations, the South African truth and reconciliation processes have revealed a more comprehensive story about the past. This is attributable to the specific mandate given to the TRC, the inclusiveness and procedural flexibility of the process, as well as victims' and offenders' participation in truth-telling. The transparent and public nature of the truth-telling process has contributed to some form of shared history and social transformation. However, the article cannot claim that the truth has necessarily led to healing. Nevertheless, one will never know what would have happened without such a process.

The article has shown that the Ethiopian Red Terror trials tried to establish the truth as part of the judicial process of meting out justice. The two objectives – truth-telling and criminal punishment – are difficult to achieve and the first has been relegated to secondary importance. The dual mandate of the process, the selectiveness of the framework, the emphasis on retribution, the unsuitability of adversarial and formalistic nature of the court process for truth-telling, the limited or lack of participation of victims and offenders in truth-telling, and the lack of publication have limited the exposure of the truth. Another problem with the Ethiopian process is the exclusion of healing and reconciliation, which should be the ultimate goal of societies in transition. The article also shows that the truth-telling process should be impartial, public, transparent as well as timeous.

115 Reta 238-239.

Hence, a close examination of the South African TRC and the Ethiopian Red Terror trials demonstrates that a more holistic approach is likely to succeed in uncovering the truth and promoting accountability, healing and reconciliation. In some cases, justice demands the prosecution of perpetrators. However, we also learn from the Ethiopian experience that full-scale prosecution may not be desirable or even possible. Hence, a truth-telling process before commissions should generally be pursued to disclose the truth and promote healing and reconciliation. Nevertheless, prosecution must be retained to deal with the most serious crimes and offenders. In addition, telling the bare truth cannot lead to true healing, reconciliation and sustainable peace. Hence, a holistic approach recommends reparation for victims. It is also necessary to undertake institutional reforms to deal with social, economic and political structures of inequality and injustice. Finally, societies in transition need to articulate and address the demands for truth-telling and reconciliation taking a holistic approach of addressing other complementary objectives of justice and institutional reform.