

Ethiopia's transitional justice framework: Defining the boundaries of the mandate of the Ethiopian Reconciliation Commission¹

Introduction

It was on 5 February 2019 that the Ethiopian House of Peoples Representatives adopted the proclamation establishing the Ethiopian Reconciliation Commission. Initiated as part of the political reform process that has been underway since the ascent of Prime Minister Abiy Ahmed to the position of leadership in April 2018, the Reconciliation Commission, established, under Proclamation No. 1102/2018 has become Ethiopia's choice of a transitional justice framework. While the proclamation lacks the level of details expected of a law establishing such an institution, it sets the broad outlines regarding the transitional justice objectives, role and mechanisms of the Commission.

In this presentation, the issues that I plan to address concern the material and temporal scope of the mandate of the Commission, the powers the proclamation vested in the Commission, and potential areas of interface between the Commission and the ordinary institutions for the administration of justice. Before I discuss these issues, I would in the next couple of paragraphs present two important points that offer us important contextual background for understanding the Ethiopian Reconciliation Commission.

The foundation for transitional justice

Transitional justice refers to the various judicial and non-judicial measures that a society in transition puts in place for dealing with the violence inflicted on members of the society and the drivers and causes of such violence as part of the effort for transitioning from one political order characterized by violence, division and repression to another peaceful and democratic order. Although transitional justice emerged as a field of practice and scholarly work only in recent decades, large number of countries in Africa, Latin America and Europe have used transitional justice measures that they deem fit for their conditions.

From South Africa's post-apartheid transitional justice that gave worldwide prominence to the use of truth and reconciliation commission as a framework of transitional justice to the experiences in Liberia, Sierra Leone and Kenya, the choice of the transitional justice measure that a society in transition adopts constitutes an outcome of and a vehicle for the implementation of a (new) political settlement. In each of these countries, South Africa, Sierra Leone, Liberia, and Kenya, transitional justice was a result of a political agreement among the various rival political forces who have been parties to the conflict from which these countries sought to exit. As with many other countries, transitional justice in these countries was thus founded on and constituted only one element of the political/peace agreement, on which the entire transitional process is anchored. It is thus of paramount importance that a transitional justice process is anchored on a political/peace agreement.

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Viewed from the perspective of the foregoing, there is little indication that one finds to suggest that the Ethiopian transitional justice framework anchored on the Reconciliation Commission is founded on an identifiable political agreement. There does not seem to be any dispute about the value of establishing the Commission. However, the lack of negotiation and agreement among the various political forces in the country on the objectives, mandate and expected role of the Commission presents foundational gap for the Commission.

The other element key in initiating and designing transitional justice framework from the experience of various countries is public consultations. Both in terms of normative expectations and best practice standards, the most important process issue in the development of a transitional justice body such as a reconciliation commission is the creation of adequate platforms that solicit the input of various sectors of society including victim groups on the draft law establishing the transitional justice mechanism. Such a process is also required in terms of vetting the candidates for the membership of a transitional justice body like a reconciliation commission. These process issues have also been absent in the establishment of the Commission and constitution of its membership.

The other element in terms of the foundational conditions for transitional justice is the use of parliamentary legislation in establishing the transitional justice body. This has to do with the question of legal legitimacy. In this respect, our Commission, established under the act of the House of Parliament with constitutional legislative authority, enjoys the required legal legitimacy.

Mandate of the Reconciliation Commission - Material scope

The review Proclamation 1102/2018 shows that the mandate of the Ethiopian Reconciliation Commission has two pillars or components. The first and perhaps most prominent pillar of the mandate of the Commission relates to the social and political conflicts pillar or component– which is the core mandate focusing on the establishment of national reconciliation, peace and national cohesion. The other pillar is the mandate relating to gross violations of human rights.

Pillar I of the mandate of the Commission – social and political conflicts

As can be gathered from the nomenclature of the Commission itself, much of the focus of the Proclamation seems to be on this reconciliation pillar of the mandate of the Commission. Unlike similar bodies of other countries where truth or truth and justice were used along with reconciliation in the nomenclature of the body, only ‘reconciliation’ is used for our Commission. The Proclamation defines under Article 2(3) reconciliation to involve ‘establishing values of forgiveness for the past, lasting love, solidarity and mutual understanding by identifying reasons of conflict, animosity that are (sic) occurred due to conflicts, misapprehension, developed disagreement and revenge’.

Article 5 of the Proclamation establishing the objective of the Commission also states that the ‘objective of the Commission is to maintain peace, justice, national unity and consensus and also reconciliation among Ethiopian peoples.’ As these terms make clear, there is particular premium that is put on the peace and reconciliation dimension of the work of the Commission.

While the proclamation does not provide details on how this pillar is to be implemented, there are a number of indications from the proclamation. First, there is the element of truth which is one of the themes used more than ones in the preamble to the Proclamation. The first preambular paragraph indicates that the reconciliation process is to be based on truth. Preambular paragraph 4 also states that the Commission is established on account of the necessity to have ‘free and independent institution that inquire and disclose the truth of the sources, causes and extent of conflicts’. It is interesting to note that the truth referred to in both of these preambular paragraphs concerns what the proclamation calls ‘disagreement’ (preambular para 1) and ‘conflicts’ (preambular para 4).

Understandably, there may not be a single truth about conflicts in Ethiopia. Also, importantly, as the South African Truth and Reconciliation Commission highlighted, truth does not consist only of factual/forensic/scientific truth. It can also consist in personal/narrative truth, social/dialogical truth and healing/restorative truth as well. The methodologies that may be used for implementing this pillar have thus need to be various. These may include analysis of primary and secondary documents on patterns, manifestations and causes of conflicts in Ethiopia, statement taking, convening of hearings and submission from experts such as historians, political scientists etc.

As article 6 of the Proclamation that outlines the powers of the Commission shows the Commission has the necessary authority for accessing documents (although those classified as secret remain off limits), visit any premise of any institutions and the power of subpoena. This means that the Commission will be able to gather all the relevant information from all sources (including official sources by investigating public institutions as well) for establishing the various forms of ‘truth’ about the disagreements and conflicts as well as their causes.

As part of its mandate to facilitate reconciliation, the Commission is expected to initiate various measures. These measures include: a) the provision of forums that facilitate the public acknowledgement of the sufferings that individuals and communities have endured due to gross human rights violations and political conflicts, b) the convening of national and community dialogue forums to deal with past and existing sources of polarization and tension, c) the establishment of as complete a record as possible of the facts relating to the social and political conflicts and the gross human rights violations and the political, institutional and socio-economic conditions and circumstances that made such violations and conflicts possible, and d) the promotion through government and community based initiatives of restorative measures. Per Art 5(2) & (10) will be responsible for convening inter-community dialogue and reconciliation forums to chart ways of establishing reconciliation, harmonious co-existence and national unity. Per Art 5(3) – the Commission will be responsible for codifying shared principles and values of various communities in the country through inter-community discussion forums to be the bases for national Reconciliation.

Pillar II – Gross violations of human rights

The second pillar of the mandate of the Commission covers what the proclamation calls gross human rights violations. As it becomes evident from the review of the terms of the proclamation, while this constitutes one of the components of the mandate of the Commission, it does not seem

to be seen as standing in isolation from the first component. While its importance is visible and recognized, the proclamation does not seem to treat it on its own. No definition of what constitutes gross human rights violations is provided as opposed to the definition of reconciliation specified in the proclamation.

Preambular paragraph 2 highlights the need for identifying and ascertaining the nature, cause, and dimension of the repeated gross violations of human rights' as a means not only for ensuring respect for human rights but also for 'reconciliation'. While no direct reference is made to this pillar of the mandate of the Commission under Article 5 providing for the objective of the Commission, Article 6 which outlines the powers of the Commission stipulates under sub-article 4 that the Commission has the power to 'make examination (sic) to identify the basic reasons of disputes and violations of human rights by taking into consideration of political, social and economic circumstances and the views of victims and offenders'

Unlike the laws of countries such as South Africa, Liberia, Sierra Leone or Kenya that established similar Commissions, the Proclamation establishing our Commission lacks in details and hence suffers from major lacunae. One such lacunae is the absence of a definition of what constitutes gross human rights violations. As the law of each of these other countries shows, while there are commonalities in how gross violations of human rights are defined, there are also some variations. Under international law, gross human rights violations are often associated with systematic and large-scale violations of civil and political rights associated with life, bodily integrity and liberty of the person. As a result, they exclude major deprivations involving socio-economic rights such as deprivation of the right to health, the right to housing, the right to land and livelihood etc. They also don't cover major abuses of power by public officials involving embezzlement of public funds and grand fraud and corruption. Given that violations in our context at times tend to take identity dimensions, the violation of group rights should also be taken into account.

Kenya was the first country to incorporate socio-economic rights into the domain of the violations of rights to be covered as part of the mandate of the Kenyan Truth, Justice and Reconciliation Commission.

What will be covered in gross violations of human rights?

One of the issues to be addressed is how to fill in the lacunae in the proclamation. While there are various avenues for achieving this, if this is to be done within the parameters set in the proclamation and consistent with its terms (hence by complying with the law, in so doing by setting the example of following the law instead of exceeding it or going outside of it), what the Commission can do is to use Article 19 of the Proclamation. This envisages that the Council of Ministers or the Commission may issue regulations necessary for the effective implementation of the proclamation. As it is clear from the terms of Article 19, the regulations that may be issued cannot create new authority or power for the Commission or new legal obligations on anybody only provide for such details as are necessary for the effective implementation of this proclamation. Otherwise, it would be venturing into law making, hence encroaching on the mandate of the legislative body.

In clarifying what constitutes gross violations of human rights in issuing a regulation under Article 19 of the Proclamation, the Commission either on its own or through the Council of Ministers provide for an inclusive definition covering major violations socio-economic rights as well. Gross violations of human rights for purposes of the Proclamation could thus be defined as systematic and widespread violations fundamental human rights including extra-judicial executions, torture, forced disappearances, sexual or gender based violence, large-scale deprivations of socio-economic rights including notably dispossession of land and large-scale embezzlement of state resources and massive violation of group rights including massacre and displacement of members of targeted ethnic groups.

As with the social and political conflicts pillar, this pillar of the mandate of the Commission will be implemented through convening hearings, document reviews etc. Thus, as stipulated in the Proclamation, the Commission will facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person on such violations.

As envisaged in preambular paragraph 2 and Article 6(4), the scope of its investigations is such that the Commission must establish: how and why such violations were committed, and the identity of all persons, authorities, institutions and organizations or groups involved in such violations; the identity of the victims, their fate or present whereabouts and the nature and extent of the injuries and harm they have suffered; whether violations were the result of deliberate planning by the State or any other organization; group or individual.

What happens after establishing the ‘nature, cause and dimension of’ gross violations of human rights?

There are two words used in the Proclamation that offer guidance for answering this question. The first term is ‘justice’ and the other is truth. The term justice is used principally in two places. The first is in preambular paragraph 1 and the second is in Article 5 of the Proclamation. In both instances, the term ‘justice’ is used in relation to reconciliation, peace, national unity and consensus. This seems to suggest that instead of the narrow conception of justice entailing punishment what the use of the term justice seems to refer to the state of being just, or evenhanded or balanced. Accordingly, the term is used to describe the end state of the work of the Commission, namely to achieve, among others, justice in the relationship among Ethiopian peoples. In terms of addressing gross human rights violations, its use in the proclamation does not seem to lend itself to be an avenue.

All indications from the reading of the Proclamation is that the term truth as used in the Proclamation is the main avenue for addressing gross violations of human rights. Instead of retributive accountability, the form of accountability envisaged in the Proclamation is one of establishing the truth about violations. This can be gathered from Preambular paragraphs 2, 3 and 4 as well as Article 6(4) & (9). Under preambular paragraph 2 emphasis is put on ‘identifying’ and ‘ascertaining’ the ‘nature, cause and dimension’ of the violations. In preambular paragraph 3 makes reference to the provision of a forum for perpetrators ‘to disclose and confess their actions as a way of reconciliation and achieving lasting peace’. Article 6(4) expands on preambular paragraph 2 and states that the Commission has the power examination or investigation ‘to identify the basic reasons of... violations of human rights by taking into consideration of political, social

and economic circumstances and the view of victims and offenders’. Article 6(9) provides for the disclosure to the public of the findings of the Commission and hence putting in official public record as a form of public acknowledgment of the violations and the suffering of all those affected by the violations.

In terms of remedies for those affected by the violations, once again the proclamation seems to focus on the establishment of truth, the provision of narrative justice by providing victims the opportunity to be heard and the public acknowledgement of the suffering of victims. Thus, preambular paragraph 2 envisages that the Commission is established to provide ‘victims of gross human rights abuses in different time and historical event (sic) with a forum to be heard’. Similarly, Article 6(4) stipulates that the Commission will draw on the views of victims (and offenders) in its examination to identify the reasons of violations of human rights’.

While it is true that this formula of accountability and redress of the Proclamation establishing the Ethiopian Reconciliation Commission does not fit the template of the mainstream practice of transitional justice with its emphasis on prosecution, truth, reparation and non-recurrence, there is nothing that makes it wrong or normatively inadequate. The reading of the mainstream practice as being dogmatically prescriptive is committing an error of one size fits all approach to transitional justice. Hence, the proposition that all societies in transition need all the four dimensions of the mainstream transitional justice framework always in an equal measure is highly flawed and unhelpful. Such a proposition almost automatically throws out of the window the fundamental right to self-determination and national ownership, robbing the members of the transitional society the possibility of determining for themselves based on their own assessment of the issues facing them the form and focus of the transitional justice framework that fits their realities.

The mandate of the Reconciliation Commission – **Temporal scope**

The second aspect of the question on the mandate of the Commission relates to the question of the ‘social and political conflicts’ and ‘gross human rights violations’ of which period. This is a question about the temporal scope of transitional justice and reconciliation. As with the substantive scope of the mandate of the Commission, there is no clear provision in the Proclamation establishing the time period that the mandate of the Commission will cover. Just like the material scope of the mandate of the Commission, this has to be clarified through implementing legal instruments, notably regulation, through Article 19 of the Proclamation.

Understandably, as the experience of countries such as South Africa and Kenya shows, the temporal scope of institutions similar to our Reconciliation Commission covers different time periods. In the case of Kenya, it covered the colonial period and the independence period until the time of the 2007/2008 post-electoral violent conflict. In almost all cases, while due account is given to considerations of practicability and efficacy, account is given to the historical origin violence and its legacies as well as the political, social, cultural and economic basis of the conflicts and the attendant violations.

But, while bearing in mind the lessons from the experience of others, as the Commission seeks to clarify the temporal scope of its mandate the expectation is that it would be guided by the terms and parameters set in the proclamation. In this regard, the question of particular importance is

whether there are any hints that offer guidance for determining the temporal scope of the mandate of the Commission. Although it can be said that there is generally open room in terms of time scale for the ‘social and political conflicts’ pillar of the mandate of the Commission, this question on temporal scope is particularly important for the ‘gross violations of human rights’ pillar of the Commission’s mandate.

In this respect, one finds some useful hints that are expected to guide the Commission in its endeavor to clarify through a regulation under Article 19 of the Proclamation temporal scope of its mandate. These are particularly available in the preamble of the Proclamation. The first reference to time that can be used as a basis for determining temporal scope is the phrase ‘for years’ in preambular paragraph 1. This phrase ‘for years’ in this context is used in reference to the ‘disagreement that developed among peoples of Ethiopia’ because of social and political conflicts. Clearly, this phrase is principally addressed to the first pillar of the mandate of the Commission – the one concerning ‘social and political conflicts’. Understandably, in this context, the phrase ‘for years’ would obviously include the past couple of decades but is unlikely to be confined to those recent decades only. Understandably, the ‘social and political conflicts’ have their antecedents in the political, economic and socio-cultural power dynamics of the country in the years preceding the past couple of decades. Additionally, it is not clear how limiting the definition of the phrase ‘for years’ in this context to the past couple of decades would be consistent with the principal focus of the Proclamation on moving the country forward and achieving reconciliation and national cohesion.

With respect to gross violations of human rights, the Proclamation provides another hint under preambular paragraph 3. Here the proclamation makes reference to ‘gross human rights abuses in different time and historical event (sic)’. On the face of it and using the ordinary meaning model of legal interpretation, the language ‘different time and historical event’ seem to suggest a time scale that seems to be longer than the phrase ‘for years’ read on its own. As with the phrase ‘for years’, the language ‘different time and historical event’ would obviously cover the past couple of decades. Clearly, rather than a particular historical and political period, this language seems to cover various historical periods. As such, it also implies time and event beyond the recent decades.

In terms of thus determining how far back we should go, further guidance should be sought from the objective that is being sought to be achieved through this Commission. Seen from this vantage point, the most important considerations for making the determination is the historical developments and time period to which the ‘social and political conflicts’ and the ‘gross human rights violations’ dividing and bleeding the country can be traced. This would be an assessment students of the conflict and political history of the country rather than for lawyers to do. Be that as it may, while from the perspective of ‘social and political conflicts’ the historical developments and time period can be traced to the formation of the unitary form of state structure in Ethiopia, from the perspective of ‘gross violations of human rights’ ‘different time and historical event’ would also include the major incidents of human rights violations going as far back as post-Italian invasion period. Or it is possible to specify the focus of the ‘gross human rights violations’ to the period going back to 1974.

It may be argued that such a long *durée* is not realistic to cover on account of various limitations. While this time period is not too long when compared to the temporal mandate of similar institutions such as those in South Africa and Kenya, the concern is however legitimate. Yet this argument does not supersede the objective for which the Commission is established. Importantly, there are ways of addressing the challenges that arise from such time scale. Perhaps one effective approach for overcoming such challenge is for the Commission to focus on investigating the major incidents of ‘gross human rights abuses’ rather than trying to document all cases of such violations across different periods. One interesting precedent for this is the Red Terror Trials instituted in the aftermath of the demise of the Dergue regime. Instead of probing the entire era of the Dergue regime, the Red Terror Trials targeted only a particular incident that took place within a specific time period. The current Commission may taking cues from this experience focus on specific major incidents of ‘gross violations of human rights’ that took place, for example, since the end of the Italian occupation.

In terms of whether the Commission covers current events, all indications from the reading of the Proclamation is that the Commission is mainly tasked to address events prior to its establishment. As such, the Commission is not meant to operate as a fire fighter that will show up for extinguishing fire wherever it breaks out.

In limiting the temporal scope, experience shows that it might be prudent to leave door ajar for looking into issues prior to or after the time period specified in the legal instrument to be adopted for implementing the Proclamation. A good example of this is the law establishing the Liberian Truth and Reconciliation Commission. It is thus possible to stipulate that ‘notwithstanding the period specified in the regulation, the Commission may, on an application by any person or group of persons on justifiable grounds, pursue the objectives set out in the proclamation establishing it in respect of any other period preceding (say 1941 or 1974) or since its establishment.’

Interface with the ordinary institutions for the administration of justice

It is possible to identify at least three ways by which the Commission may interface with the ordinary institutions for the administration of justice such as the judiciary.

The first of this is the ordinary institutions for administration of justice may operate as sources of information and evidence. This arises from the powers listed in Articles 6 and 15 of the Proclamation. Indeed, these institutions at times operate as platforms for orchestrating ‘social and political conflicts’. They also are the institutions that can have documents that are most relevant for identifying the victims and perpetrators of ‘gross violations of human rights’.

The second dimension for interface is that these institutions themselves can be a subject of investigation. The role that these institutions have played in perpetrating and abating violations or in failing to discharge their obligations for protecting victims or ensuring the protection of their rights can be part of the examination by the Commission into the reasons for human rights violations within the framework of Article 6(3) of the Proclamation.

The third way for interface between the Commission and the ordinary institutions for administration of justice is in terms of provision of technical expertise and advise on legal matters.

Since the mandate of the Commission has significant amount of legal issues, the execution of its mandate depends on the legal expertise and advice that it receives. While the kind of legal advice necessary for the work of the Commission is highly specialized and hence may not be obtained from the ordinary institutions for administration of justice, there could however be areas of Ethiopian law with respect of which the expertise in these institutions is best placed to provide advice for the Commission.

There is no provision in the Proclamation envisaging the possibility of the Commission referring matters to the office of the Attorney General or to the Judiciary. Indeed, if there is any relevant provision in this respect it is one that actually forecloses such referral. Accordingly, Article 18 (1) provides that ‘no one may be accused (charged for crime) by the testimony given to the Commission as well as the testimony given to the Commission could not serve as evidence upon him’. Obviously, those who did not give evidence or testimony before the Commission fall outside of the jurisdiction of the Commission and hence this provision would not protect them.

What corrective measures can the Commission adopt

Another area in terms of the boundaries of the mandate of the Commission relates to the corrective measures that the Commission could adopt in pursuit of its mandate and the objective for which it is established. Apart from those referred to above, the Commission is mandated to make recommendations. Such recommendations may include institutional reforms going as far as proposing the review of the Constitution itself, such as for example, if such review is deemed necessary to give the most effective protection for human rights.

In the words of the last preambular paragraph of the Proclamation, the Commission may take ‘appropriate measures and initiate recommendation that enable for lasting peace and to prevent (sic) the future occurrence of such conflict’. Once again while this gives the Commission to initiate measures that it deems fit, this is limited to peace and the prevention of future occurrence of conflicts.

Conclusion

It is clear from the foregoing that the Proclamation establishing the Reconciliation Commission does not contain provisions that define the material and temporal scope of the mandate of the Commission. Despite this, the Proclamation has laid down a mechanism within the framework of Article 19 for rectifying the lacuna that resulted from the absence of such provisions. Importantly, it also has useful elements that offer the relevant parameters for guiding the approach of the Commission in clearly defining the material and temporal scope of its mandate.

In terms of temporal scope, the mandate of the Commission principally addresses to issues that happened prior to its establishment and as such it does not ordinarily deal with new or emerging situations. It has also emerged from the analysis of the Proclamation that while the material scope of the mandate of the Commission has two pillars or components, the overall structure and content of the Proclamation is skewed towards the ‘social and political conflicts’ pillar. And overall, reconciliation has emerged to be at the core of both the approach for the Commission’s work and

as an objective of the Commission. There are two interesting ideas that emerge from this and the analysis in the foregoing sections.

First is the use of the Commission as a mechanism for pursuing the objectives of nation-building and mobilization of consensus in the current transition. The overall picture that emerges from the close reading and analysis of the proclamation is that this transitional justice process is more future oriented than past oriented. This can be gathered from the terms used in the preamble and the substantive text defining the objective of the Commission. As such, the principal role envisaged for the Commission in the Proclamation is that of facilitating and contributing to the nation building project. This is also evident from Article 6(3) of the Proclamation that stipulates that one of the powers of the Commission is to codify shared ‘principles and values which will be base (sic) for national reconciliation by making discussion (sic) with groups of society which have different view (sic)’.

Second, the departure of the Proclamation from the template of the mainstream dogmatic approach to transitional justice seem to attribute to the transitional justice framework it adopted potential for making major contribution to the field of transitional justice. As such the fact that it avoided mimicking the mainstream approach to transitional justice rather than being a limitation can be an asset. Rather than focusing on one form of accountability involving the apportioning blaming and punishment, what is envisaged in the proclamation opts for other forms of accountability such as public acknowledgement of wrong doing, provision of hearing to victims and the documentation of as accurate and full an historical account possible of ‘the social and political conflicts’ and ‘gross human rights violations’. Instead of focusing on a perpetrator centered accountability with its focus on punishing perpetrators, the proclamation opts for an approach that brings victims to the centre, hence the emphasis on truth, provision of hearing for victims and acknowledgement of those affected by violations. Instead of treating violations in isolation, the proclamation opted for placing the violations in their historical, political and socio-economic context. While acknowledging the manifestations of the violations, the proclamation seems oriented to addressing the root causes of the violations.

Instead of copying and pasting the mainstream approach, the greatest contribution of the Ethiopian model, as was with the South African model and with the most recent Colombian model of transitional justice framework its ambition for crafting a framework deemed appropriate for the particular context and realities of Ethiopia. Such an approach that accords prime place to national ownership and context specific application of transitional justice is not contrary to international norms and indeed is backed by the latest transitional justice normative document, namely the African Union Transitional Justice Policy. The Policy in the section on principles stipulates that the ‘choice of TJ should be context-specific, drawing on society’s conceptions and needs of justice and reconciliation, having regard to: The nature of the conflict and the violations it occasioned, including the situation of women and children as well as other groups in vulnerable conditions; The conditions and nature of the country’s legal system, traditions and institutions as well as its laws.’ More importantly, the AU TJ Policy states that ‘A society in transition may choose, through inclusive consultative processes, to put more or less emphasis on the reconciliation, healing or justice dimension of the combination of TJ measures required for its realities.’

Finally, there are two important points that emerge from the foregoing analysis. First, within the four corners of the proclamation, no direct link has been established between the Commission and the ordinary institutions for administration of justice. Given where the Proclamation puts its emphasis, this is not totally surprising. This does not however mean, as noted above, that there will be no interface between the Commission and these institutions for the administration of justice. Second, the fact that there is no political agreement anchoring the mandate of the Commission and that there was no public participation in the making of the law establishing the Commission and in the nomination of the members of the Commission have created major foundational gaps. Some of these can be rectified if the Commission in invoking Article 19 of the Proclamation opens the process of developing the relevant regulations for the implementation of the Proclamation for public participation, consultation and input.