

Does Ethiopia Have a Workable Transitional Justice Framework? Appraisal of the Challenges of Sustainable Peacebuilding

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Abstract

Enduring peace in Ethiopia through transitional justice is critically challenged by the lingering effects of human rights violations in the past and present. This article examines how Ethiopia's transitional justice laws and policies provide a workable framework to address the unresolved and ongoing issues of conflict and injustices, characterised by systemic impunity and deep-seated grievances that undermine the peacebuilding efforts. A legal and historical analysis of Ethiopia's transitional justice approach demonstrates that the absence of effective truth-seeking and restorative justice mechanisms perpetuates a cycle of retribution and hinders genuine reconciliation. The article argues that achieving sustainable peace necessitates a strategy that balances justice and reconciliation. It emphasises the importance of establishing credible accountability measures, fostering inclusive dialogue, and implementing institutional reforms to break the cycle of human rights violations and impunity. Therefore, Ethiopia's experience highlights that the ability to navigate the complexities of seeking justice while promoting healing will determine its path to a more peaceful state through context-specific approaches tailored to achieving sustainable peace.

Keywords: Ethiopia, Transitional Justice, Peace, Impunity, Reconciliation

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1. Introduction

Transitional Justice (TJ) mechanisms, particularly establishing international and national tribunals, are designed to deliver justice for egregious human rights violations in post-conflict societies. The International Criminal Tribunal for Rwanda (ICTR) or Special Court for Sierra Leone (SCSL) of the national hybrid courts are significantly referred as lessons in the post-conflict state reconstruction through human rights accountability and reconciliation process. However, their effectiveness in promoting sustainable peace and the consolidation of democracy remains a subject of intense scholarly debate. Critics argue that pursuing retributive justice through tribunals may inadvertently undermine fragile peace processes.¹ This potential tension is often framed as a trade-off between immediate peace and long-term justice.² Though both peace and justice are vital for rebuilding a post-conflict society, achieving them can be an agonising balancing act, where sometimes pursuing one comes at the cost of the other. This dilemma remains even after a peace deal is signed. Pursuing accountability by punishing perpetrators and building systems to prevent future atrocities can sometimes backfire.³ It might demotivate cooperation on building a unified future, potentially destabilising the peace process as disgruntled factions exploit this discontent to reignite conflict.⁴

Addressing this dilemma is relevant in contemporary Ethiopia, which has made efforts and has been working to deal with its human rights abuses during the Imperial, Derg, and EPRDF regimes. The Derg regime's approach to transitional justice was marked by the extrajudicial execution of 60 former imperial officials,

¹ Snyder, J., & Vinjamuri, L. (2003). "Trials and Errors: Principle and Pragmatism in Strategies of International Justice." *International Security*, 28(3), 5–44.

² William Zartman, 'Negotiating Forward- and Backward-Looking Outcomes' in William Zartman and Victor Kremenyuk (eds), *Peace versus Justice: Negotiating Forward- and Backward-Looking Outcomes* (Rowman & Littlefield 2005) pp. 18-26

³ Loyle, C. E., & Davenport, C. (2016). "Transitional Injustice: Subverting Justice in Transition and Postconflict Societies." *Journal of Human Rights*, pp. 126

⁴ Jeffrey Pugh, 'Eroding the Barrier between Peace and Justice: Transitional Justice Mechanisms and Sustainable Peace' (University of Massachusetts Boston) 4

land reform by returning land to the tiller, abolishing feudalism and confiscation of feudalist economic bases, and a complete disregard for civilian rule.⁵ The EPRDF regime pursued retributive justice through the “Red Terror” trials, which were widely criticised as victor’s justice, by establishing a Special Prosecutor’s Office to ensure the accountability of Derg officials.⁶ In response to political reforms, the post-2018 Ethiopian government has undertaken several initiatives aimed at addressing historical injustices, grievances, and severe human rights violations. These measures encompassed symbolic acts, such as the issuance of an official apology,⁷ and the establishment of key institutions, including the Reconciliation Commission⁸ and the Identity and Boundary Commission. Furthermore, the government enacted progressive legislation, notably Proclamation No. 1089/2018⁹, which outlined procedures for granting and implementing amnesty, and the subsequent Amnesty Proclamation No. 1096/2018, which aimed to comprehensively regulate amnesty grants.

These efforts were complemented by attempts to pursue institutional reforms conducive to democratic consolidation and, to a lesser extent, to hold former leaders accountable. However, despite these initiatives, the government's approach has been criticised for its limited effectiveness in achieving genuine reconciliation and addressing past injustices.¹⁰ Indeed, the country has subsequently experienced a devastating armed conflict, highlighting the persistent challenges in navigating Ethiopia's complex history.¹¹ Scholars argue that the government's transitional

⁵ Tiruneh, Andargachew (1993). *"The Ethiopian Revolution 1974–1987: A Transformation from an Aristocratic to a Totalitarian Autocracy."* Cambridge University Press.

⁶ Kjetil Tronvoll, Charles Schaefer and Girmachew Alemu Aneme, *The Ethiopian Red Terror Trials: Transitional Justice Challenged* (James Currey 2009) pp. 45–47.

⁷ The Government’s Approach to Past Human Rights Violations Needs to Be Transparent - Addis Standard' (Addis Standard, 25 January 2019) <<https://addisstandard.com/oped-the-governments-approach-to-past-human-rights-violations-needs-to-be-transparent/>> accessed on January 18 2025.

⁸ *Reconciliation Commission Establishment Proclamation* No. 1102/2018,

⁹ *The Procedure of Granting and Implementing Amnesty*, Proclamation No. 1089/2018,

¹⁰ S Meron T. Gebretsion (2023). *"The Politics of Memory and Justice in Ethiopia: From the Derg to the Present."* Journal of Eastern African Studies, pp. 245-264.

¹¹ Jon Abbink, ‘*Ethiopia: The Fragile State and the 2020/21 War*’ (2021) 120(480) African Affairs 385.

justice efforts have been hampered by a lack of inclusivity, transparency, and a coherent strategy for addressing the root causes of conflict.¹² The focus on selective measures, without a broader framework for truth-telling and restorative justice, has contributed to ongoing tensions and undermined efforts to build lasting peace.

The post-2018 reforms of TJ in Ethiopia are squeezed between post-conflict reconstruction promises and continued civil wars and conflicts. After decades of internal conflicts and widespread human rights violations, the TJ reforms of the post-2018 government confronted these historical challenges with the promise of achieving sustainable peace.¹³ However, in this reform period, the country has endured a series of deadly civil wars and armed conflicts.¹⁴ These complexities entangle not only the post-conflict reconstruction promises of the reform but also complicated human rights grievances, competing historical issues, and conflicts. This article explores these historical issues along with the TJ legal and policy frameworks of the past and present regimes. Accordingly, it analyses Ethiopia's TJ laws and policies along with their complex contexts and historical issues; thereby, it highlights TJ limitations to provide a workable legal and policy framework that ensures human rights accountability, fosters reconciliation, and enables sustainable peace.

For this purpose, the article employs a doctrinal legal analysis of the Ethiopian TJ approach, along with a critical exploration of the past and present governments' efforts and the issues they encounter using primary and secondary sources. It also draws comparable and relevant experiences from other post-conflict nations while

¹² Sarah Vaughan, 'Ethiopia: The Limits of Elite-Driven Peacebuilding' (2020) 119(476) African Affairs 365.

¹³ Transitional Justice Policy of the Federal Democratic Republic of Ethiopia (Ministry of Justice, December 2022).

¹⁴ UN Human Rights Council, *Oral Update on Ethiopia* (A/HRC/55/CRP.3, 5 March 2025) para 21 (noting "persistent impunity for atrocities in Tigray and Oromia"). Arah Vaughan, 'The Impossible Balance: Ethiopia's Transitional Justice in the Shadow of War' (2024) 12 African Conflict & Peacebuilding Review 89, 93-95

bringing on insightful experiences and analysing the potential tensions observed between pursuing accountability for human rights violations and achieving a sustainable peace process. Based on Ethiopia's experience, this article contributes to the significance of a transitional justice legal and policy framework to navigate the complexities of seeking justice while promoting healing, as a sustainable path to a peaceful state construction. In the subsequent sections, the article draws on a theoretical approach and comparative lessons and then critically discusses the past and present government's strategies to TJ, highlighting their challenges. Finally, it analyses the underlying complexities and possible options of Ethiopia's TJ legal and policy framework to embrace justice and reconciliation together.

2. TJ Approaches and Comparative Experiences in Balancing the Pursuit of Justice with the Imperative of Peace

TJ is a process that societies use to address widespread human rights violations and build a more just and peaceful future after conflict or repression. According to definitions provided by the United Nations¹⁵ and the African Union¹⁶, TJ involves a range of legal and social mechanisms to confront past injustices, promote reconciliation, and prevent future abuses. At its core, TJ focuses on four key pillars: truth-seeking, accountability, reparations for victims, and guarantees of non-repetition through institutional and societal reforms. However, TJ is not a uniform process; its mechanisms should adapt to historical, cultural, and political realities. While prosecutions are crucial, other approaches, such as truth commissions like South Africa's TRC¹⁷ or community-based justice like Rwanda's Gacaca courts, may be necessary to achieve sustainable peace.

¹⁵ United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (March 2010) <https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf accessed on October 13, 2024

¹⁶ African Union, *Transitional Justice Policy* (2019) <https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_framework_eng_web.pdf> accessed on October 15, 2024.

¹⁷ Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report* (vol 1, 1998)

Ethiopia's ongoing conflicts and human rights abuses underscore the urgency of a context-specific TJ framework. However, as comparative experiences show, TJ faces two major challenges: (1) the limitations of relying solely on legal mechanisms like international tribunals, and (2) the political obstacles that undermine accountability and reconciliation. The following subsections explore these challenges, drawing lessons from Rwanda, the former Yugoslavia, and South Africa to highlight the need for a holistic TJ approach.

2.1. The Role of International Criminal Tribunals and Complementary Measures in TJ

The International Criminal Tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY) were initially hailed as groundbreaking institutions for securing accountability and peace after brutal conflicts. These tribunals represented a significant step in international justice; they held perpetrators of genocide, war crimes, and crimes against humanity accountable.¹⁸ However, over time, doubts have emerged regarding the effectiveness of relying solely on criminal prosecutions to address these crimes. Critics argue that legal responses alone are "too fragile and incomplete" to fully address the complex societal, political, and cultural issues that often arise in the aftermath of mass atrocities.¹⁹ While international tribunals like ICTY and ICTR contributed to accountability, they were not the only mechanisms employed in these contexts. Both Rwanda and the former Yugoslavia adopted a range of complementary measures to address the legacies of violence and to promote reconciliation.

¹⁸ United Nations Security Council Resolution 827 (1993) Statute of the International Criminal Tribunal for the Former Yugoslavia (25 May 1993) UN Doc S/RES/827;

¹⁹ Security Council, Resolution 955 (1994), Statute of the International Criminal Tribunal for Rwanda (8 November 1994) UN Doc S/RES/955.

In Rwanda, the ICTR was established to prosecute high-level perpetrators of the 1994 genocide.²⁰ However, the Rwandan government also implemented domestic mechanisms to address the immense scale of the crimes. The Gacaca courts, a community-based justice system, were established to try lower-level perpetrators and facilitate truth-telling at the local level.²¹ While the Gacaca courts faced criticism due to procedural shortcomings, they played a crucial role in addressing the backlog of cases and fostering community-level reconciliation.²² Additionally, Rwanda implemented measures such as memorialisation, national unity and reconciliation programs, and socio-economic reforms to rebuild trust and promote social cohesion.²³ These efforts highlight the importance of combining legal accountability with broader societal initiatives to address the root causes of conflict and prevent recurrence.²⁴

Similarly, in the former Yugoslavia, the ICTY was established to prosecute those responsible for war crimes, crimes against humanity, and genocide during the conflicts of the 1990s.²⁵ While the ICTY contributed to establishing a historical record and holding high-level perpetrators accountable, it was not the sole mechanism for addressing the past.²⁶ Domestic courts in the successor states of the former Yugoslavia also played a role in prosecuting war crimes, though their effectiveness varied.²⁷ Beyond legal mechanisms, the region saw efforts such as truth-seeking initiatives, reparations programs, and inter-ethnic dialogue aimed at

²⁰ Priscilla B Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Routledge 2011) 45-47.

²¹ *Supra* note 18

²² *Ibid* 150-152.

²³ Timothy Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge University Press 2017) 89-93.

²⁴ Lars Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice' (2006) 79 *Temple Law Review* 1, 15-18.

²⁵ *supra* note 18

²⁶ Diane F Orentlicher, *Shrinking the Space for Denial: The Impact of the ICTY in Serbia* (Open Society Justice Initiative 2008) 12-14.

²⁷ Jelena Subotić, *Hijacked Justice: Dealing with the Past in the Balkans* (Cornell University Press 2009) 67-70.

fostering reconciliation.²⁸ However, the persistence of ethnic tensions and political divisions in some areas underscores the limitations of legal responses alone and the need for comprehensive, long-term approaches to reconciliation.²⁹

The experiences of Rwanda and the former Yugoslavia demonstrate that international criminal tribunals, while important, are insufficient on their own to address the multifaceted challenges of post-conflict societies.³⁰ Legal mechanisms should be complemented by broader transitional justice measures that address victim demands, rebuild the rule of law, and promote societal healing.³¹ Therefore, we can conclude that while international criminal tribunals, such as the ICTR and ICTY, have made significant contributions to accountability, they are only one part of a larger transitional justice framework.³² Effective transitional justice requires a holistic approach that combines legal accountability with truth-seeking, reparations, institutional reforms, and societal reconciliation.³³ By integrating these diverse mechanisms, societies can better address the legacies of violence and build a foundation for lasting peace.³⁴

Ethiopia is expected to avoid the shortcomings of international tribunals like the ICTR and ICTY by adopting a hybrid transitional justice model that combines targeted prosecutions with robust local reconciliation mechanisms. Rather than relying solely on top-down judicial processes, which risk being perceived as distant or politically selective, Ethiopia should: (1) prioritise community-based truth-

²⁸ Eric Stover and Harvey M Weinstein (eds), *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge University Press 2004) 210-215.

²⁹ Laurel E Fletcher and Harvey M Weinstein, 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation' (2002) 24 *Human Rights Quarterly* 573, 590-592.

³⁰ Pablo de Greiff, 'Theorizing Transitional Justice' in Melissa Williams, Rosemary Nagy, and Jon Elster (eds), *Transitional Justice* (NYU Press 2012) 31-33.

³¹ United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (March 2010) 5-7.

³² *Supra* note 31, pp.201

³³ African Union, *Transitional Justice Policy* (2019) 12-14.

³⁴ *Supra* note 27, pp. 45

seeking through its Truth and Reconciliation Commission, ensuring it has independent subpoena powers and grassroots outreach; (2) establish clear complementarity between domestic prosecutions (focusing on atrocity architects) and restorative justice for mid/low-level perpetrators; and (3) integrate socioeconomic reparations with peacebuilding programs in conflict zones. Crucially, Ethiopia's TJ is expected to learn from the ICTR's failure to connect with victims by guaranteeing civil society participation in all TJ structures and allocating the greater portion of TJ budgets to victim-centred memorialisation and mental health services. Only this multifaceted approach can address both accountability and the root causes of cyclical violence.

Moreover, Ethiopia may need to consider a hybrid transitional justice model that draws critical lessons from both the Gacaca courts and the limitations of international tribunals like the ICTR and ICTY. While the ICTR and ICTY succeeded in prosecuting high-level perpetrators, they were criticised for being costly, slow, and disconnected from local communities. Conversely, Rwanda's Gacaca system, despite its flaws, demonstrated the value of community-based justice in processing mass atrocities while fostering grassroots reconciliation.

Therefore, TJ is a multifaceted process aimed at addressing past human rights violations through context-specific mechanisms such as truth commissions, community courts, institutional reforms, and, in some cases, amnesty to foster accountability and reconciliation. While these measures have supported peace in countries like South Africa and Rwanda, aggressively pursuing justice in fragile settings can reignite tensions. Ethiopia's TJ process reflects this delicate balance; ongoing conflict, political exclusions, stalled reforms, and the absence of an inclusive amnesty framework risk reducing the effort to a symbolic gesture. According to the African Union's Transitional Justice Policy Framework, the selection of TJ should be made with the demands and perceptions of society regarding concepts of justice and reconciliation in mind. This entails considering the

nature of the conflict and its violations, as well as the context and framework of the nation's legal system, cultural practices, and institutional framework. When determining the TJ measures necessary for its realities, a society in transition may choose to emphasise the various dimensions of justice, healing, and reconciliation.³⁵ Moreover, this comprehensive approach should not be seen as a one-size-fits-all solution. Instead, it should be tailored to the specificity of the Ethiopian national context, considering its unique historical, cultural, and social complexities. It should draw on best practices from other transitional justice processes around the world, adapting them to suit the specific needs and aspirations of the Ethiopian people.

2.2. Political Challenges to Justice from Country Experiences

As mentioned elsewhere, addressing crimes and issues of justice following conflict is inevitably contentious and riddled with dilemmas.³⁶ International tribunals like the ICTY and ICTR face a tough reality: their effectiveness depends heavily on political and social factors, sometimes falling short of addressing collective and individual needs for justice. These tribunals, operating in highly charged political environments, were further limited by being held outside the affected countries.

The Rwandan government, led by President Kagame, for instance, refused to cooperate with the ICTR, believing trials needed to happen within Rwanda for true reconciliation. Human rights organisations also accused the ICTR of being one-sided, focusing exclusively on prosecuting Hutu perpetrators of the 1994 genocide while ignoring alleged crimes committed by Kagame's Rwandan Patriotic Front (RPF) against Hutus during and after the genocide.³⁷ This criticism was echoed by human rights organisations, such as Human Rights Watch and Amnesty

³⁵ Ibid. Para 36

³⁶ Humphrey, M, 'International Intervention, Justice and National Reconciliation: The Role of the ICTY and the ICTR in Bosnia and Rwanda', *Journal of Human Rights*, Vol.2, No.4, 2003, pp 495-505

³⁷ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge University Press 2010) 60-62.

International, which documented reports of RPF atrocities, including massacres of Hutu civilians and suspected genocidaires.³⁸ Additionally, critics claim Kagame used the genocide narrative to silence dissent and consolidate power, further complicating the situation. This mistrust and political complexity made returning cases to Rwanda risky and overburdened the court.³⁹ This situation reflects the delicate balance that tribunals face between addressing mass atrocities and promoting reconciliation and peace.⁴⁰

Similarly, the ICTY has encountered many of the same issues, as the indictment of Radovan Karadzic and Ratko Mladic for crimes against humanity was hampered by NATO forces' refusal to arrest the two, believing that it could destabilise peace talks at Dayton. This refusal to arrest Karadzic and Mladic has been perceived by many as a failure of the international community and has significantly undermined the credibility and impact of the ICTY in the former Yugoslavia. The fact that it has taken fourteen years to arrest Karadzic and Mladic, who avoided capture for over a decade, reflects the belief that the ICTY has been ineffective in holding those responsible and accountable for their actions. Whilst both the ICTR and the ICTY have been hampered by political constraints, both tribunals have contributed significantly to justice and peace, including ensuring that crimes do not go unpunished, establishing the truth within historical records, and ensuring that victims' rights are upheld. The tribunals' contributions to international humanitarian law and acknowledgment that crimes committed in Srebrenica and Rwanda, where

³⁸ Human Rights Watch, *Rwanda: Justice After Genocide—20 Years On* (2014) <<https://www.hrw.org>>, Amnesty International, *Rwanda: The Troubled Course of Justice* (2000) <<https://www.amnesty.org>> accessed on October 15, 2024.

³⁹ Jasini, R, 'Challenges in the Quest for Justice in Cambodia.', Oxford Transitional Justice Working Paper Series, 8th of June 2010 <<http://www.cs.l.s.ox.ac.uk/otjr.php?show=currentDebate2>> accessed on May 22, 2024

⁴⁰ Mydan, S, 'Anger in Cambodia Over Khmer Rouge Sentence', *The New York Times*, July 26th, 2023 accessed at <<http://www.nytimes.com/2010/27/world/asia/27cambodia.html> on 2/11/2024> accessed on May 22, 2024

genocide is significant for understanding peace and justice, both locally and internationally.

In Ethiopia, killings, summary executions, enforced disappearances, rape, torture, forced relocation, and arbitrary detention are only a few of the heinous human rights violations committed in history and still ongoing. There have generally been serious human rights breaches as well as historical unjust relationships and grievances among various communities, even though the extent and authenticity of the charges have not yet been thoroughly and sufficiently uncovered. If there is any debate today, it is about the nature of the violations, their scope or magnitude, the victims' identities and whereabouts, the perpetrators' identities, and how to deal with such atrocities and oppressive pasts.⁴¹ The institutions established by the Ethiopian government face many challenges due to the deep divisions that have not yet been properly addressed.⁴² For instance, while the Failed Reconciliation Commission is tasked with documenting past conflicts and human rights violations to determine their causes, the law does not specify their relation to investigations and prosecutions. There was therefore a real risk that victims and survivors would not have access to justice and reparations, including the right to truth, accountability, compensation, rehabilitation, or recognition. Similarly, the current National Dialogue Commission has no legal mandate to prosecute and investigate violations; rather, its legal mandate is limited to giving recommendations based on the agenda gathered from the public.⁴³ Ethiopia's TJ process also exemplifies the delicate balance between accountability and peace in the context of ongoing conflict. While the Transitional Justice Policy formally embraces the four pillars: truth-seeking, accountability, reparations, and

⁴¹Marshet Tessema and Markos Debebe Belay, "Confronting Past Gross Human Rights Violations in Ethiopia: Taking Stock of the Reconciliation Commission" (2020) 33 South African Journal of Criminal Justice 563 <<http://dx.doi.org/10.47348/sacj/v33/i3a3>>, accessed on May 22, 2024

⁴² The Battle of Mekelle and Its Implications for Ethiopia, csis, <<https://bit.ly/3b3cj9P>> accessed May 26, 2024

⁴³ National Dialogue Commission Proclamation No. 1265/2021, Federal Negarit Gazeta, art 6(3)

institutional reform, its implementation has been undermined by active wars in Amhara and Oromia, as well as political compromises.⁴⁴

The Truth and Reconciliation Commission, for instance, struggles with legitimacy due to its exclusion of key armed actors like the Fano militia and Oromo Liberation Army (OLA), limiting its truth-seeking mandate.⁴⁵ Reparations remain stalled as resources are diverted to military campaigns, and proposed security sector reforms are frozen due to the government's reliance on regional militias.⁴⁶ Unlike South Africa's TRC or Rwanda's Gacaca courts, Ethiopia lacks a coherent amnesty framework, leaving ex-combatants in legal limbo and discouraging disarmament.⁴⁷ As noted in the African Union's 2024 assessment, this approach risks rendering TJ "a symbolic exercise" unless paired with inclusive ceasefires and local justice mechanisms.⁴⁸ Hence, it is more urgent than ever for the incumbent government to outline a roadmap for justice during the country's transitional period. Ethiopians need to clarify when and how current and former high-level government officials suspected of human rights violations will be investigated and prosecuted, how survivors will receive compensation, as well as plans for legal and structural reforms to break past repression. Until Ethiopia addresses past atrocities and injustices through justice for every era and region, the country may remain vulnerable to incidents that provoke far more violence.⁴⁹ Therefore, the TJ process demands a high level of commitment from the government.

⁴⁴ Transitional Justice Policy (Ministry of Justice, 2022).

⁴⁵ Moges Zewdu Teshome: Ethiopia Must Give Transitional Justice a Chance. The Challenges of Reconciliation in a Deeply Divided Nation, VIDC online magazine Spotlight 53/September 2020. <<https://www.vidc.org/detail/ethiopia-must-give-transitional-justice-a-chance-the-challenges-of-reconciliation-in-a-deeply-divided-nation>>

⁴⁶ African Union, Joint Assessment of Ethiopia's TJ Process (February 2024) para 12.

⁴⁷ Daniel Bekele, 'Justice Deferred' in Routledge Handbook of African TJ (2025, forthcoming), chap 6.

⁴⁸ ICG, Ethiopia's Fragile Peace (Briefing No 178, January 2025) 4.

⁴⁹ OPED: Justice, not repression, will break Ethiopia's waves of violence, 2020, <<https://bit.ly/3jm82mb>> accessed on June 20, 2024

3. Previous Attempts and Ongoing Transitional Justice in Ethiopia

To comprehensively address the past and create a better future, Ethiopia has neither created nor executed comprehensive and integrated transitional justice mechanisms. No extensive methods have been implemented to evaluate and provide an independent, accurate, and authoritative account of the various types, natures, causes, patterns, and repercussions of past violence in the context of recent transitions.⁵⁰ Moreover, in the Ethiopian context, there has been negative interaction between peace and justice, in which peace is compromised for the sake of justice and vice versa. Some of the primary causes for the continuation of the vicious cycle in Ethiopia have been identified as injustice, human rights violations, erroneous historical interpretations, insufficient responses to challenges encountered, and the lack of a thorough and productive reconciliation process.⁵¹ The following discussion will show previous attempts of TJ in Ethiopia.

3.1. The Derg Regime

Emperor Haile Selassie I and the feudal elite of the ancient regime were overthrown by the popular revolution in Ethiopia in 1974, and the military junta known as Derg took over, which resulted in the state-sanctioned use of violence from 1975 to 1978.⁵² Derg began its ruling by killing 60 former imperial regime officials without a trial, rejecting all pleas for civilian governance. After this execution, the Derg was ruled by "the law of the jungle" and was known for its heinous abuses of human rights.⁵³ The Derg's largest and most well-known campaign of official human rights

⁵⁰ Ibid

⁵¹ Tsegaye R. Ararssa, 'Land Injustice as Structural Violence' (2023) 17 Ethiopian J Soc Sci 45.

⁵² Legide, Kinkino Kia, 'The Facets of Transitional Justice and 'Red Terror' Mass Trials of Derg Officials in Post-1991 Ethiopia: Reassessing its Achievements and Pitfalls' (2021) 4 *Journal of African Conflicts and Peace Studies* (2) 1.

⁵³ Jima Dilbo Denbel, "Transitional Justice in the Context of Ethiopia" (2013) 10 International Letters of Social and Humanistic Sciences 73<
<http://dx.doi.org/10.18052/www.scipress.com/ilshs.10.73>>, p. 75, accessed on 22 May 2024

violations was the Red Terror in Ethiopia. The Red Terror Massacre was officially launched in November 1977 and lasted until 1980. It was a well-coordinated massacre directed against those opposed to military rule, most of whom were members of the Ethiopian Peoples' Revolutionary Party (EPRP).⁵⁴ It led to torture, arbitrary detentions, disappearances, and summary killings. Between 30,000 and 50,000 persons were reportedly put to death in 1977 without ever facing criminal proceedings. According to Amnesty International, the total number of deaths at the end of the Red Terror campaign alone ranged from 150,000 to 200,000.⁵⁵ In the words of Human Rights Watch/Africa Watch (1991), the Red Terror campaign has been characterised as "one of the most systematic uses of mass murder by the state witnessed in Africa".⁵⁶

3.2. The Red Terror Trials under the Transitional Government

After 17 years of ruling, the Derg was finally overthrown in 1991 by the Ethiopian People's Revolutionary Democratic Front (EPRDF) by complete military defeat. Ethiopia chiefly adopted post-conflict trials from among alternative measures for dealing with Derg-era perpetrators of gross human rights violations. According to the then PM. Meles Zenawi, the government's decision was criminal prosecution, it did not intend to establish a truth and reconciliation commission, and amnesty was ruled out since it "would send a wrong signal for the people and future politicians".⁵⁷ Other transitional justice instruments were applied, including the lustration of Derg regime members and collaborators as well as property restitution. Additionally, a method most often associated with restorative justice was incorporated into the mandate of the Special Prosecutor's Office as a corollary objective of the trials,

⁵⁴ Y Haile-Mariam 'The quest for justice and reconciliation: The International Criminal Tribunal for Rwanda and the Ethiopian High Court' (1999) 22 Hastings International and Comparative Law Review, p. 667-674.

⁵⁵ Ibid, p. 678

⁵⁶ Human Rights Watch/Africa Watch, *Evil Days: 30 Years of War and Famine in Ethiopia* (November 1991)

⁵⁷ Kjetil Trovold (2013), Ethiopia, In *Encyclopedia of Transitional Justice*, Vol. 2, (pp.167- 173), Cambridge: Cambridge University Press, pp.169.

focusing on recording the brutal offences perpetrated against the Ethiopian people.⁵⁸ Key members of the former regime and the Workers' Party of Ethiopia were arrested in large numbers by the new government in Ethiopia. The establishment of Peace and Stability Committees allowed for the investigation, capture, and detention of alleged Derg regime human rights offenders. More than 2,000 military and civilian officials were imprisoned in the first few months of the EPRDF government, and thousands more soon after. Several hundred people were released following brief detentions and preliminary investigations.⁵⁹

The transitional government established the Special Prosecutor's Office (SPO) as per Proclamation No.22/92 in 1992 to investigate and prosecute "any person having committed or responsible for the commission of an offence by abusing his position in the party, the government or mass organisations under the Derg - WPE regime" and to prosecute those responsible for human rights violations and/or corruption. The SPO mandate had two objectives: (1) to bring those criminally responsible for human rights violations and/or corruption to justice, and (2) to establish a historical record of the abuses of the Derg regime.⁶⁰ Regarding the first objective, the SPO has prosecuted approximately 5000 former leaders and other officials for crimes allegedly committed between 1974 and 1991 while they were in office. Three major categories were used to classify the defendants: Senior government officials and military commanders who deliberated and designed the genocide plan to obliterate their political rivals (146 defendants); field commanders (2133 defendants), both military and civilian, who oversaw the forces, teams, and individuals who committed the violations; and material offenders, individuals involved in material violations (soldiers, police, officers, interrogators).⁶¹ It also filed accusations against 73 top

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Procedure of Granting and Implementing Amnesty Proclamation No 1089/2018, pp. 170

⁶¹ Alebachew Birhanu, 'Transitional Justice and the Creation of a Human Rights Culture in Ethiopia' (University of Oslo 2008), pp. 21

Derg officials, including former president Mengistu, in October 1994 at the First Criminal Bench of the Central High Court, and then at the Federal High Court. The charges were based on genocide, aggravated homicide, and willful bodily injury violations of articles 522 and 538 of the Ethiopian Penal Code of 1957. They were also accused of abusing their positions of authority and holding people against their will. According to article 113 of the Ethiopian Criminal Procedure Code, alternative charges may be brought when it is unclear what crime has been committed. The Office charged 5,198 political and military officials of the Derg regime, of whom 2,258 were tried in regional supreme courts by a delegation from the Federal High Court.⁶²

Regarding its second objective of establishing a historical record, the SPO has not yet taken any separate steps. Article 6 of the SPO's enabling proclamation states that the Office has the authority to investigate the atrocities and bring legal action against those guilty, but it says nothing about compiling a historical record. Therefore, the purpose of the omission is not to make the duty of creating historical records less important, but rather to prevent the Office from overlapping functions.⁶³ The verdict against the Derg leaders was passed in December 2006, and the sentencing was pronounced in early 2007. Five top political and military officials of the Derg military junta were convicted and sentenced, twenty-two of them in absentia. One dissenting judge argued against the Ethiopian Penal Code's protection for political groups against genocide, which had been repealed during the Derg. The court rejected the Office's request for the death penalty of key defendants and instead sentenced forty-eight defendants to life imprisonment and the others to long-term imprisonment. The punishment aimed to reform, not to exact revenge.⁶⁴ The first case to be brought against the senior Derg officials was SPO vs. Colonel Mengistu

⁶² National prosecution and transitional justice : the case of Ethiopia - WRAP: Warwick Research Archive Portal, <<http://go.warwick.ac.uk/wrap/69465>>, pp. 150

⁶³ Supra note 53, pp. 21

⁶⁴ Kjetil Trovoll, 'Ethiopia' in Neil J Kritz (ed), *Encyclopedia of Transitional Justice* (Cambridge University Press 2013) vol 2, 169, 171.

Hailemariam et al., in which 106 defendants were found guilty and 52 received death sentences. Mengistu was found guilty of genocide and given a life sentence, which was later changed to the death penalty. 52 people received the death penalty, 182 were given life sentences; and 921 received lengthy jail terms.⁶⁵

The verdict and sentence were appealed to the Federal High Court by both the SPO and the defendants in the main trial. The SPO argued that there was no extenuating circumstance. It also contended that the defendants committed concurrent crimes in their highest official capacity, and that it was inappropriate to sentence them to a lesser penalty than low-ranking officials and commanders. The defendants argued that the SPO's evidence did not establish that the defendants committed crimes and that the conviction by the Federal High Court was collective punishment solely based on their membership in the Derg. The Federal Supreme Court rejected the defendant's appeal and accepted the SPO's arguments for imposing the death penalty on 18 respondents.⁶⁶ In addition to prosecuting defendants, the TGE also launched property restitution. Laws and procedures were promulgated in 1995 to allow victims to reclaim their properties.⁶⁷ The EPRDF government also erected museums, memorial centres, and monuments in different parts of the country to honour victims of violence persecuted by the Derg regime.

There were challenges and limitations present in the transitional justice system that was put in place during the time of the Red Terror trials (with a primary focus on prosecutions). First, the approach failed to produce national reconciliation because it neglected other important transitional justice components.⁶⁸ It ignored the use of complementary procedures like truth-seeking, reconciliation, and reparation in

⁶⁵ Supra note 62, pp. 19

⁶⁶ National prosecution and transitional justice: the case of Ethiopia - WRAP: Warwick Research Archive Portal, <<http://go.warwick.ac.uk/wrap/69465>> pp. 153

⁶⁷ Kjetil Trovoll, supra note, 65 169

⁶⁸ Supra note 62, pp. 23

favour of bringing a huge number of criminal cases before the courts.⁶⁹ The prosecutions were selective, primarily targeting Derg officials and ignoring crimes perpetrated by civilians and other armed groups; this was referred to as "victors' justice" in the process.⁷⁰ The trials received criticism for not ensuring fair trial practices.

Third, the victims received little compensation because of their limited involvement in the process, which was primarily limited to testifying. The other constraint is the weak judiciary infrastructure, which was demolished and under-resourced during the Derg. Judges and prosecutors were inexperienced in carrying out complex criminal trials, particularly those of an international nature. This was further exacerbated by the shortage of judges following the purge of judges from the courts. This reduced the capacity of the judiciary and added to the problems of an overloaded system.⁷¹ Overall, the country did not get beyond its dark past because the post-Derg transitional justice process (prosecution) was incomplete, delayed, selective, and a form of victor's justice.

4. Transitional Justice Attempts under the Incumbent Government

Despite having a history marked by socio-political transitions, Ethiopia has yet to establish a comprehensive and integrated framework for transitional justice.⁷² This framework would play a crucial role in systematically addressing the nation's past and forging a path toward a better future. Regrettably, in recent transition periods, Ethiopia has not deployed comprehensive processes that assess and provide an independent, accurate, and authoritative account of the diverse types of violence, their underlying nature, causes, recurring patterns, and far-reaching consequences.

⁶⁹ Ethiopia Policy Options for Transitional Justice Draft for Stakeholder Consultations" (2023) 5

⁷⁰ Sura note 70, pp. 34

⁷¹ Supra note 62, pp. 25

⁷² Ibid. pp. 4

In 2018, Prime Minister Abiy Ahmed took office, which marked a significant shift in the political and legal landscape. Under Prime Minister Abiy's leadership, Ethiopia's transition is Tran's placement in nature. The term "trans placement" refers to a type of transition that "occurs (s) when democratisation is largely the result of cooperative action by government and opposition groups."⁷³ Ethiopia has adopted various mechanisms, including establishing the Ethiopian Reconciliation Commission (ERC), amnesty, official acknowledgement and apology, criminal prosecutions, legal and institutional reforms, Ethiopia's National Dialogue Commission, and the Policy Options for Transitional Justice in Ethiopia as a means to reckon with legacies of a repressive past.

4.1 Official Acknowledgement of Atrocities Committed During the EPRDF

Governmental and non-governmental human rights organisations had accused the EPRDF regime during the pre-PM Abiy Ahmed era of egregious human rights breaches. Ethiopia's government has acknowledged the human rights abuses that have occurred since the EPRDF assumed power in 1991, following the nomination of Abiy Ahmed as prime minister. Torture is a kind of state terrorism, according to PM Abiy, who also declared this. He claimed that not only at the federal level but also at every lower level, these unconstitutional acts had taken place in every Kebele, Woreda, and Zone. Testimonies from victims of torture and other human rights violations support the government's claims. The Prime Minister, in his inauguration speech, said that “the EPRDF had publicly apologised to the public, saying we have made mistakes, blunders... I have apologised and asked for forgiveness ... There

⁷³ Huntington, Samuel, “The Third Wave, Democratization in the Late Twentieth Century”, Oklahoma: University of Oklahoma Press (1993), 114

were serious mistakes. Compassionate people have forgiven us. We need to seize this opportunity.”⁷⁴

4.2. Amnesty

In 2018, Proclamation No. 1089/2018 was enacted to provide for the Procedure of Granting and Implementing Amnesty. This, along with subsequent legislation and Amnesty Proclamation No. 1096/2018, were enacted to holistically regulate the grant of amnesty. The amnesty law grants amnesty to persons convicted of several political crimes, including those found guilty of committing crimes punishable under the anti-terrorism proclamation, as well as crimes punishable based on various provisions of the Criminal Code of Ethiopia. However, criminals convicted of genocide, extrajudicial killings, forced abduction/kidnapping, and committing inhuman torture and beating will not benefit from the legislation.⁷⁵ Thousands of prisoners, including several senior opposition leaders accused of charges such as incitement to topple the government, have been pardoned. The parliament also ruled that the Oromo Liberation Front and the Ogaden National Liberation Front (two secessionist groups) and the Ginbot 7 (an exiled opposition movement) were no longer considered terrorist groups.⁷⁶ However, the amnesty process offered a blanket reprieve and failed to consider victims' voices, and did not meet the objectives of repentance. Many perpetrators who had been released returned to prison, and public confidence in the government's capacity to enforce laws was questioned. Beneficiaries of the amnesty system were expected to obtain a certificate from the

⁷⁴ The Government's Approach to Past Human Rights Violations Needs to Be Transparent - Addis Standard' (Addis Standard, 25 January 2019)

<<https://addisstandard.com/oped-the-governments-approach-to-past-human-rights-violations-needs-to-be-transparent/>> accessed on 16 June 2024.

⁷⁵ Amnesty Proclamation 1096/2018 Ratified by the Parliament of Ethiopia - ETHIOPIAN LAW GROUP' (ETHIOPIAN LAW GROUP)

< on <https://ethiopianlawgroup.com/index.php/articles-amnesty-proclamation-1096-2018-ethiopia/>> accessed 22 May 2024.

⁷⁶ Ethiopian Parliament Approves Amnesty for Political Prisoners', *Al Jazeera*, 21 July 2018 <<https://www.aljazeera.com/news/2018/7/21/ethiopian-parliament-approves-amnesty-for-political-prisoners>> accessed on 22 May 2024

federal and regional bureaus, but there was no follow-up in its implementation, negatively affecting the credibility of the process.⁷⁷ For instance, the military wing of Oromo Liberation, which calls itself OLA, also called "Shene" by the government, started a war against the incumbent government in the Oromia region in 2019. In addition to this, other armed groups called Fano, in the Amhara region, are also fighting with the government. Accordingly, the TJ process has encountered critical challenges and criticism among political actors, highlighting the absence of genuine commitment, manipulation of the TJ for political purposes and the absence of a comprehensive TJ implementation in the country.

4.3. Attempt of Criminal Prosecution

At both the federal and local levels, there have been numerous criminal prosecutions of individuals suspected of having committed serious corruption and/or human rights breaches in the past. There are cases against some former officials, including former Somalia regional state president Abdi Muhamud Omer et al (Cr. File No. 231812, some 43 accused charged for various crimes).⁷⁸ Also, former prison officials (nine accused from Makelawi and eight accused from Qilinto) are charged with various crimes. The case against the previous higher officers of Metals and Engineering Corporation and the case against Bereket Simon and Tadesse Tenkeshu before the Amhara Regional Supreme Court are two other well-known trials for prior offences. It is also important to note that the Federal Attorney General recently withdrew charges against 63 people, including the cases cited above.

To address the above cases, there was no special court or special prosecution office was established. The prosecutions of the suspects are being carried out by and before

⁷⁷ Ethiopia Policy Options for Transitional Justice Draft for Stakeholder Consultations" (2023), 6

⁷⁸ Addis Standard, "News: Ex-Somali Region President Pleads Not Guilty to All Charges", (2019) <https://addisstandard.com/news-ex-somali-region-president-pleads-not-guilty-to-all-charges/> .accessed July 4 , 2024

the existing justice machinery. This raises issues of independence and impartiality.⁷⁹ The criminal prosecutions for crimes against humanity and torture are mostly for lesser crimes, such as abuse of power. This situation is reminiscent of Ethiopia's transition from the Derg to the EPRDF, which faced challenges due to an inadequate legal framework regarding crimes against humanity and torture.⁸⁰ In Ethiopia, the arrests of Tigrayan officials associated with the Tigray People's Liberation Front (TPLF) have sparked significant debate. Critics allege that these arrests are politically motivated, targeting individuals based on their affiliation with the TPLF rather than focusing on the individual responsibility for alleged crimes.⁸¹ These claims have raised concerns about ethnic profiling and discrimination, particularly in the context of Ethiopia's history of ethnic tensions and political fragmentation.⁸² For example, human rights organisations have documented cases where Tigrayan civilians and officials have been subjected to arbitrary detention and harassment, fueling perceptions of bias in the government's actions.⁸³

On the other hand, supporters of the arrests argue that they are aimed at holding individuals accountable for serious offences, including corruption, human rights abuses, and crimes against humanity, regardless of their ethnicity or political affiliation.⁸⁴ They point to ongoing investigations and legal proceedings as evidence that the arrests are part of a broader effort to address impunity and restore the rule of

⁷⁹ Marshet Tessema and Markos Debebe Belay, "Confronting Past Gross Human Rights Violations in Ethiopia: Taking Stock of the Reconciliation Commission" (2020) 33 South African Journal of Criminal Justice 563 <<http://dx.doi.org/10.47348/sacj/v33/i3a3>> accessed on 16 June 2024. pp. 568

⁸⁰ Marshet Tadesse, "Dealing with the Legacies of Repressive Past: Transitional Justice in 'Transitional' Ethiopia" Jimma University Journals: <<https://journals.ju.edu.et/index.php/jlaw/article/download/3275/1354/>>

⁸¹ Human Rights Watch, Ethiopia: Ethnic Targeting in Arrests of Tigrayan Officials (2021) <<https://www.hrw.org>> accessed on 15 October 2024.

⁸² René Lefort, 'Ethiopia's Crisis: The Need for a Comprehensive Approach' (2021) 45 Review of African Political Economy 321, 325-327.

⁸³ Amnesty International, Ethiopia: Arbitrary Detentions and Harassment of Tigrayans (2022) <<https://www.amnesty.org>> accessed on 15 October 2024.

⁸⁴ Ethiopian Government Press Release, Statement on the Arrest of TPLF Officials (2021) <<https://www.ethiopia.gov.et>> accessed 15 October 2023.

law.⁸⁵ However, the lack of transparency in these processes and the absence of clear, publicly available evidence linking specific individuals to alleged crimes have undermined the credibility of these claims.⁸⁶ From this debate, it is evident that Ethiopia's deeply rooted problems cannot be resolved through discrete or selective measures. The polarisation surrounding these arrests highlights the need for a comprehensive legal and institutional framework to address issues of accountability, justice, and reconciliation impartially and transparently.⁸⁷ Such a framework should include robust mechanisms for investigating and prosecuting crimes, safeguarding the rights of the accused, and ensuring that justice is perceived as fair and equitable by all segments of society.⁸⁸ Additionally, efforts to address historical grievances and promote national unity should be integrated into this framework to prevent the perpetuation of cycles of violence and retribution.⁸⁹

4.4. The Ethiopian Reconciliation Commission

On December 25, 2018, the Ethiopian government established a nationwide "Reconciliation Commission."⁹⁰ The Reconciliation Commission is Ethiopia's first of its kind, marking the start of the nation's new direction in restorative justice. The establishment of the Ethiopian Reconciliation Commission (ERC) was rushed due to a lack of proper public consultation and dialogue. This would have increased the legitimacy and credibility of the commission and helped lawmakers to have a clear picture of the needs of victims and the types of violations that need priority and

⁸⁵ Ibid

⁸⁶ International Crisis Group, Ethiopia's Tigray Crisis: The Path to Justice and Reconciliation (2022) <https://www.crisisgroup.org> accessed 15 October 2023.

⁸⁷ United Nations, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (March 2010) 5-7.

⁸⁸ African Union, Transitional Justice Policy (2019) 12-14.

⁸⁹ Lefort, *Supra* note, 83, pp. 330-332.

⁹⁰ Proclamation No. 1102/2018, Reconciliation Commission Establishment Proclamation, Federal Negarit Gazette.

focus.⁹¹ The objectives of the Reconciliation Commission of Ethiopia are to ensure peace and justice, promote national unity, and promote reconciliation among Ethiopians.⁹² These objectives are stated in generic terms, rather than in terms of measurable and specific goals. Under the Reconciliation Commission proclamation, the procedure for appointing commission members is enshrined in Article 4. This provision does not state the number of commissioners. Rather, it empowers the government to determine the number of members of the commission. The law states that the chairman, vice-chairman, and other members of the commission will be appointed by the House of Peoples' Representatives upon the recommendation of the Prime Minister.⁹³ The HPR had appointed 41 Ethiopians as commissioners, including His Eminence Cardinal Berhane Yesus Sourafel and Mrs. Yeteneberesh Nigusse as Chairperson and Deputy Chairperson, respectively. However, the law does not specify conditions for being appointed as commissioners.⁹⁴ The law does not provide for eligibility conditions and factors that make a person ineligible for the position, as there was the possibility of including controversial and politically active individuals as commissioners.⁹⁵

The same proclamation provides the mandate of the commission to investigate the causes of conflicts⁹⁶ and promote national unity and reconciliation⁹⁷. However, the provision does not clearly state whether the mandate is limited to only uncovering and recording egregious human rights violations. Article 6 of the law provides both

⁹¹ Supra note 81, pp. 563 <<http://dx.doi.org/10.47348/sacj/v33/i3a3>>, accessed on 16 June 2024. p. 570

⁹² Reconciliation Commission Establishment Proclamation 1102/2018, Article 5

⁹³ Ibid., Article 4(1)

⁹⁴ Supra note 81 pp. 573

⁹⁵ Ibid.

⁹⁶ Proclamation No. 1102/2018, Réconciliation Commission Establishment Proclamation, Article 6 (4)

⁹⁷ Ibid, Article (Art 6 (3) (10)

the mandate of the commission and legal powers, but these two matters should have been addressed in separate provisions.⁹⁸

The ERC has the legal power to search, seize, and have access to archives based on Article 6 (1), (5), (6), (7) and Article 15 of the proclamation. From the reading of the proclamation, the commission has the power to order the presence of anyone; however, it is not clear whether the commission has the power to issue a summons itself. Furthermore, there is no mention of conditional amnesty. In addition, the commission was not empowered to name and identify perpetrators of human rights violations or recommend collective reparation to identified victims.⁹⁹

Most importantly, the period covered by the grave human rights crimes is not included in the establishing proclamation of Ethiopia's Reconciliation Commission. It does not restrict the commission's authority in terms of the time frame from when and up to which it will investigate serious human rights violations. It is important to determine the time frame within which a commission should confine its operation. The lawmakers should specify the period that falls within the ambit of the ERC's temporal jurisdiction.¹⁰⁰ The commission tried to solve this issue through a regulation, but for various reasons, the draft regulation was unable to clear the initial legislative procedure. Later on, the commission decided to investigate the social, political, and human rights violations that were occurring nationwide as of September 12, 1974, as part of its strategic plan. It is unclear why the ERC decided to limit its temporal jurisdiction to the year specified.¹⁰¹ According to Article 14 of the proclamation, the commission's term is set at three years with the option of an extension.¹⁰² The Ethiopian Reconciliation Commission was dissolved three years

⁹⁸ Supra note 80, pp. 563 <<http://dx.doi.org/10.47348/sacj/v33/i3a3>>, p. 575 accessed on 16 June 2024.

⁹⁹ Supra Note 90, pp. 33

¹⁰⁰ supra note 81 pp. 575

¹⁰¹ The Ethiopian Reconciliation Commission Strategic Plan 2020-2022 (2020), p. 2.

¹⁰² Proclamation No. 1102/2018, Reconciliation Commission Establishment Proclamation, Article 14

into its formation by the parliament in February 2022, even though the commission had requested an extension of its term from the HPR. It was ordered to hand over its unused budget and office materials to the newly formed National Dialogue Commission (NDC) and dissolve. The HPR urged the commission to submit a summary of its activities over the past three years.¹⁰³ The Reconciliation Commission was expected to empower victims and collaborate with them to bring peace to Ethiopia, but its term ended without significant achievements. The failure of the commission was largely due to the lack of political commitment, public participation, and consultation, the vague powers and functions of the commission, its relationship with other mechanisms, and the large number of commissioners (41), exceeding the average size of most truth commissions.¹⁰⁴

4.5. National Dialogue Commission (NDC)

The Ethiopian National Dialogue Commission (NDC) Establishment Proclamation No. 1265 /2021 established the Commission, containing 11 members nominated, appointed, and accountable to it by the HPR for a term of three years. The commission's mission is to implement inclusive dialogue on national issues to forge consensus at the national level and identify common ground. It acknowledged differences and disagreements on fundamental national issues, declared that resolving them is necessary, and projected that the ultimate goal is to build national consensus and bolster a culture of trust.¹⁰⁵ It also incorporated fundamental principles of the ND, such as inclusiveness, transparency, credibility, tolerance and mutual respect, rationality, implementation and context-sensitivity, impartial

¹⁰³ Addis Standard, "News: Ethiopian Reconciliation Commission Dissolves - Addis Standard" (Addis Standard, March 1, 2022) <<https://addisstandard.com/news-ethiopian-reconciliation-commission-dissolves/>> accessed on May 22, 2023

¹⁰⁴ Ethiopia Policy Options for Transitional Justice Draft for Stakeholder Consultations" (2023)

¹⁰⁵ Addis Standard, "Commentary: Ethiopian National Dialogue Proclamation: A Camouflage for Monologue? - (September 6, 2022) <<https://addisstandard.com/commentary-the-ethiopian-national-dialogue-proclamation-a-camouflage-for-monologue/>> . Accessed May 22, 2024

facilitator, depth and relevance of agendas, democracy, and rule of law, national interest, and using national traditional knowledge and values.¹⁰⁶

According to Professor Mesfin Araya, NDC commissioner, the National Dialogue is divided into four stages, namely preliminary preparation, preparation, and dialogue. The process and implementation stage will be determined by the results of the dialogues.¹⁰⁷ During the early phases of preparation, the commission met with relevant organisations and had discussions with them. The commission established its secretariat and created the procedural systems needed to choose participants, find debate moderators and facilitators, and create a discussion agenda. To create agenda items, it also organised conversations with input from various society groups. Farmers, pastoralists, academics, professionals, women, young people, religious leaders, political parties, teachers, organisations for people with disabilities, Ethiopians living abroad, and more took part in these discussions.¹⁰⁸ On March 25, 2023, FBC reported that the Ethiopian National Dialogue Commission (ENDC) said it has been working tirelessly to commence the National Dialogue, which is believed to bring lasting solutions to the longstanding problems in June 2023.¹⁰⁹

Even though the commission has made progress in gathering agenda items for consultations across various regions, it is still facing several significant challenges. The process has been criticised for excluding key stakeholders, including major opposition parties and armed groups like the Oromo Liberation Army (OLA) and

¹⁰⁶ The Ethiopian National Dialogue Commission Establishment Proclamation No. 1265 /2021, Article 3

¹⁰⁷ Borkena Ethiopian News, "National Dialogue Commission Entering Next Phase of Work, Faced 'Internal and External Intervention'" (April 27, 2022) < <https://borkena.com/2022/04/26/ethiopia-national-dialogue-commission-entering-next-phase-of-work/> > accessed May 22, 2023

¹⁰⁸ Ethiopian Monitor "Commission Plans to Launch National Dialogue in May" (March 1, 2023) < <https://ethiopianmonitor.com/2023/03/01/commission-plans-to-launch-national-dialogue-in-may> > accessed on May 22, 2024

¹⁰⁹ "Ethiopian National Dialogue Set to Start in June" (Welcome to Fana Broadcasting Corporate S.C., March 25, 2023) < <https://www.fanabc.com/english/ethiopian-national-dialogue-set-to-start-in-june/> > accessed May 22, 2024

Fano. This lack of inclusivity undermines the legitimacy of the dialogue and limits its potential for meaningful change. The unresolved conflicts and deep-seated grievances also make it difficult to create a conducive environment for constructive dialogue. Moreover, the ongoing violence in Amhara, Oromia, and other regions continues to overshadow the dialogue.

4.6. Transitional Justice Policy of the FDRE

As mentioned above, Ethiopia's transitional justice (TJ) policy emerges from a complex historical context marked by successive regimes of violence, from imperial rule to the Derg's Red Terror (1974-1991) and the ethnic federalism period (1991-2018).¹¹⁰ Despite its experience in socio-political transitions in its modern history, Ethiopia has neither designed nor implemented comprehensive and integrated transitional justice mechanisms to systematically deal with the past and craft a better future. In the context of recent transitions, no comprehensive processes have been deployed that have been assessed and provided an independent, accurate, and authoritative account of the types, nature, causes, patterns, and consequences of violent pasts. Following political reforms unveiled in 2018, the government undertook specific measures to address past injustices, grievances, and serious human rights violations. The measures aimed at creating a conducive environment for democratic consolidation: as it was mentioned previously, they included the issuance of an official apology, the establishment of the Reconciliation Commission, the formation of the Identity and Boundary Commission, the enactment of progressive legislations, and the pursuit of institutional reforms that support transitional justice. Yet, the purposes of transitional justice were not fully met; key limitations included failure to anchor and coordinate the process on a holistic framework, and ineffectiveness of the individual measures that were implemented. In its initial report on the war in northern Ethiopia in 2021, the Joint Investigation Team (JIT) provided a proposal for transitional justice, which the government

¹¹⁰ Transitional Justice Policy of the Federal Democratic Republic of Ethiopia (Ministry of Justice, 2023)

accepted. Despite calls from the United Nations, international human rights organisations, and Western countries to permit foreign investigators to investigate human rights violations during the Tigray War, the Ethiopian government plans to establish its transitional justice system. There were 59 public consultations performed nationwide in various locations.¹¹¹ The green paper offers alternatives as a starting point for public consultation, but the choices that are made in the end will depend on a variety of approaches to identifying and fixing the issues with the transitional justice system.¹¹² By soliciting input from many stakeholders, the paper represents a first step towards a locally owned transitional justice program. This furthers Ethiopia's duties under Article 10(3) of the Cessation of Hostilities Agreement (CoHA/Pretoria Agreement), an agreement for lasting peace between the government and the Tigray People's Liberation Front (TPLF). The provision states that the Ethiopian government shall implement a comprehensive national transitional justice policy consistent with the FDRE Constitution and the AU Transitional Justice Policy Framework.¹¹³

As a turning point, the Ministry of Justice introduced a comprehensive TJ policy titled "Transitional Justice Policy of FDRE." It has passed through a rigorous process of drafting, consultation, and validation since November 2022 and was finally adopted by the Council of Ministers in April 2024. This policy aims to deal with the country's violent past through transitional justice. It is the first of its kind in Ethiopia's history and potentially a major step forward in bringing peace. It focuses on the pillars of transitional justice and cross-cutting issues and outlines the role of regional states, federal government offices, and civil society in the implementation process. Victim groups, opposition political parties, transitional justice experts, civil society

¹¹¹ The Reporter Ethiopia, Setting Up Ethiopia's Transitional Justice System to Pardon Or Prosecute | The Reporter | Latest Ethiopian News Today" (March 11, 2023) <<https://www.thereporterethiopia.com/31958/>> accessed May 22, 2024

¹¹² Ibid

¹¹³ Agreement for Lasting Peace Through Permanent Cessation of Hostilities Between the Government Federal Democratic Republic of Ethiopia and the Tigray People's Liberation Front (TPLF) 2022, Article 10(3)

organisations, and representatives of regional and federal courts and justice offices participated in the policy drafting process.

The current policy represents the most comprehensive attempt to address systematic human rights violations that have characterised the nation's modern history.¹¹⁴ The policy is divided into three main sections, the first of which examines Ethiopia's experience with transitional justice and how it relates to the current situation. In the second section, various policy alternatives are analysed for pursuing transitional justice in Ethiopia through various approaches. The final section examines and suggests various institutional arrangements to establish transitional justice systems in Ethiopia.¹¹⁵ To achieve this, the policy incorporates several key components, including criminal accountability, truth-seeking, reparations, institutional reform, and conditional amnesty. Furthermore, by combining traditional justice mechanisms with formal legal processes, this holistic approach seeks to address the complex challenges of the past and build a more just and peaceful future for Ethiopia. However, the traditional mechanisms should be considered in their interventions. In the area of grave human rights violations and gender-based violence, for instance, this traditional mechanism these traditional mechanisms may not be effective in redressing the issues.

4.6.1 Structural Framework of the TJ Policy

As mentioned above, the transitional justice initiative builds upon earlier accountability efforts, particularly the 2021 Joint Investigation Team (JIT) report on the northern conflict which first proposed a comprehensive TJ framework. This locally owned approach, while controversial given allegations of government-imposed limitations, represents an attempt to balance international standards with national ownership. The resulting policy document adopts a tripartite structure:

¹¹⁴ Human Rights Watch, 'Ethiopia: Justice for Past Crimes Key to Future Peace' (2023) <<https://www.hrw.org>> accessed on June 15, 2024

¹¹⁵ Ethiopia Policy Options for Transitional Justice Draft for Stakeholder Consultations" (2023), p. 3

historical analysis of Ethiopia's TJ experiences, an evaluation of policy alternatives, and recommendations for institutional design.¹¹⁶

The FDRE's transitional justice framework adopts a four-pillar approach that mirrors international best practices while attempting to address Ethiopia's unique context.³ The prosecutorial pillar establishes special benches within federal courts to try war crimes and crimes against humanity, drawing on both Ethiopia's criminal code and international law.⁴ However, its narrow focus on individual criminal responsibility risks overlooking structural violence embedded in state institutions.¹¹⁷ The truth-seeking mechanism proposes establishing a five-year Truth and Reconciliation Commission with regional chapters.¹¹⁸ Unlike South Africa's model, Ethiopia's version incorporates traditional conflict resolution mechanisms like the elders' council.¹¹⁹ This hybrid approach attempts to bridge formal justice with indigenous practices, though tensions persist between retributive and restorative justice paradigms.¹²⁰ As we have seen above, Rwanda's experience suggests that hybrid mechanisms may suit Ethiopia's context.¹²¹ The integration of Gacaca community courts with formal prosecutions could balance the breadth and depth of accountability.¹²² However, Ethiopia's larger population and more complex ethnic landscape would require careful adaptation.¹²³

The TJ also incorporates reparations programs that include both individual compensation (medical care, education support) and collective measures (memorials, community development projects).¹²⁴ The policy notably recognises

¹¹⁶ Supra note 116 p. 3

¹¹⁷ K Tronvoll, supra note 65, pp. 45

¹¹⁸ FDRE Transitional Justice Policy, chapter 4

¹¹⁹ S Gebrehiwot, 'Traditional Justice Mechanisms in Ethiopia' (2022) 8 *African Conflict & Peacebuilding Review*, pp. 112

¹²⁰ International Center for Transitional Justice, 'Hybrid Justice Systems in Africa' (2023) 15

¹²¹ P Clark, 'Rwanda's Gacaca Courts' (Oxford University Press 2010) pp. 302

¹²² F Ntoubandi, 'African Approaches to Transitional Justice' (2022), pp.156

¹²³ Supra note 120, part 4

¹²⁴ Ibid. part 7.3

sexual violence victims as a special category, reflecting lessons learned from other post-conflict settings.¹²⁵ In this regard, Ethiopia's TJ should learn from Colombia's transitional justice, which offers relevant lessons on victim centrality.¹²⁶ The 2016 peace accord's comprehensive victim registry and reparations program demonstrates how to operationalise participatory justice at scale.¹²⁷ Ethiopia's policy mentions victim participation but lacks concrete mechanisms for meaningful inclusion.¹²⁸ The policy could leverage Ethiopia's religious institutions as neutral arbiters.¹²⁹ The religious command has moral authority that could bolster truth-seeking efforts, similar to South Africa's use of religious leaders in its TRC process.³² However, the absence of clear funding mechanisms,¹³⁰ the institutional reform component targets security sector overhaul and judicial independence,¹³¹ and the vetting processes for officials implicated in abuses remain contested and raise questions about the sustainability of the reparation.¹³² Furthermore, the joint investigation teams (JIT's) original recommendations, which emphasised victim-centered approaches later diluted in the policy document. This demonstrates how political considerations often override technical best practices during implementation. This pillar's success depends on political will that has historically been lacking during Ethiopia's previous transition attempts.¹³³

4.6.2 Political Economy as Challenges of Implementation

The policy's implementation is also expected to face structural barriers rooted in Ethiopia's governance model.¹³⁴ The ruling Prosperity Party's hegemony creates an inherent tension between pursuing genuine accountability and protecting regime

¹²⁵ UN Women, 'Gender and Transitional Justice in Ethiopia' (2023) policy brief

¹²⁶ K Sikkink, 'The Justice Cascade' (Norton 2011), pp. 189

¹²⁷ International Center for Transitional Justice, 'Colombia Peace Process Lessons' (2023), pp. 22

¹²⁸ Supra note 120, part 6.5

¹²⁹ Ethiopian Inter-Religious Council, 'Statement on National Reconciliation' (2023)

¹³⁰ World Bank, 'Funding Mechanisms for Reparations Programs' (2024) working paper

¹³¹ Supra note 120, Chapter 5

¹³² African Union, 'Guidelines for Security Sector Reform' (2022) para 17

¹³³ M Aalen, 'The Politics of Transition in Ethiopia' (2023) 61 African Affairs, pp. 320

¹³⁴ International Crisis Group, 'Ethiopia's Fragile Transition' Africa Report No 321 (2023)

interests.¹³⁵ The above discussions demonstrate how TJ mechanisms can be instrumentalised. The 2018-2020 reforms initially promised accountability but subsequently saw persecution of selected and targeted elites under the guise of anti-corruption campaigns.¹³⁶ Ethnic federalism also presents complications.¹³⁷ The TJ policy attempts to navigate competing victimhood narratives among more than 86 Ethiopia's ethnic groups.¹³⁸ For instance, the elite of the ruling regime, mainly from the Oromo, emphasise the past human rights abuses and the 2014-2018 protest casualties, while the Amhara elites highlight the EPDRF and recent targeted violence.¹³⁹ The Tigray elites, on the other hand, focused on the recent northern war, causing casualties. This pluralism of grievances risks fragmenting the truth-seeking process into competing ethnic narratives rather than fostering a shared national thinking.¹⁴⁰ The security apparatus also remains a formidable obstacle.¹⁴¹ Military and intelligence institutions are yet to act independently without political influence.¹⁴² Their continued influence undermines prospects for thorough vetting or meaningful institutional transformation.¹⁴³

The TJ consultation process itself revealed structural tensions in Ethiopia's approach to transitional justice. While the 59 public consultations theoretically allowed pluralistic input, civil society reports indicate that marginalised groups like Tigrayan survivors faced participation barriers in government-controlled areas.¹⁴⁴ The green paper's policy alternatives, while comprehensive on paper, were ultimately filtered through the Prosperity Party's political priorities, particularly regarding the treatment

¹³⁵ Alex de Waal, 'The Political Marketplace in Ethiopia' (2023), pp. 89

¹³⁶ Ethiopia Human Rights Council, 'Annual Report on Transitional Justice' (2024), pp. 33

¹³⁷ J Abbink, 'Ethnic Federalism and Conflict in Ethiopia' (2022) 44 *J of Eastern African Studies* 215

¹³⁸ Supra note 120, part 3.4

¹³⁹ Amnesty International, 'Ethiopia: Competing Narratives of Violence' (2024), pp. 12

¹⁴⁰ L Ayalew, 'National Reconciliation in Divided Societies' (2023) 19 *Conflict Resolution Quarterly* 78

¹⁴¹ International Crisis Group, 'Ethiopia's Fragile Transition' Africa Report No 321 (2023)

¹⁴² Ethiopia Human Rights Commission, 'Security Sector Reform Progress Report' (2024)

¹⁴³ T Hagmann, 'The Military in Ethiopian Politics' (2023) 25 *African Security Review* 56

¹⁴⁴ OSCE Office for Democratic Institutions and Human Rights (ODIHR) Report (2023): Available at: <https://www.osce.org/odihr> accessed on 22 April 2025

of security force accountability. This tension between inclusive design and controlled implementation reflects Ethiopia's broader dilemma in reconciling international TJ norms with the ruling system. Accordingly, Ethiopia's TJ policy represents an ambitious framework that, if implemented fully, could address historical grievances more comprehensively than previous attempts.³³ However, its success hinges on overcoming three fundamental tensions: between elite interests and popular demands for justice; between ethnic particularism and national reconciliation; and between retributive and restorative justice approaches.¹⁴⁵ The international community's role requires careful calibration.¹⁴⁶ While technical assistance is valuable, excessive external influence could fuel nationalist backlash, as seen in other African TJ processes.¹⁴⁷ Ultimately, the policy's viability depends on domestic constituencies, particularly victims' groups and civil society, maintaining pressure for genuine implementation beyond symbolic gestures.¹⁴⁸

6. Conclusion and Recommendation

This article explored whether Ethiopia's approach to TJ will effectively address the long-standing grievances and impunity, ultimately contributing to peace, or if it will instead hinder this process. It highlights that Ethiopia's transitional justice efforts remain fragmented and lack the legal coherence needed to achieve meaningful accountability, reconciliation, and sustainable peace. The past mechanisms, from the Red Terror trials to the dissolved Reconciliation Commission, have suffered from political manipulation, selective justice, and weak institutionalisation, while the current Transitional Justice Policy risks failure without stronger legal foundations. To establish an effective framework, first, Ethiopia is expected to enact comprehensive transitional justice legislation to codify the TJ Policy into binding law, ensuring judicial enforceability and compliance with constitutional rights as

¹⁴⁵ A de Waal, 'The Political Marketplace in Ethiopia' (2023) 89

¹⁴⁶ UN Security Council Resolution 2456 (2023) in Ethiopia

¹⁴⁷ L Vinjamuri, 'International Justice and Local Politics' (2023) 67 International Organisation 405

¹⁴⁸ Ethiopian Civil Society Network for Transitional Justice, 'Policy Monitoring Report' (2024)

well as international standards, including the UN and AU Transitional Justice Framework. This should be accompanied by the creation of hybrid judicial mechanisms, through specialised chambers within domestic courts that incorporate international expertise to ensure impartial prosecutions for atrocity crimes.

A properly empowered truth commission with robust investigative authority should be established to systematically examine violations across different historical periods, identify responsible parties, and recommend appropriate reparations. A victim-centred reparations program should be implemented through sustainable funding mechanisms, including recovered assets, to provide meaningful redress. The outcomes of national dialogue processes require a formal legal status to ensure their implementation rather than remaining symbolic gestures. Furthermore, rigorous vetting processes for public officials, along with security sector reforms that align with international human rights standards, should be instituted to prevent the recycling of perpetrators into positions of authority. Without these interconnected legal and institutional reforms, Ethiopia's transitional justice process will remain fundamentally compromised. This will perpetuate cycles of impunity rather than establishing the foundation for genuine reconciliation through a balanced approach that harmonises the demands of justice with the necessities of peacebuilding.

Therefore, this article highlights the need for credible accountability, inclusive dialogue, and institutional reform of TJ as essential foundations for breaking cycles of human rights violations and impunity. By drawing comparative insights from transitional justice models such as South Africa's TRC, Rwanda's Gacaca courts, and the ICTY, the article draws the importance of contextual adaptation rather than direct transplantation of external models that ultimately positions Ethiopia's transitional justice journey as a test of its ability to balance justice with healing.

Conflict of Interest

The author declares no conflict of interest.