

Alternative Implementation Strategies for Ethiopian Transitional Justice Policy: Towards Silencing the Gun

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Abstract

Over the last few years, Ethiopia has witnessed a gamut of mass atrocity and violence. Following the 2022 Agreement for Lasting Peace and Cessation of Hostilities signed by the Government of the Federal Democratic Republic of Ethiopia and the Tigray Peoples' Liberation Front, also referred to as the Pretoria Agreement, the Ethiopian government committed itself to lift the country out of the crisis and recently adopted a nation-wide Transitional Justice Policy. The transitional justice policy promised to address past violations and bring about a more just and peaceful society. While adopting a Transitional Justice (TJ) Policy can be a stepping stone, it cannot bring the desired sustainable peace unless backed by a strong political commitment, capacity and a fertile ground for its implementation. Against this backdrop, this piece seeks to contribute to the ongoing debates in relation to how, and the extent to which, the adopted transitional justice policy could serve the desired purpose. In so doing, the paper makes a content analysis of relevant policy instruments as primary source of data and other literatures as secondary sources. The paper finds that the transitional justice policy of Ethiopia has a potential to create a conducive environment for building a sustainable peace and stability in the country. However, there are several challenges that may arise during the implementation of the policy. The transitional justice commission will need to work closely with relevant stakeholders to ensure that the challenges are addressed and that the process is successful.

Keywords: Ethiopia, implementation, Transitional justice policy, sustainable peace

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1. Introduction

The human history is characterized by both conflict and peace. Large or small, there is no any democratic state on earth which fully freed itself from violence and atrocities. The degree of stability of States is measured not necessarily by their ability of ensuring zero-violence. It rather highly rests on the extent to which they approached the resolution of conflicts they founded themselves in. States have used varieties of mechanisms to restore peace and security in times of need. Transitional justice one among such mechanisms. A better understanding of transitional justice is possible with knowing its contents, purposes and modalities of its implementation. As a result, there is no consensus in the literature as to what really a transitional justice is.

In the context of the United Nations and the African Union Transitional Justice Policy, transitional justice constitutes the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation.³ This stems from Article 4(o) of the Constitutive Act of the AU which calls for peaceful resolution of conflicts, respect for the sanctity of human life and the condemnation and rejection of impunity. These measures are intended to address past human rights violations, divisions, and inequalities, and to create conditions for security, democracy, and socio-economic transformation.

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³ The 2019 AU Transitional Justice Policy, Adopted at the 32nd Ordinary Session of the Assembly of the Union in Addis Ababa, Ethiopia, Article 19, available at [36541-doc-au_tj_policy_eng_web.pdf](#). The AUTJP builds on the AU Policy on Post-Conflict Reconstruction and Development as one of the key policies aimed at realizing Aspiration 3 of Agenda 2063.

The idea of transitional justice is not a recent concept in Ethiopia. It has been practiced in various forms at different times. The post-2018 reforms enabled the revision of major legal and policy reforms that contributed to human rights violations in Ethiopia. Likewise, the government acknowledged the violations committed before 2018 under the EPRDF regime and established the Reconciliation Commission in December 2018.¹ The Commission was mandated to address multi-layered grievances; identify and ascertain the nature, cause, and dimension of the violated rights; and provide both victims and perpetrators a platform for truth-telling and acknowledgment.² The establishment of the Ethiopian National Dialogue Commission is another aspect of TJ effort in Ethiopia. Another major achievement is the recent adoption of a TJ Policy by the Ethiopian government, which can be considered as a renewal of the government's normative commitments to the promotion and protection of justice, accountability, human and peoples' rights. The transitional justice initiatives in Ethiopia are diversified with no interconnectedness. So far, the country adopted incomplete, disjointed, and contradictory measures instead of a holistic and complementary approach. The objective of this piece is to unpack the transitional justice policy of Ethiopia and forward possible policy implementation directions for policymakers, implementers and other concerned stakeholders. This paper is organized in three sections. The first section sets the scene by introducing the subject matter of transitional justice. Section two presents the details of the recent TJ Policy of Ethiopia, how it is compared to the AUTJ Policy and the workable policy directions Ethiopia should go for. The third section forwards the main conclusions and the way forward.

2. The 2024 Transitional Justice Policy of Ethiopia: A Critical Review

The current TJ Policy of Ethiopia stemmed from Article 10(3) of the Agreement for Lasting Peace and Cessation of Hostilities signed by the Government of the Federal Democratic Republic of Ethiopia and the Tigray Peoples' Liberation Front on 2 November 2022. Article 10(3) of the Agreement states that "the Government of Ethiopia shall implement a comprehensive national transitional justice policy aimed at accountability, ascertaining the truth, redress for victims, reconciliation, and healing, consistent with the Constitution of FDRE and the African Union Transitional Justice Policy Framework." The Pretoria Agreement, which was primarily brokered by the African Union, called for the peaceful resolution of conflicts in the country and it proposed the adoption of TJ Policy as a way forward.

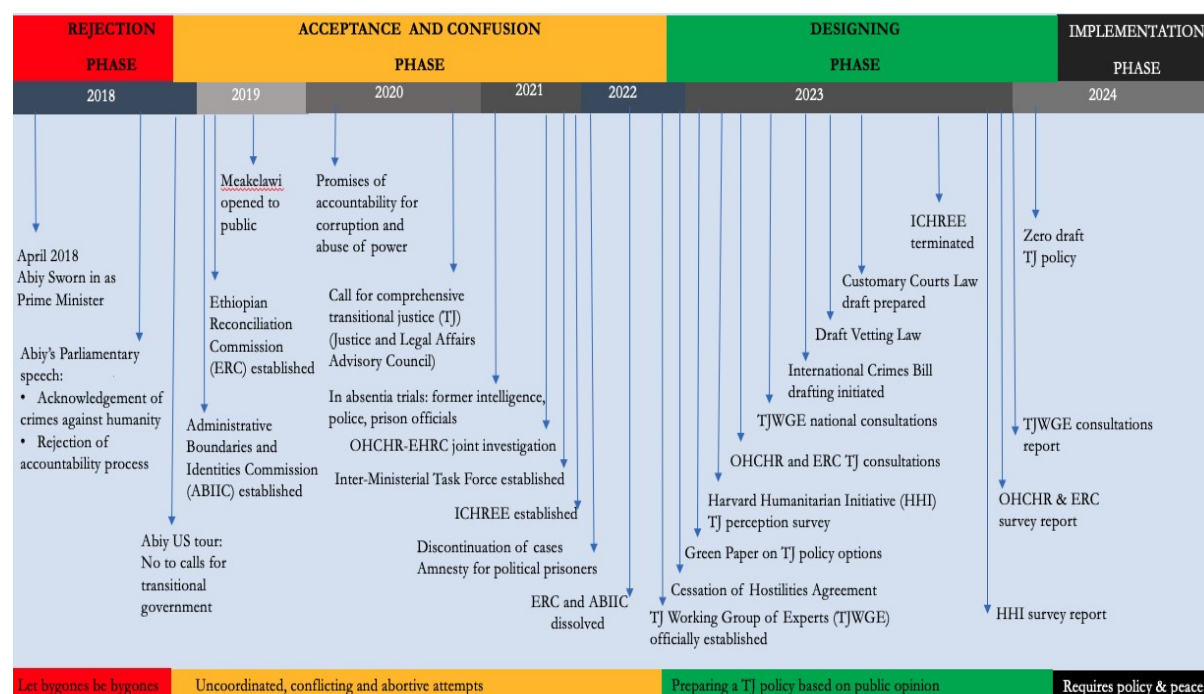


Figure 1: Evolution of Ethiopia's transitional justice process since 2018; Source: Institute for Security Studies

¹ Zekarias Beshah Abebe, As Ethiopia Moves Forward with its Transitional Justice Initiative, Challenges Abound, Global Observatory, 2 April 2024. Available at [As Ethiopia Moves Forward With Its Transitional Justice Initiative, Challenges Abound | IPI Global Observatory \(theglobalobservatory.org\)](https://www.globalobservatory.org/).

² *Id.*

The Policy, according to the Ministry of Justice is anchored on ten (10) indicative elements. These include truth telling, national reconciliation, accountability, reparations, traditional justice mechanisms, and institutional reforms, amongst others and they are all imbedded in the traditionally known four pillars of transitional justice. These are the Truth and Reconciliation Commission (TRC), Reparations, Judicial and traditional Accountability.

2.1. Determination of Offenders and the Offences

One of the objectives of the TJ Policy of Ethiopia is to subject offenders to investigation and prosecution thereby ensuring accountability for the committed atrocities. Accountability in this context has two perspectives. The first one is about which category of offenders should be investigated and prosecuted while the second one is concerned with which offences should be investigated and prosecuted.

At this juncture, it is valid to question the category of offenders to be investigated and prosecuted. This is necessitated because there are different categories of offenders who participated in violence in various capacities. In principle, no offender should escape justice despite the type of offence committed and whosoever transgresses the law and should be held accountable for his actions. However, it will be hardly possible and less feasible to conduct investigations and prosecutions on all offenders in a poor country like Ethiopia.

Implementing transitional justice hinges not only on political will, but also on capacity.¹ It is better to focus on most responsible offenders rather than chasing all the offenders. This is because of time, finance, expertise, and space constraints to investigate and prosecute all offenders. This approach is in line with the principle of transitional justice, which aims to hold the most responsible perpetrators accountable for their actions. By focusing on the most responsible offenders, the transitional justice process can ensure that justice is served to the victims and the perpetrators are held accountable for their crimes. This can dissuade others from committing similar crimes in the future. In addition, it is possible to use other alternative mechanisms for those offenders who have participated in less grave crimes, or those involved in the crimes out of ignorance, want, fear of persecution, fraud and any other psychological, physical and financial undue influences.

The other critical issue is concerning the types of offences to be investigated. In principle, it may deem necessary to investigate and prosecute all human rights violations, including less severe violations, as these can also have a significant impact on the social cohesion and trust building process. However, it is practically difficult to initiate investigation for all offences. Accordingly, due attention should be given to the investigation offences which constitute gross human rights violations such as war crimes, crimes against humanity, torture, indiscriminate killings, rape² and the destruction of property.³ It has to be noted here that what constitutes gross human rights violations is subject to interpretation. 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.⁴ 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 is highly important to identify and ascertain 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'.⁵ Hence, it is possible to manage minor crimes/violations through amnesty/pardon; training and counselling.

2.2. Institutional arrangement for investigation and prosecution

There might be suspicions on the independence and competence of the existing justice machineries in Ethiopia in properly handling serious national issues like transitional justice. The existing police, prosecution, and judiciary organs may have only a limited capacity and trustworthiness for investigating and prosecuting the gross violations of rights and freedoms. In such cases, the AU TJ Policy also suggests that where national courts lack capacity and the confidence of affected communities, steps should be taken to use special courts, extraordinary

¹ Institute for Security Studies, available at [Does Ethiopia's transitional justice amount to quasi-compliance? | ISS Africa](https://www.iss-africa.org/does-ethiopia-s-transitional-justice-amount-to-quasi-compliance/). Accessed on 18 May 2024.

² Article 86 of the AU TJ Policy suggests that there should be no limitation to the full investigation and prosecution of serious violations, notably those specified under Article 4(h) of the Constitutive Act of the AU, including sexual and gender-based violations.

³ The provisions of the FDRE Constitution can be considered as a benchmark in this regard. Article 28(1) of the 1995 FDRE Constitution states that "Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ." This, however, is not to mean that only those crimes listed under Article 28 are investigated and prosecuted.

⁴ [Document2 \(usip.org\)](https://www.usip.org/document2)

⁵ [Document2 \(usip.org\)](https://www.usip.org/document2)

chambers or hybrid courts that bring in the required capacity and legitimacy to ensure the support and confidence of affected members of society, including victims on all sides of the conflict.¹ Accordingly, the policy's suggestion for the establishment of a new investigation institution is commendable. However, for the Ethiopian people and the rest of the international community to have a confidence in the system, it is important to ensure the inclusivity, and independence of the institutions to be established. This includes both the privilege to be free from unwanted interferences in their jobs as well as budgetary independence.

2.3. Truth-seeking and reconciliation

A TJ must move beyond the punitive to more restorative, comprehensive, and holistic TJ model.² Emphasizing only on criminal accountability process and punishing offenders would not achieve lasting peace³ and reconciliation simply because they sideline the truth-seeking, healing, reconciliation and reparation elements.⁴ Truth-seeking refers to a non-judicial inquiry that focuses on finding what human rights wrongs had occurred and determining the facts (extent of grievance sustained); it furthermore entails proper acknowledgment of the wrongdoing.⁵ A genuine commitment to truth and reconciliation could inform how to deal with the trauma and wounds of the past by ensuring that past human rights violations are accounted for in a manner that respects and protects the dignity of survivors and their relatives without threatening future peace and security.⁶

Hence, truth-seeking and reconciliation is needed for all gross human rights violations, socio-economic, political and economic injustices, history, national identity and other similar concerns. As discussed in the aforementioned paragraphs, other less serious issues may be addressed using indigenous mechanisms. With respect to its institutional aspect, the existing institutions are unfit to ensure a just truth and reconciliation. Accordingly, the establishment of a new truth and reconciliation commission is commendable. Another equally pressing issue is on which subject matters the truth-seeking will be conducted. As it might be practically difficult to seek-truth and reconciliation on all types of violations, it is advisable to focus on felonies like crimes against humanity, genocide, rape, ethnic-cleansing.

In terms of truth-seeking institution, the establishing a new inclusive truth-seeking commission is advisable. The existing institutions/commissions might not be dependable to conduct the transitional justice in an effective and efficient manner.

2.4. Conditional amnesty

Amnesty is one of the ways forward because amnesty can play a role in helping to promote peace and stability in a society but it's also important to ensure that the process is carried out in a fair and transparent manner, considering the needs and concerns of victims. However, transitional justice processes should not allow "blanket" or unconditional amnesties that prevent investigations, particularly of the most serious crimes referred to in Article 4(h) of the AU Constitutive Act.⁷ Granting amnesty without any precondition is equal to letting the perpetrators free and allowing them to reap the fruits of their crimes.

While granting amnesty, the common criteria for eligibility or ineligibility should be the gravity of the crime. Accordingly, all persons who participated as a principal offender, as a mastermind, as a planner or executor in gross violations of human rights such as crimes against humanity, torture, war crime and genocide shall not benefit from amnesty. On the other hand, those who involved in less serious crimes should be entitled to amnesty. Those who were forced to participate in the violations or who participated in lesser degree with lack of knowledge or for benefits, and who have never participated in the commissions of heinous crimes like crimes against humanity, war crimes, rapes, and genocide should be eligible for amnesty. Concerning an institution to be entrusted with the task, it is preferable to establish an inclusive, independent and genuine amnesty organ.

¹ AU TJ Policy, *supra* note 1, Article 78.

² Jima Dilbo Denbel, Transitional Justice in the Context of Ethiopia, International Letters of Social and Humanistic Sciences, Vol. 10, available at [\(PDF\) Transitional Justice in the Context of Ethiopia \(researchgate.net\)](https://www.researchgate.net/publication/354444444), accessed on 18 May 2024.

³ See EHRC/OHCHR's Joint Advisory Note and Key Findings stemming from Community Consultations on Transitional Justice to inform the development of a Transitional Justice Policy Framework for Ethiopia, 15 December 2022, Addis Ababa. Available at [Advisory-Note-TJ-by-EHRC-OHCHR.pdf \(un.org\)](https://www.un.org/ehrc/files/Advisory-Note-TJ-by-EHRC-OHCHR.pdf).

⁴ Policy Options for Transitional Justice, Ethiopia, Draft Stakeholders Consultations, January 2023. Available at [Transitional Justice Policy Directions \(justiceinfo.net\)](https://www.justiceinfo.net/).

⁵ *Id.*

⁶ Jima Dilbo Denbel, Transitional Justice in the Context of Ethiopia, International Letters of Social and Humanistic Sciences, Vol. 10, available at [\(PDF\) Transitional Justice in the Context of Ethiopia \(researchgate.net\)](https://www.researchgate.net/publication/354444444), accessed on 18 May 2024.

⁷ See Article 91 of the AU TJ Policy, *supra* note 1.

2.5. Reparation

Reparation is needed for all victims, but given the country's reality, it is not affordable to give reparation/pay compensations for all kinds of victims. Accordingly, those civilians who are displaced from their livelihoods, and persons whose family members and relatives were martyred or disabled as result of the atrocities must be prioritized and re-settled. Then, individual reparation/compensations should be addressed secondly; followed by the group reparations/compensations. The mode of reparation could be financial, provision of basics such as food, water, clothing and medications. In addition, the atrocities need a proper psycho-social support.

2.6. Institutional reform

A serious institutional reform is needed in order to uproot the causes of the gross violations of human rights and freedoms in the country. The reform, must start with human right and democracy institutions, and justice machineries because these are the main guardians of fundamental rights and freedoms. Other institutions should follow gradually.

2.7. The role of indigenous institutions in the TJ Process

Indigenous justice mechanisms are effective in redressing the atrocities in Ethiopia. This is in compliance with the AU Transitional Justice Policy which recognizes traditional and complementary justice mechanisms as the local processes, including rituals, which communities use for adjudicating disputes and for restoring the loss caused through violence in accordance with established community-based norms and practices.¹ They include traditional adjudicative processes such as clan or customary courts and community-based dialogue.² This can help ensuring the neutrality and impartiality of the transitional justice process. Therefore, when designing transition justice mechanisms in Ethiopia, it is important to consider the traditional justice system and religious institutions to the extent that they are free from any political inclination and are able to serve as a trusted broker for resolving conflict.

3. Conclusion and the way forward

History teaches us that there has never been a flawless transitional justice process globally. When it comes to ending such violence as those in Ethiopia, what matters the most is the political determination on all side. With that, a properly tailored and implemented transitional justice process in Ethiopia has the potential to promote healing, reconciliation and peaceful coexistence. By adopting a TJ Policy, Ethiopia paved the way for healing, justice, and sustainable peace for generations to come. Now that the TJ Policy is adopted, it is important for Ethiopia to promulgate enabling legislation, simplify administrative processes and eliminate obstacles to the implementation of the policy. Before reaping the fruits of the transition process, building trust among diverse ethnic and political groups, ensuring the independence and effectiveness of transitional justice mechanisms, and navigating complex historical narratives are among the hurdles that lie ahead.

This has to be supported by ensuring the effective participation of all stakeholders in all process of the transition. Addressing the root causes of violence in the country, and establishing institutional arrangements that are effective, transparent and accountable. Therefore, the TJ should result in establishing inclusive, competent and impartial institutions tasked with investigating and resolving the root causes of violence in Ethiopia.

Currently, there are ongoing conflicts in different parts of Ethiopia. Unless the guns are silenced in all corners of the country, the process cannot move to the final implementation phase. This is in line with the AUTJP which provides that the peace process element of TJ seeks to bring an end to any ongoing violence, remove the threats of further violence impacting affected populations, and the provision of protection and security guarantees to civilians in the conflict or violence-affected areas. Likewise, the State has to fulfill its primary responsibility of protecting civilians and ensuring that similar violations do not happen in the future.

¹ *Id.* Article 18

² *Id.*