

TOPIC BRIEF

Transitional Government vs. Transitional Justice: Is a transitional government a necessary precondition for a successful transitional justice?

June 2023

Transitional justice plays a positive role in state-building and its sustainability through engagement of reconciliation and justice processes. Historically, successive governments and regimes in Ethiopia have eluded genuine reconciliation of past human rights violations, injustices and grievances thus contributing to perpetuation of the vicious cycle in the country. On grounds of renewed commitment however, the current government is working towards implementing a comprehensive human-rights based and victim-centered transitional justice process in dealing with alleged human rights violations that occurred during the Amhara- Tigray Region conflict.

Transitional justice is a comprehensive process that involves prosecution, reconciliation, amnesty, truth-seeking, vetting, reparation, compensation and institutional reforms. Among these, successful prosecutions make the strongest statement against impunity and signal to victims that the new government is committed to make a clean break with an abusive past. This requires dealing with past atrocities and injustices – for every era and region.

According to the joint investigation report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) into the Tigray Region conflict, widespread violations of international human rights, humanitarian and refugee law have been committed by *all* parties involved -some of which may amount to international war crimes and crimes against humanity, to the extent that they are widespread or systematic. For this reason, there are pending concerns on whether the government in power has the political will and assurance to undertake a transitional justice process prior to any form of actual or perceived institutional reform. This is particularly relevant to Ethiopia's context considering the military, police and other security units including prosecution and courts of law were operational at the time of commission of alleged crimes and the process may require prosecution of incumbent government officials.

To this end, some strongly argue that the establishment of an independent transitional government will not only be necessary to prevent the recurrence of future human rights violations but also to exert the required political will needed to ensure accountability and prosecution with clear plans for legal and structural reforms to break free from past repressions. The establishment of a transitional government is also promoted on grounds that it guarantees the participation of representatives of opposing groups in political decision making, potentially reducing the chances of one group becoming dominant. Participation of former enemies in decision-making may be difficult to manage and potentially even cause conflict within the ruling government hence, calling for the formation of a transitional government with shared powers.

Given reports on the nature and extent of atrocities; the multiplicity of offenders and victims; and limited capacity; and legitimacy of government institutions, there are also legitimate questions on the capacity of existing justice sector infrastructure to effectively administer meaningful reconciliation and justice processes including issues of amnesty. The process would, among others, require that the transitional justice framework envisaged by the government takes into account best-suited practices and institutional arrangements appropriate to Ethiopia’s socio-economic context- yet to be identified.



On the contrary, others argue that Ethiopia is not ready to embark on the task of transitional justice on grounds that the current initiative led by the government has not yet won the trust and support of Ethiopia’s diverse social and political groups. The lack of actual initiative to transition from either war or human rights violations particularly in the border areas of the Tigray Region including Oromia Region are amongst reasons cited for continued mistrust in the transitional justice process. This has placed the country in continued fragility given the protracted unrest and inter-ethnic clashes entailing further atrocities that add to the complex nature of coming to terms with the past as is.

While developing a holistic and complementary policy framework tailored to the Ethiopian context is bound to address past issues of incoherence and ineffectiveness in this regard, equally important is the need to ensure meaningful victims and public participation in the process. The application of amnesty as a mechanism of transitional justice with respect to persons who took part in past atrocities is one such controversial issue that needs legitimacy in its application. As the process is not a blanket provision, it requires mandated institutions to implement such decisions in a transparent and impartial manner.

There are, however, concerns on the genuine political commitment of the government to facilitate and ensure the participation of opposition groups and other stakeholders in the discussion of the transitional justice policy options. The current government is yet to extend beyond warring and non-warring parties in its deliberation of transitional justice framework and involve marginalized groups such as the youth, women, and minorities and internally displaced to afford opportunities to discuss choices of measures in Ethiopia’s transitional justice process - *prosecution*, *reconciliation* (including establishing the whole truth), *memorialization* and *reparation* towards the attainment of lasting peace.

The debate on the topic was organized by DHLO in partnership with USAID/OTI ESP. *Habegar Debates* hosted the event **9th September, 2023 in Addis Ababa** between *Abreham Haimanot (PhD)* and *Alemaw Kifle (PhD)* with *Mahlet Abreham* moderating.

Here is the link to the full debate video.

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