

A GLIMPSE AT TRANSITIONAL JUSTICE: **MECHANISMS AND PRINCIPLES**

TRANSITIONAL JUSTICE ATTEMPTS IN ETHIOPIA
FROM PROSECUTION TO THE RC



Outline

Two Parts:

Part one:

- Dealing with Legacies of Repressive Past: Optional or Imperative?
- Transitional Justice
- Goals
- Mechanisms
- Principles

Transitional Justice in Ethiopia

- Post-Derg
- Post-EPRDF

Dealing with the Past: TJ?

The issue of how to deal with the past egregious human rights violations arises when a country is in transitional process

TJ: often associated with periods of political change: transition

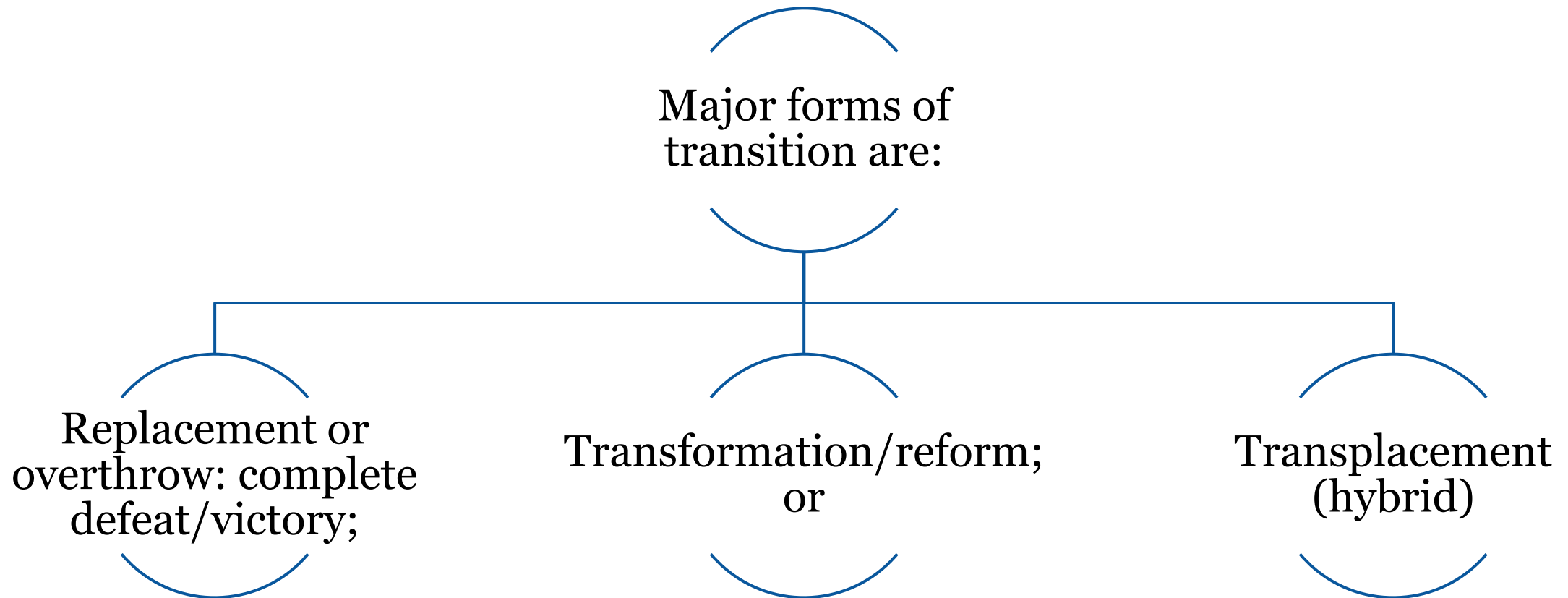
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What is transition?

Models?

The mode/nature of transition often influence the policy choice and decision on how to come to terms with the past

Modes of Transition



Transition

Rather than referencing a particular time period, **transition** in this policy refers to the journey of societies with legacies of violent conflicts, systemic or gross violations of human and peoples' rights towards a state of sustainable peace, justice and democratic order. (AUTJP)

Dealing with the Past: Necessary or Optional

At the early stage of the genealogy of TJ:

- Reckoning with an atrocious past was deprioritized, delayed or even abandoned altogether.
- DwP viewed as obstacles to reconciliation and peacebuilding;
- Opening old wounds generates political instability and interferes with forward-looking political change
- Let bygones be bygones and move forward
- Better not awaken the ghost of the past

Disrepair/Rupture



Cont'd

Physical Infrastructure in Disrepair (Syria)



Disrepair (Ethiopia)



Cont'd



Cont'd



Cont'd



Gross Violations

Human Cost



Human Cost



Cont'd



Cont'd

Human Cost



Torture/Wefelala



IDPS

Displacement



IDPS



DwP Necessary

The past must be addressed in order to reach the future

There is consensus on the necessity of dealing with the oppressive pasts by employing appropriate transitional justice mechanisms

Ignoring past gross human rights violations is not anymore a viable option to start democratization process

Repressive past should not be left unconfroted for to bury egregious past wrongs is a recipe for similar future abuses

Looking Backward to Move Forward



Formal mechanisms cannot help confront past adequately

Bypassing them inevitable

Hence, charting TJ necessary

TJ Framework: UN

- ICCPR,
- ICSECR
- CAT
- Geneva and Hague Conventions,
- Genocide Convention
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Rights of the Child;
- The Convention on the Rights of Persons with Disabilities

- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations adopted by General Assembly resolution 60/147 of 16 December 2005
- The set of principles for the protection and promotion of human rights through action to combat impunity of 1997 and the updated version of those principles 2005
- Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies 2004, 2011.
- Guidance note of the Secretary-General on the United Nations approach to transitional justice of 19 April 2010
- Rule of law tools for post-conflict societies (prosecution to vetting) conceptual and analytical works of OHCHR
- Transforming our world: the 2030 Agenda for Sustainable Development

AU's TJ Framework

The African Charter on Human and Peoples' Rights

Constitutive Act of the African Union

The African Charter on the Rights and Welfare of the Child

The Maputo Protocol

Kampala Convention

Protocol establishing the Peace and Security Council of the AU

AU Transitional Justice Policy

Adopted 2019 in Addis Ababa

Agenda 2063: the Africa We Want

The AU Post-Conflict Reconstruction and Development Policy of 2006

TJ: Definition



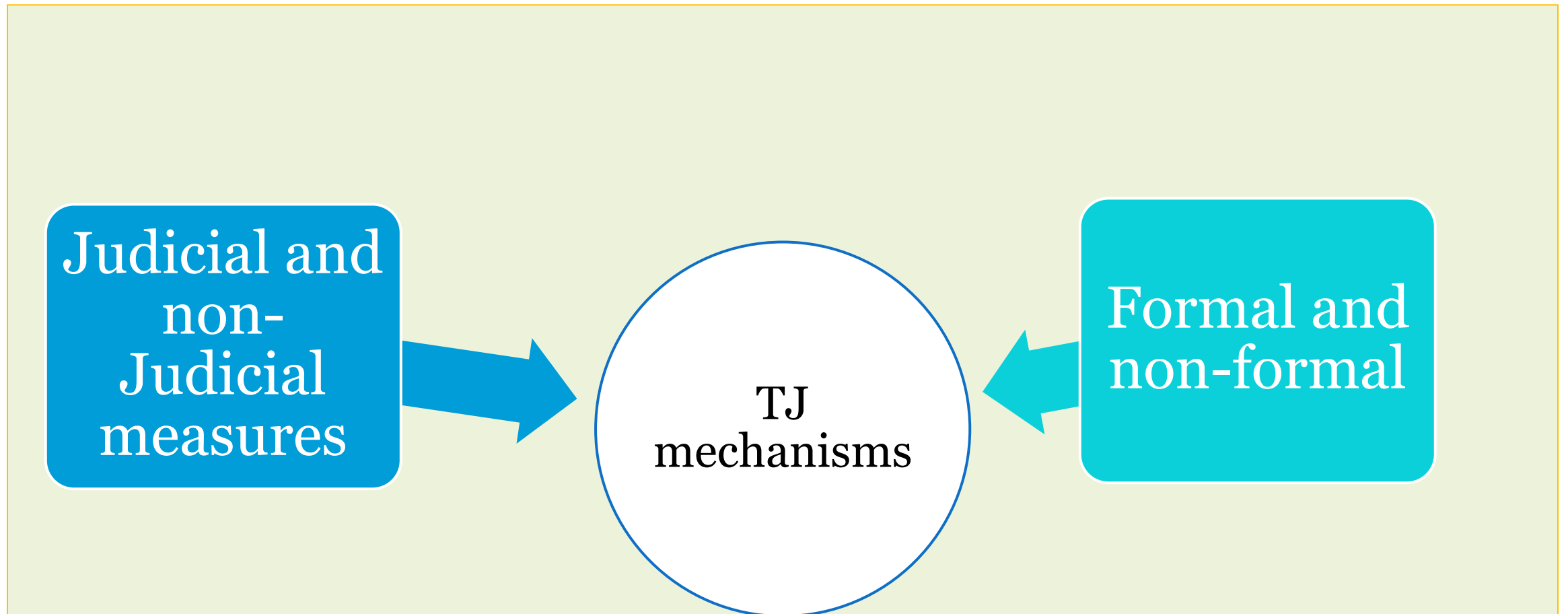
the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof. (UNSG Report 2004)

AU



- Transitional justice refers to 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.

Elements



Goals of TJ Mechanisms

The
mechanism
goals
include:

- justice;
- Seeking and establishing official *truth*;
- Acknowledgement* ;
- Reparation*
- Promoting **reconciliation/peace**;
- Initiating reform
- Guarantees non-recurrence?
Transformative

TJ Mechanisms

Mechanisms

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graph TD; A[Mechanisms] --- B[Accountability]; A --- C[Truth-seeking]; A --- D[Reparation]; A --- E[Conditional Amnesty]; A --- F[Institutional and Legal Reform];
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Accountability

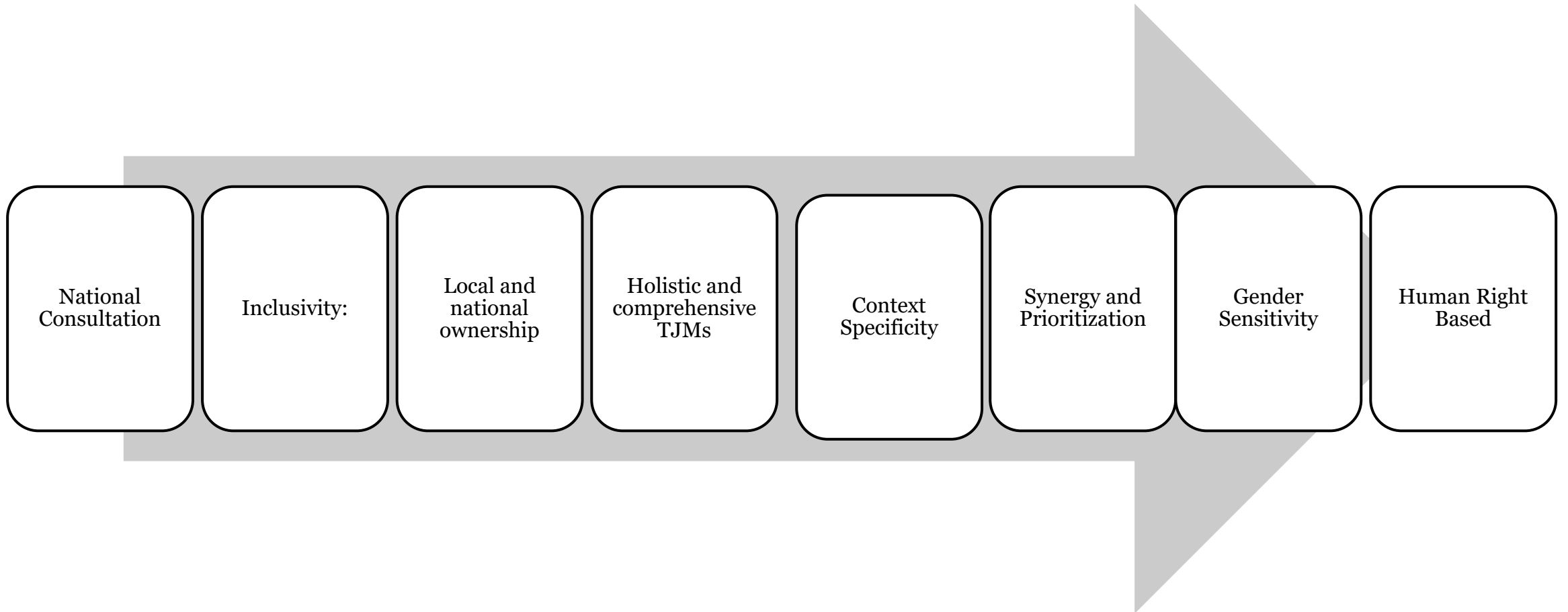
Truth-seeking

Reparation

Conditional
Amnesty

Institutional
and Legal
Reform

Principles



National Consultation: As TJ Pillar

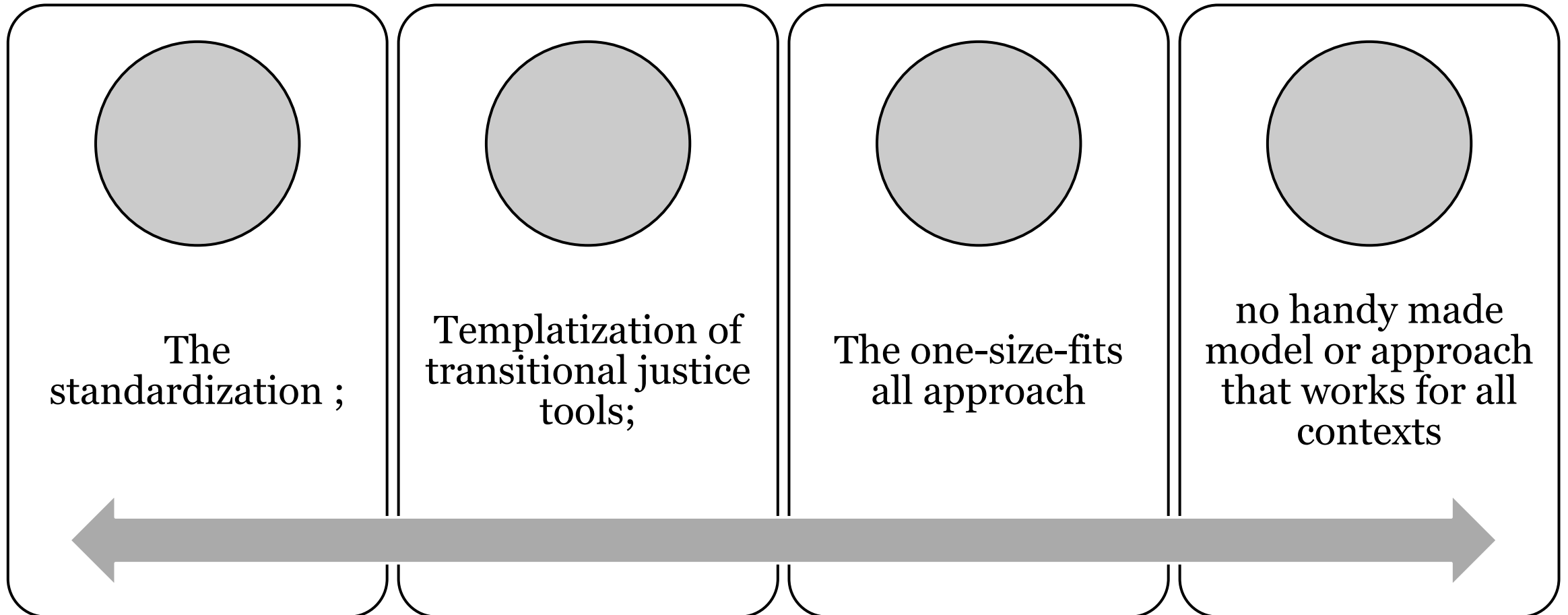
The most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out.

Local consultation enables a better understanding of the dynamics of past conflict, patterns of discrimination and types of victims. (UNSG, Report, 2014, Para 16)

National consultations are a critical element of the human rights-based approach to transitional justice...

Public participation reveals the needs of communities affected by conflict or repressive rule, allowing States to craft an appropriate context-specific transitional justice programme (UNSG, Guidance Notes, 2010, P. 9)

Context Specificity



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Our perspectives are off kilter...we consider our justice as the only justice...we don't create mechanisms by which we can consider the cultural and customary approaches to justice within the region (David Crane, the former Prosecutor of the SCS)

Too often, the emphasis has been on foreign experts, foreign models and foreign-conceived solutions to the detriment of durable improvements and sustainable capacity (UNSG Report 2004 due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition. (UNSG Report 2014, para 36)

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The only thing which applies to every post-violence transition is the need to address the issue of reconciliation

Contextualization, Tailoring to Local needs, context and realities

Transformative

The choice of TJ should be context-specific, drawing on society's conceptions and needs of justice and reconciliation (AUTJP)

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Transitional Justice in Ethiopia

From Derg to Post-EPRDF



Post 1991 Transition: From Derg to EPRDF

2023/01/20

The TG adopted **criminal accountability** as the main transitional justice mechanism

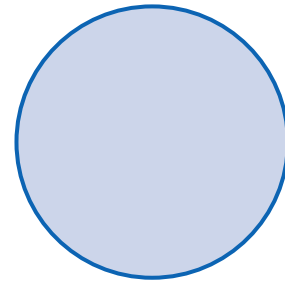


Special Public Prosecution Office was established in 1992



No special tribunal established for this purpose: Cases filled before the ordinary courts.

Mandate of the SPPO



The SPPO was entrusted with an ambitious two-fold mandate:

- To investigate and prosecute Derg crimes; and
- To establish a historical record of the gross human rights violations.



Reckoning with Derg Crimes

Extensive Criminal Prosecution

- Conducted massive criminal accountability
- Over 3000 convicted
- Over 1200 for politicide and other crimes
- Protracted: 17 years plus?
- Legal and institutional reforms

Terror on Trial



Limitations

Narrow
and
incomplete
mechanism

Selective

Legal
deficiency

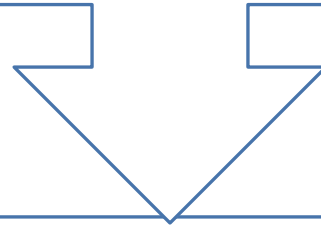
State of the
justice
sector

Protracted

Offenders
oriented

Ethiopia's Current Transitional Process: Mechanisms Charted

Prime Minister Abiy and his administration have adopted several TJ mechanisms to confront the repressive past:



These range from:

Official apology

Amnesty

Reconciliation
Commission,

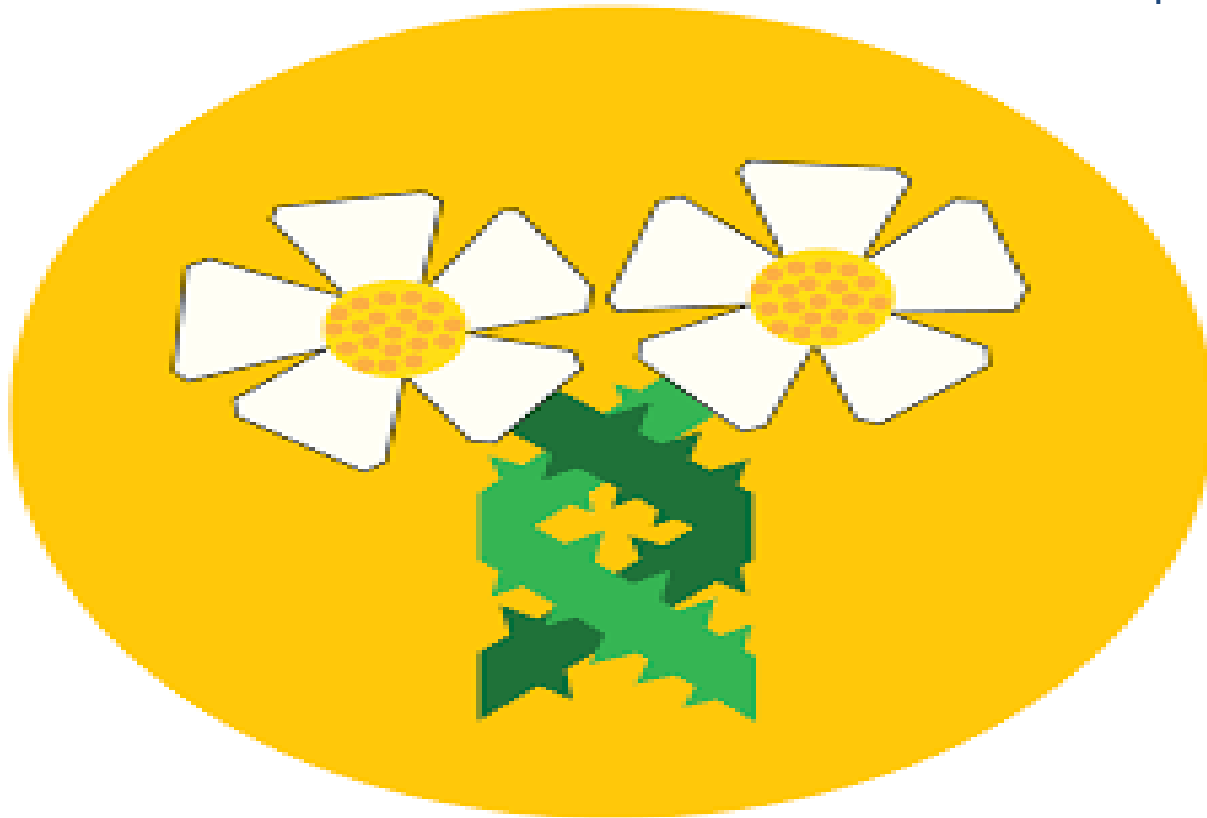
Criminal
Prosecutions to

Legal and
institutional
reforms

Now Ethiopia's
National
Dialogue
Commission

Establishment of the ERC

Motto: ይቅር ለሰላም



ERC

- Established on 25 December 2018 by the law-making organ.
- The first of its kind in Ethiopia
- It is commendable that the new administration took a policy decision to establish the much sought for truth-finding mechanism
- However, there are several limitations

Establishment and Composition

Not participatory

41 Commissioners

The appointment too was conducted without proper public consultation

Appointment parameters: merit and/or representation?

Inclusion of controversial and politically active individuals



Mandate: Subject matter Jurisdiction

The mandates of the Commission not well defined.

Three pronged:

- National dialogue;
- Conflict resolution;
- Gross human rights

Limitations of Past TJ Initiatives IN Ethiopia

Designing process: not based on consultations (ERC, NDC)

Lack of integration and Synergy

Prioritization?

The state of the national justice system;

Legal deficiency: CAH

Context specificity: roles of TMCR?

Political context

Cyclic Violence and Violations..

Ethiopia's atrocious and repressive past not well addressed, processed;

Denial, silencing, competing narrations; amnesia not challenged not replaced;

Ruptured relationship not repaired, rule of law not restored

Hence violence, and violations continued



THANK YOU

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