

NDC AND TRANSITIONAL JUSTICE PROCESSES IN ETHIOPIA: CONTEXTS, COMMONALITIES, INTERFACES AND KEY DISTINCTIONS

TRANSITIONAL JUSTICE WORKING GROUP OF EXPERTS

1. CONTEXTS IN WHICH BOTH PROCESSES ARE INITIATED

National Dialogue Commission

- ♣ Established against background of difference of opinions/disagreements among political and opinion leaders/gov't/segments of society on fund. national issues;
- ♣ Strives to:
 1. resolve the issues:
 - a) by identifying root causes of differences on fundamental national issues;
 - b) crafting different agendas, engaging in a process of broad-based/inclusive public dialogue/consultations;
 2. engender national consensus;
 3. support implem. of recommendations made by dialogues;
 4. eventually lay social and pol. foundations on the basis of which
 - a) current problems can be solved in a sustainable manner;
 - b) conducive env't is created for building of a democratic system, lasting peace, state building;

Ethiopia's Transitional Justice Process

- ♣ Initiated against the background of the need for dealing with:
 - 1) unaddressed legacies of the past (serious and widespread abuses/human rights violations) (whatever their causes) and organizing the future;
 - 2) and put a break to the vicious cycle of violence leading to rights violations, and to install justice;
- ♣ Strives to achieve objective:
 - 1) by developing a comprehensive/integrated TJ policy;
 - 2) anchored on pillars of justice/accountability, reconciliation, human rights, and inclusiveness;

2. WHY A TRANSITIONAL JUSTICE INITIATIVE NOW

- ♣ Agenda promoted by the GoE:
 - 1) MoJ brought seasoned experts on TJ - 2021; study carried out;
 - 2) established the TJWGE – November 2022;
 - 3) TJ roll out recommended by JIT-EHRC/OHCHR (Nov.3 2021);
 - 4) CoHA with TPLF: need for operationalizing TJ (Nov.2 2022);
- ♣ In principle, it could be submitted that Eth's path to address legacies of the past/continued violations (serious/widespread abuses) should be charted within the framework of national dialogues and specific recommendations of TJ offered in that context. This is legitimate.
- ♣ However, it is also possible to pursue both processes concurrently - with clearer articulation of the boundaries, temporal scope, and specific focus/objectives. There is nothing wrong about such approach.

- ♣ More importantly, there are also pressing imperatives that require the immediate deployment of a TJ process in Ethiopia.
 - 1) stratum/volume of unattended violations of rights - and the legal/political/moral pressure;
 - 2) TJ roll out recommended by JIT-EHRC/OHCHR (Nov.3 2021) - which the GoE accepted - could not be extended for a long period without raising objection from internal and external stakeholders;
 - 3) the CoHA with TPLF: specific obligation on operationalizing TJ (Nov.2 2022) creates immediately enforceable legal and political demand;
 - 4) the right to effective remedy of victims: while a pile of criminal investigations have been pursued in the context of violations committed in the past 3 years (associated to the conflict in North), no significant measures (prosecution and judicial) have been pursued;
 - this approach was adopted to give way to considerations of TJ as a means of addressing the issues in a more comprehensive/sustainable way;
 - it would be a disdain to elements of justice to pend the case for longer period, for example, until such time when the DC undertakes consultations and indicates TJ as a suitable pathway; inherently, DC process needs time, careful thread;
 - instead, it is more pragmatic and just for GoE to use its policy making power - to consider TJ as a means of attending to such complex issues;

3. Interface between JT and ND process- differences and commonalities

General:

- ♣ There are many countries that undertook national dialogue and transitional justice process simultaneously or sequentially or at different times.
- ♣ They are seen as different processes with some converging elements that complement each other.
- ♣ When they are implemented simultaneously, countries need need strategies to ensure complementarity with each other and with other political processes (such as peace processes) about timing, sequencing, constituency building to ensure one does not compromise the other.

Scope and objectives:

- ♣ Both are largely complementary mechanisms: work towards the establishment of sustainable peace, democracy and political order/nation-building; to look at the past/present (issues, grievances, abuses, matters of disagreement/contention etc.) and organize the future on stronger foundations;
- ♣ ND endeavors to achieve objective mainly by focusing on dialogue on contested issues to create national consensus, and recommend specific pathways;
- ♣ TJ endeavors to contribute to the objective mainly by focusing on justice/accountability for past/continued violations of rights and mass abuses

- ♣ ND aims at identifying root causes of differences on fundamental national issues to create a new political dispensation marked by mutual trust
- ♣ TJ Principal objectives are justice and reconciliation but have various functions for political settlement through complementary application of prosecution, truth seeking, reconciliation, Amnesty, reparation for gross human rights violations and institutional reform

Institutional arrangement

- ♣ Successful ND processes, depending on the type of transition, are led by independent structures such as national dialogue commissions
- ♣ TJ processes are mostly led by Truth commissions (more than 40 in the world so far) and court systems for prosecutions including National courts, Ad-hoc international tribunals established by the United Nations Security Council (the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR)), ad-hoc mixed or hybrid tribunals (as with those for Cambodia and Sierra Leone) and in the permanent international courts (the International Criminal Court, ICC)

Truth finding and reconciliation

- ♣ Perhaps the most converging element
- ♣ TJ best truth commissions produce dialogue across all major groups in society, in particular through public hearings and the publication of a final report meant to contain impartial conclusions and recommendations for redress and prevention the main aim of which is to uncover the truth about past abuses and promote healing by establishing a common baseline of facts verified by truth finding processes
- ♣ ND: brings together representatives of the public and key groups and tackle sensitive issues about the past and future that essential to fostering reconciliation and consensus, building trust among rival groups, fashioning a new social covenant and contract, establishing a set of political rules to govern society and forging a shared national identity and vision.
- ♣ TJ: mostly involves victims, victims' families, perpetrators and witnesses of serious human rights violations whereas ND has a broader

Institutional and legal reform

- ♣ Both processes can recommend institutional reform
- ♣ TJ: focuses on reform the most abusive institutions - of laws, codes of conduct, symbols, rules of engagement and personnel –to 'public institutions that helped perpetuate serious human rights violations and guarantee of non-recurrence
- ♣ ND: are dialogues designed to play a role in the writing a new social contract or the reform of major defects in an existing document and TJA process might make recommendations for constitutional reform

4. Approach taken by the green paper

- ♣ The green paper is cognizant of multiple national processes and institutions that have related mandate with TJ.
- ♣ It provided options whereby new mechanisms are established to undertake TJA related tasks or assign some elements to existing institutions with some modification to their mandate and institutional set up- and enumerated the strengths and weaknesses of each option
- ♣ The National dialogue commission is presented as an institutional option to undertake TJA components of truth seeking, reconciliation and collective reparation
- ♣ Issues such as incompatibility with international best practice, already stretched institutions with broad mandates and responsibilities, issue of competence and capacity are mentions as weaknesses of that option.