

Dear Dr. Tadesse,

Thank you for sharing the “Ethiopia Policy Options for Transitional Justice” paper with us and for giving us the opportunity to provide input. As you had requested during our visit to Addis Ababa in early August, we have a few suggestions and observations that may be helpful as you embark on this process. This note reflects the considered views of several transitional justice experts within the U.S. government and is offered in the spirit of friendship, given the long partnership between our two nations. We would be happy to continue to engage with you and your colleagues on these issues as your process evolves.

Macro Comments

This white paper is an extremely important undertaking as you begin the transitional justice process that is envisaged by the Cessation of Hostilities Agreement and that will be so essential to Ethiopia’s future. The paper offers a comprehensive overview of Ethiopia’s transitional justice options and demonstrates a deep understanding of the complex issues at play. It reflects much of the most current transitional justice theory while also recognizing the need for context-specific responses. The fact that you and your colleagues have taken such care in collecting these views reflects an understanding that launching a genuine, inclusive, and comprehensive process will be essential to the instantiation of democracy, the rule of law, and a lasting peace. This is a future that will benefit all Ethiopians.

We appreciate the report acknowledges Ethiopia has little experience with transitional justice, despite multiple political transitions and periods of extreme violence. It is also welcome that the authors recognize the acute institutional needs; the importance of taking victims’ and survivors’ views into account and including them in all phases of design and implementation; and the benefits of obtaining technical assistance as Ethiopia embarks on this process. The paper is quite straightforward on these points.

We also appreciate the dilemma you face between establishing new institutions versus repurposing existing institutions (including your own, but also the National Dialogue and Ethiopian Human Rights Commission).

Likewise, the question of the temporal scope of any process is a difficult one. Different transitional justice institutions can adopt different timeframes, with prosecutions potentially focused on the most recent events, while a truth-telling

process delves into past circumstances to better understand historical grievances and how a lack of historical justice has influenced current events.

Finally, as you anticipate, we would encourage further exploration of how traditional dispute resolution mechanisms might be integrated into the process given the vast diversity of Ethiopia, so long as their use is consistent with Ethiopia's constitution and international law obligations.

With all those general comments above, a few thoughts on the specific components of any integrated transitional justice process as you move from this conceptual paper to institution building and implementation:

Criminal Prosecutions

The white paper recognizes that some criminal accountability for the commission of grave international crimes will be critical to any transitional justice process. There are clearly a number of difficult questions ahead about which cases, incidents, and perpetrators to prioritize. The paper articulates some skepticism about an exclusive focus on retributive justice. This is reasonable, and any transitional justice response in Ethiopia will certainly require more than prosecutions. However, as the paper notes, prosecution may be the preferred pathway with regard to some of the most serious offenses, consistent with Ethiopia's constitution and international law obligations. It is something the victims will demand, even if the process cannot possibly respond to all potentially prosecutable conduct.

The idea of a dedicated international crimes bench is intriguing and promising. This is a model that has been used elsewhere to good effect (e.g., Bosnia-Herzegovina), and we think it could be appropriate and advantageous in your situation. Such a dedicated chamber could consolidate expertise, ensuring that all personnel were fully versed in the conflict and applicable laws, and streamline proceedings. We would encourage you to explore options for incorporating international personnel, even if they only serve in an advisory capacity. Some victims might feel more comfortable with an international presence, and it would help build capacity, overcome perceptions of bias, and enhance the legitimacy of the process in the eyes of many stakeholders.

We are glad that you are calling for the incorporation of crimes against humanity into the penal code, and for it to be applied in a way that is consistent with Article 15 of the ICCPR, which suggests a way to overcome any retroactivity defenses.

This legal route has been successfully utilized in Europe, so there may be some European jurists who can advise as needed. The United States Congress is also considering a draft crimes against humanity bill, and amendments to our statutes addressing war crimes and torture, so I will keep you posted as these efforts progress here.

Amnesty

The report notes several times that an amnesty of some sort may ultimately play a part in any transitional justice program. We applaud the acknowledgement that any amnesty must be individualized (versus collective or blanket) and conditional (versus automatic) and recommend against any attempts to weaken Article 28 of the Ethiopian Constitution, which is consistent with international law and best practices in preventing amnesties for those who stand accused of committing grave international crimes. The establishment of a dedicated institution to manage any appeals for amnesty is wise, as opposed to relying upon the earlier amnesty board, which seems tainted by the failure of previous efforts. There are some interesting models of conditional amnesties throughout the world (for example, in Colombia), which require perpetrators to testify truthfully about their involvement in abuses, commit to community service, forgo certain professional roles, and respond to the needs of their victims. We would be happy to connect you to others working on this same issue to gather ideas that might work for your own situation.

Truth Commission

The paper notes several times that previous truth commissions in Ethiopia were not successful, but I encourage you not to let that reality be a deterrent to establishing some sort of truth-telling process. One hallmark of the northern Ethiopia conflict is the dearth of truthful accounts of what has happened and the proliferation of dis- and misinformation and extremist narratives. There is a clear need to establish a shared factual record and allow victims and witnesses to tell their stories and to have their suffering be formally acknowledged. In addition, truth commissions often generate valuable recommendations for other transitional justice responses (such as reparations), institutional reform, and guarantees of non-repetition. We would be happy to connect you to personnel who have contributed to successful truth commissions elsewhere around the world. The Gambia has just concluded an excellent process; other examples include Colombia, Peru, East Timor, and Sierra Leone. If you do decide to go this route, as with a dedicated bench, I would

encourage you to try to include international personnel for the reasons articulated above.

Reconciliation

Reconciliation is not something that can be forced or imposed from the outside, or from above, but rather is something that individual victims (or perpetrators) must choose for themselves. Transitional justice institutions, however, can create spaces and circumstances in which people feel moved to reconcile. Programs that encourage dialogue, healing, and acknowledgement in communities may be helpful, but ultimately, such communities must be free to make the decision to reconcile for themselves.

Reparations

Many victims and survivors see some form of restorative justice or reparative process as essential to any transitional justice program to reflect, and respond to, their financial, familial, and other losses. That said, there are many ways one can try to make communities whole, including through psycho-social rehabilitation, restitution of property, memorialization, and communal or symbolic reparations. It is most important, perhaps, not to create heightened financial expectations that cannot be satisfied by existing resources.

Conclusion

In closing, we were heartened to see the prominent place that transitional justice commitments play in the Cessation of Hostilities Agreement and stand ready to assist as you sift through the options you have identified and move toward implementation. There are several organizations with extensive experience on these issues that may be helpful as you work through these questions, recognizing that each society must ultimately craft the most appropriate response given the needs and priorities of the affected societies and the unique national history. The International Center for Transitional Justice (ICTJ) could be a useful partner, particularly as you undertake comparative analyses of other societies that have undergone transitional justice processes to both avoid the pitfalls of previous efforts but also benefit from emerging best practices. The Institute for Integrated Transitions, which has experience in Colombia, also works on the design of transitional justice systems within peace negotiations. We would be happy to make introductions and look for ways to foster technical assistance, as appropriate.

Most importantly, we commend you for launching a broadly consultative process with all stakeholders—including a role for the international community, which cares deeply about these issues and the future of Ethiopia. Truly understanding the needs, priorities, and preferences of the Ethiopian people will ensure any process you put into motion will convey a sense of justice, foster rehabilitation and reconciliation, and be responsive to those who have been most affected by the violence of the past.

Please do not hesitate to reach out to discuss any of this. We stand ready to assist as you deem most helpful. I hope we can stay in touch on these issues going forward.

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