



የኢትዮጵያ ሲቪል ማህበረሰብ ድርጅቶች ምክር ቤት
ETHIOPIAN CIVIL SOCIETY ORGANIZATIONS COUNCIL



USAID
FROM THE AMERICAN PEOPLE

Policy Brief Prepared Based on the Civil Society Organizations' Input on the Draft Ethiopia Transitional Justice Policy Options

Prepared by the Ethiopian Civil Society Organization Council

Addis Ababa

May 2023

Feteh (Justice) Activity
IN ETHIOPIA

This policy brief was made possible through the support of the American people through the United States Agency for International Development (USAID). The content and opinions expressed in this document in no way reflect the views of the USAID.

Contents

Acronyms	1
1. Executive Summary	3
2. Background	3
3. Objectives of the Policy Brief	4
4. Methodology/Approach	4
5. General conditions for TJ	5
5.1. Transition	5
5.2. Political Commitment	6
5.3. Trust	7
5.4. Inclusivity	7
5.5. Gender justice	8
5.6. Vulnerable Groups	8
5.7. Principles of Selection	8
6. TJ, Owners, Principal Players, and Commissions	8
6.1. Commission and Tribunals	9
6.2. Government	9
6.3. Political parties and non-state actors	10
6.4. Civil Societies	10
6.5. Indigenous Knowledge and Approaches	10
7. TJ Timeframe: post war or all conflicts?	11
8. Federalism and Constitutional Issues	12
9. Institutional reform	12
10. International and Comparative Dimensions of TJ	13
11. The Transitional Justice Options	15
11.1. Truth-seeking	15
11.2. Reparations	15
11.3. Prosecution	16
11.4. Amnesty	16
11.5. Cross-cutting Issues for Policy Options and Implementation	16
12. General Conclusions and Recommendations	17
12.1. General Conclusions	17
12.2. General Recommendations	17

Acronyms

ACSO	Authority for Civil Society Organizations
AUTJP	The African Union Transitional Justice Policy
CSOs	Civil Society Organizations
ECSOC	The Ethiopian Civil Society Organizations Council
EHRC	Ethiopian Human Rights Commission
GBV	Gender Based Violence
IDPs	Internally Displaced Persons
MoJ	The Ministry of Justice
NDC	National Dialogue Commission
POTJ	Policy Options for Transitional Justice
PWDs	Persons with Disabilities
TJ	Transitional Justice
TRC	Truth and Reconciliation Commission

1. Executive Summary

The Ethiopian Civil Society Organizations Council (ECSOC) is established in December 2020 based on Article 85 of the CSOs Proclamation No 1113/2019. ECSOC is the apex body legally representing over 4500 civil society organisations, consortia and associations registered with the Authority for Civil Society Organizations (ACSO). The Council has the mandate to represent and coordinate the civil society organization (CSO) sector in Ethiopia. It is governed through the full participation of all CSOs in Ethiopia and operates as a wholly independent institution. ECSOC plays multi-dimensional roles in supporting the CSO sector which can be broadly categorised as CSO sector representation; CSO sector coordination; CSO sector self-governance; knowledge production and dissemination; leading advocacy on policy and regulatory reforms; advising ACSO, government and other sectors on CSO matters; protection of the CSO sector; promoting the CSO sector and CSO sector networking.

ECSOC, with the financial support from the *Feteh* (Justice) Activity in Ethiopia has prepared this policy brief to ensure CSO participation in providing input on the draft transitional justice policy options to be incorporated in the final Ethiopian transitional justice policy. Within this context, this policy brief is prepared relying on the inputs collected from CSO Sector by participating various CSOs from different regions through four consultative, one validation workshops and online platforms. In these workshops and online platforms, 285 CSOs took part and provided feedback on the draft transitional justice policy options document. Therefore, this policy brief provides a summary of the core findings transpired in the consultations with CSOs and outlines the salient elements of their views on the potential contents of Transitional Justice (TJ) Policy and the major roles of CSOs in TJ in Ethiopia. It also outlines options to be considered in the future TJ Policy and discussed different challenges and provides recommendations for policy plan and implementation. Befitting its nature, this policy is briefly organized in to sections and sub-sections, starting with objectives and ending with recommendations. Specific recommendations are also given under each section and sub-section.

2. Background

Relying on an extensive TJ research for the purpose, in January 2023, a national task force at the Ministry of Justice (MoJ) developed a draft *Ethiopia: Policy Options for Transitional Justice (POTJ)*, which has been tabled for stakeholder consultations.¹ Since then, a series of consultations are being undertaken at federal, regional and local levels collecting inputs from the various stakeholders. However, CSOs have not been given an opportunity to provide their views on the green paper in an organized manner. Consequently, the ECSOC with the financial support gained from USAID *Feteh* (Justice) Activity took the initiative and organized a number of high-level TJ Consultative meetings to produce this policy brief towards contributing to the formulation of TJ Policy in Ethiopia.

¹ Ethiopia: Policy Options for Transitional Justice Draft for Stakeholder Consultations January 2023

With this objective, initially one expert meeting and four consultative meetings² were organized to collect inputs and views on the draft POTJ prepared by the Expert Team at the MoJ. During the consultative meetings, the POTJ was presented as they were, allowing participants to form their opinions regarding content, form, participation in general, participation of CSOs and other factors of the POTJ. The inputs were collected, analyzed and summarized with the support of high-level expert consultants resulting in this policy brief.

Overall, the participation of CSOs, their experts and leaders were remarkable, showing their commitment, enthusiasm, and high potential in the plan, implementation and the overall success of TJ in Ethiopia as long as genuine TJ is executed. Interestingly, in addition to collection of inputs, the settings had created the opportunity to raise awareness on TJ in general and in Ethiopian context in particular, including content of TJ, state ownership including CSOs, as well as necessary conditions for future policy implementation. The brief has also benefited from the final validation workshop undertaken.

3. Objectives of the Policy Brief

As outlined in the document itself, the POTJ has the objective of collecting inputs from relevant stakeholders. Aligning the objective of the green paper with CSOs, the objectives of this policy brief are the following:

- To collect inputs from CSOs on the content of POTJ and the future TJ Policy for Ethiopia;
- To identify the potential role of CSOs in the development of the future TJ Policy as well as implementation in Ethiopia;
- To raise awareness of CSO leaders and experts on the TJ initiative in Ethiopia.

4. Methodology/Approach

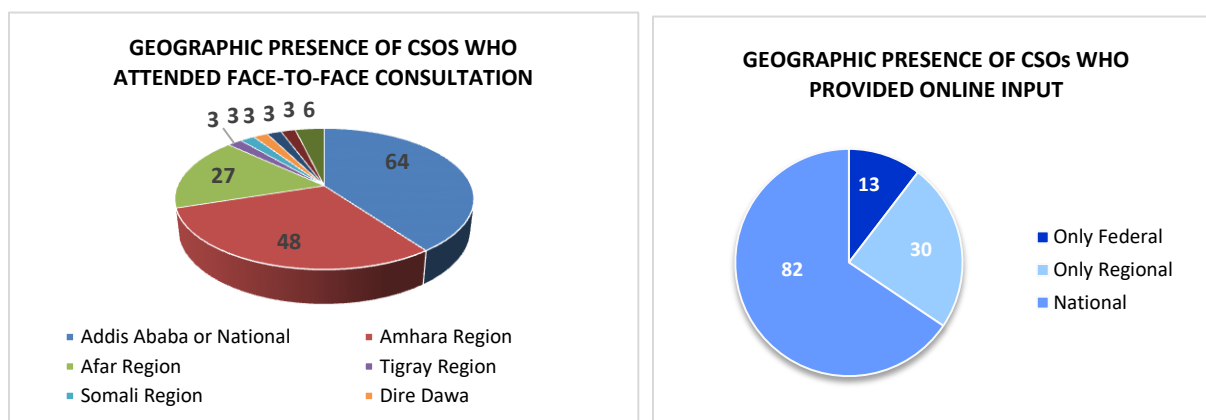
With the above objectives, ECSOC arranged two types of platforms to collect inputs from CSOs. The first one is the face-to-face consultative workshops and the second is a digital Google form shared through online platforms specifically targeting inputs from CSOs. ECSOC collected data by requesting participants of each workshop to fill out and reply to a list of questions distributed during the workshops as well as through an online survey of open-ended questions distributed by email and shared on targeted social media platforms to CSOs.³

² One expert meeting was held in Addis Ababa on April 26, 2023. At the meeting, the green paper was presented by a member of the team of experts who drafted POTJ document. Two consultative meetings with were held in Addis Ababa on May 9, 2023 to collect inputs and views from high level representatives of civil society organisations. Additional two meetings with civil societies were held in Dese and Semera on May 15, 2023.

³ The full draft of the Ethiopian POTJ document is available at ECSOC website <http://ecsoc.net/index.php/ecsoc-resources> & The input collection online survey (Google form) is available at: <https://forms.gle/BvFncPFutqpbPEET9>

Participants of these high-level consultative meetings and online platforms were principally civil societies in Ethiopia engaged in all sectors including developmental, peace building, democracy, gender and inclusions (with focuses on persons with disabilities or internally displaced persons), and human rights activities. ECSOC also ensured the participation of CSOs working on vulnerable groups by including them in the invitation list on the basis of purposive sampling which was reviewed by *Feteh's* team to ensure the participation of all voices in the POTJ.

ECSOC received inputs from the face-to-face consultations where 160 CSOs participated (96 were from regions) and the online survey where additional thoughts and inputs were collected from 125 CSOs. In general, inputs from a total of 285 CSOs were collected from two city administrations (Addis Ababa and Dire Dawa) and five regional states namely, Addis Ababa, Diredawa, Somalia, Benishangul Gumuz, Oromia, Tigray and Gambela.



The next sections show major discussion made and the inputs/recommendations forwarded from the CSO sector per concept listed in the draft POTJ document organized in sections and sub-sections. Specific recommendations are also given under each section and sub-section.

5. General conditions for TJ

For a successful TJ in Ethiopia, i.e., designing a good TJ policy as well as ensuring a successful implementation of the same, a number of preconditions are set. Major prerequisites that were emphasized in the consultations include: transition, political commitment, trust, inclusivity, gender justice, inclusion of the vulnerable, and principles of selection.

5.1. Transition

TJ involves a series of processes and mechanisms. However, there are many basic assumptions underpinning this transformative potential and processes of TJ. One is the assumption that for TJ to operate there has to be a transition from authoritarianism to democracy, from conflict to peace, from rights violations to rights-conscious system and so on. In short, for TJ to be meaningful there has to be a transition in values, standards, institutions, practices, and so on. This means that ‘transition’ is one of the fundamental questions of TJ policy.

In Ethiopia today, the fear is that, except political rhetoric and mere verbal or written statements, the Ethiopian state might have not transitioned to speak of TJ. Whatever forms of past violations, Ethiopia might have not transitioned to a sustainable peace, inter-communal tolerance and respect, democracy, development, strong institutions and so on. This means that if transition is absent, then the likelihood of TJ to succeed is suspect. Moreover, TJ should not create unrealistic hopes since its failure might have serious counterproductive effects.

Hence, the TJ initiative in Ethiopia should ascertain whether Ethiopia has transitioned. Among the questions that should be raised and addressed in TJ plan include:

- Is TJ possible without transition to sustainable peace, democracy and rule of law?
- Might TJ work in active conflicts or in situations where mass human rights violations and atrocities are still going on?
- Can TJ interventions lead to transition?

Recommendations include:

- Assessment has to be carried out if there is (real) transition that is conducive to TJ;
- Assuming that there are weaknesses in the transition, efforts should be exerted to bring about transition, using persuasion, advocacy or other peaceful ways of compelling transition;
- As part and urgent matter of transition, the government should adhere to rule of law and ensure minimum human security before any process of TJ.

5.2. Political Commitment

There might be normative commitments relating to peace, accountability, reparations and reconciliation, in the sense of stating them in policy instruments by government. But political commitment requires commitment in action and practice and not just words, statements and policy documents. Indeed, there are some actions and inactions that might worry stakeholders of peace and democracy. For instance, in the recent ‘award ceremony’ between the federal government and TPLF, there is little acknowledgment of victims of the war who are in millions. There has not been any genuine forgiveness sought from victims of both sides; officials from both sides appear immune to the atrocities and rights violations; there has not been transparency in the peace process and agreement; officials implicated in atrocities and human rights violations are being promoted and appointed. These are not signs of commitment to TJ. Hence, stakeholders have reason to be concerned of whether the TJ and POTJ remain a show or a tactical policy to counter international pressure.

Recommendations include:

- On the road to TJ, governmental commitment has to be shown not only just in policy but also in practice;
- The government should refrain from actions and inactions that would preempt future policy actions of TJ;

- Officials and individuals with apparent evidence of involvement in atrocities and international crimes should not be promoted in any form.

5.3. Trust

TJ normally relies on social trust in the application of its various instruments and processes. The design and implementation of POTJ requires societal confidence and trust. In the absence of trust, collection of evidence and finding the truth, mass dialogue, inter-communal forgiveness, faith in future accountability and so on are unlikely to occur. The question is now whether people and political actors have confidence in government, the ordinary regulatory systems including the criminal justice and in the establishment of new institutions for TJ. There is also a great concern if there is trust among the various political factions and groups. These are issues which are being raised repeatedly by the public at large and require urgent actions even before adopting a full-fledged TJ policy. In this connection, the two general questions posed by participants are:

- Is there trust amenable for TJ between the various levels of government on one hand and communities on the other, particularly of victims?
- Are there confidence and trust among communities, political factions, and other groups to undertake TJ?

Recommendations include:

- In order to build trust upon the government, it is necessary to quickly develop and start implementing confidence building interim measures;
- Taking confidence-building measures should not wait for the TJ policy. They should start by working on the need to ensure peace and security and maintain rule of law, to extent possible, throughout the country.

5.4. Inclusivity

In preparation as well as implementation processes, the more inclusive the TJ system, the higher its legitimacy would be. Diversification and wider participation should begin by implementing a bottom-up approach and including various perspectives to improve the reach and local ownership of TJ. Thus, gender, disability, culture, ethnicity, religion, traditional leaders, elders, urban, rural, regions, and other forms of diversity are normally the voices of various interests that should not be neglected. Affirming this approach, for instance, the African Union TJ Policy (AUTJP) says TJ requires a “consultative and inclusive process that guarantees participation of national stakeholders from all sides and sections of society with particular attention to the voice of victims and freedom of expression.” As a result, TJ shall not be a set of activities at the top level with seeming reconciliation; rather it should be of communities, grass-roots level participation in peace, reconciliation, etc. As the AUTJP emphasizes and as reflected by CSOs, TJ inclusivity is required not only in the technical approaches but also in ensuring inclusive justice, i.e. victims as well as perpetrators should participate, and TJ should be victim sensitive. For example, forgiveness and amnesty should be given by communities and not politicians at the top. Reconciliation requires people-to-people engagement but not politicians claiming to forgive and forget.

Inclusivity requires a national platform for the active involvement of affected communities and other sectors of society, and above all bringing those who are responsible for violations of rights to face justice.

5.5. Gender justice

Among the frequently raised inclusivity concerns, the concerns of women stand out. Women should extensively participate in the various capacities, as victims, as peace and democracy builders, and as owners of the TJ processes. Women have been affected to a larger degree by the atrocities and crimes of the past and the present – one example being the recent civil war that was characterized by a wide range of gender based violence (GBV), which might amount to crimes against humanity. A number of women organizations that could contribute to the TJ in the forms of ensuring accountability to GBV crimes, healing the wounds of victims of GBV, and reforming institutions to be conscious of the concerns of women, have to participate. Women’s participation has to be ensured in the whole process of TJ, through both substantive and formal participation, in planning and implementation.

5.6. Vulnerable Groups

In determination and implementation of the TJ options, for example, in choosing either to prosecute or forgive, the crimes committed against vulnerable groups and their rehabilitation should be taken into account. Those perpetrators that committed atrocities and violations against these vulnerable groups such as children, people with disabilities, and elders should be brought to account.

5.7. Principles of Selection

While the POTJ appears to have the overall objective of transition from conflict to democracy, it was put on the table after the Pretoria Agreement. This creates doubt as to whether it will be even handed in addressing all conflicts in the country. The question relates to the intent of addressing the conflict in Tigray *per se* or in others parts of the country. Does the POTJ even handedly address all victims such as including victims in other parts of the country? Is there a geographical implication to the implementation of TJ in Ethiopia? Moreover, is POTJ free from victor’s justice, like in the 1960s and 1980s, such as focusing on atrocities and crimes committed by one side and not the other?

Overall, the recommendation is that the selection of the various TJ options must be guided by principles including even handedness, fairness, equality, and consistency, taking into account the interests of victims, peace, and democracy.

6. TJ, Owners, Principal Players, and Commissions

This is among the areas which were widely commented on by participant CSOs, and the following points were raised:

6.1. Commission and Tribunals

The civil societies acknowledge the economic burden and the challenges of managing TJ through too many commissions and tribunals, particularly if new ones are to be created. Accordingly, the options whether to use existing institutions or one or several new commissions for the various policy options have been investigated in the consultations. There is an acknowledgment that existing institutions might be used owing principally to resource limitations but also out of necessity for interconnectedness of some of the options and other factors. However, if existing commissions and tribunals are used to any one or several of the TJ actions, it is important to make sure that they have resources, independence and are staffed with people of independence, integrity and competence, with the participation of independent actors. Still some legal reforms are necessary with the existing institutions such as the granting of amnesty and pardon, which are currently under the control of government but should be independent.

On the other hand, lack of independence, competence, and legitimacy and other factors against existing commissions such as the current National Dialogue Commission (NDC) gravitate towards the establishment of new commissions. Informed by the historical failures and trust deficits on the incumbent institutions, the establishment of a new Truth and Reconciliation Commission is obviously necessitated for truth-seeking, achieving reconciliation, granting amnesty and implementing reparation programs.

Particularly for the option of accountability and prosecution, unlike commissions (such as NDC and the Ethiopian Human Rights Commission (EHRC)), existing police and prosecution offices might have been implicated in past atrocities and crimes, and some might have yet to answer to their involvement. Thus, new independent and special investigation and prosecution offices might be necessary, to be organized for example in consultation with civil societies, the academia and other independent actors. But courts might also be suffering from public trust deficits due to real or perceived lack of independence and political partisanship. Setting aside the issue of internationalizing for later sections, the establishment of a dedicated special bench for this specific process, assignment of judges, the provision of training to judges and assistants should be part of the institutional reform for TJ. While representation is important, principal criteria in staffing of investigation and prosecution offices and tribunals shall be: vetting, competence, integrity, public confidence, and so on.

Ultimately, ensuring legitimacy, effectiveness and accountability of such commissions, offices and tribunals require political commitment.

6.2. Government

TJ is principally a response by a state, and the state is a crucial player in any form of TJ, in planning as well as implementation. Without governmental commitment (mentioned earlier) and ownership, TJ cannot happen. However, there is a general fear that incumbents often use TJ to gain more legitimacy instead of ensuring accountability. Likewise, the incumbent in Ethiopia is alleged to be responsible for some crimes, and there might be fear that it might not honor its obligations and enforce accountability of its individual members. Moreover, the POTJ appears to imply

excluding prosecution, and this predetermined approach might not help build trust upon the government for accountability.

6.3. Political parties and non-state actors

There is no indication in the POTJ that principal actors such as political parties and other non-state actors have been part of the preparation of the TJ options. Without the participation of political parties and non-state actors as representing communities, as victims, as well as perpetrators, success in TJ policy implementation might become difficult. Of course, there is always the risk of polarization and politicization with their involvement, and balancing their participation with the participation of communities can be considered as a better option. Similarly, the public and communities should be among the major players, and designing a mechanism to ensure the participation of other actors such as the diaspora could make the process complete.

In this connection, it is recommended that:

- There should be a mapping of political parties and non-state actors that could impact on the plan and success of TJ;
- This mapping should include armed groups, the media, and cultural institutions.

6.4. Civil Societies

TJ and the civil society sector are inseparable. CSOs are crucial particularly in the implementation of the future policy, and therefore their roles should clearly be spelled out to be included in the future TJ policy. The absence of the role of CSOs in the POTJ is among the most commented aspect of the POTJ, since it lacks any meaningful clause regarding the potential participation of CSOs in the TJ process. Among the common recommendations of the consultations is that the TJ Policy should clearly spell out the role of CSOs in policy development, in the formation of formal institutions such as commissions, and in the implementation of TJ options. Among the areas identified for participation of CSOs include:

- CSOs have experience with grassroots, humanitarian activities, advocacy works, and so on which are useful in planning and implementation of TJ;
- Awareness raising at grassroots could be undertaken by CSOs;
- Truth-seeking could be better accomplished if trustworthy CSOs meaningfully engage to enhance social participation in support of the role of statutory commissions.

6.5. Indigenous Knowledge and Approaches

It is not clear to what extent the POTJ have incorporated indigenous, traditional or local knowledge and approaches for dispute resolution, reconciliation and other matters that are useful for TJ. The recommendation is traditional dispute resolution mechanisms which are available in almost all communities in Ethiopia should be taken into account as providing potential solutions for TJ. Among arguments raised in favor of traditional mechanisms are: legitimacy of local mechanisms, their simplicity, their potential in bringing sustainable peace, and suitability for forgiveness, which will in the end ensure social justice. On the other hand, fears are also expressed that traditional

mechanisms might be against the interests of vulnerable groups such as women and persons with disabilities, they might not be compatible with one another, and they might also be against universal values such as human rights.

Recommendations regarding traditional mechanisms include:

- Atrocities and international crimes, which are against universal values as provided in the Constitution and other laws of the countries, should be treated under the formal and modern approaches to TJ, including prosecution for international crimes. For lesser crimes, they may be subject to traditional mechanisms;
- Traditional approaches should be limited in scope to TJ approaches applicable *intra*-communal; for *inter*-communal, formal approaches should be adopted;
- Studies need to be carried out to see the compatibility of traditional mechanisms with accountability and other universal and constitutional values such as human rights;
- Their application should not in any way be a source for further disputes and conflicts, for reasons such as incompatibilities among traditional mechanisms (in which case, application of the formal and modern approaches to TJ would be adequate).

7. TJ Timeframe: post war or all conflicts?

With regard to the temporal scope of TJ, the AUTJP acknowledges the difficulty of fixing the time covered through the TJ process. It says, “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.”⁴ Lack of consensus on the time coverage for the TJ process in Ethiopia is inevitable as the opinions vary from only covering the most recent conflicts, i.e. post-2018 to that of time immemorial as long as it is a source of conflict. In between, there are also references to post-revolution Ethiopia (1974) and post-1991 in reference to the coming into power of Ethiopian People’s Revolutionary Democratic Front. Some strong observations made a reference to a one-generation timeframe (i.e. post 1991) and leaving the historical implications to dialogue and the NDC.

Recommendations regarding timeframe include:

- In the continuum of TJ between prosecution and forgiveness, the likelihood of discovery and required weight of evidence (for various purposes such as for example beyond reasonable doubt for prosecution, preponderance for redress to victims, widely held beliefs for reconciliation, etc.), the potential of deployment of criminal justice (for example, whether the perpetrators are alive or not), the persistence of victimhood, and other factors should govern the timeline;

⁴ African Union, Transitional Justice Policy, Adopted 2019

- The timeline might and should vary based on the TJ options applicable;
- Relying on these general criteria, matters of TJ pre-1991 should be addressed using truth-seeking, reconciliation and related options;
- The justice and prosecutorial options should be applied post-1991.

8. Federalism and Constitutional Issues

In a federal system, the division of power is guided by the federal constitution. Similarly, the implementation of TJ has to be determined by FDRE Constitution. As a matter of principle, if TJ is meant to be implemented throughout the country and covers conflicts affecting the diverse societies of the country, the federal government has to be entrusted with the responsibility to design and implement a TJ policy, of course without leaving behind the participation of all. However, in a situation where some regional governments have established, or are in the process of establishing a reconciliation commission, how the mandates and relationship of the federal and state commissions should be determined appears to be an important issue. One of the guiding principles to determine the jurisdiction of regional commissions is that state jurisdiction should not implicate the outcome of TJ at the federal level, or shall not have a consequence of injustice in other regions or communities. Consequently, if resolving internal conflicts can be limited to a particular region or community, it would be an important milestone in bringing about reconciliation among conflicting groups and contribute to peace building. Nevertheless, this issue requires at least open and participatory discussion with regions guided by the federal principle and by analyzing relevant provisions of the Constitution. Similarly, regional jurisdictional matters also necessitate exploring the role of traditional institutions in the TJ process and if they play a role, to adequately frame the governing law to ensure impartiality, acceptance and sustainability of the institution. Whenever there is a need to reconcile the formal justice system with the traditional one, developing guiding principles at the very outset mitigates unintended consequences.

The other Constitutional issue is the intent to override Article 28 of the Constitution and grant amnesty based on the TJ policy. Article 28 of the FDRE Constitution clearly provides 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 constitutional clause is in line with international law and global values and should be strictly enforced ensuring accountability to international crimes. However, at least constitutional amendment might be necessary to grant amnesty of these crimes.

9. Institutional reform

Transitional justice is to be used to address past human rights violations in an effort to curb reoccurrence, enhance reconciliation, and provide a measure of accountability. To achieve these objectives, and, in particular, to ensure that the human rights violations and abuses do not reoccur,

the use of the existing human and institutional infrastructure such as the police, prosecution, judiciary, and the security sector can be questioned on how to make them fit for newly added roles related to TJ. Three types of institutional reform should be taken into account. The first category is of institutions that would implement the TJ policy, either existing or newly created. This is a point of section 6.1, and reference is made accordingly (generally existing or new institutions such as the EHRC, NDC or a planned Truth and Reconciliation Commission need to have legitimacy, resources, competence, independence and so on).

The second category is the reform of institutions that are implicated in past atrocities and crimes, owing to their natural power of maintenance of peace and order, waging war, using policy power and so on. This relates to the reform of the security sector, the military, the police, the prosecution, and to some degree the judiciary. For TJ to be successful, the recommendation is that these organs of the government need to be reformed. This will require implementing institutional reform. It is normal to assume that the Truth and Reconciliation Commission, in discharging its responsibilities, may reach a conclusion that the government institutions responsible for the violations must be reformed. Therefore, in order to avoid cosmetic internal reform, to build public trust, and to minimize repeated human rights violations, these organs need to be reformed. The proposed commissions should also have the mandate to provide recommendations for what changes and reform need to take place within government institutions that perpetrated violations against its citizens. In order to ensure sustained transition, all governmental organs should also be reformed, supporting TJ, peace, democracy and development. In this third category, all organs of the government have roles to play, and they need reform, including being corruption-free, competent, efficient, and so on.

Finally, whichever category, institutional reform is neither necessarily linked to TJ, nor should it be delayed until implementation of TJ. Reforms and capacity building work should be carried out right away for institutions suspected of human rights violations, for police and security agents, for the judiciary, and in general, to all institutions that play a significant role in the protection of human rights.

10. International and Comparative Dimensions of TJ

Several aspects of the international dimension were raised in the consultations. Many of them are recommendations for potential and modalities of engagement of the international community, widely defined to include individual states, such as the United States of America, intergovernmental organizations such as the United Nations, the European Union and the African Union, international non-governmental organizations such as research and advocacy institutes, and private citizens, meaning foreigners having the knowledge and skills to help TJ in Ethiopia. Indeed, concerns are also expressed of sovereignty and non-interference in internal affairs of Ethiopia. The benefits raised of the international community could be grouped into three, all of them to be implemented without affecting sovereignty of Ethiopia:

- a) **Financial and Technical Assistance and Independent Assurances:** Here, without affecting local ownership, the international community might get involved in policy development and more importantly implementation of TJ. Individual states such as donors and partners, regional and international organizations might provide technical and financial assistance through grants and loans to the TJ process. Here, the involvement of the international community is a double-edged sword. On the one hand, since TJ and its implementation require enormous amounts of resources, the international community would provide the much-needed financial, technical and resources to the TJ process, through the government, CSOs, other independent actors, and directly by itself, indeed without affecting sovereignty. On the other hand, assurances might also be sought from the international community as to the commitment of national actors of TJ, principally of government but also armed and other groups, so that they do not renege from their promises of TJ. Ethiopia's experience of TJ is full of failed attempts, as evidenced by recent failures of the Reconciliation and Boundary Commissions of post-2018. Fear of repeat failure of transitional and reform initiatives and fear of non-implementation of the options agreed upon are principal causes to engage TJ with full force and would likely frustrate the future of TJ. The international community might provide independent and third-party assurances to local actors lacking faith in the main players of TJ. Locally, there is little guarantee that the process which brought to an end the reconciliation process post-2018 will not be repeated to the POTJ.
- b) **International and hybrid tribunals and mechanisms:** Regarding this, a number of recommendations and fears were expressed. One set of recommendations is introducing the possibility of prosecution at international or preferably hybrid tribunals, at least for a limited number of international crimes, and again if resources do not permit, at least by way of appeal. *Ad hoc* international or African criminal proceedings are possibilities. However, these are costly, and hybrid is a preferred option. While prosecution might be wholly nationally owned owing to costs, non-membership and other factors, the participation of the international community is a real possibility in truth-seeking, reconciliation and other options, particularly until trust and faith are built among the various political factions and in some cases ethnic rivalries.
- c) **The experience of other countries:** It is commended in the consultations that the POTJ relied on African Policy Framework of TJ and the experience of many countries. It is recommended that more lessons be brought to Ethiopia's TJ. Indeed, contextualization and pragmatism are important, owing to Ethiopia's complexity of TJ issues, ranging from past ideological challenges to numerous current and recent past ethnic conflicts in all places, political rivalries reliant on claims of ethnic representation, and the various other independent and interconnected zonal and local conflicts and grievances. Innovative approaches should also be sought now as well as throughout the process of TJ.

11. The Transitional Justice Options

Regarding the general TJ options and sub-options, there were a number of challenges and recommendations mentioned during the consultations. Some expressed doubts why the policy options in POTJ appear to downplay the importance of prosecution and accountability, while others argued inter-communal matters such as history, language, and territorial disputes (such as Afar and Somali Regional States) should be prioritized for sustainable peace and development, which are goals of TJ. In this section, the recommendations on some of the TJ options will be outlined with a final comment relating to decisional rules regarding the options.

11.1. Truth-seeking

Participants agree that Ethiopia's history is the most contentious and the principal cause for conflicts. In this regard, truth-seeking is a good option to resolve historical contestations. While acknowledging that in some cases, history, perspectives or perceptions in history are unduly instrumentalized for undue political gains (ranging from claims of absolutism of historical writings to revisionism and denial), serious considerations should be given for disputes and conflicts that are based in history. Truth-seeking and fact-finding, including historical facts, should be undertaken in ways that build consensus among the various communities, reconciliation, and reparation. In truth-seeking, not only the vertical damages and injuries committed by regimes against individual, but horizontal conflicts should also be taken into account. As the saying goes, "Only the truth can put the past to rest."

11.2. Reparations

Participants have expressed their misgivings regarding reparations, whether the government is committed to provide reparations once deserving victims are identified, whether the scheme could be abused and misused, and whether the perpetrators are willing and able to provide reparations. Among the general challenges raised towards reparations include:

- Limited resources from the international community (without their involvement, there appears little chance of reparations), the government, and those that are accountable of the crimes and atrocities;
- Lack of (systemic) documentation of losses, injuries and damages occurred throughout the years;
- The prohibitive volumes of damages, losses, and injuries and sometimes against communities (in the Northern War, for example, communities were deprived of their cattle);
- Who is to prioritize the limited resources throughout the state, with fairness, equity, equality, etc.?
- The importance of legal reform such as an enactment of a Proclamation to Redress Victims of Human Rights Violations or International Crimes to plan and execute reparations;
- The inclusion of the vulnerable in the reparation laws and processes.

Despite all these challenges, participants agree on the importance of structural and systemic measures of reparations, including investments and incentives to investments that help individual and community victims in the TJ process, provision of various modalities of reparations such as special treatment in loans and public services for victims of atrocities and crimes that are subject to TJ, special and long-term budgets and loans to areas affected and so on.

11.3. Prosecution

While TJ aims at addressing past injustices, it aims at ensuring accountability of responsible persons, preventing impunity. Lack of and limited accountability is often taken as a principal challenge for lack of transition, so sustainable peace, justice and democracy in Ethiopia and should be among the principal policy actions in TJ. While the difficulty of investigating and prosecution of all crimes cannot be ignored, the POTJ regarding the criminal prosecution process appears to be lax, marginalizing the prosecution and accountability option. It lacks also specifics on prosecution. It should be reiterated that prosecution is one of the important components of TJ, punishment of perpetrators and non-impunity. The TJ policy should reflect this and place importance on prosecution. Accordingly, the orientation of TJ in Ethiopia should be to prosecute those believed to be responsible for grave violations of human rights. The policy should therefore unambiguously express the prosecution of those suspected of causing significant human rights violations at any level. This is also the intent of Article 28 of the Constitution.

The TJ system should establish clear principles and procedures in its policy, so that the government cannot unilaterally decide to prosecute or not to prosecute, or to pardon whomever it wishes. Those that have had political and governmental power should also be held accountable. One of the challenges to TJ is failure to refer cases for prosecution and a failure of timely reporting on how many of the accused are on trial and how many are going through different processes. To make TJ adequately implemented, these potential challenges should be taken into consideration, and a follow up mechanism has to be included.

11.4. Amnesty

As indicated in the previous sections, the POTJ appears lax regarding criminal prosecution, which seems to encourage amnesty and pardon. However, participants agree that, while amnesty might be given for the sake of peace, reconciliation, and other factors, there should not be blanket amnesty, particularly for international crimes committed during the war in the North: Tigray, Amhara and Afar.

11.5. Cross-cutting Issues for Policy Options and Implementation

In determination of the options for inclusion in the TJ policy and implementation, there were a number of factors and questions participants said are crucial. The following are the major ones:

Prioritization and sequencing: Assuming that all the suggested and more policy options are included, the question was whether the policy options are implementable simultaneously or one after another, or whether there should be prioritization as a matter of necessity, resources or other factors, or as a natural course of action sequencing might be necessary, for example seeking truth

before going to reconciliation or prosecution. In this connection, the determination should rely on evidence, knowledge, skills, previous planning and so on.

Policy Options as causes of conflict: In the consultations, there was an expressed fear that some TJ options might be misused as causes of conflicts. For example, memorialization, while it is part of TJ options might be used against communities in unintended ways. Hence, in such undertakings, consensus should be reached and memorialization be built in ways that benefit all, such as memorial schools and hospitals. In this connection, past initiatives of transition such as the Dergue Trial and the post-2018 amnesties and prosecutions should be carefully evaluated for their fairness, thoroughness, etc. before their inclusion or exclusion in the current TJ process.

Root causes: In the adoption and implementation of the TJ options, root causes need to be identified and resolved.

Evidence: In all actions to be taken regarding the TJ process, all shall rely on evidence.

12. General Conclusions and Recommendations

12.1. General Conclusions

Overall, the participation of CSOs was remarkable in the input collection process, showing their commitment, enthusiasm, and high potential in the plan, implementation and overall success of TJ in Ethiopia, as long as genuine TJ is executed. Interestingly, in addition to collection of inputs, the undertaking created an opportunity to raise awareness on TJ in general and in Ethiopian context in particular, including content of TJ, state ownership including CSOs, as well as necessary conditions for future policy implementation. The participants forwarded valuable recommendations which can be summarized as follow:

12.2. General Recommendations

Specific recommendations are given under each section and sub-section. Here, two categories of general recommendations are given: first is in connection with the overall TJ policy, its process and implementation; the second is about the role of CSOs in TJ from policy development to execution.

Regarding the first, the following **recommendations** are in order:

- The TJ process should adopt a holistic approach;
- TJ should integrate existing approaches and institutions such as the National Dialogue (which many believed should be part of the TJ or the converse), law and policy reform, constitutional reform, and other reform initiatives;
- The government should discharge its responsibility of ensuring accountability pre-TJ and during the TJ process;
- The TJ policy should expressly acknowledge and provide and/or permit the various roles for non-state actors in TJ process;

- Laws to be enacted to plan and implement TJ should fully consult those concerned, including CSOs;
- The TJ Policy should be designed in ways that enhance compliance with policy promises, particularly by government; in this connection, the Commissions and Tribunals to be established or designated in the TJ should be at least partially controlled and monitored by independent actors such as national institutions, CSOs and the academia;
- Consultations should be undertaken in conflict areas, not merely in cities and relatively peaceful places;
- Time and seizing the moment are crucial; hence TJ plans and actions should be undertaken with utmost urgency in the shortest timespan possible.

From the empirical data collected as well as benefiting out of experience of other countries regarding the role of CSOs in TJ, the following are **recommended**:

- Greater participation of CSOs in drafting of the policy is needed;
- Prepare a complementary policy to TJ policy on the engagement of CSOs for TJ;
- Actively take part in the formation and staffing of TJ commissions and tribunals, particularly where policies and laws permit, nomination of CSO members to commissions is important;
- Actively promote and advocate (mobilization, as necessary) for TJ now, during the process, and implementation, all the way to its completion. This includes advocacy for accountability, reparations and reconciliation;
- Actively engage TJ Commissions, Tribunals, and others, by supporting capacity building, providing advice and evidence, and other available modalities;
- Actively participate in the implementation, particularly through the various programs of peace, societal understanding, human rights, and development (including provision of medical and other services for victims), including using the bottom-up approach, that would help the success of TJ actions;
- Documentation, monitoring and reporting of the TJ processes;
- Undertake a series of public dialogues and awareness raising activities;
- As necessary, to form strong coalitions CSOs for TJ and TJ approaches, including establishment of working groups on TJ;
- Partner with international actors in order to ensure the success of the TJ process;
- Undertake capacity building of actors in TJ;
- Enhance their own capacity for TJ and their roles (Ethiopian CSOs themselves are in early stage of development);
- Strengthen themselves to take part in the prevention of future atrocities and crimes.