

Issue # **1**

POLICY BRIEF

# FROM POLICY TO PRACTICE

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Implementing Transitional Justice in  
Ethiopia with International Standards

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Dear reader,

In the wake of Ethiopia's tumultuous history, the recently adopted transitional justice policy marks a pivotal step towards truth, accountability, healing, and reconciliation. This policy brief, crafted by Dr. Tadesse Simie, delves into the intricate process of implementing transitional justice in Ethiopia, aligning with international standards and best practices.

The brief underscores the necessity of a holistic approach, integrating traditional justice mechanisms with modern judicial and non-judicial measures. It highlights the potential challenges posed by ongoing conflicts in the country, and the importance of sequencing and participatory methods to ensure inclusivity and effectiveness.

The brief, among others, addresses important transitional justice elements such as criminal accountability, truth-seeking, reparations, memorialisation, conditional amnesty, and institutional reform. It also emphasizes the importance of adhering to international standards, as enshrined in instruments like the African Union Transitional Justice Policy (AUTJP). Retrospective legitimization of the policy through continuous adaptation and evaluation mechanisms is recommended as an important tool to ensure successful implementation within Ethiopia's evolving sociopolitical landscape.

Beyond outlining policy pillars, the brief sheds light on the vital roles various stakeholders could play in the implementation process. Victims, youth, the diaspora, and civil society organizations are all recognized as essential voices in this process. The brief advocates for dedicated platforms for victim participation, the strategic engagement of international experts, and the meaningful engagement of civil society to enhance the process's credibility and effectiveness.

As Ethiopia embarks on this transformative journey, I believe that this policy brief serves as an invaluable guide, offering insightful analysis and practical recommendations. It is an essential read for policymakers, scholars, and anyone committed to fostering a future rooted in peace and justice for all Ethiopians.

I wish you interesting insights

Lukas Kupfernagel  
Country Director  
KAS Office Ethiopia/African Union

# Implementing Transitional Justice in Ethiopia with International Standards

Tadesse Simie Metekia<sup>1</sup>

## Introduction

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In April this year, the Council of Ministers in Ethiopia endorsed the long-awaited transitional justice [policy](#), containing a range of judicial and non-judicial measures identified to deal with its violent and repressive past. These measures include criminal accountability, truth-seeking, reparations, memorialisation, conditional amnesty, and institutional reform. The policy integrates traditional justice mechanisms within the various pillars of transitional justice. It also delineates the temporal and material scope of transitional justice.

Following the official announcement that the process is entering its implementation phase, the Ministry of Justice is finalising the preparation of an implementation [roadmap](#). This succinct policy brief examines the forthcoming implementation in anticipation from conceptual, methodological, legal, and institutional perspectives, emphasising the necessity of adhering to international standards enshrined in international instruments, including the African Union Transitional Justice [Policy](#) (AUTJP).

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### Peace and Stability

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Considering, arguably, that waiting for an ideal time to discuss transitional justice options is not practical, Ethiopia had to craft its transitional justice framework amid ongoing conflicts. The [designing](#) phase of the transitional justice process began before and continued during and after the Tigray War, contrary to some attempts at portraying the process as triggered by the Cessation of Hostilities Agreement ([CoHA](#)) signed in Pretoria on 2 November 2024 between the government and the Tigray Liberation Front.

Conflicts in Oromia, Amhara, and Tigray posed substantial challenges to ensuring broader participation in the public consultations on transitional justice options. The ongoing instability in these regions is feared to be an even more significant obstacle during the implementation phase, as also highlighted in the national consultations [report](#) of the Transitional Justice Working Group of Experts. Attempting to implement transitional justice amidst active conflict risks undermining its purpose and the commitment to peace and reconciliation it aims to achieve.

The ongoing transitional justice and national dialogue processes can serve as a demonstration of commitment to peace while negotiating cessations of hostilities in Amhara and Oromia. Peace negotiations should be seen as a means

to advance transitional justice rather than limit its prospects. As stipulated in the AUTJP and exemplified by the CoHA, these processes should emphasise accountability and transitional justice, avoiding any provisions that grant impunity and undermine prospects for implementing transitional justice.

### Delinking Reconciliation

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Ethiopia's transitional justice policy envisages a comprehensive and holistic endeavour to foster reconciliation. Initially, in the [Green](#) Paper that served as a basis for nationwide consultations in transitional justice options, reconciliation was considered a pillar on its own alongside criminal accountability, truth-seeking, conditional amnesty, reparations, and institutional reform.

This conceptual error is later [rectified](#), and reconciliation is now not a pillar but a goal of transitional justice. The forthcoming implementation should avoid the common misconceptions that incorrectly link reconciliation solely to truth-finding, reparations, amnesty, and institutional reforms. Instead, it should be guided by a holistic view of reconciliation as a potentially achievable outcome of a process that rigorously incorporates criminal accountability without undermining or unnecessarily delaying it.

## Sequencing: delaying but not abandoning

An essential consideration in implementing transitional justice is the sequencing of its different components. According to the AUTJP, 'various TJ measures should be comprehensively planned and complementarily organised in their formulation, and programmatically ordered and timed in their implementation.' This essentially means determining which pillar of transitional justice should be implemented at which time to ensure complementarity and synergy. Unjustified prioritisation and competition among pillars can lead to selective implementation or eventual abandoning of a sensitive pillar. Such an approach undermines the overall goal of transitional justice.

One shortcoming of the policy document is that it does not address the question of sequencing in the implementation of transitional justice. The implementation [roadmap](#) is expected to indicate general approaches to sequencing. Nonetheless, sequencing requires continuous and ongoing examination of the sociopolitical landscape that emerges and re-emerges during implementation. An overarching transitional justice implementing institution, as envisaged in the policy, may be entrusted to determine the question of sequencing through a rigorous assessment of the prevailing context.

A key aspect of sequencing is ensuring that the process does not result in abandoning one transitional justice pillar in favour of implementing a more feasible one. Instead, any delay in implementing a transitional justice pillar must be [accompanied](#) by efforts to remove potential impediments to its eventual implementation.

## Participatory Transitional Justice

Methodologically, transitional justice should be designed and implemented in a participatory manner, involving the population and addressing the specific needs and voices of diverse stakeholders. Ethiopia's process has benefited from three major consultations and surveys that captured both general and specific opinions on transitional justice.

Firstly, the Harvard Humanitarian Initiative (HHI) conducted a nationwide [survey](#) using a sequential mixed-methods approach to rigorously assess Ethiopians' needs, perceptions, and attitudes about peace and justice. The study began with 20 key informant interviews, followed by a quantitative survey of 6,689 adults across all eleven regions and two city administrations in Ethiopia. It concluded with four focus groups to inform the analysis.

Secondly, the Ethiopian Human Rights Commission (EHRC) and the Office of the

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United Nations High Commissioner for Human Rights (OHCHR) conducted 15 [consultations](#) on transitional justice between July 2022 and March 2023. These consultations involved 805 participants, including victims, IDPs, persons with disabilities, community and religious leaders, and civil society organisations. The consultations aimed to document views on transitional justice, inform decision-making, and raise awareness about transitional justice concepts, gathering information through key informant interviews, focus group discussions, plenary discussions, and desk analysis.

Thirdly, the Transitional Justice Working [Group](#) of Experts, established by the Ministry of Justice in November 2023, conducted public consultations and input collection for Transitional Justice Policy Direction Options from March 2023 to October 2024. About 80 sessions were held with the public, stakeholders, experts, political parties, and civil society organisations. The primary method was qualitative, using focus group discussions, which allowed participants to attend sensitisation sessions on transitional justice options before sharing their observations. Plenary forums enabled the presentation of ideas, and written comments were collected via the Ministry of Justice's social media and email addresses of the expert group members. This process has also managed to gather the views of international experts and organisations

on what Ethiopia's transitional justice process should look like.

The policy drafting process, informed by these consultations and the analysis of the working group of experts, is unprecedented in Ethiopian history. Unlike the post-1991 transitional justice process, where decisions (such as establishing the [Special Prosecution Office](#) in 1992) were not participatory, this process aimed for greater inclusivity. However, this does not suggest the current process is perfect or has been fully participatory.

### *i. Youth Participation*

Transitional justice processes often perpetuate a culture that [marginalises](#) youth in dealing with the past. In Ethiopia, the youth, specifically university students, have historically led protests, revolutions, and armed conflicts, including the nonviolent movements that brought the current government to power. They have been victims and perpetrators — and could be agents of change. Despite this, the survey and the consultations mentioned above have failed to undertake targeted youth-only consultations to address youth-specific issues.

Issues that [triggered](#) youth grievances and protests include displacement, land grabbing, corruption, and other forms of economic injustice. As also identified in the [HHI](#) Survey, land and resource disputes, economic inequality, and corruption, alongside political and ethnic

differences, were the major causes of violence and conflict in Ethiopia. Therefore, one could argue that if the youth had been consulted, the proposed scope of Ethiopia's transitional justice might have expanded to include criminal accountability for past socio-economic rights violations, not just for civil and political rights violations.

The policy limits questions of socio-economic violence to transitional justice pillars such as truth-seeking, reparations, and institutional reform. In doing so, it differs from past transitional justice efforts that included inquiries (1974) and criminal accountability (1992) for corruption and the plundering of state resources. As such, the current policy has overlooked the mutually [reinforcing](#) nature of socio-economic rights violations (such as large-scale corruption) and human rights violations.

The implementation process should attempt to rectify youth exclusion. Creating independent youth advisory councils at local and national levels could facilitate a more in-depth understanding and representation of youth perspectives in the implementation phase. Additionally, sensitisation campaigns tailored for youth should be launched to inform and empower them about their rights and potential roles in the transitional justice process.

### ***ii. Diaspora Participation***

Another group whose views were not captured in the transitional justice policy-

making process is the over 3 [million](#) Ethiopian diasporas. The policy fails to explicitly mention the diaspora as a distinct group and stakeholder, which starkly contrasts with the approach taken by the National Dialogue [Commission](#) and the recommendations of the AUTJP.

In fact, the Ethiopian diaspora is as politically polarised as Ethiopians living in their country. There are [allegations](#) of mistrust between the diaspora and the government, online engagement in misinformation and warmongering, and a lack of unified representation.

Yet, these issues should not be used as an excuse not to include the diaspora in dealing with Ethiopia's past, in which they were also victims and families of victims, fugitive perpetrators, and witnesses to the truth. Additionally, their resources and expertise are invaluable and should be leveraged to enhance the implementation of the proposed transitional justice measures.

### ***iii. Victim Participation***

The draft policy emphasises inclusiveness by involving various stakeholders, including victims. It contains a provision for establishing a victims' participation unit in the criminal accountability process. This will be the first time Ethiopia's criminal justice system has experimented with separate victims' standing in criminal trials. Experience of such an exercise could be borrowed from other jurisdictions,



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including that of the International Criminal [Court](#).

Establishing dedicated platforms, such as Victims' Centers or Advisory Committees, and prioritising mental health and psychosocial support (MHPSS) are essential steps to enhance victim participation. The implementation phase should be guided by the understanding that victims cannot wait and that the need for MHPSS is always urgent. Providing timely MHPSS and [integrating](#) it early on not only enables victims to cope with the trauma of violence and prepares them for long-term healing but also enables them to actively participate in the implementation of other pillars of transitional justice.

Victims' centres or advisory committees need to be [accessible](#) to the victims and engage with stakeholders at every stage of the process, from preparing the roadmap to implementation and monitoring. Without such mechanisms, the implementation risks the victims' superficial engagement.

In the absence of a readily available victims' advisory committee, civil society organisations focused on victim issues (victim-centred organisations) and victims' associations (victim-led organisations) can represent victims and participate in pre-implementation activities. This approach can ensure that new institutions and implementing legislation emphasise that transitional justice is fundamentally about

addressing the needs and concerns of victims.

### *iv. International Expertise*

Ethiopia's Transitional Justice Policy allows international experts to participate as advisors and capacity builders. The Transitional Justice Working Group of Experts initially recommended that international experts serve as judges, prosecutors, and investigators alongside their Ethiopian counterparts. This [recommendation](#) was meant to mitigate concerns about independence and impartiality in the transitional justice process.

Beyond providing an appearance of independence and impartiality, international experts may help equip Ethiopian judges and prosecutors with knowledge of international standards and best practices. In that respect, the domestic system currently [lacks](#) adequate experience in investigating and prosecuting various international crimes, such as torture, war crimes, crimes against humanity, and enforced disappearances, with respect to which there is no comprehensive domestic [legal](#) framework.

Furthermore, international experts can significantly address [gaps](#) in the Ethiopian justice system by enhancing the domestic capacity for utilising electronic evidence in criminal trials and ensuring that fair trial guarantees are upheld in line with international

standards. Courts may require training in judgment writing to ensure the accessibility and readability of decisions involving complex issues such as international crimes.

At this stage, the implementation process must adopt a more robust approach to the involvement of international experts, even if limited to advisory and technical assistance roles. One way to ensure this is by establishing a fixed and clear structure within the new institutions that guarantee the continuous involvement of international experts, thereby avoiding discretionary and fragmented arrangements for their participation.

Additionally, this approach could involve distinguished experts from the Ethiopian diaspora, who can offer a blend of international and local expertise and insights. Ethiopia-based scholars and practitioners can also make significant contributions. In all cases, experts should be appropriately vetted for professionalism, credibility and effectiveness.

### *v. Civil Society Organizations*

The transitional justice policy in Ethiopia calls for the meaningful participation of Civil Society Organizations (CSOs) as key stakeholders in its implementation. This inclusion is vital, as CSO involvement is [indispensable](#) for ensuring a comprehensive and effective transitional justice process. They can serve as service providers, watchdogs, and capacity

builders, significantly influencing policy directions. The success of transitional justice depends on the active and organised engagement of CSOs.

Although a more progressive CSO Proclamation was enacted in [2019](#), the past decade of repression continues to impact CSOs, affecting their capacity and interactions with the state and international organisations experienced in transitional justice.

To ensure meaningful participation in the transitional justice process, involving CSOs from the outset is crucial, including in the roadmap design. This involvement must go beyond a box-ticking exercise. Transitional justice-implementing organs and institutions should foster an open and collaborative relationship with CSOs. Rigorous mapping of CSOs based on thematic, geographic, and target group focus is required for strong and continuous collaboration.

Providing technical and financial support to CSOs will enhance their capacity for meaningful engagement, enabling them to contribute effectively to the transitional justice process. Involving CSOs in the preparatory phase helps align the transitional justice framework with public opinion and ground-level realities, facilitating an implementation process likely to gain public trust and support.

Donor communities could implement capacity-building programs to equip

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CSOs with the necessary skills and knowledge for effective engagement. Given the novelty of transitional justice, many CSOs in Ethiopia lack prior experience with the topic. This situation justifies donor engagement with relevant emerging and new CSOs by reducing overreliance on the old ones.

While there are solid SCOs that have been operating in risky conflict situations to promote human rights and peace in Ethiopia, some CSOs might exhibit partisan tendencies or engage in rent-seeking behaviours. These organisations can act as gatekeepers resistant to new ideas and actors, a situation that can lead to civic space capture. By fostering a diverse and inclusive civic space, donor communities can help ensure a more dynamic and responsive approach to transitional justice.

On their part, local CSOs should proactively conduct advocacy and sensitisation efforts to promote public opinion-based transitional justice, raising awareness and fostering understanding among the general population. Collaborating with established international CSOs could enhance their interventions and impact. Forming consortia dedicated explicitly to transitional justice can improve their impact, allowing them to identify strategic areas for intervention and coordinate efforts to maximise influence.

The current disengagement of CSOs is notable, as evidenced by the lack of

meaningful advocacy and sensitisation efforts even after public perception surveys and consultation reports were published. Understandably, several CSOs might have been [dissuaded](#) by uncertainties over the country's readiness and genuine commitment to a holistic transitional justice process. Nonetheless, it is their proactive engagement, not disengagement, that might help generate the commitment and readiness needed.

## Legal frameworks: rigorous and transparent drafting

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Following the implementation roadmap that is being prepared, the implementation phase is expected to commence with the promulgation of more than a dozen laws, guidelines, rules, and procedures. This process represents the initial step in ensuring compliance with international standards by removing legal impediments to implementation. These laws will be a blend of national and international rules. Some, such as the proposed international crimes bill, are more international in nature, as the foundation of international crimes lies in international law. In contrast, vetting and lustration laws, procedural rules, and evidentiary standards will primarily be domestic, although they must still adhere to relevant international human rights laws.

The forthcoming legislation should result from a meticulous and rigorous drafting process. Historically, such as with the 1992 law establishing the Office of the Special Prosecutor, a hasty drafting process that excluded international experts and other stakeholders resulted in [ambiguously](#) formulated provisions regarding the crimes the office was meant to prosecute. Other international, domestic, and hybrid mechanisms have benefited from the [involvement](#) of international experts in drafting their statutes, rules of procedures, and evidence.

In Ethiopia, legislative drafting is often led by domestic experts, with stakeholders participating in brief validation workshops before the draft is sent to the Council of Ministers and then to Parliament. The involvement of diverse experts that enable robust debates and discussions will enhance the quality of the legislation. Engaging stakeholders and the public through open discussions on draft legislation, with a commitment to incorporating relevant feedback, is essential. A transparent legislative process can ensure this by sharing draft legislation with stakeholders prior to conducting public validation workshops, allowing for well-thought-out inputs. The draft of the now-adopted transitional justice policy was not shared publicly before, and even after, validation workshops were held to discuss its contents.

Drafting over a dozen laws related to transitional justice presents a significant

challenge in mobilising the necessary resources and expertise. As Ethiopia embarks on this endeavour for the first time, it would be advantageous to establish a dedicated drafting committee and take the time to learn from successful experiences in other countries. Careful planning and sequencing of different legislation will be essential, as these laws must be designed to complement one another and establish a cohesive interface among transitional justice institutions and processes and between transitional justice institutions and the existing ones.

## Transitional Justice Institutions

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The policy explicitly envisions the establishment of four new institutions: a Special Prosecution Office, Special Chambers within the Courts of Ethiopia, a Commission for Truth Seeking, Amnesty and Reparations, and an Institutional Reform Commission. It also implies the need for an overarching transitional justice institution to facilitate coordination and collaboration among these entities and relevant stakeholders.

### ***i. The Special Prosecution Office: new and special is not enough***

The Transitional Justice policy mirrors the recommendation of the working group of experts on establishing new investigative and prosecutorial mechanisms to deal with Ethiopia's past, except that the proposed Special

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Prosecutors Office does not include the involvement of international experts as co-investigators and co-prosecutors. The newness of the mechanism could be seen as a significant step in garnering public buy-in to the process. Yet, the country is not new to such special mechanisms. It had [one](#) set up to investigate and prosecute Dergue-era crimes.

Ethiopia's experience with criminal accountability has often reflected '[victor's justice](#)', whether through special or regular prosecutors. The post-1992 accountability process by the Special Prosecutors Office focused solely on members and affiliates of the Dergue, the defeated regime. Similarly, in the aftermath of the 2005 post-election conflict, the regular prosecution department targeted only members of the opposition political party, Kinijit (Coalition for Unity and Democracy), while government security forces accused of killing over 193 civilians went [unpunished](#).

The Special Prosecutor will be the most influential transitional justice organ concerning criminal accountability, wielding significant discretionary power to determine who should or should not be prosecuted. As Ethiopia prepares to establish the Special Prosecutor Office, it is crucial to highlight that more than being new and special is needed.

Legislation must include explicit guarantees of independence and impartiality for the forthcoming Special

Prosecutor Office to ensure that it is distinct from its [predecessors](#) and avoids past mistakes. Specifically, the office should be accountable to Parliament to prevent political interference and have the authority to manage its budget. Additionally, investigators and prosecutors must undergo proper vetting to ensure their integrity and competence.

Moreover, the office should include an advisory and technical assistance unit composed of international experts and members of the Ethiopian diaspora with proven expertise. This inclusion will help enhance the Special Prosecutor Office's credibility, impartiality, and effectiveness in comprehensively and fairly investigating and prosecuting crimes under its jurisdiction.

### *ii. Special Chamber vs Special Court*

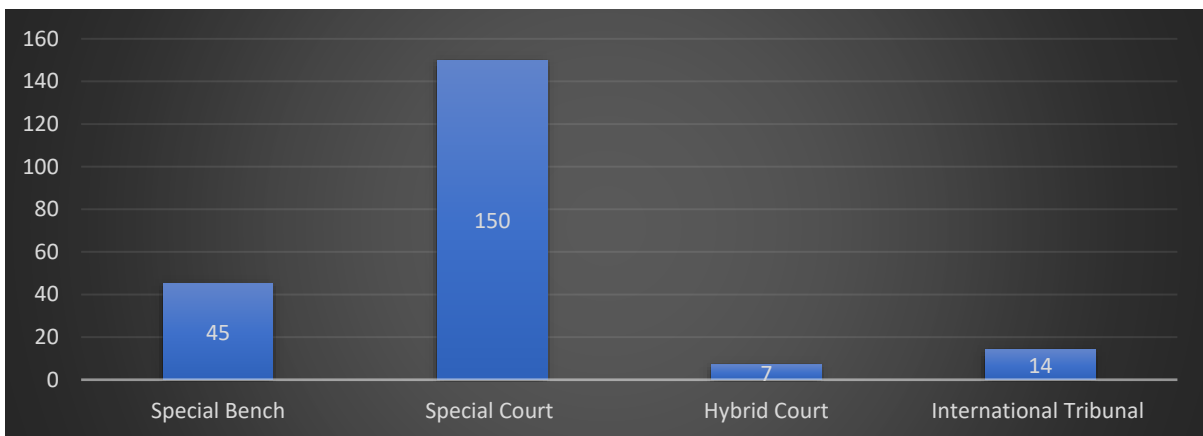
The policy underscores that establishing an independent and impartial judicial institution is crucial for transitional justice and to ensure Ethiopia meets its human rights and accountability obligations. It proposes to achieve this by setting up Special Chambers within the existing court system instead of a separate and new institution, the Special Court, proposed by the Working Group of Experts.

The Council of Ministers' decision not to establish a Special Court has been considered in several discussions as the

most significant deviation from public opinion captured in transitional justice consultations conducted by the Working Group of Experts. The consultations strongly support the establishment of a Special Court, as it is perceived to offer greater judicial autonomy, impartiality, and independence. Specifically, 70% of the consultation sessions (150 out of 216 focus group discussions) supported the establishment of a new Special Court. Support for a special bench within the existing courts stands at around 20%.

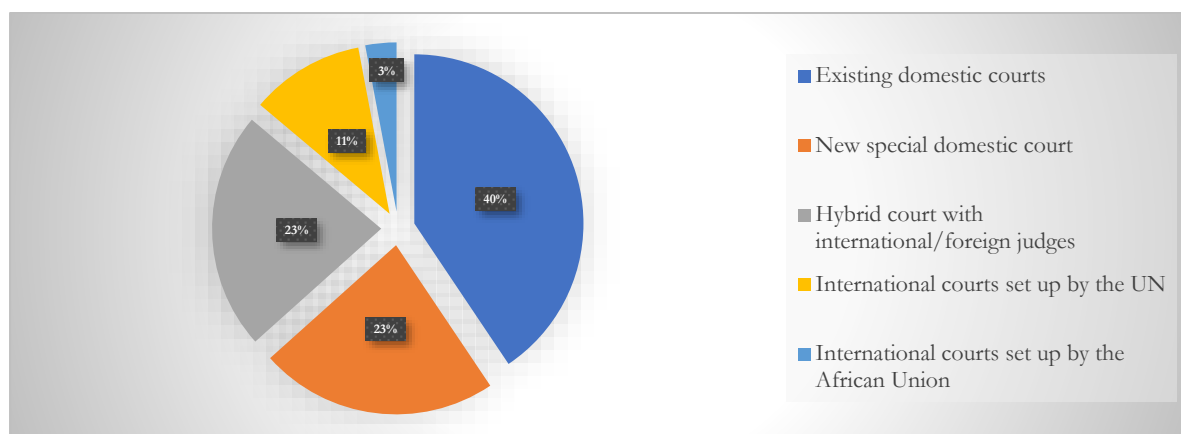
Despite the pervasive lack of trust, the HHI Survey reveals that Ethiopians prefer to avoid international or hybrid mechanisms over existing domestic courts. Support for a new special domestic court is lower than the support for existing domestic courts. Yet, the HHI Survey, similar to the findings of the working group's consultation, reveals a significant need for more trust in the existing judicial system in Ethiopia

**Figure 1:** Choice of Venue for Criminal Trials (Focus Groups)



Source: የኢትዮጵያ የሽግግር ፍትህ የፖሊሲ አቅጣጫ አማራጮች የህዝብ ምክክር እና ግብዓት ማሰባሰብ ሂደት ሪፖርት

**Figure 2:** Choice of Venue for Criminal Trials (Public Perception)



*Source: Pham PN, Metekia TS, Deyessa N, Mah A, Vosniak L, Vinck P. 2023. Ethiopia Peace and Justice Survey 2023. Harvard Humanitarian Initiative.*

The trust in the current justice system and its judges is [low](#), at 26% and 30%, respectively – a lack of confidence that stems from perceptions of judicial independence (71%), corruption (56%), and involvement in violence (44%). Additionally, over half the population views the Ethiopian justice system as too expensive (50%), inaccessible (53%), and overly complicated (53%).

As a result, there is a well-founded doubt that a special bench may not fully address concerns of independence and effectiveness due to its association with existing courts, which are perceived as neither independent nor corruption-free, as also echoed in [statements](#) by the Prime Minister. However, the decision by the Council of Ministers to opt for a special bench over a special court remains unclear.

Sources close to the discussions at the Council of Ministers indicate that a

special court was deemed unconstitutional under Article 78(4) of the [Constitution](#), which prohibits creating special courts that do not adhere to prescribed legal procedures. The proposal for a special court allegedly faced strong opposition from the Federal Supreme Court, which was assumedly concerned about the negative implications establishing such a court could have on the perceived legitimacy of existing courts.

Additionally, some judges argued that the transitional justice process involves a limited number of cases, which does not warrant sidelining the current judicial system. They believe addressing these cases within the existing framework maintains judicial continuity and integrity. Furthermore, officials have allegedly raised concerns that establishing a special court could undermine the extensive judicial reforms Ethiopia has been striving to implement.

These officials also caution that creating a special court could be interpreted as evidence that the reforms were unsuccessful.

Be that as it may, the proposed Special Chambers seem to differ from what many have in mind, i.e., the usual special bench (ልዩ ትላቅ). Traditionally, in Ethiopia, a special bench is simply a separate courtroom with judges assigned by the court to try specific crimes such as terrorism, robbery, and human trafficking. For instance, during the Dergue trials, [courtrooms](#) one and later six at the High Court were colloquially considered special benches because they exclusively handled cases brought by the then Special Prosecutors Office. Even then, no appellate special and cassation benches were established at the Supreme Court level for these cases.

As detailed in the policy, the proposed Special Chamber within the Federal High Court of Ethiopia will be bestowed with jurisdictional primacy over relevant cases, and a vetting process will ensure judges have no history of human rights abuses. Also, judges will be selected based on qualifications in criminal and international law, providing expertise and integrity. The chamber will include specialised support units and operate with budgetary independence and adherence to international standards, enhanced by foreign advisory participation. These measures are proposed to uphold human rights, ensure accountability, and build public

trust in the judiciary, according to an expert at the Ministry of Justice.

The role of Parliament, as envisaged in the policy, will be crucial in the establishment and operation of the Special Chamber, as it will enact the laws necessary for establishing the vetting and lustration mechanisms that will ensure only qualified and untainted judges serve in the special chamber. Operational frameworks will be legislated to maintain the chamber's independence and impartiality, including mechanisms for removing and replacing judges and administering its budget. By incorporating international best practices and maintaining strict qualifications and diversity criteria for judges, the chamber will aim to effectively fulfil its role in Ethiopia's transitional justice process, promoting transparency, integrity, and inclusivity in its judicial functions.

Notably, the inclusion of a victims participation unit and the involvement of international expert advisers are novel additions to the judicial system, elements with which the existing courts are [not](#) familiar. The policy incorporates these components to enhance the chamber's responsiveness to victims' needs and ensure it meets internationally accepted standards. However, hosting such an advanced extraordinary mechanism within the current judicial system might create compatibility issues, as it could involve subsuming a larger and more



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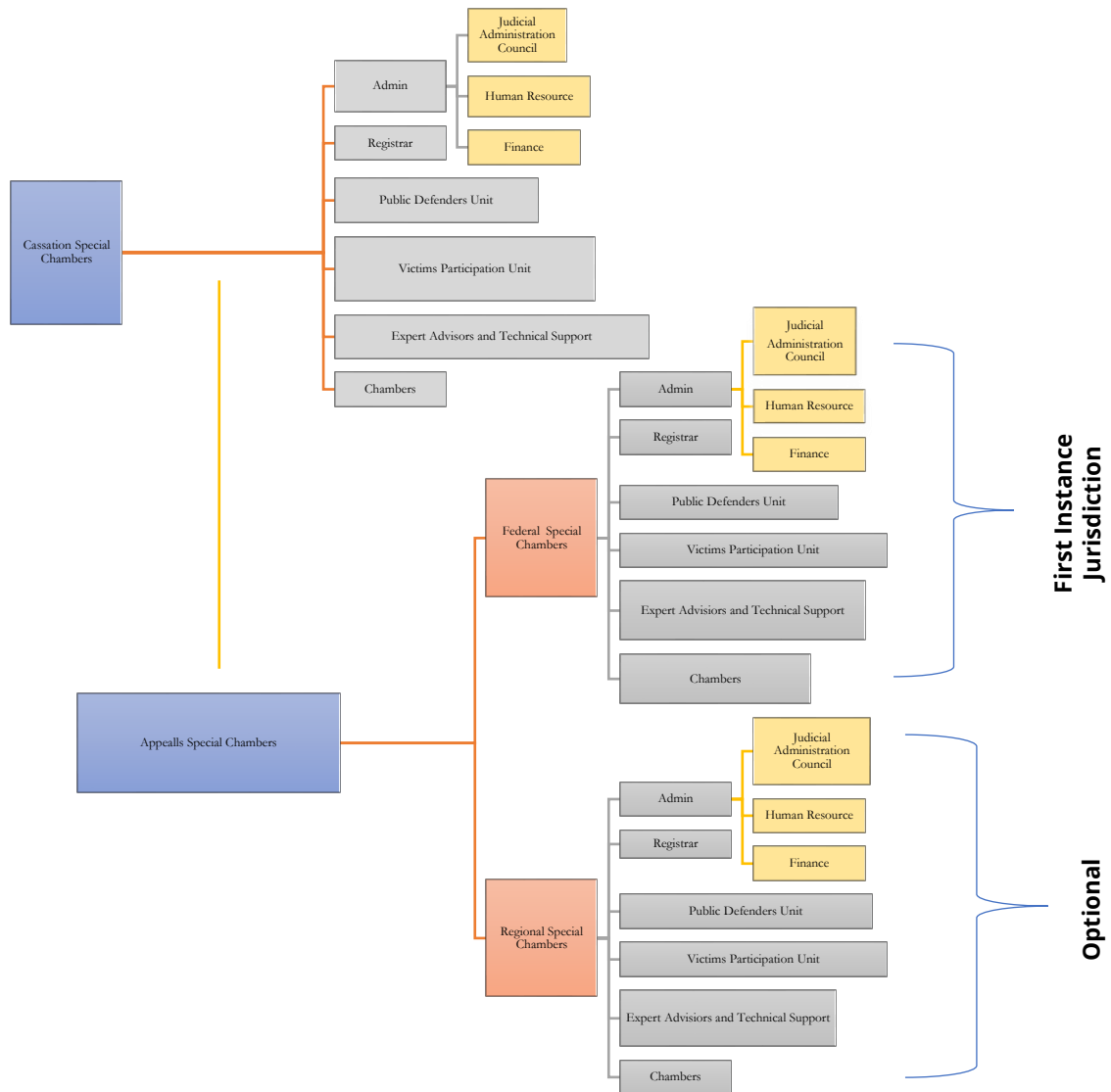
sophisticated institution within a less developed host structure.

This integration challenge may require significant adjustments to ensure the special chamber operates effectively and harmoniously within the existing judicial framework while remaining independent of the host. As illustrated by the rough structure suggested below, the special chamber would, in effect, be a court within a court, necessitating careful management to preserve its unique mandate and operation.

Additionally, as shown in Figure 3, similar structures could be established at the regional levels, responsible to the Federal Supreme Court, and extraordinary chambers for appeals and

cassation with similar structures and support units will be set up within the Supreme Court. While these measures aim to ensure comprehensive coverage and accessibility of transitional justice, they may also lead to duplication of efforts and resources compared to establishing a fully independent special court. This redundancy could complicate the judicial process and strain scarce resources, underscoring the need for a balanced approach in implementing these judicial reforms. Establishing these special chambers within the existing courts may inadvertently dilute their effectiveness. This begs for meticulous planning and resource allocation to achieve the desired outcomes in transitional justice.

**Figure 3:** Possible Structure of the Proposed Special Chambers in Courts of Ethiopia<sup>2</sup>



Source: the author

Although the proposed special chambers may produce effective results if implemented correctly, this does not mean that stakeholders should refrain from advocating for the establishment of a Special Court by seeking amendments to the policy. Such advocacy can take various forms. For instance, civil society organisations may institute legal

proceedings before the House of Federation to challenge the policy decision and seek direction from the House on constitutional grounds. Arguments can be made that the Constitution supports policies based on public opinion and that a Special Court would be more economical and practical than establishing multiple special

<sup>2</sup> This is an official attempt to present the organs of the forthcoming Special Chambers in the Courts of Ethiopia based on the details provided in the transitional Justice Policy.

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benches. Further, it could be submitted that Article 78(4) of the Constitution is not a blanket ban on special courts, but instead on those special courts, the likes of those established during the Dergue regime, that usurp the jurisdiction of regular courts and settled disputes

### *iii. Truth-seeking, amnesty and reparations*

The policy proposes truth-seeking mechanisms that extend as far back as evidence of wrongdoing exists. This process is unrestricted in both temporal scope and the nature and gravity of the crimes it addresses. Additionally, the proposed truth-seeking commission is tasked with responsibilities such as reparations, amnesty, truth-seeking, and memorialisation. However, [research](#) has noted that a mandate that was too broad and had an unrestricted temporal scope contributed to the premature termination of the Ethiopian Reconciliation Commission. Unlimited material and temporal scope create undue hope and expectations among stakeholders, leading to dissatisfaction and a loss of public trust in the process.

The broad mandate was chosen to avoid the proliferation of transitional justice institutions. However, it [poses](#) significant methodological challenges and may lead to inefficiency, resulting in unjustified cherry-picking of events. Furthermore, a broad mandate could be used as a recipe for victor's justice in truth-seeking, reparations, amnesty, and memorialisation.

without following legally prescribed procedures and due process of law. Survey and consultation results and expert opinions may be used to support the case for a Special Court and to argue that policies should not sideline public opinion.

Ethiopia has a history of selective transitional justice. While it has not implemented truth-seeking and reparations, [memorialisation](#) efforts have primarily focused on heroes and armed conflicts rather than victims. Some events are remembered more than others, and the country does not commemorate the Red Terror. There is currently a proposal to [remove](#) the 'Downfall of the Dergue' from the list of public holidays.

The truth-seeking process may overlap with activities currently undertaken by the National Dialogue process, although the latter's role is limited to dialogue on fundamental issues of difference. These fundamental issues may involve questions of gross human rights violations and injustices, which the truth-seeking mechanism is designed to address. Therefore, ensuring complementarity and synergy between the two processes is essential for both to work.

Relevant recommendations from the National Dialogue Commission may be used to redefine the mandate of the truth-seeking mechanism. This may suggest the need to sequence the

progress of the national dialogue with establishing a truth-seeking commission, an issue the implementation roadmap may consider.

### ***iv. Involvement of Traditional Mechanisms***

The Transitional Justice Policy echoed the AUTJP in acknowledging the potential significance of traditional mechanisms in transitional justice. The policy is also in line with public opinion. According to the HHI [survey](#), 80% of Ethiopians believe traditional mechanisms should be utilised to address violence. Unlike the formal justice system, most people view traditional actors and institutions as more aligned with their best interests and more relevant for peacebuilding, as also identified in a survey conducted in 2021 by the [Hague](#) Institute for Innovation of Law.

Ethiopia boasts a wealth of traditional dispute-resolution mechanisms emphasising reconciliation through consensus, aiming to mend fractured relationships and maintain communal harmony. These mechanisms could help implement specific transitional justice pillars and ensure accessibility and acceptance for victims and perpetrators. They could also be used in the aggregate to provide a traditional framework that guides the implementation of various mechanisms by offering a [unifying](#) philosophy towards peace and justice.

Nonetheless, traditional mechanisms should be cautiously incorporated into

the accountability process. While these mechanisms can complement formal justice processes, they remain primarily patriarchal, may not be human rights compliant, might be politically co-opted, and may fail to ensure the participation of youth and marginalised groups. A balanced approach that integrates traditional mechanisms without compromising human rights standards is essential.

### **Federal vs Regional: centralising and decentralising implementation**

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Ethiopia's transitional justice policy is national in scope. Contrary to common perceptions, the policy is not solely focused on Tigray and the war that ravaged the region between November 2020 and November 2022. Its temporal scope for criminal accountability encompasses not only post-2018 violence but also injustices that have occurred since 1995. Indeed, every region in the country bears the wounds of past and ongoing conflicts that require attention through transitional justice.

The national framework could be relevant in creating a predictable process that complies with international standards. Additionally, prosecutions of international crimes and communal and inter-ethnic violence, which are features of most violence that has occurred in the country, are traditionally regarded as

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federal mandates. However, there are [concerns](#) about the potential prioritisation of particular situations/regions over others, which could result from resource limitations and issues of political commitment.

Delineating a regional implementation plan is equally essential. Victims, witnesses, evidence, perpetrators and stakeholders are present at the regional level as much as they are based in federal offices and city administrations. Regional states are also closer to traditional justice mechanisms than the federal government. Therefore, some aspects of the implementation should be decentralised.

The policy indicates that regional special chambers would be established when necessary. It is practically impossible to prosecute hundreds or thousands of alleged perpetrators at the federal courts. In the post-1992 process that brought members and affiliates of the Dergue to justice, five [regional](#) supreme courts were involved, in addition to the Federal High and Supreme Courts. Similar forms of decentralisation are needed for other pillars of transitional justice.

Excessive centralisation of the process could lead to ineffectiveness and manipulation, as it may tend to avoid politically sensitive cases and limit oversight and monitoring mechanisms. A centralised federal implementation can be conflict-[insensitive](#). It may result in the selective prosecution of a few incidents, which may nurture a sense of exclusion and selective justice — a recipe for the country's vicious cycle of violence.

Decentralising implementation could also be problematic, as it might create a sense of prioritisation of one situation or region over another. Careful planning could ensure separate but equal treatment of victims of different types of violence. Through decentralised implementation, the process could serve as many victims and reach as many perpetrators as effectively as possible. In either case, the goal should be preventing the process from undermining one situation by overemphasising another for political reasons that foster a culture of impunity.

## Conclusion: retrospective legitimisation

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The implementation of Ethiopia's transitional justice policy signifies a crucial step toward addressing the nation's history of violence and repression. Its success depends on a stable and peaceful environment, which is currently absent due to ongoing conflicts in regions like Amhara and Oromia.

A central feature of the policy is the prioritisation of reconciliation not merely as a component of transitional justice but as its ultimate goal. This approach ensures a holistic process that incorporates rigorous criminal accountability. The careful sequencing of transitional justice elements is essential to prevent undue prioritisation and to maintain synergy and complementarity among the various components. Furthermore, the implementation process should embrace the importance of participatory transitional justice, engaging diverse stakeholders such as youth, the diaspora, victims, and civil society organisations, each playing an irreplaceable role. This participation should be more than just a nominal exercise.

The involvement of international experts is critical for bolstering the credibility and effectiveness of the transitional justice process, particularly in training Ethiopian judges and prosecutors in international standards. Creating a Special Prosecutor's Office and a Special Chamber within the existing court system aims to ensure independence and impartiality in addressing past crimes. However, the choice of special chambers over a special court remains a contentious issue.

Additionally, the policy's extensive mandate for truth-seeking, reparations, and memorialisation, alongside the inclusion of traditional justice mechanisms, signals an ambitious approach to transitional justice. However, careful planning, ongoing evaluation, and adherence to international human rights standards are vital to navigate the complexities and challenges of this initiative. The successful implementation of Ethiopia's transitional justice policy promises to foster reconciliation, accountability, and enduring peace in the nation.

To address the gaps seen in the consultation process and during the policy's crafting, the implementation process should be guided by the policy's overall intent, referencing the AUTJP and the Constitution. These documents, on the basis of which the policy was drafted, allow for interpreting policy provisions in light of international standards and best practices. Although the policy is imperfect, as most policies are, it could be retrospectively legitimised and rectified through an implementation that adheres to these international standards.



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