Comment on the draft Transitional Justice from the Human Rights Civil Society Organizations

1.Introduction

According to the cessation of hostilities agreement signed in Pretoria, South Africa, to end the conflict in the northern parts of the country, the Ministry of Justice of the Federal Democratic Republic of Ethiopia (FDRE) has prepared a transitional justice policy. This policy aims to ensure accountability for human rights violations and war crimes committed during the war and to provide a sustainable solution to the complex issues in the country. The preparation of the Transitional Justice Policy was previously explained in a document (Green Paper) and was enriched through a series of discussions. Subsequently, many public discussions were held under the guidance of the research team assigned to study different transitional justice policies. However, a completed draft of the transitional justice policy has not been made public, and neither the discussions nor criticisms have been reflected upon it. Even in the PowerPoint discussion held, the participants were not provided with the PowerPoint beforehand to offer comments. Since the draft transitional justice policy is not made public, this suggestion is also based on the explanation provided through the PowerPoint discussion.

2.The Draft Transitional Justice Must Be Official and Needs to Get Feedback

As mentioned above, although the transitional justice policy draft has not yet been made public, various pieces of information indicate that it will be ratified by the Council of Ministers in a short period of time. Except for the small discussions held with CSOs and donors, it is not believed that enough discussions were held. As the document is not official, there was no chance to form a well-versed opinion on the draft. We Human Rights Organizations listed below urge the draft to be official to the public, and stakeholders must reflect on it.

In this regard, though we appreciate the extensive discussions on alternatives to transitional justice, considering we are in a pivotal time of the policy preparation, for sufficient and fruitful discussions to be held, we demand for the draft policy to be made public beforehand. In addition to, CSOs, organizations which the issue directly concerns them—Ethiopian Human Rights Commission, National Dialogue Commission, Institutions of the Ombudsman, The law and

justice standing committee in the house of peoples' representatives, media, higher educational Institutes, Scholars, and other stakeholders—must be given a chance to thoroughly examine the transitional justice policy document and forward their comments before it is ratified. We strongly believe that this process will enhance the credibility of the transitional justice policy from the people's side on top of enriching the policy document.

3. The government upholding its responsibility of creating suitable environment for the implementation of the transitional justice policy

Various parts of the country are witnessing a series of hostilities, and it is not certain that the rest of the country has reliable security. Currently, armed conflicts are ongoing in various places of Amhara and Oromia between Fano and Oromo Liberation Army, respectively, and the Ethiopian National Defense Force. Though the situation in Benishangul Gumuz looks calm, it wasn't possible to conduct the election. In Gambella, recent armed violence has been observed. In Tigray, albeit there is no armed conflict at the moment, the multitude of crises caused by the war has not been addressed, and there are multiple unresolved issues regarding implementation of the pretoria agreement. The resentment and ramifications among the various people are still a hotbed.

The transitional Justice Policy is believed to have an affirmative role in the country in bringing sustainable peace and trust among the people. However, if the current security situation of the country does not improve, if the government does not fulfill its responsibility of enforcing law and order in the country, it will be difficult to implement transitional justice. As the current cycle of conflict and the human rights violations are hampering factors for the national Dialogue Commission, the government must have a commitment to ensure the rule of law and need to have political commitment to secure human rights to avoid hindrance from the implementation of transitional justice.

We are saying this, as the Human Rights Commission and institutions of the Ombudsman stated in their continuous reports, the government has not been proactive to take evident measures while citizens are being abducted, killed, and vanished by armed groups in Oromia Region.The government is also not seen taking action or reporting to the public if action is taken on some regional and local security forces committing arbitrary arrest, extrajudicial killings, and torture on civilians. In Amhara region, when the ENDF members take retaliations on civilians following

various ambush attacks by armed groups in various parts of the region, it is not yet confirmed if the government held those ENDF members accountable. The government lacking proactiveness starting from condemning the violation, to stop and avert the issue, the increasing magnitude of targeting civilians by drones and heavy artillery is also seen as an exacerbating factor for the ongoing conflict.

Furthermore, we fear that comments that have an intimidating posture by some government officials on the governmental organization that is in charge of investigating and announcing the issue which is the Ethiopian Human Rights Commission will cause a trust issue in the process.

Though the war in the North has stopped in Afar, Amhara, and Tigray, various information indicates that human rights violations are being committed, including by foreign forces. Following the ending of the war, there was no indication of instant investigation of human rights violation, collection of data so it is feared it will hinder the efforts of taking accountability on perpetrators of transitional justice.

In addition, during the State of Emergency it seemed as if it was prohibited to bring accused citizens before the court of law and we have also observed a long period of detention on opposition party members, media professionals, members of the federal and regional councils, minister detas without lifting their immunity and without court order. Moreover, the fact that facilities where prisoners are being held are not proper facilities or facilities intended to serve for this purpose , rather, they are dire and military camps, makes the people think it is a revenge rather than a normal law enforcement process. Due to this, it dwarfs the attitude that the people have towards the independent justice process. This will distort the public trust and acceptance, core values of the implementation of transitional justice. Therefore, by taking swift and corrective measures, the government must effect prisoners who have been jailed by the State of Emergency to be transferred to proper prisons, and their cases should be seen by regular courts and access to their lawyers, and they need to be accessible to their family members for a visit, and fair justice shall be served immediately.

As mentioned above, even though the government's main responsibility is to consolidate transitional justice; it is a must that armed group members who are repeatedly causing tragedy on civilians and violation rights to stop and prepare themselves for peaceful political negotiation.

Similar to the situation in Tigray, it is crucial to halt hostilities in Amhara and Oromia regions to provide the people with much-needed social stability. so that armed groups should play their part for the accountable and reconciliation-centered transitional justice process. Otherwise, we would like to stress that it is difficult to bring sustainable peace in the country, as well as the implementation of the national dialogue and transitional justice.

4.The inclusion of relevant institutional roles in the transitional justice

A. The Role of National Dialogue Commission

According to National Dialogue Commission Establishment Proclamation No 1265/2021, Article 6, the objective of the commission is stated as; by ameliorating the relationship between various segments of society and between government and the people to enable the formation of a democratic system that consists of Peace and trust. To bring this into action, and to solve the longstanding issues, it is important to develop a democratic culture and consensus. On the other hand, the main objective of the Transitional Justice Policy is to create an ample platform to establish reconciliation, Rule of law, Justice, and democracy by putting in place a coordinated system to lead a coordinated transitional justice system. In this regard, the transitional justice objective coincides with the key activities of the national dialogue commission.

As per the proclamation and the draft policy, both the transitional justice policy and the national dialogue process objective and goal are similar, and it is to create a country where peace and democracy are prevailed by eradicating resentment and mistrust. So, since the political and legal framework of the implementation of the transitional justice process is highly intertwined with the national dialogue commission process, it is important to affirm their collaboration, and also crucial to clear their demarcation to avoid confusion and agenda overlap. In this regard, notably truth finding and indemnity activities aspect, it is important to work on ways to integrate with the National dialogue commission and establish collaboration including time frame, implementation, and ways to avoid redundancy. If the transitional justice implementation bodies clearly state the ways in which they are working with the national dialogue commission, in theory or objective, it should be clearly stated in the policy which will help to avoid a confusion that may arise from the people's side and also helps to do the job in a better way.

B. The role of the Ethiopian Human Rights Commission and the Institute of Ombudsman

Similarly, the Ethiopian Human Rights Commission, on top of promoting human rights and democracy culture, also encompasses the pursuit of justice by holding accountable individuals suspected of human rights violations. The transitional justice has also similarity with the commission's mission with regard to ensuring accountability and democratization. Thus, it is better that the coordination and working relations between the commission and the transitional justice institutes be put down in detail on the policy. The institute of Ombudsman is also missioned to indicate solutions by identifying administrative violence on citizens, and it is closer to the transitional justice process. These Organizations will do the following responsibilities in the transitional justice process notably starting from in the truth finding aspect, and sharing their evidence to the transitional justice that will help for the prosecution, and the following will be done: to create awareness among the people towards the transitional justice and human rights, proper documentation of information regarding right violations, create awareness of the people about law and human right by using the transitional justice process, giving training for the judges and prosecutors who will take part in the transitional justice arbitration process, presenting proposals and ideas regarding transitional justice, regular follow up the truth finding and indemnity works, evaluate the indigenous conflict resolution mechanisms that are employed in this process from the human right protection perspective, giving advices and technical support to better off the implementation of transitional justice, documenting the justice and truth finding documents after the conclusion of the transitional justice, and save them for research and educational purposes, and as the human rights commission has a key stake, it should be clearly stated in the policy.

C. The role of Civil Society Organizations

It is affirmative that CSOs and their roles are clearly stated in the transitional justice policy. In this regard, it is applaudable that the stating of CSOs' role in transitional justice by enhancing the society's awareness towards transitional justice, by supporting financially,technically, and other ways possible and being part of the implementation process and undertaking a portion of the responsibility to insure the implementation. However, we believe that CSOs should have a

broader scope of responsibilities, similar to those undertaken by the Ethiopian human rights commission. In this regard, CSOs by providing recommendations and opinions on the arbitration process in the transitional justice, may Share the human rights violations information and evidences and findings to the transitional justice institutions, monitoring the transitional trial, and the activities of the transitional justice and truth finding, evaluate the indigenous conflict resolution mechanisms that are employed in this process from the human rights protection and accountability perspective, identifying useful experiences by looking back to the previous and similar process that took place to investigate and hold accountable of those crimes that have happened during the Derg regime, and also CSOs may support the transitional justice process by taking part on researches about the transitional justice, and this shall be stated in the policy with details. It will help Implementers of the transitional justice, and relevant stakeholders to understand the partnership of CSOs and will consolidate the process.

D. The Role of Media, Religious and Higher Educational Institutions

The media and religious institutions have an important role in creating awareness to the society about transitional justice and in raising an affirmative attitude towards transitional justice, for its acceptance, and for the success of it. Moreover, the media, including social media , have an affirmative role in creating awareness about transitional justice, show the result of the transitional justice, and have the role of creating awareness on issues related to human rights and transitional justice.

Higher educational institutions could also support the transitional justice on the interpretation and the implementation to enhance the law by doing research on international human right laws, on humanitarian law and criminal laws that are applicable in the Ethiopian legal framework. Scholars of political science will also bring an asset by bringing resources supported by research for truth seeking and Reconciliation procedures for the democracy process and social trust. Therefore the media, religious institutions and higher educational institutions and the roles should be clearly stated on the transitional justice policy.

5. The Scope of Pertinence

The policy draft indicates that the inapplicability of transitional justice is across the country.

AHRE
CARD
የመብቶች እና ዲሞክራሲ ዕድገት ማዕከል
CENTER FOR ADVANCEMENT OF RIGHTS AND DEMOCRACY
MAKE DEMOCRACY THE ONLY RULE OF GAME!
EHRDC
IDE
ETHIOPIAN LABOUR RIGHTS WATCH
የኢትዮጵያ ሰራተኞች መብቶች ተሟጋች
LHR
Lawyers for Human Rights
NEWA
Setaweet
ለሰዋታ እኩልነት

However, it has been confirmed by the Ethiopian Human Rights Commission and the United Nations Human Rights Commission chief commissioner, that Eritrean forces have committed severe human rights violations and war crimes during the war in the Tigray region. Therefore, Eritrean soldiers who have been involved in the human rights violations and war crimes shall be held accountable by the special court process in their absence. Moreover, the truth commission must document the crimes committed by these foreign forces and make the findings official to the public. In this regard, the Ethiopian court that is in charge of the case needs to have a legal framework to establish universal jurisdiction, as is the practice elsewhere in the world when grave human rights violations are committed.

6. Guiding Principles of Transitional Justice

As stated in the draft document, the guiding principles of the transitional justice process are as follows: Human Rights-centered implementation, Do No Harm, national ownership, context-centered implementation, Accountability, Versatility, Inclusiveness, participatory, Gender-oriented implementation, employing indigenous conflict resolution values. And We, CSOs, whose names are listed on this document, fully support the stated principles. In addition, we believe that the stated points regarding the objective and implementation of transitional justice adhere to international human rights principles and are inclusive. The policy preparation is based on the previous proposals given by the Ethiopian Human Rights Commission and The UN Human Rights Commissioner General. Though we raise points as follows, we acknowledge that the preparation of the policy has been made commendable.

Even though we support the idea of employing indigenous conflict resolution that is incorporated in the document, we suggest that it should also focus on human rights and serve the interests of survivors, notably women, children, and persons with disabilities, during implementation. In this regard, we believe that the EHRC and CSOs will play a vital role.

7. Interpretation of crimes and Accountability

In the explanatory document, it was stated that those who are presumed to have a significant role

AHRE
CARD
የመብቶች እና ዲሞክራሲ ዕድገት ማዕከል
CENTER FOR ADVANCEMENT OF RIGHTS AND DEMOCRACY
MAKE DEMOCRACY THE ONLY RULE OF GAME!
EHRDC
IDE
ETHIOPIAN LABOUR RIGHTS WATCH
የኢትዮጵያ ሰራተኞች መብቶች ተሟጋች
LHR
Lawyers for Human Rights
NEWA
ሴትዋት
Setaweet
ለፆታ እኩልነት

in the human rights violations will appear before the court during transitional justice. Although we agree with the concept, it is important to clarify what “significant human rights violations” means and what it includes. In this regard,we suggest that it shouldn't be ambiguous and should be stated as clearly as possible. we also suggest that it should include the following: Rape, destruction of civilians properties and civil service institutions, Destruction of Historical and cultural heritages including war crimes by violating International humanitarian law, significant human right violations, Genocide, and crimes against humanity, using siege and hunger as weapons of war, and other allegations. Notably, since crimes against humanity are not included in Ethiopian law, they should be judged based on international laws and experiences.

With regard to involvement in crimes, the following steps must be taken into consideration and those who participated depending on the degree of the crime must be held accountable: Crime planning, not only giving orders and direct execution but also exposing people to attack deliberately by failing to fulfill responsibilities, giving information to perpetrators, or hiding information from survivors, and collaborating by not protecting the people, helping perpetrators to escape, or avoiding accountability using one's power. This shows the government's commitment to ensuring accountability at all levels, and also demonstrates that officials will not be free from accountability by shielding within their respective ethnicity or power.

8. Concerning special prosecutor institution

As stated in the document, to ensure professional capacity, independence, and public trust in transitional justice, it is encouraged that investigating crimes and filing lawsuit are led by the special prosecutor, In this regard, on top of pressing charges, the special prosecutor to adhere the human right principles shall form a well-trained and well experienced police forces that will be in charge of crime investigation and arresting suspects.

concerning investigation and charging of suspects, as crimes have an international posture and require special knowledge and professional capacity, it is important to invite experts who have deep knowledge of the matter in advisory positions to transfer knowledge, fulfill the requirements of the job, and help the process gain acceptance.

To earn trust from survivors regarding the process of the investigation and prosecution process,

especially on crimes and attacks against women, it is important to assign female experts.

9. Special Courts

In the policy explanatory document, it was stated that cases in transitional justice will be heard by a special court. Although the reasons stated for the establishment of a special court are convincing, the constitutionality of the special court has to be carefully reviewed. In this regard, it may spark an argument citing the article from the constitution Article 78 “Special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established.” Thus, we believe that the article should be reviewed based on the context of the origin and the provision. In the constitution, the reason for establishing special courts is that citizens were subjected to prolonged arrest, human rights violations, and killings by the unprocedural special courts and unknown judges during the Derg regime.

Therefore, the objective of the constitution is to avert unaccountable and non-procedural justice processes that do not adhere to fair trial standards, it is not prohibit the arbitration that is established based on the law, that fulfills international human rights and fair trial principles, and that conducts open trials with judges appointed according to the law. Thus, as long as it fulfills all the requirements mentioned above, the special court cannot be unconstitutional. The proposed special court should be endowed with both first instance and appellate court, ensuring that its appellate decisions serve as binding precedents for subsequent cases and lower courts, akin to the rulings of the cassation court. This structure is pivotal for the development of Ethiopian legal jurisprudence. Moreover, the inclusion of foreign experts, alongside Ethiopians, on the benches of both tiers of the court, individuals well-versed in dealing with war crimes, international offenses, and grave human rights violations, will significantly bolster the justice process's legitimacy and credibility. Such an approach will not only elevate the caliber of judicial decisions but also facilitate knowledge transfer and enrich human rights jurisprudence. Prior to their participation, these international judges should undergo comprehensive training to familiarize themselves with the Ethiopian legal framework, procedural norms, and the specific contexts within which the relevant acts were perpetrated.

10. The Role of CSOs and Higher Education Institutions during the Trial

AHRE
CARD
የመብቶች እና ዲሞክራሲ ዕድገት ማዕከል
CENTER FOR ADVANCEMENT OF RIGHTS AND DEMOCRACY
MAKE DEMOCRACY THE ONLY RULE OF GAME!
EHRDC
ሁሉን አቀፍ ራዕይ ለዲሞክራሲያዊት ኢትዮጵያ
Inclusive Vision for Democratic Ethiopia
ETHIOPIAN LABOUR RIGHTS WATCH
የኢትዮጵያ ሰራተኞች መብቶች ተሟጋች
LHR
Lawyers for Human Rights
NEWA
ሴትዊት
Setaweet
ለፆታ እኩልነት

Process

As mentioned above, CSOs, law and human rights schools should participate in the process by: Observation, providing amicus curiae, organizing discussion platforms, and conducting research. Local CSO and international civil societies could organize experience sharing regarding transitional justice from other countries with the experience for judges, prosecutors, truth-finding teams and reconciliation bodies. Additionally, CSO's should ask a civil procedure to be taken on individuals who are criminal offenders and organizations who are accountable under the law for the victims to get compensation, and professional medical associations should also participate by preparation and presentation of forensic evidence.

11. Legal Amendments for Transitional Justice

As stated above, the transitional justice process is unique in its kind and inclusive. Therefore, it requires legal amendments that fit it. In this regard, it is important to have new legal amendments based on international human rights laws and also that include new crime topics. In addition to the newly ratified, with regard to the crime procedure, it is important to conduct research and identify if it is important to adhere to international trial processes.

Truth-seeking, compensation, rehabilitation, and reconciliation processes need to have a legal framework. Traditional laws need to be incorporated into the modern law system and have pioneer legal amendments to embrace the indigenous conflict resolution system in transitional justice.

Finally, stakeholders must use transitional justice to identify and make institutional and legal reforms, to identify significant human rights violations, partiality, vandalism, ethnically motivated attacks, Gender-based violence, and misuse of power.

Conclusion

As mentioned above, the fact that the option of transitional justice has included various conversations with the mass public, as well as the involvement of CSOs, the Ethiopian Human

AHRE
CARD
የመብቶች እና ዲሞክራሲ ዕድገት ማዕከል
CENTER FOR ADVANCEMENT OF RIGHTS AND DEMOCRACY
MAKE DEMOCRACY THE ONLY RULE OF GAME!
EHRDC
IDE
Inclusive Vision for Democratic Ethiopia
ETHIOPIAN LABOUR RIGHTS WATCH
የኢትዮጵያ ሰራተኞች መብቶች ተሟጋች
LHR
Lawyers for Human Rights
NEWA
ሴትዋት
Setaweet
ለፆታ እኩልነት

Rights Commission, the United Nations Human Rights Chief Commissioner, and professional groups conducting in-depth research, is commendable. This approach should be continued in future main policy and law drafting processes. For the process to be complete and successful, the draft for transitional justice should be made public, allowing stakeholders to provide comprehensive comments.

In addition to transparency and inclusiveness, considering the current state of our country, where stable peace and accountability are lacking, the implementation and drafting of the transitional justice policy will face challenges. Apart from providing comments on the policy, stakeholders should also be actively involved in its implementation, and their roles should be clearly outlined in the policy. This will contribute to better accountability. It is crucial for every concerned body to fulfill its role by creating an enabling environment for policy implementation and by clearly defining the roles of relevant organizations. Otherwise, it will be impossible to implement transitional justice as expected. Lastly, we urge the government to take the aforementioned comments seriously and with a strong commitment.

1. Associations for Human Rights in Ethiopia (AHRE)

2. Center for Advancement of Rights and Democracy (CARD)

3.Ethiopian Human Right Defenders Center (EHRDC)

4. Ethiopia Labor Rights Watch

5.Inclusive Vision for Democratic Ethiopia

6 Lawyers for Human Rights

7. Network of Ethiopian Women's Association

8.Setaweet