

THE CONFLICT IN NORTHERN ETHIOPIA: THE PEACE VS. JUSTICE DILEMMA

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Abstract

This article examines the peace–justice dilemma arising from Ethiopia’s recent armed conflict and explores the choices, constraints, and possibilities associated with addressing atrocity crimes while pursuing a negotiated political settlement. Drawing on the literature on transitional justice and an analysis of Ethiopia’s historical responses to political violence and conflict-related abuses, the article examines the relationship between peace negotiations and criminal accountability. It argues that accountability should not be pursued merely in response to external pressure or international expectations. Rather, credible justice mechanisms are essential because of their potential to contribute to sustainable peace, the consolidation of the rule of law, and democratic development. The article concludes that while political negotiations may be necessary to end armed conflict, durable peace in Ethiopia is unlikely to be achieved without meaningful accountability for atrocity crimes.

Key-terms: *Ethiopia; justice; peace; transitional justice; accountability; international crimes*

Introduction

In November 2020, an armed conflict erupted in Ethiopia’s Tigray region. The conflict was characterized by a high level of violence and has been, by all accounts, an extremely brutal war, resulting in massive

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loss of life, displacement and destruction of property. According to reports, all parties to the conflict have committed grave violations of international humanitarian, human rights, and refugee laws.¹ Several of the alleged violations may constitute war crimes and crimes against humanity.² At the moment, parties to the conflict have agreed to a cessation of hostilities and have taken preliminary steps toward a negotiated settlement. Whether this will be successful remains to be seen. At the same time, there have been persistent demands for accountability for atrocity crimes committed during the conflict.³ Similarly, since the beginning of the war, there has been a strong call to resolve the conflict politically, that is, via negotiation and compromise.

The situation in Ethiopia therefore presents a profound peace–justice dilemma. On the one hand, the Ethiopian government and other stakeholders face the urgent task of ending armed conflict and restoring stability through political negotiation and compromise. On the other hand, they must address serious international crimes committed during the conflict and respond to victims’ demands for truth, accountability, and reparations. Reconciling these competing objectives presents one of the most difficult challenges facing post-conflict societies.

¹ Ethiopian Human Rights Commission (EHRC) and Office of the United Nations High Commissioner for Human Rights (OHCHR), *Report of the EHRC/OHCHR Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by All Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia* (3 November 2021).

² *Ibid.*, 5.

³ See UN Human Rights Council, *Resolution S-33/1 on the situation of human rights in Ethiopia*, adopted at its 33rd Special Session, UN Doc. A/HRC/RES/S-33/1 (December 17, 2021); Amnesty International and Human Rights Watch, “*We Will Erase You From This Land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone*, April 6, 2022; Amnesty International, *UN and AU Must Prioritize Justice, Truth, and Reparations in Ethiopia*, September 2022.

The government's own approach to the conflict illustrates this tension. Since the War in northern Ethiopia began in November 2020, the interests guiding the government of Ethiopia's strategy and decision-making have been shifting over the course of the war. At the beginning, the government invoked justice to justify the war efforts and rejected calls for peaceful resolution of the conflict, implying that justice was the only guiding principle of government decision-making.⁴ However, as the conflict escalated and allegations of serious violations were directed against all parties, the government's position gradually shifted. In a bid to stop the war, the government released senior TPLF officials whom it had arrested and imprisoned, declared a cessation of hostilities, and nominated negotiators, signifying a shift in its commitment from an exclusive emphasis on accountability to a negotiated settlement of the conflict.

Nevertheless, finding a morally and legally defensible balance between peace and justice remains highly challenging. The central question is not simply whether Ethiopia should pursue peace or justice, but how the country can design a framework capable of advancing both objectives in a context of political fragility, limited institutional capacity, and competing interests. This article examines the peace–justice dilemma in Ethiopia and explores the choices, constraints, and possibilities associated with addressing atrocity crimes while pursuing political settlement. It argues that accountability should not be pursued merely as a response to external pressure or international expectations. Rather, credible justice mechanisms are essential because of their potential contribution to sustainable peace, the consolidation of the rule of law, and democratic development. By examining Ethiopia's

⁴ *BBC News*, "Tigray crisis: Ethiopian Prime Minister Abiy Ahmed rejects peace talks," *BBC News*, November 11, 2020, <<https://www.bbc.com/news/world-africa-54900769>> accessed on July 8, 2022.

historical responses to political violence and conflict-related abuses, the article demonstrates that ignoring accountability risks perpetuating cycles of impunity and instability, whereas meaningful justice can contribute to building a more durable peace.

The paper proceeds in five parts after this introduction. Part 1 contextualizes the article by describing the dilemma, presenting arguments in favor of peace and justice, and reviewing selected empirical studies. Part 2 provides a brief overview of the Ethiopian conflict. Part 3 provides a brief overview of political transitions in Ethiopia and justice-related responses. Part 4 examines justice-related responses and peacemaking efforts. The last part offers concluding remarks.

1. The Peace vs. Justice Dilemma

Three decades ago, there were no restrictions on peace talks taking place during or after a war. Without having to worry about issues of accountability for atrocity crimes committed during a war, the parties to the conflict may agree to a peace agreement.⁵ Granting leaders amnesty was a recurring element of the peace agreement, and it was viewed as a crucial tool for political transition. The sovereign had the right to grant amnesty, which had the effect of making impunity the rule rather than the exception.

With the advancement of individual human rights and international criminal law, this situation has fundamentally changed. Currently, almost all conflicts around the world are accompanied by demands for accountability for egregious violations of basic human rights. The

⁵ See, e.g., Naomi Roht-Arriaza and Lauren Gibson, "The Developing Jurisprudence on Amnesty," (1998) 20 *Human Rights Quarterly* 843–885.

increase in accountability measures strengthened and tipped the scales in favor of justice and accountability. This change significantly constrained states' unrestricted ability to grant amnesty in the name of promoting peace. At least in theory, the result is that after heinous atrocity crimes, a broad amnesty is not acceptable.

Thus, countries emerging from a repressive regime or a devastating war face enormous challenge. On the one hand, they must continue with reconstruction and restoration efforts in order to strengthen the wartime economy and reestablish societal bonds. On the other hand, they must confront the past and deal with fundamental human rights violations and atrocity crimes committed by the repressive regime, or during wartime. In dealing with the past, they must consider measures to prevent similar future violations and redress victims, as well as promote democracy, peace, and human rights without jeopardizing the fragile peace and reconstruction efforts that follow a repressive regime or devastating war. This necessitates balancing competing demands, which is a significant challenge to meet.⁶

The question of how to deal with the past has sparked a significant body of scholarly work,⁷ frequently presented as a peace vs. justice debate. The main points of contention are whether the pursuit of justice should trump peaceful dispute resolution and whether the protection of human rights ought to take precedence in post-conflict environments. The debate over which of the two values should come first has not yet

⁶ See, e.g., Kai Ambos, Judith Large and Marieke Wierda (eds.), *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development* (Springer 2009).

⁷ See, e.g., Ruti G. Teitel, *Transitional Justice* (OUP 2000); Chandra Lekha Sriram and Suren Pillay (eds.), *Peace versus Justice? The Dilemma of Transitional Justice in Africa* (James Currey 2010); Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (OUP 2008).

found a consensus, and the creation of the International Criminal Court has only served to fuel it. A third approach to the debate seeks to bridge the gap between those who support peace and those who support justice by emphasizing that both are necessary to achieve sustainable peace and build democracy. The arguments advanced by proponents are highlighted in the following sections.

1.1. The Case for Negotiated Settlement

Advocates of peace contend that seeking justice should be subordinated to resolving conflicts through negotiation and compromise. The justifications put forth by those who favor negotiations and compromises are typically opposed to pursuing justice through criminal prosecution and are largely grounded in pragmatic considerations. They contend that peace eliminates the conditions that allow innocent civilians to be targeted for attack during times of war. In an ongoing conflict, ending the war prevents the loss of life and the destruction of vital infrastructure and services.⁸

Some claim that seeking justice could prolong a conflict⁹, and that the longer a conflict lasts, the more civilian infrastructure and property are destroyed, the more civilians are targeted and killed, and the more challenging intergroup reconciliation becomes.¹⁰ Others claim that criminal prosecution weakens already precarious transitions by forcing leaders who might be held accountable to fight longer and harder to

⁸ See, Anonymous, 'Human Rights in Peace Negotiations', (1996) 18(2) *Human Rights Quarterly* 249–258.

⁹ Priscilla Hayner, *The Peacemaker's Paradox: Pursuing Justice in the Shadow of Conflict* (Routledge 2018) 37; See Mark Kersten, *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace* (OUP 2016); Jack Snyder and Leslie Vinjamuri, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', (2003) 28 *International Security* 6.

¹⁰ See Mark Kersten (n 9), and Jack Snyder and Leslie Vinjamuri, (n 9).

escape prosecution.¹¹ They contend that upholding justice directly jeopardizes the political and personal safety of warring parties' leaders, a risk that political leaders are unwilling to take. Conversely, peaceful conflict resolution through negotiation allows for the beginning of a reconstruction process and the redirection of war budgets for the construction of infrastructure severely damaged by the war.¹²

In addition, those who are opposed to the use of criminal prosecution have argued that the use of criminal prosecution can make reconciliation extremely difficult and can even lead to the remobilization of troops for another conflict. What is more, because of the sheer magnitude of the crimes that have been committed and the number of people who have been involved in the commission of those crimes, the standard criminal justice system is not suitable to deal with crimes of this magnitude. It would be counterproductive and ineffective to make an effort to investigate the large number of people who were involved in committing these crimes.¹³

Based on the foregoing reasons, advocates who argue for negotiation and compromise reject criminal prosecution for dealing with the past. Instead, they argue for amnesty and forgiveness, which according to proponents are more likely to promote national reconciliation and social healing. However, the moral and legal foundations of amnesty for serious crimes are highly contentious, and at least amnesty for

¹¹ See Jack Snyder and Leslie Vinjamuri (n 9) 5–44.

¹² Anthony D'Amato, 'Peace vs. Accountability in Bosnia', (1994) 88 *American Journal of International Law*, 88 (1994) 500–506.

¹³ Erin Daly and Jeremy Sarkin, *Reconciliation in Divided Societies: Finding Common Ground* (University of Pennsylvania Press 2011).

serious international crimes is said to be inconsistent with international human rights standards.¹⁴

1.2. The Case for Justice

Demanding justice for human rights violations by rights and victims' groups is increasingly becoming common. Extreme example of seeking justice is demonstrated by the saying "*Fiat Justitia pereat mundus*," which means "Let justice be done, even if it means the end of the world," or "*Fiat Justitia, Ruat Coelum*", which means "Let justice be done, even if the heavens fall"¹⁵. The modern understanding of justice seeks to justify itself by raising the moral and legal foundations on which victims' justice is based, as well as the values that will be promoted by pursuing justice. Those who advocate for justice insist that ensuring justice is of the utmost importance in order to reduce the likelihood of future violence.¹⁶ They argue that ensuring justice breaks the cycle of violence caused by impunity, since impunity leads to a disregard for moral and legal obligations.

Some proponents contend that peace treaties that are predicated on a culture of impunity do not endure for an extended period of time and are more likely to fall apart sooner or later. According to them, a long-lasting peace is unlikely to be achieved unless those responsible for atrocities and other violations of human rights are made to account for

¹⁴ Helena Cobban, *Amnesty After Atrocity? Healing Nations after Genocide and War Crimes* (Routledge 2015).

¹⁵ See Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* (Ted Humphrey tr, Hackett Publishing Co. 1795), Appendix I; William A. Schabas, 'The International Criminal Court: Limits, Potential and Conditions for the Promotion of Justice and Peace', (2013) 34 *Third World Quarterly* 841–860.

¹⁶ See Antonio Cassese, 'Reflections on International Criminal Justice', (1998) 61 *The Modern Law Review* 1–10; Diane F. Orentlicher, 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime' (1991) 100 *Yale Law Journal* 2537–2615.

their actions.¹⁷ Moreover, a culture of impunity breeds mistrust and resentment among victims, which in turn erodes respect for the rule of law and human rights. According to proponents of this view, impunity does not restore the dignity of the victims, their families, or the communities in which they live.¹⁸ Instead, it leads to retaliation and further cycles of violence.¹⁹ On the contrary, advocates argue that accountability helps to cultivate a culture of respect for the rule of law and human rights, as well as contribute to the growth and development of democratic institutions.²⁰ In turn, this contributes to the resolution of conflicts through legal and democratic means, which in turn contributes to sustainable peace. Also, it makes people less likely to violate human rights in the future and helps build an environment that is good for human rights and democracy.²¹

Moreover, since parties to a conflict will typically deny responsibility for acts that violate fundamental human rights, proponents of justice argue that judicial fact findings assist in establishing contested facts as well as the truth in an independent and impartial manner.²² This avoids future pointing fingers, shifting blame, and attempting to justify the commission of serious violations of human rights, all of which are harmful to the peaceful coexistence of societies affected by a devastating war. In addition to this, it keeps the historical record

¹⁷ See Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge University Press 2006).

¹⁸ See United Nations Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616 (2004).

¹⁹ Naomi Roht-Arriaza, *Impunity and Human Rights in International Law and Practice* (OUP 1995).

²⁰ Teitel, *Transitional Justice* (n 7).

²¹ Samantha Darehshori, *Selling Justice Short: Why Accountability Matters for Peace* (Human Rights Watch 2009).

²² Orentlicher (n 16).

straight and acts as a deterrent to those who want to deny the commission of atrocities. By keeping the record straight, it stops future political leaders from trying to manipulate the past in order to sow the seeds of future conflict and further their own political goals.

Furthermore, others argue that by putting the blame for serious violations on the shoulders of the individuals who are responsible, criminal accountability helps to prevent the perception that everyone within the community of perpetrators is collectively responsible for wrongful acts.²³ The idea is that the removal of individuals who are responsible for atrocity crimes makes it possible for communities to find peace with one another. This helps keep the perpetrators' community from feeling guilty and ashamed as a whole and the victim community from blaming everyone in the perpetrators' community.

Some relate the case for accountability to the rights of victims recognized in international human rights instruments. In international law, victims have the right to justice and reparation, and in order to exercise these rights, the responsible parties need to be held accountable for their actions. In connection with this, holding those responsible for serious human rights violations not only restores the victims' dignity but also brings satisfaction to the victims' families and the community in which the crimes took place. It helps to ease the feeling of helplessness that victims or whole communities may have after terrible crimes or violent conflicts.²⁴

Finally, proponents of accountability argue that democracy and the rule of law cannot be sustainably established where those responsible

²³ See Antonio Cassese, *International Criminal Law* (3rd ed., OUP 2013).

²⁴ M. Cherif Bassiouni, 'Searching for Peace and Achieving Justice: The Need for Accountability', (2017) *International Crimes* 113–132.

for serious crimes enjoy impunity.²⁵ Accountability, they argue, strengthens faith in the law and contributes to the development of a culture of resolving political disputes legally and respecting human rights.²⁶

1.3. Alternative Approaches

Although many disagree on the form that accountability should take, there has been an increasing global consensus on pursuing accountability in post-conflict situations, at least in relation to the most serious crimes such as war crimes, crimes against humanity, and genocide.

Some argue that states have a legal duty to prosecute the most serious international crimes.²⁷ As such, retributive or criminal justice is advocated by some as an effective means of achieving justice for victims of violence. This means that states are not allowed to grant amnesty to perpetrators in order to pursue political goals.²⁸ Others argue that the duty to prosecute should be approached with flexibility in a manner that allows flexibility to pursue other policy objectives, such as reconciliation processes. According to this view, if pursuing other policy objectives than criminal prosecution is found to be necessary, the choice between abandoning criminal prosecution and pursuing an alternative justice approach should not be closed.²⁹ The argument is that, depending on the context in which they are implemented, accountability mechanisms might vary in their effectiveness in

²⁵ Teitel (n 7).

²⁶ *Ibid.*

²⁷ Orentlicher (n 16).

²⁸ See M. Cherif Bassiouni, *International Criminal Law*, vol. I: *Sources, Subjects and Contents* (3rd ed., Martinus Nijhoff Publishers 2008).

²⁹ See Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Bloomsbury Publishing 2008).

achieving desired results. As a result, policymakers should be able to choose from any method of justice

Alternative approaches to criminal prosecution include Truth and Reconciliation Commissions (TRCs), reparations, institutional reform, memorialization, traditional justice mechanisms, and vetting and lustration processes.³⁰ Generally, truth Commission is perceived as more restorative than criminal prosecution, falling between the extremes of criminal prosecution and blanket amnesty. South Africa's Truth and Reconciliation Commission is often held up as a model of an effective post-conflict justice mechanism.³¹ Not everyone agrees, but many think the TRC in South Africa was successful in easing the country's transition from apartheid and ushering in democracy. In recent years, Colombia has established a novel justice and accountability process that combines both restorative and retributive purposes. The Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (SIVJRNR) consists of three mechanisms, including a mechanism to prosecute and punish those responsible for the most serious crimes committed in the context of the armed conflict in Colombia. These mechanisms are the Truth, Coexistence, and Non-Repetition Commission (CEV), the Search Unit for Persons Presumed Disappeared in the Context of the Conflict (UBDP), and the Special Jurisdiction for Peace (JEP). Those who qualify for the Special Jurisdiction for Peace (JEP) face lenient punishments and are given the chance to reintegrate into society.³² JEP, in contrast to the formal

³⁰ See United Nations Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, 23 August 2004.

³¹ Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd ed., Routledge 2011).

³² See Government of Colombia and Revolutionary Armed Forces of Colombia (FARC-EP), *Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace* (24 November 2016), Point 5 (Victims).

criminal justice system, prioritizes the needs of victims, gives them a voice to have their suffering recognized and incorporates reparation mechanisms.³³

1.4. Empirical Research

Because most of the literature on peace and justice offer no systematic evidence to support transitional justice claims, some have labeled the claims as wishful thinking unsupported by evidence. The intrinsic difficulty of quantifying the effects of justice processes, whether in terms of generating durable peace or democracy or influencing important players' conduct, contributes to the lack of evidence.³⁴ Furthermore, justice systems are complicated and contentious, which complicates gauging the outcomes of justice procedures. Even so, there have been more attempts to measure both the effects of transitional justice procedures and the theoretical assumptions that they are based on.

The data collected so far, and the conclusions show a mixed result, partly because of the inherent difficulty of measuring the effect of post conflict interventions. Nonetheless, findings from empirical research suggest that a single mechanism is unlikely to provide the desired goals, such as democracy, long-term peace, and reconciliation of communities that have been devastated by conflict.³⁵ The data also clearly shows that prosecuting and trying key individuals responsible for serious crimes is vital to achieving the desired objectives, such as

³³ Ted Piccone, *Peace with Justice: The Colombian Experience with Transitional Justice* (Foreign Policy at Brookings 2019) 1–31.

³⁴ Paul Gready and Simon Robins, 'Transitional Justice and Theories of Change: Towards Evaluation as Understanding', (2020) 14(2) *International Journal of Transitional Justice* 280–299.

³⁵ See Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Routledge 2010).

establishing the rule of law and democracy.³⁶ For example, trials could be linked with a truth and reconciliation commission or victim reparation procedures. The International Center for Transitional Justice (ICTJ) also advocates for a comprehensive approach to transitional justice that includes truth-telling, reparation mechanisms, and institutional changes in combination with prosecution.

For instance, Lie, Binningsbø and Gates examined the effectiveness of post-conflict justice mechanisms in promoting durable peace.³⁷ They found that criminal trials are associated with longer post-conflict peace, but this positive effect is largely confined to conflicts that ended in decisive military victory rather than negotiated settlements.³⁸ They also found that victim-centered processes like reparations and truth commissions are useful in forging lasting peace, but not as effective in non-democratic cultures. By contrast, amnesties tend to be destabilizing and are generally associated with shorter post-conflict peace.

In a similar vein, Olsen, Payne, and Reiter empirically examined claims regarding the effectiveness of transitional justice mechanisms in promoting democracy and improving respect for human rights.³⁹ They underscore the effectiveness of trials in promoting democracy and respect for human rights when combined with other mechanisms. According to them, TJ mechanisms are not mutually exclusive, but rather complement one another to bring about

³⁶ *Ibid.*

³⁷ Tove Grete Lie, Helga Malmin Binningsbø and Scott Gates, 'Post-Conflict Justice and Sustainable Peace', *World Bank Policy Research Working Paper*, No. 4191 (2007).

³⁸ Matthew M. DeTommaso, Moritz Schulz and Sarah B. Lem, 'Choices of Justice: Effects of Civil War Termination on Post-conflict Justice Mechanisms Implemented by the State' (2017) 11(2) *International Journal of Transitional Justice* 218–238.

³⁹ Olsen, Payne and Reiter (n 35).

democracy and stability, including trials and amnesty.⁴⁰ They conclude that a single mechanism alone is not likely to succeed and address all human rights abuses or strengthen democracy and that “most successful transitional projects for achieving stronger democracies and human rights records will include trials and amnesty”.⁴¹ They argue that a single mechanism as means of addressing past violence is counterproductive.

On the other hand, Stromseth, Wippman, and Brooks examine post-conflict scenarios in which prosecutions and other approaches have been used to determine whether trials help the development of the rule of law and the strengthening of domestic judicial systems.⁴² They found that it does and identified the circumstances under which the pursuit of accountability mechanisms may be successful, depending on their demonstration effect and their capacity-building effect.⁴³ They conclude that fairness is critical for accountability to work in promoting the rule of law and strengthening the domestic justice system, because both the people who were affected and those responsible for the wrongdoing must think the justice response was fair. Their final thesis is that courtroom justice only succeeds when embedded within a comprehensive, multi-sector, and socially inclusive reconstruction blueprint.

2. A Brief Overview of The Ethiopian Conflicts

The conflicts in Ethiopia present a significant case study for the investigation of the tension between peace and justice due to several

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Jane Stromseth, David Wippman and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law After Military Interventions* (Cambridge University Press 2006).

⁴³ *Ibid.*

distinctive characteristics. Ethiopian conflicts have taken various forms, ranging from intense armed confrontations involving heavy weaponry to lower-intensity conflicts that do not involve such weapons, as well as ethnically motivated rebellions targeting civilians and interethnic conflicts. However, the Tigray conflict in northern Ethiopia is unique in several respects. It differs from other conflicts in Ethiopia due to the scale of violence, geographic scope, weaponry employed, actors involved, and the magnitude of the humanitarian crisis. Consequently, it is not surprising that the conflict has attracted significant attention from observers around the world and the international community.

The outbreak of the Tigray war represented a watershed moment in Ethiopia's political crisis, as it effectively ended the possibility of resolving the disputes between the federal government and the TPLF through negotiated means. After the conflict began, the complexity of the situation grew rapidly. While every aspect of the war is debatable, including when and why it began, there appears to be general agreement that the TPLF attacked the Northern command in what it called "anticipatory self-defense."⁴⁴ On the night of November 3, 2020, the TPLF launched an attack on the Northern Command and took control of the command base in Tigray. Following this, the Federal government launched a counter-offensive on November 4, 2020. Along with the federal government, the Amhara Special Forces (ASF) and allied militia, as well as the Eritrean Defense Force (EDF), joined the counter-offensive against the TPLF forces.⁴⁵ These forces deposed the

⁴⁴ Sekoture Getachew, 'Interview with Dimtsi Woyane', YouTube, 14 November 2020 <<https://www.youtube.com/watch?v=K2d4WAtbhBc>> 17 July 2022.

⁴⁵ EHRC/OHCHR (n 1) para. 37.

TPLF, seized control of Mekelle, and the federal government established an interim administration in the region.

Subsequently, Tigray forces engaged in guerilla warfare, and the TPLF regained control of Mekelle, and the government withdrew from Tigray in June 2021 and declared a unilateral ceasefire. However, the fighting did not stop. Instead, the TPLF advanced into the Amhara and Afar regional states, threatening to seize Addis Ababa and depose the federal government. Afterward, the balance of power shifted in favor of the federal government, and the TPLF was pushed back to Tigray. The federal government declared a humanitarian truce on March 24, 2022.⁴⁶ Soon after, the TPLF-led government for the Tigray region agreed to a cessation of hostilities.⁴⁷

As already noted, the armed conflict in northern Ethiopia is not the only conflict affecting the country, as conflicts of varying intensity have emerged in many parts of Ethiopia. For instance, another major conflict is taking place in the Oromia regional state, pitting the Oromia Special Forces and Militia as well as the ENDF against the Oromo Liberation Front Army (OLF). This conflict has caused massive human suffering, complete disregard for human life, property destruction, and population displacement.⁴⁸ Nevertheless, there has been no indication

⁴⁶ Federal Democratic Republic of Ethiopia Government Communication Service, 'Declaration of a Humanitarian Truce by the Government of Ethiopia', Facebook, 24 March 2022
<<https://www.facebook.com/FDRECommunicationService/posts/137573522116463>> accessed on 22 July 2022.

⁴⁷ Tigray External Affairs Office, 'Statement on Humanitarian Truce', Twitter, 24 March 2022<<https://twitter.com/TigrayEAO/status/1507108987107430407>> accessed on 17 July 2022.

⁴⁸ Human Rights Watch, 'Ethiopia's Other Conflict: Ethiopia's Tigray War Overshadows Ongoing Cycles of Violence in Oromia', Human Rights Watch Commentary, 4 July 2022<<https://www.hrw.org/news/2022/07/04/ethiopias-other-conflict>> accessed on 17 July 2022.

that the parties to the conflict are willing to resolve their differences through political means. Consequently, the conflict remains ongoing, making a negotiated settlement increasingly unlikely. Sadly, civilians are caught in the middle, have been the target of ethnically motivated attacks, and are feeling the burn of the fire as a result.

The violent conflict in Northern Ethiopia has caused unspeakable human suffering and destruction of property. The parties to the conflict completely disregarded the fundamental rules of international law and customs of war, as well as the rights and dignity of civilians.⁴⁹ According to the OHCHR-EHRC Report, all parties to the conflict have flagrantly violated international humanitarian law and caused enormous suffering to civilians, including grave violations of human rights and refugee law.⁵⁰ The report indicates that serious crimes have been committed, including attacks on civilians and civilian objects, unlawful killings and extra-judicial executions, torture and other forms of ill-treatment, arbitrary detentions, abductions, and enforced disappearances, sexual and gender-based violence, forced displacement of civilians, and plunder, looting, and property destruction.⁵¹ Some of these violations may amount to crimes against humanity or war crimes, according to the JIT.

The human cost of the war remains controversial, but Belgium's Ghent University estimate puts the death toll at around 500,000.⁵² More than

⁴⁹ See EHRC/OHCHR (n 1).

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Geoffrey York, 'Tigray War Has Seen Up to Half a Million Dead from Violence and Starvation, Say Researchers', *The Globe and Mail*, 14 March 2022 <<https://www.theglobeandmail.com/world/article-tigray-war-has-seen-up-to-half-a-million-dead-from-violence-and/>> accessed on 17 July 2022.

2.6 million people have been internally displaced as a result of the war.⁵³ This, however, does not include the deaths and displacement caused by other conflicts across the country.

3. Conflict and Responses Related to Justice

A brief examination of the responses of successive Ethiopian governments to violent political crises will help us comprehend how historical events have shaped the current state of affairs. Today's violence in Ethiopia is not a spontaneous, temporary hiccup caused by the country's current political climate. Instead, it is part of a five-decade-long cycle of violence and egregious violations of human rights. To better understand the current situation in Ethiopia, the next section examines the justice-related responses of successive regimes to violent conflicts.

3.1. The Dergue

The dawn of the modern period of Ethiopia's history of conflict and war dates back to the 1960s. In September 1974, popular protests and uprisings brought Emperor Haile Selassie's government to an end. The lack of leadership during the popular uprising allowed the Derg to seize the opportunity, organize itself, present itself as the leader of the uprising, and remove the emperor. The deposition of the Emperor and the transfer of power to the Derg were remarkably peaceful and largely unopposed. Selected officers went to the emperor's palace and informed him that they were there to remove him, and the emperor agreed to accompany them.⁵⁴ The Derg then declared that the emperor

⁵³ USA for UNHCR, 'Ethiopia's Tigray Refugee Crisis Explained', *UNHCR News*, 13 June 2023<<https://www.unrefugees.org/news/ethiopia-s-tigray-refugee-crisis-explained/>> accessed on 18 July 2022.

⁵⁴ See René Lefort, *Ethiopia: An Heretical Revolution?* (Zed Press 1983).

had been deposed and that the Derg would act as a provisional government.

Following the deposition of the emperor, the Derg implemented a revolutionary system of justice against both the old regime's leadership and dissident groups. It summarily executed sixty former officials of the emperor and instituted an eliminationist ideology toward dissident groups. In the years that followed, not only did the Derg engage in armed conflicts on multiple fronts, but it also employed violence, such as arbitrary detention, summary execution, and torture, as a means of governance and unleashed nationwide repression. It stripped the courts of their authority over what it deemed to be political matters and gave it to the *kebele* officials. This meant that even if a person was merely suspected of being a supporter or member of an opposition group, this could have grave consequences for their freedom and life.

The Derg met all forms of opposition with violence. During this period, the seeds of resolving political disputes through the use of extreme force were sown. Thus, the origins of the pattern of addressing political opposition through violence can be traced back to the brutal violence Ethiopia experienced under the Derg regime. In this sense, the 1970s laid the foundation for a political culture in which violence and the use of force became accepted means of pursuing political objectives, a pattern that continues to persist today. The continued prevalence of violence as a means of resolving political disputes can, in part, be understood in light of the fact that some of the actors who relied on violence during earlier periods continued to exercise significant political influence in the country.

The human and material cost of 17 years of persecution and brutality is difficult to quantify, but they were undoubtedly immense. However,

one tragic reality is plainly clear: the Derg's 17 years of persecution and outrage against Ethiopians did not provide the foundation for long-term security and peace in Ethiopia, nor did they achieve their primary purpose of preserving Ethiopia's territorial integrity. In doing so, the period during the Derg regime laid the groundwork for Ethiopia's intractable conflict, and Ethiopia has never been at peace since.

3.2. The EPDRF

The Derg was overthrown in 1991 after years of vicious and violent military struggle, and the EPRDF/TPLF, a coalition of ethnic groups led by the TPLF, assumed control. Unlike the transfer of power from the Emperor to the Derg, the transfer of power from the Derg to the EPRDF/TPLF was bloody and came after a long violent armed conflict that resulted in the Derg regime's collapse. In 1991, the EPRDF, a coalition of ethnically formed parties dominated by the TPLF, seized power and established a transitional government. In a significant departure from Derg's approach, and partly due to the complete collapse of the regime, which made such action more feasible, the EPRDF established a special prosecution office and pursued justice through criminal trials, bringing members of the Derg leadership before the courts.

The Special Prosecution Office (SPO) had the authority to investigate and prosecute crimes committed by the Derg regime's leadership. The trials conducted after the fall of the Derg regime, commonly known as the Red Terror Trials, represented one of the largest and most ambitious attempts to prosecute the leadership of a fallen authoritarian regime. The trials' primary goal was not just to hold the Derg accountable for its cruelty but also to educate about atrocity crimes and avoid future recurrence. Although the trials contributed to establishing

accountability by bringing several senior Derg officials before the courts, they failed in promoting democratic culture and respect for human rights, as well as in averting a bloodshed recurrence. In this sense, it is sufficient to recall the 27 years of persecution and significant human rights abuses experienced in Ethiopia, both during and after the trials. From this point of view, it is not surprising that many saw the trials as victor's justice, show trials, and an effort to legitimize the EPRDF/ TPLF's apparent illegitimacy in the eyes of the world community. Thus, it is not surprising that the legacy of the Red Terror Trials faded into obscurity in Ethiopian history, having little influence on the development of democracy and human rights. This demonstrates that trials lacking legitimacy are unlikely to foster a culture of respect for the law, even among those responsible for designing and implementing the process.

3.3. The 2018 Transition

Ethiopia underwent a transition for the second time after 27 years in April 2018. Unlike its predecessor, which collapsed due to military defeat, the EPRDF/TPLF regime was brought to an end after decades of repression by popular protests across the country, first in Oromia and then in Amhara and elsewhere. This was a negotiated transition rather than a regime collapse. Thus, rather than a clean break from the EPDRF/TPLF, there was continuity, albeit in a different form. The dominant party, the TPLF, lost its hold on the center and was pushed to the Tigray region, but it kept enormous influence and military capabilities.

As a result, justice in the form of a criminal prosecution for grave crimes was not only difficult; it could have threatened the transition itself. The transition was too fragile to pursue full-scale criminal

prosecution against former high profile TPLF officials who still possessed significant power and wealth. Consequently, the government adopted various strategies to circumvent this challenge. Firstly, the government employed strategic rhetoric aimed at discrediting the former officials of the TPLF. Secondly, there were some cases of reshuffling. Thirdly, there were few cases of targeted prosecution for corruption and abuse of power. The transition and transformation of government were widely welcomed both domestically and internationally, generating considerable hope for a more peaceful and democratic future in Ethiopia. Since the measures adopted by the government during this period have been extensively documented elsewhere, there is no need to revisit them in detail here.

However, the transition sacrificed key principles of justice, favoring a political settlement to end the enduring instability in the country. Accountability for 27 years of gross human rights violations was ignored, victims were not heard, or their interests were not considered in the transition. In the transition, issues of human rights violations were put aside because the dominant party conceded to relinquish its dominant position. There was no repentance and no one acknowledged responsibility for causing great suffering to victims. The transition failed to strike a balance between the interests of justice and political pragmatism, favoring the transfer of power instead of negotiating accountability for past crimes as part of the transition. Given that the transition was founded on impunity, Ethiopia's relapse into violence was not a question of if, but when. The culture of impunity for massive human rights abuses lies at the center of Ethiopia's relapse into violence. Three years after the transition, a deadly armed conflict erupted in Tigray. The brutal conflict resulted in massive civilian suffering, the destruction of infrastructure and property, and significant economic losses.

4. The Tigray Conflict in Ethiopia: The Peace and Justice Puzzle

The origins of conflicts in Ethiopia are controversial, making it one of the most contentious issues in the country. Some argue that Ethiopia's conflict stems from competing visions for the country's future.⁵⁵ Others argue that Ethiopia's conflicts are rooted in the history of the country and its state structure.⁵⁶ Nevertheless, the sources and interests driving Ethiopian conflicts are diverse. Looking at the situation in Ethiopia as a whole, there are several reasons that cause conflicts, including elite power struggles, questions about autonomy or administrative boundaries, conflicts between communities over scarce resources, and conflicts between those who are regarded as natives and settlers.⁵⁷

Despite the huge controversy surrounding it, the immediate cause of the beginning of the war in Tigray was the attack on the Northern Command, which had its base in Tigray. According to the government, the conflict in Tigray began because all previous attempts to resolve political differences between the TPLF and the Federal Government peacefully failed and the TPLF attacked the Northern Command. In the language of the government, the war was imposed on it, and the government had exhausted all other options for peacefully resolving the country's political disputes.

⁵⁵ Patrick Wight, 'Ethiopia's Civil War: Competing Visions on the Nature of the State', *ACCORD Conflict & Resilience Monitor*, 2 December 2020

<<https://www.accord.org.za/analysis/ethiopias-civil-war-competing-visions-on-the-nature-of-the-state/>> accessed on 18 July 2022.

⁵⁶ Teferi Mergo, 'The War in Tigray Is a Fight Over Ethiopia's Past—and Future', *Foreign Policy*, 18 December 2020 <<https://foreignpolicy.com/2020/12/18/the-war-in-tigray-is-a-fight-over-ethiopias-past-and-future/>> accessed on 18 July 2022.

⁵⁷ Berihi Asgele Siyum, 'Underlying Causes of Conflict in Ethiopia: Historical, Political, and Institutional?', *Proceedings of the 2nd World Conference on Social Sciences Studies* (October 2021).

This argument, however, emerged within a broader context of political instability and increasing demands for the government to uphold the rule of law. Even before the Tigray crisis began, calls for greater protection of citizens and accountability for violations were becoming increasingly prominent. Illegal acts were widespread, attacks against civilians and their property were increasing, and ordinary citizens accused the government of failing to protect them. Many people lived in a state of insecurity, with their livelihoods and ways of life severely affected. Several critics highlighted the government's perceived inaction and indifference in the face of widespread violence against civilians. Conversely, the government attributed Ethiopia's broader crisis to the TPLF, accusing it of fueling instability and supporting attacks against civilians in different parts of the country in order to divert attention from democratic reforms and economic development.

Against this backdrop, the federal government sought to frame its response to the Tigray crisis not merely as a military intervention but as a law enforcement action aimed at restoring constitutional order and ensuring accountability for those responsible. In the Tigray operation, the entire justice system was activated to investigate and take legal action against those responsible for the attacks on the Northern Command. The Ethiopian government characterized the operation in northern Ethiopia as a "law enforcement operation."⁵⁸ Accordingly, the stated objectives of the operation were to uphold the law and "apprehend those responsible for the attacks on the Northern Command of the Ethiopian National Defense Forces."⁵⁹ The goal was,

⁵⁸ Abiy Ahmed, 'Statement by Prime Minister Abiy Ahmed, Putting an End to Impunity: The Case for Enforcing Federal Laws in Tigray', Embassy of Ethiopia, London, 17 November 2020<<https://www.ethioembassy.org.uk/putting-an-end-to-impunity-the-case-for-enforcing-federal-laws-in-tigray/>> accessed on 18 July 2022.

⁵⁹ *Ibid.*

therefore, to either bring the TPLF's top leaders to justice if they turned themselves in or were captured, or to totally destroy the TPLF once and for all.⁶⁰

In line with these objectives, arrest warrants were issued against senior TPF officials. Subsequently, on February 14, 2021, the Office of the Attorney General issued a press release outlining the scope of the investigation into TPLF members. The statement identified 349 suspects, including 253 current and former members of the Ethiopian National Defense Force and the Federal Police, and 96 senior TPLF officials.⁶¹ In addition to outlining the scope of the investigation, the Attorney General described the legal nature of the alleged offenses. The allegations include high treason, crimes against the constitutional order, and terrorism. It is interesting to note that the Office of the Attorney General was not investigating international crimes such as war crimes and crimes against humanity. Additionally, according to the press release, 123 individuals were arrested and were being held at the time.⁶² Thus, this was initially successful as some key TPLF leaders were arrested and a few of them were executed. Overtime, however, both winning the war and bringing the leaders of the TPLF and the remaining TPLF leaders proved to be difficult.

As consequence, the government's strategy was refashioned in two ways. First, the government released the officials of the TPLF who had

⁶⁰ *Ibid.*

⁶¹ Office of the Federal Attorney General of Ethiopia, 'Attorney General – Press Release on the Investigation into TPLF's Attack against the Northern Command of the National Defense Force and Related Grave Criminal Offences', Embassy of Ethiopia, Washington, D.C., 5 February 2021 <<https://ethiopianembassy.org/attorney-general-press-release-on-the-investigation-into-tplfs-attack-against-the-northern-command-of-the-national-defense-force-and-related-grave-criminal-offences-february-4-2021/>> accessed on 18 July 2022.

⁶² *Ibid.*

been apprehended and imprisoned.⁶³ Secondly, the original goal of the war, namely to hold responsible TPLF officials accountable through the law enforcement operation, was abandoned. Instead, a ceasefire was announced, and the parties to the conflict have remained in a state of neither peace nor war up to this point.

Often times, rather than being a purely hypothetical debate, the peace and justice dilemma represents a practical challenge that conflict-affected countries must confront. This also applies to the case of Ethiopia. The difficulty is evident in the government's shifting position regarding the resolution of the conflict in the country, which has oscillated between pursuing justice and peace. There is no magic formula to resolve this dilemma. Countries have used a variety of policies and tactics throughout history to resolve implacable political conflicts and bring about peace. While the conflicts in the former Yugoslavia and Rwanda were addressed largely through criminal accountability mechanisms, South Africa established the Truth and Reconciliation Commission (TRC) as a means of promoting national healing and reconciliation. An approach that proved effective in a particular context may not necessarily be suitable for Ethiopia, given the unique historical, political, and social circumstances of the country.

4.1. Justice Efforts

As already mentioned, the conflict in Ethiopia has been marked by excessive brutality and cruelty on both sides, causing enormous suffering among the civilian population. Early in the battle, evidence of serious international crimes, including crimes against humanity and

⁶³ BBC News, 'Tigray Conflict: Ethiopia Frees Rebel Leaders in Christmas Amnesty', *BBC News*, 10 January 2022 <<https://www.bbc.com/news/world-africa-59919539>> accessed on 18 July 2022.

war crimes, started to emerge.⁶⁴ The underlying crimes perpetrated throughout the conflict range from the deliberate killing of wounded troops and civilians to rape, torture, indiscriminate murders, and excessive destruction of property not justified by military necessity.⁶⁵ As previously stated, the government has characterized its action in the north as a law enforcement operation, and as such, the operation was designed to hold those responsible accountable.

Nonetheless, as evidence of atrocities involving both sides of the conflict accumulated, the call and pressure for comprehensive justice grew. As a result, international and national investigation mechanisms have been established to conduct impartial investigations into alleged abuses and violations of the law and customs of war. So far, an investigation into the alleged crimes has been conducted on three fronts.

First, as noted earlier in this article, the Joint UN Human Rights Office-Ethiopian Human Rights Commission investigation launched independent and impartial investigations. This collaborative team provided a credible account of serious violations of international humanitarian law committed by all parties to the conflict. The report concluded that serious crimes, including unlawful or extrajudicial killings and executions; torture; arbitrary detentions and enforced disappearances; pillaging, looting, and property destruction; sexual and gender-based violence; and forcible displacement of civilians, have been committed.⁶⁶ In addition to calling for an immediate cessation of

⁶⁴ Zecharias Zelalem, 'Survivors recount horrific details of Mai Kadra massacre,' *Al Jazeera*, December 12, 2020 <<https://www.aljazeera.com/news/2020/12/12/survivors-recount-horrific-details-of-mai-kadra-massacre>> accessed on July 18, 2022.

⁶⁵ EHRC/OHCHR (n 7).

⁶⁶ EHRC/OHCHR (n 1).

hostilities, the report calls for independent and impartial bodies to conduct prompt, thorough, and effective investigations into allegations of violations and to hold those responsible accountable.⁶⁷ The Ethiopian government welcomed the report as a way to complement the ongoing efforts to "provide redress to victims, ensure accountability, and take preventive measures."⁶⁸ The government was also pleased to know that the report did not come to the conclusion that genocide may have happened. In contrast, the TPLF rejected the report, mostly opposing the involvement of the Ethiopian Human Rights Commission in the investigation of the conflict.⁶⁹

Subsequently, the Ethiopian government announced the formation of an Inter-Ministerial Taskforce on Accountability and Redress of Violations Committed in the Context of the Conflict in Northern Ethiopia on November 29, 2021. The task force has its own secretariat and was created to implement the recommendations included in the report of the joint investigation. Four committees comprise the task force: investigations and prosecutions, refugees and IDP affairs, sexual and gender-based violence, and resource mobilization.⁷⁰ The investigative and prosecution committee is comprised of a specialized joint civil-military investigative and prosecutorial unit and has been instructed to immediately begin its work. According to recent statements made by the head of the Secretariat, 158 experts with diverse

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Ethiopian Monitor, 'PM Recognizes Joint UN Ethiopia Investigation Team's Report on Tigray Conflict', *Ethiopian Monitor*, 3 November 2021 <<https://ethiopianmonitor.com/2021/11/03/pm-recognizes-joint-un-ethiopia-investigation-teams-report-on-tigray-conflict/>> accessed on 18 July 2022.

⁷⁰ Addis Standard, 'Ministry of justice establishes inter-ministerial task force to oversee investigation, legal action against human rights violations in northern Ethiopia conflict,' *Addis Standard*, 30 November 2021 <<https://addisstandard.com/23412-2/>> accessed on July 18, 2022.

professional backgrounds have been assembled to investigate grave violations of international human rights in the northern region of the country.⁷¹ During a briefing for EU diplomats, the head of the secretariat reported that in the regional states of Afar and Amhara, investigators had gathered evidence of "2,712 extrajudicial killings of civilians, 1,228 serious bodily injuries, 969 rapes, and 421 cases of inhuman treatment of civilians."⁷² In addition, the head of the team stated that the first phase of the investigation was complete and that the team was proceeding with prosecution of the responsible parties.⁷³ Given that the Task Force does not currently have access to the Tigray Regional State, where the vast majority of crimes were committed, it is unlikely that its investigations will be exhaustive and objective. Besides, the Tigray side may find it hard to believe that the task force will be able to conduct a fair investigation and ensure that all victims receive justice. As a result, the task force will operate with a serious lack of legitimacy, which seriously limits its capacity to promote accountability. No matter how accurate or impartial the investigation's findings may be, the legitimacy gap means they will almost inevitably be perceived as political. Consequently, rejecting the manner in which the task force was established will almost certainly lead to the rejection of the investigation's findings.

Finally, on December 17, 2021, the UN Human Rights Council established the Commission of Human Rights Experts on Ethiopia

⁷¹ Africa-Press, 'EU Diplomats in Addis Briefed on Accountability Measures Taken by Ethiopia', *Africa-Press*, 1 June 2022 <<https://www.africa-press.net/ethiopia/all-news/eu-diplomats-in-addis-briefed-on-accountability-measures-taken-by-ethiopia>> accessed on 18 July 2022.

⁷² *Ibid.*

⁷³ *Ibid.*

through resolution S-33/1.⁷⁴ The Commission's mandate includes conducting an exhaustive and impartial investigation into allegations of violations and abuses of IHL and other laws, as well as providing guidance on transitional justice. The Commission's most important authority relates to its mandate to "establish the facts and circumstances surrounding the alleged violations and abuses, collect and preserve evidence, identify those responsible, where possible, and make such information accessible and usable in support of ongoing and future accountability efforts."⁷⁵

Initially, Ethiopia vehemently opposed the formation of the United Nations Commission of Experts.⁷⁶ The Council nevertheless voted in favor of establishing the Commission despite Ethiopia's opposition. Ethiopia subsequently announced that it would not cooperate with the Commission, characterizing it as a tool of political pressure and an unfair mechanism.⁷⁷ Ethiopia has recently demonstrated a willingness to engage with the Commission. Members of the Commission made their first trip to Ethiopia since the Commission's inception in July 2021, where they were able to meet with high government officials and other stakeholders in an effort to gain unfettered access to crime scenes.⁷⁸ While this progress in relation to the Ethiopian government

⁷⁴ International Commission of Human Rights Experts on Ethiopia (ICHREE), 'International Commission of Human Rights Experts on Ethiopia Portal', *Office of the United Nations High Commissioner for Human Rights (OHCHR)*, 2023 <<https://www.ohchr.org/en/hr-bodies/hrc/ichre-ethiopia/index>> accessed on 18 August 2023.

⁷⁵ *Ibid.*

⁷⁶ *The Reporter*, 'Ethiopia Rejects UN Human Rights Council Resolution', 18 December 2021 <<https://www.thereporterethiopia.com/12440/>> accessed on 18 July 2022.

⁷⁷ *Ibid.*

⁷⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Press Release: Members of Human Rights Body Conclude First Mission to Ethiopia', 2 August 2022 <<https://www.ohchr.org/en/press-releases/2022/08/members-human-rights-body-conclude-first-mission-ethiopia>> accessed on 18 August 2022.

is encouraging, the Commission faces severe resource constraints in carrying out its mandates. In its most recent update to the Human Rights Council, the Commission stated openly that it lacks both human and financial resources to fulfill its mandate, and the head of the Commission stated bluntly, "if this Council expects us to accomplish what it requested in December, we need more resources."⁷⁹ By their very nature, international investigations of atrocity crimes require substantial financial and human resources. However, the Commission is already facing significant resource constraints. It remains to be seen whether the Council and states will provide the necessary resources for the Commission. Potential financial providers, such as the European Union and member states, have shifted their focus to the war in Ukraine, which has a significant impact on the resources available to the Commission. Furthermore, despite the Commission's positive progress in establishing cooperative relations with the Ethiopian government, there is currently no assurance that the Commission will have complete access to the crime scenes. If access is denied, it will severely hinder the Commission's capacity to conduct a thorough and impartial investigation. Moreover, the Commission's investigation is the initial step on the long path to ensuring justice for victims of violence in Ethiopia. Nevertheless, despite these and other limitations, if the commission is able to overcome its obstacles, it has the potential to investigate grave violations of human rights and humanitarian law in the Ethiopian conflict in an independent and impartial manner.

⁷⁹ International Commission of Human Rights Experts on Ethiopia (ICHREE), 'Oral Update of the International Commission of Human Rights Experts on Ethiopia to the UN Human Rights Council', *Human Rights Council*, 50th Session, Geneva, 30 June 2022.

4.2. Peace Making Efforts

Immediately following the outbreak of the war in northern Ethiopia, the international community and other observers increasingly called for dialogue and a negotiated political settlement to the conflict that was devastating the country. According to proponents of this view, the challenge facing Ethiopia was fundamentally political and should therefore be addressed through political means. Nevertheless, all parties to the conflict rejected the prospect of a peaceful resolution when they believed victory was within reach.⁸⁰ From the government side, a tweet from Prime Minister Abiy illustrates this;

*Our law enforcement operations in Tigray are proceeding as planned: operations will cease as soon as the criminal junta is disarmed, legitimate administration in the region restored, and fugitives apprehended & brought to justice - all of them rapidly coming within reach.*⁸¹

Similarly, when victory appeared imminent, the TPLF showed limited willingness to compromise with the federal government. As Tigrayan forces advanced toward Addis Ababa in November 2021, TPLF leaders maintained that negotiations could not proceed without prior

⁸⁰ Abiy Ahmed Ali (@AbiyAhmedAli), "አሁንም ደግሜ ለኢትዮጵያውያን ላረጋግጥላችሁ የምወደው የህግ የበላይነት የማረጋገጥ ስራችን ሳይጠናቀቅ ከዚህ ጁንታ ጋር ድርድር እንደማይኖር ነው። 2/2," *X (formerly Twitter)*, November 10, 2020 <<https://twitter.com/AbiyAhmedAli/status/1326216995247951874>> accessed on July 18, 2022.

⁸¹ *BBC News*, "Tigray crisis: Ethiopian Prime Minister Abiy Ahmed rejects peace talks," *BBC News*, November 11, 2020 <<https://www.bbc.com/news/world-africa-54900769>> accessed on July 18, 2022.

concessions from the federal government, including the withdrawal of federal-aligned forces and the lifting of restrictions on Tigray.⁸²

Recently, both parties have shifted their positions on negotiating a peaceful resolution to the conflict. On June 14, 2022, the Ethiopian government announced its intention to negotiate peace with the TPLF and established a committee to examine how to proceed with the peace negotiations. The government subsequently announced the members of the negotiating team that would represent it in the planned peace talks.⁸³ Despite the government's unequivocal willingness to participate in negotiations for peace, the most recent announcement does not specify the conditions for peace talks with the TPLF. In fact, the recent government position seems to indicate that the government is willing to start the peace talks without preconditions. The Ethiopian government even explicitly stated that there should be no preconditions for beginning negotiations. Thus, it is unclear whether accountability for serious international crimes will be included in the government's peace proposal.

Likewise, the TPLF has expressed its willingness to engage in peace negotiations⁸⁴ and appointed members of the negotiating team.⁸⁵

⁸² *Al Jazeera*, 'Ethiopia Gov't Outlines Terms for Possible Tigray Ceasefire Talks', 11 November 2021 <[aljazeera.com](https://www.aljazeera.com)> accessed on July 18, 2022.

⁸³ Fana Broadcasting Corporate (FBC), "Ethiopia appoints negotiating team to resolve conflict in the north peacefully," *Fana Broadcasting Corporate*, June 27, 2022 <<https://www.fanabc.com/english/ethiopia-appoints-negotiating-team-to-resolve-conflict-in-the-north-peacefully/>> accessed on August 18, 2022.

⁸⁴ Debretsion Gebremichael (President of the Government of Tigray), "Open Letter from the President of the Government of Tigray on peace talks," June 3, 2022 <<https://secureservercdn.net/198.71.233.26/yky.03a.myftpupload.com/wp-content/uploads/2022/06/Open-Letter-from-the-President-of-the-Government-of-Tigray-on-peace-talks-.pdf>> accessed on August 18, 2022.

⁸⁵ Borkena Ethiopian News, "TPLF says it has set up negotiating team for talks with Ethiopian gov't," *Borkena*, July 18, 2022 <<https://borkena.com/2022/07/18/tplf-says-it->

Analysts offer several explanations for why the parties decided to engage in peace talks after initially rejecting negotiations when the prospect of total victory appeared imminent, including the recognition that achieving complete victory was unattainable.⁸⁶ The negotiations face numerous complex and contentious issues that may prove difficult to resolve, making it uncertain whether they will ultimately lead to a lasting resolution of the conflict.⁸⁷ For now the most contentious issue has been the parties' selection of a potential mediator; the Ethiopian government preferred the AU, while the TPLF preferred the Kenyan president, Uhuru Kenyatta.

However, even if the negotiations succeed in producing a political settlement, a fundamental question remains: what role will accountability play in the process? It remains unclear whether accountability will form part of the negotiations, assuming that negotiations proceed. All parties to the conflict bear responsibility for reported violations of human rights, and none was able to achieve total victory. The parties came to the negotiating table not necessarily out of a genuine willingness to resolve their political differences through negotiation, but rather because they were exhausted by a protracted conflict. Moreover, because those who may bear the greatest responsibility continue to hold significant political and military power, negotiations over accountability are likely to be particularly difficult. From this perspective, political pragmatism is more likely to take precedence over justice.

has-set-up-negotiating-team-for-talks-with-ethiopian-govt/> accessed on August 18, 2022.

⁸⁶ William Davison, "At Long Last, Ethiopia Prepares for Peace Talks," *International Crisis Group*, July 4, 2022 <<https://www.crisisgroup.org/qna/africa/ethiopia/long-last-ethiopia-prepares-peace-talks>> accessed on July 18, 2022.

⁸⁷ *Ibid.*

The tension between peace and justice is not determined solely by the preferences of the domestic parties to the conflict. External actors can also play a significant role in shaping whether accountability is pursued or whether political compromises, including forms of amnesty, become more likely.⁸⁸ In the case of Ethiopia, both domestic and international human rights organizations have consistently called for accountability for atrocity crimes and have played an important role in documenting and reporting violations committed during the conflict. At the same time, external political actors, particularly the United States and the European Union, appear to possess considerable influence over the government's policy choices. They have put great pressure on the government to negotiate a peaceful end to the conflict in the north ever since the start of the war. Following allegations of serious human rights violations, the United States suspended Ethiopia from its duty-free trade programme,⁸⁹ while the European Union withheld financial support pending progress on issues including humanitarian access and accountability.⁹⁰ Nevertheless, both the European Union and the United States have continued to call for accountability for serious human rights violations while simultaneously supporting a peaceful resolution of the conflict through political means.

⁸⁸ See Chandra Lekha Sriram, *Confronting Past Human Rights Violations: Justice vs. Peace in Times of Transition* (Routledge 2004).

⁸⁹ Reuters, "U.S. cuts off Ethiopia, Mali, Guinea from Africa duty-free trade program," *Reuters*, January 2, 2022 <<https://www.reuters.com/world/africa/us-cuts-off-ethiopia-mali-guinea-africa-duty-free-trade-program-2022-01-01/>> accessed on August 17, 2022.

⁹⁰ Reuters, "EU suspends Ethiopian budget support over Tigray crisis," *Reuters*, January 15, 2021 <<https://www.reuters.com/article/us-ethiopia-conflict-eu-idUSKBN29K1SS>> accessed on July 18, 2022.

Concluding Remarks: Building Ethiopia's Future with Justice and Peace

As the foregoing discussion demonstrates, the peace–justice dilemma is not merely a theoretical question that Ethiopia may confront in the future; it has been a practical and enduring challenge since the outbreak of the war in the north. Those who prioritize a political settlement argue that the conflict in Ethiopia is fundamentally political and that its resolution must therefore be political rather than judicial. From this perspective, an emphasis on criminal accountability risks undermining peace initiatives, prolonging armed confrontation, increasing civilian suffering, threatening national cohesion, and contributing to state fragility. Conversely, critics of this approach maintain that overlooking accountability for grave violations is neither morally nor legally sustainable. They argue that political settlements negotiated without meaningful consideration of victims' rights risk marginalizing those who suffered most from the conflict and may fail to address demands for truth, justice, and reparations. Moreover, peace achieved through broad impunity may prove fragile, as it can weaken public confidence in the rule of law and hinder the development of democratic institutions. The experience of Ethiopia illustrates the complexity of reconciling these competing objectives. Although the parties to the conflict initially rejected negotiations and pursued military solutions, their positions shifted when neither side was able to secure a decisive victory, but a return to hostilities cannot be ruled out.

There is no simple answer to the dilemma Ethiopia faces or to the question of how the country should reconcile the potentially competing demands of peace and justice. The tensions between these objectives create profound political and institutional challenges, and identifying a workable solution is inherently difficult. On the one hand, applying

ordinary rule-of-law principles developed in times of peace is challenging in the aftermath of widespread violence. In contexts involving mass atrocities, it may be practically impossible to prosecute every individual responsible for international crimes, particularly where the number of perpetrators, victims, and incidents is extremely high. Moreover, an immediate and comprehensive pursuit of criminal accountability during an active conflict may risk intensifying political resistance and prolonging violence, thereby exposing civilians to further harm and worsening humanitarian conditions.

The current circumstances in Ethiopia suggest that peacemaking is likely to receive greater political priority than justice in the short term. The immediate objectives of ending armed conflicts and preventing a renewed escalation of violence, particularly in Tigray, may outweigh efforts to pursue extensive accountability measures. First, the conflicts have severely affected Ethiopia's political economy, contributing to declining investment, pressure on foreign reserves, inflation, and broader economic instability. Addressing these challenges and preventing further economic deterioration are likely to remain central government priorities. Second, Ethiopia continues to face significant humanitarian challenges, including food insecurity, drought, and large-scale internal displacement, which require urgent responses. Third, the conflict in the north did not end as a result of a decisive victory by one of the warring parties, but rather as a result of both sides reaching their breaking point. In such circumstances, political bargaining and compromise are more likely outcomes than comprehensive justice measures. Finally, negotiated settlements often provide quicker mechanisms for reducing violence and managing political disputes than the complex and resource-intensive process of accountability.

Nevertheless, the prioritization of peace negotiations should not obscure the long-term importance of justice. Although some justice demands may exceed the immediate political willingness of the parties, accountability ultimately depends on political commitment. Compared with negotiated settlements, justice processes are slower, costly, and require substantial institutional capacity and financial resources—resources that Ethiopia currently lacks. Their benefits may also not be immediately visible. However, Ethiopia’s historical experience demonstrates that political settlements without meaningful justice mechanisms have rarely produced sustainable peace.

A review of Ethiopia’s responses to political violence reveals that impartial and legitimate justice has seldom occupied a central place in post-conflict transitions. Following the 1974 revolution, the Derg regime established a revolutionary justice system that was accompanied by widespread repression and human rights violations. After the EPRDF came to power, it pursued prosecutions against former Derg officials, but this approach was largely characterized as victor’s justice rather than a comprehensive and impartial accountability process. The transition from the Derg regime did not eliminate patterns of repression, and serious human rights violations continued under the EPRDF government, including the use of torture in detention facilities such as Ma’ekelawi in Addis Ababa.

The political transition that began in 2018 provides another example of the difficulties associated with negotiated transitions. By their nature, negotiated transitions often prioritize political stability and the management of potential spoilers over comprehensive accountability for past abuses. While such approaches may facilitate short-term political change, they risk leaving unresolved grievances and patterns of impunity. Building democracy and respect for human rights on a

foundation of unaddressed violations creates significant risks for long-term stability.

Therefore, sacrificing justice entirely in pursuit of political pragmatism may produce only temporary stability rather than durable peace. Although peace agreements that provide explicit or implicit forms of amnesty may contribute to ending immediate violence, they may fail to address the underlying causes of repeated cycles of conflict. Ethiopia's past experience demonstrates that sustainable peace requires more than the cessation of hostilities; it requires credible mechanisms capable of addressing victims' demands for truth, accountability, and recognition. The central challenge for Ethiopia is therefore not choosing between peace and justice as mutually exclusive alternatives, but developing a transitional framework capable of advancing both objectives in a realistic and context-sensitive manner.
