

JUSTICE OPTIONS FOR ETHIOPIA

Eight Options to Provide Redress for Ethiopia's Victims

OCTOBER 2022



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Thank you to those who agreed to be interviewed as part of the research for this paper and to Sareta Ashraph who wrote an instructive internal memo on this topic.

Cover: Senait Ambaw, left, who said her home had been destroyed by artillery, leaves by foot along a path near the village of Chenna Teklehaymanot, in the Amhara region of northern Ethiopia Thursday, Sept. 9, 2021. At the scene of one of the deadliest battles of Ethiopia's 10-month Tigray conflict, witness accounts reflected the blurring line between combatant and civilian after the federal government urged all capable citizens to stop Tigray forces "once and for all." *AP Photo.*



Key Points

- The most recent conflict in Ethiopia has claimed thousands of lives and perpetrators have enjoyed almost complete impunity for their crimes.
- Justice and accountability for perpetrators on all sides are desperately needed to demonstrate that perpetrators will not escape punishment, to provide recognition and repair to victims, and to promote social healing and reconciliation.
- Ethiopian civil society representatives have called for the full spectrum of transitional justice mechanisms including criminal accountability, reparations, truth telling, and guarantees of non-recurrence.

“Legal accountability must be robust if there’s going to be some kind of justice, remedy, and contribution to reconciliation and peaceful coexistence for Ethiopia.”

– Tigrayan justice activist and scholar in interview with author on 8 June 2022

INTRODUCTION

Ethiopian civilians have suffered mass atrocities and dire humanitarian crises for generations. According to recent [estimates](#) by Ghent University, up to 465,000 people have died or been killed in the context of ongoing conflict in the Tigray region that erupted in November 2020.¹ Ethiopian national forces (ENDF), Amhara regional government forces, and Eritrean forces (EDF) are fighting Tigrayan regional forces (TDF), ostensibly due to disagreements over basic governance issues. All sides [have committed](#) horrific crimes—including murder, torture, sexual violence, forced displacement, and deliberate starvation, among other crimes—with complete impunity.² Elsewhere throughout the country, Oromo forces (OLA) and other militia have also perpetrated crimes.

According to a [resolution](#) of the United Nations Human Rights Council, parties to the ongoing conflict in Tigray—the ENDF, EDF, and TDF—may have committed war crimes and crimes against humanity.³ In addition, Human Rights Watch and Amnesty International [released](#) a joint report in April 2022 stating that Amhara regional government forces together with militias, local authorities, and the ENDF, have committed war crimes, ethnic cleansing, and crimes against humanity against the Tigrayan population of Western Tigray since November 2020.⁴ There has also been a severe uptick in the [dehumanization](#) of ethnic affiliations, generalized public [statements](#) (including [by Prime Minister Abiy](#)) categorizing Tigrayans as the “enemy”, and the Prime Minister’s [call](#) to all citizens to join the armed fight against Tigrayan “terrorists.”⁵ Meanwhile, civilians in other areas, including the Afar, Amhara, and Oromo regions, [have also experienced](#) high

levels of violence, conflict, and/or human rights abuses in recent years.⁶

Justice and accountability are desperately needed to demonstrate that perpetrators will not escape punishment, to provide recognition and repair to victims, and to promote social healing and reconciliation. Justice measures may also help to prevent further atrocities by deterring would-be perpetrators from committing atrocity crimes.

This paper, which is based on a combination of desk research and a dozen interviews with Ethiopian and non-Ethiopian scholars and civil society representatives conducted in May and June 2022, discusses options for justice and accountability for mass atrocity crimes committed in Ethiopia. It begins by summarizing views gathered from Ethiopian civil society representatives and scholars who belong to different diaspora communities. It then outlines and assesses justice options that are currently being pursued before suggesting additional avenues that should be considered.

The scope of this paper's analysis is deliberately broad; it includes but is not limited to justice for atrocity crimes committed in the context of the ongoing conflict in the Tigray region. In this regard, it is important to note that successive regimes in Ethiopia have committed mass atrocity crimes with complete impunity. This has left Ethiopian society without a shred of recognition or repair and has fostered a perception that perpetrators can commit atrocity crimes without facing consequences for their actions.

PART 1: ETHIOPIAN PERSPECTIVES ON JUSTICE

It is critical that any future justice and accountability processes be shaped and informed by the perspectives of affected communities from Ethiopia. In that spirit, in May and June 2022, the author conducted several interviews with scholars and civil society representatives that belong to the Tigrayan, Amhara, and Oromo ethnic groups and who live outside the country. Those interviewed are not official representatives of their entire community, but their views are nevertheless instructive when considering what mechanisms and measures are needed to produce meaningful justice and accountability in Ethiopia.

Those interviewed mostly agreed on a number of significant points, including the need to:

- Establish the full spectrum of transitional justice mechanisms including criminal accountability, reparations (including compensation, rehabilitation, mental health support, access to medical care, land and property restitution, and apologies), truth telling, and guarantees of non-recurrence;
- Hold perpetrators of crimes on all sides to account while avoiding making a false equivalency between crimes perpetrated by different groups;
- Conduct a truly representative and meaningful national dialogue process with an international mediator; and
- Address historical crimes in addition to ongoing crimes and violations.

One interviewee stated that justice would be unlikely to usher in long-term reform and peace and expressed the sentiment that it may even undermine these goals. However, this perspective was not shared by other interviewees. The importance of comprehensive, unbiased justice was summed up well by one of the interview respondents: "I cannot imagine there would be any justice if it's not for all; there has to be an investigation of everybody." (*Oromian justice activist in interview with author on May 23, 2022.*)

PART 2: PROSPECTS FOR SUCCESS OF ONGOING JUSTICE INITIATIVES

There are several ongoing efforts that could help to advance justice for atrocity crimes committed in Ethiopia. This section describes each of these initiatives and critically assesses their potential for success. There are two unifying themes across each of these justice initiatives that may reduce public confidence: (1) the Ethiopian government's refusal to grant access to affected areas; and (2) the lack of publicly available information about the initiatives.

African Union Commission of Inquiry on the Tigray Region in the Federal Democratic Republic of Ethiopia

On June 17, 2021 the African Commission for Human and People's Rights (African Commission) [launched](#) a Commission of Inquiry (AU COI) on the situation in

Tigray.⁷ The AU COI is [mandated](#) to investigate alleged violations of international human rights and humanitarian law and to gather information to determine whether such violations constitute serious and massive human rights violations.⁸ The following individuals were named as commissioners: Rémy Ngoy Lumbu, Maya Sahli-Fadel, Hatem Essaiem, Maria Teresa Manuela, and Mudford Zachariah Mwandenga.

The launch of the AU COI may be an important step towards accountability. That said, there are concerns about its effectiveness and impartiality, including its:

- Failure to provide sufficient publicly available information about its work;
- Lack of access to relevant populations, including in Tigray and refugees in Sudan;
- Delays in releasing its report, which was expected to come out in February 2022 and has yet to be released; and
- Exclusion of specific communities in current case selection (which focuses only on crimes committed in Tigray).

Complaint Filed with African Commission for Human and People's Rights

On February 8, 2022, Legal Action Worldwide (LAW), the Pan-African Lawyers' Union (PALU), and Debevoise & Plimpton LLP [filed](#) a complaint with the African Commission for Human and People's Rights against the Ethiopian Government and allied forces for allegedly committing massive human rights violations against Tigrayan civilians.⁹ The complaint alleges that the Ethiopian federal government targeted civilians and their infrastructure, committed mass killings and extrajudicial killings, perpetrated acts of sexual and gender-based violence, arbitrarily arrested and detained individuals, forcibly displaced civilians, and discriminated against people on the basis of ethnicity, among other human rights violations.

While the African Commission cannot adjudicate individual criminal responsibility for crimes that may have occurred, it may nevertheless advance the cause of justice and promote peace. For example, it ostensibly has authority to order the Ethiopian government to stop committing violations, to provide unfettered humanitarian access to Tigray, to apologize for violations of the African Charter for Human and People's Rights, and to support safe and voluntary returns of displaced persons. Even if the Commission is unable to enforce these orders, its findings may help to

set an historical record and mobilize other African states to intervene.

United Nations International Commission of Human Rights Experts on Ethiopia

On December 17, 2021, the United Nations Human Rights Council established the International Commission of Human Rights Experts on Ethiopia (UN Commission). The UN Commission is mandated to investigate alleged abuses of human rights and violations of humanitarian law that have occurred in Ethiopia since November 3, 2020. It is also mandated to collect and preserve potential evidence of crimes that may have occurred. Kaari Betty Murungi is Chair of the commission alongside Radhika Coomaraswamy and Steven Ratner.

The establishment of a UN Commission is an important sign of the international community's commitment to the goal of justice and to recording information about crimes and violations that may have occurred. The UN Commission is experiencing challenges in gaining access to affected areas but an equally important challenge is insufficient funding and support from an international community whose attention is divided and diverted. Moreover, at the time of writing, there is limited publicly available information about the UN Commission's current work, strategy, and focus. It published a [written report](#) in September 2022 which stated that it had reasonable grounds to believe that the Federal Government has committed the crimes against humanity of murder, torture, and rape and sexual violence.¹⁰

Commission of Inquiry on Tigray Genocide

The Commission of Inquiry on Tigray Genocide (Tigray Commission) is a team of around 40 Tigrayan individuals established by the regional Government of Tigray to collect information about international crimes and other violations that have occurred. Their particular focus is to gather information and evidence to support the work of the UN Commission. They are collecting evidence from people within Tigray and have reportedly assessed the inhabitants of more than 1.3 million households. According to a civil society representative familiar with the Commission's work, their work is currently unfunded. They are seeking to secure funding to provide rehabilitative services to victims of sexual and gender-based violence post investigative-questioning. They are also seeking funding and resources to gather satellite imagery, forensic evidence, and information from local areas they are unable to reach due to lack of fuel.



An unidentified armed militia fighter walks down a path as villagers flee with their belongings in the other direction, near the village of Chenna Teklehaymanot, in the Amhara region of northern Ethiopia Thursday, Sept. 9, 2021. At the scene of one of the deadliest battles of Ethiopia's 10-month Tigray conflict, witness accounts reflected the blurring line between combatant and civilian after the federal government urged all capable citizens to stop Tigray forces "once and for all." *AP Photo.*

Belgian Proceedings

In June 2021, six Belgian nationals (five of whom are also Tigrayan) who have experienced crimes in the context of the war in Tigray filed a complaint with the Federal Prosecutor's Office of Brussels. The complaint was brought under the passive personality principle, which affords sovereign States the authority to exercise jurisdiction over crimes committed against its nationals while they are abroad. According to a [report](#) in Belgian newspaper *Le Soir*, the victims claim that their relatives had been executed, civilian property had been looted, and that rape had been used as a weapon of war.¹¹ Publicly available information in the English language about these proceedings is extremely limited. At the time of writing, the Prosecutor had yet to act on the filing.

Ethiopian Government-led Justice Initiatives

The Ethiopian Federal Attorney General Office has launched investigations into several cases concerning Ethiopian soldiers accused of killing and raping civilians. In May 2021, these investigations resulted in the [conviction](#) of four soldiers of such crimes.¹² In

addition, the Ethiopian government [created](#) an Inter-Ministerial Taskforce which is responsible for overseeing redress and accountability measures established in response to human rights violations committed in the country's north.¹³ However, these mechanisms have been [criticized](#) for focusing primarily on abuses committed by the TPLF and, in the few instances in which government soldiers have been investigated, on lower-level perpetrators.¹⁴

PART 3: OPTIONS FOR JUSTICE THAT COULD BE PURSUED

This section identifies additional justice initiatives that should be considered. It presents these initiatives as "options," but that is not to suggest that they are mutually exclusive; in fact, these options would likely be more effective if pursued simultaneously. It also does not present options in order of their importance or feasibility; instead, it begins with options that can be pursued domestically and then advances to regional and internationalized options. It is important to note that the

capacity of these mechanisms to operate effectively may be limited to some degree by the ongoing armed conflict in the country but this should not be used as an excuse for inaction because the specter of justice mechanisms may serve as a deterrent for future atrocities.

This section draws on the findings of the interviews conducted with Ethiopian scholars and civil society representatives discussed in Part 1 of this paper. These interviews revealed an interest in: (1) pursuing the full spectrum of transitional justice beyond criminal accountability mechanisms; and (2) holding perpetrators on all sides for atrocity crimes committed against numerous ethnic groups to account.

Option 1: Create a special chamber within the Ethiopian criminal justice system

A special chamber could be created within the ordinary Ethiopian criminal justice system to prosecute atrocity crimes. Careful decisions would need to be made based on broad consultations with Ethiopian communities about the temporal and geographical scope of such prosecutions. Given the complexity of prosecuting atrocity crimes, it would be necessary for the international community to provide training and technical assistance to Ethiopian officials responsible for prosecuting and hearing such cases. Given that conflict is ongoing and trust in the federal government is low, the effectiveness of this option may be limited. Ideally, this would be pursued in tandem with a broader suite of transitional justice mechanisms, as discussed in the next paragraph.

Option 2: Pursue reparations and other transitional justice (TJ) mechanisms

As noted in Part 1, Ethiopians interviewed for this paper endorsed pursuing forms of justice that extend beyond criminal accountability to include the full spectrum of TJ mechanisms such as reparations, guarantees of non-recurrence, and truth-telling mechanisms. A model similar to that adopted in the Gambia where the truth commission has given the opportunity for people to tell their stories and has made recommendations about specific individuals to prosecute could be followed. To be successful, such mechanisms typically require some level of state involvement, if not leadership.

Option 3: Pursue criminal cases in other countries under universal jurisdiction (UJ)

Prosecutions for atrocity crimes committed in Ethiopia could take place in other countries under the principle of

UJ—a principle of international law that permits states to investigate and prosecute perpetrators of international crimes, irrespective of whether they possess any of the traditional jurisdictional links to the offense. In recent years several individuals have been prosecuted under UJ, notably in Sweden and Germany, for crimes against humanity committed in Syria. As noted in Part 2, a similar complaint has been filed in Belgium under the passive personality principle. Theoretically a UJ case could be filed in an African state that has accepted the principle of UJ, but many African states have expressed opposition to the principle.

Option 4: Create an *ad hoc* criminal court in the region

An *ad hoc* international criminal tribunal could be established to prosecute atrocity crimes committed in Ethiopia. Most individuals interviewed for this paper expressed support for the creation of a court in an African country such as Kenya, Tanzania, or South Africa. Interviewees supported such an approach because it would allow proceedings to occur in a neighboring country (and therefore afford access to victims and witnesses) while simultaneously lessening concerns that the Ethiopian government would sabotage or undermine any justice initiatives. The AU Peace and Security Council and the UN Security Council ostensibly have authority to unilaterally establish such a tribunal or court, though this approach is politically unlikely. Another possible model that merits serious consideration is the creation of the Extraordinary African Chambers, which was established in the domestic justice system of Senegal to prosecute crimes committed during Hissène Habré’s brutal dictatorship in Chad.

Option 5: Pursue criminal proceedings at the International Criminal Court (ICC)

The ICC is a court of last resort that has authority to prosecute the international crimes of aggression, war crimes, crimes against humanity, and genocide. Given that Ethiopia is not a State Party to the Rome Statute, there are only two ways that the ICC could investigate the situation. First, the UN Security Council could refer the situation in Ethiopia to the ICC under Article 13(b) of the Rome Statute. Second, Ethiopia could voluntarily accept the Court’s jurisdiction on an *ad hoc* basis under Article 12(3). Each of these avenues is politically unlikely.

Option 6: Ensure the UN Commission has sufficient resources to fulfill its mandate in full

As described in Part 2 of this paper, the UN Commission is mandated to gather and preserve evidence of atrocity crimes that may have occurred throughout Ethiopia. It is funded through the regular budget of the UN and has not received voluntary contributions. Other crises, such as the situation in Ukraine, have diverted international attention and resources, which may make it difficult for the UN Commission in Ethiopia to fulfill its mandate. It is therefore critical that the UN Commission continue to receive additional support and funding so that it can fulfill its mandate—including the investigative functions—in full.

Another model would be for the UN Commission to eventually transition to an investigative mechanism similar to one established by the United Nations Human Rights Council for Myanmar which was recommended to be established by the Myanmar UN Fact-Finding Mission before its mandate ended. A mechanism for Ethiopia would be focused solely on collection, analysis, and preservation of information and evidence for the purposes of supporting criminal accountability efforts.

Option 7: Support local organizations doing documentation work

The security situation in Tigray makes it very difficult for local organizations to conduct documentation initiatives and to share their findings with the outside world. However, where possible, the international community should provide support to local organizations that are seeking to keep a record of crimes that have occurred. Some civil society organizations outside the country are doing this work and should also be supported.

Option 8: Conduct a US-led investigation

The US Government could lead its own investigation into the situation, following a similar model to its investigations in Darfur and Burma/Myanmar. A US-led investigation would likely encounter issues in relation to accessing affected territory but it may nevertheless be possible to conduct a meaningful investigation by interviewing those who have fled the country. It would be important for the US to consult closely with civil society organizations who are conducting their own investigations in and near Ethiopia.

CONCLUSION

The victims and survivors of the horrific crimes and violations that have occurred in Ethiopia over many years deserve justice. Those interviewed for this paper endorsed inclusive investigations and prosecutions of those who have perpetrated crimes regardless of their ethnic group. They also expressed support for transitional justice mechanisms beyond criminal accountability. The justice initiatives that are currently underway are an important start but much more can and should be done to break the cycle of violence and impunity and to provide a modicum of redress and repair to victims. Any of these efforts must be shaped and informed by the perspectives of those most affected. As one Ethiopian interviewee commented, “Legal accountability must be robust if there’s going to be some kind of justice, remedy, and contribution to reconciliation and peaceful coexistence for Ethiopia.” *(Tigrayan justice activist and scholar in interview with author on 8 June 2022.)*

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