

*Review*

# **Exploring the challenges and limits in the compliance with transitional justice norm in non-regime transitions: The case of post-2018 Ethiopia**

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The last decades witnessed the emergence of transitional justice as a global norm which obliges post-conflict transitioning states to address systematic past human rights violations through purposeful judicial and non-judicial mechanisms. While its typical architecture focused on formal transitions, the dynamics of non-regime transitions and compliance is often neglected in transitional justice literature, and the measures also signify manifold challenges. This article attempted to assess the beleaguered transitional justice measures implemented in Ethiopia's current troubled non-regime transition which came after the authoritarian and Marxist TPLF/EPRDF regime collapsed in 2018 after violent anti-government protest. Consequently, under the new hybrid elites' leadership, host of justice measures were implemented but they unfolded in the absence of both typical transition and guiding transition roadmap. Through the lens of compliance and resistance in transitional justice, the article finds that rather than addressing legacies of atrocious past, the flawed and instrumentalist implementation of contested justice processes and the mismanagement of the narrow window of opportunity led to unprecedented societal violence and new political complexities. The Ethiopian case, therefore, reveals that seeking the retributive transitional justice measure in the absence of typical regime change and inter-elites bargain, and in an ethnically polarized political transition exacerbate inter-elite discord, bolster ethnic-supported resistance from predecessor elites, and harbor the risk of resurgence of new violence. Hence, it falls short of achieving the compliance with the transitional justice norm such as ensuring accountability (fighting impunity), adequately addressing past wrongs through judicial and non-judicial means and also ensuring non-recurrence of the same in the future.

**Key words:** Transitional justice, compliance, challenges, Ethiopia, non-regime transition.

## **INTRODUCTION**

The concept of transitional justice is chiefly concerned with addressing the fundamental question of how societies attempt to address the legacies of large-scale past human rights violations that occurred either due to

prolonged violent conflict or authoritarian repression and also how to guarantee non-repetition (Roht-Arriaza and Mariezcurrena, 2006; Teitel, 2003; 2014). Emerging in the 1980s in the post-Cold War period, the new transitional

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justice field chiefly focused on prosecution of predecessor officials as a key mechanism of addressing past abuses and punishing impunity. But this approach is criticized as narrow and proved insufficient in addressing widespread problems of post-conflict states.

Therefore, the relatively young field gradually expanded to encompass additional holistic measures to criminal accountability, such as: truth-seeking, reconciliation, reparation, vetting and lustration, and institutional reforms (Roht-Arriaza, 2006). Normally, the original conception of transitional justice is founded on liberal, 'typical' transition from dictatorship to democracy (Teitel, 2003). But, with its gradual expansion as a global norm, it is increasingly invoked also in the absence of typical 'from repressive to liberal' transitions (Hansen, 2011; 2014; Teitel, 2014).

The Ethiopia's post-Cold War transition was marked by the collapse of Military Derg regime and coming into power of ethno-regional coalition called the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF hereinafter) after military victory. As part of national response to Derg era atrocities including the 'red terror crimes', the new rulers employed mass prosecution of predecessor officials as the key transitional justice mechanism while ruling out other measures such as amnesty (Tronvoll, 2013). It remained in power nearly for three decades under repressive, (semi-)authoritarian single-party rule and ideology of 'revolutionary democracy' (Batch, 2011) until its power is rocked by the widespread and violent popular protest which broke out since 2015 in Oromia, the Ethiopia's largest region. The violent protest, rooted in long-precipitating local grievances, increasingly took wider ideals such as human rights protection, rule of law and equitable economic benefits (Abbink, 2017). It nonetheless faced unleashing of violent security repression and ensuing new widespread human rights abuses, but it ultimately backfired, triggering the puzzling demise of the EPRDF's infrastructure as a unified dominant party. It also crucially marked the enforced resignation, in February 2019, of the 'beleaguered' Prime Minister Hailemariam Desalegn to halt looming security crisis and facilitate peaceful transition. The next crucial political event was marked by the selection by the parliament of Abiy Ahmed, from within, as a Prime Minister in April 2018. This again aroused a desperate call for remedying deep-rooted past injustices and implementing inclusive political reforms towards justice and durable peace.

Since then, Ethiopia has been undergoing 'ambiguous' and 'ambitious' yet perilous political transition. Soon after his rise to power, Abiy rapidly took some unprecedented but short lived political measures in clear departure from the abusive past. This was until the launching of new armed conflict in November 2020 between new power holders and defiant predecessor Tigrayan elites who appeared to resist or 'spoil' the measures. Many were applauding Ethiopia's miraculous transition and yielded in 'untested optimism' about swift democratization by Abiy,

the Africa's 'messianic' young and visionary leader'. He swiftly followed twin policies: firstly, his unexpected rapprochement with Eritrea, Ethiopia's arch-enemy for the last two decades, earned him international attention as a peacemaker. Secondly, 'rebuking' predecessor TPLF rulers as 'actors of state violence', institutionalized looters to be condemned, and equally his rhetoric of 'forgiveness' earned him support from domestic audience. However, they were part of the drive to uncertain journey to reckon with the past abusive authoritarian repression while the present is also at great upheaval. As such, the transitional justice measures implemented in present-day Ethiopia does not fall under what is commonly understood as 'linear transitions' but arguably falls under what Friedman and Wong (2008) consider as "less significant and subtle transitions" which are often marginalized in regime transition literature. Despite this fact, the author argues that they encompass ambitious measures in the sense that even if we do not witness formal regime change and lack of its replacement with new one, the new elite 'reformist coalition' (as it was called) appeared at first sight to radically depart from the political practices of the past regime and embarked upon significant but less celebrated transitional justice measures. They officially made ambitious promise to ensure accountability for past abuses, guarantee respect for the rule of law and, at times rhetorically preached forgiveness and reconciliation worth considering. On the other hand, the author also argues that the transition is 'ambiguous' transition, the concept which he borrowed from Noha Aboueldahab's (2017) analysis of complex transition processes in Egypt, Libya, Tunisia, and Yemen in post-Arab Spring period. He argued that, it is 'ambiguous' because from conventional transition viewpoint, those measures remain part of 'reform from within' in the old system, unfinished transition taking place in the absence of formal regime change but marked by significant departures. The transition was led by a mix of old and new elite coalition in the existing old political-institutional structure. The path to transition has been perilous, widely marred by inter-communal violence, highly vulnerable to volatile security environment and other predicaments such as armed conflict.

In the political context of pressing (post-) conflict or post-authoritarian repression period, the role of transitional justice to reckon with the 'evil past' is assumed to be a crucial global enterprise. Generally, it is asserted that the transitional justice has emerged as a global norm (official practice) for over the past two decades which requires the states to respond to serious human rights violations especially in (post-) conflict situations (Rubli, 2018; Subotic, 2014; Teitel, 2014; UN, 2010). This new international norm is based on the right to justice, truth through recognition, symbolic and material reparation for victims, and non-recurrence of violence (Arthur, 2011). It provides coordinated set of institutional, legal, judicial and non-judicial mechanisms

to ease societal tensions, ensure accountability for past wrongs, provide redress for victims, guarantee non-recurrence and guides arguably the legitimate political paths towards peaceful societal order through reconciliation (McAuliffe, 2017). In this regard, apart from formal liberalizing transitions, available works from some pertinent cases suggest that, due to its popularity and 'horizontal' expansion, the transitional justice measures are also increasingly called for in states where profound (liberal) transition from one regime to another regime has not taken place (Bosre, 2006; Gidley, 2019; Hansen, 2011; 2014; Teitel, 2014). By accepting transitional justice as a global normative standard, the international actors such as the UN (as norm diffuser and enforcer), regional organizations and rights communities vocally advocate in its support and require transitioning states to adopt transitional justice in compliance with international human rights standards.

But, while its status as a global norm is increasingly accepted, the important question of how states go about to comply with international justice norm in dealing with its repressive past is so perplexing (Subotic, 2009; also Orentlicher, 2007). Moreover, the domestic politics is believed to play a significant role, but a very little is known about other factors that determine or limit transitional justice unfolding and shape their domestic outcomes (Gready and Robins, 2020; Teitel, 2010). This question is specifically critical in the context of often neglected non-formal transitions in a divided society. In an attempt to explain the above question, Subotic (2014) develops a 'theory of transitional justice compliance' in the context of strong international pressure, strong domestic resistance and weak domestic demand for justice measures. In these situations, she maintains that the states take measures for instrumentalist motives such as getting rid of opponents, to get membership to reputable international organizations or to appear as a reformer in which the justice measures in the end are shallow and do not ensure the compliance with standards of international justice norms. On the other hand, Jones and Bernath (2018)'s thesis of 'resistance and transitional justice' argues that since the transitional justice processes may endanger the key interests of predecessor elites, it makes resistance inevitable 'natural response' which also shapes or constrains the course of justice process. The present work analyzes the Ethiopian case, to the relevant extent, in light of this 'compliance-resistance' framework.

Empirical study of the transitional justice processes has devoted a substantial attention of scholarship that produced rich literatures on the topic. However, these literatures give much focus on formal (typical) regime transitions, and non-regime (and illiberal) transitions do not get adequate scholarly focus or they are simply sideline as 'not ripe' for treatment. This hampers knowledge production and information sharing specifically from the experience of non-regime transitions which

unfold in different places. Today, there is a valid assumption that transitional justice has a continued relevance in providing various judicial, non-judicial and institutional mechanisms in assisting the 'ambition of transformation' (McAuliffe, 2017:35). Thus, to enrich its mechanism and learn lessons from various contexts, its different mechanisms and their operational reality need to be examined by including cases from non-regime transitions.

Therefore, by making early assessment of the processes, challenges and limits and tentative outcomes of the non-regime transitional justice in Ethiopia, this paper attempts to provide a timely contribution to fill these gaps. Thus, the paper aims to make an early assessment about how the transitional justice is unfolding during the time immediately after old EPRDF regime's collapse. It considers the period when the reform measures were being aggressively pursued until the country again headed towards today's catastrophic internal armed conflict. Since its early unfolding, however, much has changed with regard to its dynamics, texture and the author's initial assumptions on the case. Moreover, given the then and current turbulent political condition, ongoing devastating civil-war and inter-communal violence and also amidst the continuation of personalized authoritarian climate, some might doubt the dialogue on the relevance of transitional justice measures currently in Ethiopia. And the suggestion may be unfitting at first sight with normative transitional justice architecture. But transitional justice should not be conceived to be only applying in ideal situations of liberal transitions. It took place in stable democracies where there appears to be no political transitions, and it also applies to incomplete troubled transitions which shows that justice is relevant to serve other social goals (Fatic et al., 2018). Thus, initially this work was conceived in immediate reform period in 2018 and argued in favor of some sort of justice measures in Ethiopia. For one thing, the important but disorganized justice measures had already taken place and their unfolding and factors shaping or limiting those measures have not been analyzed. Moreover, in the absence of political bargain, the repercussions of those measures in brewing the continued inter-elite discontent and ensuing violence of current period require critical appraisal.

But no serious attempt is made to analyze the earlier phase of Ethiopia's justice process in this contested political climate in light of the mainstream transitional justice frameworks. Thus, this article aims to address the following research questions: *What is the major transitional justice measures implemented during the immediate post-EPRDF period in Ethiopia and why? And, what factors shaped or limited the compliance to normative transitional justice framework?* By way of reflection, it also attempts to address how the Ethiopian situation relates to or departs from the mainstream transitional justice regime and examines the (in-)adequacy

of the latter to explain non-regime transitions.

These questions would help to understand the nexus between the measures, the constraints determining or limiting their choice, and their outcomes. The paper employed qualitative research methodology as it enables us to get thicker, in-depth and contextualized understanding on the topic to address the research questions. It mainly relied on the diverse body of secondary sources of data such as published books, journal articles, other unpublished documents, government official reports, legislations, reports by human rights bodies, and other timely media sources. The paper also draws on the established transitional justice literature and reflects from other recent cases from non-liberal (or non-regime) transitions. Due to the sensitiveness of the case currently, attempt to conduct interview with top government officials has not been successful, but the author included their views from timely media sources. Moreover, pre-war political views of the predecessor Tigrayan elites on the justice process have also been included from different media reports. Generally, the research benefited by drawing on the timely information while the events unfold. So, by making an early analysis on first phase of non-regime transitional justice in Ethiopia, this paper contributes to exchange of views which help enrich or else challenge the existing normative transitional justice assumptions and evaluate its role in the peace building projects specifically in the context of non-regime transitions.

As a reminder, this paper only focuses on what is termed as the 'first phase' of the transitional justice measures in Ethiopia. This period runs from the time of removal of old power holders and appointment of new prime minister in April 2018 up until the beginning of the open armed conflict in 4th of November 2020. The ongoing protracted armed conflict is declared by the government as 'law enforcement operation' against the defiant Tigrayan regional political group following preceding three years of simmering tensions and ideological-cum-military confrontations. In response to the escalating atrocities in the conflict fought now for over a year, the government very recently started to take some measures: halted military offensive; established National Dialogue Commission, established the Ministerial Taskforce to probe into gross human rights violations, and formulated draft peace policy. However, the roles, prospects and outcome of these latest measures are yet to materialize and are beyond the scope of this paper. The paper has two parts. Part one discusses about the general context of transitional justice in regime and non-regime transitions. Part two deals with the case of Ethiopia. Following this introduction, part two provides an overview of the notions of transitional justice paradigm and its key goals. The third part briefly looks at transitional justice measures in the context of non-regime or 'illiberal' transitions. The fourth part briefly highlights the authoritarian dimension of Ethiopian state, recent

violent protests and human rights violations. Part five addresses how transitional justice is currently conceived and implemented followed by part six which deals with the factors that shape or limit the process unfolding through the lenses of theoretical frameworks of compliance and resistance. The last part concludes.

## **The conceptual foundations and major frameworks of transitional justice**

### ***Definition of the concept***

The world has witnessed a troubling mass violence committed by state and non-state actors over the years for which the 20th century has been described as century of genocide and violence (Williams and Buckley-Zistel, 2018:1). Most of these violent conflicts are intrastate conflicts conducted either with the government forces and rebels or between rebel groups (Lamont, 2021). Others involve a protest against authoritarian repression, all of them cause varying level of large-scale human rights violations and material destructions. In these post-conflict or post-authoritarian situations, the transitioning states cannot proceed with simply ignoring the atrocious past (Hayner, 2010), and since impunity is unwanted problem, "there should always be a purposeful response to human rights abuses" (Iverson, 2015:83).

Therefore, there are pressing questions of how to ensure accountability or fight impunity, and on what standards, and more broadly, how to transform a society wrecked by war, prolonged conflicts or authoritarian repression into a durable peace and democratic order in a non-violent means (Hayner, 2010; Jarstad and Sisk, 2008). According to Colleen Murphy, responses to those questions remain 'morally salient' and context dependent in many transition societies (2017). The field of transitional justice, therefore, involves the philosophical, legal, and political processes to respond to such complex questions (Eisikovits, 2014). Originated in the post-Cold War period in 1980s, TJ is the field in a constant growth and expansion, and its meanings and the subjects it deals with also expanded considerably over the years (McAuliffe, 2011; Quinn, 2017; Turner, 2017). Initially, it relied on criminal trial as the most important measure of reckoning with the past wrongs (Jeffrey and Kim, 2014). But to address its inherent inadequacies and complex post-conflict challenges of states characterized by weak political and judicial institutions and weak security systems (UN, 2010), it also gradually incorporated other diverse measures (Roht-Arriaza, 2006). This constant growth also broadened its scope, subject and activities it deals with (Hansen, 2014), which renders the subject complex and increasingly contested for academics, practitioners and policy makers (Monroy-Santander, 2018:220). Even today, it is said that there is a considerable debate about what the transitional justice is

and its main goals, directions and achievements (Gready and Robins, 2021; Lawther and Moffett, 2017; Orentlicher, 2007). Generally, however, transitional justice as a distinct field of enquiry is concerned with the questions of how states attempt to deal with the legacies of large-scale past human rights violations and transform state into a peaceful political order in the wake of political turmoil, violent armed conflicts or authoritarian repression (Aiken, 2013; Olsen et al., 2010; Teitel, 2014). However, it deals with complex issues that are broader than violation of ordinary human rights laws (Iverson, 2014).

Ruthi Teitel defines transitional justice as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (2003:69). In a widely cited report, the UN Secretary-General Kofi Annan defines it as:

[. . .] the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. This may include both judicial and non-judicial mechanisms [such as] individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissal or a combination thereof (UNSC, 2004, 4, *emphasis added*)

According to the International Center for transitional justice (hereinafter ICTJ) it involves “[...] the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response. [...]”. These above cited definitions provided by Kofi Annan or ICTJ may be contested with respect to the scope, processes, aims and outcomes of transitional justice. However, the integration of transitional justice in to the UN system as self-standing field signals that it is a big progress for the field which once thought to be marginal (McAuliffe, 2017), a subsidiary element attached only to the negotiated transitions and peace mediations (Lawther and Moffett, 2017). Today, it is a ‘lingua franca’ of the international community and has been taken as a normative commitment by policy makers including at the UN level and other regional organizations “as a field of study and practice” (Lawther and Moffett, 2017, 2; Grover, 2019; Kastner, 2015; Rubli, 2018).

Moreover, its original focus as espoused by initial theorists such as Teitel (2003) is on the ‘ideal-type’ transitions from authoritarian regimes (dictatorship) to liberal democracy. But as an expanding global enterprise conceived in and supported by Global North (Sharp, 2018), it is also increasingly employed in diverse (illiberal or non-regime type of) situations, often without prior knowledge of complex settings (Subotic, 2012 cited in Saleh, 2021). For instance, in some non-liberal situations,

it has been chiefly employed as a means of settling on-going conflicts such as in Colombia (Pabon, 2018); or adopted amidst ongoing conflicts in Africa (Bosire, 2006) or in some places in the absence of typical regime changes more generally (Hansen, 2011). In some different cases such as in ‘settled democracies’, it is also adopted to addressing their historical human rights abuses without any noticeable political transition (Lawther and Moffett, 2017). It has been implemented also in ambiguous non-regime transitions in Libya, Tunisia and Egypt (Aboueldahab, 2017) and even in Syria (Schaack, 2020). The Ethiopian case of transitional justice arguably shares some features these ‘atypical’, non-regime transitions.

Generally, justice in transition context presents what Newman (2019) calls ‘contending views’, an idea which explains inherent and complex difficulties faced in addressing the past atrocities especially in an unsettled present. As such, while normative aspirations are accepted, there are inherent difficulties in making realistic choices regarding seeking to establish viable political order, managing the competing interest of the political other actors, and preventing recommencement of violence (Williams and Nagy, 2012). While sometimes it is called post-conflict justice, some writers argue that this ‘post-conflict’ terminology and its very nature are problematic because “there is rarely a neat transition from a state of conflict to a state of peace” (Bowden et al., 2009:4-5). Moreover, as Fabio Pabon (2018) observed, what is justice in transition context depends on whom the justice system focuses. Accordingly, prosecution, amnesty, and lustration are key areas of focus for the perpetrator(s), whereas reparations, truth telling, memorializations and restitution appear to be more important for the victims (Pabon, 2018). On general level, the substantive emphasis of T transitional justice J fundamentally rests on various judicial and non-judicial responses to address past systematic human rights violations (Iverson, 2014).

### **Key frameworks and goals of TJ paradigm**

Historically, attempts at bringing perpetrators of serious past human rights violations to some kinds of justice are not a new phenomenon and war crime trials can be traced back to 14th century (Roht-Ariazza, 2006). Judicial accountability for serious violations of human rights were also sought after the immediate World War II period chiefly marked by Nuremberg and Tokyo Trials (Fijalkowski and Grosescu, 2015; Schabas, 2012). However, the current conception of idea of transitional justice and its emergence as a self-standing field of study and practice is rooted in the post-Cold War transition to democracy of the moment termed by Samuel Huntington as “third-wave” of democratization (1993). These transitions from dictatorship to democracy took place

varyingly in Latin America and Balkan regions (Teitel, 2010; Quinn, 2017). Drawing its foundational inspiration from the Nuremberg (Schabas, 2012), and after trials and progresses, the contemporary understanding of transitional justice has been expanded in post-Cold War period (Hansen 2014; McAuliffe, 2011). The democratization following transition from military dictatorship to democracy in Latin America and ensuing prosecutions, and post-Cold War transformation in Eastern Europe changed the pace of the transitional justice measures (Williams and Nagy, 2012). Thus, it has been employed in diverse cases: after the overthrow of dictatorships in Latin America, the large-scale conflicts in the Balkans, and widespread civil war and violence in Africa and Asia (Hansen, 2014; Oneg, 2012; Subotic, 2009). Gradually, from being peripheral field of inquiry in the past, it has now attained a status of global norm, including being formalized in the UN system (Grover, 2019; Sharp, 2018; Subotic, 2014).

As noted, during the first generation of the transitional justice measures, much emphasis has been given to the criminal prosecution of the perpetrators of human rights abuses along with some efforts to establish truth commissions (Roht-Arriaza and Mariezcurrena, 2006). Further studies in the field revealed, however, that adopting single mechanism dominated then by narrow 'legalistic' lens in reckoning with the largescale state perpetrated violence has proved inadequate and calls for 'thicker understanding' of transitional justice also emerged (McEvoy, 2008). Generally, it is argued that the holistic notion of transitional justice emerged as a response to past inadequacies of single measures and also in response to past failures which relied on 'one size fits all approach' which is restrictive and failed to meet the diverse expectations from the process (Monroy-Santander, 2018). The precarious and weak nature of institutions in countries coming out of violence and weak norms in place in this situation makes it difficult to get standardized justice from only single measure of prosecution (Monroy-Santander, 2018; Olsen et al., 2010). Truth seeking measures emerged as the "second best alternative" where criminal trials appeared to be difficult to pursue (Roht-Arriaza, 2006:3).

But sole reliance on truth measures were also criticized not only for their officially sanctioned single narrative but also for its questioned outcomes and at times failure in enforcement of its recommendations which gave rise to host of other complimentary measures (Roht-Arriaza, 2006; Hayner, 2010). Hence, as suggested by UN, the measures should involve broader, holistic and context-specific aims such as truth-seeking, victims' reparations and social repair and reconciliation (UN, 2010; Roht-Arriaza, 2006; Olsen et al., 2010). As experiences show, each case is unique, and transitional justice processes and the choices made thereof are determined and influenced by different considerations.

Among them, unsettled domestic politics, external

pressures, the nature and extent of conflict, the nature of transitions, domestic resistance and co-optation by elites may generally inform the types of transitional justice measures (Duthie and Seils, 2017; Olsen et al., 2010; Roht-Arriaza, 2006; Selim, 2018).

Moreover, there is also a need to strike a balance among those various measures adopted (Teitel, 2010). As Teitel observes, "[...] trials are essential to accountability for human rights violations and to building democratic institutions. On the other hand, countries cannot put everyone on trial... Therefore, a balance exists between legal imperatives, public safety, and pragmatic considerations" (Teitel, 2010, xvi, *emphasis added*). Furthermore, the study and approach of transitional justice should not only be holistic but also go beyond the narrow focus on common actors such as governments and donors and involve other grassroots actors (Szablewska and Bachmann, 2015). Furthermore, being holistic requires not only using different measures combined, but also paying attention to local realities (Duthie and Seils, 2017). Thus, states should pursue increased 'multi-pronged approach' which involves adopting international, mixed and domestic tribunals, and also pursuing hosts of measures which are forwarded as transitional justice 'toolkit' (Williams and Nagy, 2012). Arguably, adopting the holistic approach also enables the actors to pay more attention to politics of compliance, cooptation and resistance in transitional justice (Selim, 2018). In the transitional justice's contemporary understanding, much focus has been placed on the frameworks which involve truth-seeking, prosecution (accountability), reparation and reconciliation, among others. This is because, among diverse claims about transitional justice outcomes, they "constitute the ideal-type transitional justice policy objectives" (Vandeginste, 2010:238).

Generally, Olsen et al. (2010) compellingly suggest that elaborate mechanisms of transitional justice therefore should fall under the following broad, overlapping categories. Firstly, the measures of accountability involving trials, establishment of truth Commissions and lustration policies should be pursued. Secondly, it is equally imperative to adopt victim-oriented, broadly restorative measures such as reparations, construction of monuments and public memorialization projects. Thirdly, the peace and security concerns should also be addressed through such mechanisms as amnesty and pardons, constitutional amendments, and reforming repressive institutions such as security and judicial sectors (Olsen et al., 2010:1). Their comprehensive review of the literatures finds that 'The more mechanisms, the more effective the government will be in dealing with past problems' (Olsen et al., 2010:153). In the end, it is hoped that it is by interweaving, sequencing and designing multiple "pathways to justice" that would result in some kind of "larger justice" (Roht-Arriaza, 2006:8). The holistic approach and transitional justice's

mutually reinforcing processes can contribute to political change and further consolidation of peace and institutions of rule of law (Olsen et al., 2010). It broadly aims to facilitate rebuilding the citizens' trust in state institutions and augment the rule of law, guarantee the fundamental human rights, and development especially in states committed to liberal democracy (McAuliffe, 2011). Moreover, the measures should not only focus on past abuses but they should also aim to guarantee non-repetition of future violence (Seils, 2017). In a broader perspective, transitional justice has 'ambitious' goals which aims to transform societies or ensure their regeneration in a post-war socio-economic settings (Andrieu, 2014). In this regard, success of transitional justice measures are conceived as "a transition from war, violence and oppression to peace, justice and democracy" (Jones, 2020:168).

In a later phase, apart from its popularity and ambitious claims, transitional justice has also reached to a 'critical turn' (Sharp, 2019), a tension between its ambitious goals and also growing doubt about its efficacy (McAuliffe, 2017). For one thing, it is argued that given diverse contexts of non-liberal cases, the measures should be not always expected to consolidate democratic institutions and rule of law. As such, it's imprudent, instrumentalist and the exclusivist implementation would result rather in strengthening a political regime that would emerge more authoritarian than democratic (Mihir, 2017; 2020). Moreover, due to its wide ranging claims from criminal accountability to expansive developmental goals, as well as due to lack of self-reflection for what it is and its consequences, it has been criticized as "an overburdened and under-conceptualized idea" (Gready and Robins, 2020:280). According to Dustin Sharp (2019), the other important criticism claims that transitional justice only focuses on symptoms rather than on root causes of conflicts or violent atrocities. Moreover, he reflects that its mainstream views and mechanisms focused mostly on violation of civil and political rights and fall short of addressing other economic, social, gender and everyday structural violence's.

Furthermore, since it has been dominated by views and actors from Global North and implemented mostly in Global South, it neglects indigenous views, social capital, and institutions of peace and justice. Some of these critiques on transitional justice arise from an increasing demand to rectify its limitations and increase its transformative capacity in addressing deep rooted challenges in the aftermath of mass atrocity (Dustin Sharp, 2019). Criticisms aside to ensure its continued relevance for the realities of the twenty-first century, Dustin Sharp (2018) suggests that transitional justice discourse should reimagine "creative and context-sensitive" approaches to achieving justice and peace building.

Generally, despite the above criticisms, transitional justice's status as a global norm has been accepted and

sufficiently treated. But what remained more debatable, is the nature and extent of obligations and level of factors shaping or limiting the standard of transitional justice compliance (state practice). Earlier writers in the field such as Orentlicher (1991) and Roht-Arriaza (1990) claimed that there is an obligation under international law which requires the states to take measures to ensure accountability and fight impunity in the wake of grave human rights violations. The obligations might flow from the ratification by the states of binding international human rights instruments and other body of non-binding instruments (soft laws) (Aiken, 2013; Kastner, 2015). As Lena Grover (2019) notes, in the later phase of evolution of transitional justice, the UN has shifted its position from relying on international law to support domestically designed transitional justice measures and began requiring states "to conform to a body of international legal standards it has set in this field" (Grover, 2019:1). In its review of peacebuilding architecture in 2015, UN also claimed that "human rights violations and impunity are root causes [of conflict] and must be addressed as soon as possible" (quoted in Davidian & Kenney 2017, 187). In the due course of peace negotiations and crafting domestic transitional justice measures, the actors rely on international legal norms embodied in near universal extent some of which are embodied international human rights instruments (Kastner, 2015, *ibid*). The UN principles developed a specific obligation of prohibiting 'blanket amnesties' especially for crimes of genocide, war crimes and crimes against humanity'. This provides a room for diplomatic pressure among international community, create moral obligations, and help shape and regulate the behavior of states, and 'create expectations' (Grover, 2019). However, in the effort to institutionalize and apply transitional justice norms to domestic cases, there are substantial challenges, among others, in ensuring normative policy coherence and compliance (Cardenas 2007; French and Samuel 2015).

Therefore, though states may willfully or under international pressure make efforts to meet those standards, the level of compliance has not been consistent (Kastner, 2015). In the following part of the study, the dynamics of transitional justice in non-regime transitions is briefly discussed.

### **An overview of transitional justice in the context of non-regime transitions**

Most of the time, political transitions generally and its rendering in transitional justice specifically 'almost exclusively' give a focus to linear transition from failing authoritarianism to democracy (Friedman and Wong, 2008). According to Friedman and Wong, the focuses on this linear transition rule neglects the transitions which departs from its assumptions which occurs for instance when dominant party regimes collapse or when significant

threat is posed against their power (Friedman and Wong, 2008). They may be incomplete transitions because they fail to lead to democracy. However, Friedman and Wong suggest that the 'transitology literature' should also focus on other "more subtle and less significant" types of political transitions. As noted, the cases of political transition in many societies are diverse, and the conventional transitional justice models applied in those cases are determined by various factors (Fletcher et al., 2009; Hayner, 2010; Teitel, 2010). O'Donnell and Schmitter (1986) defined political transition as "the interval between one political regime and another" which shows the presence of "profound political transition" (quoted in Hansen, 2011:22). The political change may come after the culmination of ongoing civil war, or due to the collapse of the regime, or due to widespread popular revolt against repressive regime, with or without international support (Hayner, 2010). According to Ruti Teitel (2010), only a little is known about the factors that initiate or impede states in adopting transitional justice measures during transition. Teitel maintains that in post-communist East Europe, for instance, the transition process was largely shaped by the domestic political conditions and the degree of "commitment to political change" (2010: xvi). In some countries such as in post-Apartheid South Africa, political change has been introduced through negotiated political settlement. This reminds us that the measures are important because it would be so difficult for a society to build a peaceful future political order "...on a foundation of blind, denied, or forgotten history" (Hayner, 2010:5).

In essence, the dominant liberal conception of transitional justice as espoused by earlier writers such as Teitel (2003) assumes that there should be a 'typical', liberalizing transition from dictatorship to some form of democracy. In this context, political change for Teitel meant "the move from less to more democratic regimes" (quoted in Hansen, 2014:109). As a central component of contemporary liberal peace building, (Sriram, 2009), transitional justice then is conceived and employed instrumentally to promote liberal democratic values and facilitate transition (McAuliffe, 2017).

While transitional justice is inconsistently sought for in 'non-paradigmatic' contexts, some scholars still insist that for it to materialize, there should be a political transition to "more democratic and accountable regime" (Iverson, 2015:89- 90).

Nevertheless, this typical, formal regime transitions are not always precisely available and not all cases involve from 'less to more' democratic regime change. Initially, the non-regime transitions are not central focus of normative transitional justice architecture. However, with the increasing expansion of its frontiers, the context of transitions and the type of past wrongs dealt within the subject has expanded considerably (McAuliffe, 2011; 2017; Szablewska and Bachmann, 2015).

As such, available works suggest that transitional

justice, due to its horizontal expansion (Hansen, 2011); have been attempted in states where profound liberal transition has not taken place or in non-liberalizing atmosphere (Aboueldahab, 2017). In this context, Grodsky (2008) envisages transitional justice as "a new or nominally new regime's legal and symbolic responses to past human rights violations" (quoted in Giddley, 2019, 19). This 'illiberal transition' and associated transitional justice measures took place in diverse places. They included post-Arab Spring North African states like Tunisia, Libya and Egypt (Aboueldahab, 2017; 2018), or in non-regime transition in such places as Uzbekistan and Uganda (Giddley, 2019) or in various part of Africa (Bosire, 2006). This is partly due to its increased 'popularity' in providing inspiration, institutional mechanisms and ideological guidance to initiate justice process, foster peace and promote rule of law. So, today it is argued that the role of transitional justice mechanisms should not be limited to typical transitions and the important normative prescription of transitional justice are increasingly sought in the cases which fall outside the context of formal transitions (Hansen, 2014; Teitel, 2014). As international community's dominant lens, it has been called for in places where democratization is not realized and post-conflict peaceful order is not achieved (Hansen, 2014; Teitel, 2014).

Some Latin American countries such as Chile and Argentina adopted justice measures in the presence of clear instances of regime change. On the other hand, the most striking difference of African case from the Latin American one is that transitional justice in Africa takes place following either civil war, or internal conflict, and mostly not following regime changes (Bosire, 2006). In Africa, previously transitional justice is conceived and criticized as "an externally defined idea" founded on the understanding and prescriptions of the global north (Brankovic and van der Merwe, 2019, xi). As such, there remains a friction (grassroots contestations) between its actors mostly from global north and local African consumers (Brankovic and van der Merwe, 2019:x). Despite these contestations, Africa has been at the center of transitional justice debate due to different factors. Some of them include the establishment of the famous Truth and Reconciliation Commission (TRC) in post-Apartheid South Africa in 1995; the establishment of International Criminal Tribunal for Rwanda (ICTR) in 1990s, and the International Criminal Court's (ICC) continued and controversial focus on African leaders. The South African TRC has achieved to "become a model to illustrate how transitional justice interventions can be used to heal divided societies and advance reconciliation" (Aiken, 2016:190). These factors, among others, made the continent a center of 'looming' academic works and debates in transitional justice (Anders and Zenker, 2015). Okafor and Ngwaab (2015) argue that there is increasing role played by ICC in transitional justice in Africa, and while this may have positive role, it also is bound to lead



to some negative consequences. Moreover, the employment in Africa of alternative, non-judicial or traditional mechanisms in dealing with violent past also casts doubt its legality in its relation with the international law (Nalin, 2018). Today, African states' favorable gesture towards the subject can be reflected in the adoption of recent AU Transitional Justice Policy in 2018 and subsequent studies based on African visions and perspectives (ACHPR, 2019). Africa's transitional justice making generally is hoped to foster the epistemic agency of the Africans and help push the frontiers of transitional justice (Dersso, 2021).

It can be demonstrated, therefore, that with the exception of a few cases, the continental trend of transitional justice implementation in Africa shows that it took place in the absence of liberalizing formal transitions, or amidst continuation of conflict or authoritarian atmosphere (Bosire, 2006). These included Rwanda after genocide; Sierra Leone; Ghana; DRC; Uganda; Truth commission in Chad under authoritarian rule of Deby (Hansen, 2014); the Red Terror Trials in authoritarian political climate in Ethiopia (Tronvoll et al., 2009) and others. Uzbekistan's truth commission under Karimov's undemocratic regime, Khmer Rouge trials in Cambodia (Gidley, 2019) and transitional justice in Middle East and North Africa which prompted dialogue in institutional reforms (Aboueldahab, 2017). Therefore, as Hansen aptly puts:

[...] the concept of transitional justice is no longer reserved to for analyzing justice tools in liberalizing political transitions. Instead, justice tools are being conceptualized as transitional justice in highly diverse contexts, including undemocratic political transitions, transitions from violent conflict to a more peaceful order, and situations where apparently there is no ongoing transition, political or otherwise (2014:106).

It must be admitted that transitional justice in the absence of liberal transition is less common, less focused, and due to inherent constraints transpiring from lack of typical regime change, it's unfolding or outcomes may not be amenable to judgments by liberal standards. However, it is also to be noted that the absence of this profound transition does not make the meager changes irrelevant. For instance, it is one thing by itself, to move from 'large-scale violent conflict' or state violence to a relative peace (Hansen, 2011) or to implement some domestic reforms. Admittedly, overstretching its frontier is risky, but it is increasingly argued that it applies not only to ideal-type (linear) transition from authoritarianism to democracy, but more widely "applicable to all political and societal arrangements in need of change" (Szablewska and Bachmann, 2015:341). Teitel also notes its ever-increasing relevance by saying that "[...] where transitions are fraught and democratization a distant goal, the call for transitional justice is becoming both means and end..." (2014: xi).

As such, waiting for ideal situations does not seem

prudent, but entry points need to be carefully identified to initiate the justice process without ruining peace. ICTJ suggests that the important point to consider is to investigate whether there emerged a window of opportunity or "even limited opportunity" to address the massive past human rights violations. This is because, as the former UN Secretary-General Ban Kii Moon emphasized in 2007, "A culture of impunity and a legacy of past crimes that go unaddressed can only erode the peace" (quoted in Pring, 2017:3). In this line, the author argues that the rare opportunities brought about by the ambiguous transition warrants carefully crafted transitional justice measures in Ethiopia. Because as argued above, the increased desire for relevance of transitional justice mechanisms in non-formal transitions makes the Ethiopian case appropriate for contextually tailored transitional justice implementation. This, however, is not without challenges and we will deal with them in the subsequent sections.

### **The politics of post-1991 Ethiopia's transition and transitional justice measures**

The Ethiopian political culture is rooted in authoritarian tradition (Markakis, 2011) and regime changes are not always achieved smoothly in the country's history (Bahru, 2002). The 1974 popular revolution, one of such real cases in Africa, brought the Ethiopian *ancient regime* of Emperor Haileselassie to its end and the military communist regime of *Derg* (Committee in *Amharic*) usurped power and ruled the country until its demise in May 1991. The *Derg* regime generally symbolized one of the most ruthless and bloody regimes in late 20th century Africa that, from 1975-78, unleashed a 'red terror' campaign. This murder campaign and violence implemented through law "in the name of state" (Balint, 2012) generally decimated thousands of urban-based opposition groups and a generation of intelligentsia and also those dead in ethno-regional liberation wars (Tronvoll et al., 2009). After the demise of the Derg in 1991 by the military struggle of the ethno-regional groups, the victorious TPLF in alliance with other ethno-regional rebel groups established a coalition called EPRDF. The TPLF emerged as political and military leader of the ruling coalition and solely determined the fate of Ethiopia's post-Cold War 'from war to peace' political transition (Merera, 2003).

To reckon with its violent past, and owing to its military victory, the post-1991 Ethiopian regime chiefly adopted a mechanism of mass criminal prosecution on former Derg officials without adopting other alternative or supplementary measures. According to then leader Meles Zenawi, the government did not intend to establish the suggested truth and reconciliation commission (Ryle, 1996). Recourse to amnesty was also ruled out since they believed that it "would send a wrong signal for the

people and future politicians” (Tronvoll, 2013:169). In 1992, Special Prosecutor Office (SPO) was established and, in what is reported as one of the most massive (post-Cold War) domestic trial after Nuremberg (Ryle, 1996), the former Derg civil and military officials were apprehended and prosecuted in domestic courts for crimes of genocide, war crimes, torture, rape, and crimes against humanity (Tronvoll et al., 2009; Tiba, 2013). Since then, with its strong centralized Marxist party apparatus erected to deal with then political challenges, TPLF/EPRDF remained dominant power holder until its power faced a blatant upheaval by violent popular protest started in 2015/16 (Lyons, 2019).

Generally, the post-1991 period in Ethiopia ushered in a new era of hope for post-war political transformation from autocracy to some form of constitutional democracy (Brietzke, 1995). The new liberal constitution was promulgated in 1994 which established limited state power, provided for extensive lists of fundamental human rights and freedoms, and promised collective right to self-rule for diverse ethno-national groups. The constitution also subjected the government activities to the principles of accountability, transparency, and peaceful transfer of political power only through free and periodic elections (Adem, 2012). However, while some maintained ‘guarded optimism’ on the Ethiopia’s post-Cold War transition (Brietzke, 1995), others viewed it with skepticism. Marina Ottaway (1995), one of the harshest critics of the regime, on the other hand argued that the chance that democratic transformation in Ethiopia would succeed was ‘remote’. This was because the EPRDF is simply an instrument of TPLF who has no aim to surrender power, and above all, favorable conditions for democratization do not exist in Ethiopia (Marina Ottaway, 1995).

Generally, the ideology of revolutionary democracy, ethno-linguistic federalism and later the doctrine of a developmental state are the three important ideological threads that regulated the political life in post-1991 Ethiopia (Vaughan, 2011). Batch (2011) remarks that the ideology of revolutionary democracy is inherited from the years of TPLF’s liberation wars of 1970s and 1980s, and it is later intended to legitimize the party-controlled state which ultimately operates as the “exact opposite of liberalism and neoliberalism” (2011:641). Its nature has anchored the fusion of state and party, served as a weapon of political mobilization functioned in non-liberal political climate (Vaughan, 2011). It negates constitutionally sanctioned principle of separation of power and hampers system of checks and balances (Merera, 2011). Ironically, the initial aspiration to forge democracy and political pluralism in Ethiopia gradually retrenched towards (‘electoral) authoritarianism’, which in post-2000s period, is later legitimized under the new developmental state ideology (Aalen and Tronvoll, 2009). After 2005 the most competitive ever election which put regime’s power in a ‘temporary vulnerability’, the regime resented the political ‘openness’, and took determined

attempt to reverse the trend. As Adem (2012) observed, it has increasingly adopted major repressive laws on media, civil society, and opposition. The regime violently uses these laws as an instrument of suppressing dissent or opposition with critical voices and to target important democratic institutions.

### **Authoritarian repression, violent popular protest, and human rights violations**

Classifying political regimes in to autocratic or democratic is a complex task. Milan Svobik holds that every political regime that “fails to elect its legislature and executive in free and competitive elections” is considered as authoritarian regime (2012:20). In authoritarian politics, there is lack of higher authority responsible for enforcing mutual agreements and ‘ever-present’ threat of violence among the key political actors (Svobik, 2012). Broadly, authoritarian regimes are characterized as the informal and opportunistic governing system by the executive, political power is considered private property; often bypassing the constitution is the norm; and immediacy cult towards the community about their leader (Frankenberg, 2020:239). However, they draft and design constitutions sometimes following a widely accepted procedure to resemble nominally with democracies and as a ‘mere window-dressing’ but disregard it in practice (Frankenberg, 2020:239) and violence plays as the “ultimate arbiter” of political dissents (Svobik, 2012:20).

Since 1995, Ethiopia is constitutionally declared to be a ‘parliamentary democratic republic (1995 FDRE Constitution, Art 1). However, it was a democracy only in name and there was a repressive and violent regime in power. Generally since 2000s and specifically after 2005 electoral shock, the central focus of EPRDF party’s political contestation has shifted towards a developmental state model (Vaughan, 2015). Undeniably, the Ethiopian economy and infrastructural development expanded but it is unevenly distributed among the diverse population and achieved at the expense of severe curtailment of civil liberties. Moreover, the ideological shift towards developmentalism along the domestically praised East Asian models is chiefly manifested in the government’s unduly increased commitment towards the socio-economic sector than civil rights and political freedoms (Assefa, 2015). As keen observers after considering the trends concluded, “Ethiopia has by 2008, returned firmly into the camp of authoritarian regimes” (Aalen and Tronvoll, 2009: 193). The regime’s authoritarian behavior can also be seen in the way it is highly militarized, repressive, and exclusionist (Jalata and Schaefer, 2010). Moreover, the post-1991 politics and the economy has been disproportionately controlled by the small groups of elites and their few other regional networks wherein the bulk of other elites feel alienated. Typical of its authoritarian counterparts, the regime very often disregards its

constitution (Frankenberg, 2020), and developmentalist ideology simply legitimized increasingly repressive state measures. The problem of authoritarian repression is a common phenomenon in earlier developmental states. For instance, the developmental state of a South Korea, also has similar record of severe curtailment of human rights which resulted in the eruption of major struggles for democracy in 1980s (Kim, 2010). Thus, EPRDF's legitimacy in democratization through election and economic liberalization remained highly undermined by the Marxist democratic centralism and dominant party rule which are further compounded by the persistence of old problems of authoritarianism (Hagmann and Abbink, 2011). Therefore, as Lyons summarizes, the TPLF/EPRDF's "ruling party exemplified a disciplined, authoritarian, vanguard party organized around the principles of democratic centralism. ...From 1991 to 2016, this system remained steady..." (2019:3). However, authoritarian repression for extended period finally backfired, provoking violent popular protest as briefly discussed below.

### ***The popular protest and EPRDF's weakening***

As Edward Friedman and Joseph Wong (2008) noted, authoritarian regimes under dominant parties employ state repression as an instrument of maintaining stability. However, authoritarianism has inherent tendency of creating destabilizing conditions and they confront what James Scott terms 'the "inconvenience" of losing' (quoted in Edward Friedman and Joseph Wong, 2008:1).

More recently in Ethiopia, two important events occurred which seriously challenged TPLF/EPRDF's hegemonic power politics thereby leading to current transitional politics. The first is the death of its powerful state architect Meles Zenawi who remained unchallenged strongman leader from 1991 to his death in August 2012 (Aalen, 2018). According to Lovise Aalen, the death of Meles has severely challenged the party cohesion and crippled the strong discipline of the EPRDF. Common to other authoritarian regimes (Svolik, 2012), he was succeeded by his nominal deputy, Hailemariam Desalegn from the same ruling regime. It was a survival strategy of the regime to ensure continuity of its rule but the beleaguered prime minister was criticized for lack of delivering genuine leadership 'like his predecessor' (Aalen, 2018).

The second and related was the outbreak of widespread violent protest and its political consequences. The violent protest which occurred on local basis in 2015 in Oromia was initially stirred by enforced 'Addis Ababa Integrated Master Plan' which is alleged to expand its outer boundary and displace surrounding Oromo farmers. Generally, the protest is the result of long-precipitated grievances over political and economic domination, repression and gross human rights abuses with impunity

(Lefort, 2016). As Abbink (2016) pointed out, the oft-claimed development achievement could not satisfy many, and thus the protests took more 'universal ideals' such as respect for rights, respect for rule of law and wider political freedom. According to Armed Conflict and Event Data project (ACLED), only from October 2017 to April 2018, about 264 violent events took place in Oromia, the heart of the anti-government protest (Matfess and Watson, 2018). The regime responded ruthlessly (Lyons, 2019) and the brutal repression resulted in the perpetration of widespread human rights violations which still remains uninvestigated. After reviewing political science literature, Dag Tanneberg (2020) shows that while repression is the hallmark of authoritarian rule, it has limits as it does not eliminate the roots causes of grievances that instigate violence. Moreover, it is also bound to backfire sometimes leading to regime downfall.

### **An overview of human rights violations: Old and new**

Stories of massive human rights violations with impunity by the TPLF/EPRDF regime abound in Ethiopia from its early days on power (HRW, 2010; 2019; McCracken, 2004). The human rights violations are deep-rooted, extensive, and intertwined with the nature of the regime's politics, and its full exploration is beyond the scope of this article. In their review of the EPRDF's 20 years balance sheet, Abbink and Hagmann demonstrate that contrary to the 1995 constitutional stipulations, old problems of authoritarianism, rejection of political pluralism, impunity for human rights violations, and weak judicial system pervade the EPRDF rule (2011). From early days, the regime has been battling with Somali and Oromo insurgencies over the years and violent crackdown on popular opposition prominently characterize the regime's rule (Jalata and Schaefer, 2010). There are also allegations that the regime has committed war crimes and serious abuses of rights of civilians in Somali region between 2000s-through 2007 in a military campaign against Ogaden rebels and in other regions. War crimes are also reported during Ethio-Eritrean war in 1998-2000 (McCracken, 2004; HRW, 2018). These and other massive domestic atrocities remain untold and did not get attention for systematic investigation and appropriate reckoning. According to HRW (4 July 2018), Ethiopia's compliance to international human rights standards is low and its reporting procedure is inconsistent non-cooperation with the UN human rights bodies is the norm. On top of human rights abuses, the institutionalized economic crimes have been enormous (McCracken, 2004). According to Global Financial Integrity (GFI) report, from 2000 through 2009, Ethiopia lost US\$ 11.7 billion through illicit financial flight which makes it top ten African countries (ibid, Dec. 5, 2009). Despite the dire human rights conditions, the regime remained a key partner of western powers including as US's anti-

terrorism ally and one of the top recipients of the international aid. But pro-human rights groups consistently accuse international community of supporting repression in the name of development aid (HRW, 2010).

Moving quick forward, the anti-regime violent popular protests since 2015 have been, therefore, the result of the long 'institutionalized crimes' and abuse of power, gross human rights violations, and economic marginalization. During the violence, the regime declared the emergency law by Proclamation No. 1/2016 (and extended it) and Council of Ministers Regulation No. 391/2016 to violently suppress the heightening violent protest. Under these vague laws, arbitrary measures were taken including arbitrary arrest and abuse of opposition groups, journalists, protesters and prominent and vocal academics *The Bertelsmann Transformation Index*, 2018, *BTI* hereinafter). Politically motivated massive trials were conducted against main opposition in the name of terrorism and outrage against the constitutional order to coerce them to submission. Moreover, "Security forces used excessive force against protesters and routinely committed acts of torture and ill-treatment of suspected dissidents" (The Bertelsmann Transformation Index, 2018). Generally, while the nature and extent of recent violent abuses are yet to be comprehensively investigated and the victims yet to be reached, HRW (2019) and BTI (2018) claim that only between 2015 and 2016, "over 1000 protesters were killed" by security forces, while also many tens of thousands were reportedly detained, tortured, and some others subjected to forced disappearances.

### **Regime collapse and ambiguous transition in context**

The far-reaching consequence of the popular protest is that it resulted in the devastating paralysis of the hitherto centralized party cohesion among the EPRDF coalition. As a result, the EPRDF was forced to chart reform to save itself and the country from the looming security crisis. This was followed by what vaguely came to be called '12 points reform plan' by the EPRDF in December 2017 in which it pledged to open political spaces, release political prisoners, and implement institutional reforms (Manek, 2019). The prominent political measure of greater consequence was the resignation of the former prime minister and the appointment of Abiy Ahmed from the EPRDF-affiliated Oromo regional Party who sworn in as a new prime minister on 2 April 2018. However, the EPRDF's reforms came only very late, after its key elements of Marxist rule founded on "hierarchy, discipline, and top-down control" was grossly weakened (Lyons, 2019:4).

After his appointment, Prime Minister Abiy appeared to radically depart from the EPRDF's common power politics and started to implement even some unanticipated reform measures. Some of them included the massive

release of political prisoners; the signing of unprecedented but secretive peace deal with Eritrea, Ethiopia's hitherto hostile neighbor; and granting pardon and amnesty for some individuals and political organizations formerly named terrorists (Bieber and Wondimagegn, 2019). Moreover, in chaotic scene, the exiled opposition groups with conflicting aspirations were invited to the country to engage in peaceful political activity (Manek, 2019) but without being disarmed. The legal reform council was established to identify and reform laws that were instruments of suppression of civil and political rights (Bieber and Wondimagegn, 2019). According to ruling Prosperity Party official, the foremost aim of those above measures was "to make them part of the Ethiopia's path towards prosperity" (Tsegaye and Fana Tv Dec. 30, 2021). These measures, some of them controversial and fatal, garnered the prime minister unprecedented domestic support and attention from the international (rights) community. On the other hand, EPRDF's old political power is weakened, intra-party rupture increased and the reform revolved around his centrality. Meanwhile, the new defiant leadership suspicious of reform targets already emerged in Tigray and began to launch resistance. Above all, however, the short-lived opening-up of political space and early reform moves brought about much needed optimism among the public that serious past human rights violations would be addressed and democratization would take root.

### **Analysis of the compliance in current transitional justice response in Ethiopia**

#### ***Typology: Transitional justice in absent regime transition***

Elsewhere, the author argued that transitional justice can be adopted in the cases of non-liberal transitions, and so, it is argued here that it similarly applies to the Ethiopian case. The current political crisis in Ethiopia has been broadly interpreted as "the legacy of Ethiopian modern history", inherited from the country's exploitative past (Markakis, 2011).

The problems of the empire-state such as over-centralization, marginalization of diverse groups and autocratic exercise of power gave birth to the 'Soviet-Style revolution' in 1966 (Clapham, 1988). It also has led to the change of military regime in 1991 after years of violent regional insurgency wars waged against the center (Lyons, 2019; Merera, 2003). However, the current crisis is starkly different from the two crucial previous crises in that both the previous ones marked emergence of new regimes. According to Lyons (2019), the legacies of the Ethiopia's 'war to peace transition' in 1991 and political-institutional structures erected to respond to the challenges of 1980s and 1990s are still in place and, with unsettled past, also continue to impact today's political

dynamics.

As noted earlier, the current 'ambiguous' and 'ambitious' political transition in Ethiopia came after the deadly protests against the regime. This made incumbent on the new leadership that to establish legitimate new political order, it is imperative to take certain kinds of transitional justice measures. But the current Ethiopian transition has not achieved clear conventional regime change through negotiated settlement, nor involves political change after military victory.

Viewed from the vantage point of conventional cases of transition, it would be clear from the outset, therefore, that the Ethiopian current transition process and accompanying transitional justice case does not fall under these conventional models. Until the start of new armed conflict, it went through tortuous and violent paths in a highly contested political climate.

In this juncture, differing early characterizations of current situation has been observed. By referring to EPRDF's new posturing of reformist arrangement following violent popular protest, some argued that the transition has some semblance of negotiated settlement between 'old guards' and new forces (Daniel, 2019). On the other hand, others contend that the Ethiopian current transition is rather a 'hybrid' transition. According to Dersso (2018), it is hybrid because the transition is neither a negotiated transition like that of South Africa nor resulting from one-sided military victory. He argues that "It is a transition that resulted from the *ad hoc* alliance of members of society who mobilized in public protest against the prevailing regime of the ruling EPRDF and a portion of the membership of the EPRDF" (Dersso, 2018). The demands of the popular protest was initially hoped to be accommodated within the old EPRDF system at the same time aiming to undergo fundamental reforms. Furthermore, the other group who rather runs rejectionist view to radical measures considers the transition process simply as a 'reform from within', induced by the party itself to enforce broader political reform which according to them departed from its initial missions. As such, this group, specifically those who draw from former power holders and their vocal ethnic supporters forward the measures as politically motivated targeting against previous rulers based on their identity and thus, they launch organized resistance.

Therefore, political reforms and the associated justice measures in Ethiopia have been unfolding in a situation where "managing intraparty competition has faltered" (Cochrane and Asnake, 2019), central power is weakened. Moreover, it operates where some defiant regions reinforced their power, which in turn largely affects the trajectories of the transition (Cochrane and Asnake, 2019; Lyons, 2019). As such, the liberal conception of transitional justice is less helpful in explaining the unique Ethiopian case. Moreover, as the intensely fought war continues and political instability dominates, it is too early to come up with conclusive

observations on the justice process. On the other hand, we noted that transitional justice norm with some international obligations of compliance has emerged and adopting this norm in societies coming out of conflicts and violence are not a matter of choice but of obligation (UN, 2010). The question for Ethiopia, therefore, concerns not whether to adopt one or not, but about which type should be adopted to harness a narrow window of opportunity brought about by transitional moment.

### **Competing interpretation of relevance and type of transitional justice in Ethiopia's non-regime transition**

#### ***Should transitional justice be pursued in Ethiopia?***

Generally, some competing understandings colored the first phase of transitional justice measures choice in Ethiopia. For the purpose of this paper, three tentative classifications can be made. One group maintained that the time for transitional justice is not ripe, and, therefore, should not be attempted. Their argument is based on the concern for the lack of formal transition towards democracy and the continuation of the rather new authoritarian political climate (Tsegaye, 2019). The second separate camp claimed that Ethiopia should undergo some form of TJ measures against the predecessor elites, and even aggressively. Generally, the supporters of the transitional justice efforts believed that the opportunity provided by recent collapse of the repressive regime should be harnessed to address past abuses. But they tend to propose various versions of justice measures, and at least three of these views are in order. The first influential and powerful camp strongly campaigns for retributive model to be adopted. It mainly draws from the historically dominant Amhara elites who resent for the loss of their dominance for the Tigrayan elites in the last nearly three decades and their heavy influence was well noticeable in the recent belligerent political measures. For them, it is the right time to impose retaliatory measures on those who employed 'divide and rule' style and who 'looted' the country's economy. The second alternative opinion suggests for restorative and reconciliatory justice frameworks than retribution. By considering the Ethiopia's complex and precarious political situation, they fear that pursuing retributive model would rather exacerbate the political division and gravely ruin peace process (Daniel, 2019). The third but a related view holds that given the abusive past and also dire current situation, Ethiopia should embrace a mix of both accountability, and peace and reconciliation measures as purposeful response to reconcile with its violent, repressive and traumatic past characterized by prevalence of a culture of impunity and collective trauma (Awol, 2018). According to Awol, addressing the history of painful past

“requires both accountability and peace and reconciliation process that allows for a comprehensive official investigation and a public acknowledgement of the abuses” (Awol, 2018). The third competing view concerns a rejectionist view that downplays the attempted or proposed transitional justice measures. This camp draws largely from predecessor Tigrayan elites who openly campaigned against the measures claiming that the process embodies calculated political retaliation and ‘selective apportionment’ of justice (*Addis Fortune*, 2019). As such, there is considerably divergent understanding among political elites and commentators about the nature of the transition, and divided voice about appropriate justice responses to Ethiopia’s repressive past.

### ***The controversy over choice of transitional justice for Ethiopia***

The subject of transitional justice even in ‘typical transitions’ has been considered as one of the vexing topics including for professionals engaged in the field (Orentlicher, 2007). Specifically, the question as to how societies should reckon with its abusive past becomes so complex in the context of fragile states like Ethiopia transitioning to uncertain future amidst unsettled and divided political situation. Though empirical studies do not exist yet, closer observation of the early transition phase in post-2018 Ethiopia indicated that apparently a considerable portion of the dominant elites push for the implementation of retributive prosecution measures. Most importantly, experience also informs that ‘justice’ in the common Ethiopian political phraseology is conceived as narrow criminal prosecution of wrongdoer(s). When someone is punished, the popular saying goes: ‘*yejun agegne*’, which roughly means ‘he has reaped the fruits of his deeds’. In extreme cases, it may amount to taking opportunistic revengeful measures against political opponents. This shows that retributive justice is at the center whereas forgiveness is bestowed with marginal role.

In some countries, independent surveys were organized to identify the popular opinion concerning the measures to be taken. For instance, a poll organized by the Institute of Democracy in South Africa (IDASA) in August 1994 showed that 60% of South Africans favored the establishment of commission to investigate the human rights abuses (Aiken, 2013: 206). In Bosnia, the UN-organized comprehensive survey showed that about 84% of Bosnians supported that the perpetrators of war crime should be brought to justice (Subotic, 2009:153). Survey in post-Mubarak Egypt has also shown that there is “strong popular support for trials” (Aboueldahab, 2018:188). However, domestic demand for certain form of justice shows only one among many of the motives the domestic elites when implementing or declining the justice project which also change over time (Subotic, 2009).

However, even such determinations are absent in the present Ethiopian case. The ‘new’ political actors even did not provide a clear transitional justice policy or ‘roadmap’ at the first phase of transition. However, from the early days in office, Abiy Ahmed openly declared that his leadership is determined to ensure justice and rule of law. In offensive terms, he said his administration will ensure that those ‘*zerafiwoch*’ (literally ‘organized looters’) and notorious human rights abusers as he terms as ‘*yeken jiboch*’ (literally translated as ‘the daytime hyenas’) are to be brought to the might of law. This initial pronouncement along with his liberalization and privatization move garnered him some western support, among others. Along with his unprecedented pacifying move with Eritrea, many also applauded him as staunch, young ‘visionary’ reformer poised to salvage troubled African Horn. Despite official rhetoric, however, the new government lacked even rudimentary transitional justice frameworks and policy direction (Daniel, 2019) and never used ‘transitional justice’ vocabulary throughout its measures.

For the reasons discussed in subsequent sections, the domestic demand for justice lacks a systematized articulation, or they are selectively pursued on ‘hit-and-run’ style based on instrumentalist considerations. Despite the undeniable deep scars from the abusive past and collective condemnation of predecessor regime, the nature and extent of the violence, and the type of crimes on human rights remain less considered. Neither thorough official investigation nor independent studies exist, nor would one occur sooner. As investigations may take years, the scale of victimization and the exact identity and number of victims during current regime remains murky. These are the real questions which need adequate political reckoning in Ethiopia. The 1995 incumbent constitution and other human rights instruments ratified by Ethiopia incorporate the international obligations to respond to human rights violations.

In this context, transitional justice literature provides some guidance in choosing response mechanisms by successor elites. According to Luc Huyse (1995), the justice choices made by the successor elites are generally determined by factors such as the legacy of the past repressive regime; the prevailing legal context during transition to democracy; the mode of transition unfolding and its effects on the regime change and balance of power between old and new elites.

Olsen et al. (2010) empirically demonstrate that if it were a transition brought about by military victory, the new regime would have more opportunity to disband old security and military; can undergo strong transitional justice measures; and take other measures in a way that help consolidate its power. In the aftermath of newly ended war resulting in one-sided military victory, criminal trials are most likely to take place (Kim and Hong, 2018). The previously ruling EPRDF regime took the clear prosecution and massive post-Cold War trials against

Derg officials. However, currently in the first period in which the measures are attempted, the 'old guards', the former powerful officials who maintain their stronghold in economy, in military and security were not easily wiped out or contained. This situation further gave rise to contestations, fierce resistance, spoilerism, and continued unpredictability. Olsen et al. (2010) also demonstrate that countries who exhibit 'high ethnic and linguistic fractionalization and who face challenges of transitional justice choice are less likely to pursue prosecution, truth commissions and reparations, and focus more on amnesties (Olsen et al. (2010:45). But truth commissions and reparations are mostly outcomes of negotiated political settlement as they took place in South Africa and Latin America (Balint, 2012; Kim and Hong, 2018). Though amnesty gained an increased increase since 1990s (Mallinder, 2008), Abiy's political reform vocabulary was not content with it. In the absence of inter-elite political bargain and in an atmosphere of ethnically defined politics, reconciliation was also never sought beyond political posturing.

Therefore, the question of why a state prefers prosecution or why it rejects it and opts for other measures may not be explained only by looking at lack of strong and independent institutions in post-conflict settings which appears reductionist claim (Aboueldahab, 2017). Moreover, the TJ scholarship increasingly suggest that the implementation of the justice process should be holistic, "more context specific, to be more attuned and aligned to national and local context" (Duthie, 2017:11). However, some authors caution that allowing for much local variation in similar situation may defeat the purpose of the transitional measures themselves (Orentlicher, 2007). To mitigate for such variations, the UN also developed detailed principles to comply with and also strongly urges that states' transitional justice measures should comply with the international human rights standards (Grover, 2019; Rubli, 2018). As a bottom line, UN puts that "The nature and timing of such measures should be framed first of all in the context of international legal obligations and taking due account of the national context and the views of the national stakeholders, particularly victims" (2010:4).

Moreover, the issues of timing and sequencing of competing transitional justice measures should also be focused as critical elements (Fletcher et al., 2009:218).

## **An overview of major transitional justice measures implemented**

### ***Official apology and massive release of political prisoners***

Public apology, official acknowledgement of the past abuses and assuming the responsibility for the human rights violations of the past regime is considered as official condemnation of past wrongs (Howard-Hassmann,

2016). And the UN considers it as the right of victims (Howard-Hassmann, 2016). The new leadership unequivocally acknowledged that there were massive human rights violations, extra-judicial killings, tortures in prison chambers, and forced disappearances. During his inaugural speech, for either the reasons of conviction or pragmatism, the prime minister characterized those acts of predecessor regime as 'state terrorism' (Fick, 2018) and asked official apology for the wrongs committed by the regime for which he was a member. During the earlier months, the Federal Attorney General also released the details of appalling human rights abuses and aired documentaries about the testimonies of victims of torture in notorious prison chambers. The documentaries also exposed 'detestable' institutionalized economic crimes which galvanized the mass alarm. They stirred an expectation among the domestic public and the rights community that "meaningful justice beyond media trial" (Horne, 2018) would be served for the victims of torture.

Massive release of mostly political prisoners held by the past regime was carried out and former (including exiled) armed groups officially labeled as 'terrorist' groups such as Patriotic *Gimbot 7* and Oromo Liberation Front were lifted such status and invited into the country. The prime minister's report to national parliament on 1 July 2, 2019 (6) says that under amnesty law effected through proclamation No. 1089/2018, about 45,000 prisoners were released. Moreover, over 100,000 prisoners charged for crimes of 'outrage against the constitution' and other crimes were released on pardon (*Addis Standard*, June 28, 2018).

### ***Vetting and security sector reform***

In the post-conflict and post-authoritarian settings, vetting along with lustrations is used 'to facilitate personnel and institutional reforms' (Horne, 2017:424). Historically rooted in political purging, they aim to shed light on who was responsible to what extent during the times of political suppression and to verify their integrity for the future public service (Mihir, 2017). In this line, the new leadership swiftly involved in vetting of influential political, military and security figures. The previous Chief of Staff was replaced by new Tigrayan army chief reportedly content with reformists. But following his assassination, the period saw the appointment of new general from Amhara, the strong power contender, again soon to be replaced by army chief from Oromo.

Security sector reform, one of the key aspects of transitional justice (Sharp, 2012), has also been swiftly implemented. Getachew Assefa, the other controversial figure and former director of the National Intelligence Service, along with his deputy, has also been removed and sought for trial but the former successfully took refuge in his home region. Until Mid-November 2018, over 60 officials from military, security/intelligence and prison apparatus were swiftly arrested (Mahlet and Yared,

2018). Also federal police commissioner was arrested and charged for human rights violations and grand corruption. According to the then Attorney General Berhanu Tsegaye, the wave of arrest measures came after 5 months of investigations into the past atrocities and the measures are not based on ethnicity nor on political and religious affiliations (Mahlet and Yared, 2018). *Maikelawi*, an infamous torture and repression prison was closed (allegedly changed into museum), but its regional counterparts remain untouched. The gradual disempowerment of previous officials also resulted in either dismissal or reshuffling of cabinets and regional governors the prominent instance being the arrest of Abdi Illey, governor of Somali region and allegedly notorious abuser and TPLF's close ally.

### ***Selective prosecution of predecessor officials***

Drawing on Nuremberg and Tokyo trials, criminal trials and prosecution of the 'most notorious symbols of oppression' (Abdoueldahab, 2017:8) has been the oldest and the most widely pursued mechanism of transitional justice (Roht-Arriaza, 2006). The legitimacy of new political order and citizens' trust in state institutions could only be constructed by disallowing impunity by individualization of responsibility through judicial courts and establishing guilt (Eisikovits, 2017).

In this case, the most notable prosecution measure came against the influential EPRDF's ideologue and former minister, Bereket Simon. He staunchly run the idea that the new leadership has 'betrayed' the EPRDF's cardinal principles and neglected the earlier promises made during Abiy's appointment and agreed-upon reform directions.

Indeed, the prosecution of him and others did not largely come in the name of human rights crimes. Instead, he and certain others were charged for their alleged involvement in grand corruption crimes and later sentenced by the Amhara regional high court to six years rigorous imprisonment. Similarly, Brig. Gen. Kinfe Dagneu, CEO of massive Military Engineering conglomerate (called *METEK*), and some 26 others were also arrested and tried on corruption charges under file name of Brig. Gen. Tena Kurunde et al. (Mahlet and Yared, 2018). Metek and its officials have been at the heart of the criminal investigations. Though its authenticity is not cross-checked, the prime minister's annual Report of July 2019 (4-5) mentions that about 799 abusive and corrupt officials were jailed. After the start of the war in November 2020, prosecution of officials and executive members of ousted Tigray regional government came in the name of 'waging armed rebellion, attacking the Ethiopian army base in Tigray, terrorism and others.

However, this latest prosecution process is beyond the scope of the paper and not dealt with in this section.

Generally, some trends can be observed in the prosecution process. Firstly, the prosecution measures

lacked carefully crafted strategy and also lacked sequencing and prioritization to minimize its adverse consequences in undermining security for opponents and exacerbating political tensions. Secondly, it also appeared to be targeting people from same ethnic background who sooner complained of 'selective apportionment' of retributive justice. This was because the former officials from different ethnic backgrounds who enjoyed similar power or involved in human rights abuses are not sought to be brought to justice similarly. More controversially, they enjoyed new appointment to top political power positions and protection under the new system which ignites grievance. Thirdly, most of the crimes prosecuted were brought in the name of corruption, and crimes for serious human rights violations do not figure prominently. Fourthly, most of the measures appear to highly depend on narrow current abuses and appear to ignore the deep-rooted patterns of human rights violations. Ultimately, as Chief Justice of Federal Supreme Court once uttered, only ordinary judicial institutions were forwarded as 'sufficient' tool and employed in the process until reconciliation commission was lately established as briefly presented below.

### ***The establishment of national reconciliation commission***

The most noteworthy transitional justice measure which mirrors policy direction came lately with the establishment of Reconciliation Commission. Generally, reconciliation has a good reputation as it facilitates transition processes and helps heal the wounds of victims and repair social fractures (Schussler, 2017; Hayner, 2010). The predecessor EPRDF regime consistently dismissed the call for national reconciliation during its rule and the current effort to establish it is a step forward. During inaugural speech, Prime Minister Abiy said: "The coming time in Ethiopia will be a time of love and forgiveness ..." (quoted in Lyons, 2019:1). However, the reconciliation rhetoric did not take shape as a comprehensive transition roadmap. The Commission is established with Proc. No. 1102/2018 with the poorly articulated objective: "to maintain peace, justice, national unity and consensus and also reconciliation among Ethiopian peoples" (Art. 5). It comprises of 40 commissioners (some are active politicians), chaired by the leader of the Ethiopian Catholic Church, Cardinal Berhaneyesus Souraphiel, an attempt to emulate the South African counterpart.

Reconciliation has been given a prominent place in transitional justice and it represents the comprehensive view, the means and the ultimate goal of transitional justice (Monroy-Santander, 2018). However, the questions as to when, how, and under what circumstances it should be used for nation-building, maintain peace and security are not settled in Ethiopia. The commission was not an outcome of deliberative policy choice resulting from political bargain. Moreover, the commission has been



criticized already for its several flaws.

Firstly, the commission came only lately after the government took drastic measures of prosecution, lustration and vetting of top predecessor officials which already ruined the spirit of forgiveness and reconciliation (Daniel, 2018). Secondly, contrary to established norms, some of the members who were the very previous officials suspected of responsibility for the human rights abuses and other currently active politicians are its key commissioners (Tsegaye, 2019). In this regard, late Archbishop Desmond Tutu, chairperson of South African TRC cautions that “even the best designed institutions are dependent on the character and integrity of those chosen to serve them” (2018:xvii). Thirdly, the commission members draw entirely from domestic members handpicked by the executive, and there is no mechanism to ensure their independence. To compensate for this, for instance, Burundi in its TRC established a ceremonial body, “international consultative council composed of five eminent personalities of high moral standing” (Vandeginste, 2012:364). Fourthly, while national/ethnic oppression and grievances are historically rooted, the mandate of Ethiopia’s commission is so vague about its period, depth and breadth of investigation.

It also did not engage broader public consultation, and unlike its South African counterpart, it has no schemes to repair victims of state violence. Victims reparation is often neglected in transitional justice literature (de Greiff, 2006), but material and moral reparation has been argued to have at least a direct touch with victims (Hamber, 2009).

Arguably, the Ethiopian Commission is erected with instrumental purpose to display ‘political posturing’ to signal that the leadership is serious in dealing with its troubled past (Reiter, 2017; Slye, 2018). It has neither prosecutorial nor reparative mandates, and it only would serve as symbolic forums for public hearings which were never practiced. Top-down ownership, lack of good faith consultation and consensus in its establishment and its mandate haunts its legitimacy among the Ethiopian public who remains divided over its past and present. Recently, Tesfaye Dhaba, the government’s state minister to Cabinet Affairs announced that the Commission has ‘failed’ to accomplish its tasks (ETV, 12 Dec. 2018). As such, in a move to replace it, the Council of Ministers passed a draft Bill to establish new ‘National Dialogue Commission’ on 10 December 2021. Generally, empirical evidence from South Africa and Ireland shows that reconciliation is not one time activity, so it remains incomplete, or it takes decades, or generations to materialize (Moon, 2007).

### **Challenges and factors that determine transitional justice responses in Ethiopia**

When the country has to decide to implement justice

measures, numerous factors play out to determine the approach to be adopted (Huysse, 1995). These complex factors are interrelated, but their accurate weight of influence on the measures may also be different. The current Ethiopian situation reflects a situation of predicament where both the past and present political trouble ‘competes for attention’. The following factors are discussed to the extent of their relevance in helping explain the ambiguous Ethiopian situation.

### ***The incomplete nature of transition and exclusionist transition politics***

Perhaps the most profound challenge with and determining factor in the current trajectory of the transitional justice in Ethiopia is that it is taking place without linear regime change. As commentators put it, the present change “remains reform from within, rather than change from the outside” (Cochrane and Bahru, 2019:7). The measures are taking place within the existing ‘authoritarian’ political-institutional structures erected three decades ago. According to one commentator, “It is a [...] transition, which relies on the old EPRDF based regime while trying to fundamentally reform it.

The feature of the transition is not without its major ramifications for the trajectory of the transition and the pursuit of transitional justice and reconciliation in Ethiopia” (Dersso, 2018).

Though some works noted above suggest that transitional justice measures may be undertaken in ‘atypical’ transitions to utilize rare opportunity to fight impunity, the Ethiopian tumultuous case informs that this is still complex and problematic. For the last nearly three decades, the TPLF/EPRDF has been a dominant force in controlling almost the entire aspects of Ethiopian economy, military and society. The closer reading of what unfolds in the first phase shows that, due to lack of complete regime collapse, until sometimes they maintained their strong political, economic and military positions (Daniel, 2018). They also unequivocally demonstrated a ‘will and capacity’ to threaten the new power holders. The early lustration measures did not significantly uproot their indirect power and influence, and repressive officials in other regions who realigned their alliance to new coalition mostly remain untouched. Olsen et al. (2010) empirically demonstrated that in the absence of collapse of old regime, it would be problematic for the new elites to robustly engage in prosecution of officials because the spoilers are ‘potentially strong’. Generally, therefore, transitional justice in the context of absence of fundamental regime transition meant that elites take such measures as half-hearted and shallow attempts to balance different imperatives. In this kind of situation, as Subotic (2014) argues, the justice measures are taken based on instrumentalist motives, such as to display some level of governance reforms, to expose and create a certain image of the past abuse particularly as to who is

responsible, and also may be to target political challengers. To be successful transition towards democracy, the new 'winners' should not completely exclude the 'losers' from the political process. Similarly, the 'losers' should also learn to peaceful transfer of power and 'participate according to the new democratic rules of the game' (Handley et al., 2008:191). In Ethiopian case, however, besides the challenge of absence of formal transition, both the losers and the new winners did not behave in that way. The process was exclusionist targeting the predecessor Tigrayan elites, and the latter in parallel resisted and spoiled the whole transition process which hampered the democratic and peaceful element in the process. The irreconcilable understanding of the justice process may 'destabilize' post-conflict countries (Sriram, 2009). So, the new administration might have been compelled to balance and satisfy competing imperatives by posturing justice measures in a bid to gain legitimacy, and in parallel, ensuring consolidation of its power.

#### ***Divided political coalition and aspiration for personal international legitimacy***

As preceding sections revealed, the current change was brought about by the wider civilian protest later led by the alliance mainly between Oromo and Amhara elites. However, once their common enemy is weakened, their initial political alliance could not sustain longer, and mutual suspicion re-emerged. This draws from a significant intraparty/ethnic competition to assume or dominate the transitional political power among EPRDF-affiliated parties before its merger to form the ruling 'Prosperity Party'. More visibly, the members of the then ruling EPRDF coalition such as TPLF and Amhara Democratic Party have been accusing and counter-accusing each other and exchanging provocative and retaliatory words of insult embodying chauvinistic messages, territorial claims, exchange of old communal grievance and heightened hostilities which sets the country at cross-roads (Matfess and Watson, 2018; Manek, 2019) and later led to devastating war. So, the Ethiopian current over-proclaimed but poorly delivered reform is not institutionalized, and the whole process 'largely revolve around the personality of Abiy' (Cochran and Bahru, 2019: 10). He maintained shifting alliance with these competing elites but his effort to appease the divergent interests of the multiple constituencies appears to be unsuccessful. The newly forged successor of EPRDF, Prosperity party, has already been criticized of its weakness to overcome the challenges that already constrained previous EPRDF leadership (Lyons, 2021) including its centralist/unitarist orientations and alleged reverence for past imperial glory. Political institutionalists increasingly emphasize that institutions lie at the heart of state building and determine the type of justice measure

the states take and its effectiveness (Waldorf, 2017). Amidst the demise of centralized party and consequent divided coalition and disputed nature of new party, observers were puzzled about how to ensure cohesive leadership, and fear that it opens door for new dictatorship.

As noted, in the absence of substantive domestic justice demand, the elites use the language of justice instrumentally to signal their respect for international obligations, while using those processes as a mechanism to achieve some other political goals, such as gaining international legitimacy, getting rid of opponents, and other rewards (Subotic, 2014).

Along with his economic liberalization moves, the new leader is already able (then than now) to win the laudatory views from western countries and international financial institutions. And he also won the 2019 prestigious Nobel Peace Prize for ambiguous peace deal, the unexpected rapprochement which 'ended' stalemate with Eritrea. But the merit of the Saudi and UAE-backed Ethio-Eritrea Peace Deal remained a secret and is seriously questioned with the outbreak of new civil war with defiant Tigray region. By looking at the trajectories of the transition politics, and in line with Subotic's argument, it is reasonable to hold that the leaders embarked in some justice processes ('quasi-compliance', Subotic, 2014:139) in a way that it helps them excel their international reputations, to distance themselves from previous abusers, and to appear as a legitimate reformers. Under this kind of "conflicting cost of compliance" (Subotic, 2014:139) and non-compliance, the measures implemented do not significantly produce substantive justice required by the international standards.

#### ***Fierce resistance by TPLF 'old guards' and their ethnic supporters***

According to Subotic, the state's attempt to fully comply with the justice norms may also be resisted by 'powerful, domestic anti-justice constituencies' that can threaten to destabilize the new regime. As Sandra Rubli (2018) observes, resistance to transitional justice at state level may be caused by different reasons. The common reason is the incompatibility between 'international models' of transitional justice and the 'local realities' of the transition states. The other important reason concerns the localized reactions from the previous elites who are implicated in the human rights abuses and who particularly try to avoid prosecution' and instead want the state protection (Sandra Rubli, 2018). In Ethiopia, the political and justice measure has not earned support from all social and political groups. The strongest resistance to the transition and justice process came from the predecessor TPLF elites and their open ethnic supporters which can be held as 'the usual suspects' of resistance

(Jones and Bernath, 2018). Abiy's sudden political measures already started to brew discontent among the Tigrayans in that they felt sidelined from new political life. The first significant measure came from the replacement of two Tigrayan top military and intelligence officials: Samora Yenus and Getachew Assefa, respectively (Fisher and Meressa, 2019). Following these measures, the Eritrean president, Isaias Afewerqi, who suffered international alienation and successive sanctions staged by TPLF/EPRDF for long, in reprisal intention responded positively to Abiy's measures. The rapprochement which seemed miracle again would produce fatal political consequences.

As such, then ongoing governance reform measures were perceived to 'threaten powerful interests among the old guards'. Though they cannot reassume power, during early phase they held 'residual power', vocally propagated competing ideology, and appeared as a source of security threat to the new vulnerable order. According to one observer, they comprise of different internal elements: firstly, 'the power-hungry elites' who propagate siege mentality and advocate Tigrayan secessionism; and secondly, the 'old guards' mainly the core TPLF politicians who suggest that restoration of '*status quo ante*' would be the only solution to ease the tension (Ermias, 2019). Sebat Nega, senior founding Member of TPLF Executive Committee (arrested and jailed after war begun) is reported to have said, "If constitutional order is not restored, the Balkanization of Ethiopia is inevitable" (Champion and Manek, 2019).

The most important justice measures which they fiercely resisted is the prosecution of their former regime officials; swift lustration and vetting measures widely portrayed as ethnic-based targeting; and lifting ban on rebels such as OLF and Patriotic Gimbot-7 which were formerly labeled by them as 'terrorist organizations'. The situation of avoiding justice in the case of Getachew Assefa for alleged human rights abuses triggered US Congressman Mike Coffman who invoked on Getachew and 'his enablers' 'The Magnitsky Act', the law enacted in 2012 to impose visa and asset sanctions by the US government on perpetrators of human rights abuses (*Africa News*, 03 Jan. 2019). Despite triggering of this international process, they are not apprehended; and instead portrayed by Tigrayan activists as 'hero' to be praised.

Their resistance notably involved the localized reactions from what in the transitional justice literature are known as the previous elites implicated in the human rights abuses (Jones and Bernath, 2018; Subotic, 2014). At their regional government level, they vigorously interpreted the early aggressive (justice) measures as a prejudiced attack on them and forward those jailed as 'political prisoners'. The shadow 'Peace deal' with Eritrea and sporadic closure of highways from Amhara were also successfully portrayed as a 'tripartite alliance' among prime minister Abiy, Eritrean President Isaiyas and

Amhara elites, a ploy to sandwich them, which provoked 'siege mentality' thereby exacerbating political tensions.

Yet from the earlier phase, the vocal Tigrayan elites also widely resent that the new leader blames them for the entire problems of the country and never recognize their positive contribution to the country's development. Furthermore, the massive lustration especially from the security sector is interpreted as ethnic attack. Getachew Reda, then senior member of TPLF executive committee decries the measures: "An ethnic purge is taking place..." (Manek, 2019). Their resistance took wider ethnic dimension since "appeal to a sense of [localized] nationalism" is key instrument employed by resisters (Subotic, 2014:138). As noted, one factor which gave ethnic dimension of retributive measures and gave some sort of legitimacy for resisters is what is perceived to be 'selective prosecution' of individuals specifically from Tigray and leaving officials from other regions intact (Daniel, 2018).

In the last phase, two factors would stand out as immediate factors of their confrontation. The first one is the premier's near forced, unilateral dissolution of EPRDF and replacement with his new 'pan-Ethiopian' party called 'Prosperity Party' which is suspected for its centralist (unitary) inclinations. The second one is the postponement of 2020 national election due to COVID-19 pandemic which also gave rise to controversial constitutional interpretation (Mengie, 2021). The House of Federation, authoritative body to interpret the federal constitution, decided that extension of the term of federal and regional governments 'until sometime' due to pandemic is constitutional. The Tigray elites on the other hand rejected it as unconstitutional attempt to prolong power. Then, in unprecedented defiance to the above decision, they proceeded to conduct their own regional election on 9 September 2020 portraying the illegitimacy of federal government and its electoral board. The federal government declared the process "illegal", and election 'sham' and these and other related tensions signaled that armed conflict would breakout soon.

Politically, the ultimate result of the reigning confrontations has led to a raging war declared on 4th of November 2020 with the official pretext that Tigrayan armed forces have attacked Northern Command of National Defense Force stationed in Tigray region. On 9 November, the Tigrayan authorities spoke via regional media that they have taken 'lightening preemptive' attack to neutralize the national army. At the time of final editing of this paper, the war is intensifying with huge reported human casualties, genocide claims, and over 9 million displaced persons from Tigray, Afar and Amhara regions. The transition hoped to lead to peaceful order has thus morphed in to all-out war with devastating consequences and with vigorous mobilization for war, it is again producing further national violence. In line with Jones and Bernath's (2018) argument, their resistance has other actors beyond 'usual spoilers', such as their wider 'war-

hardened' ethnic constituency, and those who gained illegitimate benefits during their rule. The government's lack of careful strategy and the resisters' shrewd interpretation of the measure as an assault against their identity helped them rally their whole ethno-regional constituency and regain legitimacy. In this situation, vigorously seeking prosecution was feared at first since the elites already possess 'will and ability to mobilize mass ...' (Hansen, 2014:119). So, until the conflict began, their resistance fundamentally shaped the unfolding of justice choice during first phase of transition.

### ***Continued inter-communal violence and stability imperative: Peace-Justice dilemma***

As the transition period unfolds, in addition to strong resistance from predecessor elites, the anti-government protests did not automatically come to its end. Rather the conflicts were gradually transformed into widespread inter-communal violence (Matfess and Watson, 2018). As the centralized party-control weakened, the period saw "outbreaks of violence, mass displacement of people, and other issues that tarnish the hope that has been created by these changes" (Cochrane and Bahru, 2019:11). As the Matfess and Watson's report for ACLED (2018) warned, the heightened inter-communal violence signals that the country anticipates 'continued instability'. It is notable that political violence and human rights violations are 'severe' in transitioning societies (Horowitz and Schnabel, 2004). Such have been the cases in Oromia, Amhara and Benishangul-Gumuz regions and later conventional armed conflict in Tigray. Some existing works reveal that premature gesture of democratization in fractured transition societies may be a risky endeavor.

According to Heupel, an unpredictable transition from autocracy to democracy is particularly risky "because the process of democratization enables the societal groups to gather and voice their demands while the governing regime is frequently not yet in a position or willing to accommodate such demands..."(2011:216).

The intercommunal ordinary violence has also been transformed and intensified by the rebel-turned ethnic hardliners and also saw revival of Derg-era movements which proved beyond government's ability to control them. As we noted, the measures of massively releasing prisoners and integration of armed rebels for lofty aims of political inclusion and 'neutralizing ethnic hardliners', however, unleashed a 'bitter struggle' for power outside and within the ruling EPRDF coalition. It also heightened challenge by hardliner-nationalists. It might reflect what Subotic (2014:127) calls unexpected "domestic policy effects" of the measures. As Manek (2019) notes: "[...] that policy has also unleashed forces that Abiy may no longer be able to control... Hardliners such as National Amhara Movement (NAMA) and OLF who returned from refuge abroad started to mobilize, rather than going

smoothly with the reformist government..." which furthered violence.

The most significant showdown of this chaotic process exploded with the so called 'June 22, 2019 foiled coup' attributed to late Brig. General Asaminew Tsige, which took place in Amhara region. The 'foiled coup' resulted in the tragic assassination of Amhara regional governor and senior officials at Bahir Dar, regional capital, and also assassination within hours of army chief reportedly by the extension of the same wing in Addis Ababa. This challenged the regime and its stability down to the core. It prompted the observers to warn that despite the 'laudable reforms', the "immediate priority must be restoring security" (International Crisis Group, 2019). These political events more than ever brutally challenged Ethiopia's common future. Hansen notes in this situation that "Achieving stability and security may be seen as more pressing needs in such [highly instable] situations...[In] highly instable situations, it may be unrealistic to expect that the justice tools utilized primarily aim at promoting liberal democratic values" (2014:115). In this situation, and in the absence of strong democratic and civic institutions, there is a pressing need to ensure peace and coexistence among the peoples in the polity than embarking on justice measures (Eisikovits, 2014; Hansen, 2011). Trading justice for peace is still fraught with challenges. From the post-Qaddafi Libya experience, the International Commission of Jurists puts it that "... overlooking the necessity for justice in the interests of "peace" has compromised both justice and peace" (2020:2) which shows that it is imperative to reconcile the two.

### ***Absence of/or weak domestic civil society engagement***

As Brankovic and Van der Merwe (2018) observed, the subject of transitional justice has been a field prominently shaped by the Civil Society Organizations (CSOs hereinafter) and they have been key actors behind its development and 'dogma'. In weak states wrecked by conflicts, the civil society participates in drafting legislations, in establishing commissions and accessing the victims and assisting vulnerable communities to seek justice (Brankovic and Van der Merwe, 2018). Though CSOs can have divergent policy preferences, they played a significant role for instance in designing the South African TRC (Brankovic et al., 2018), the Kenyan TRC (Slye, 2018) and TRC in Burundi (Vandeginste, 2010). Even in the case of recent transitional justice in North African countries, "civil society was and still continues to be a crucial driving force" (Aboueldahab, 2018:183). CSOs are crucial not only for advocating transitional justice, but also overseeing the attempt of the political elite (not) to capture the justice process for their own political benefits (Roht-Arriaza, 2006; Vandeginste, 2010).

Their role also is strongly felt in peace building phase where they help fill gaps by linking high level political negotiations to people at grassroots level (Andaya, 2021:288).

In Ethiopia, these bodies which Subotic (2014) calls “justice true believers” are so weak due to the closed political tradition and resultant absence of vibrant civil society. The *Civicus Monitor* (2020) rates the civic space in Ethiopia as ‘repressed’. They are also decimated by the repressive civil society law passed with Proc, No 621/2009 and their role especially in promotion of civil rights, democratization and peace building has been curtailed (Yntiso, 2016). The strained relationship between government and civil societies prevailed for long time and the government criticizes them of “lack of dedication to mission” and “donor-driven engagement” (Yntiso, 2016:22). With the assistance of the Ethiopian Civil Society Organizations Forum established in 2013 as independent and inclusive platform, the draconian civil society law of 2009 was amended in February 2019 with Proc. No. 1113/2019. The new law in the preamble pledges that “the existence of active and freely organized society is imperative to ensure that the government affairs are conducted in a transparent, accountable and participatory manner”. After this, the restrictions imposed on those working on human rights, democracy, good governance and access to external funding has been lifted (*CIVICUS*, 2020).

However, the prevalence of authoritarian repression for the extended period has the ‘chilling effect’ on social mobilizations and weakens the flourishing of vibrant civil societies (Cavatorta, 2013). Despite the earlier liberal gesture of current transition and law reform, recent reports reveal that human rights advocacy by national civil societies has become so dangerous due to pressures and threats posed by state and non-state actors in the context of currently escalated conflict (*CIVICUS*, 2020). Moreover, for ‘justice believers’ to succeed in promoting justice norms, Subotic (2014:138) argues that the ideal condition is where none of the justice instrumentalists and resisters are in dominant position. But in Ethiopia today, the justice instrumentalists appear to hold the top position and the role for (absent) civil society is, therefore, very limited.

### ***Absence of or weak international pressure***

Peaceful and at a time coercive pressure from the internal community is important yet controversial in “bringing about state compliance with international...human rights norms” (Schnabel, 2004:141). The role of international actors has been prominent especially where there is lack of ability or domestic political will (Hansen, 2014; Reiter, 2015).

Elsewhere, in addition to state’s own justice initiative to comply with transitional justice norms, external pressures

have been instrumental (Subotic, 2014; Reiter, 2015). The intervention for protection of human rights may also be informed by political, economic and geo-strategic imperatives (Schnabel, 2004). In Ethiopia, no visible international pressure has been exerted to adopt a transitional justice framework. The topic became so relevant only after the atrocities committed in the current escalated war in Tigray in northern Ethiopia. However, some of the international human rights groups claimed that the government should give attention to serving justice in response to the massive human rights violations.

According to Amnesty International (26 April, 2019), it is imperative that justice agenda should be a priority in Ethiopia’s transition and Human Rights Watch also forwards skeptical position and points for further investigations. Therefore, despite those calls whose weight is not clear, one could not see an organized strong involvement from international bodies. One explanation may be that the then Ethiopia’s allies seem to be satisfied with the over-proclaimed and under-delivered reform efforts and might also have prioritized stability than ‘distant’ justice. In sum, the transitional justice dynamics currently in Ethiopia lacked key international advocates as a result of which the justice process became the state’s unchecked domain. According to Subotic, in the absence of strong domestic justice demand and absence of international pressure “the justice norms will be... simply ignored” (2014:131), or rationalized for domestic political purposes. The vocal international concern become noticeable only lately during the current civil war, and the UN Human Rights Council, after series of controversial sessions established ‘International Commission of Human Rights Experts on 17 December 2021. Its mandate is to conduct, within a year, “thorough and impartial investigation” into claims of serious human rights violations committed since November 2021, collect evidence and identify those responsible for the perpetration of human rights violations (UN Geneva, 2021). The Ethiopian government strongly objected the decision arguing that it would downplay the findings of previous investigation conducted jointly by the Ethiopian Human Rights Commission (EHRC) and the Office of the High Commissioner for Human Rights (OHCHR) about alleged human rights violations, abuses, and violations of international humanitarian law and refuge law in the context of Tigray conflict. A 156 pages report released on 3 November 2021, reportedly “not exhaustive”, finds that the crimes committed by both parties to the conflict “may amount to crimes against humanity and war crimes...”(OHCHR and EHRC, 2021:5).

### **Conclusion**

This work attempted to make an early assessment of how

some of the transitional justice measures which predate new conflict have been attempted in Ethiopia's troubled transition, and the factors that shaped the domestically driven compliance efforts and their underlying limits. The collapse of authoritarian TPLF/EPRDF rule in 2018 and short-lived peaceful reforms ushered in a new moment of hope and optimism for Ethiopia's democratization, ensuring accountability and achieve lasting peace. However, the analysis of ambiguous, non-regime transition in Ethiopia finds that implementation of transitional justice measures and State's compliance efforts in the absence of typical regime change and in troubled political situation presents complex challenges. The study finds that the flawed attempt to implement retributive transitional justice in a 'deeply divided' society and in a climate of ethicized hostile politics of Ethiopian kind triggers dual challenges: firstly, the new elites who come to control power tend to conceive justice as reprisal and trade the opportunity for employing collective revenge, and secondly, the frustrated previously dominant, now sidelined ethnic-based elites conceive and shrewdly interpret some or all of the aggressive justice measures against them such as prosecution, purging and lustration as 'selective apportionment of justice' and stand in defense of the 'survival of their identity' from those threats. In this atmosphere of contestation, requisite distinction between individual perpetrators of human rights violations becomes blurred and reckless approach of collective condemnation simply re-legitimizes old elites, bolsters their fierce resistance, and garners powerful support from their ethnic constituency which in the end furthers national discord. New governments in Latin America and Eastern Europe implemented what McAuliffe terms "bargain-based attempts" in the process of pursuing accountability for past human rights abuses by predecessor rules "without aggravating instability" (2017:36) amidst otherwise perilous transitions. The Ethiopia's measures, insensitive to its precarious realities, proved rather provocative which generally put both justice and peace at risk. As such, the Ethiopia's case is fraught with inter-communal (and inter-elite) tensions and the justice process lacks systematic strategy and conceived divergently among different contending actors. Hence, rather than ensuring justice and lasting peace and ensuring standard compliance, the mismanagement of the justice processes again witnessed metamorphosis into societal violence which further complicated the efforts of addressing past abuses and added new complexities.

Ethiopia's gloomy political situation demanded carefully crafted new strategy but that was no avail and it manifested the failure. True to familiar vicious circle, rather than taking recourse to dialogue and political settlement, the ill-advised predominantly retributive approach led to a new catastrophic war with predecessor Tigrajan elites. This only worsened the fragile social contract and fuels the societal rupture with the high likelihood of future continued violence or divisions and

current frustration of expectations. It displayed major limits and departures from other conventional transitions but also provides the above lessons from non-regime context.

Generally, this study found out that the politics of non-regime transition; strong resistance from old guards; continued violence and instability; lack of honest inter-elite political bargain; instrumentalist use of justice processes and aspiration for personal legitimacy; lack of strong civil society engagement; and absence of international actors' involvement, among others, significantly determined the course of transitional justice process in Ethiopia. Arguably, all these constraints and challenges explain that the political elites employed some of the justice measures as half-hearted, shallow attempts for instrumentalist purposes such as getting rid of opposition, consolidation of power, and gaining legitimacy and not in the true belief of compliance to transitional justice norms in line with the argument of Subotic's (2014) theory of transitional justice compliance.

Ultimately, at least two observations can be made. Firstly, the paradigmatic transitional justice architecture neglects this kind of 'atypical' transitions fraught with severe predicament. It also does not provide adequate standards to assess the level of compliance, its successes or failures, but TJ should also learn from it. Secondly, though the uncertain attempt during first phase in condemning past wrongs may not be understated, there are serious inherent gaps in skillfully approaching and prioritizing the justice processes. The weaknesses yielded into transitional vulnerability when viewed from the optimum goals of transitional justice. In sum, Ethiopia's current approach does not effectively address serious human rights abuses, and falls short of ensuring accountability.

As the Reconciliation Commission's task is also recently reported a failure, non-recurrence of abusive past is not guaranteed. Therefore, in light of the atrocities in current war, and owing to its historically inbuilt political contradiction, the paper suggests that Ethiopia should re-adopt comprehensive and innovative view of restorative transitional justice approach keeping also in mind the necessity of fighting impunity. This can be achieved, among others, by carefully crafting the legal mandates and operation of newly conceived National Dialogue Commission based on inclusive, inter-elites political bargain and by tailoring it to the Ethiopian current and future reality.

## CONFLICT OF INTERESTS

The author has not declared any conflict of interests.

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