

Justice and Reconciliation in Ethiopia?

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Citing COVID-19 concerns, Ethiopian Prime Minister Abiy Ahmed postponed the country's August 2020 general election to a yet-to-be determined date in 2021. In response, the recently out-of-power, Tigray People's Liberation Front (TPLF) declared Ahmed's government illegitimate, as it has persisted in office beyond the constitutionally established term limit date of October 5. Shortly thereafter, the TPLF went to war against the government, attacking soldiers from the Ethiopian National Defense Force (ENDF) stationed in various Northern Command bases in the Tigray area. Ahmed then declared a state of emergency in Tigray, cut services to the region, and ordered a military offensive against the TPLF. The ENDF offensive was joined by local police and gendarmerie, pro-government militias, and the neighboring Eritrean Defense Forces. The coalition's aerial and ground assault resulted in the quick capture of Humera, a key Tigrayan agricultural center. Within roughly two more weeks, the ENDF captured Mekelle, the Tigrayan capital, and declared victory. Despite the loss of Mekelle, and the heavy toll of war—roughly 500 battle deaths, 60,000 refugees, and 2.5 million internally displaced persons from the area—the TPLF claims it will fight on.

Serious human rights abuses, and possible war crimes, have come to light on both sides. Massacres of civilians occurred at several key sites in the conflict, such as Adigrat, Debre Abbay, and Humera, as well as in the Hitsats refugee camp. Eritrean forces have also been identified as participants in several of these atrocities, such as those in Aksum. The United Nations High Commissioner for Human Rights, Michelle Bachelet, has noted that evidence suggesting that these abuses could amount to “war crimes” and “crimes against humanity”—key language in invoking the Responsibility to Protect and the jurisdiction of the International Criminal Court (ICC). Similarly, U.S. Secretary of State Antony Blinken recently labeled Ethiopian and Eritrean actions in Tigray “ethnic cleansing”. Blinken then called for the departure of these forces, and joined the growing demand for investigation into the ongoing abuses. According to Blinken “an independent investigation into what took place there” is necessary, as is “a reconciliation process so that the country can move forward politically”. Despite international attention to the grave human rights abuses that have occurred throughout the Tigrayan region, each actor in the conflict denies their involvement in the crimes. The tension between international attention and domestic denial returns observers to a common question during and after civil war: is this conflict likely to see justice-focused measures implemented?

Accurately predicting whether, or when, such measures are likely to be implemented in any given case is difficult. However, previous patterns in the implementation of *during-conflict justice* (DCJ) and *post-conflict justice* (PCJ) can help provide some insights into this process. Importantly, understanding the likelihood of DCJ and PCJ requires clarifying key aspects of a given situation and the range of options available to actors in that case. First, both DCJ and PCJ include various measures, such as the implementation of trials, truth commissions, amnesties, reparations, or lustration policies. Second, while there are commonalities between DCJ and PCJ in terms of how

the measures present and some of the underlying patterns in when they are implemented and thus their effects, the key difference between the two is when they are employed. As their names imply, DCJ is implemented while fighting is still ongoing, whereas PCJ is enacted after the war concludes. The Tigray War possess difficulties here. Addis Ababa considers the war over. It captured Mekelle and scattered the TPLF forces. However, the TPLF fighters and leadership escaped Mekelle and remain in the mountains of the region, where the ENDF has refused to follow. From their peripheral position, the TPLF claims intent to continue fighting. As ENDF forces have begun to withdraw from Tigray, the TPLF fighters may soon have their opportunity.

Determining if the war is over is important because justice mechanisms employed during an ongoing conflict can influence the duration and termination of the war. Where top officials or commanders face the threat of domestic or international trial, war is likely to persist because such individuals prefer to take their chances fighting to victory instead of facing certain punishment. Thus, invoking a DCJ institution like the ICC, for example, may undermine peace. Conversely, where combatants are offered amnesty for their participation in the war, DCJ may help bring peace. This pattern holds because amnesties reduce the costs of disarming and demobilizing by removing the threat of imprisonment or other punishment. The caveat to this dynamic is that amnesties for severe abuses like those committed in Ethiopia do not have this pacifying effect. The facts of the Ethiopian case suggest, then, that to ensure Tigray demobilization, a settlement to the conflict is necessary to implementing any form of justice measure.

Attempts at negotiation have occurred in this case. Early in the conflict, the African Union offered to negotiate. More recently, the TPLF have set preconditions for negotiations, indicating their willingness to settle. Similarly, Ethiopian President Sahle-Work Zewde has met with Kenya's President Uhuru Kenyatta for what many speculate are discussions on how to end the ongoing conflict. Importantly, if the Tigray War ends through negotiated settlement, this process will likely shape whether and which PCJ measures are implemented. Specifically, negotiated settlements tend to result in amnesties, truth commissions, and reparations rather than trials for the perpetrators, as neither side has the power or willingness to push for harsher punishments for fear of restarting the war.

For trials, and subsequent punishment of (at least some of) the perpetrators, one of two things usually needs to occur. First, one side needs to militarily defeat the other. Military success provides the victor ability to force the loser before a court. While this process can result in punishment, clearly several concerns exist regarding victors' justice and the ability to indict foreign actors (e.g., Eritreans). Furthermore, even if victorious, governments that have also committed war crimes (e.g., Ethiopia) balk at pushing trials for fear that the process will reveal further information regarding their crimes, leading to a situation in which no or limited PCJ occurs. The second path toward PCJ in such situations involves international courts or tribunals, whether ad hoc (e.g., Rwanda), hybrid (e.g., Sierra Leone), or the standing International Criminal Court (e.g., Uganda). Setting aside issues of geographic and temporal jurisdiction (e.g., Ethiopia is not party to the ICC), and the process for legal involvement beyond these constraints (i.e., the Security Council), the largest hurdle such international efforts face is gaining cooperation from the target country and other countries who are willing to help apprehend indicted individuals. Former President of Sudan

Omar al-Bashir, for instance, travelled freely throughout Africa, despite ICC indictment, until he was overthrown and imprisoned by the new junta. Barring a successful coup or international invasion, then, the leaders of Ethiopia and Eritrea are unlikely to face international trials for the crimes committed during the Tigray War.

Whether, or when, DCJ or PCJ will occur in Ethiopia for the crimes committed by the government, the pro-regime forces, Eritrea, or the TPLF is hard to predict. However, matching the facts of this case to recent and historic patterns in the implementation of justice measures during or after civil war suggests that trials for the perpetrators of these atrocities are unlikely. To help end the war, or if negotiated settlements are successful, then if DCJ or PCJ occur, they are more likely to include amnesties, reparations, and truth commissions. If, as Secretary Blinken called for, a reconciliation process is needed that allows for the country to move forward politically, then it is important to note that trials and punishment are not often a requirement for such an outcome. At the individual level, calls for trial vary widely based both on personal experience in the conflict and an expectation of whether the trials would benefit the individual's personal situation. Aggregated to the group-level, those groups that gain politically from the settlement of the conflict—even falling short of victory—often prefer to avoid protracted legal battles in favor of enjoying their new position. Thus, justice and reconciliation are not necessarily intertwined. Moving forward, it will be important to watch whether the military situation reignites and what type of concessions the Tigray are able to gain from any negotiations with the government. These are the factors that are most likely to predict whether we see justice and/or reconciliation measures implemented in Ethiopia.