

## **INTRODUCTION**

Horn of Africa Bulletin To resolve differences of opinion on the most fundamental national issues, Ethiopia started discussions on a national dialogue process. In December 2021, the Ethiopian Parliament established the Ethiopian National Dialogue Commission (ENDC), and in February 2022, it approved the appointment of 11 commissioners. These commissioners are tasked with identifying the root causes of fundamental national issues and facilitate inclusive consultations across diverse sectors of society. The goal is to build mutual trust, restore social values, pave the way for lasting peace, and bolster national consensus.

The effective facilitation of dialogue in societies affected by conflict requires a strategic approach that considers cultural nuances. As Ethiopia progresses in its conflict resolution and peacebuilding journey, the involvement of traditional justice mechanisms into formal national dialogue processes is being considered. This reflects the commitment of the ENDC to leverage traditional knowledge and values from across the country. While this involvement presents challenges such as aligning various methods with legal structures and ensuring human rights and gender equity it also provides opportunities to leverage the depth and community-centred nature of traditional systems to enhance legitimacy and community cohesion, and simultaneously lend support to formal legal processes.

This study explores the views of national policy actors on the involvement of traditional justice mechanisms in the overarching framework for national dialogue in Ethiopia. Focused exclusively on these actors, the study sheds light on their perceptions of the benefits and limitations of doing so, as well as their proposed recommendations for facilitating effective involvement. This study engaged 15 national policy actors, including government officials, national dialogue commissioner, scholars, transitional justice (TJ) experts, peacebuilding practitioners, and civil society representatives. They participated in semi-structured interviews focused on their experiences, beliefs, and perceptions of both traditional justice and the national dialogue process. By understanding the perspectives of national policy actors, this study aims to contribute to the ongoing policy discussions and decision-making processes regarding the role of traditional justice mechanisms in the Ethiopian national dialogue process. Ultimately, the study findings are relevant to the development and implementation of national dialogue policy recommendations, providing valuable insights for policymakers.

## **UNDERSTANDING TRADITIONAL JUSTICE MECHANISMS**

Traditional justice mechanisms involve a diverse range of practices and processes rooted in the cultural traditions, customs, and norms of specific communities or societies. They often engage local elders, religious leaders, or community councils in mediating disputes and resolving conflicts, and restoring societal harmony through informal processes. Despite ongoing debates about the definition of terms such as “traditional”, “local”, and “informal”, there is broad consensus that they include “practices occurring at the community level, rooted in a community’s cultural repertoire”. Traditional justice mechanisms tend to possess three key attributes: they focus on groups rather than individuals, seek compromise and community harmony, and emphasise restorative justice over other forms of punishment.

The significance of local ownership is reiterated in the 2004 report of the UN secretary-general, “Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies”. In this report, Kofi Annan notes, “Due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help Horn of Africa Bulletin them to continue their often vital role and to do so in conformity with both international standards and local tradition.” Similarly, the African Union Transitional Justice Policy recognises the historical use of traditional justice mechanisms in African societies. Reflecting the concept of “ubuntu” (the interconnectedness of humanity), the policy acknowledges the role of traditional leaders and community structures in promoting reconciliation, accountability, and peacebuilding efforts.

Traditional justice mechanisms can provide accessible and culturally relevant frameworks for conflict resolution and justice. Combining traditional practices with formal legal systems enhances the potential effectiveness and acceptance of the formal justice system and its procedures when implemented in a culturally relevant and community-involved framework. In turn, this allows communities to nurture trust and social cohesion. Importantly, traditional justice mechanisms help fill the gaps in formal justice systems, particularly in regions with limited access to legal institutions or where customary practices are prevalent. Traditional justice can also sometimes be imposed on local communities by those administering it, similar to other post-conflict justice initiatives. That is, traditional justice systems are often influenced by local politics and historic power imbalances within the community, which has the potential to make them more oppressive than emancipatory. Power imbalances, such as those between elders and youth, or between women and men, therefore, warrant consideration in discussions on the fairness of traditional justice mechanisms. Addressing these power differentials is crucial for ensuring equitable access to justice in traditional systems.

### *Traditional justice mechanisms in Ethiopia*

In Ethiopia, traditional justice practices are deeply entrenched in local customs, communal values, and indigenous conflict resolution methods. They have historical significance in resolving disputes and maintaining social order in local communities. Exemplifying the rich diversity of these mechanisms, these traditional systems have a variety of names or titles for those who are responsible for administering traditional justice: For example, “Gaarad”, “Ugaz”, or “Sultan” in Somali society; “Kawo”, “Ogade”, “Kere”, and “Ganna” in Gamo society; the “Shimglina” tradition in Amhara society; and the “Gadaa” system in Oromo society.

Traditional justice proceedings involving respected community elders are characterised by their accessibility, flexibility, and emphasis on consensus building, which are valued by many Ethiopians who view these mechanisms as more familiar and trustworthy in areas where formal institutions may be inaccessible or perceived as ineffective. A 2023 survey reveals that approximately 80% of Ethiopians (with slight regional variations) advocate for the use of traditional methods to address violence. This survey further indicates that most of the population perceives traditional actors and institutions as more beneficial and relevant for peacebuilding compared to the formal justice system. In addition:

A 2021 survey by the Hague Institute for Innovation of Law found that Ethiopia’s formal justice system typically resolves only about 18% of legal disputes annually, while approximately 43% are managed through traditional structures involving local elders. These traditional mechanisms handle around 3 million disputes each year.

Despite this, the Ethiopian constitution only grants traditional justice mechanisms a limited mandate to deal with civil matters. The lack of comprehensive constitutional provisions has resulted in interactions between state law and traditional justice mechanisms that are characterised by arbitrariness, inconsistency, a lack of regulation, and unpredictability. Occasionally, however, the two legal systems acknowledge each other and work together through case transfers or information sharing. Government authorities and traditional justice custodians may also collaborate to address inter-ethnic conflicts. Nonetheless, hostility sometimes arises when one system encroaches on the jurisdiction of the other. Although the constitution does not recognise traditional justice involvement in criminal matters, in practice, traditional mechanisms continue to be used to resolve criminal cases and provide justice, especially in rural areas of Ethiopia. Currently, demand is growing for increased acknowledgement of traditional justice systems. At the regional level, for example, the Oromia Regional State passed a proclamation acknowledging and establishing customary courts, which have the authority to handle minor offenses and crimes that can be punished based on a complaint.

## **OVERVIEW OF THE ETHIOPIAN NATIONAL DIALOGUE PROCESS**

In December 2021, during the peak of the conflict between the Ethiopian federal government and the Tigray People's Liberation Front (TPLF), the government established the first ENDC with Proclamation No 1265/2021. As the proclamation states:

There are difference[s] of opinions and disagreements among various political and opinion leaders and also segments of society in Ethiopia on the most fundamental national issues and it is a necessity to resolve the differences and disagreements through broad based inclusive public dialogue that engenders national consensus.

Since its inception, the ENDC has encountered significant criticism and doubts from major political parties. This is largely attributed to the absence of meaningful involvement by key stakeholders such as the TPLF and the Oromo Liberation Army (OLA), as well as transparency issues surrounding the selection process of ENDC commissioners. Some politicians contend that candidates must be assessed according to transparent and merit-based criteria in an openly accessible forum to instil confidence in the commission among the public.

ENDC challenges persisted, particularly regarding the involvement of armed groups such as the OLA and Fano militia and ensuring the inclusivity of key stakeholders. Efforts to engage armed groups and secure ceasefires in regions such as Oromia and Amhara were deemed crucial to the success of the process.<sup>20</sup> In the absence of these key participants in the dialogue, some argue that the influence of the national dialogue process could be limited and insignificant—both in the Oromia and Amhara regions, and on a national scale. Despite these challenges, the ENDC is progressing with its preparatory phase. By April 2024, the ENDC identified and selected participants in ten regional states and two city administrations, except for some districts in Somalia and Dire Dawa, and parts of Oromia as well as Amhara and Tigray regions. The ENDC is now transitioning to the agenda-collection phase for the national dialogue.

It is anticipated that traditional justice mechanisms will aid in strengthening public acceptance of the ongoing ENDC process, acknowledging their substantial contribution to promoting a sense of community ownership over national dialogue processes and strengthening social cohesion among citizens. The ENDC acknowledges traditional justice mechanisms for their inherent ability to understand the needs and priorities of communities. Consequently, the ENDC regards them as a valuable platform for facilitating social discourse and raising awareness on a wide range of issues. Moreover, traditional justice mechanisms are recognised for their skill in identifying both victims and perpetrators in times of conflict and peace violations, in accordance with community customs.

## **PERCEPTIONS ON TRADITIONAL MECHANISMS AND TRADITIONAL LEADERS**

Perceptions hold a central role in shaping the effectiveness of policies and public engagement in peacebuilding initiatives. There is an intricate relationship between citizen perceptions and their willingness to engage with and support peacebuilding measures.<sup>23</sup> It is essential to underscore the significance of public trust and confidence in the mechanisms employed, emphasising that positive perceptions of procedural fairness, accountability, and inclusivity significantly contribute to the success of national dialogue initiatives. Policymakers must understand and address public perceptions to design effective policies and engagement strategies that resonate with diverse communities, promoting greater societal acceptance and support for peacebuilding processes.

The findings of this study show that many interviewees recognise the importance of traditional mechanisms and the involvement of traditional leaders in various aspects such as truth finding, reconciliation, community awareness raising, and adopting victim-centred approaches during conflict resolution and peacebuilding efforts. One interviewee from the Ethiopian Civil Society Organizations Council cautions against romanticising traditional justice, however. This participant points out potential conflicts with human rights and gender standards, particularly in politically intricate contexts such as Ethiopia. Another peacebuilding practitioner notes that, traditional justice systems were originally designed to resolve conflicts at the local level. With many conflicts in Ethiopia now going beyond local boundaries, encompassing broader translocal dimensions, this interviewee argues the necessity to adapt and reconfigure these institutions to maintain their relevance and effectiveness on a wider scale. In contrast, an interviewee from the ministry of justice remains optimistic about traditional leaders and the abilities of traditional justice to restore community trust in traditional institutions. Yet, this interviewee also stresses the importance of institutional reform and capacity strengthening for traditional leaders to counteract political interference. This interviewee further underscores the necessity of providing legal protection and institutionalising traditional mechanisms to empower them for more active participation in conflict resolution and justice efforts.

Many interviewees also express concerns about the compromised integrity and neutrality of traditional leaders, citing their co-optation by government and their susceptibility to political influence. A human rights lawyer who was interviewed for this study suggests making a clear distinction between traditional justice mechanisms and the leaders who oversee them. This proposal implies recognising that while traditional justice mechanisms may hold value in specific contexts, the individuals in leadership positions within these mechanisms may not always uphold the principles of neutrality and impartiality. By distinguishing between the

mechanisms themselves and the individuals who administer them, it becomes possible to assess their effectiveness and integrity separately.

## **VIEWS ON THE NATIONAL DIALOGUE PROCESS**

The Ethiopian national dialogue remains a work in progress, as study findings indicate. According to a large majority of interviewees, although there appeared to be some public participation, the establishment of the ENDC was not transparent and did not receive complete support, especially from the political elite. A peacebuilding expert reiterates that the commission was established hastily, without building upon or giving adequate consideration to existing national dialogue initiatives. This highlights a significant problem in the formation of the ENDC and underscores the necessity of rescuing it from potential failure. Many interviewees also highlight the importance of the preparatory phase in the national dialogue process, but express concerns regarding the lengthy time needed to identify and select participants.

Furthermore, some interviewees voice concerns about the lack of clarity in the national dialogue process, in particular the dialogue participants. They raise concerns about the ENDC decision to commence the participatory process at the community level, as most differences of opinion and disagreements tend to emerge from elite circles. Despite the ENDC proclamation explicitly stating that the aim of the national dialogue is to involve a wide-ranging public rather than exclusively elite groups, there is still uncertainty about who should engage in the dialogue first. An academic from Addis Ababa University emphasises, that the root issues in Ethiopia primarily arise from conflicts within elite groups rather than among the wider population. This interviewee believes that addressing these issues requires intense negotiation rather than just dialogue and emphasises that dialogue should start among the elite and then involve the broader community once consensus is reached. In contrast, one peacebuilding practitioner argues that the national dialogue process should ideally begin with grassroots community engagement before gaining consensus among the political elite. This interviewee stresses that prioritising grassroots community engagement from the beginning of the national dialogue process is in line with the principles of inclusivity, legitimacy, and sustainability in peacebuilding efforts.

In addition, many interviewees highlight the challenges of conducting the national dialogue amid a political environment lacking in mutual trust in the community, especially given conflicts in regions such as Amhara and limited accessibility in parts of Oromia. A TJ expert questions the feasibility of conducting a national dialogue when the Tigray region has expressed doubts about the legitimacy of the ENDC. An interviewee from the Advocacy Center for Democracy and Development raises further concerns about the inclusivity of the term “national” when some segments of society or the community are unable to participate

due to ongoing conflicts. Amid the challenges facing the national dialogue process, the ENDC has announced efforts to facilitate a peaceful avenue for armed groups to engage and negotiate in an inclusive process. Encouraging militants to lay down their arms, ENDC appeals have yet to garner agreement from any armed group to participate.

Nevertheless, some interviewees recognise the daunting task of the ENDC. A human rights lawyer compares the Ethiopian dialogue with those of other nations that undergo similar dialogues following periods of conflict or legitimacy crises, particularly during transitional periods. This lawyer emphasises that engaging in dialogue nurtures a culture of communication in which political issues can be tackled. Even if success is not achieved, there are valuable lessons to be gained. This highlights the ongoing evolution of the national dialogue process in Ethiopia, emphasising the need for continuous dedication to inclusivity and transparency. Policy actor concerns regarding ENDC Horn of Africa Bulletin inception and operation underscore the importance of genuine engagement across Ethiopian society. There is growing consensus emerging that a genuine and meaningful national dialogue process is the sole means of guaranteeing national survival. It is viewed as a critical moment, a make-or-break situation, emphasising the need for a more serious approach to the process amid continuing uncertainty.

#### *Involving traditional mechanisms in the national dialogue process*

Traditional justice mechanisms continue to be utilised in Ethiopia, demonstrating their enduring significance and relative effectiveness. The relevance and efficacy of involving traditional justice into the national dialogue process is, however, an ongoing topic of exploration. Many interviewees highlight that as Ethiopia navigates the complexities of national dialogue and reconciliation, involving traditional justice mechanisms into the process could serve as a cornerstone for sustainable peacebuilding efforts. By drawing on local knowledge and customs, these mechanisms can guide dialogue initiatives, prioritise inclusivity and community participation, and advance healing and the restoration of relationships. Through the mediation of traditional leaders and elders, grievances can be addressed, and the voices of grassroots communities can be brought to the forefront of the national dialogue process. This grassroots engagement ensures that the dialogue process is informed by the realities and aspirations of local communities, leading to more informed and inclusive policy recommendations. While obviously relevant, a member of the Transitional Justice Working Group of Experts points out that Ethiopian customs span across 80 plus ethnic groups. The highly diverse ethnic composition of the country implies that identifying suitable traditional justice mechanisms for national implementation will prove challenging. An interviewee from the Consortium of Ethiopian Human Rights Organizations further suggests that traditional mechanisms may be more proficient at facilitating community

dialogues than addressing political and elite-centred national issues. This interviewee indicates that the complexity and scale of these challenges could potentially exceed both the capabilities and authority of traditional mechanisms. Highlighting the insufficient participation of women and youth, a representative from a women's coalition working with the ENDC emphasises that women often do not reap the benefits of traditional justice and are subject to societal pressure to accept decisions without having their meaningful input considered. This shows up a further limitation of traditional mechanisms in the context of the national dialogue process.

Despite these challenges, the ENDC commissioner emphasises that traditional justice nonetheless both aids the national dialogue process and gives it an Ethiopian flavour and essence. Traditional mechanisms are also hoped to contribute to garnering public buy in. The commissioner further states that traditional justice mechanisms have the ability to identify and address community needs and concerns and are thus expected to play a crucial role in shaping the agenda-setting process. Moreover, the commissioner notes that it is anticipated that the dialogue process will encounter challenges, characterised by disputes and potential deadlock. In such instances, traditional leaders will be called upon to offer wisdom, provide guidance, and offer conflict resolution expertise to bridge these differences and facilitate progress. The commissioner also reiterates ENDC commitment to identifying traditional justice mechanisms in diverse communities, acknowledging the challenge in determining how and to what extent these mechanisms will be involved, as well as the appropriate timing for their inclusion. The commissioner emphasises that answers to these questions will evolve as the national dialogue process progresses, recognising the need for a flexible framework due to diverse community realities.

In contrast, a senior researcher points out the difficulty of involving traditional justice without clear laws and policies supporting their incorporation. This interviewee emphasises the importance of institutionalising traditional justice mechanisms for representation and legitimacy during the national dialogue process. For traditional justice mechanisms to play significant roles in national dialogue, policy reform is essential. This reform should entail greater recognition and autonomy granted to these mechanisms. An interviewee representing an international multilateral organisation highlights that the recommendations from the ENDC may also incorporate traditional justice as an outcome, particularly in addressing widespread violations. Traditional justice mechanisms could play a decisive role in this implementation phase, given their customary influence and community trust. The specific role of traditional justice in this context remains to be defined, however. It is contingent upon the evolving agenda and objectives of the dialogue process.



Overall, traditional justice mechanisms are expected to offer valuable insights and community trust. Nonetheless, their involvement into the national dialogue process in Ethiopia requires careful consideration of legal, institutional, generational, and gender-related dimensions to realise their full potential as agents of reconciliation and peacebuilding.

## **RECOMMENDATIONS: ADDRESSING CHALLENGES OF INTEGRATING TRADITIONAL MECHANISMS IN THE NATIONAL DIALOGUE PROCESS**

### *A decentralised approach to traditional mechanisms in Ethiopia*

The ENDC should consider adopting a decentralised approach to involving traditional justice mechanisms instead of seeking a single system for national implementation. This involves allowing each region or community to maintain and draw on its own customary practices within a broader framework of legal standards and human rights principles. By doing so, the ENDC can respect the cultural diversity of the country while ensuring that justice systems remain relevant and effective at local levels. These mechanisms can still have a national impact by legitimising the national dialogue process and utilising reconciliation rituals to acknowledge the past, foster healing, and establish a foundation for a more inclusive and harmonious future. Involving traditional justice mechanisms should be based on thorough assessment and identification of roles in local contexts. This can be accomplished by acknowledging their status and determining relevant subject matter and geographic areas that necessitate their participation. Adopting this model alleviates the burden on formal institutions and enhances the effectiveness of the process, thereby contributing to sustainable peace, reconciliation, and amnesty.

### *Balancing representation: Engaging women and youth in the dialogue process*

Many traditional justice mechanisms are often dominated by elder males, which may minimise or exclude marginalised groups such as women and youth. Engaging women and youth enhances diverse perspectives and ensures the inclusivity of the national dialogue process. Providing specific platforms and resources for their participation helps mitigate challenges by addressing gender and generational dynamics, promoting equitable representation, and enhancing the relevance and effectiveness of traditional justice approaches in terms of their unique needs and concerns. International examples, such as the national dialogue in Yemen, provide experiences upon which the Ethiopian process can build.

### *Vetting and strengthening the capacity of traditional leaders*

Ensuring impartiality is essential in the national dialogue process. Transparent and participatory selection processes should be implemented, with checks and balances in

place to prevent favouritism. Regular training on ethical governance and conflict resolution can help cultivate impartiality. By investing in their professional development, traditional leaders can effectively contribute to the national dialogue, addressing complex issues and promoting peaceful dispute resolution within their communities. Establishing independent oversight bodies can also effectively monitor and address any allegations of bias or misconduct.

#### *Developing a legal framework for traditional mechanisms*

There is a need to develop a legal framework that recognises and respects traditional justice mechanisms while ensuring compatibility with national laws and human rights standards. This provides clarity and legitimacy to the involvement process and support the implementation of the recommendations made by the ENDC. The drafting of a proclamation by the Ministry of Justice to provide a model law for the establishment and operation of customary courts in Ethiopia is a step in the right direction.