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AMNESTY UNDER THE ETHIOPIAN NATIONAL TRANSITIONAL JUSTICE POLICY AND ITS COMPATIBILITY WITH THE ETHIOPIAN CONSTITUTION AND INTERNATIONAL STANDARDS

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Addis Ababa, Ethiopia



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A thesis submitted to the school of law of Addis Ababa University College of law and governance studies in partial fulfillment of the requirement for LLM in Public International Law

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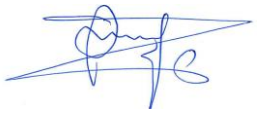
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Declaration

I, the undersigned, declare that the research titled "Amnesty under the Ethiopian National Transitional Justice Policy and its compatibility with the Ethiopian Constitution and international standards" is the result of my original work apart from the review literature which all sources clearly mentioned and properly acknowledged. I have conducted the study by myself, and the research has not been presented in this or any other universities.

Yitbarek Fekadu Woldemichael



June 6, 2026

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Acronyms/ Abbreviations

NTJP	National Transitional Policy *of the Federal Democratic Republic of Ethiopia*
CoHA	Cessation of Hostilities Agreement
CaH	Crimes against humanity
HoF	House of Federation (Ethiopia)
AP	Additional Protocol to the 1949 Geneva Conventions
FARC	Fuerzas Armadas Revolucionarias de Colombia
SPJ	Special Peace Jurisdiction (Colombia)
RUF	Revolutionary United Front (Seirra Leon)
SCSL	Special Court for Sierra Leone
VCLT	Vienna convention on the Law of Treaties
TRC	Truth and Reconciliation Commission (South Africa)
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
NIAC	non-international armed conflict
ICRC	International committee of the Red Cross
TPLF	Tigray Peoples Liberation Front
FDRE	Federal Democratic Republic of Ethiopia
EHRC	*Ethiopian Human Rights Commission*
OHCHR	Office of the High Commissioner for Human Rights
CIL	Customary International Law
ICCPR	International Convention on Civil and Political Righ

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Abstract

This Stud tries to examine the compatibility of amnesty provisions of the current Transitional Justice policy (NTJP) with the FDRE Constitution and international standards. Doctrinal and comparative methods are employed in the process. After the recent internal armed conflicts in Ethiopia, the Federal government and Tigray Force have signed the peace agreement in November 2022 to end hostility. Accordingly, the government adopted *NTJP*. The policy excludes only "most responsible perpetrators" from amnesty which may ultimately create certain situation in which some responsible persons may evade prosecution. This study finds out that the amnesty provisions of the NTJP are not in line with both the international norm, which calls for prosecution of these crimes, and the Constitutional which excludes these crimes from the ambit of amnesty. The study concludes that amnesty provisions with respect to gross human rights violations should be revised and amended to be in line with constitution and international standards.

1. Chapter One

1.1.Introduction

Amnesty is one of the ancient tools used by different governments without limitation and unconditionally to address post conflict situations to secure peace through forgiving their enemies. [1] Traditionally amnesty was taken as "exclusive and sovereign domain of states" to which no intervention was expected, though this view is now should be seen in light with the current understanding and the development of international human rights norms being the common interest of the world community where gross violations of these crimes are now taken as threat to peace and security of mankind.[2] Despite its long history, amnesty has become one of the controversial issues when it comes to its application in relation to gross human rights violations since many human rights activists and academics now contend that amnesties for gross human right violations are prohibited under international treaties and CIL.[3] Ironically, however, some others are taking Article 6(5) of the 1977 AP II to the Geneva conventions as an international law allowing amnesty for atrocity crimes.[4] Such interpretation of the protocol is highly contested by some international bodies like the international committee of the Red Cross (ICRC) who strongly argue that such amnesty is limited to only combatants detained simply for participating in the war.[5]

Coming to the crime of genocide, the defining criteria "intent to destroy in the convention, in whole or in part, a national, ethnical, racial or religious group" used under Article 2 of the geocide

[1] Andreas O'Shea, *Amnesty for Crime in International Law and Practice* (Kluwer Law International 2002) 5–21, cited in Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) Introduction; John Dugard, 'Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?' (1999) 12 *Leiden Journal of International Law* 1001 (Introduction).

[2] Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) PART III – 'AMNESTIES AND INTERNATIONAL LAW'.

[3] Ibid.

[4] Naomi Roht-Arriaza and Lauren Gibson, 'The Developing Jurisprudence on Amnesty' (1998) 20 *Human Rights Quarterly* 863.

[5] Naomi (n 4) 865.

convention excludes crimes against individuals targeted due to their political affiliation.[6] Fortunately, Ethiopia seems to avoid such problem as political group are among the groups against whose acts of genocide can be committed.[7] As a matter of fact, most serious human rights violations do not fall within the domain of act of genocide due to lack of that specific intent and hence its only in specific situations that such crime may exist during armed conflict.[8] As far as war crimes are concerned, the duty to prosecute doesn't exist for non-international armed conflicts which are now said to be the most armed conflicts in the world since the end of the Second World War.[9]

The convention against torture to which Ethiopia is a party also imposes the duty to prosecute.[10] Such duty to prosecute is also limited to torture acts committed by public official or by consent of public official which excludes many torture acts committed by non-state actors.[11]

The existence of the duty to prosecute gross human rights violations under CIL is again uncertain since the practice seems to be to the opposite throughout different regions.[12] For scholars like Charles P. Trumbull IV, an American scholar, there is no general duty to prosecute core crimes (including crimes against peremptory norms) under CIL.[13]

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[6] *Convention on the Prevention and Punishment of the Crime of Genocide* (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art 2.

[7] Criminal code of Ethiopia (Proclamation No. 414/2004), Art. 269.

[8] Charles P Trumbull, 'Giving Amnesties a Second Chance' (2007) 25 *Berkeley Journal of International Law* 283, 289.

[9] Peace Research Institute Oslo (PRIO), *Conflict Trends: A Global Overview, 1946–2024* (ReliefWeb, 11 June 2025) <https://reliefweb.int/report/world/conflict-trends-global-overview-1946-2024?utm_source=copilot.com> accessed 31 March 2026.

[10] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 7.

[11] Charles (n 8).

[12] Mallinder (n 2).

[13] Charles (n 8) 287.

Ethiopia is party to different treaties like Genocide and Torture conventions, the 1949 Geneva conventions and ICCPR.[14] The conflict in the northern Ethiopia, from 2020 to 2022 between the Federal Government, along with its allies, and the TPLF resulted in considerable loss of life and allegations of serious violations of human rights.[15] This conflict, which pushed the country deeper into chaos, came to an end with the signing of the Cessation of Hostilities Agreement (CoHA) (Pretoria Agreement), which was concluded in November 2022.[16] Accordingly, the Ethiopian council of Minsters has adopted National Transitional Justice Policy ***(NTJP)*** April 17, 2024. This policy acknowledges both prosecution[17] and amnesty.[18] The main purpose of this thesis is to ascertain whether the amnesty contemplated by the NTJP of April 17, 2024, is *i*n line with the 1995 FDRE constitution and international standards. The Policy employed the accountability and prosecution mechanism against the "most responsible perpetrators" and the most responsible perpetrator is defined under the policy as;[19]

… a person who through planning, leading, masterminding, coordinating, or giving orders, controls or enables the commission of gross human rights violations, or a superior who fail who fails to discharge his responsibilities to prevent the commission of gross violations by subordinates

[14] United Nations Treaty Collection, *Convention on the Prevention and Punishment of the Crime of Genocide* (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, Ethiopia accession 1 July 1949; OHCHR, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, Ethiopia accession 14 March 1994, OHCHR, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Ethiopia accession 11 June 1993; and ICRC, *Geneva Conventions of 12 August 1949* (entered into force 21 October 1950), Ethiopia ratification recorded in ICRC Treaties Database.

[15] Office of the United Nations High Commissioner for Human Rights and Ethiopian Human Rights Commission, *Report of the EHRC–OHCHR* Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed in Tigray Region, Ethiopia (OHCHR 2021) https://www.ohchr.org/sites/default/files/2021-11/OHCHR-EHRC-Tigray-Report.pdf (ohchr.org in Bing) accessed 26 February 2026.

[16] African Union, Agreement for Lasting Peace through a Permanent Cessation of Hostilities (signed 2 November 2022, Pretoria, South Africa).

[17] Federal Democratic Republic of Ethiopia, *National Transitional Justice Policy* (17 April 2024) p. 6_7.

[18] NTJP (n 17) sec. 2.3.2., p. 12_13.

[19] NTJP (n 17) sec. 2.3.2., p. P 3.

or a person who directly commit the crime of by his own initiation or those who make a decisive contribution to its commission in any other way.

This paper goes deeper into the matter to ascertain whether the modality choses by NTJP is compatible with the FDRE constitution and international standard and hence tries to show the gaps and problems that the Ethiopian government must correct by employing relevant procedures and measures. The practices of different legal systems from different regions are going to be systematically and comparatively analyzed together with the international relevant norms to see if the Ethiopian amnesty under the NTJP fits with the international standards.

1.2.The Literature Review

This study's online investigation has revealed that no academic research or scholarly articles on the compatibility of the current NTJP of the FDRE of Ethiopia with the FDRE constitution and the international standards regarding amnesty in case of gross human rights violations. The current NTJP was adopted following the signing of the Cessation of Hostilities Agreement (CoHA) (Pretoria Agreement), which was concluded in November 2022 and the CoHA was made between the Ethiopian government and TPLF to end the conflict.[20] It is shown by the joint investigation of *EHRC–OHCHR* that the conflict has accompanied by gross human rights violations committed by all parties to the conflict.[21] The adoption of the policy is therefore reasonably the immediate effect of the conflict and the then signed Cessation of Hostilities Agreement.[22] There is no scholarly identified article or research done particularly focusing on the amnesty contemplated under NTJP in light with core international crimes as per my personal search. Of course, there are thesis papers done by different scholars at least in relation to amnesty laws of Ethiopia, but with a different context and issues. One of the relevant thesis papers is a work done by Neima Aman Shifa, School of law, Jimma University (October 16, 2019) titled "Responding to past human rights abuses through amnesty, reconciliation and prosecution: analyzing the case of Ethiopia since 2018".[23] The paper tries to assess the situation in Ethiopia (since 1991 and up to the date of the paper which is

[20] CoHA (n 16).

[21] EHRC-OHCHR (n 15).

[22] CoHA (n 16) art. 10.

[23] Neima Aman Shifa, *Responding to Past Human Rights Abuses through Amnesty, Reconciliation and Prosecution: Analyzing the Case of Ethiopia since 2018* (LLM thesis, School of Law, Jimma University, 16 October 2019).

2019) in light of established rules that lay down the rights of victims and the society at large and also it tries to assess the obligation of the government to prosecute human right violations generally.[24] It remain short of discussing the Current NTJP which was adopted on April 17, 2024 in light with the constitutional guarantees(1995 FDRE constitution) and international standards set for amnesty which I have to add a new Knowledge. The focus of the paper of Neima is on the amnesty proclamation no 1096/2018 and Reconciliation commission establishment Proclamation No.1102 /2018.[25] The amnesty proclamation has listed crimes which can be within the domain of amnesty laws under article 5.[26] The paper argues that states are under duty to prosecute gross human rights violations under CILs even in the absence of treaty obligation.[27] It further discuss the need to have a transitional mechanism which protects the right of victims to truth, justice, remedy and the time frame of the paper by itself makes it clear that the paper cannot discuss new issues based on un-existed phenomena (The new NTJP adopted on April 17, 2024).[28] The new NTJP has departed from the previous approach when it clearly left the approach of exclusive listing of core crimes under proclamation No 1089/2018[29] from the domain of amnesty to a kind of different approach by qualifying the degree of responsibility" Most Responsible perpetrator" to make the exclusion from amnesty.[30] This new approach is not analyzed in light with the Ethiopian constitution and the international standards yet. Besides, the paper fails to present contending ideas about non-existence of duty to prosecute gross human rights violations under CILs and of course such opposing arguments exist as per my assessment.

The other scholarly written research is a research by Abera Nigus titled" *Pardon, Amnesty and the Prospect for National Reconciliation in Ethiopia: Law and Practice* (LLM thesis, Jimma

[24] Neima Aman Shifa, *Responding to Past Human Rights Abuses through Amnesty, Reconciliation and Prosecution: Analyzing the Case of Ethiopia since 2018* (LLM thesis, School of Law, Jimma University, 16 October 2019) 9_11.

[25] Ibid(n 24).

[26] Granting of Amnesty to Outlaw Who Have Participated in Different Crimes Proclamation No. 1096/2018, Art. 5(1).

[27] Neima (n 24) 35.

[28] Neima (n 24) P 11.

[29] Procedure of Granting and Implementing Amnesty Proclamation No. 1089/2018, Art. 3(2).

[30] NTJP (n 17) sec. 2.3.2., p. 11.

University, December 2006)".[31] Abera Nigus's work is limited to giving insights about what pardon and amnesty are, their historical development through different regimes in the country and their purpose and benefits.[32] The paper was never meant to discuss the compatibility of the new NTJP with the FDRE constitution and the international standards when it comes to granting amnesty with respect to gross human rights violations even due to the difference of time chronological existed between the two.

Similarly, the work of Adu Anteneh, Amnesty under the Ethiopian Law: Legal and Practical Challenges; discuss the historical view of amnesty law in the country, shortage of the amnesty proclamation no 1096/2018. It Focuses on the amnesty proclamation no 1096/2018 and Proclamation No. 1089/2018.[33] With respect to the ideas that I am going to discuss in this thesis, Adu Anteneh's paper criticizes the amnesty proclamation based the proclamation's inclusion of acts of terrorism under crimes to subject to amnesty if one look deep in to the overall ideas discussed in the paper.[34] The other point of the argument in that paper is that terrorism can include other gross human rights violations.[35] But under the new NTJP, only those " most responsible perpetrators" are going to be prosecuted while the existing approach during the time frame of Adu Anteneh"s paper was that crimes listed under Article 28(1) of the FDRE constitution were excluded from the domain of amnesty law.[36] Now it needs a new investigation to show whether the new approach under the NTJP is in line with the Ethiopian constitution and international standards with respect to core international crimes.

Therefore, this research tries to go beyond what has been done by other scholars in relation to the Amnesty contemplated by the Ethiopian current National transitional Policy with respect to all gross human rights violations and the 1995 FDRE constitution article 28(1).

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[31] Abera Nigus, *Pardon, Amnesty and the Prospect for National Reconciliation in Ethiopia: Law and Practice* (LLM thesis, Jimma University, December 2006).

[32] Abera (n 31).

[33] Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, School of Law, Bahir Dar University, July 2021) 6_7.

[34] Ibid.

[35] Ibid 55_56.

[36] Amnesty Proclamation (n 29) Art. 3(2).

1.3.Statement of Problem

Transitionally governments usually choose among the tools of justice to deal with past crimes and these tools can either be prosecution, truth commission accompanied by amnesty or just use amnesty.[37] The dilemma as to which mechanism is to be chosen is usually affected by relevant government's considerations of power, self-interest, and feasibility in deciding whether to advocate, block, or ignore accountability.[38] The impunity that created the atrocities in the Second World War was replaced by the accountability through criminal investigation and prosecution to sustain a general principles of international law to deter future atrocities.[39] But the contemporary understanding is that amnesty is a domestic practice which has recognition by the international community with in a limited margin.[40] UN has recognized the existence of amnesty for peace and reconciliation at the end of internal conflicts while excluding core international crimes from the ambit of amnesty and in this regard, UN Secretary General Kofi Annan once reported;

> *While recognizing that amnesty is an accepted legal concept and a gesture of peace and reconciliation at the end of a civil war or an internal armed conflict; the United Nations has consistently maintained the position that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law.*[41]

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[37] Cohen S., 'State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past' , Law and Social Inquiry, 1995, vol. 20, No. 1, p.7; cited in Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, School of Law, Bahir Dar University, July 2021) p. 4.

[38] Leslie Vinjamuri and Jack Snyder, 'Law and Politics in Transitional Justice' (2015) 18 *Annual Review of Political Science* 303, 327, 304.

[39] Leila Nadya Sadat, 'Exile, Amnesty and International Law' (2005) 81 *Notre Dame Law Review* 955, 959.

[40] R Lévy, 'Pardons and Amnesties as Policy Instruments in Contemporary France' (2007) 36 Crime & Just 551, cited in Louise Mallinder, 'Peacebuilding, the Rule of Law and the Duty to Prosecute: What Role Remains for Amnesties?' Transitional Justice Institute Research Paper 11-06 (2011) 2_3.

[41] UN Security Council, *Report of the Panel on United Nations Peace Operations* (4 October 2000) UN Doc S/2000/915.

Ethiopian has been through different conflicts that leads to political unrest and confusion.[42] The Tigray conflict (2020-2022) between the Federal Government, along with its allies, and the TPLF resulted in considerable loss of life and allegations of serious violations of human rights.[43] The conflict however came to pause with the signing of the Cessation of Hostilities Agreement (CoHA) (Pretoria Agreement), which was concluded in November 2022 which in turn resulted in the adoption of NTJP on 17 April 2024.[44] The policy has used both accountability through prosecution against those who are "most responsible perpetrators" and truth commission accompanied by amnesty for those who are "not most responsible perpetrators".[45]

Ethiopia is state parties to different relevant human rights treaties including the 1949 Geneva conventions, Torture convention, and Genocide convention, ICCPR and others.[46] The 1995 FDRE constitution excludes crimes like crimes against humanity, genocide, summary executions, forcible disappearances or torture from the ambit of any amnesty or pardon.[47] Whereas the amnesty law contemplated under the NTJP is planning to prosecute only those "most responsible perpetrators" [48], while other perpetrators can be granted amnesty within the meaning of the policy, it is now imperative to check by this thesis as the compatibility of the amnesty (under the NTJP) with the established norm of anti- impunity under international laws and to analyze the constitutionality of the amnesty policy with respect to gross human rights violations recognized by FDRE constitution since there no scholarly researched findings so far .

1.4.Research Questions and hypothesis

1. What is the legal status of amnesty for core international crimes (war crimes, crimes against humanity, genocide) under international law and regional instruments?

[42] Abera (n 31) 55.

[43] NTJP (n 17).

[44] CoHA(n 16).

[45] NTJP (n 17) 7.

[46] UN treaty collection (n 14).

[47] Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazette, Year 1, No. 1 (Addis Ababa, 21 August 1995), Art. 28(1).

[48] NTJP (n 17) sec. 2.3.2., p. 11.

2. To what extent does the Ethiopian Transitional Justice Policy provide for amnesty, and how do its provisions align with international legal norms?
3. Whether the amnesty provisions under the current National Transitional policy of FDRE align with the constitutional guarantees?
4. How have other jurisdictions (for example, South Africa, Colombia, Sierra Leone) dealt with amnesties for international crimes in a transitional justice context? What lessons can Ethiopia derive?

   The current NTJP has wanted to deal with past atrocities both through accountability (investigation and prosecution) and reconciliation accompanied by amnesty.[49] Investigations and prosecutions are mandatory only for those who are said to be "most responsible perpetrators" within the meaning of the policy document.[50] Some international treaties to which Ethiopia is party to oblige investigation and prosecution as opposed to impunity and crimes like crimes against humanity, summary executions, forcible disappearances or torture are excluded from the domain of amnesty (which in turn avoids punishment and civil liability) under the FDRE Constitution.[51]

1.5.Research Objectives

This thesis wanted to examine the constitutionality of the amnesty provisions under the NTJP and to check its compatibility with the international standards relating to gross human rights violations. It wants to give some insights regarding policy implications and safeguarding measures to be taken.

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[49] NTJP (n 17) P. 4_13.

[50] NTJP (n 17) P. 7.

[51] Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazette, Year 1, No. 1 (Addis Ababa, 21 August 1995), Art. 28(1); United Nations Treaty Collection, *Convention on the Prevention and Punishment of the Crime of Genocide* (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, Ethiopia accession 1 July 1949; OHCHR, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, Ethiopia accession 14 March 1994, OHCHR, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Ethiopia accession 11 June 1993; and ICRC, *Geneva Conventions of 12 August 1949* (entered into force 21 October 1950), Ethiopia ratification recorded in ICRC Treaties Database.

Specific objectives

The specific objectives of this work are: -

1. To analyze treaty obligations under international human rights and humanitarian law treaties in relation to duty to prosecute gross violations,
2. To analyze the constitutional limitations made on amnesty laws with respect to certain crimes relating to gross human rights violations and
3. To check the constitutionality of the amnesty provisions of NTJP.

1.6.Methodology

The thesis paper wanted to adopt comprehensive doctrinal analysis. It will discuss and analyze amnesty provisions of the current NTJP in light with the 1995 FDRE constitutional, regional and global binding legal documents and with non-binding soft laws like UN resolutions & reports, Journal articles, papers and dissertations, specific relevant case laws. It also benefits from a comparative study of different experiences from selected jurisdictions. SCOLA system of citation will be applied throughout the paperwork.

1.7.Scope of Research

The research explores only the compatibility of the amnesty provisions under the current NTJP with international standards and the FDRE constitution respect to possible gross human rights violations. It will not address issue of the Policy's ability to bring the desired results expected by the policy document. Besides, the study shall not go into the issue of whether gross human rights violations are really committed or not in Ethiopia even though it may try to make use of the facts made by official human rights bodies' reports for persuasion purposes. The mechanism of how pardon is going to be applied in Ethiopia and its compatibility with any legal obligations is also not within the domain of this study.

1.8.Limitation

The focus of this study is provisions relating to prosecution and amnesty under the current National Transitional policy of FDRE (adopted on 17 April 2024) with respect to gross human rights violations. The policy has already qualified the degree of responsibility for gross human rights

violations.[52] Those "most responsible perpetrators' for gross human rights violations should face criminal investigation and prosecution while those responsible but qualified as "not most responsible" may not be prosecuted if they apply for amnesty.[53] The policy is expecting new legislation to fill the legal gaps to implement the NTJP.[54] This study cannot discuss the NTJP together with the enabling legislation the policy is expecting since that is not yet adopted, but merely at the unofficial draft stage at this time.

1.9.Proposed Structure

This paper has five chapters including this concept note proposal where each chapter contains different ideas and purposes.

The first chapter is the proposal part while the second chapter is devoted to discussing definitions and meanings of amnesty, types of amnesty laws, discuss the overall global understanding about amnesty laws in relation to international human rights laws and humanitarian laws to show the tension between amnesty laws and gross human rights violations. It also discusses the existing arguments for and against the Additional Protocol II to the Geneva conventions with respect to amnesty for gross human rights violations.

The third chapter starts with discussing the historical amnesty practices in the modern history of Ethiopia in short. Then it tries to show the existing legal frameworks of amnesty laws including the constitutional limitations made on amnesty. It shows the triggering reasons for the current NTJP (adopted on 17 April 2024), and the qualification and classification made between 'most responsible perpetrator' and 'not most responsible perpetrator' and the implications of this classification. It further discusses the compatibility of the amnesty and accountability provisions with the constitution and the international standards.

The Fourth chapter discuss different typical relevant amnesties from different jurisdictions from different regions (amnesty of Colombia, Seirra Leion Amnesty law, South Africa's amnesty, and Haiti**)** and discusses each in comparison with the Ethiopian amnesty provision of the NTJP as regards responding to gross human rights violations of the past. Safeguards and Policy

[52] NTJP (n 17).

[53] NTJP (n 17).

[54] NTJP (n 17) sec. 3.1.1., p. 21.

Implications, for Ethiopia, are also indicated in this chapter. The last chapter is about conclusions and recommendations made by this study.

2. Chapter Two

2.1.Existing norms on Amnesty

2.1.1. Historical Background

The origin of amnesty can be traced back to code of Hammurabi in 1700 BCE to address legacy of violence in post-conflict situations.[55] The term amnesty comes from the Greek word "*amnēstia*," meaning "forgetfulness" or "oblivion".[56] Dr. Louise Mallinder stated that amnesty was traditionally used by governments to eliminate any record of crime by barring any possible criminal prosecution or civil suits for certain crimes or certain people.[57] The romans developed a number of forms of mercy schemes which later influenced European laws.[58] Similarly, in ancient Greece, amnesty was used as a political tool to resolve conflict and bring stability.[59] During medieval and early modern periods, monarchs use pardoning means to consolidate power or reward those who show loyalty to them by even committing offenses.[60]

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[55] Andreas O'Shea, *Amnesty for Crime in International Law and Practice* (Kluwer Law International 2002) 5–21, cited in Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) Introduction.

[56] Ben Chigara, *Amnesty in International Law: The Legality under International Law of National Amnesty Laws* (Longman 2002), cited in Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) Introduction.

[57] Carolyn Bull, Amnesty (2001) (Prepared by Carolyn Bull for Interim Office, Commission for Reception, Truth and Reconciliation in East Timor), cited in Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) Introduction.

[58] Amnesty and Pardon: Historical Overview' *Law JRank* <https://law.jrank.org/pages/506/Amnesty-Pardon-Historical-overview.html?utm_source=copilot.com> accessed 17 April 2026.

[59] Origins Of Modern Amnesty Laws: A Historical And Legal Journey' (LawShun, undated) <https://lawshun.com/article/where-did-the-current-amnsty-law-come-from?utm_source=copilot.com> accessed 17 April 2026.

[60] Thomas McSweeney, 'The King's Courts and the King's Soul: Pardoning as Almsgiving in Medieval England' (Medievalists.net, 16 December 2014) <https://www.medievalists.net/2014/12/kings-courts-kings-soul-pardoning-almsgiving-medieval-england/> accessed 17 April 2026.

Amnesty was historically granted, automatically and unconditionally to specific group of offences, to bring stability and reinforce the state's power and legitimacy.[61] Amnesty historically gives the governments a means to suppress the dissent, compromise with its enemies as well as to protect its agents who engaged in criminal acts.[62]

Therefore, the government may use amnesty to silence opposition voices, maintain stability of the state government and authority by compromising with whom they foreboded as enemies or it may use amnesty to shield its own state agents from accountability as per these literatures.

The global trend is that, at the age of the Cold War, there was enormous number of conflicts around the world that a number of amnesty laws were sharply increased in that decade.[63] During the collapse of Soviet Union and former Yugoslavia, different civil wars erupted and different amnesty laws were enacted in their aftermath in the 1990s.[64]

The working principle was that Sovereign states have the inherent power to regulate their internal domestic affairs including whom to prosecute, investigate or to leave without accountability.[65] Later on, different developments have emerged in relation to international criminal law. The establishment of the International Criminal Court (ICC) and UN's denunciation amnesties against international core crimes as illegal in 1999 leading to reduction of amnesty laws in the late 2000 years.[66] To see the figures, regionally, a large number of amnesties (33 %) were enacted in Sub-Saharan Africa during 1979-2010 due to large number of states in the region and higher conflict

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[61] Mark Pensky, 'Amnesty on Trial: Impunity, Accountability, and the Norms of International Law' (2008) 1(1–2) *Ethics and Global Politics* 1, cited in Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, July 2021) 2.

[62] A Fijalkowski, 'Amnesty' in O Simić (ed), *An Introduction to Transitional Justice* (Routledge 2020) 123, Introduction. DOI: <https://doi.org/10.4324/9781003021414>.

[63] International Center for Transitional Justice, *Final Version: International and Regional Norms on Amnesty* (Fact Sheet, July 2017) 16 <https://www.icrc.org/sites/default/files/document/file_list/final_version_amnesties_factsheet_14_july_2017.pdf> accessed 20 February 2026.

[64] Ibid 17-18.

[65] Max Pensky, 'Amnesty on Trial: Impunity, Accountability, and the Norms of International Law' (2008) 1 Ethics & Global Politics 1, 6.

[66] ICTJ (n 63) 18_20.

while 16 % was enacted in America, Asia 18 % and in Europe and central Asia 19 % amnesty laws were enacted during the same period.[67]

Since the end of the Cold War, there is clear evidence of development in global human rights accountability norms; like the adoption of the Rome Statute of the ICC and UN's refusal to accept amnesty against core international crimes even though amnesty laws were still being enacted by states.[68]

2.1.2. What is amnesty?

Despite its long-time span, however, the concept of amnesty continues to be a center of controversy and ambiguity.[69] Amnesty is a domestic practice where each state defines it differently, and applies it.[70] Usually, these domestic laws fail to differentiate amnesty from pardon and generally the former usually applied to those who are not yet convicted while the later applies to those who are convicted.[71] Due to the domestic nature of the norm, there is no internationally accorded definition to the term.[72] Due to this, practically, it differs from that which intends to accords reparations to the victims to those which intends self-confer shield from criminal liability of whatsoever.[73]

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[67] ICTJ (n 63) 20 _21.

[68] ICTJ (n 63) 32.

[69] Louise Mallinder, *Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) Introduction, available at <https://www.researchgate.net/publication/228214698_Global_Comparison_of_Amnesty_Laws> accessed 22 February 2026.

[70] R Lévy, 'Pardons and Amnesties as Policy Instruments in Contemporary France' (2007) 36 Crime & Just 551, cited in Louise Mallinder, 'Peacebuilding, the Rule of Law and the Duty to Prosecute: What Role Remains for Amnesties?' Transitional Justice Institute Research Paper 11-06 (2011) 2_3.

[71] United Nations, Rule-of-Law Tools for Post-Conflict States: Amnesties (United Nations 2009) 43; Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) PART I - INTRODUCTION

[72] Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) PART I – INTRODUCTION.

[73] Louise Mallinder, 'Peacebuilding, the Rule of Law and the Duty to Prosecute: What Role Remains for Amnesties?' Transitional Justice Institute Research Paper 11-06 (2011) 3.

The term is usually defined differently by different states and then different bodies grant amnesty due to the fact that amnesty is traditionally within state sovereignty.[74] Even though there is no internationally accepted definition for amnesty, Mark Freeman, defined it as "an extraordinary legal measure whose primary function is to remove the prospect and consequences of criminal liability for designated individuals or classes of persons, in respect of designated types of offenses irrespective of whether the persons concerned have been tried for such offenses in a court of law or not".[75] Amnesty also refers to legal options aimed at barring ongoing or future criminal investigations or prosecutions for specified crimes or offenders.[76] It may also refers to a legal measure that extinguishes civil and criminal responsibility for certain offenses, often enacted after periods of extreme violence, civil war, or political conflict.[77]

As an instrument of transitional justice, amnesty serves many purposes, including encouraging the discovery of the truth and/or preventing resurgence or protraction of an armed conflict.[78] A certain regime may be changed in a certain legal system and in whatsoever way the change occurs, when the relevant people go through a painful experience, the relevant people usually want their suffering to be acknowledged or validated.[79] As per the Jeremy Sarkin's article, when the political change is the result of overthrow, prosecution model may be chosen while amnesty model is usually preferred when the change is the outcome of a reform of existing regime while a

[74] ICTJ (n 63) 10.

[75] Michael Freeman, *Necessary Evils: Amnesties and the Search for Justice* (Polity Press 2010) 13, cited in Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, July 2021) 13.

[76] Shaw, D., & Mallinder, L. (2025). Amnesty in International Relations. Oxford Research Encyclopedia of International Studies.

[77] Naomi Roht-Arriaza and Lauren Gibson, 'The Developing Jurisprudence on Amnesty' (1998) 20 *Human Rights Quarterly* 843, 856.

[78] ICRC, Amnesties and International Humanitarian Law: Purpose and Scope < https://www.icrc.org/sites/default/files/document/file_list/170545_amnesties_factsheet_14_july_2017_clean_en.pdf > accessed on August 1, 2025.

[79] Ivor Sokolić, 'Meaningful acknowledgement: how to evaluate acknowledgement in transitional justice interactions using deliberative reciprocity?' (2025) 29 *International Journal of Human Rights* 568, 574.

combination of the two may also be employed when the political change is the result of compromise.[80]

Therefore, in whichever way the change occurs, past gross human rights violations are to be an international issue at this contemporary world reference to these literatures and hence the measures that should be taken can be international prosecution, national truth and reconciliation commission, national prosecution, civil remedies and compensation, national purification.[81]

Prosecutions are preferred over amnesty in international law because they embody democratic accountability by publicly enacting the rule of law, not simply because they punish wrongdoers.[82] International law seeks to avoid any impunity for gross violations of human rights.[83]

In the modern days, however, amnesty is to be granted restrictively and conditionally.[84] Since the era of international criminal responsibility, however, amnesty is not allowed in case of gross human right violations such as crimes against humanity and torture and the reason is that dictators are giving amnesty for themselves which creates impunity as opposed to state's obligation under international laws.[85]

There were also signs of global acceptance and encouragement of amnesties in certain cases like at final stages of the war between Tamil Tigers and Sri Lanka in 2009 and 2000 Ugandan amnesty law where there was no inference for prosecution of serious crimes.[86]

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[80] J Sarkin, 'The Trials and Tribulations of South Africa's Truth and Reconciliation Commission' (1996) 12 SAJHR 617, 618–620.

[81] Neima Aman Shifa, 'Responding to Past Human Rights Abuses through Amnesty, Reconciliation and Prosecution: Analyzing the Case of Ethiopia since 2018' (Master's thesis, Jimma University 2019) 14.

[82] Pensky (n 61) 1.

[83] Fijalkowski (n 62) 6.5 Points of contention and controversy.

[84] Mallinder L. & Kieran M., Rethinking amnesties: atrocity, accountability and impunity in post-conflict Societies(2011) vol. 6, No 1, pp. 107-128, at p.112, cited in Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, July 2021) 2.

[85] John Dugard, 'Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?' (1999) 12 *Leiden Journal of International Law* 100, 1002.

[86] "Co-Chairs Of Sri Lanka Peace Process Urge Tamil Tigers To End Hostilities" RTT News (3 February 2009), "Lay down arms, surrender – European Parliament tells LTTE" The Colombo Times (6 February 2009), and "U.N. Security Council Asks LTTE To Surrender" RTT News (22 April 2009), as cited in International Center for Transitional Justice, *Final Version: International and Regional Norms on Amnesty* (Fact Sheet, July 2017) 36.

Some also argue that Article 6(5) of the AP II to the Geneva Convention of 1977 is a sign of recognition of amnesty during that time.[87]

Generally, as far as core international crimes are concerned, the responsibility to prosecute is now becoming international norm even though there is still room for amnesty as state practice shows favoring lasting peace and political resettlement.[88]

Hence the dichotomy between retribution and reconciliation is not lacking in valid arguments each.[89] Therefore, we may say that the balancing point is that both prosecution and amnesty have their own benefits having regard to specific situations according to these literatures.[90] When there is a push for prosecution for core crimes, amnesties will be excluded despite the fact that such exclusion doesn't by itself guarantee prosecution.[91] This is because, even where prosecution policy is adopted, it touches only those higher ranking offenders while vast majority offenders would not be prosecuted.[92] Such states rarely deny the existence of global accountability norms but choose peace and stability to end atrocities.[93]

2.1.3. Types of Amnesty

Having regard to different experiences of states around the globe, amnesty can be blanket or conditional or another.[94] Blanket amnesty is baring any possible prosecution/punishment/suits for all crimes committed prior to the amnesty law or it can also be excluding any possible prosecution/punishment/suits for certain crimes only or for certain groups only for specific period of time, usually with in the conflict period.[95] Conditional amnesty laws are the ones that require

[87] Naomi (n 77) 864.

[88] Dugard (n 85) 1003.

[89] Dugard (n 85) 1005.

[90] Dugard (n 85) 1005.

[91] ICTJ (n 63) 37.

[92] UNSC, Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies (UN, 2004), para 46.

[93] ICTJ (n 63) 38.

[94] Mallinder (n 72) Introduction.

[95] Mallinder (n 72).

applicants to perform certain tasks such as surrendering weapons or providing certain information, or admitting truth about their actions or showing remorse to be benefit from the amnesty law.[96]

For UN system, at least as a policy level, amnesty can be Self-amnesty, blanket amnesty, conditional amnesty, de facto amnesty or disguised amnesty.[97] Self-amnesty is an amnesty law enacted those who are responsible for gross human rights violations to shield themselves from accountability while de facto amnesty is to mean legal measures such as State laws, decrees or regulations that effectively foreclose prosecutions without explicitly naming it as amnesty.[98] Disguised amnesty can take many forms including for example when a law, on their face, seems to comply with the international standards, but implemented through regulations/directives that ultimately undermines that state's human rights treaty obligations.[99] Blanket and conditional amnesties are given same meaning stated above by the UN policy. [100] Only conditional amnesty is said to be permissible under the policy.[101]

2.1.4. Recurring Arguments for and against Amnesty

Most of the challenges against amnesty laws come from arguments based on international laws/norms.[102] Contrary views usually come from Article 6(5) of the AP II of the 1949 Geneva Convention for those who uphold amnesty laws and from applicability of international human rights law for those who reject amnesty laws.[103] Courts like El Salvador court, Chilean court and South African courts cite article 6(5) of the protocol to validate amnesty laws to give chances to reconstruction and peace.[104]

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[96] Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Hart Publishing 2008), cited in Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) Introduction, 9.

[97] United Nations, Rule-of-Law Tools for Post-Conflict States: Amnesties (United Nations 2009) 43_44.

[98] Ibid 43.

[99] Ibid 44.

[100] Ibid 43.

[101] Ibid.

[102] Naomi (n 77) 863.

[103] Naomi (n 77) 863.

[104] Naomi (n 77) 864.

The main ground of argument for those who challenge amnesty is provisions of international treaties including the 1949 Geneva conventions which call for prosecution in case of grave breaches.[105] The Chilean lower court has cited the ICCPR and American convention of human rights (ACHR) provisions which call for the right to get remedy, fair trial and judicial protection and that of the right to be "ensured".[106] The court has cited the convention against torture which imposes the obligation to investigate and prosecute, extradition and civil redress to the victims.[107] Similarly Argentinian court has also cited the American convention of human rights in relation to those who were disappeared between 1976 and 1977 and the court has decided that the duty to ensure the right to mourn, bodily integrity and truth continue to apply until the final whereabouts of the disappeared person is to be identified.[108] ICCPR human rights committee has also reaffirmed such obligation of states under general comment number 20 in case of crime against torture.[109] UN human rights committee in its concluding observation has also stated concerns of blanket amnesties.[110]

In our continent, Africa, as well, the African commission has given a decision that amnesties are against Article 1 and 7(1) of the charter.[111] Similarly African commission on Human and peoples'

[105] Naomi (n 77) 867.

[106] Naomi (n 77)

[107] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, arts 6, 7, 14.

[108] Naomi (n 77) 867 n 183.

[109] Human Rights Committee, *General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (1992) UN Doc HRI/GEN/1/Rev.1, para 15.

[110] Human Rights Committee, Concluding Observations: Argentina (3 April 1995) UN Doc CCPR/C/79/Add.46, para 12, available at https://hrlibrary.umn.edu/hrcommittee/ARGENTNA.htm (hrlibrary.umn.edu in Bing) accessed 22 February 2026.

[111] *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006), Comm 245/2002, 39th Ordinary Session, 11–25 May 2006, para 215, available at <https://www.globalhealthrights.org/wp-content/uploads/2013/10/Zimbabwe-HR-NGO-Forum-Zimbabwe-2006.pdf> accessed 22 February 2026.

rights, in the case involving Burkina Faso for past human rights violations, extends treaty obligation to include investigation, criminal prosecution together with reparation for victims.[112]

Though amnesty is being considered by some as a new allowable mechanism under the AP II to the Geneva conventions, contrary interpretations to Article 6(5) of the protocol are stated below.[113] International committee of the Red Cross (ICRC) for example limits the amnesties under the protocol to only "combatants'.[114] ICRC bases its argument on the legislative history of the provision which tries to get release of combatants detained or punished merely because they were killing enemy as combatant without violating international law.[115] Other argument in relation to this Article also bases on the very purpose of the 1977 AP II.[116] For them, it was adopted to give expand the protection to civilians stated under Common Article 3 of the Geneva conventions having regard to the preamble of the Protocol, and therefore, allowing amnesty to perpetrators of core international crimes is against the purpose of the convention.[117] If Criminals are to be granted amnesty, then what was already granted under common article 3 is to be even extinguished let alone expanding g protection.[118] Furthermore, they add their argument based on article 6 of the protocol which provides penal sanctions for those who are found guilty and, therefore, had the protocol was to give amnesty there was no need to have penalty in there. [119] The term 'broadest possible amnesty' used under the article is also taken to sustain the right of victims' hope for retribution and denunciation.[120]

[112] Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso (2001) AHRLR 51 (ACHPR 2001), Communication 204/97.

[113] Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Hart Publishing 2008), cited in Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) Introduction, 9.

[114] Naomi (n 77) 865.

[115] Naomi (n 57) 865.

[116] Mouvement (n 112).

[117] Naomi (n 77) 865_66.

[118] Naomi(n 77) 866.

[119] Naomi (n 77).

[120] Naomi (n 77).

Therefore, as discussed above, the contemporary international human rights law seems to stand against amnesty, especially where it is used to ban accountability of those who commit gross human rights violations.

Coming back to the issue of existence of international norm which opposes amnesty, literatures show that international crimes like aggression, genocide, crimes against humanity, war crimes, piracy, slavery and slave-related practices, and torture are amounted to be "jus cogens" or 'preemptory norms" having the highest hierarchical order within the international law.[121] Accountability through prosecution may endanger the life of the new democracy at risk; dueling on the past and pointing fingers may not be favorable for reconciliation and peace; elicitation of truth requires some inducement and that amnesties could constitute such an incentive and induction of truth requires some incentive and that amnesties could constitute such a stimulus.[122] To attain these purpose, however, amnesty laws dealing with purely political offences such as espionage or producing anti-state propaganda, or they could be common crimes, such as theft or assault, committed with political objectives are not in conflict with state's international law.[123] Nowadays amnesties have increasingly been used, despite the growth of the international human rights law and international criminal justice at the post-conflict situations.[124] Americas are the most know region for use of amnesties and having advanced legal jurisprudence on the matter while Sub Saharan countries have greatest number of amnesty laws from the region since the Second World War.[125] Angola, Mozambique, Sierra Leone, Uganda and South Africa all experienced post conflict amnesty laws in different times some of which are successful leading to peace and democracy while some are not.[126]

So, if amnesty is to be employed, with the acceptable margins, it has to be applied in exceptional conditions to meet clearly defined goals as part of wider reform or post-conflict justice

[121] M Cherif Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (1996) 59 *Law and Contemporary Problems* 63, 68.

[122] Kobina Egyir Daniel, *Amnesty as a Tool of Transitional Justice: The South African Truth and Reconciliation Commission in Profile* (LLM dissertation, University of Pretoria, 30 November 2001) 15_16.

[123] Mallinder (n 72) PART III - Amnesties and International Law.

[124] Mallinder (n 72) PART IV - Global Trends in the Use of Amnesties.

[125] Mallinder (n 72) PART IV - REGIONAL TRENDS IN THE USE OF AMNESTIES.

[126] Mallinder (n 72) PART IV - REGIONAL TRENDS IN THE USE OF AMNESTIES.

measures.[127] Additionally the existing legal regime and the extent of the threat of prosecutions should be considered before an amnesty is enacted and it should be enacted in accordance with domestic laws.[128] There should also be public consultation on the scope and objectives of an amnesty and amnesty which aim to promote truth-recovery should cover all parties to a conflict and shall be time-limited tool.[129] The territorial scope of the amnesties should reflect the scope of the violations and it shouldn't be extended beyond the borders of the state in which it was introduced.[130] In order to benefit from an amnesty, individuals must be required to make individual applications and adhere to the conditions where individuals who fail to apply or do not adhere to the conditions, prosecutions should be pursued.[131] The granting of amnesties should be performed by an independent and impartial body.[132] Targeted individuals should be informed of the existence of an amnesty program and Victims should have a role in amnesty decisions.[133]

In conclusion, it is duly imperative to conclude that these literatures show that the international norm is increasingly shaped by the normative preference for prosecution and accountability in case of gross human rights violation.[134] While amnesty has historically been invoked as instrument for peace and reconstruction during conflict and/or at post conflict situations, their legitimacy continues to be contested under international legal order.[135] On one side, critics argue that granting amnesty contravenes a state's international obligations emanating from international human rights treaty commitments or international custom.[136] On the other Side, others maintain that the international practice, including reference such as Article 6(5) of AP to the Geneva conventions, show that amnesties may be permissible in limited contexts, particularly as tools to stop conflict

[127] Mallinder (n 72) PART V - LESSONS LEARNED.

[128] Mallinder (n 72).

[129] Mallinder (n 72).

[130] Mallinder (n 72).

[131] Mallinder (n 72).

[132] Mallinder (n 72).

[133] Mallinder (n 72).

[134] Dugard (n 85) 1003; Ibid (n 121), 68.

[135] Dugard (n 85), 1003.

[136] For example, see "M Cherif Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (1996) 59 *Law and Contemporary Problems* 63, 68".

and bring peace and reconciliation.[137] Nevertheless, the prevailing interpretation advanced by international human rights bodies and tribunals is that blanket amnesty against core international crimes is incompatible with contemporary international law.[138] Ultimately, however, the balance between peace and justice must be kept in a consistent manner with international human rights instruments, customary international laws (CIL).[139]

[137] Louise Mallinder, 'Amnesties and Transitional Justice' in C Lawther and L Moffett (eds), *Research Handbook on Transitional Justice* (2nd edn, Edward Elgar 2023) 262; Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Hart Publishing 2008), cited in Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) Introduction, 9.

[138] See "*Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006), Comm 245/2002, 39th Ordinary Session, 11–25 May 2006, para 215, available at <https://www.globalhealthrights.org/wp-content/uploads/2013/10/Zimbabwe-HR-NGO-Forum-Zimbabwe-2006.pdf> accessed 22 February 2026".

[139] Office of the High Commissioner for Human Rights, Amnesties: Rule-of-Law Tools for Post-Conflict States (United Nations 2009) HR/PUB/09/1, p 7.

3. Chapter Three

3.1.Amnesty under Ethiopia's Legal Landscape and the legal aspect of the National transitional policy

In the preceding chapter, the history and meaning of amnesty, the different types of amnesty, and the norms relating to amnesty and the recurring arguments surrounding it were thoroughly discussed. This chapter focuses on the history of amnesty in Ethiopia and aimed to explore issues concerning the nature of the current transitional justice policy within the Ethiopian legal framework. More importantly, it analyzes the current transitional policy's provisions relating with amnesty its substantive content, and its legal compatibility with the 1995 FDRE constitution as well as international norms.

The chapter starts with tracing the historical trajectory of amnesty in the country, putting it within the country's political and legal evolution. This historical overview is essential for understanding how amnesty has been understood and applied in different regimes, and how these experiences continue to trigger the issues relating with its application. It then moves to explore the nature of transitional justice policy in Ethiopia, by its particular emphasis on the recent legal frameworks adopted by the government.

More importantly, the chapter provides a detailed analysis of the substantive provisions relating to amnesty and accountability under the current national transitional justice policy. The analysis is based on the 1995 FDRE constitutional frameworks and the global norms relating to the matter.

3.1.1. Transitional Justice Policy in Ethiopia

The United Nations Secretary General in its report defined Transitional Justice as "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".[140] According to this report, therefore, transitional justice refers to the various processes accompanying political transition by societies emerging from a period of violence that aim to deal with the grave human rights violations committed during the conflict and to achieve

[140] United Nations Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General* (23 August 2004) UN Doc S/2004/616, para 8.

national reconciliation.[141] Similarly, transitional justice is referred to as the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation under the AU transitional justice policy.[142]

In 1995, Nelson Mandela noted that,

"*As all... countries recover from the trauma and wounds of the past, they have had to devise mechanisms not only for handling past human rights violations, but also to ensure that the dignity of victims, survivors and relatives is restored. The main objectives of transitional justice are ensuring accountability and serving justice*.[143]

Hence, by using the most suitable instruments, the concept of transitional justice can encompass a range of initiatives, including judicial processes, truth commissions, reparations, and administrative reforms, and it can be effectively applied in all societies.[144]

In response to the widespread unrest in Ethiopia prior to 2018, the reformist government adopted proclamation No. 1096/2018 with the aim of restoring peace and stability by granting amnesty to individuals or groups who had committed political crimes.[145] However, the outbreak of the northern Tigray war soon after led to reports of grave human rights violations.[146] Subsequently,

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[141] United Nations Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General* (23 August 2004) UN Doc S/2004/616, para 8.

[142]African Union, *African Union Transitional Justice Policy* (February 2019) 4, para 19 https://au.int/sites/default/files/documents/36541-doc-au_NTJP_eng_web.pdf (au.int in Bing).

[143] UNSG (n 141).

[144] Kora Andrieu, *La justice transitionnelle* (Gallimard 2012) 28.

[145] Granting of Amnesty to Outlaw who have participated in different crimes proclamation No. 1096/2018, Federal Negarit Gazette, Year 24, No 1(Addis Ababa, 2018), Preamble.

[146] Office of the United Nations High Commissioner for Human Rights and Ethiopian Human Rights Commission, *Report of the EHRC–OHCHR Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed in Tigray Region, Ethiopia* (OHCHR 2021) https://www.ohchr.org/sites/default/files/2021-11/OHCHR-EHRC-Tigray-Report.pdf (ohchr.org in Bing) accessed 26 February 2026.

the Federal government and Tigray forces reached a peace agreement to end hostilities, which created the need for a comprehensive transitional justice framework.[147] In line with this, the National Transitional justice Policy (NTJP) was formally adopted on 17 April 2024.[148]

3.1.2. Amnesty under Ethiopian Legal Framework

3.1.2.1.Historical Background of Amnesty in Ethiopia

Ethiopia has endured a long history of conflicts.[149] However, the country's long history includes cycles of conflict and oppression between its diverse ethnic and religious groups, and across government-civilian relations.[150] Ethiopia adopted the federal system when the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) entered into force on 21 August 1995 to accommodate its vast ethnic and religious diversity, which comprises more than 80 languages and 200 dialects.[151] The FDRE Constitution declares that the federation is comprised of the Federal Government and the State Members.[152]

Ethiopia has experienced all imperial monarch, the Marxist Leninist military regime and Ethic federal system within the modern history of the country.[153] In the modern history of Ethiopia, king Minilk's effort to unify the country through expedition resulted in many battles with different regional lords and kings and after victory he awarded amnesty to those regional lords and bequeathed them the power to administer their area under his sovereign.[154] Emperor Hailesilassie was even used amnesty to reconcile with different patriots after the emperor returned from exile

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[147] African Union, Agreement for Lasting Peace through a Permanent Cessation of Hostilities (signed 2 November 2022, Pretoria, South Africa).

[148] Federal Democratic Republic of Ethiopia, *National Transitional Justice Policy* (17 April 2024).

[149] Bahru Zewde, *A History of Modern Ethiopia, 1855–1991* (Addis Ababa University Press 1991).

[150] Ibid.

[151] RL Watts, *Comparing Federal Systems* (3rd edn. Institute of Intergovernmental Relations, Montreal 2008) 48.

[152] Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazette, Year 1, No. 1 (Addis Ababa, 21 August 1995), Art. 50(1).

[153] Watts (n 151).

[154] ፓውሎስ ኞኞ፣ ዳግማዊ አጤ ምኒልክ ። See also ደረሶ በሬይሞንድጀናስ፣ አፄ ምኒልክ ና የአድዋ ድል፣ ትርጉም ሙሉቀን ታሪኩ፣ ዬጎት መፃፍ መደብር፣ አዲስ አበባ፣ 2006፣ ገፅ 63, cited in Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, Bahir Dar University, July 2021) 22.

at the time of Italian aggression.[155] In this regard , the emperor has granted amnesty for those who committed crime in the country back in 1941.[156] During the Derg regime, amnesty was used to appease bandits and outlaws to bring appeasement to the country.[157] Recently the Granting of Amnesty to Outlaws Who have Participated in different Crimes proclamation, Proc. No 1096/ 2018 was enacted for cancellation of criminal liability of persons participated in different crimes (political offences) during the internal instability.[158] Yet again, currently the Ethiopian government has adopted the NTJP on April 17, 2024.[159]

Even though it is not possible to classify these different types of Ethiopian amnesties in such a clear manner, the types of amnesties which have been employed may include blanket amnesty, conditional amnesty, unconditional amnesty, general amnesty, express amnesty, or de facto amnesty.[160] Amnesty laws of January 20/1941 which bans liability for all offences committed during the Italian occupation can be categorized as blanket amnesty.[161]

3.1.2.2.Amnesty under the NTJP of FDRE and its Compatibility with international, regional and national standards

As an instrument of transitional justice, amnesty serve many purposes, including encouraging the discovery of the truth and/or preventing resurgence or protraction of an armed conflict.[162]

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[155] Meseret, The Role of Executive President on Capital Punishment, LLM Thesis, Addis Abeba University, Law Faculty, 2003, [Unpublished, available at Law library], p. 48, cited in Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, Bahir Dar University, July 2021) 23.

[156] Harold G Marcus, 'Haile Sellassie and the Italians, 1941–1943' (2003) 36 *Northeast African Studies* 1, 19.

[157] ፍቅረስላሴ ወግደረስ፤ እኛ እና አብዮቱ፤ ፀሀይ አሳታሚ እና አካፋፋይ፤ አዲስ አበባ፣2006; ገጽ 191-2004 [Here in after, ፍቅረስላሴ ወግደረስ፤ እኛ እና አብዮቱ], cited in Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, Bahir Dar University, July 2021) 23.

[158] Amnesty proclamation (n 145) Arts. 4-5.

[159] NTJP (n 148).

[160] Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, Bahir Dar University, July 2021) 23.

[161] Adu (n 160) 24.

[162] ICRC, *Amnesties and International Humanitarian Law: Purpose and Scope* <https://www.icrc.org/sites/default/files/document/file_list/final_version_amnesties_factsheet_14_july_2017.pdf> accessed 27 February 2026.

The purposes of the current amnesty under the NTJP are stated in the policy and accordingly the difficulty in prosecuting all expected large numbers of perpetrators, the need to give opportunity for truth-seeking, disclosure, and reconciliation are the main purposes.[163] The amnesty provided under the policy is conditional amnesty.[164] The NTJP's is applicable nationwide.[165] Although the NTJP does not clearly specify the temporal scope of its application, the introductory section of the policy document suggests that it may include both past and recent atrocities.[166]

It has been stated that States bear the obligation to investigate and prosecute gross human rights violations like war crimes committed in international and non-international armed conflicts.[167] Therefore, amnesties which run counter to effective accountability, and genuine investigation and prosecution cannot be extended to those suspected of having committed war crimes or ordering them to be committed and such measures would be incompatible with States' obligation to investigate and, if appropriate, prosecute alleged offenders.[168] As stated in the preceding chapter(chapter 2), human rights relating with core international crimes have attained the status of jus cogens from which no deviation is possible.[169] Therefore, granting of amnesty to those suspected of coming international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law is prohibited under international law. In line with the prohibition of amnesties for international crimes, Article 28(1) of the FDRE Constitution also bars the commutation of offences, as defined by international agreements ratified by Ethiopia and by

[163] NTJP (n 148) s 2.3, 12.

[164] NTJP (n 148), pg. 2.

[165] NTJP (163) s 1.6, 7.

[166] NTJP (n 163) P. 2.

[167] ICRC, 'Rule 158. Prosecution of War Crimes' in *Customary International Humanitarian Law Database* <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158> accessed 27 February 2026.

[168] ICRC, Amnesties and International Humanitarian Law: Purpose and Scope < https://www.icrc.org/sites/default/files/document/file_list/170545_amnesties_factsheet_14_july_2017_clean_en.pdf > accessed on August 1, 2025.

[169] M Cherif Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (1996) 59 *Law and Contemporary Problems* 63, 68.

other Ethiopian laws, including C, summary executions, forcible disappearances or torture either by pardon or amnesty by any state organ, including the legislature.[170]

Following the reform of government in 2018, the decision by the government of Ethiopia to embark upon a reform agenda heralded a momentous opportunity for democratization in the country.[171] Ethiopia's political reform gave hope to many that the nation was moving towards a better future where democratic rights and freedoms would be respected.[172] However, this hope was soon dimmed by the parallel rise of violent inter-communal and ethnic conflict across the country, as well as the outbreak of war in the northern region (Tigray).[173]

The conflict in the northern Ethiopia, from 2020 to 2022 between the Federal Government and the TPLF resulted in considerable loss of life and allegations of serious violations of human rights.[174] This conflict, which pushed the country deeper into chaos, came to an end with the signing of the Cessation of Hostilities Agreement (CoHA) (Pretoria Agreement), which was concluded in November 2022.[175]

According to the joint investigation of Ethiopian Human Rights Commission (EHRC) and United Nations Office of the High Commissioner for Human Rights (OHCHR) Joint investigation into alleged violations of international human rights, humanitarian and refugee law committed by all parties to the conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia, all acts that may constitute war crimes, crimes against humanity, torture and others are committed in the northern conflict.[176]

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[170] FDRE Constitution (n 152) 28(1).

[171] Taddesse Berisso and Yidnekachew Mitiku, 'Democratisation and Violent Ethno-Political Conflicts in Post-2018 Ethiopia: An Examination on their Interface and the Way Forward' (2022) *EJDR* 1 https://ejol.aau.edu.et/index.php/EJDR/article/download/4264/7739/16671 (ejol.aau.edu.et in Bing) accessed 26 February 2026.

[172] Ibid.

[173] Ibid.

[174] EHRC-OHCHR (n 146).

[175] CoHA (n 147).

[176] EHRC-OHCHR (n 146).

As the most recent triggering factor, the CoHA signed and the subsequent Nairobi agreement laid the foundation for addressing grievances and confront gross human rights violations including through a comprehensive justice process as stated under Art 10 of the agreement.[177]

Article 10(3) of the Pretoria Agreement specifically envisaged that;

> *"The government of Ethiopia shall implement a comprehensive national transitional justice policy aimed at accountability, ascertaining the truth, redress for victims, reconciliation, and healing, consistent with the Constitution of FDRE and the African Union Transitional Justice Policy Framework."*[178]

Accordingly, the Ethiopian government has adopted the NTJP on 17 April 2024 as the power entrusted to it under Article 51(2) of the FDRE constitution.[179] The NTJP authorizes accountability for those most responsible, while outlining a leeway for those who are not "most responsible" that offers conditional amnesty for truth-telling, disclosure, and reconciliation.[180] Criminal investigation and prosecution solely focused only most responsible person who have participated in the offences at the highest level.[181]

The term "most responsible perpetrator" is defined in the document as;

….a person who through planning, leading, masterminding, coordinating, or giving orders, controls or enables the commission of gross human rights violations, or a superior who fails to discharge his responsibilities to prevent the commission of gross violations by subordinates or a person who directly commit the crime of by his own initiation or those who make a decisive contribution to its commission in any other way.[182]

[177] CoHA (n 147) art 10.

[178] CoHA (n 147) art 10.

[179] CoHA (n 147); Ibid (n 152) Art. 51(2).

[180] NTJP (148) 4_13.

[181] NTJP (148) 7.

[182] NTJP (148) Pg. 3.

Now let's break down the elements of the definitional structure of the term "most responsible perpetrator' to see if this definition is compatible with Article 28 (1) of the FDRE constitution and the global standards.

The interpretation follows is therefore; within the definition given above, only the following are possible 'most responsible perpetrators" within the plain meaning of the terms. These are, planners who design or organize the commission of the gross human rights violations, leaders who direct operations of the crimes, masterminds who conceive and orchestrate the crimes behind the from picture, coordinators who arrange meanness to be used for the commission of the crimes, commanders who give orders for the commission of the crimes, superiors who fails to prevent the commission of the crimes , direct perpetrators by their own initiatives and any one whose actions make a critical impact on the commission of the crime. However, it infers that, low-level participants like ordinary soldiers or civilians who follow orders without significant influence or/and those who provide incidental or minor assistance without decisive impact are not "most responsible perpetrator".

Therefore, the qualification "most responsible perpetrator" used in the definition logically implies that only a small fraction of those who bear responsibility for atrocity crimes are likely to be subject to criminal investigation.

Unpublished unofficial draft of the Transitional Justice Code legislation defines the term " most responsible perpetrator" as ".a person who holds a position of leadership, authority, or effective control over the means of the commission of the crime or materialization of the crime, and plays a central role in planning, masterminding, or orchestrating the commission of a grave crime or gives the order to commit a grave crime, or enables the commission of a grave crime by failing to discharge his responsibility, or directly commits grave crime, or otherwise enables the commission of a grave crime - irrespective of such persons' authority, rank or position of influence.[183] This phraseology may even shield many potential perpetrators from criminal accountability leavening survivors without justice. Though this draft legislation is not binding source it may indicate that

[183] Federal Democratic Republic of Ethiopia, Transitional Justice Code (Draft, unofficial, 2024), art 12.

there no change of the definition of the "most responsible perpetrator" even for the coming legislation.

There is no explicit prohibition of adoption of amnesty laws under any international law.[184] However, states shall not disregard their international human rights obligations and shall always ensure to provide effective remedies to victims of gross violations of human rights and States may not abrogate these duties through the operation of an amnesty.[185] These obligations can emanate from treaty agreements or norms.[186] In this regard, conventionally, all the four 1949 conventions obliges contracting parties to enact penal laws which can enable them to prosecute and put sanctions on those found to be responsible.[187] Similarly the Torture convention urges state parties to investigate the commission of the crime and punish those found responsible.[188] The 1948 Genocide convention also makes genocide an international crime which the state party shall criminalize and punish those found responsible.[189] As regards crimes against humanity, there is no standard treaty yet though human rights relating with crimes against humanity are already attained the status of CIL.[190] Literatures show that crimes like aggression, genocide, crimes against

[184] M. Freeman, Necessary Evils p.32, cited in Adu Anteneh, *Amnesty under the Ethiopian Law: Legal and Practical Challenges* (LLM thesis, July 2021) 33.

[185] UN, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims, Para.3(d).

[186] Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993, art 38(1).

[187] Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, art 49; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85, art 50; Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135, art 129; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 146.

[188] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, arts 4–7.

[189] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, arts 1, 4–6.

[190] Bassiouni (n 169) 68.

humanity, war crimes, piracy, slavery and slave-related practices, and torture are amount to be "jus cogens" or 'preemptory norms" to which no deviation is allowed.[191]

Therefore, even though there is no international law which prohibits amnesty laws, domestic amnesty laws cannot be taken as a defense for breach of international treaty obligations.[192] I couldn't find any literature whatsoever which makes affirmative statements for existence of exceptions to this rule.

International law is applicable in Ethiopia in three different ways, namely as treaty law[193], as aid in interpreting domestic law[194]. Article 9(4) of the FDRE Constitution provides that all ratified international agreements form part and parcel of the law of the land.[195] The question of position of international ratified treaties domestically creates confusion among scholars internally.[196] Ethiopia shall observe international agreements which ensure respect to Ethiopia's sovereignty and are not contrary to the interests of its people.[197] Though, Ethiopia cannot invoke this provision for the sake of "sovereignty and/or interest of the people" to disregard its international treaty obligations when it comes to issues to be raised at international for.[198] Besides, today, gross human right violations are not just domestic matters as the international law is affirming it repeatedly that they are against the international peace and security.[199] Moreover, human rights issues relating with core international crimes are now attained the status of jus cogens from where no derogation is possible

[191] Bassiouni (n 169) 68.

[192] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 27.

[193] FDRE Constitution (n 152) Art. 9(4).

[194] FDRE Constitution (n 152) Art. 13(2).

[195] FDRE Constitution (n 152) Art. 9(4).

[196] Takele Soboka Bulto, 'The Monist–Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia' (2011) 11 African Human Rights Law Journal 132, 133.

[197] FDRE Constitution (n 152) Art. 86(4).

[198] Andrieu (n 144).

[199] Namibia Advisory Opinion [1971] ICJ Rep 16, 31; UNSC Res 1674 (28 April 2006) UN Doc S/RES/1674.

and these obligation is upon all states even on non-party states to any relevant human rights documents.[200]

The FDRE Constitution doesn't directly address the applicability of CIL though these also valid sources of law as per article 38 of ICJ statute.[201] But, as stated earlier, human right treaty obligations relating to core international crimes have argued to attain the jus-cogens status which imposes obligation to every state.[202] Leaving this argument untouched, what is important here is that amnesty for purely political offences such as espionage or producing anti-state propaganda, or common crimes, such as theft or assault, committed with political objectives are not in conflict with state's international law.[203]

The NTJP has provided possibilities of granting amnesty for perpetrators of international core crimes so long as the perpetrators are not, within the meaning of the "most responsible perpetrator".[204] Comparing this to that of the South Africa's amnesty law, the South African amnesty was to be granted for acts, omissions and offences committed with **political objective(** Offence Based Approach**)** and that was constitutionally correct as per the South African 1993 constitution.[205] By contrast, the Ethiopian NTJP however, doesn't focus on the type offences, but rather on the level of participation (Actor Based Approach) in the criminal acts.[206]

[200] ICRC (n 167).

[201] FDRE Constitution (n 152) Art. 9(4).

[202] Andrieu (n 144) 68.

[203] Louise Mallinder, Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws (European Initiative for Democracy and Human Rights 2008) PART III - AMNESTIES AND INTERNATIONAL LAW.

[204] NTJP (n 148) Sec. 2.3.2., pg. 12.

[205] Promotion of National Unity and Reconciliation Act 34 of 1995, s 3(1)(b).

[206] NTJP (n 148) Sec. 2.3.2., pg. 12.

3.1.2.3.The compatibility of the NTJP's Amnesty provisions to the constitution

All types of amnesty are not illegal under the constitution since the constitution has only excluded certain crimes from the ambit of amnesty.[207] To see what offences are excluded from amnesty under the FDRE constitution, let's see Article 28(1) of the FDRE Constitution which reads;

> *Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ.*[208]

Though it cannot be conclusive evidence, the joint investigation of EHRC–OHCHR revealed that facts constituting crimes against humanity, war crimes, torture, forced disappearance are possibly committed with all parties to the conflict in the norther conflict.[209] The constitution didn't leave possibilities of granting amnesty to those who commit these listed crimes.[210] Ironically, however, the NTJP has departed from the constitutional provision when it gives the possibility of amnesty for those who commit these crimes if they are not "most responsible perpetrator" under the NTJP.[211]

Coming back to issue of the compatibility of amnesty under the NTJP with the constitution, assuming that the listing under Article 28(1) is exhaustive, the constitutional provision lists crimes that are outside of the ambit of amnesty for whatsoever reason.[212] The policy intentionally put an exception to the constitutional provision which opens the possibility of granting amnesty to those

[207] T. Berisso & Y. Mitiku (n 171).

[208] FDRE Constitution (n 152) Art. 28(1).

[209] EHRC-OHCHR (n 146).

[210] FDRE Constitution (n 152) Art. 28(1).

[211] NTJP (n 148) sec. 2.3.2., p. 12.

[212] FDRE Constitution (n 152) Art. 28(1).

who commit international crimes including genocide, summary executions, forcible disappearances or torture when perpetrators are not "most responsible".[213]

To conclude, amnesty is not a new phenomenon in Ethiopia since that has been happened in different times in the modern history of Ethiopian legal system as this is discussed at the beginning of this chapter. The Current Amnesty law incorporated under NTJP of the country is the milestone foundation when it comes to dealing with lasting conflict which was reported to involve violations of gross international human rights by human rights bodies.[214] But this amnesty is not limited to only political crimes under the policy unlike different experiences from around the globe show and it is even different from the recent Amnesty proclamation which lists only political crimes.[215] It also comes to stand as negation to the FDRE constitution which was made to exclude certain crimes under 28(1) from amnesty.[216]

[213] NTJP (n 148) sec. 2.3.2., p. 12.

[214] NTJP (n 148) preamble.

[215] Granting of Amnesty to Outlaw Who Have Participated in Different Crimes Proclamation No. 1096/2018, Art. 5(1).

[216] FDRE Constitution (n 152) Art. 28(1).

4. Chapter Four

4.1.Comparative Study and Safeguards and Policy Implications for Ethiopia

It is useful to examine how other jurisdictions have addressed amnesty laws, as this comparison may help to highlight potential challenges, controversies, and the significance of Ethiopia's amnesty law within the current NTJP framework. This chapter will therefore discuss how jurisdictions such as South Africa, Colombia, Sierra Leon, and Haiti have dealt with amnesties with respect to international human rights violations in a transitional justice context and will consider the possible lessons the country can draw from these experiences.

4.1.1. COLOMBIA

Colombia is one of North American countries which has experienced fifty years internal conflict which later come to an end when the peace deal between the Colombian government and Fuerzas Armadas Revolucionarias de Colombia (FARC) was adopted by Colombian Congress in 30 November 2016.[217] The Colombian constitution (1991) has already gave amnesty a constitutional base and hence the two chambers have the mandate to enact amnesty laws for political crimes by two third majority.[218] The relevant provision of the 1991 Colombian constitutions states;.

The Congress shall Grant by a majority of two thirds of the votes of members of both chambers and for serious reasons of public convenience, amnesties or general pardons for political crimes.[219]

In 2016 FARC was of course militarily weakened but was not yet defeated and this was taken as opportunity to end the deadly conflict by peace agreement and accordingly the government and FARC agreed the peace agreement as expected.[220] The peace agreement was mainly made in conformity with the international legal standards though some of its implementation later created controversies; amnesty for certain crimes was strictly challenged by the international human rights

[217] R Urueña, 'Playing with Fire: International Criminal Law, Transitional Justice, and the Implementation of the Colombian Peace Agreement' (2016) 110 AJIL Unbound 364, 364.

[218] Constitution of Colombia 1991, art 150(17) https://codices.coe.int/codices/documents/constitution/db83a4dc-4f6c-4838-b849-32be635a1e36.

[219] Urueña (n 217).

[220] Urueña (n 217) 364.

bodies that was later excluded when the Congress enacted Law 1820 of 2016 which gave the legal details to the peace agreement on 30 December 2016.[221] The amnesty law has two amesites, namely de jure amnesty and de facto amnesty.[222] The De jure amnesty, which was to cover about 5000 militants, was to be given to political crimes and to ordinary crimes like seizure of aircrafts and de jure amnesty was given for all guerrilleros; the president issues decree which list of all persons to enjoy de jure amnesty; the de jure amnesty includes even those who do not have criminal record, all ongoing investigations were to be terminated and court cases closed; and the list of the beneficiary was not be disclosed to the public.[223]

The de facto amnesty was to be granted by Special Peace Jurisdiction (SPJ), created by the peace agreement, to non-political crimes whose connection to political crimes is not established by the amnesty law and it was to be decided case by case by SPJ's Chamber of Amnesty and Pardon.[224] De facto amnesty was to be given for crimes which are specifically related to the rebellion committed during the armed conflict such as death in compatible with the IHL rules, detention of combatants during military operations, crimes which were already defined by the Criminal Code as affecting the constitutional order as a whole, and not a particular victim or group of victims, crimes related with supporting or financing the rebellion, FARC's drug-trafficking crimes.[225] State agents were to be treated in a special way where the SPJ characterizes their act as grave violations except for international crimes.[226]

The other issue with the Colombian amnesty was prosecuting commanders for the acts of their subordinate and in this regard, though the peace agreement and the amnesty law defines the scope of 'commander responsibility' in different ways, the SPJ has adopted a more restrictive standard which is almost prohibitive threshold "effective control" and "effective knowledge.[227] so, commanders will be prosecuted only if they were actually knew and could actually control the act

[221] Urueña (n 220) 364-65.

[222] Urueña (n 220)365.

[223] Urueña (n 220)365.

[224] Urueña (n 220) 365.

[225] Urueña (n 220)365.

[226] Urueña (n 220) 366.

[227] Urueña (n 220)367.

of the subordinate and ICC finally reported to the case that it might prosecute if the system creates impunity while granting amnesty tor commanders who should have be prosecuted.[228]

4.1.2. Seirra Leion Amnesty law

A decade long conflict in Seirra Leon between the government of Seirra Leon and Revolutionary United Front (RUF) was come to an end when peace agreement was concluded on 7 July 1999 which, among other things, conferred RUF a blanket amnesty.[229]

United Nations Special Representative of the Secretary-General for Sierra Leone objected to the peace agreement stating that it should not applicable to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law.[230] Hence the government of Seirra Leon and UN has signed an agreement to create Special Court for Sierra Leone (SCSL) on 16 January 2002, ad hoc criminal tribunal, to prosecute serious violations of human rights following the UNSC resolution 1315.[231] A case (Prosecutor vs Kallon and Kamara) were accused before the special court and they presented to this court and their allegation was that the peace agreement between the government and RUF was an international treaty made in accordance of the 1969 VCLT that the agreement between UN and the government shall not alter the previous agreement and thereby govern us.[232] The SCSL Appeals chamber analyzed issues of whether the insurgents (RUF) can enter international treaty and the legal effect of Article 10 of the Statute, whether chamber has authorized to review the legality of the statutory provision of the statue which created the court itself and the issue of the limits of amnesty laws under international law.[233] Regarding the first issue the appeal chamber analyzed that the mere fact that UN (non-state body) and other third party has signed an agreement doesn't make that agreement an international treaty and the Lome agreement cannot be treated as an international treaty (it is

[228] Urueña (n 220)368.

[229] Lomé Peace Agreement (Ratification) Act 1999 (Sierra Leone) <http://www.sierra-leone.org/Laws/1999-3.pdf> accessed 5 March 2026.

[230] Simon M Meisenberg, 'Legality of amnesties in international humanitarian law: The Lomé Amnesty Decision of the Special Court for Sierra Leone' (2004) 2 Journal of International Criminal Justice 445, 839 <https://academic.oup.com/jicj/article/2/2/445/873008> accessed 5 March 2026.

[231] Ibid 837–838.

[232] Ibid 839.

[233] Ibid 840.

domestic peace accord) and cannot bind UN and in the analysis of the case it was stated that UN was just mediating between the government and RUF to conclude the peace agreement.[234] Regarding the RUF's capacity to enter in to international treaties, the Chamber has disallowed legal personality to RUF under international law.[235] As to whether the court has jurisdiction and inherent powers to review the legality of the statute, the chamber has decided that the court has no power to declare its own constitution unlawful.[236] Regarding the limits of amnesty laws, the chamber has stated that granting amnesty is purely a domestic matter though such domestic practice cannot be taken as forgetfulness before an international jurisdiction and it cannot deprive another State of its jurisdiction to prosecute such international crime.[237]So, the Appeal chambers has decided that any amnesty accorded to any person violating serious international crimes is then made null and void by Article 10 of the statute and such amnesty cannot bar prosecution of such person before SCSL.[238] The Lome decision becomes the first international criminal court to decide that amnesties cannot bar prosecution of gross human rights violation even when amnesty is awarded.[239] Of course ICTY in its Furundzija Judgment has already decided that a person who committed Torture can be prosecuted in another state or even by a subsequent Government after being granted amnesty for the crime.[240]

[234] Prosecutor v Kallon and Kamara, Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, SCSL-2004-15-AR72(E); SCSL-2004-16-AR72(E) (Appeals Chamber, 13 March 2004) paras 37–42 <https://www.worldcourts.com/scsl/eng/decisions/2004.03.13_Prosecutor_v_Kallon_Kamara.pdf?utm_source=copilot.com> accessed 10 March 2026.

[235] Ibid Para 45.

[236] Ibid Para 62.

[237] Ibid Para 67_72.

[238] Statute of the Special Court for Sierra Leone 2000 <https://www.rscsl.org/Documents/scsl-statute.pdf> accessed 5 March 2026.

[239] Simon M (n 230) Para 843.

[240] Kallon and Kamara (n 234) para 155.

4.1.3. South Africa

As discussed in chapter two, after a long struggle against the apartheid in South Africa, a new constitution was adopted in 1993 which has a provision for amnesty for "acts, omission and offences associated with political objectives and crimes committed in the course of the conflict of the past"[241] which in turn pave the way for the 1995 truth and reconciliation act which has a provision giving protection for certain persons who have committed political human right abuses against civil and criminal liability.[242] According to the act, if any one who is suspected of committing those political crimes, he shall present himself to the truth and reconciliation commission within a specific period of time and make a full disclosure of all the relevant facts relating to acts associated with a political objective.[243] The commission was duty bound to give chance to the victim to present his own account of the relevant alleged violation and recommend reparation.[244] Even after the release of N. Mandela from prison in 1990, the country was in danger as the power battle among white and black resulted in terror and human rights violations which in turn necessitated the adoption of interim constitution which aims at bringing reconciliation and reconstruction and Truth and Reconciliation Commission was enacted.[245] One of the committee of TRC is Committee on Amnesty (members selected from all parties) which was mandated to receive and grant amnesty for applications who fully and frankly disclosed acts committed from 1 March 1960 and 10 May 1994 which were perpetrated in pursuance of a political objective.[246]

By 2009, 5500 amnesty applicants were submitted and only 900 amnesties were given in which ANC topped the list and from this over 60 percent were for crimes that had not resulted in the loss

[241] Constitution of the Republic of South Africa Act 200 of 1993, s 251.

[242] Promotion of National Unity and Reconciliation Act 34 of 1995, s 20(7).

[243] Ibid S. 3(1)(b).

[244] Ibid S. [3(1) ©].

[245] Kobina Egyir Daniel, *Amnesty as a Tool of Transitional Justice: The South African Truth and Reconciliation Commission in Profile* (LLM dissertation, University of Pretoria, 30 November 2001) 26_27.

[246] Act 34 (n 242) s 19, 20 and 3(1)(b)–(c).

of life such as arson, public violence, unlawful possession of arms, belonging to a banned organization or attending unlawful gatherings, robbery and causing harmless explosions so as to facilitate infiltration of freedom movements.[247]Among these granted amnesties, 60 % were already been prosecuted and were serving or had already served their sentences while others are on court based bail.[248] For cases involving loss of life, all the circumstances to be proportionate to the political objective pursued.[249]

When one of the prominent case(AZAPO v President of the Republic of South Africa) in 1996 was brought before the South African Constitutional court challenging amnesty for political crimes claiming that that is against constitutional right of access to justice before court, the court decided that as per the post amble of the interim constitution (end of the constitution), amnesty was part of the reconstruction and reconciliation process of the interim constitution and therefore it indeed ruled constitutional.[250]With respect to allegation regarding amnesty violating international obligations, the court ruled that international obligations are only applicable by the court if they are made integral part of the law and not inconsistent with the constitution.[251] The court also cited article 6(5) of the Protocol II to the Geneva Conventions of 1949 as an international norm favoring amnesty.[252] However, the court should consider the relevance of CIL imposing obligations on all states[253] since, beyond treaties imposing human rights obligations on state parties, crimes against

[247] Daniel (n 245) 35.

[248] Petros Sosibo: Amnesty Application No AM 1099/96 Decision No. AC/2000/0006; cited in Kobina Egyir Daniel, *Amnesty as a Tool of Transitional Justice: The South African Truth and Reconciliation Commission in Profile* (LLM dissertation, University of Pretoria, 30 November 2001) 35 n 53; Sipho Wellington et al: Amnesty Application No AM 3202/96 Decision No. AC/1997/0040; cited in Kobina Egyir Daniel, *Amnesty as a Tool of Transitional Justice: The South African Truth and Reconciliation Commission in Profile* (LLM dissertation, University of Pretoria, 30 November 2001) 35 n 54.

[249] Sipho Biko et al: Amnesty Application No AM 2916/96 Decision No. AC/99/0251; cited in Kobina Egyir Daniel, *Amnesty as a Tool of Transitional Justice: The South African Truth and Reconciliation Commission in Profile* (LLM dissertation, University of Pretoria, 30 November 2001) 35 n 52.

[250] *Azanian Peoples Organisation (AZAPO) and Others v President of the Republic of South Africa* 1996 (4) SA 671 (CC).

[251] *Ibid para* 25–30.

[252] *Ibid* paras 28_30.

[253] Daniel (n 245) 42.

humanity under CIL law which were subsequently codified by the statutes of the ICTY and ICTR can arguably impose obligations on every state.[254]

4.1.4. Haiti

Eight months just after Jean Bertrand Aristide was elected as the first democratically elected president of Haiti in 1990, Aristide was exiled when a military coup was taken place and the military leaders, the military regime later committed massive human rights violations like state-sanctioned massacres, disappearances and assassinations, widespread political rapes, arbitrary arrests and detentions in inhumane condition, and torture.[255] When the international effort to reinstate Aristide and to end atrocities in Haiti was paused, UNSC imposed a worldwide oil and weapons embargo and ordered worldwide freeze of Haitian government assets and the personal assets of the military leaders and their leading civilian supporters.[256] After failed imposed persistent UNSC's sanctions on Haiti military leaders and Haiti and continued human rights violations, UNSC took the extreme step of authorizing an invasion of Haiti by a multinational force in 31 July 1994.[257] Immediately, the military leader promised to step down and exile as agreed 18 September 1994 and USA has assisted the exile of the military leaders to Panama.[258] For the sake of their own interests, the choice to prefer amnesty over prosecution was an imposed by America and UN and amnesty was not what the Aristide's side decided by their own.[259] The Haiti amnesty act was enacted in 6 October 1994 and the pertinent preamble part of the amnesty law reads;[260]

> Whereas, to end this crisis that is so cruelly eating away at the country, to the extent that the State's own existence is imperiled, Amnesty is likely to reconcile the nation with itself

[254] Motala 'The Promotion of National Unity and Reconciliation Act, the Constitution and International Law' (1995) 28 Comparative and International Law Journal of South Africa 338;Roht-Arriaza 'State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law' (1990) 78 California Law Review 45.

[255] Michael P Scharf, 'Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?' (1996) 31 Texas International Law Journal 1, 4_5.

[256] UNSC Res 841 (16 June 1993) UN Doc S/INF/49.

[257] UNSC Res 940 (31 July 1994) UN Doc S/RES/940.

[258] Michael (n 255) 7_8.

[259] Michael (n 255) 1, 8.

[260] I Michael (n 255) 15

by covering it with a lawful shield of oblivion to general political events that disrupted the life of the nation.

The relevant provision (Article 1) of the act reads;

> *…..the right to amnesty granted to the President by the Constitution only applies to political matters, that is to say, in all cases of crimes and misdemeanors against the state, internal and external security, crimes and misdemeanors affecting public order and accessory crimes and misdemeanors as defined by the Penal Code. Amnesty can be declared either before or after prosecutions and even after convictions in absentia.*[261]

By political crimes or acts of "political matters" the legislation defines it as "crimes and misdemeanors against the internal and external security of the State or affecting the public order as well as "accessory crimes and misdemeanors".[262]

So, crimes within the ambit of amnesty law are political crimes as stated in the amnesty act. Though those who commit human rights violations go un punished, the general amnesty given to the military members has saved further human rights violations in Haiti.[263] The point to taken in to mind here is that the amnesty given to the Haiti military can be challenged either by Haiti domestic court or an international court if it was taken to shield gross human rights violation despite the fact that UN played a role in the peace agreement as per Michael P. Scharefs article.[264] It is said that duty to prosecute war crimes in domestic wars or international conflicts has attained the status of CIL, but, Michael P. Scharefs is of opinion that no duty to prosecute military men in Haiti as such duty is no there in case of internal conflicts.[265]

4.1.5. Analyzing the Comparison between the above scenarios with the Ethiopian amnesty law

The 1995 Ethiopian FDRE constitution followed the exclusion model of amnesty. Crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of

[261] Michael (n 255) 15.

[262] Michael (n 255) 16.

[263] Michael (n 255) 11.

[264] Michael (n 255) 18_19.

[265] Michael (n 255) 21.

Ethiopia, such as genocide, summary executions, forcible disappearances or torture are excluded from the ambit of amnesty.[266] The Colombian constitution, however, followed the inclusion model when it lists crimes which are within the domain of the amnesty to be granted.[267] The amnesty legislation enacted by Colombia was at least in line with the constitutional provision with respect to amnesty as the legislation gives amnesty only for those political crimes committed during the conflict and the legislation further goes to exclude crimes against humanity, genocide and war crimes as stated above.[268] The NTJP of Ethiopia however goes against the constitutional provision as regards amnesty when it tries to include, by qualifying, those constitutionally excluded crimes based on the "most responsible" model.[269] The 1995 FDRE constitution doesn't include in the domain of amnesty those crimes listed under the relevant constitutional provision.[270] Besides the Colombian amnesty was said to be in line with the international law as it didn't include international crimes for into the domain of amnesty while the NTJP tries to deviate from the international standards when it included international crimes committed by those who are "not most responsible.[271]

The Seirra Lion peace agreement was, however, granted blanket amnesty to the RUF without consideration to international crimes.[272] Since the UN has objected to the peace agreement, UN and the Seirra Lion government has entered in to separate agreement and accordingly Special Court for Sierra Leone (SCSL) was created on 16 January 2002.[273] This court has laid basic principles as regards peace agreement concluded disregarding international core crimes and according to the ruling of this court, insurgents cannot enter into international agreements, but only peace accords

[266] Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazette, Year 1, No. 1 (Addis Ababa, 21 August 1995), Art. 28(1).

[267] Colombian Constitution (n 218) art 150(17).

[268] Urueña (n 217), 364-65.

[269] Ibid (n 218); Ibid (n 266) Art. 28(1).

[270] FDRE Constitution (n 266) Art. 28(1).

[271] Urueña (n 217), 364-65; Federal Democratic Republic of Ethiopia, *National Transitional Justice Policy* (17 April 2024) sec. 2.3.2., p. 12; FDRE Constitution (n 266). 28(1).

[272] Simon M. (n 230), 849.

[273] Simon M. (n 230), 837.

as stated above under.[274] One cannot invoke such peace accords to disregard other international treaties, and any peace agreement and domestic legislation cannot be defense to avoid accountability arising from commission of international core crimes.[275] Besides, any amnesty given to a person responsible for committing international core crimes, as per domestic legislation or peace agreement cannot bar another prosecution in different jurisdiction or by the same jurisdiction later after change of government.[276] Coming to the current Ethiopian amnesty policy, the criteria used by the policy to exclude some sort of crimes from the ambit of amnesty can be problematic when it comes to gross human rights violation. The qualification used by the Policy, "not most responsible", cannot be defense for future prosecution either domestically or by other jurisdictions.[277]

The 1993 South African Constitution has an amnesty provision and according to the relevant constitutional provision; acts, omission and offences associated with political objectives and crimes committed during the conflict of the past are included in the domain of amnesty.[278] Then the truth and reconciliation act has then provided conditional amnesty to those who are suspected of committing political crimes.[279] The Ethiopian amnesty is also conditional amnesty in which both the applicant (suspect) and the victim can participate in the process.[280] Accordingly it premises that the South African amnesty was enacted without surpassing the constitutional amnesty provision unlike that of Ethiopian amnesty under the current NTJP.[281] The main problem

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[274] I Kallon and Kamara (n 234), paras 37–42.

[275] Kallon and Kamara (n 234), paras 37–42.

[276] Kallon and Kamara (n 234), paras 37–42. <

[277] Federal Democratic Republic of Ethiopia, *National Transitional Justice Policy* (17 April 2024) glossary and sec. 2.3.2., p. 12.

[278] S.A Constitution (n 241), s 251.

[279] Act 34 (n 242) s 20(7).

[280] NTJP (n 277), sec. 2.3, p. 12.

[281] Comparing Constitution of the Republic of South Africa Act 200 of 1993, s 251 with Promotion of National Unity and Reconciliation Act 34 of 1995, s 20(7 vs Constitution of the Federal Democratic Republic of Ethiopia,

with the Ethiopian NTJP policy is that, unlike the amnesty of South Africa, amnesty is not only for those who are suspected of committing political crimes, but for any crime so long as the perpetrator is "not most responsible" within the meaning of the term of the policy.[282] This qualification, "most responsible perpetrator", of perpetrators by the Ethiopian NTJP can equally be problematic when it comes to core international crimes since there is possibility of granting amnesty for those who commit gross human rights violations if they are not "most responsible perpetrator".

In Haiti massive human rights violations like state-sanctioned massacres, disappearances and assassinations, widespread political rapes, arbitrary arrests and detentions in inhumane condition, and torture were all alleged committed by the military. The UN Security Council taken the gross human rights violations being committed in Haiti as threat to international peace and authorize multinational force to intervention. By the time the USA force heading to Haiti, the military shown interest to peace agreement and to step down and exile. The relevant 1987 Haiti constitutional provision gives the president the power to grant amnesty only for political matters as stipulated by law.[283] The amnesty law of 6 October 1994 then was only applies to political matter that is to say in all cases of crimes and misdemeanors against the state, internal and external security, crimes and misdemeanors affecting public order and accessory crimes and misdemeanors as defined by the Penal Code.[284] The amnesty decree of the president was not conditional as the military was given heaven in Panama without being asked to disclose facts and avail themselves let alone assisting truth finding of the transitional justice.[285] Comparatively, the amnesty law contemplated by the NTJP , however, is not in line with the constitutional terms of the constitution regarding amnesty and international crimes.[286] Ironically, the contemplated amnesty under the NTJP was

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Proclamation No. 1/1995, Federal Negarit Gazette, Year 1, No. 1 (Addis Ababa, 21 August 1995), Art. 28(1) with Federal Democratic Republic of Ethiopia, *National Transitional Justice Policy* (17 April 2024).

[282] NTJP (n 277), glossary and sec. 2.3.2., p. 12; FDRE Constitution (n 266) Art. 28(1).

[283] Haiti, *Constitution of 1987* <https://hdndigest.org/haitian-constitution-1987-english/> accessed 20 March 2026, art 147.

[284]Act 34 (n 242), s 20(7) s 19, 20 and 3(1)(b)–(c).

[285] Michael (n 255), 7_8.

[286] NTJP (n 277), glossary and sec. 2.3.2., p. 12.

conditional and practically gives the chance to check what crimes were really committed during the conflict. As the core international crimes are concerned, the Haiti amnesty decree is said to be in line with the international obligations concerning core crimes as it was only limited to political crimes unlike the Ethiopian amnesty under the NTJP for the same reasons stated above.

4.1.6. Safeguards and Policy Implications

Population of Ethiopia is expected to be around 138 million.[287] Amnesty is said to serve as collateral tool for doing justice for past events to ascertain peace and reinstatement while considering gross human rights violations with different lens.[288] Employing amnesty by itself cannot bring the desired results though.[289] The Seirra Leon Amnesty has faced international objection, and special court for Seirra Leion was established through the auspice of UN to deal with the case. [290] For the continued human rights violations by the military government in Haiti, the UNSC has taken the extreme step of authorizing an invasion of Haiti by a multinational force in 31 July 1994.[291] Similarly, for those atrocities created in Chile, though amnesty was granted to those who were responsible for the crimes, General Pinochet was later indicted before the English courts and prosecuted for heinous crimes committed in Chile since there is always an international jurisdiction for each state for such crimes.[292] Even the former Ugandan blanket amnesty act of 2000 was largely opposed by the international community since the amnesty was granted to all most responsible for gross human rights violations in disregard of Uganda's international

[287] Nations Geo, *Ethiopia Population*<https://nationsgeo.com/population/africa/et/?utm_source=copilot.com> accessed 23 March 2026.

[288] Daniel (n 245) 16 & 17.

[289] Louise Mallinder, 'Amnesties and Transitional Justice' in C Lawther and L Moffett (eds), *Research Handbook on Transitional Justice* (2nd edn, Edward Elgar 2023) 262.

[290] Simon M. (n 230) 839.

[291] UNSC Res 940 (n 257).

[292] *R v Bow Street Metropolitan Stipendiary Magistrate and Others, ex parte Pinochet Ugarte (No 1)* [1998] 4 All ER 897 (HL).

obligations and hence the act was later amended to exclude gross human rights violations from the domain of amnesty where prosecution were pursued instead. [293]

Similarly there are pushes and criticisms from outside on Ethiopian government to enable conditions to prosecute those individuals responsible for the crimes committed during the northern conflict.[294] Considering the seriousness of the case, the UNSC has been discussing on the issue of Northern conflict of Ethiopia and that can be taken as a signal that the matter can be an international security issue.[295] The Civil Society organizations are also arguing that the transitional justice policy is not in compliance with international standards.[296]All these scenarios can be good indication and signals for Ethiopia to reconsider the ongoing process of transitional justice frameworks so that the risks will be minimized. Internal laws cannot be invoked against failure to obey international obligations. Besides, the Ethiopian constitution is the supreme law of the land[297] and the amnesty anticipated under the current NTJP should at least respect the untouchable margines made by the constitution.[298] The exclusion of only those "most responsible" individuals from the ambit of amnesty is not proper choice if all persons who are responsible for committing

[293] Justice Law and Order Sector (JLOS), 'Amnesty Issues Paper' (Judiciary of Uganda, undated) 9 <https://www.judiciary.go.ug/files/downloads/JLOS-Amnesty%20Issues%20Paper.pdf> accessed 30 March 2026; Amnesty International, 'Uganda: Justice for Victims of War Crimes and Crimes against Humanity' (Amnesty International, August 2005) <https://www.amnesty.org/ar/wp-content/uploads/2021/08/afr590082005en.pdf?utm_source=copilot.com> accessed 30 March 2026.

[294] Amnesty International, 'It is long overdue for the African and global human rights bodies to bring Ethiopia back to their agenda, including setting up public and private engagements on the situation in the Amhara region' (Amnesty International, 22 August 2024) <https://www.amnesty.org/en/latest/news/2024/08/it-is-long-overdue-for-the-african-and-global-human-rights-bodies-to-bring-ethiopia-back-to-their-agenda-including-setting-up-public-and-private-engagements-on-the-situation-in-the-amhara-region/?utm_source=copilot.com> accessed 30 March 2026.

[295] UN Security Council, 'Report of the Security Council mission to Ethiopia, 5 and 6 October 2023' (2 February 2024) UN Doc S/2024/130 <https://digitallibrary.un.org/record/4051234> accessed 30 March 2026.

[296] Global Centre for the Responsibility to Protect, 'Civil Society Concerns in Achieving Transitional Justice and Accountability for Atrocities in Ethiopia' (Global Centre for the Responsibility to Protect, 2023) <https://www.globalr2p.org/publications/civil-society-concerns-in-achieving-transitional-justice-and-accountability-for-atrocities-in-ethiopia/> accessed 30 March 2026.

[297] FDRE Constitution (n 266) Art. 9.

[298] FDRE Constitution (n 266) Art. 28(1).

gross human rights violations are excluded. In Uganda the plan to prosecute only "most responsible" persons was opposed to where later an amendment is made to the amnesty law to prosecute all those responsible Lord Resistance army perpetrators.[299]

4.1.7. Conclusions

To conclude, the amnesty contemplated by the NTJP is not within the limits made by the 1995 FDRE constitution which has totally excluded any crime of Humanity, such as genocide, summary executions, forcible disappearances or torture from ambit of amnesty.[300] The listed crimes under the relevant constitutional provision are excluded from the domain of amnesty in the country.[301] The term "such as" is also to indicate that the listing is not seem to be exhaustive though the power to interpret the constitution remains to be for the HoF.[302] The policy is a legal document enacted by the Council of ministers as per the powers entrusted to the council by the constitution.[303] The Federal government is empowered to implement the policies formulated under the constitution.[304] It is also clear that Ethiopia is party to international treaties like Torture convention, 1949 Geneva conventions, and genocide convention, ICCPR, The African Charter on Human and Peoples' Rights.[305] The Torture convention and genocide convention impose the duty to prosecute on state parties. ICTY in its Furundzija Judgement discussed the validity of amnesties under international

[299] Louise Mallinder, *Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws* (European Initiative for Democracy and Human Rights 2008) Part IV 'Regional Trends in the Use of Amnesties, Sub-Saharan Africa, Uganda'.

[300] FDRE Constitution (n 266) Art. 28(1).

[301] NTJP (n 277), glossary and sec. 2.3.2., p. 12.

[302] FDRE Constitution (n 266) Art. 62(1).

[303] FDRE Constitution (n 266) Art. 51(2).

[304] FDRE Constitution (n 266) Art. 51(2).

[305] United Nations Treaty Collection, *Convention on the Prevention and Punishment of the Crime of Genocide* (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, Ethiopia accession 1 July 1949; OHCHR, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, Ethiopia accession 14 March 1994, OHCHR, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Ethiopia accession 11 June 1993; and ICRC, *Geneva Conventions of 12 August 1949* (entered into force 21 October 1950), Ethiopia ratification recorded in ICRC Treaties Database.

law and found that an individual could be prosecuted for torture before an international tribunal, by a foreign State and under a subsequent regime even if the conduct in question had been the subject of an amnesty[306] The 1949 Geneva conventions, however, lack such parallel provision which imposes duty to prosecute war crimes when the type of the conflict is non international armed conflicts.[307] Since international armed conflict are all cases of declared war or of any other armed conflict which may arise between two or more of the high Contracting Parties the crimes committed in Ethiopia, to which the NTJP applies, are that of a non-international armed conflict (NIAC).[308] Therefore, it implies that though committing the crimes under Article 3 common to all the four Geneva conventions are illegal, there is no binding legal ground which imposes duty to prosecute.

Ethiopia is not yet signatory to the international convention for the protection of all persons from Enforced disappearance.[309] However, the FDRE constitution has already guaranteed protection against such crime.[310] In this regard, the Ethiopian Human Rights Commission has already submitted written statement to UN Human Rights Council, back in 2024, and reported that it has investigated, documented and reported on over 200 cases that may constitute enforced disappearance within the preceding three years from the date of the report.[311] Therefore any act which may grant amnesty for persons responsible for enforced disappearance amounts to be

[306] Prosecutor v Anto Furundzija (Judgment) ICTY-95-17/1-T (Trial Chamber, 10 December 1998) para 155.

[307] Geneva Convention (I) (1949) art 49; Geneva Convention (II) (1949) art 50; Geneva Convention (III) (1949) art 129; Geneva Convention (IV) (1949) art 146; Jean Pictet (ed), *Commentary on the Geneva Conventions of 12 August 1949* (ICRC 1952) 357; Antonio Cassese, *International Criminal Law* (2nd edn, OUP 2008) 65–70.

[308] Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, art 2.

[309] Office of the High Commissioner for Human Rights (OHCHR), *Status of Ratification: International Convention for the Protection of All Persons from Enforced Disappearance* (OHCHR, 2026) <https://treaties.un.org> accessed 1 June 2026; Ethiopian Human Rights Commission, 'The Human Right to Protection from Enforced Disappearance' (11 May 2022) <https://ehrc.org> accessed 14 May 2026.

[310] FDRE Constitution (n 266) Art. 28(1).

[311] United Nations Human Rights Council, 'Written submission by the Ethiopian Human Rights Commission' UN Doc A/HRC/57/NI/3 (17 September 2024).

unconstitutional in this regard since that is already excluded under Article 28 of FDRE constitution.

Though Crimes against humanity lacks a comprehensive international treaty basis by its own, the crime is defined under the Rome statue. [312] The term is also defined under ICTY and ICTR.[313] Though the scope and definition of CaH is not the matter to be discussed under this paper, CaH is now said to attain the status of CIL to which no deviation is allowed despite the fact that there is no duty to prosecute under international law.[314] CIL concerning crimes against humanity, therefore, does not provide a solid basis for challenging the validity of the Amnesty Law.[315] But the case of Ethiopia should also be seen in light with the relevant constitutional provision which has already ousted CaH from the domain of amnesty.[316]

Besides African commission on Human and peoples' rights, in the case involving Burkina Faso for past human rights violations, is trying to extend state parties treaty obligation (invoking Articles 3, 4, 5, 6 7 (1)(d) and 12(1) of the African Charter on Human and Peoples' Rights) to include investigation, criminal prosecution together with reparation for victims.[317]

The experiences of different jurisdictions which are duly discussed above under this chapter show their relevant amnesty legislations are in line with their respective constitutional frameworks. The crimes to be included in the amnesty laws are political crimes, excluding core international crimes while the amnesty contemplated under the current NTJP fails to specify political crimes as crimes for which amnesty law applies to. Rather it gives the chance of getting amnesty while still committing core international crimes so long as they are not "most responsible" within the

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[312] Rome Statute of the International Criminal Court, 17 July 1998, art 7.

[313] Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), 25 May 1993, art 5; Statute of the International Criminal Tribunal for Rwanda (ICTR), 8 November 1994, art 3.

[314] M Cherif Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (1996) 59 *Law and Contemporary Problems* 63, 68.

[315] Michael (n 255) 39.

[316] FDRE Constitution (n 266) Art. 28(1).

[317] Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso (2001) AHRLR 51 (ACHPR 2001), Communication 204/97.

meaning of the policy. The term is a ‘superlative adjective/adverb” which compares three or more things. Logically, Core international crimes committed by those who are not “most responsible perpetrator” can be within the amnesty domain.

5. Chapter Five

5.1. Conclusions and recommendations

5.1.1. Conclusion

In the proceeding chapters (3 and 4), it is discussed that the amnesty provisions of the current NTJP have some problems compared to the international and regional standards with respect to amnesty against gross violations of human rights. Both the international and regional norms call for prosecution for these crimes as already seen in those chapters. It is also revealed that the amnesty provisions are not in line with the 1995 FDRE constitutional provisions relating to some serious crimes as proclaimed under Article 28(1) of the constitution. In this chapter, the conclusions and the way forward for Ethiopia shall be made in light with the analyses and the findings already made ahead.

5.1.1.1.The duty to prosecute gross human rights violations under international law

It is already stated that states parties to certain treaties are duty bound under the treaties to prosecute core international crimes.[318] To make conclusions and recommendations as to whether Ethiopia is duty bound to prosecute crimes committed within the time temporality of the NTJP under international law, it is necessary to put the following initial conclusions ahead.

[318] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 7; Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, arts 4–6, Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, art 49; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85, art 50; Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135, art 129.

1. All the four 1949 Geneva conventions oblige contracting parties to enact penal laws which can enable them to prosecute and put sanctions on those found to be responsible.[319] Since Ethiopia is party to these Geneva conventions, it bears the duty to prosecute war crimes committed in any international armed conflict. The conflict to which the NTJP applies is mainly the northern Tigray conflict and it is a non-international armed conflict with the meaning given to armed conflict by the 1949 Geneva conventions.[320] There is no duty to prosecute war crimes under the Geneva conventions for a non-international armed conflict. Therefore, Ethiopia shall not be legally bound to prosecute the possible war crimes committed within the temporality time frame of the NTJP's application.
2. With respect to the Genocide conventions, the duty to prosecute genocide crimes is intact against Ethiopia. Though the joint investigation of *EHRC*–OHCHR didn't indicate possible occurrence of genocide crimes,[321] the issue of whether genocide crimes are really committed or not, during the Tigray conflict or at another time, is to be proven by the investigation to be carried out during crime investigation and prosecution. Therefore, Ethiopia is duty bound to prosecute genocide crimes under the Genocide convention.[322]

[319] Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, art 49; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85, art 50; Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135, art 129; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 146.

[320] Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, art 2.

[321] Office of the United Nations High Commissioner for Human Rights and Ethiopian Human Rights Commission, *Report of the EHRC–OHCHR Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed in Tigray Region, Ethiopia* (OHCHR 2021) https://www.ohchr.org/sites/default/files/2021-11/OHCHR-EHRC-Tigray-Report.pdf (ohchr.org in Bing) accessed 26 February 2026.

[322] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, arts 1, 4–6.

3. The torture convention also holds the obligation to prosecute torture crimes against member states.[323] Since Ethiopia is party to this treaty, the country bears such duty to prosecute under the treaty.
4. The Issue of whether the duty to prosecute exists under the ICCPR is uncertain as the convention has no explicit provision which obliges state parties to the convention. There is no international legal document imposing such duty to prosecute in Ethiopia.
5. African commission on Human and peoples' rights is already adopted the principle of investigation and prosecution of human rights violations though that remains to be soft law (not binding).[324] Therefore, unless a specific crime is to be included in any other legal document which imposes duty to prosecute, such duty to prosecute under the AU charter is not yet certain to exist and hence Ethiopia may not be obliged to prosecute under the legal document.
6. The issue of whether there is a duty to prosecute CaH is uncertain unless the crimes are already covered under torture convention or/and genocide convention or any other legal source.

Therefore, this study concludes that the amnesty provisions of the current NTJP are against treaty obligations emanating from both genocide and torture conventions.

5.1.2. The duty to prosecute gross human rights violations under the 1995 FDRE constitution

It is proved that the 1995 FDRE has already excluded crimes against humanity, as defined by treaties ratified by the country and by other domestic laws, from the domain of amnesty.[325] Even though the constitution is not clear why it tries to make crimes like genocide, summary executions, forcible disappearances or torture as part of crimes against humanity, for the purpose of this thesis, it clear that those crimes listed under Article 28(1) of the FDRE constitution are not to be

[323] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, arts 4–7.

[324] Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso (2001) AHRLR 51 (ACHPR 2001), Communication 204/97.

[325] Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazette, Year 1, No. 1 (Addis Ababa, 21 August 1995), Art. 28(1).

commuted by amnesty or pardon. Ironically, the NTJP has already failed to, explicitly, exclude these crimes from the ambit of amnesty since it has rather tried to exclude only those who are "most responsible perpetrator" from the domain of amnesty.[326] This method of exclusion, together with the problems associated with disguised amnesty (practical problems associated with implementation), is problematic and not aligned with the constitutional safeguards already set in place.

In this regard, therefore, the current NTJP provisions relating to accountability for gross human rights violations and amnesty provisions are unconstitutional.

5.1.3. Recommendations

Having the general objective of the NTJP which is to ensure enduring peace, reconciliation, rule of law, justice, and democracy in mind, the paper has recommended the following way forward.

5.1.3.1.Aligning with the international standards of NTJP

As already proved by this paper, amnesty is a transitional justice tool which has now already got acceptance all over the world.[327] Amnesty for purely political offences such as espionage or producing anti-state propaganda, or they could be common crimes, such as theft or assault, committed with political objectives are not in conflict with state's international law.[328] The NTJP of Ethiopia, however, tried to use amnesty for person who are not "most responsible perpetrator". This is a different method that Ethiopia has employed compared to other similar policy documents which are contemporarily being employed by others as the comparative study has revealed in this paper. Coupled with possible practical problems associated with amnesty laws implementation, using this method of exclusion, at least invite for criticism from different sides, in or outside. As discussed earlier under chapter four, for the matters relating with the current NTJP of Ethiopia,

[326] Federal Democratic Republic of Ethiopia, *National Transitional Justice Policy* (17 April 2024) glossary and sec. 2.3.2., p. 12.

[327] Kobina Egyir Daniel, *Amnesty as a Tool of Transitional Justice: The South African Truth and Reconciliation Commission in Profile* (LLM dissertation, University of Pretoria, 30 November 2001) 26_27.

[328] Louise Mallinder, Fighting Impunity and Promoting International Justice: Draft Global Comparison of Amnesty Laws (European Initiative for Democracy and Human Rights 2008) PART III - AMNESTIES AND INTERNATIONAL LAW.

both the 1948 genocide convention and 1984 Torture convention imposes duty to prosecute[329] while the policy document has failed to exclude crimes relating with these conventions clearly.

Therefore, the NTJP provisions relating with accountability and amnesty shall be revised based on the international standards to explicitly exclude crimes of genocide and torture since these are the legal sources imposing duty to prosecute under international treaty obligation.

5.1.3.2. Aligning amnesty under the NTJP with the 1995 FDRE constitution

The 1995 constitution has already excluded crimes against humanity and other crimes like genocide, summary executions, forcible disappearances or torture from the ambit of amnesty.[330] For the reasons discussed earlier, there is a bold prohibition of amnesty for crimes listed in the FDRE constitution. Accordingly, these crimes should automatically be explicitly excluded from the domain of amnesty in the NTJP. Therefore, the NTJP shall be reconsidered and amended accordingly before taking next steps of adopting new legislation to implement the policy.

[329] Genocide convention (n 322); Torture Convention (n 323); NTJP (n 326).

[330] FDRE constitution (n 325).

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