

Policy Brief



Making Ethiopian Customary Institutions Relevant for the National Dialogue and Reconciliation Processes

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****Eyasu Yimer, Tessema Getahun, and Markos Debebe** were commissioned by UNDP-Ethiopia to write this report as part of a wider support to the governance, peace building, and social sector.

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Policy Brief: Making Ethiopian Customary Institutions Relevant for the National Dialogue and Reconciliation Processes

Customary Institutions (CIs), Ethiopian ancient instruments for conflict prevention and management, have served as important platforms in preventing and resolving conflicts and playing roles in smoothing broken societal/communal relationships and building/strengthening societal bonds.

Ethiopia is the home of various ethnic groups with indigenous mechanisms of conflict resolution with peculiar features and commonalities. The commonalities manifest through principles, values, norms, and beliefs. CIs naturally focus on maintaining balance, encouraging compromise; pursue and focusing on the restoration of peace within the community rather than punishing the wrongdoer. The concept of justice in local communities extends much more than simply punishing the criminal and compensating the victim. This is at the heart of restorative justice mechanisms wherein punishing the offender is not the main agenda but mending social relationships via forgiveness eventually. This is particularly important in deeply divided societies like Ethiopia where these groups are ethnically and politically polarized and mobilized by distinct factors. CIs and their leaders, however, have better legitimacy compared to the formal justice system with the indigenous capacity to resolve conflicts to varying degrees.

These age-old practices and traditions synergized with the national dialogue process initiated in 2021 will have tremendous contributions to facilitate and ease the dialogue process as well as the resolving mechanisms. Hence, this Policy Brief argues that the Ethiopian national dialogue process has much to gain and apply the valuable practices and lessons from the Ethiopian CIs.

Furthermore, though numerous studies have indicated the value addition and limitations of customary dispute resolution mechanisms (CDRMs), their contribution to national dialogue and reconciliation is despite some limitations. This Policy Brief seeks concurrently to contribute to bridging this gap.

1. Introduction

Ethiopia is a mosaic of different ethnolinguistic groups with their native traditional governance and dispute-settlement institutions, laws, and mechanisms. However, with the introduction of the modern justice system, they faced various forms of challenges. For example, they do not have a clear constitutional mandate to settle criminal matters.

The relevance and contribution of Customary Institutions and Authorities (CIAs) have been a subject of study from different perspectives in different authorities. Especially, their pros and cons considering the formal justice system have been studied widely. However, their relevance and contributions to national processes such as national dialogue and reconciliation efforts have not been examined, especially in the Ethiopian context. Hence, the policy brief fills this lacuna developed based on a qualitative study of “Local Institutions and Structures of Conflict Resolution and their Relevance to Dialogue and Reconciliation Efforts at the National and Regional Levels”¹.

The brief is a thorough qualitative analysis made to understand the level of engagement of CIs, their status, and capacity in resolving community-level

conflicts and to what extent the informal justice systems are relevant to the national dialogue and reconciliation in the Ethiopian context. The study was conducted from October – December 2022 by an interdisciplinary team consisting of lawyers, political scientists, and anthropologists. The primary data was collected from four sampled national regional states; namely, the Somali, the Amhara, the Oromia, and the SNNP. In addition to the regional states, data were also collected from the Ministry of Peace. To this end, Focused Group Discussions (FGDs) and Key Informant Interviews (KIIs) were employed as primary data collection instruments. Finally, a validation Workshop was organized wherein the findings of the study were presented in the presence of relevant stakeholders, and feedback was collected which was used to enrich the study report.

The study revealed that CIAs are relevant to the process of national dialogue and national reconciliation processes. The practices and ways of conflict resolution and management are by any standard far less than being panacea as they have their drawbacks and require institutions with the mandate to run a dialogue process to consider rectifying measures in advance.

2. Findings and Discussion

Customary law is ‘made by the people and not the state’ and derives its legitimacy ‘from participation and consensus of the community and its recognition of the same by the government.’²

The approach towards CDRMs and recognition of their roles in local conflict prevention, management, peacebuilding, and strengthening social cohesion has not been consistent throughout the different regimes of Ethiopia. While the imperial and Derg regimes had followed an abolitionist approach; explicitly and implicitly respectively, the incumbent constitution followed a different approach wherein their formal recognition has been limited to family and personal matters.

In the current constitutional system of Ethiopia, the role of the CIA concerning civil matters other than family and personal matters, and in criminal matters is unclear. However, in recent times, there seems to be a policy decision to broaden their formal mandate to include criminal matters. This can be inferred from the approach followed by the 2011 criminal justice policy of Ethiopia and the draft criminal procedure and evidence law. The data collected from the sampled regions favors the approach of broadening the mandate of CIAs to encompass criminal matters. However, they suggested that there should be a clear legal framework that empowers them and regulates their relationship with the formal justice system.

The mandate of the CIAs nevertheless can be broadened to entertain criminal matters without making a constitutional amendment. Seconding the argument that silence in the Constitution does not mean prohibition, one may also argue from the perspective of Articles 8 (1) and 39 (2) of the FDRE Constitution itself. The Constitution provides that “[a]ll sovereign power resides in the Nations, Nationalities, and Peoples of Ethiopia”.³ Moreover, the Constitution confers every Nation, Nationality, and People in Ethiopia the right to speak, write, and develop its language; to express, develop, and promote its culture; and to preserve its history.⁴ Hence, the cumulative reading of these two constitutional provisions appears to suggest the absence of limitation on the mandate of the CDRMs if the party concerned consented to it. Furthermore, the approach of the policy and the draft procedural law is supported by the practice and is more pragmatic than the previous approach. Hence, even without the amendment of the Constitution, one may submit that the House of Federation can give a binding interpretation in favor of flaring the power of customary justice systems.

Although CIs stand the test of time, it does not

mean that they are free of deficits. Some challenges that CIAs are currently facing and preventing them from delivering their services to communities in the best possible way include political interference from third-party interest groups including the government (at least the existence of the perception of co-optation), awareness gaps as conflicts get more complicated, and lack of infrastructure (like office space,) or the conduct of their work.

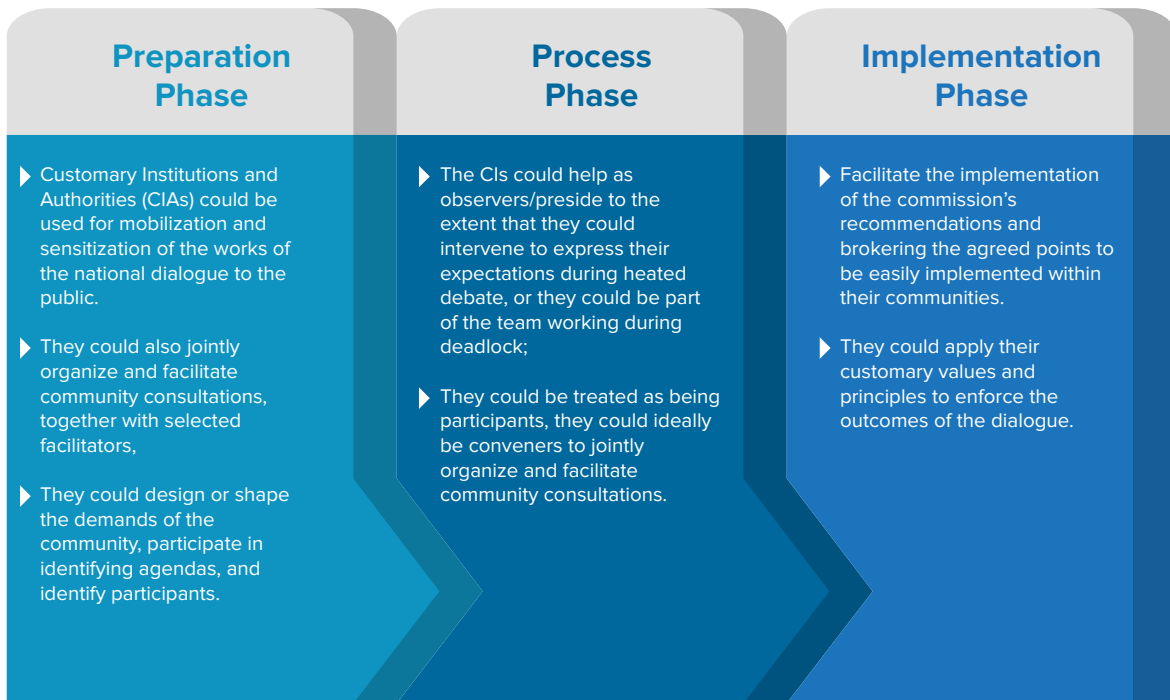
Despite the above challenges, CIs do still have legitimacy and are pivotal in addressing conflicts including criminal matters even after the issue is resolved using the formal justice system. The study argued that CIAs could play an indispensable role in national dialogue and reconciliation efforts. The slight difference in the gathered responses is the concern about the stage when the national dialogue process infuses prominent practices of the CIs for a better impact.

While significant majorities of the study participants argue that the CIAs can contribute throughout the national dialogue process and reconciliation efforts, very few respondents argued that CIs’ contribution is appropriate at the implementation stage. Although it is very few, it was suggested that CIs contribution is minimal. The argument is that most of the problems in Ethiopia are geared toward politicians and elites. Accordingly, they cannot be solved by the involvement of CIAs. This line of argument is based on the premise that the customary authorities (CA) may not be capable enough (lack the expertise) to articulate the different socio-political problems of the country. As a result, the discussion should be decided at the elite level rather than go to the extent of the grassroots level. Stated differently, for them, the agendas should be identified at the elite level discussions rather than adopting a strict bottom-up approach. For this group, the relevance of the CIAs comes into the picture during the implementation of the agreement of the elites, in other words, the last stage of a national dialogue process or even during the reconciliation efforts. However, this line of argument did not get buy-in from the highest percentage of the study participants in all the sampled regions. The importance of the use of local justice in the national dialogue and reconciliation process has been an agreed point in the Ethiopian context.

Specific contributions of CIAs in a national dialogue process and reconciliation processes are outlined below.

a. To the dialogue process

As depicted in the diagram, CIAs associated with the values, principles, and works of national dialogue increase the merit of and chance to resolve conflicts and historical grievances.



b. Moving to the reconciliation efforts

- I. For the reconciliation process/efforts to be successful, the truth behind the different incidents including gross human rights violations should be unraveled. Hence, the CIAs do contribute in a meaningful manner to discovering the truth. This can be done through different mechanisms such as rituals, oaths, and cursing.
- II. CIAs are the best means to ensure social justice by taking individual victims' concerns in the process. As CIAs are closer to the community and are more intertwined with the day-to-day life of the community, they are in a better position to ascertain the needs of the victims.
- III. CIAs can help the reconciliation process as they primarily mend a broken social relationship. Unlike the formal justice system, CIAs are acclaimed for creating a win-win situation after a conflict. This helps to bring sustainable peace to the community. Hence, the involvement of CIAs in reconciliation efforts would help to ensure lasting peace and co-existence in the community than conflicts resolved through formal systems and retributive approaches to justice more broadly as the community has deep trust in the CIAs.
- IV. CIAs have gained a lot of knowledge, experience, and wisdom around conflict prevention and addressing differences. For example, Yonas Adaye, Commissioner of the ENDC, said "In African philosophy and context, we do not have huge books, but we have age-old wisdom' i.e., Indigenous-based knowledge on African homegrown knowledge." Hence, the CIAs can contribute to the reconciliation process indirectly by sharing their experiences on dispute resolution with the experts in the reconciliation efforts.
- V. The reconciliation process attracts the attention of diverse groups in different capacities. Some people speak about their experience regarding the conflict and gross human rights violations. Moreover, it is necessary to have people who give testimony about the incident. In this regard, as confirmed by the data collected, the CIAs can play a significant role by giving their testimonies about what has happened, why it has happened, against whom it has happened, and by whom it has happened.
- VI. The engagement of the CIAs increases the chance of the implementation of the recommendation of would-be-established reconciliatory organs. The data collected suggested that CIAs could be vehicles to disseminate and implement reconciliation outcomes. In addition, this would also help the objective of Transitional Justice (TJ) in general, which is "never again".
- VII. Finally, it is important to mention that the use of CIAs in the reconciliation efforts will have the effect of reducing the workload of the formal justice system.

Despite the necessity of engaging the CIAs in the national dialogue and reconciliation efforts, it is also necessary to take note of the fact that they are not free of weakness. Hence, awareness problems/capacity issues, emerging corrupt practices and partiality, political influence, or interference,⁵ non-inclusiveness,⁶ and incompatibilities with accepted human rights standards are some of the deficits that may arise in the use of CIAs in the national dialogue process and reconciliation efforts both at national and regional levels. Hence, taking the necessary precautions and taking the appropriate corrective measure as much as possible would maximize the contribution of CIAs to the success of the national dialogue process and reconciliation efforts.

Before concluding the contributions of the CIAs, one of the core principles, i.e., enhanced participation, both in the dialogue as well as in the reconciliation processes, has been explored in the study.

c. Participation in national dialogue and reconciliation

Results of primary data collected by the study and consultation of the relevant literature from various sources indicate that successful dialogue and reconciliation requires broad-based and meaningful participation of stakeholders in all phases of the process. In addition to ensuring representation and legitimacy, any consultation and participation process must consider the well-being and dignity of the victims⁷ where groups should not be excluded based on institutional, cultural, or practical barriers.⁸ Hence, Ethiopia as a home of more than 80 ethnic groups needs to promote an inclusive dialogue and reconciliation process to accommodate the needs and aspirations of individuals and various groups to bring lasting peaceful co-existence. To this end, national dialogues, and reconciliation processes typically involve principal national elites, including the government and the largest (armed or unarmed) opposition parties, groups representing wider constituencies such as civil society, women, youth, business, and religious or traditional actors. In this context, the wider population is often indirectly included through broader consultation processes.

One of the essential questions, however, remains how meaningful participation can be ensured in a national dialogue and reconciliation process through the instrumentality of CIs. In this regard, these, public consultations, awareness creation, developing feedback mechanisms, public funding, and other outreach mechanisms could be used as tools to engage the public.

In the context of CIs, although they are male-dominated, CIs have been established in line with community values, customs, and traditions. The process of their dispute resolution is open and participatory. Their operation is based on the tenet of restorative justice wherein both parties to the disagreement do have an active role in the process. However, the lack of adequate representation and participation of women, youth, and non-Indigenous (minorities) in the process is not something that should be left unmentioned. Hence, the national dialogue and reconciliation process should be mindful of these weaknesses of CIs and craft a mechanism to address them. To recap, although there is an improvement, the data analysis and discussion of the study reveal that the participation of women,⁹ youth, and minority groups (non-Indigenous groups) in the CIs is low.

As points for strengthening the contribution of the CIs to meaningful participation, there is a need to design a clear strategy and procedure with the participation of stakeholders to execute the activities in the dialogue and reconciliation process where CIs should be one of the main actors; on the other, CIs should draw their members based on the established values, norms, customs, and traditions so that they could maintain community trust for accepted representation. This ensures the legitimacy of the CIs and the Ethiopian National Dialogue Commission. Overall, all stakeholders should be engaged from the outset so that their concerns and issues are taken care of in the dialogue and reconciliation process.

3. Conclusion

CIIs have treasured values that can be transposed to the success of the national dialogue process and reconciliation efforts. Their values aim to restore or mend social relationships, focus on unraveling the truth, open and participatory process, respect confidentiality, and provide flexibility, volunteerism, and simplicity.

This study further ascertained that CIIs could make meaningful contributions to the national dialogue process and reconciliation effort at all levels. In addition to their role as the stakeholders of the process, they could provide the following illustrative contributions to the dialogue and reconciliation process, *mutatis mutandis*.

- a. for mobilization and sensitization of the works of the national dialogue to the public.
- b. jointly organize and facilitate community consultations.
- c. designing or shaping the demands of the community.
- d. identification of agendas.
- e. identification of the participants.
- f. identifying the victims, perpetrators, and the causes of the conflict.
- g. bridge the legitimacy of the commission – transfer the legitimacy of the CIIs to the ENDC.
- h. facilitates the implementation of the commission's recommendations.
- i. unraveling the truth behind conflicts.
- j. helps to bring meaningful and sustainable peace by mending the social relationship.

That said, as dispute resolution mechanisms, CIAs are not free from challenges. Stated differently, akin to the formal justice system, they do have their limitations. As mentioned, one of the major weaknesses of the CIIs is around gender - exclusion of women from local justice institutions and the inbuilt bias towards men, as reflected in the verdicts. It is argued by other studies also that greater recognition of CIIs would allow them to go through internal reforms informed by human rights values. The exclusion is also true for youth and ethnic minorities in some cases (as some CIIs are primarily made up of the Indigenous majority groups). To maximize their benefits in the national dialogue process and reconciliation efforts, it is necessary to take precautionary measures against their weak sides. It is necessary to romanticize the benefits of CIAs in national dialogue and reconciliation efforts. Undue reliance on them would adversely affect the national dialogue process and reconciliation efforts.

4. Policy Recommendations

Based on the above conclusions, this policy-oriented study, therefore, produces the following recommendations, which are disaggregated, if not mutually exclusive to each entity.

a. For Government entities

i. Ministry of Peace, Ethiopian Heritage Authority and Regional Bureaus of Culture and Tourism, Regional Peace, and Security Offices

- ▶ Protecting the CIIs from perceived manipulation: The existence and strength of the CIIs are contingent on their legitimacy in the eyes of the public. It is important, therefore, for them not to be portrayed as instruments of different interest groups including the government. Hence, while engaging in peace-building activities and protecting cultural values, the Ministry of Peace and regional Bureaus of Culture and Tourism should take maximum caution to not send a message of manipulation of the institution for a political end goal. To this end, government offices should play only a facilitation role and should allow CIIs to exercise their role. Accordingly, there should be a bylaw that can govern the relationship of the government and non-governmental institutions with the CIIs.
- ▶ The Ministry of Peace and Bureaus of Culture and Tourism, primarily the latter, should seriously engage in the preservation of CDRMs. As disclosed in this study, almost none of the study sites give enough attention to the recording of the CDRMs owing to several factors including financial constraints. Hence, as the proverb “spoken words fly away, written words remain” goes, these concerned offices should conduct scientific studies and record the different values of the CIIs so that the generation to come will benefit from them in the form of social capital. Stated differently, the Ministry and Bureaus should establish a comprehensive database of CIIs of both the institutions and the contacts involved both at national and regional levels; as this would improve access to CIIs to collaborate with them. Although the study has been informed that MoP with the regional bureaus has attempted documentation and appraisal of local institutions of conflict resolution under social capital assessment, this trial should be shared and exercised at the regional level too.

II. Ministry of Justice/Bureaus of Justice

- ▶ They should capacitate the CDRMs through the provision of training on the concept of human rights standards in the process of dispute resolution.
- ▶ They should openly recognize the contributions of CIs and provide consideration for CIs intervention in the reconciliation of disputing parties during criminal matters to complement the modern justice system.

III. The House of Federation (HoF)

- ▶ It is the highest organ of government to make decisions on some key root causes of conflicts by taking prompt action, for instance, on the quest for identity. In this respect, HoF should formally recognize the CIs potential contribution to the peaceful negotiation of issues related to boundaries and others that fall under its authority.
- ▶ Moreover, the role of CIs in criminal matters is a gray area in the Ethiopian constitutional system. Hence, the House can give a binding interpretation on this point. This would clarify the confusion in the operation of CIs concerning criminal matters and bring consistency.

b. For the Ethiopian National Dialogue Commission

- ▶ Allow meaningful participation of the CIs and usage of the same at all stages in the preparatory phase, during consultations of parameters selection for agenda setting, when crafting selection criteria for participants, during the actual dialogue sessions as conveners, (even serve as observers), and during the implementation stage, CIs could be engaged to disseminate the agreed recommendations to the public.
- ▶ The Commission should be cautious of the fact that there is a perception in the community that elderly people are politically 'co-opted.' Hence, serious scrutiny mechanisms should be in place in selecting elders from their localities, for example, CIs representatives/authorities. If the communities select the elders, this can be done without any interference, and this is confirmed by the observer on the side of ENDC.
- ▶ Clearly define its relationship with the CIs. The Commission and stakeholders can provide details of the definitions. Subject to the Commission's readiness to develop a handbook to guide its processes, then such concepts will be added.

End notes:

- 1 UNDP- LPI, A Policy-Oriented Study about Local Institutions and Structures of Conflict Resolution and Their Relevance to Dialogue and Reconciliation Efforts at the National and Regional Levels, 2022. Consultants: Eyasu Yimer, Tessema Getahun, and Markos Debebe
- 2 Encyclopedia *Aethiopica* (2003:839).
- 3 The FDRE Constitution Article 8(1)
- 4 The FDRE Constitution Article 39(2)
- 5 The elders are politically co-opted, or at least they are perceived by most of the public as Political parties/including government is co-opting them.
- 6 Women and youth are excluded in all the traditional institutions dispute resolution processes.
- 7 SOAS, Transitional Justice Processes in Sudan, (Policy Briefing, 2020), 3.
- 8 SOAS (2020), 3.
- 9 In terms of inclusivity, the study identified that there are some positive trends in accommodating the interest of women and youth in CIs. For example, in the Somali national regional state, women are members of the law drafting committee that aims to establish an elders' council at the regional level. Similarly, the deputy chairperson of the Somali Regional State Commission for Investigation of Violence and Reconciliation and Reparation Compensation of Victims in the Somali Region is also a woman. In the same fashion, in the 'Gamo' traditional conflict resolution process, women play a pivotal role in unraveling the truth behind the conflict or the wrong committed. In the Amhara Regional State 'Shimglina' culture, too, women are getting better attention. For instance, one of the founders (vice chair of the board) of 'Ye amahara hizib ye shimglina mahiber' is a woman. Similarly, a platform established as 'ye selam enatoch,' an association that works on peace building, is composed of women. In 'Hadhe Sinqee' in the Oromo culture, women play roles to articulate and contribute their expertise and concerns in the transitional justice processes.

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