

Naming torture and the legal implications of its omission from Article 18 of the FDRE Constitution

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Key points of interest

- Article 18 of the FDRE Constitution prohibits cruel, inhuman or degrading treatment but does not name torture. Articles 9(4) and 13(2) may inform interpretation, but neither writes torture into Article 18 or places it expressly within the text protected by Article 93(4)(c).
- The constitutional omission is distinct from Ethiopia's statutory failures. Article 424 does not create a comprehensive offence of torture, and Article 19(5) is not supported by a torture-specific procedure linking evidentiary exclusion to investigation and accountability.
- Ethiopia's transitional justice reforms create an immediate legislative opportunity. A Convention-compliant response requires an autonomous general offence of torture, jurisdiction, investigation, evidentiary exclusion, complaint protection, redress and rehabilitation, while amendment of Article 18 remains necessary to cure the distinct constitutional defect.

Abstract

Introduction: Article 18(1) of the Constitution of the Federal Democratic Republic of Ethiopia prohibits cruel, inhuman or degrading treatment without naming torture. The prevailing interpretive answer relies on Articles 13(2) and 9(4) to bring torture within that broader prohibition. The question is whether interpretive inclusion is legally equivalent to express constitutional recognition. **Methods:** The analysis combines doctrinal and comparative legal methods. It examines the Constitution, the Criminal Code, criminal evidence and procedure, the Convention against Torture, the African Charter and publicly accessible Ethiopian legal practice. Uganda, South Africa and Nigeria provide legislative models, while Kenya tests the relationship between constitutional naming and later statutory implementation. **Results:** Torture falls under the broader prohibition of ill-treatment but is defined separately and carries specific legal consequences. Articles 9(4) and 13(2) do not rewrite Article 18, settle the contested domestic status and enforceability of the Convention, or place torture expressly within Article 93(4)(c). The omission is not the cause of Ethiopia's separate statutory and institutional failures, but it remains an independent constitutional defect. Article 424 does not capture the full Convention definition, the international-crimes provisions depend on additional contextual elements, and Article 19(5)'s general rule against coerced evidence lacks a settled torture-specific procedure linking exclusion to investigation and accountability. **Discussion:** Transitional justice policy need not itself create criminal offences, but the implementing legislation must establish a general offence of torture and the connected jurisdictional, investigative, evidentiary and remedial framework required by the Convention. Constitutional amendment remains necessary to cure the distinct defect in Article 18.

Keywords: Torture, Ethiopia, FDRE Constitution, Convention against Torture, transitional justice

Introduction

Torture is not merely another instance of cruel, inhuman, or degrading treatment. It belongs to that wider family of prohibited acts, but international law identifies it as a distinct and aggravated wrong, defined by severe pain or suffering, intentional infliction, a prohibited purpose, and an official nexus. That classification carries specific duties of criminalisation, jurisdiction, investigation, prosecution or extradition, evidentiary exclusion, redress and *non-derogation*. Major universal and regional human rights instruments therefore name torture expressly, and the prohibition is recognised as a peremptory norm of international law. The Convention against Torture gives the distinction an operative legal structure through Articles 1, 2, 4-7 and 12-16.

The Universal Declaration, the International Covenant on Civil and Political Rights, the African Charter, the European Convention, the American Convention and the Arab Charter each name torture alongside the wider prohibition of cruel, inhuman or degrading treatment or punishment (UN General Assembly, 1948, art 5; UN General Assembly, 1966, art 7; Organization of African Unity, 1981, art 5; Council of Europe, 1950, art 3; Organization of American States, 1969, art 5(2); League of Arab States, 2004, art 8).

Article 18(1) of the Constitution of the Federal Democratic Republic of Ethiopia (hereinafter FDRE Constitution) guarantees protection against cruel, inhuman or degrading treatment or punishment but does not name torture (FDRE, 1995a, art 18(1)). The word appears in Article 28(1), which removes limitations and restricts amnesty or pardon for criminal liability arising from crimes against humanity, including torture (art 28(1)). That provision addresses the prosecution of a particular category of grave crime. It does not establish a free-standing right held by every person against torture. The rights chapter therefore contains no express prohibition of torture, and Ethiopian ordinary criminal law contains no autonomous general offence capturing the full definition in Article 1 of the Convention against Torture.

The principal defence of the omission is interpretive. Article 13(2) directs that the rights in Chapter Three be interpreted in conformity with the Universal Declaration, the international covenants and instruments adopted by Ethiopia, while Article 9(4) makes ratified international agreements an integral part of the law of the land. Those clauses, read with Article 7 of the ICCPR and Article 1 of the Convention, are said to bring torture within Article 18's broader prohibition. The Commit-

tee against Torture reflected that position in 2011, describing the Constitution as prohibiting torture while directing its recommendation to Article 424 (Committee against Torture, 2011, para 9).

The interpretive route through Articles 9(4) and 13(2) is insufficient to cure Article 18's omission or to resolve its legal consequences. At most, those provisions allow an interpreter to argue that conduct amounting to torture may be condemned under the broader prohibition of cruel, inhuman or degrading treatment. They do not make torture an express constitutional right, place torture as a distinct legal category within Article 93(4)(c), or create the criminal, evidentiary, jurisdictional, investigative and remedial framework required by the Convention. The omission therefore leaves more than a linguistic gap. It leaves the gravest form of ill-treatment without direct constitutional recognition and forces its legal consequences to depend on interpretation, incorporation and incomplete ordinary legislation. Constitutional amendment and statutory implementation must therefore be treated as separate but connected reforms.

Methodology

The analysis examines Articles 9(1), 9(4), 13(2), 18, 19(5), 28, 93 and 105 of the FDRE Constitution; Articles 423, 424, 270-272 and the relevant ordinary offences in the Criminal Code; the rules governing confession and admissibility; and Ethiopia's obligations under the Convention against Torture and Article 5 of the African Charter. International and regional decisions are used to establish the content of those obligations, not as binding precedent in Ethiopia.

Publicly accessible Ethiopian judicial materials were searched for decisions concerning torture, coerced confessions, Articles 18 and 19(5), Article 424, *Makelawi* prison, anti-terrorism prosecutions and reliance on the Convention against Torture. No published judgment was found in which an Ethiopian court adjudicated torture as an autonomous offence or developed a torture-specific procedure under Article 19(5). This identifies a limitation in the accessible record; it does not establish that no such proceedings have occurred.

Uganda, South Africa and Nigeria are examined as legislative models. Kenya is used separately to test the relationship between express constitutional protection and later statutory criminalisation. Reports by Ethiopian, United Nations, and civil society bodies are treated as evidence of practice and insti-

tutional conditions, not as judicial findings or as authority for legal propositions.

Torture as a distinct wrong within the wider prohibition of ill-treatment

Torture falls within the broader prohibition of cruel, inhuman or degrading treatment, but the categories are not legally interchangeable. *Ireland v United Kingdom* described torture as aggravated and deliberate inhuman treatment carrying a special stigma, while *Selmouni v France* confirmed that the threshold is capable of development as human-rights standards rise (*Ireland v United Kingdom*, 1978, para 167; *Selmouni v France*, 1999, para 101). Severity is not the only relevant consideration. Intention, prohibited purpose, official involvement, vulnerability, context and the powerlessness of a person under another's control also shape the classification under the applicable legal framework (Nowak & McArthur, 2008). The relationship is therefore one of inclusion, but the identification of the aggravated wrong remains legally consequential.

Article 1 of the Convention defines torture through severe physical or mental pain or suffering, intentional infliction, a prohibited purpose, and infliction by, at the instigation of, or with the consent or acquiescence of a public official or another person acting in an official capacity. Pain or suffering arising only from, inherent in or incidental to lawful sanctions is excluded (UN General Assembly, 1984, art 1(1)). Article 1(2) preserves instruments and national laws of wider application. Domestic law may therefore extend protection beyond the Convention's minimum definition, but it may not omit the elements required for Convention torture.

The Convention assigns particular consequences to conduct classified as torture. Article 4 requires criminalisation, Articles 5-7 require jurisdiction and prosecution or extradition, and Article 15 excludes statements obtained through torture. Article 16 addresses other cruel, inhuman or degrading treatment and expressly applies the safeguards in Articles 10-13 with the necessary substitution of terms. The distinction is not a denial of the absolute prohibition of other ill-treatment. It reflects the Convention's decision to attach additional criminal, jurisdictional and evidentiary duties to torture as defined in Article 1. General Comment No. 2 accordingly warns that discrepancies between the Convention definition and domestic law create actual or potential loopholes for impunity and explains why torture should be identified as a distinct offence (Committee against Torture, 2008, paras 9, 11).

In *Questions Relating to the Obligation to Prosecute or Extradite*, the International Court of Justice held that a State Party must equip itself with the legal tools necessary to per-

form the Convention's prosecution and extradition obligations as soon as the Convention binds it (*Belgium v Senegal*, 2012, paras 74-78). The judgment confirms that fragmented ordinary offences are not enough if domestic law cannot support the jurisdictional and procedural scheme required by the Convention. The judgment does not impose a constitutional-drafting rule; its significance here is that statutory implementation cannot be replaced by interpretive incorporation.

The prohibition of torture is recognised as a peremptory norm of international law (*Prosecutor v Furundžija*, 1998, paras 153-157; *Al-Adsani v United Kingdom*, 2001, para 61). The Convention separately creates presence-based jurisdiction and prosecution-or-extradition duties. An amnesty that prevents the investigation or prosecution required by the Convention, or denies the enforceable redress required by Article 14, is incompatible with those obligations. Where torture also constitutes a war crime or a crime against humanity, the African Union Transitional Justice Policy's exclusion of international crimes from amnesty supplies an additional and independent basis. Peremptory status, treaty-based jurisdiction and restrictions on amnesty are related consequences of the prohibition of torture, but each rests on a distinct legal basis.

The constitutional omission and the limits of Articles 9(4) and 13(2) of the FDRE Constitution

Article 18 prohibits cruel, inhuman or degrading treatment without naming torture. The most serious defence of that omission rests on Articles 13(2) and 9(4). Article 13(2) requires the rights in Chapter Three to be interpreted in conformity with international human rights instruments adopted by Ethiopia, and Article 9(4) gives ratified treaties domestic legal force. Read with Article 7 of the ICCPR and Article 1 of the Convention against Torture, these provisions give an Ethiopian court a plausible basis for treating torture as covered by Article 18's broader language. However, that conclusion is reached only through interpretation and incorporation; it does not confer on torture the same express constitutional status that inclusion in Article 18 would have provided.

The distinction is important because Articles 13(2) and 9(4) operate in different legal registers from express constitutional entrenchment. Article 13(2) guides the interpretation of rights already present in Chapter Three. Article 9(4) incorporates ratified treaties into domestic law. Neither provision places the Convention's definition of torture inside Article 18, gives torture express protection within the non-derogation clause in Article 93(4)(c), or creates the statutory machinery required by the Convention, including an autonomous offence, penalties, jurisdictional rules, evidentiary consequences, investigative du-

ties and remedies. They provide, at most, a route for judicial condemnation of torture in a concrete case. They cannot provide the textual certainty, constitutional classification or legislative implementation that express recognition and statutory criminalisation would supply.

The precise domestic rank of ratified human-rights treaties remains contested. Article 9(1) declares the Constitution supreme, while Article 9(4) makes ratified agreements an integral part of the law of the land. A substantial body of Ethiopian scholarship places treaties below the Constitution or at the level of proclamations; another view accords human rights treaties constitutional parity (Woldemariam, 2017). The omission survives either position. On the subordinate-rank view, the Convention cannot supply an omitted constitutional norm or the entrenchment that express inclusion in Article 18 would provide. On the parity view, the Convention remains an incorporated external instrument read alongside Article 18 rather than a textual component of Article 18 itself. Under neither view does Article 9(4) write torture into the right expressly protected by Article 93(4)(c). Ethiopia's international obligations remain binding regardless of this dispute over domestic hierarchy.

Article 13(2) remains an interpretive clause rather than a textual amendment, and its reach is itself uncertain. The authoritative Amharic version of Article 13(2), which prevails over the English text in case of divergence, does not refer to the Universal Declaration of Human Rights.¹ Whatever the precise breadth of the international materials to which the clause

directs the interpreter, it cannot insert torture into Article 18 or carry it into the *non-derogable* guarantee as a named category. The constitutional argument therefore does not depend on resolving the linguistic dispute; it holds on either reading, because on either reading the protection remains interpretive rather than textual.

No proclamation, accession notice or Gazette publication reproducing the Convention was in the official repositories examined. Ethiopia's international obligation under the Convention remains intact. Domestically, however, that absence undercuts the claim that Article 9(4) supplies a readily accessible and judicially noticeable norm equivalent to express constitutional language.²

The institutional setting makes reliance on interpretation especially uncertain. Constitutional interpretation is vested in the House of Federation, acting on recommendations from the Council of Constitutional Inquiry, while ordinary courts refer to constitutional questions rather than finally deciding them (FDRE, 1995a, arts 62, 83, 84). Ethiopian scholarship also documents restrictive standing, limited rights litigation, and infrequent judicial reliance on ratified human rights treaties (Abebe, 2010, 2017; Yeshanew, 2008). In the Federal High Court proceedings involving Dr *Negaso Gidada*, Articles 9(4) and 13(2) were used to support direct reliance on the Universal Declaration of Human Rights and the Covenant in domestic adjudication (Yeshanew, 2008). The case marks an important opening in Ethiopian rights litigation, but its exceptional character also exposes the weakness of placing the burden of express constitutional text on treaty-based interpretation. A route that depends on rare judicial willingness, contested treaty status and a referral-based constitutional structure cannot offer the same certainty, visibility or institutional discipline as an explicit constitutional prohibition. The wider institutional record points

1 FDRE Constitution, Proclamation No. 1/1995, arts 9(4), 13(2), 18(1), 93(4)(c), 106. It is worth mentioning here that the Constitution does not contain a general reception clause for customary international law. Article 9(4) gives domestic legal force to international agreements ratified by Ethiopia, while Article 13(2) directs the interpretation of Chapter Three rights by reference to international human rights instruments adopted by Ethiopia. Neither provision expressly states that customary international law, as such, forms part of domestic constitutional law. The position of customary international law in the Ethiopian legal order therefore remains distinct from, and less textually settled than, the position of ratified treaties. Although the prohibition of torture is widely recognized as customary international law and as a peremptory norm, that status confirms the force of the prohibition at the international level. It does not by itself insert torture into Article 18, make torture a named constitutional right, or carry torture expressly into Article 93(4)(c). The point is reinforced by Article 106, which gives final legal authority to the Amharic version of the Constitution. If the controlling Amharic text of Article 13(2) does not contain an equivalent reference to the Universal Declaration of Human Rights, reliance on Article 13(2) as a bridge from Article 18 to the international definition of torture becomes less direct than the English translation suggests.

2 Ethiopia acceded to the Convention against Torture on 14 March 1994, and the Convention entered into force for Ethiopia on 13 April 1994: United Nations Treaty Collection, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, status table. Proclamation No. 3/1995, arts 2(2)-(4), requires federal laws to be published in the Federal *Negarit Gazeta*, provides for judicial notice of published laws, and requires publication in Amharic and English. Searches of the Ministry of Justice legal repository, the Federal Supreme Court Digital Law Library and publicly available Gazette indices, completed on 18 June 2026, located no proclamation, accession notice or Gazette publication reproducing the Convention. Ethiopia's accession predates Proclamation No. 3/1995, so this absence is not relied upon as a retroactive breach. Nor does it affect Ethiopia's international obligations. Its significance concerns domestic accessibility, judicial notice and enforceability of the treaty norm relied upon under Article 9(4).

the same way. Ethiopia has no National Preventive Mechanism, complaint mechanisms lack independence and have been marked by reprisals against complainants, and the oversight performed by the Ethiopian Human Rights Commission remains constrained by resources and mandate (OMCT, 2025).³

General Comment No. 2 addresses criminalisation rather than constitutional drafting, but its rationale for naming torture is directly relevant to constitutional design. The Committee against Torture links express identification to the Convention's preventive purpose by distinguishing torture from ordinary violence and making its special gravity visible to officials, victims and the public (Committee against Torture, 2008, para 11). A constitution performs a related classificatory function: it identifies the wrongs the legal order treats as fundamental and determines their place within rights, limitations and emergency clauses. Article 28(1) cannot perform that function. It concerns limitation and amnesty for crimes against humanity and refers to torture only within that narrower context. It does not establish a general constitutional guarantee against torture. The claim is narrower than the asserted treaty duty to amend Article 18. Article 18's omission leaves torture without the constitutional visibility, classification and *non-derogable* placement that express recognition would have secured.

Article 93 and emergency protection

Article 93(4)(c) expressly exempts Article 18 from emergency suspension, and torture, as conduct, may fall within the broader prohibition of cruel, inhuman or degrading treatment that Article 18 states. Torture is not, however, expressly named in Article 18, and it is therefore not expressly carried into Article 93(4)(c) as a named constitutional category. Its identification depends on the interpretation of Article 18, read with Articles 9(4) and 13(2), and the incorporated treaty obligations, rather than on the constitutional text itself.

A *non-derogation* clause settles the status of certain protections in advance, precisely so that they do not fall to be argued at the moment emergency rule expands detention powers, weakens ordinary safeguards and places judicial control under its greatest pressure. A constitutional category that must be established through interpretation is less secure than one expressly settled in the constitutional text. The broader prohibition may well protect the conduct; what it cannot supply is the tex-

tual certainty, constitutional visibility and legal classification that express naming would provide, and it is during a state of emergency that those qualities matter most. International law prohibits torture without exception, and no Ethiopian emergency measure could lawfully authorise it. The defect is one of domestic constitutional design, not of international obligation.

The importance of express protection is demonstrated by Ethiopia's recent emergencies. The November 2021 proclamation authorised broad arrest and detention without ordinary judicial safeguards, while Ethiopian, United Nations and civil-society investigations reported torture and other serious ill-treatment during the conflict and detention operations (FDRE, 2021; EHRC & OHCHR, 2021; Amnesty International, 2021; Human Rights Watch, 2023; United States Department of State, 2022). Reports concerning the August 2023 emergency in Amhara and detention at Awash Arba likewise describe beatings, forced exposure to extreme heat, incommunicado detention and other conduct characterised by the reporting bodies as torture or ill-treatment (Amnesty International, 2024; OMCT-FIDH, 2025).

The criminal law and evidentiary failures

Article 424, titled "Use of Improper Methods", is the nearest ordinary offence. It applies to specified public servants exercising arrest, custody, supervision, escort or interrogation functions and addresses improper treatment used to obtain a statement or confession (FDRE, 2004, art 424). It can punish part of the conduct covered by Article 1, but it is not a comprehensive torture offence. Its custodial and occupational scope is narrower than the Convention's category of persons acting in an official capacity; its purposes do not capture punishment, intimidation, coercion and discrimination in full; it does not address official consent or acquiescence outside the listed custodial functions; and it is not integrated with the Convention's rules on participation, jurisdiction, investigation, exclusion and redress.

The Committee against Torture identified the core deficiencies in 2011 and recommended an offence covering all Article 1 elements and carrying penalties that reflect the gravity of torture (Committee against Torture, 2011, para 9). Reviewing Ethiopia's second periodic report in May 2023, against a record that included grave allegations of torture and ill-treatment in the Tigray conflict and in ordinary detention, the Committee repeated the recommendation to bring the definition of torture into conformity with Article 1 (Committee against Torture, 2023). OMCT reported in May 2026 that no significant legislative reform had been adopted since that review (OMCT, 2026). Its Global Torture Index assessment of Ethiopia reaches the same conclusion from the side of substance, finding that

3 The decision is relied upon through *Yeshanew's* secondary account because the judgment itself was not located in a publicly accessible court repository. It is used only as evidence that a federal court has reportedly invoked Articles 9(4) and 13(2), not for any broader proposition concerning the holding or precedential effect of the case.

the Criminal Code provides an inadequate definition of torture and imposes minimal penalties, which undermines accountability and allows impunity to persist (OMCT, 2025). Twelve years separate the Committee's first recommendation from its most recent restatement, and the offence still does not exist. The legal deficiency is therefore not that Ethiopian law can punish none of the underlying violence. It is that no general offence classifies and regulates the conduct as torture across the full field required by the Convention.

Articles 270-272 criminalise torture only where the elements of a war crime are established, including an armed-conflict nexus and the protected status or circumstances required by the provision. A political description of an operation as law enforcement is not legally decisive, but prosecution still depends on proof of those contextual elements. The Convention's ordinary offence of torture contains no such requirement. War-crimes provisions therefore cannot satisfy Article 4 for torture committed in policing, detention, emergency administration or other settings outside the established war-crime context.

Ethiopian law uses the phrase "crimes against humanity" in Article 28(1) of the Constitution and within the Criminal Code's treatment of fundamental crimes against international law, but it has not enacted a distinct modern offence equivalent to Article 7 of the Rome Statute (*Metekia*, 2022). Torture committed as part of a widespread or systematic attack may still overlap with ordinary offences or war-crime provisions, depending on the facts, but Ethiopian law does not classify and punish it as the constituent act of a modern crimes-against-humanity offence. This is a separate gap from the absence of the general Convention offence.

Article 19(5) prohibits compelled confessions and declares evidence obtained through coercion inadmissible. Its wording may be broader than Article 15 of the Convention, which specifically addresses statements obtained through torture. The constitutional rule is therefore not absent. What remains underdeveloped is the procedure required to make it effective when torture is alleged: the burden and standard of proof, a distinct judicial inquiry into provenance, the treatment of derivative evidence, the use of a statement against third persons, mandatory referral for independent investigation, protection of the complainant and appellate review. Articles 12, 13 and 15 of the Convention connect evidentiary exclusion to investigation, complaint protection and accountability; Ethiopian law does not presently provide for a corresponding torture-specific procedure.

Article 23 of the 2009 Anti-Terrorism Proclamation recognised recorded confessions as admissible evidence while preserving the ordinary rules of admissibility. It did not au-

thorise coerced confessions, but it gave recorded statements a statutory place in prosecutions arising from detention practices repeatedly associated with allegations of coercion. In *Zelalem Workagenebu's* case, statements allegedly extracted under duress at *Maekelawi* prison were treated at the trial as an admissibility issue under the ordinary law of evidence. The allegation was therefore processed through general rules on confessions and coercion, rather than through a procedure designed specifically for torture.⁴

The Istanbul Protocol applies to the effective investigation and documentation of torture and other ill-treatment regardless of whether domestic law contains an autonomous offence. The absence of such an offence weakens the framework into which medical and forensic documentation feeds, impairing consistent classification, charging, statistical recording, accountability, reparation and rehabilitation, and leaving investigators and clinicians without a domestic offence whose elements can organise the legal use of their findings (OHCHR, 2022).

Without an autonomous offence, prosecutors must rely on bodily-injury provisions, abuse of power, Article 424 or, where the additional elements are established, war-crimes provisions. Those offences may punish aspects of the conduct, but they do not consistently capture the full Article 1 definition, activate the Convention's jurisdictional scheme or record the case as torture. The deficiency lies in legal classification and completeness, not in a claim that no offence can punish.

Practical consequences for investigation, accountability, redress and rehabilitation

Legal classification determines how conduct enters the institutional life of a legal system: the charge a prosecutor can lay, the elements an investigation is organised to establish, the category under which a court convicts and sentences, and the description under which the case is recorded. Where no offence of torture exists, conduct meeting the Article 1 definition is dispersed across ordinary assault, unlawful coercion, abuse of power or general ill-treatment. Each of those classifications captures a fragment of the wrong; none captures it as torture. Prosecution then proceeds, where it proceeds at all, on charges that reflect neither the gravity nor the official character of the conduct;

⁴ Global Voices reported that Zelalem Workagenebu told the trial court that statements had been extracted under duress at Maekelawi. No publicly accessible judgment establishing the court's ruling on admissibility or the weight given to the statements was located. The example is therefore used only to show that a coercion allegation arose in litigation under the general law of admissibility.

sentencing and appellate review measure a lesser offence; and forensic and psychological documentation prepared to the standards of the Istanbul Protocol has no offence whose elements it can be marshalled to prove. National statistics record no torture because no case is entered as torture, and a survivor is recognised, if at all, as the victim of an assault. The category does not create the survivor's suffering, but it affects whether institutions consistently recognise that suffering as torture and respond to it accordingly.

The same weakness runs through redress and rehabilitation. Article 14 of the Convention requires an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible, a duty the Committee against Torture has interpreted to encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (Committee against Torture, 2012). Clinical care does not depend on a criminal conviction, and documentation of abuse can proceed under the broader prohibition; a defined offence and reliable recording nonetheless make it easier to identify survivors, preserve forensic findings, connect criminal proceedings to reparation and measure whether services reach those entitled to them. The available assessments describe minimal effective remedies for survivors of torture in Ethiopia, with legal aid, psychological assistance and meaningful access to justice remaining rare and complaint mechanisms compromised by intimidation of complainants and their families (OMCT, 2025).

Transitional justice and legislative design

Ethiopia's Transitional Justice Policy, approved in April 2024, is a policy framework rather than a criminal statute. It is not defective merely because it does not itself define offences, prescribe penalties, or establish evidentiary rules. Its legal significance lies in the implementing institutions and legislation it sets in motion, including the proposed Special Prosecutor's Office, the Transitional Justice Special Bench, and the legislation governing international crimes, truth-seeking, vetting, amnesty, and reparations.

Publicly available accounts of the draft laws describe torture among the international crimes within the proposed criminal-accountability institutions. That inclusion is important but may remain incomplete. Torture under the Convention is an ordinary offence capable of commission in custody, policing and emergency administration, settings that require neither an armed-conflict nexus nor a widespread or systematic attack. Legislation treating torture only as a war crime or crime against humanity would therefore leave the Article 4 gap open.⁵

The implementing package must create a general offence of torture outside the contextual elements of international crimes and connect it to jurisdiction, prosecution or extradition, evidentiary exclusion, prompt and impartial investigation, complaint protection, redress and rehabilitation. International-crimes legislation should separately cover torture as a war crime and as a crime against humanity where the required contextual elements are established. The two tracks are complementary and should not be collapsed into a single offence.

Any amnesty framework must preserve Ethiopia's duties to investigate, prosecute and provide redress for torture. Not every act satisfying Article 1 of the Convention necessarily constitutes a war crime or crime against humanity. The legal consequences of an amnesty must therefore be derived from the character of the underlying offence and from Ethiopia's duties to investigate, prosecute and provide redress, rather than attributed automatically to the peremptory status of the prohibition. Where torture also constitutes a war crime or crime against humanity, the African Union Transitional Justice Policy's exclusion of international crimes from amnesty provides an additional and independent basis.

Legality and non-retroactivity must be addressed expressly. A newly enacted general offence operates prospectively. Accountability for earlier conduct must rest on offences applicable at the time, including properly established international crimes, without creating criminal liability by analogy. Any extension of the domestic offence to purely private conduct is a wider policy choice authorised by Article 1(2), not a requirement of Convention compliance. Conduct by non-State armed groups should also be analysed under the applicable war-crimes and ordinary criminal-law provisions.

Comparative lessons and the complete reform package

Uganda, South Africa and Nigeria demonstrate that a general offence of torture can be enacted through dedicated legislation rather than left to fragmented ordinary offences. Uganda illustrates a national choice to extend the offence beyond the Convention's official-nexus minimum. South Africa illustrates a standalone statute that defines torture, criminalises commis-

described draft legislation concerning a Special Prosecutor's Office and a Transitional Justice Special Bench, with proposed jurisdiction extending to torture among other international crimes: T. S. Metekia, "Ethiopia's Special Prosecutor's Office Needs an International Cooperation Unit" (ISS Today, 7 March 2025); T. S. Metekia, "Ethiopia's Transitional Justice Special Bench: More Than Just a Criminal Tribunal" (ISS Today, 9 April 2025). These dated sources are used only to assess the publicly described design of the proposed institutions and not to suggest that the draft legislation has been enacted.

5 As of 9 April 2025, the most detailed publicly available accounts

sion and participation, provides for extraterritorial jurisdiction, rejects emergency justification and requires awareness and training. Nigeria supplies a further federal African example of dedicated anti-torture legislation and confirms that a standalone statutory regime can be adopted within a federal legal order rather than leaving torture dispersed among ordinary offences.

Kenya addresses a different question. Its 2010 Constitution expressly named torture and made the right *non-derogable*, while the statutory offence followed in 2017. The seven-year interval shows that constitutional naming does not itself create a prosecutable offence or implementation system, yet it is not idle: it supplies the supreme-law foundation and the *non-derogable* right on which legislation builds. The need to amend Article 18 follows from Ethiopian constitutional analysis; Kenya confirms that constitutional naming and statutory implementation perform distinct and complementary functions.

Binding obligations under the Convention

First, Ethiopian substantive criminal law must create a general and autonomous offence of torture that covers the essential elements of Article 1, together with attempt, complicity, and participation under Article 4(1), and penalties that reflect the grave nature of the offence under Article 4(2). The offence must operate independently of the contextual requirements of war crimes and crimes against humanity, because torture under the Convention is committed in ordinary custody and interrogation without any nexus to armed conflict or to a widespread or systematic attack. An international-crimes statute remains necessary for conduct carrying those contextual elements, and the transitional justice legislation is its natural vehicle, but the two tracks answer different wrongs and neither can absorb the other: an ordinary offence cannot express the aggravated character of torture committed as a war crime or a crime against humanity, and an international-crimes provision cannot reach the custodial torture that constitutes the ordinary case.

Second, the legislation must establish the jurisdiction required by Article 5 and the custody, preliminary inquiry and prosecution-or-extradition duties in Articles 6 and 7. Torture must be treated as an extraditable offence consistently with Article 8.

Third, evidence law and criminal procedure must implement Article 15 and connect exclusion to the duties in Articles 12 and 13. Statements obtained through torture must be excluded, except when used against a person accused of torture as evidence that the statement was made. The procedure must allocate the burden and standard of proof once a credible allegation is raised, address evidence derived from an excluded statement and require that the allegation itself trigger a defined

judicial inquiry and an independent investigation, with protection against retaliation, so that exclusion operates as the entry point to accountability rather than as an isolated evidentiary ruling.

Fourth, the legal framework must implement the preventive duties in Articles 10 and 11 through training and systematic review of interrogation, custody and detention practices, and must prevent other cruel, inhuman or degrading treatment under Article 16.

Fifth, survivors must have an enforceable right to redress under Article 14, encompassing compensation and the means for as full rehabilitation as possible, with access to legal aid and to medical and psychological services, so that identification, documentation, reparation and rehabilitation operate as a connected system rather than as isolated interventions.

Ethiopian implementation measures

The Convention requires prompt and impartial investigation but does not prescribe one universal institutional model. Ethiopia's documented conditions justify a specialised and institutionally independent investigative mechanism, supported by prosecutors trained in torture cases, mandatory referral of credible allegations, forensic procedures consistent with the Istanbul Protocol, protection of complainants and witnesses, national recording of allegations and outcomes, and coordinated referral to rehabilitation and reparation services.

Command or superior responsibility should be included where justified by the applicable international-crimes framework and the hierarchical organisation of the relevant security institutions. It should not be described as an express general requirement of CAT. A wider offence covering purely private actors may be adopted under Article 1(2), but it must be identified as an Ethiopian policy choice and drafted so that the treaty definition of torture is not conceptually obscured.

Constitutional amendment

Article 18(1) should be amended to state: "Everyone has the right to protection against torture or cruel, inhuman or degrading treatment or punishment." CAT does not expressly require this constitutional wording. The necessity of amendment follows from the constitutional defect identified here: ordinary legislation cannot insert torture into Article 18, secure its express constitutional placement among the *non-derogable* guarantees, or supply the constitutional visibility and entrenchment of a named right.

Under Article 105, amendment of Chapter Three requires approval by all State Councils by majority vote, approval by a two-thirds majority of the House of Peoples' Representatives,

and approval by a two-thirds majority of the House of Federation. Statutory reform should proceed immediately, but it is complementary to constitutional amendment rather than an interim substitute for it.

Conclusion

Article 18's silence is neither the whole of Ethiopia's failure nor a harmless drafting anomaly. Torture falls within the wider prohibition of cruel, inhuman or degrading treatment, but its classification as torture activates a separately defined legal regime. Articles 9(4) and 13(2) may assist an interpreter in condemning the conduct; they do not place torture in the constitutional text, resolve the contested domestic status and enforceability of the Convention, or give the category express protection within Article 93(4)(c).

The statutory failures are separate and equally serious. Article 424 does not capture the full Convention definition; the international-crimes provisions depend on additional contextual elements; and Article 19(5) is not supported by a torture-specific procedure that connects exclusion to investigation and accountability. Transitional justice legislation must therefore establish a general offence of torture and the full jurisdictional, investigative, evidentiary, preventive and remedial framework required by the Convention.

Constitutional amendment and legislation are complementary. Legislation can define and punish the offence, establish jurisdiction, exclude tainted statements, require investigation, protect complainants and secure redress and rehabilitation. Only an amendment can name torture expressly in Article 18 and carry it expressly into Article 93(4)(c) as a named constitutional category, so that its protection during emergencies rests on the text rather than on interpretation. Ethiopia should enact the complete statutory regime and amend Article 18 so that torture is both punishable as an autonomous offence and named as a *non-derogable* constitutional wrong.

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