

EHRC/OHCHR advisory note on the next steps towards the development of a human rights compliant Transitional Justice Policy for Ethiopia

I. Background

The Ethiopian Human Rights Commission (EHRC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have continued to advocate and support efforts towards the adoption and implementation of a genuine, participatory, inclusive, contextualized, and in line with international human rights standards transitional justice (TJ) policy since the release of the EHRC/OHCHR Joint Investigation Team (JIT) Report in November 2021.¹ The Agreement for Lasting Peace through a Permanent Cessation of Hostilities between the Government of the Federal Democratic Republic of Ethiopia and the Tigray People’s Liberation Front (the Cessation of Hostilities Agreement) of November 2022 provides for the implementation of a comprehensive national TJ policy. The EHRC and OHCHR released an Advisory Note in December 2022 based on their community consultations on TJ to raise awareness on key human rights principles applicable to TJ processes and to highlight the views and aspirations of conflict-affected populations in the different regions of Ethiopia on accountability, truth-seeking, reparations, institutional reform, and reconciliation.²

A TJ Working Group of Experts (the Working Group) set up by the Ministry of Justice to advise and lead the process of Ethiopia’s TJ policy development published a “green paper” in January 2023 to solicit public inputs from relevant stakeholders on different policy and institutional options for TJ in Ethiopia.³ In March 2023, the Government of Ethiopia launched nationwide public consultations on the content of the “green paper” led by the Working Group. The Working Group’s public consultations are expected to inform the initial phase of the TJ policy development work, and implementation of the TJ process will only start after the policy is adopted. EHRC and OHCHR provided technical and advisory support to the Working Group and to over 200 facilitators of the public consultations. Based on the checklist and tools prepared and in line with internationally recognized human rights standards,⁴ EHRC and OHCHR also observed 23 public consultations⁵ held in Oromia, Afar, Amhara, Benishangul-Gumuz, Harar, Gambella, Sidama, Somali, Tigray regions, and the former Southern Nations, Nationalities, and Peoples’ region, as well as in the Addis Ababa City Administration and Dire Dawa City Administration. Based on this monitoring, EHRC and OHCHR regularly communicated observations and advice to the Working Group on how to address identified gaps or any other relevant suggestions.

¹ Available at <https://www.ohchr.org/sites/default/files/2021-11/OHCHR-EHRC-Tigray-Report.pdf>

² See the EHRC/OHCHR Advisory Note at <https://ehrc.org/download/ehrc-ohchrs-joint-advisory-note-and-key-findings-temming-from-community-consultations-on-transitional-justice-to-inform-the-development-of-a-transitional-justice-policy-framework-for-ethiopia/>.

³ See the “Ethiopia Policy Options for Transitional Justice” at <https://www.justiceinfo.net/wp-content/uploads/Ethiopia-Policy-Options-for-Transitional-Justice-2023-v2.pdf>.

⁴ See for example OHCHR, 2009, “Rule-of-law tools for post-conflict states: National consultations on transitional justice.” at https://www.ohchr.org/sites/default/files/Documents/Publications/NationalConsultationsTJ_EN.pdf The OHCHR tools provide a comprehensive and internationally acknowledged set of principles and best practices for evaluating the quality and effectiveness of consultations.

⁵ Out of 67 held by the time of publication of the present note.

As the country-wide TJ consultations are nearing completion, it is understood that the Working Group is expected to start the national TJ policy drafting phase, based on the views and aspirations gathered from consultations throughout the country. This second Advisory Note which builds on the 2022 joint EHRC/OHCHR Advisory Note, aims to publicly present the key observations of EHRC and OHCHR monitoring of the Working Group’s public consultations with corresponding recommendations that seek to inform and guide the next equally critical phases of **policy drafting, validation, adoption**, and the **implementation** from a human rights perspective and in line with international standards. These next phases offer an opportunity to accommodate or address key issues that may have been missed or not properly addressed during the consultations.

II. Key Observations

i. Inclusivity and accessibility

Inclusiveness and effective participation are among the key considerations which the organisers of the consultations must ensure, so that all participants, regardless of background, age, gender or social status, can meaningfully engage and express their views and opinions. Participants for the consultations were selected through the coordinated efforts of local interlocutors, facilitators from universities, and the Working Group. EHRC and OHCHR⁶ observed during their monitoring that the groups in attendance included individuals of all ages, women, religious and ethnic minorities, internally displaced persons (IDPs), persons with disabilities (PWDs), and direct victims of human rights violations and abuses. They reside inside or around the urban centres and smaller towns where consultations were held, or they travelled from neighbouring districts. In the 23 consultations monitored, almost half of the participants were women. However, the representation of PWDs was limited in various consultations monitored and several venues⁷ were not physically accessible for PWDs, hindering their participation.

As language barriers may impede effective participation, it is necessary to put in place interpretation services to ensure that the consultation is accessible to all participants. In a few consultations monitored, the lack of interpretation services for all groups in attendance hindered the ability of some participants to engage effectively and meaningfully in discussions. Moreover, in some locations the interpreters summarised ideas and concepts voiced by facilitators and/or attendees rather than providing detailed interpretation.

Additionally, security concerns in some locations of the Amhara and Benishangul-Gumuz regions presented operational obstacles, for the attendance of participants, resulting in the postponement or relocation of a few consultations thus negatively impacting the ability of participants from these violence-affected areas to effectively engage in the consultation process.

ii. Participants’ meaningful engagement and capacity to provide inputs

⁶ EHRC and OHCHR are aware that the Working Group held dedicated consultations with additional groups including the media, government officials, former prosecutors and judges involved in the “Red Terror” cases, national and international experts on TJ, political parties, and refugees inside the country. The EHRC and OHCHR acknowledge that dedicated consultations with Ethiopian refugees outside the country are planned by the Working Group before the drafting of the policy in neighbouring countries with the support of the UN family.

⁷ For example, conference halls inside local hotels.

Enabling participants' engagement by enhancing their capacity to provide meaningful input is key for effective public consultations. It is essential that the organisers design and implement a customised sensitization programme to equip participants with the requisite knowledge and awareness to express well-informed perspectives. In most consultations, facilitators clearly explained the aim of the events, articulated TJ concepts and clarified the inputs which were solicited from participants. It was observed that this practice helped to clarify expectations and promote an environment conducive to meaningful engagement. Given that TJ notions are often explained in technical jargons, facilitators tried to use simple terms and visuals during their informative presentations to facilitate participants' comprehension and meaningful discussions. In a few consultations, however, the lack of knowledge and understanding of TJ related issues among some participants appeared to have affected their full engagement in the consultations.

In the consultations monitored by EHRC and OHCHR, no security officials or uniformed personnel were observed inside or around the venues which allowed for an overall conducive environment for participants to express their views. Similarly, EHRC and OHCHR did not observe media presence covering the events thus contributing to an open and more confidential atmosphere.

Consultation processes should also be carefully designed to accommodate the specific needs and concerns of individuals, particularly survivors of sexual and gender-based violence. Overall, the consultation process was designed and tailored to the specific needs and concerns of various groups. For example, focus group discussions (FGDs) were organized in various break-out rooms to create favourable conditions that facilitated open conversations in smaller groups. Separate FGDs for women enabled the creation of safe spaces to share their experiences and reparation needs. However, shortcomings in terms of gender balance were observed in the composition of the facilitators' team in some locations.

iii. Input solicitation process

Consultation organisers have the responsibility to ensure that questions posed are formulated in a manner that encourages well-informed and consequential responses. Clear explanation of the FGD ground rules prior to the discussions created a conducive environment for open discussions and ensured safeguards against possible revictimization of participants. However, insufficient time allocated to the FGDs and the plenary were observed in some locations, which may have impacted the depth of discussions. Organising consultations and seeking meaningful input on crucial and sensitive topics of TJ in merely one day consultation presented inherent challenges. The EHRC and OHCHR flagged this to the Working Group during the planning phase of the roadmap, but the Working Group explained that consultation time or days cannot be increased due to financial resource limitation and the desire to complete the consultation process within the set timeline with the available resources.

Overall, facilitators refrained from expressing personal opinions and addressed specific notions objectively and succeeded in de-escalating tense situations which were noticed in some consultations. However, in the few instances where EHRC and OHCHR observed facilitators posing leading questions or had difficulties in effectively articulating the input expected from participants, feedback was provided to facilitators to correct their approaches, and improvement was observed in the subsequent consultations. The use of yes-or-no questionnaires and multiple-choice questions, which do not sufficiently allow participants to

express their divergent perspectives beyond the options presented, may have limited the collection of data on the unique needs and aspirations of affected communities. The Working Group tried to address these concerns in the FGDs in some consultations by explicitly encouraging participants to put forward any option, beyond those enclosed in the ‘green paper’.

iv. Working Group’s reception to feedback

Overall, the Working Group has engaged constructively with EHRC and OHCHR during the consultation phase - through regular information sharing and requesting/receiving technical and advisory support and feedback, leveraging respective global and national expertise on a rights-based TJ process to ensure that the process is victim-centred and human rights compliant.

III. Way forward

EHRC and OHCHR present the below recommendations to guide the policy drafting, validation, adoption, and implementation phase from a human rights perspective, largely based on the aforementioned findings, and as part of the EHRC and OHCHR technical support to the Working Group.

- a) **Conflict and violence in some regions:** To address the challenges caused by conflict and violence prevailing in some regions, the Working Group should explore creative means of meaningfully engaging conflict-affected populations including through targeted/specialized meetings as it concludes the public consultations, particularly for those who could not participate in consultations due to insecurity, or refugees outside the country, as their voices remain important to decision-making processes on TJ policy development. There should also be concerted efforts by relevant stakeholders to end all hostilities, and to engage in political dialogue for a peaceful resolution of violence thus creating an enabling environment for a genuine TJ process particularly when implementation of the policy commences. The State of Emergency is incompatible with the spirit and rationale of any TJ process and its imposition in any part of the country should be assessed to ensure its compliance with the principles of legality, necessity, and proportionality, and to avoid adverse impact on the meaningful TJ related process including accountability, and the exercise/enjoyment of human rights, more broadly.
- b) **Inclusion of all groups:** Demonstrating political will and commitment to proactively engage all concerned stakeholders is key to building trust in the TJ process. Shortcomings observed around the meaningful engagement of PWDs on the TJ policy options should be addressed in follow up activities to ensure that the final policy duly reflects and responds to the concerns and needs of all groups of society. PWDs should be meaningfully engaged in the TJ process including the policy development and implementation, and measures should be taken to ensure that venues identified for consultations are accessible to PWDs. To help in addressing this gap, EHRC and OHCHR supported the Working Group by facilitating a consultation workshop targeting persons with disabilities and older persons.
- c) **Public consultations outcome report:** To ensure transparency in the TJ policy development process, it would be advisable for the Working Group to publicize the outcome report of the public consultations based on which the TJ policy document will be drafted. The outcome report should appropriately reflect the suggested modalities,

approaches and options collected across the country on accountability, truth-seeking/telling, reparations, and guarantees of non-repetition, including views diverging from the options in the green paper. Additionally, the methodology that will be used to incorporate the suggestions from those consulted into the policy document should be clearly explained, provided that these are compliant with regional and international human rights standards and principles, and the applicable human rights law.

- d) **Institutional architecture:** Whilst the policy will determine which institutional framework is most suitable to the context of Ethiopia, institutions mandated to implement the TJ policy should operate with independence and integrity in line with international standards, equipped with the necessary budgetary resources and technical specialization, and free of political influence or control to ensure its effectiveness and legitimacy.
- e) **Combination of judicial and non-judicial measures:** Similarly, without prejudice of the content of the TJ policy, it is imperative that the policy clearly defines both judicial and non-judicial processes and mechanisms, including prosecution initiatives for international crimes including sexual violence among others, to address the complexity of Ethiopia's legacy of past abuses. Furthermore, the policy should clearly state a prohibition for amnesties for international crimes as well as gross human rights violations.
- f) **Validation of the TJ policy:** Prior to the adoption of the TJ policy, its validation process must be broad-based to the extent possible. It must be inclusive, genuine, and transparent to allow relevant stakeholders to review the text and provide final feedback for consideration. In particular, the advice and perspectives of national stakeholders including victims'/survivors' groups; civil society; associations representing older persons, PWDs, women, children, refugees, and other vulnerable and minority groups; and religious leaders must be prioritized while complying with international standards on TJ processes.
- g) **Synergy among key actors engaged in TJ related initiatives:** In particular, engagements and cooperation among other initiatives promoting dialogue, peace, disarmament, justice as well as development efforts at the national and regional state level, would have a stronger impact. Alignment of such initiatives would ensure that these important processes reinforce and complement each other.
- h) **Knowledge/awareness about TJ:** Despite some efforts to raise awareness on TJ at the grassroots levels, public knowledge on TJ and the justice options is still limited and/or at times distorted by misinformation/dis-information. TJ requires proactive awareness raising and meaningful engagement with the general public. Ahead of the policy adoption, the government in collaboration with partners could initiate nation-wide accessible educational campaigns and messages on TJ in various local languages, including through media, to equip the population to meaningfully engage in the process once implementation of the TJ policy starts. The crucial role of women, their leadership and that of other groups must continue to be emphasized. Additionally, the capacity of relevant national and regional state institutions should also be strengthened, in order to adequately support TJ-related mechanisms and reforms.

In conclusion, the EHRC and OHCHR remain committed to support an all-inclusive and nationally owned TJ process in Ethiopia, grounded on applicable international human rights law, and consistently focused on the rights and needs of victims and their families – in line with their respective mandates. The credibility of the TJ process in Ethiopia hinges

significantly on the creation of a conducive environment - including commitment by government to engage in dialogue, genuinely take into account diverse views expressed without fear of reprisals, and peacefully resolve conflicts and violence, ensuring that adequate domestic legal and institutional frameworks are in place to address serious violations of human rights and humanitarian law. An explicit commitment with tangible measures and clear timelines to measure progress by political actors and federal institutions in the TJ policy implementation to fully respect human rights and non-recurrence of violations, including in the context of “*Human Rights 75*” initiative⁸ is key. The constructive engagement experienced by EHRC and OHCHR with the Working Group should continue during the next phases of the TJ process with all relevant institutions who will be mandated with implementation of the TJ policy.

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⁸ *Human Rights 75* is an initiative to mark the 75th Anniversary of the Universal Declaration of Human Rights whose three main goals focus on (a) universality, (b) progress and (c) engagement under the global leadership of the OHCHR, together with its partners across the world.