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HAUT-COMMISSARITAT AUX DROITS DE L'HOMME – OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
SECRETARIAT OF THE INTERNATIONAL COMMISSION OF HUMAN RIGHTS EXPERTS ON ETHIOPIA
C/O UNITED NATIONS REGIONAL SERVICE CENTRE ENTEBBE

www.ohchr.org • E-mail: ohchr-ichreethiopia@un.org

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The United Nations International Commission of Human Rights Experts on Ethiopia, established pursuant to Human Rights Council resolution S-33/1 of 17 December 2021, and extended for a year by Council resolution 51/27 of 12 October 2022, presents its compliments to the Permanent Mission of the Federal Democratic Republic of Ethiopia to the United Nations and other International Organizations in Geneva.

In line with its mandate to, inter alia, provide guidance on transitional justice, including accountability, reconciliation and healing, and to make recommendations on technical assistance to the Government of Ethiopia in this context, the Commission has the honour to transmit an Advisory Note (the Note) on the consultative process towards the implementation of a comprehensive national transitional justice policy for Ethiopia, pursuant to Article 10(3) of the Agreement for Lasting Peace through a Permanent Cessation of Hostilities between the Government of the Federal Democratic Republic of Ethiopia and the Tigray Peoples Liberation Front (Pretoria Agreement) of 2 November 2022.

The Commission reiterates its readiness to engage in a dialogue with the Government of Ethiopian and can be contacted at ohchr-ichreethiopia@un.org.

The Commission avails itself of this opportunity to renew to the Permanent Mission of the Federal Democratic Republic of Ethiopia to the United Nations and other International Organizations in Geneva, the assurances of its highest consideration.

A handwritten signature in black ink, appearing to read 'A. K. ...'.

Entebbe, 23 June 2023

Permanent Mission of the Federal Democratic Republic of Ethiopia to the United Nations and other International Organizations in Geneva
Geneva, Switzerland

Advisory note on the consultative process towards the implementation of a comprehensive national transitional justice policy for Ethiopia

The International Commission of Human Rights Experts on Ethiopia, established pursuant to Human Rights Council resolution S-33/1 and extended for a year by Council resolution 51/27,¹ has been given a mandate to, inter alia, provide guidance on transitional justice, including accountability, reconciliation and healing, and to engage with the Government of Ethiopia, including on recommendations on technical assistance.

On 2 November, the Commission welcomed the signing of 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.² It further acknowledged the Government's publication on 26 January 2023 of its Policy Options for Transitional Justice draft for stakeholder consultations (draft Policy Options), as a first step towards the implementation of the national transitional justice policy pursuant to Article 10 of the Agreement.³

The Commission has taken note of the announcement that public consultations on the draft Policy Options, led by the Ministry of Justice's Transitional Justice Working Group of Experts, have been launched and that regional consultations, scheduled for April to August 2023, are under way.⁴

In accordance with its mandate, the Commission offers its views on key principles for a comprehensive and inclusive transitional justice consultation process, in light of relevant regional and international law and standards, as well as information and advice concerning Ethiopia's process to date.⁵ It offers these views and advice to promote a successful consultative process, leading to the formulation of a national policy and its implementation. The Commission will not address the substance of the policy options currently under discussion; its focus at this stage is on the consultations alone.

Key principles of transitional justice processes

Transitional justice comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve

¹ A/HRC/RES/S-33/1, 17 December 2021; A/HRC/RES/51/27, 7 October 2022.

² Statement by the UN Commission of Human Rights Experts on Ethiopia on Signing of the Cessation of Hostilities Agreement, 4 November 2022.

³ Statement attributable to the UN International Commission of Human Rights Experts on Ethiopia on the Policy Options for Transitional Justice in Ethiopia, 26 January 2023.

⁴ FDRE Ministry of Justice, Press Release on Launching of Transitional Justice Public Consultations in Southern Ethiopia Regions, 31 May 2023.

⁵ The Commission notes the issuance of the EHRC-OHCHR Joint Advisory Note and Key Findings stemming from Community Consultations on Transitional Justice to inform the development of a Transitional Justice Policy Framework for Ethiopia, 15 December 2022.

reconciliation.⁶ Because successful transitional justice programmes necessitate meaningful public participation, national consultations are a critical component of this complex process.

This Note discusses seven key principles central to a human rights-based transitional justice process based on relevant domestic, regional and international law, standards and norms, including the 2019 African Union Transitional Justice Policy Framework and the Constitution of the Federal Democratic Republic of Ethiopia.

I. Compliance with international legal standards and norms

International and regional laws, standards, and norms on transitional justice form a comprehensive basis for a consultative process leading to the formulation of a national transitional justice policy. International human rights law and standards, in particular, provide a clear legal framework regarding the rights of victims and obligations of states in relation to transitional justice, including the right to truth, to effective investigations and prosecutions, to remedies including reparations, and to guarantees of non-recurrence.

National consultations should take account of, create awareness around and comply with these international legal standards and obligations. A process that overlooks, excludes, or limits options or rights under international law, is flawed and leads to an outcome that runs counter to the purpose of transitional justice and creation of sustainable peace. In addition, transitional justice processes, including national consultations, go hand in hand with required post-conflict rule of law reform focused on the security and justice sectors.⁷

In particular, the Commission notes that a comprehensive and human rights-based approach to transitional justice means that it is important that the Government allow victims and other stakeholders the opportunity to discuss and consider all possible options in a free and informed manner. These include options beyond those listed in the draft Policy Options. For example, it is important to allow for consultations to discuss accountability for violations by Eritrean forces. As a best practices example, the Colombian model of restorative justice, a novel criminal procedure that places victims at the center and overcomes some limitations of retributive justice, is an option for consideration on transitional justice.⁸ Further, the current process does not sufficiently address necessary amendments to the Constitution, Criminal Code and Amnesty Proclamation No. 1096/2018 to reflect Ethiopia's international legal obligations to criminalize, investigate and prosecute international crimes. The current draft Policy Options also needs to ensure that all human rights – political, social,

⁶ S/2004/616, para. 8.

⁷ United Nations, Framework of Analysis for Atrocity Crimes, 30 September 2014.

⁸ Restorative justice is a specific notion of justice that traces its roots to traditional and indigenous judicial systems. The process focuses on repairing the harm caused by crime or conflict. It involves bringing together the victim, offender, and community to address the harm and find ways to make amends. This approach emphasizes accountability, healing, and restoring relationships rather than punishment. It can be a powerful tool for promoting reconciliation and reducing recidivism.

economic, civil and cultural – are seen as interrelated, interdependent and indivisible and integrated in the consultative process and outcomes.

II. Strengthening national capacity to conduct meaningful consultations

Meaningful national consultations on the Draft Policy Options require a strong national capacity. The Government of Ethiopia thus needs to ensure that it has both adequate resources and domestic expertise on all components of transitional justice. This capacity includes independent, competent, and functioning federal and regional institutions; victim-sensitive procedures that guarantee the safety, dignity, and privacy of victims; and trust-building measures including through community outreach.

In addition, the current process demands time frames that balance the need for development and strengthening of the requisite domestic expertise with the urgency of addressing the needs of victims.⁹ The Commission believes that the time frame of April to August 2023 -- for national consultations covering all regions (despite accessibility concerns) -- seems inadequate, in particular for protection measures and trust-building with victims. A rushed process to meet fixed deadline risks excluding victims and communities whose voices are crucial to determining the framework for transitional justice for Ethiopia.

The implementation of this key principle requires technical assistance from international, regional, and national bodies and experts, including civil society. The Commission stands ready to offer further guidance and advice in this regard.

III. Ensuring transparency and public outreach

Outreach and transparency are key to the practice of national consultations on transitional justice. The Constitution of Ethiopia reflects this principle by stipulating in Article 12 that “the conduct of affairs of Government shall be transparent.” Outreach and transparency can help ease tensions, build trust in public institutions, and establish positive relationships with all communities. These are all essential steps towards creating a comprehensive national transitional justice policy.

As a result, information on the transitional justice process, including assistance and protection measures for victims, witnesses and communities, must be part of the planning process. Such information should be provided well in advance, easily accessible to all individuals and communities, regardless of language, ethnicity, religion, gender, age, ability and other potential barriers. Information must address the needs of victims, including survivors of conflict-related sexual violence, as well as those of the community. Transparency requires consultation on and publication of information on the transitional justice process. The process must allow for freedom of opinion and expression in law and in practice and independent monitoring.

⁹ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Section VII.

Based on information received by the Commission, Ethiopia's consultation process falls short regarding transparency. For example, in Addis Ababa, several victims informed the Commission that they had never heard about the consultation process launched by the Ministry of Justice. Victims in Amhara told the Commission that they believed that the Ethiopian authorities should inform them well in advance before the consultations in order to be best prepared to contribute to the development of the transitional justice policy.

It is thus important for the Government to make information on all phases of the consultative process publicly available and tailored to the full range of audiences in the country. Information should be provided in their preferred languages and disseminated to federal and regional institutions, media and journalists, civil society, women's organizations, victim representatives, and traditional, religious, and local leaders. Dissemination should deploy various means of communication and tailor them to target all groups, including the use of community town hall meetings as well as print, electronic and social media platforms. Independent monitoring and reporting on the process as part of the right to freedom of opinion and expression is important.

IV. Applying a victim-centred approach

According to international standards, victims include “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law”¹⁰ as well as “the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.¹¹

A victim-centred approach places the needs and rights of victims at the forefront of the transitional justice process. Victims should be recognized as rights-holders and given special status from the inception to the conclusion of the transitional justice process. Victims' diversity across various dimensions should be reflected throughout. Moreover, participation of victims comes with economic, social, security, re-traumatization, and other risks; it must be free and voluntary.¹² They must not be compelled to participate or to choose between, for instance, community reconciliation or individual criminal accountability.¹³

Based on information it has received, the Commission observes that most of the consultations held so far have focused mainly on elite groups in Addis Ababa such as members of political parties and academia. In Addis and Oromia, victims expressed their lack of trust and confidence in the entities that are leading the

¹⁰ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation, Section V; African Union Transitional Justice Policy Framework, 2019, para. 2.

¹¹ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation, Section V.

¹² A/HRC/34/62, para. 27.

¹³ Ibid. A/HRC/34/62, para. 27

public consultation process. Similar concerns have been expressed by Tigrayan and Amharan victims as well as the refugee community. It is critical to intensify engagement with victims and their communities.

Engagement requires all necessary measures during the consultation process to provide, and inform victims of, protective measures and other forms of support open to them to enable their participation in the national consultations. It is important for the Government to (a) offer the option of participation in an anonymized format to protect their identity; (b) organize victim-specific consultations; (c) ensure the availability of safe and secure locations; and (d) provide support services, including legal assistance and psychosocial support. Only with such positive measures will victims have a platform to express their voices in a safe manner.

V. Ensuring women's rights and gender equality

Women and men, girls and boys, persons with disabilities and older persons are affected by conflict in different ways. These gendered impacts require recognition during consultations on the transitional justice process. The African Union Transitional Justice Policy Framework and Article 35 of Ethiopia's Constitution both guarantee affirmative measures and full consultation of women.¹⁴ "Transitional justice approaches should pay special attention to abuses committed against (...) women."¹⁵ Women and men, children, persons with disabilities and older persons should at all stages of the process be recognized as right-holders. Recognition of the disproportionate impact on and related interests of these groups in justice, accountability, and remedies is essential to creating sustainable peace. In particular, the transitional justice consultations require a gender-sensitive design. That process includes legal assistance, psychosocial counselling, and guarantees of anonymity in reporting at the choice of the victim.

The Commission has been informed that many women victims of conflict-related sexual violence do not feel safe and comfortable speaking about their experiences in the presence of men because of fear of reprisal, trauma, religious and cultural reasons. Those interviewed by the Commission indicated that special sessions for female victims with female facilitators would allow them to participate and share their stories more openly. They also informed the Commission that the transitional justice process would not be able to integrate women's specific concerns without a safe platform to express them freely. It is thus important for the Government to consider these and other measures that would guarantee the protection of these groups, in particular women victims.

In addition, women must enjoy free and equal participation in the transitional justice process. Rather than being seen solely as victims, women should be supported also as leaders, decision-makers, and facilitators of the process, as reaffirmed in the landmark Security Council resolution 1325 (2000) on women, peace and security.¹⁶ The Security Council urged "Member States to ensure

¹⁴ African Union Transitional Justice Policy Framework, 2019, para. 39.

¹⁵ Guidance Note of the Secretary-General, page 5.

¹⁶ S/RES/1325, preamble.

increased representation of women at all decision-making levels (...).¹⁷ The Commission notes in this regard that UN Women is working with the Government of Ethiopia to develop the first ever National Action Plan for Resolution 1325.¹⁸

In this context, the Commission wishes to draw attention to the absence and underrepresentation of women in the design and implementation of the transitional justice process, from the negotiations on and signing of the Cessation of Hostilities Agreement to the ongoing national consultations.¹⁹ Addressing this concern requires designing and implementing affirmative measures for women's involvement, beginning now, at all stages and levels of consultations, as well as later in the finalization and implementation of the policy. Information on the representation of women in the transitional justice process should be publicized, in line with the principle of transparency. Sustainable peace cannot be achieved without full involvement of all stakeholders.

VI. Ensuring inclusivity, equity, and non-discrimination

Inclusivity, equity, and non-discrimination are critical in transitional justice processes.²⁰ Transitional justice processes should have national and local ownership and address the needs of remote, marginalized, and vulnerable communities. Participants must thus include person of all ethnicities, minorities, women, boys and girls (especially child soldiers), persons with disabilities, older persons, refugees (in Ethiopia and abroad), internally displaced persons, stateless persons, and the diaspora.²¹ Their unique voices and perspectives are essential in ensuring that the process is transparent, inclusive and effective.

Ensuring a child-sensitive approach to transitional justice processes is of particular importance. Children "are among those most affected by armed conflict and destabilizing political environments."²² While some children may have been recruited by parties to the conflict and involved in violations, they should be considered primarily as victims.²³ Children have the right to be heard,²⁴ and should be seen as rights-holders. Article 36 of the Constitution of Ethiopia underscores the rights of the child. During the transitional justice consultations, it is thus important that the Government ensure that children enjoy a protective environment in their families and communities,²⁵ including through mechanisms enabling them to participate safely and receive support, such as psychosocial counselling.

¹⁷ Ibid, para. 1.

¹⁸ UN Women, Humanitarian Gender Alert – Women, Peace and Security and Humanitarian Action in the Context of Ethiopia, April 2023, Issue 3.

¹⁹ Ibid. UN Women, Humanitarian Gender Alert

²⁰ African Union Transitional Justice Police Framework, 2019, paras. 25 and 33.

²¹ Ibid, para. 33. (AU TJ policy framework

²² Guidance Note of the Secretary-General, page 5.

²³ Ibid. Guidance Note of the Secretary-General, page 5.

²⁴ Article 12, Convention on the Rights of the Child.

²⁵ Ibid. Guidance Note of the Secretary-General, page 6

Regarding refugees, the Commission notes that, although the Roadmap²⁶ highlights their participation and inclusion in the consultations, it does not provide the timeline and locations for the consultations. Ethiopian refugees in the neighbouring countries stated that they have yet to learn about the public consultations and whether the Government will engage them. The refugees stressed the need for everyone affected by the conflict to be given a voice in the consultations, and for information on the consultations with refugees to be provided well in advance. It is thus important to include in the consultations the full range of groups listed above, on a non-discriminatory basis, recognizing that such a process will require more time than currently foreseen by the Government.

VII. Engaging in effective coordination and partnerships

The State carries the main responsibility for overseeing and implementing the transitional justice process. In carrying out that responsibility, it must engage in a constructive and open dialogue with all internal stakeholders to effectively coordinate, cooperate, and create coherence. These stakeholders include victims, witnesses, journalists, human rights defenders, legal and medical professionals, religious and community leaders, civil society, and federal and regional state institutions.

Ethiopia would also benefit from continuing consultation with actors and experts outside of Ethiopia, beyond the expert conference conducted in March 2023.²⁷ Expertise can be found from the African Union and United Nations Member States that have gone through transitional justice processes, the African Union Commission of Inquiry on Tigray, the present Commission, OHCHR, and non-governmental organizations. The sharing of experiences and expertise will greatly benefit the transitional justice process and outcome. The importance of such partnerships is recognized in the African Union Transitional Justice Policy Framework.

In this regard, the Commission reiterates its readiness to engage in dialogue with the Government of Ethiopia and to provide guidance on transitional justice and make further recommendations on technical assistance.

Conclusion

The Commission appreciates the opportunity to share its views on the ongoing transitional justice consultations. Implementation by the Government of the measures it is advising will play an important role in gaining both domestic and international credibility and legitimacy for the transitional justice process. Equally important, it will result in a consultation process that provides the Government with the information and perspectives required to adopt a final policy that both

²⁶ The Roadmap for the National Consultations and Preparation of a Draft Transitional Justice Policy was published in January 2023 by the Transitional Justice Working Group of Experts to serve as a guiding during the consultations process.

²⁷ On 16-17 March, 2023 the Ethiopian Government and the African Union organized a consultative meeting on policy options for Transitional Justice in Addis Ababa with experts invited from all over Africa and beyond.

meets the needs of the Ethiopian people and is consistent with Ethiopia's international legal obligations.

The Commission emphasizes that, while some of its guidance can be implemented immediately, a number of these measures will require investment of both resources and time. It thus recommends that the Government reconsider and adjust the date of completion of the consultations. As stated earlier, a rushed process could undermine prospects for a human-rights based transitional justice process that will lead to durable peace. The Commission thus urges the Government to continue to demonstrate its commitment to a victim-centred, human-rights based transitional justice process through needed changes in the consultation process.