

EHRC/OHCHR’s 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

1. Introduction

The Ethiopian Human Rights Commission (EHRC) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) once again welcome the Agreement for Lasting Peace and Cessation of Hostilities (the Peace Agreement) signed by the Government of the Federal Democratic Republic of Ethiopia and the Tigray Peoples’ Liberation Front on 2 November 2022, which provides for the adoption of a Transitional Justice Policy Framework, particularly Article 10 (3) of the Peace Agreement stating that “the Government of Ethiopia shall implement a comprehensive national transitional justice policy aimed at accountability, ascertaining the truth, redress for victims, reconciliation, and healing, consistent with the Constitution of FDRE and the African Union Transitional Justice Policy Framework.” It further states that “the transitional justice policy shall be developed with inputs from all stakeholders, and civil society groups through public consultations and formal national policy-making processes.”

Recognising the significance of a genuine, participatory, inclusive, contextualised, and human rights compliant transitional justice (TJ) process for sustained peace, reconciliation, and healing for the people of Ethiopia, EHRC and OHCHR herewith present the key preliminary findings of community consultations conducted in Afar, Amhara, Harar, Oromia and Somali regions, and Dire Dawa city administration from July to December 2022, as well as the key TJ principles that should guide during the development and implementation of TJ initiatives outlined in the African Union Transitional Justice Policy (AUTJP) and the Guidance note of the United Nations (UN) Secretary-General: United Nations Approach to TJ. Community consultations planned in August 2022 in the Tigray region were postponed due to the resurgence of fighting during the same month. However, internally displaced persons (IDPs) from Tigray participated in the consultations held in the Amhara and Afar regions, and field consultations in Tigray will be conducted with improvement in the security situation, along with consultations in the other remaining regions.

2. Background

According to definitions provided by the United Nations¹ and the African Union², TJ is generally understood as the various processes and mechanisms (both judicial and non-judicial) associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, overcome past violations, divisions and inequalities in order to ensure accountability, serve justice and achieve reconciliation as well as create conditions for both security and democratic and socio-economic transformation. A comprehensive approach to TJ comprises four (4) interrelated and mutually reinforcing components: truth-seeking and telling; accountability (the formal system to be supplemented by informal/traditional system); reparation for victims; and guarantees of non-

¹ Refer for example to UN SG Report (S/2004/616), available at <https://www.un.org/ruleoflaw/blog/document/guidance-note-of-the-secretary-general-united-nations-approach-to-transitional-justice/>.

² Refer to for example to section 19, AUTJP, available at https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf.

repetition through institutional reform and measures in the societal and cultural spheres (e.g., strengthening of civil society, memorialization, education, and psychosocial support).

3. EHRC and OHCHR’s engagement on Transitional Justice

In line with their mandate, the EHRC and OHCHR in Ethiopia have been working towards the promotion and protection of human rights, including, advocating for accountability measures for serious violations of International Human Rights Law and International Humanitarian Law through a holistic TJ approach in line with relevant human rights norms and standards. The EHRC/OHCHR Joint Investigation Team (JIT) Report on international human rights, humanitarian, and refugees law violations in Tigray released on 3 November 2021 recommended for “the country to embark on a human rights compliant, holistic, and victim-centred transitional justice mechanism for crimes committed during the Tigray conflict including accountability for past crimes.”³ The JIT further called on the international community “to support the Government of Ethiopia in setting up and/or strengthening a transitional justice mechanism, based on regional and international standards.”

To support implementation of the recommendations on TJ, EHRC and OHCHR organised a Consultation Meeting, including a TJ cluster meeting on 3 February 2022 in Addis Ababa, where representatives of the African Union Commission, the Inter-governmental Authority on Development, national civil society, the United Nations and representatives of diplomatic communities in Addis discussed and advised on next steps towards the development of a roadmap based on extensive consultations with relevant stakeholders to guide future TJ processes. In this regard, the OHCHR and EHRC organised a Follow-up Meeting on Transitional Justice with various State and non-State stakeholders on 24-25 March 2022, in Addis Ababa with the support of prominent experts on TJ from Kenya and South Africa, who shared relevant experiences to enhance understanding of TJ and contribute to discussions on the way forward. During the Meeting, participants unanimously agreed on the relevance and timeliness of pursuing a contextualised national TJ process to address the complex challenges facing Ethiopia, to achieve sustained peace and reconciliation, ensure accountability, and to provide redress for victims. A key recommendation stemming from the Meeting was the need to expand the awareness and discussions on TJ across the country and to identify existing unique Ethiopian cultural/religious/community values and practices that already advance TJ values and principles.

4. EHRC and OHCHR Community Consultations on Transitional Justice

Based on the recommendations of the March Meeting, from July to December 2022, EHRC and OHCHR conducted thirteen field consultations to gather the views of victims of human rights violations and communities affected by conflict, including on traditional and religious processes which promote accountability, truth-seeking, reconciliation and reparations - in an effort to document and amplify their voices and concerns for the relevant authorities. With such objective, the joint team has so far met communities in Afar, Amhara, Harari, Oromia and Somali regions, and Dire Dawa city administration. As stated above, two consultations planned in August 2022 in the Tigray region were postponed due to the resurgence of fighting, although several IDPs from Tigray participated in the consultations held in the Amhara and Afar regions.

³ See the JIT Report at <https://www.ohchr.org/Documents/Countries/ET/OHCHR-EHRC-Tigray-Report.pdf>.

While the community consultations are ongoing and will cover all regions of Ethiopia and the Addis Ababa city administration, EHRC and OHCHR consider it important to highlight the preliminary findings of the field consultations conducted so far from a total of 717 individuals including 282 women who constitute victims and families of victims, IDPs, religious and traditional leaders, and grassroot civil society organisations working on human rights and peacebuilding issues. The findings represent the views on TJ related issues during focus group discussions, reflections in plenary and individual interviews.

These consultations are part of OHCHR and EHRC's broader initiative to seek the views of the public in all regions of Ethiopia and complement TJ public initiatives by other institutions. OHCHR and EHRC believe that this approach, focused on the meaningful participation and experiences of rights-holders, particularly directly affected populations should inform ongoing discussions on the development of a legitimate, holistic, genuine, and inclusive TJ policy. It would also promote transformative reforms that support accountability, truth-seeking, reparations, institutional reform, reconciliation, and foster social cohesion in Ethiopia.

5. Key preliminary findings of the community consultations

i. Peace and security⁴

Affected populations in all the field consultations stated that they live in constant fear of conflict and recurrence of the violations they experienced. They stated that their number one priority is to have peace and security, and that everything else is secondary. They stated that genuine public consultations which engage all sides and the wider public, are important to promote peacebuilding and ensure reconciliation. In some consultations, participants put restoration of peace and security as a precondition to any other initiatives, including discussions on TJ approaches. IDPs emphasised on the need to enforce laws to ensure equal protection of all Ethiopians living and working in any part of the country. The restoration of the rule of law to ensure peace and security will enable conflict-affected populations to meaningfully participate and contribute to discussions on how to come to grips with the past as well as on charting the means to confront legacies of conflict. The TJ policy should therefore aim at addressing the root causes of conflict in all parts of the country and contribute to accountability, sustained peace, reconciliation, and healing to prevent recurrence of human rights violations.

ii. Reparations⁵

Affected populations in the public consultations stated that their second priority is to receive reparations for the harm they suffered including restitution, compensation, rehabilitation, and guarantees of non-repetition. Participants understood that they may never be able to recover everything that they have lost. In the short-term, there was a unanimous request to receive equal access to basic needs and services like food, water and sanitation, shelter, health services, particularly in IDP sites and conflict affected areas where they stated that the conditions did not allow a dignified life. Regarding the type of redress, needs varied depending on their individual

⁴ The AUTJP provides that the peace process element of TJ seeks to bring an end to any ongoing violence, remove the threats of further violence impacting affected populations, and the provision of protection and security guarantees to civilians in the conflict or violence-affected areas.

⁵ The AUTJP provides that reparative justice consists of effective and adequate financial and non-financial redress for violations or losses suffered.

and collective experience as a community. Overall, they requested the government to develop - with the involvement of victims and affected communities - a strategy that incorporates reparations addressing the broad-range of needs. In their view, restitution could be for example in the form of returning to their homes, living without fear, and getting their livelihoods back (a return to their normal lives), noting that forms of compensation were necessary to create conditions that would allow them to resume their normal lives. Those whose property and cattle were looted stated that they want to get back their property and receive a genuine apology. Participants added that rebuilding destroyed public facilities such as hospitals and schools are necessary as well as receiving psychosocial support to overcome the trauma of conflict.

iii. Truth, acknowledgment, and apology⁶

Participants stated that they are willing to share their truth of what happened during the conflict, and they are ready to forgive and reconcile if there is truth and acknowledgment by institutions and/or perpetrators of the harm caused and if victims receive appropriate redress and genuine apologies, including from the highest level such the Head of State, President of a region, or the Minister or commander of a defense forces or other armed actors.

Participants generally expressed discomfort with purely State-led processes and institutions, and suggested the establishment of an independent, impartial, credible, and autonomous national institution to lead the truth-seeking and telling exercise. There were suggestions to establish a mechanism comprising reputable and honest traditional and religious leaders including women who are completely detached from any political agenda and representing different parts of the country, which can be advised by impartial and independent experts on processes and standards. They noted that selection of the leaders should be done by communities in a transparent, inclusive, and merit-based manner, to ensure legitimacy and credibility.

iv. Accountability⁷

Participants stated that they understand justice as more than criminal accountability and that it should be ensured that past abuses and legacies of conflict are addressed, violence ended, and recurrence prevented. Most participants acknowledged that it may not be possible to prosecute everyone who committed crimes in the context of conflict or other situations. However, they stressed that the leadership (“masterminds”) of conflict, particularly in Northern Ethiopia, should be held accountable as they are responsible for “spreading hate and for making it a conflict between people” adding that those responsible for grave crimes such as killings of civilians and rape should also be held accountable. According to participants, amnesties should therefore not be given to those who gave orders and those responsible for committing grave crimes. Participants generally indicated that they currently have more trust in the informal (traditional/religious) justice system which they perceive as promoting reconciliation and nonrecurrence as opposed to the formal judicial system which they state does not prevent recurrence or bring peace and requires reform.

⁶ The AUTJP provides that the truth, justice, and reconciliation element of TJ involves the provision of public processes for probing societies with legacies of violent conflicts and systemic or gross violations of human and peoples’ rights. Participants of the public consultations unanimously agreed on the need for truth-seeking and telling, and the importance of acknowledgement and apology for wrong doings by State and non-State perpetrators.

⁷ According to the AUTJP the justice and accountability element deals with the (formal and traditional) legal measures that should be adopted for investigating and prosecuting the crimes perpetrated, as a means of establishing accountability and giving judicial remedy to and acknowledgement of the suffering of victims.

However, adjustment would be needed – if traditional mechanisms are to play a role in TJ. For example, some areas of concern highlighted included the lack of (or minimal) women’s participation in the proceedings of the traditional mechanisms and their unequal treatment when it comes to awarding compensation. For genuine accountability to take place, participants expressed the need to establish an independent and impartial investigation and prosecution body, as well as an independent special court (which may also be an independent special bench in the national judicial system).

v. Guarantees of non-recurrence⁸

Participants generally expressed discomfort with State institutions particularly law enforcement and the judicial system, indicating the need for reform, including constitutional provisions perceived to foster divisions or discrimination between or among communities. Affected populations generally stated that they believe the State has the primary responsibility for protecting civilians and ensuring that similar violations do not happen. However, participants also highlighted that some politicians and elites bear some degree of responsibility for the human rights violations which occurred. They stated that upholding the rule of law, holding State and non-State perpetrators accountable, and ensuring peace and security are the primary means of preventing recurrence. Some participants suggested the need for the government to undertake constitutional amendment process as a sustainable way of addressing the root causes of conflict and preventing recurrence. Participants also emphasized that all members of society have a role to play in preventing recurrence of similar violations by teaching and practicing good values in the home, by parents being role models for their children, by religious and community leaders teaching the youth ethics, by the media desisting from disinformation and spreading hateful or inciteful speech, by the people holding political parties accountable, etc.

vi. Meaningful participation

Participants in the public consultations stated that it is important to hold discussions on TJ even at the grass-root/community level for genuine and meaningful engagement. They stressed that conflict-affected populations particularly victims should have a voice in TJ related decision-making. In their view, giving voices and listening to those most affected by conflict will be a key factor that will determine the success of the transitional justice process in Ethiopia. Participants urged EHRC and OHCHR to ensure that their messages reach policymakers so that their inputs shape government policies and practices. Participants expressed their willingness and commitment to be involved in TJ-related processes such as truth-telling as they understand its relevance to bring justice, healing, and reconciliation. They emphasized the need to create a safe environment for them to express themselves without fear of reprisal – including when interacting with any future TJ mechanism. They stressed that they are willing to engage with independent and impartial institutions, noting that a TJ process can only be credible if it is representative of all Ethiopians. Participants stressed that traditional and religious leaders in society should be involved in TJ

⁸ The AUTJP provides that political and institutional reforms are aimed at reforming critical State institutions, where necessary creating such institutions to ensure democratic and socio-economic transformation and the prevention of future violations. The process can include constitutional and legal reform; adoption of legislation; disarmament, demobilisation and reintegration processes and security sector and judicial reforms; vetting of individual office holders; etc.

processes and mechanisms due to the wealth of successful dispute settlement cases using such informal processes, also promoting accountability, reparations, and reconciliation.

Meaningful participation and consultation with victims and affected communities in designing and implementing TJ mechanisms contributes to a shift in victims' and broader society's perceptions and understanding of their status and roles as beneficiaries of the process and as powerful agents of change in pursuit of transformation, peace, democracy and reconciliation. In line with the principle of **national and local ownership**, the process of designing and implementing TJ should be led and driven by national stakeholders involving all sides of a conflict and all sections of society. Victims⁹ and other members of society affected by violence should take an active part in the design of mechanisms and processes. The principle of **inclusiveness, equity, and non-discrimination** further requires that TJ processes should promote the participation and address the needs of marginalised and vulnerable groups such as women and girls, the elderly, persons with disability, the youth, and child soldiers.

vii. **Assessment, Implementation, Monitoring and Evaluation of TJ¹⁰**

Participants in the community consultations expressed the need for regular monitoring of the TJ process by independent bodies from beginning to end to ensure that their voices are heard and that their recommendations are duly considered as well as to ensure that the entire TJ process complies with requirements of credibility, transparency and legitimacy. Some participants requested EHRC and OHCHR to hold bi-annual consultations for updates on how their inputs were received and incorporated by policymakers. Participants further stated that there should be oversight of the TJ institutions to ensure that there is no interference in their mandate.

6. Conclusion: additional key human rights principles

In addition to presenting the views and suggestions of conflict-affected populations met during the community consultations, the EHRC and OHCHR would like to remind relevant national and international actors that the development and implementation of TJ initiatives should be grounded on regionally and internationally accepted basic values and standards, applicable human rights law, and informed by best practice as emerging from TJ initiatives and experiences in different contexts. In particular, TJ processes should be:¹¹

- ✓ **Context-specific:** based on Ethiopia's context specificities, political, institutional, and legal settings, history, culture, and local priorities in particular as expressed through victims' expectations and demands and in compliance with applicable international norms.
- ✓ **Gender-sensitive:** including women at all stages and levels of decision-making in the transitional justice process and holistically addressing the full range of human rights

⁹ Recognizing the centrality of victims and their special status in the design and implementation of transitional justice processes; their dignity, views, priorities, and concerns should be fully respected.

¹⁰ The AUTJP provides that national and local actors should lead the planning, implementation, monitoring, evaluation, and reporting on TJ. Coordination and coherence among all actors and processes promotes transparency, accountability, and shared objectives between the various local, national, and international actors involved, which enhances trust.

¹¹ Refer to <https://www.ohchr.org/en/transitional-justice/about-transitional-justice-and-human-rights>

violations to transform gender inequality, including but not only by adopting a specific focus on sexual and gender-based violations and their root causes.

- ✓ **Transformative for all of society:** TJ process should be understood not just as a backward-looking exercise but as a forward-looking opportunity for more significant societal transformation through addressing both the needs of victims and the root causes of violations, including gross inequalities, unfair power structures, entrenched discrimination and exclusion, institutional deficiencies, structural impunity and other human rights violations which underlie or drive so many threats to peace and security.
- ✓ **Responsibility for TJ implementation:** in line with AUTJ policy the implementation of the TJ processes is the responsibility of the State (Government of Ethiopia) supported by other stakeholders.
- ✓ **Synergising, sequency, and balancing TJ elements:** the choice of the combination of TJ measures should endeavour to mutually reinforce and ensure the complementarity of the objectives of peace and reconciliation on the one hand and justice and accountability, as well as inclusive development, on the other.
- ✓ **Cooperation and coherence:** the pressure to deliver peace, justice and accountability dividends, and the presence of many actors require cooperation and coherence to ensure that all actors and processes respond to the needs and priorities of the affected country and peoples. It is necessary to clarify and define roles and responsibilities in ways that guarantee national ownership, African leadership, legitimacy, and accountability.
- ✓ **Capacity building for sustainability:** all TJ processes should have a capacity-building component that strengthens the capabilities of the society to support and enhance national processes and institutions.

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