

18 October 2023

**To: Ethiopian Human Rights Commission
Office of the High Commissioner for Human Rights - EARO
Addis Ababa**

**Clarification Note of the Transitional Justice Working Group of Experts
In Relation to the EHRC/OHCHR Joint Advisory Note**

The Transitional Justice Working Group of Experts (TJWGE) takes notice of the 'EHRC/OHCHR advisory note on the next steps towards the development of a human rights compliant Transitional Justice Policy for Ethiopia' - issued on October 11, 2023.

An independent and impartial ad-hoc group mandated to carry out inclusive and broad-based consultations and craft a comprehensive, integrated and context-specific transitional justice policy for Ethiopia - the TJWGE welcomes the EHRC/OHCHR's joint undertaking to compose a second advisory note that appraises the consultations processes and offers recommendations on next steps in respect of Ethiopia's journey on transitional justice.

As trusted partners engaged in the TJWGE's works since the earliest phase of the design and implementation of the public consultations on transitional justice options, the TJWGE is convinced that both institutions are well placed to take on monitoring works and assessments and provide valuable insights. Their recommendations are vital to ensure that the TJWGE's pursuit of the consultations and policy design processes is managed in compliance with the pertinent human rights standards and internationally accepted tools on transitional justice.

In this light, the TJWGE expresses its appreciation to both institutions for delivering a positive testament and evidence regarding the integrity and standards of the public consultation processes and for identifying gaps that should be accommodated in future exercises.

This being said, the TJWGE also wishes to seize this opportunity to indicate a few inexactitudes in the reading of the advisory note - which, it hopes, would be rectified - in order to offer a more precise account of the TJWGE's approaches and working procedures to date. In this regard, the TJWGE wishes to accentuate that the objective is not to claim that the TJWGE operates under a utopian realm of perfection - but to only moderate any damaging outlook that may ensue from a reading of the current text of some paragraphs in the advisory note.

The points of concern are presented as follows - in the order of their appearance in the advisory note.

1. Absence of frequent/regular engagement: From the very inception, the EHRC and OHCHR were accorded an unparalleled opportunity of collaboration with and access to the works of the TJWGE. While this had facilitated a smooth sailing of the EHRC/OHCHR monitoring works in several consultations, the TJWGE's work would have been served better if a detailed account of the 23 events monitored was offered, the reflections were based on at least 50% of the total number of consultations held, and generally, if a more frequent and structured communication of observations

and recommendations was effected. The fact that only two advisory notes were shared over the course of ten months is viewed as a limitation.

2. Inclusion and effective participation of Persons with Disability (PWD): The TJWGE concurs with the positive account in the advisory note which recognized the concentrated efforts exerted by the TJWGE to ensure inclusion of all stakeholders. Nevertheless, the note also concluded that 'the representation of PWDs was limited in various consultations monitored, and several venues were not physically accessible for PWDs, hindering their participation'; based on this, the EHRC/OHCHR recommended that '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'.

The TJWGE considers that this account is prematurely articulated - and also fails to look at the whole set of measures adopted by the TJWGE in relation to PWD in the consultation processes. Indeed, PWD are viewed - and have been engaged - as a critical stakeholder in individual consultations. First, the national association of women PWD was persuaded to prepare - and had since submitted a policy brief focusing on the viewpoints of PWD. Second and more pointedly, an exclusive 'PWD-only' consultation was organized at a national level on 30 September 2023 - in coordination with the EHRC. Third, associations working on the causes of PWD were represented during the 'women-only' consultation - jointly organized with the UN-WOMEN from 9-10 June 2023. The TJWGE trusts that these multiple opportunities of engagement offer more than an adequate agency to the cause and demands of PWD in the context of the consultation processes.

3. Language barriers: The TJWGE would have preferred to receive a more detailed account of which of the 23 events jointly monitored by EHRC/OHCHR encountered issues related to language barriers - which may have impeded the effective involvement of participants in the consultations. Throughout, the TJWGE had exerted to conduct all consultations in a language which the participants understood and preferred. In a few (usually multi-ethnic) consultation proceedings where some of the attendees had struggled to grasp the discussions, specific measures were taken on the spot through the agency of regional interlocutors who availed translation services. The TJWGE has no record of any event where, in respect of 'some consultations', the 'lack of interpretation services for all groups in attendance hindered the ability of some participants to engage effectively and meaningfully in discussions'.
4. Participants' meaningful engagement and capacity to provide inputs: Again, the TJWGE accepts the well-intentioned approbations of the advisory note on measures taken by the TJWGE in enhancing the capacity of participants to provide meaningful inputs. Yet, the statement that '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' - is perhaps a little too distended - to the extent that the 'gap' is intended to be attributed to inadequacies of preparatory works. While certain personal limitations are unescapable and disparity in the comprehension capacity of participants is inevitable given that a grass-roots-level community members were invited,

at the very least, the advisory note's conclusion should have been supported by some evidence and a clear explanation demonstrating how this insight was actually discerned from field monitoring works.

5. Input solicitation process: No less, the remark in the advisory note that 'insufficient time allocated to the FGDs and the plenary were observed in some locations, which may have impacted the depth of discussions' - is certainly not in reading with bench-mark experiences and standards indicated under the relevant instruments. While it is true that methodologically, consultations must strive to involve the widest possible number and type of stakeholders, the total time that should be allocated in the search for acceptable levels of data/input is simply a coefficient of several variables - including the purpose which a process intends to achieve, its scale, and other considerations relating to access, resources, and security. As such, no specific guidance could be given in abstracto. Under best practice and social science approaches, the most generous qualitative consultation, and especially FGD, brings together a small group of preselected individuals for only one or two hours.

In this light, the TJWGE's well-thought-out decision to organize all individual consultations as a one-day-event has availed more than adequate time to carry out the sensitization and plenary discussions (in the mornings) - while the whole afternoon is dedicated to four parallelly running FGD sessions. This approach not only exceeds international and best practice standards, in practice, the TJWGE's transcribed records also showcase that the approach had barely affected the quality or quantum of the inputs received.

Furthermore, the statement that '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 of affected communities' - is simply inconsistent with the approach which the TJWGE had deployed. Indeed, all discussions to solicit input were held based on unstructured questions. This is also clearly stated in the Roadmap for the National Consultations and Preparation of National Transitional Justice Policy itself which establishes that the 'guiding questions for the discussion are open-ended themes or issues, rather than closed questions; the unstructured questions are designed in a manner that allows for different, new ideas or options to emerge during the discussions'. As such, there was neither a questionnaire nor a multiple-choice question employed in the course of the consultations.

6. In respect of the way forward: as much as the TJWGE realizes that the partnership with the EHRC/OHCHR is highly valued, and several recommendations of the advisory note on next steps are critical to ensure a policy drafting process that meets international standards, it is also important not to put prescriptive thoughts on matters of transitional justice that should be decided by Ethiopians and Ethiopians alone. This is particularly true in relation to the advisory note's apriori dictate that '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'. As stated under the AU Transitional Justice Policy (2019), local leadership is critical to ensure that 'priorities ... of the implementation of the TJ processes remain responsibility of African governments, and that other stakeholders should respect this leadership'; more pertinently, national

and local ownership applies to all aspects of TJ, from assessment and implementation to monitoring and evaluation - which entails that process leadership and decision making ... are led and driven by national stakeholders. No less, any choice on transitional justice must draw on society's conceptions and needs of justice and reconciliation - which may mean that the emphasis is on reconciliation, healing, or justice, or a combination of measures necessitated by its own specific contexts and realities.

It follows that in relation to the remaining milestones, the policy drafting process must be guided solely by the choices and aspirations of the Ethiopian people based on specific contexts in Ethiopia. In this light, any assessment note by EHRC/OHCHR - offered to the process - should exercise caution not to engage in substantive dictate on what or how Ethiopia's future policy framework should be organized.

The TJWGE takes this opportunity to strengthen its collaboration with the EHRC/OHCHR. The TJWGE also hopes that the EHRC/OHCHR will be able to modify the advisory note based on insights offered under this clarification note.

Transitional Justice Working Group of Experts

Addis Ababa, 18 October 2023