OHCHR's preliminary feedback on the draft policy on Transitional Justice

CONFIDENTIAL

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1. **Definition of victim** (page 6 of Amharic version draft policy, Definition 9)

The current definition of victim in the draft policy is linked with "systematic, large-scale" natures of human rights violations the individual has suffered. As such, it is quite narrow and risks excluding a significant section of the population. **It is recommended to adopt the following internationally-accepted definition of victim** enshrined in Principle 8 of the 2005 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.[1]

"[…] Victims are 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. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization". "A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim".

2. **Criminal Accountability** (page 9)

2.1 It is recommended that other criteria than those spelled out in sections 2.1.1 and 2.1.2 could be considered for investigations and prosecutions - including for example **cases with a large number of victims**, **cases where evidence is more available**, etc. As such, OHCHR recommends the policy to refer to the need to design a **prosecutorial prioritization strategy with victims' participation** (which we believe is the intention) - consisting of establishing a strategic order in which cases and situations of violation and abuse are investigated and prosecuted and on the basis of objective elements for such prioritization. The report (A/HRC/27/56)[2] of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence can serve as a good resource. Furthermore, we believe that a legal framework will be necessary to provide a legal basis and clarify key parameters. In this regard, it is recommended to mention that many details governing the accountability component (as well as other TJ components) will require the adoption of comprehensive **complementary legislation** – as the policy may not suffice to provide a comprehensive legal basis.

[1] See https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation

[2] See https://documents.un.org/doc/undoc/gen/g14/148/98/pdf/g1414898.pdf?token=pWgqBzSYBGwEdcd9Ih&fe=true

2.2 The draft policy uses "gross human rights violations/serious crimes" as currently is in page 10. Instead, it is recommended that the policy clearly articulates the obligation to investigate and prosecute "**gross violations of international human rights law and serious violations of international humanitarian law**". The policy should also include in the annex a list of gross violations of IHRL and serious violations of IHL (*see suggestions under point 2.3 below*) to be used in the policy, as this will be key even in the process to develop and implement any possible future legislation envisaged by the draft policy.

2.3 Although there is no definitive list of what qualify as **serious or gross violations of human rights**, it is understood that they involve violations of the right to life, personal integrity, and security. See below more in detail:

- ✓ Murder, including extrajudicial, summary or arbitrary execution;
- ✓ Torture, and cruel, inhuman or degrading treatment or punishment;
- ✓ Rape and other forms of sexual violence or comparable gravity;
- ✓ Severe forms of discrimination on racial, national, ethnic, linguistic or religious grounds;
- ✓ Slavery, servitude or force labour;
- ✓ Enforced disappearances;
- ✓ Arbitrary or prolonged detention;
- ✓ Deportation or forcible transfer of population and other forms of arbitrary displacement

OHCHR would recommend a widened list of would qualifies as serious or gross violations of human rights, to include the following:

- ✓ To deny the right to a fair trial, including to presumption of innocence.
- ✓ To deny freedom of thought, conscience and religion;
- ✓ To execute pregnant women or children;
- ✓ To permit the advocacy of national, racial or religious hatred;
- ✓ To deny to minorities the right to enjoy their own culture, process their own religion, or use their own language;
- ✓ To deprive one of essential foodstuffs, essential primary healthcare, basic shelter and housing, or the most basic forms of education.

In terms of **serious violations of international humanitarian law,** they are grave breaches as specified under the four Geneva Conventions of 1949 (Articles 50, 51, 130, 147 of Conventions I, II, III and IV respectively), grave breaches as specified under Additional Protocol I of 1977 (Articles 11 and 85), war crimes as specified under Article 8 of the Rome Statute of the International Criminal Court, other war crimes in international and non-international armed conflicts in customary international humanitarian law. Therefore, we suggest including:

- ✓ Willful killing of civilians;
- ✓ Willful killing of person who has surrendered or is otherwise hors de combat;
- ✓ Intentionally directing attacks against civilians;
- ✓ Using starvation of civilians as a method of warfare, including by willfully impeding relief supplies;

- ✓ Torture and cruel or inhuman treatment as well as humiliating and degrading treatment;
- ✓ Rape, and other forms of sexual violence;
- ✓ Destruction or appropriation of property not justified by military necessity, or pillage;
- ✓ Denial of fair trial rights protected under international humanitarian law;
- ✓ Unlawful deportation;
- ✓ forced transfer, displacement of civilians;
- ✓ Arbitrary Detention/Unlawful confinement of civilians;
- ✓ Hostage-taking;
- ✓ Attacks against other protected persons (medical, religious, humanitarian or peacekeeping personnel and journalists) provided they come within the protections of international humanitarian law;
- ✓ Launching indiscriminate attacks in relation to civilians and civilian objects;
- ✓ Killing or wounding a fighter who has surrendered;
- ✓ Transfer by Occupying Power of its own civilian population into occupied territory.

2.4 OHCHR would also like to emphasize the need for the policy to underscore **the value of international judicial cooperation as critical to the transparency of and the trust in the TJ process**. Using home remedies for criminal accountability has been challenged by many stakeholders in Tigray and beyond. Formally allowing such cooperation through a clear incorporated language in the policy, will help deter tension and address any deficit of trust during implementation.

3. The draft policy (page 10) recommends to conduct a reform of the current criminal law, among others, to ensure that provisions are in line with international laws binding Ethiopia. In the meantime, and until those reforms can be achieved, it is recommended to maximize what the domestic law offers in terms of potential criminal prosecutions against individuals who have committed gross violations of IHRL and serious violations of IHL. This includes providing effective remedies for the victims. This could be spelt out clearly.

However, any revision of the penal code and the criminal procedure law should not affect the full observance of the non-retroactivity principle of law.

4. The definition of "**perpetrators who have "high level participation**" (page 5, definition 2) remains unclear as it is not legally defined other than the one included in this draft policy. Whether this phrasing is used or the "**most responsible**" if preferred, all will need to be clearly defined.

In addition, the use of the words "leading and coordinating" can be confusing as they are neither legal nor legally defined terms/words. Hence, it is recommended that the definition makes it clear to spell out **"individuals in senior leadership positions who gave the order and those who have incited the crimes**. It is also important to insert the words "facilitate" and "conspire" as part of the definition so that the level of participation in the commission of the offence including any form of conspiracy can be established.

5. It is recommended that the policy mentions how **official/functional immunity** will not shield them from accountability for human rights atrocities.

6. In relation to the "Clear determination of offender's degree of participation" (page 11), **consider adding reference to "international human rights law**" in addition to international criminal law and the principles of criminal law – already mentioned.

7. The policy should consider the fact that, the success of the process before a national court hinges on several crucial factors in addition to receiving technical support from national/international experts:

- ✓ The establishment of comprehensive, non-restrictive national-level definitions of crimes.
- ✓ Implementation of modes of liability that align with relevant international standards.
- ✓ Ensuring the presence of adequate legal and judicial infrastructure, including with respect to victims' participation and the protection of victims and witnesses.
- ✓ Securing sufficient financial resources to support the proceedings.

8. Similarly, it is important to note that the creation of special units/prosecution offices alone cannot guarantee the success of criminal prosecution procedures. The policy should thus consider other factors which are indispensable (*listed below*) to make the investigation and prosecution processes effective. In 2022, ICTJ conducted a study on "Dedicated Investigative and Prosecutorial Capacities[3]," which suggests that countries with specialized units are more likely to achieve significant success in investigating and prosecuting historical crimes or serious international offenses when compared to countries lacking dedicated capacities. The study concluded also that for the special investigation and prosecution unit to be effective the following conditions must exist:

- ✓ The existence of a strong and continued political support
- ✓ The unity should be established on law or statute
- ✓ Have financial resources and receive sufficient capacity building support
- ✓ It should focus on the mandate for which it has been created
- ✓ Units should employ multidisciplinary teams, including investigators, prosecutors, legal experts, historians, anthropologists, psychologists, gender based violence etc.
- ✓ Be able to collaborate with local and international civil society organizations
- ✓ Conduct adequate outreach work to raise awareness about their work an mandate
- ✓ Implement adequate victims and witnesses protection measures

In this regard, consider inserting these elements throughout in the policy.

9. Regarding the use of the cultural dispute resolution (page 24) mechanisms, the policy needs to clearly mention that the '**use of traditional justice institutions and community values**' **won't be applied with offenders of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law**. In line with this approach, there is also a need to clearly define what "minor human rights violations and conflicts" are (page 25), as these are indicated to be the material jurisdiction of the traditional dispute resolution mechanisms to exercise truth seeking, reparation and reconciliation activities in the draft policy.

[3] https://www.ictj.org/node/35041

Truth seeking, truth publicizing and reconciliation work (page 14)

10. Although the institution mandated to lead truth seeking activities is named as "Truth Commission", it's mandate includes activities related to reconciliation. Consider **de-linking the mandate of truth seeking with reconciliation**, which is both a process and a long-term objective[4]. If one institution is chosen for both mandates to avoid establishing a multiplicity of institutions, which we would recommend based on resource issues, the difference between the two mandates needs to be made extremely clear in the policy and through an enabling legislation. Merging both mandates – could risk misleading the public (including victims) that uncovering the truth about past atrocities automatically equates to reconciliation – which is not necessarily the case. The effective implementation of all TJ components will contribute to reconciling Ethiopian society, not the work of one single institution with a narrow mandate.

On the other hand, the primary role of truth-seeking is to lead the way in uncovering the details surrounding violations, including how, where, when, who is responsible, and who the victims are. This pursuit of truth serves as a vital deterrent against impunity, acting as a deterrent to prevent public denial. Moreover, it serves to thwart the recurrence of violations, illuminates the root causes, and facilitates the implementation of healing processes following traumatic events. Additionally, truth-seeking plays a pivotal role in initiating both criminal and civil legal proceedings against those accountable for gross human rights violations and serious breaches of international humanitarian law. By doing so, it not only acknowledges the experiences of victims but also affirms their dignity. Ultimately, truth-seeking becomes a cornerstone for initiating a reconciliation process grounded in human rights principles.

11. It is recommended to mention that many details governing the truth-seeking component (as well as other TJ components) will require the adoption of comprehensive **complementary legislation** – as the policy may not suffice to provide a comprehensive legal basis. Therefore, the policy should envision an enabling legislation in this and indeed other components.

12. In terms of which issues/violations should the truth-seeking and reconciliation processes be implemented – the "focus on all gross human rights violations" is a solid one (page 15). Consider phrasing it "**gross violations of human rights and serious violations of international humanitarian law.**"

13. There are references to human rights violations or abuses separately in different parts of the body of the draft policy. It is recommended to include both abuses by non state actors and '**violations'** committed by state actors considering the Ethiopian context.

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[4] For the definition of reconciliation under international law, please refer to page 24 of OHCHR-EHRC recent report on TJ "UN Special Rapporteur on the promotion of truth, justice, reparations, and guarantees of non- recurrence explained that reconciliation is "at minimum, the condition under which individuals can trust one another as equal rights holders again or anew". Report of the Special Rapporteur, 2012, para. 38, A/HRC/21/46

14. Consider whether truth-seeking will exclusively tackle violations that are both gross in nature and exhibit a **systematic character** – currently phrased in the document as "systematic or widespread in nature" (page 15). While it is advisable not to overly expand the mandate and subject matter jurisdiction of a truth commission and to establish a threshold for the nature of violations it should address, **it's worth noting that confining the mandate to violations meeting dual conditions (gross and systematic) can potentially constrain the scope of the truth-seeking process**. In any case it is imperative to consider the specific context of Ethiopia, the complexities of conflicts, and the diverse nature of violations. Incorporating the perspectives of victims, as emphasized in the TJWGE's consultations report, is essential in determining what aspects truth-seeking should address. It's noteworthy that the legislation establishing a truth commission must clearly define the subject-matter jurisdiction of its work and outline the types of violations it aims to address.

- ✓ **Example: the DRC Kasaï central (the CPVJR)**: Gross violations and abuses of human rights and international humanitarian law.
- ✓ **Example: CAR (the CVJR)** "the CVJR's mandate is "to elucidate gross human rights violations and determine the nature, causes, and extent of these violations by incorporating the circumstances.
- ✓ **Example Tunisia: (the IVD):** …" violation shall mean any gross or systematic infringement of any human right committed by the State's apparatuses or by groups or individuals who acted in State's name or under its protection, even if they do not have the capacity or authority to do so. Violation shall also cover any gross or systematic infringement of any human right committed by organized groups".

15. Under the section on Institutional systems to implement truth seeking, truth publicization and reconciliation activities (page 15), in addition to references to principles of independence and impartiality, please note that **competence of the members** is also required as per international standards: principle 7 of the updated set of principles to combat impunity: "Commissions of inquiry, including truth commissions, must be established through procedures that ensure their independence, impartiality and competence". The generally recommended qualifications for members of a truth commission are as follows: Law: Human rights, criminal law, gender, social psychology, history, anthropology, medicine forensic sciences, mediation and conflict resolution, archiving, information, and communication, religious studies, economics, journalism and media etc.

16. In terms of **amnesty**, the draft policy recommends the exclusion of only "offenders who have high level participation in the commission of "gross human rights violations" (page 17). This provision is not fully compliant with international human rights law under which **amnesties are impermissible where they conflict with existing obligations to prosecute persons responsible** (regardless of the perpetrator's role) **for gross human rights violations and serious violations of international humanitarian law, including international crimes.** See 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, principle 4; Updated set of Principles for the protection and promotion of human rights through action to combat impunity, principle 19; Declaration on the protection of all persons from enforced disappearance, art. 18(1). **To make it very clear and resolve any possible confusion on this issue, it is**

important to provide a list of crimes/violations in line with international law that are not subject to conditional amnesty – including torture and sexual violence.

17. It would be important to revisit whether the truth-seeking commission body should be mandated with **granting conditional amnesties provided that the crimes to be subjected to amnesties are the lesser and that this is properly clarified.** The experience from the Truth and Reconciliation Commission in South Africa in this regard has been examined critically. However, due to the legal technicalities in determining the kind of crimes to be subjected to amnesty and the risks around amnesties, it may be better that other organs - such as the special prosecutor and the courts - may be better placed to grant amnesties and/or oversee their administration - in line with state's obligations under international standards, including respecting victims' rights to effective remedy. The experience of Timor-Leste for example where such legal institutions were involved in the determination of amnesty could provide interesting lessons in this regard.

18. In the section outlining the **preconditions to be beneficial of conditional amnesty** (page 17), we note that "the motive for the commission of the crime" is not a precondition, but it could be named under the material scope of the amnesty, such as by excluding "acts or offences motivated by personal gain or malice", as proposed by the Belfast Guideline 7. **Consider replacing "willingness to resign from public positions" with "acceptance of a (time-limited" ban from public office, as per Belfast Guideline 12**. Also, "willing to engage in volunteer work and public services" may be better explained as "consent to participate in the reparation efforts, including through volunteer work and public services and through contributions to individual reparations."

19. It would be good to include the **victims' right to reparation**. Principle 24 of the "Updated Set of Principles for the Protection and Promotion of Human Rights through the Fight against Impunity" emphasizes the restrictions and measures applicable to amnesties, including "when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency shall be kept within the following bounds: (a) The perpetrators of serious crimes under international law may not benefit from such measures until such time as the State has met the obligations to which principle 19 refers or the perpetrators have been prosecuted before a court with jurisdiction - whether international, internationalized or national - outside the State in question; (b) A**mnesties and other measures of clemency shall be without effect with respect to the victims' *right to reparation*, to which principles 31 through 34 refer, and shall not prejudice the right to know.** Moreover**,** it is recommended to include the international standards regarding amnesty. It is recommended that beneficiaries of amnesty undertake several preconditions before obtaining amnesty. These actions aim to strengthen the legitimacy and legality of amnesty, enabling it to contribute to preventing further violence. These actions may include:

- ✓ Engaging in measures to ensure truth, accountability, and reparations.
- ✓ Fully disclosing their personal involvement in offenses, with associated penalties.
- ✓ Testifying (publicly or privately) before a truth commission, a public inquiry, or any other truth-seeking process.
- ✓ Returning unlawfully acquired assets.
- ✓ Providing material and/or symbolic contributions to reparations.

20. In addition to amnesties, **other options could be used as diversions for criminal accountability** (not for international crimes) and promote the collaboration of perpetrators including reduced sentences, granting special conditions for serving time etc.

21. The comprehensive legislation mentioned in prior sections could also determine what would be the outcome of the truth-seeking commission (a report, a set of recommendations), its mandate duration, whether it can recommend certain perpetrators for prosecution by the future court and special prosecutor's office etc.

Reparation (page 18)

22. Giving the mandate to the truth-seeking commission to "put in place a reparations programme" (page 19) seems quite ambitious given that its mandate seems already quite encompassing. It may be more realistic to request that in its report, the truth-seeking body only includes **recommendations on the future reparation program** rather than mandating it with reparation. It may also be possible to suggest that an institution within the government structures with closer or appropriate mandate (including field presence across the country to ensure proximity with victims) is identified and strengthened and/or reinvigorated to conduct the reparations programme. This can be strengthened through legislation.

23. Consider adding a mention that reparations should be transformative and beyond compensating for the harm caused by the violation, they should seek to address the context of marginalization, exclusion, and inequality which victims may continue to experience. Furthermore, it is recommended emphasizing that reparations measures should be crafted in consultation with victims and civil society organizations, with advice from the state component responsible for social integration, social and medical rehabilitation, and personnel from the Ministry of Budget.

24. Many details governing reparations – including registration - will require the adoption of **complementary legislation** (*see point made under 'accountability'*) – possibly after the recommendations of the truth seeking body have been issued. The meaningful participation of victims in the design, implementation and monitoring of the reparation scheme should also be emphasized.

25. Without pre-empting the advice of the truth seeking body in determining the scope of a future reparation program, it would be advisable to already narrow the scope to victims of for example **gross IHRL violations and abuses and serious IHL violations** – as it would be unrealistic to raise victims' expectations that everyone would be entitled to reparations. Just to emphasize that the risk of raising expectations on reparations should be addressed through clear legislation which also mandates a specific institution to deal with it and the policy should be very categorical on the criteria for reparations and limitations to mitigate expectations.

26. The policy should clarify responsibilities on the issue of **urgent victims' assistance programmes**, including for example issues of psychosocial support and rehabilitation – as a fully-fledged reparation program will take time to set up.

27. On the **Victims' Rehabilitation and Support Fund** (page 19), it is recommended the policy to clarify that sustainability will be ensured through regular contributions from the national budget, to avoid relying solely on external (non-state) partners. While it's commendable that 'whole of society' should contribute to reparations programmes, it is also equally important to

consider that such proposal should not add to the economic burden of those in vulnerable condition, including significant number of the population economically affected by inflation, internal displacement, and other conflict-related economic hardships.

Institutional reform

28. While weak institutions and legal frameworks are believed to have played a role in perpetrating violations/abuses, they are a key component of guarantees of non-recurrence, but are not the only ones. As such, the policy should suggest the implementation of **broader measures** – which were also recommended during the public consultations – measures which touch upon the societal, cultural and personal spheres. As outlined in the new Guidance Note of the UN Secretary-General on TJ[5], such measures can include: fostering a free environment where civil society can advocate and network; implementing legal empowerment programmes; adopting policies that protect and promote the rights to freedom of expression and association; cultivating a free and independent media sector; targeted measures in the cultural and personal spheres such as the teaching of history, interfaith dialogue, art-based and cultural initiatives to promote tolerance and social solidarity, maintaining and opening of archives etc. The policy could highlight this in underscoring its centrality in non-recurrence.

29. In addition to recommending reforms for "justice, security, and media sectors" (page 21), it is recommended including the **national education system** in the reforms related to the education sphere. This area should be a targeted focus which reflects what emerged during consultations in certain regions. Additionally, consider the recommendations of the Special Rapporteur on Transitional Justice, which emphasize reforms in the social, educational, and cultural spheres.

Timeframe for the implementation of Transitional Justice (page 23)

30. Flexibility when it comes to determining the timeframe for truth seeking and reconciliation is good. However, when it comes to reparations, it would be unrealistic to raise victims' expectations that everyone would be entitled to reparations as indicated above. Careful analysis should be done to determine to which extent the consequences of past violations are affecting present generations and how far back to draw the line – possibly limiting it to violations committed **one or two generations before.**

Role of traditional conflict resolution mechanisms

31. Rather than granting Regional states to put in place a legal framework to recognize, govern the participation of traditional justice systems in line with the national transitional justice policy direction (page 24), it may also be advisable for the policy (and/or its subsequent legislation) to clarify the **participation of traditional justice systems** into the nationally-led transitional justice program. There need to be a tier mode of implementation of traditional conflict resolution mechanisms which highlighting the complementarity with the formal systems and their **compliance with human rights standards** including fair processes. Such approach would ensure uniformity in the understanding of the role to be played by such mechanisms and the application of human rights norms. There have been examples (e.g., Timor Leste) of productive cooperation between the informal and formal justice systems – when it comes to involve

[5] Available at https://www.ohchr.org/en/sg-guidance-note-transitional-justice.

traditional conflict-resolution mechanisms in line with international standards – e.g., cases of lesser criminal offenses.

The role of regional states and city administrations

32. It is unclear whether the regional states will actively participate in crafting their local transitional justice initiatives or if their role is primarily cooperative in implementing the national TJ efforts and the overall national TJ program/process. Nonetheless, it is crucial to adopt an approach grounded in universal human rights principles, aimed at effectively addressing past legacies, upholding victims' rights, and fostering sustainable peace. In doing so, it is vital to consider the unique experiences and demands of victims from various regions.

33. The recognition of necessary collaboration between federal/national and regional/city administrations when it comes to implementing transitional justice is a good step. However, it is unclear how the experts see the mandate of the **existing TJ regional mechanism** in Somali region affected by a national policy. It is important for the policy to recognize at least in the policy such mechanism or any other that may exist and leverage their envisaged role in the national transitional justice process.

34. Furthermore, the possibility given to regional states to establish and implement truth-seeking and reparations programmes (page 24) when material jurisdiction is falling outside the scope of institutions to be established at the national level can raise issues of possible duplication of efforts, discrimination in remedies available to victims in different regions, or the confusion in the TJ implementation etc. Despite the fact that national level authorities don't have monopoly on all TJ initiatives, **regional initiatives should support/feed into the national-led process, rather than providing competing avenues**. As such, clear agreements with regional initiatives should be envisaged in the policy to clarify roles, complementarities and overall principles. Also, given the numerous new institutions envisaged to be established at national levels, setting up new institutions at regional levels should be discouraged. However, establishing branch offices of national institutions at regional levels would enable proximity with victims, thus allowing better implementation of TJ programs. In terms of material jurisdiction, it is unclear how regions would know which issues are not going to be addressed and which are just not yet addressed by the federal institution. It is recommended that Ethiopia avoids important divergences between regions which may hinder a shared truth/understanding or a **coherent approach**.

Holistic nature of transitional justice components and institutional coordination

35. Ensuring coordination and coherence between various TJ components and related institutions is paramount and synergies need to be carefully designed, mindful that key institutions are independent and without hierarchy between them. It is not advisable to establish an external body that is disconnected from the institutions responsible for implementing the recommendations. As such, the ministry of justice is required to establish **a structure** comprised of relevant institutions and CSOs to carry out this activity, and provide the necessary support for the proper coordination and implementation of the policy (page 27). This arrangement should preferably be free from government influence. The institutions themselves may devise the most suitable mechanism to coordinate themselves. Such mechanism should operate free of government's control and mandated to report regularly to the public and possibly to the legislature. Rather than establishing another institution to coordinate, which adds to the concern of multiple institutions, Parliament could perhaps establish an inter institutional mechanism for

coordination purposes and this should be very clear in the policy and any piece of legislation on TJ. The coordination mechanism could be formed by staff from all relevant ministries and national institutions, including independent national bodies such as the EHRC, as well as members of CSOs and victims' associations. The mechanism could be created under the prime minister's office with clear terms of reference.

Others

36. OHCHR welcomes the inclusion of policy directions regarding **witness protection mechanisms** in the draft policy (page 11) in relation to accountability. If no strong legal and institutional arrangements for witness protection are in place, the victims would be reluctant to come up to provide information that would assist all TJ components beyond investigation/prosecution of gross violations. OHCHR recommends that the policy foresees the establishment of the necessary legal and institutional frameworks for **victim and witness protection across all TJ components**, especially truth seeking, in line with international and regional human rights standards to address possible cases of reprisal, both during the **design and implementation phases of TJ**. This would be in a new or revised draft legislation which we recall has been prioritized by the MOJ before the TJ initiative.

37. The issue of **missing persons** which does not appear duly reflected in the current recommendations needed to be considered. OHCHR would recommend a mechanism (perhaps within the truth-seeking institution to avoid multiple mechanisms) to address the issue of missing persons, to respond to families' right to know the fate of their loved ones, and to provide the required support to families. Tasks include documentation, forensic program of investigation and exhumation, liaising with victims' families etc. Dedicated units have been used for example in Colombia, Nepal, Lebanon etc.

38. Consider mentioning in the policy measures to ensure public's **access to information** in relation to TJ processes such as access to public records and initiatives, including the possibility for live streaming of key initiatives such as accountability, reconciliation, truth-seeking processes-in compliance with applicable principles, and subject to availability of resources.

39. It would be good for the policy to refer to a **roadmap with measurable benchmarks and indicators, and reporting mechanisms** to evaluate progresses and impact of TJ processes and provide space for independent bodies to regularly monitor the process to ensure its compliance with international human rights norms and standards. The timelines should be realistic given that the TJ is complex and other components may require longer term period to be instituted and implemented.

END