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**DRAFT AFRICAN UNION TRANSITIONAL JUSTICE POLICY**

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## LIST OF ACRONYMS

|              |   |
|--------------|---|
| <b>ACHPR</b> | African Commission on Human and Peoples' Rights |
| <b>AGA</b>   | African Governance Architecture                 |
| <b>AU</b>    | African Union                                   |
| <b>AUC</b>   | African Union Commission                        |
| <b>AUHRM</b> | African Union Human Rights Memorial             |
| <b>AUPD</b>  | African Union High-Level Panel on Darfur        |
| <b>AUTJP</b> | African Union Transitional Justice Policy       |
| <b>IDP</b>   | Internally Displaced Person                     |
| <b>PCRD</b>  | Post-Conflict Reconstruction and Development    |
| <b>REC</b>   | Regional Economic Community                     |
| <b>TJ</b>    | Transitional Justice                            |
| <b>TJP</b>   | Transitional Justice Policy                     |

## FOREWORD

By

**H.E. Mr Moussa Faki Mahamat**  
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The significance of human rights and transitional justice (TJ) cannot be overemphasized. This underscores why Aspiration three (3), “An Africa of good governance, democracy, respect for human rights, justice and the rule of law”, and Aspiration four (4), “A peaceful and secured Africa”, of Agenda 2063 – The Africa We Want – focus on human rights promotion, silencing the guns by 2020, peace, security and development. In order to accomplish these objectives of Africa’s Agenda 2063, a ten-year implementation plan was developed. The year 2015 was dedicated to Women’s Empowerment and 2016 to Human Rights, with a special focus on the rights of women.

This African Union (AU) TJ policy is a direct by-product of the 2006 AU Policy on Post-Conflict Reconstruction and Development. It is one of the indirect outputs of Agenda 2063. Although the process of developing the framework started long before the adoption of Agenda 2063, its realization became a reality with full commitment to implementing the above two Aspirations. It is on this note that I congratulate all who contributed directly and indirectly to the development of this policy.

Whilst members of the AU have had different experiences in respect of TJ, these have been individualistic, with little or no sharing of experiences between African countries. This policy covers both redistributive and restorative elements of TJ, and, unlike other TJ policies, the uniqueness and added advantage of the AU policy lies in its progressive Afrocentric methodology and approaches.

This policy therefore provides Africa with varied opportunities to establish a common standard for dealing with TJ on the continent. It is rooted in African shared values, African traditional justice systems and TJ experiences in different AU Member States. It also offers practical guidelines that need to be contextualized, bearing in mind the TJ challenge and reality in affected Member States. If implemented effectively, this policy has the potential to assist countries to better address challenges of reconciliation, social cohesion, national harmony and nation building, all of which are central to peacebuilding and sustainable human development.

## PREFACE

By

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The history of Africa is characterized by different political upheavals, struggles for liberation and socio-economic transformations. These political struggles and transformations include, for instance, the fight against colonialism and apartheid; the war against military authoritarian regimes; and the struggle for, and entrenchment of, democratic and participatory governance, human rights, constitutionalism and the rule of law. These experiences undoubtedly have brought with them different transitional justice (TJ) initiatives, like national dialogues, national truth and reconciliation commissions and national reparations funds, amongst others. The concept of TJ is therefore a necessary step in moving from a divided and painful past to a commonly shared and developed future.

The concept and the practice of TJ are by no means new to Africa. It was on this basis that the African Union (AU) Panel of the Wise, one of the AU Peace and Security Council pillars, embarked on research and came up with a report titled “Non-Impunity, Truth, Peace, Justice, and Reconciliation in Africa: Opportunities and Constraints”. The report was adopted by the Panel of the Wise at its tenth meeting in May 2011 in Addis Ababa, Ethiopia.

The findings indicate that Africa has varied experiences in TJ but there is no one, comprehensive policy framework to guide and promote experience sharing among Member States. Based on this, the report proposed developing a policy on TJ for adoption by the relevant AU organs. It also recommended an advocacy role for the Panel of the Wise in order to effectively promote and reinforce guiding principles on the rule of law and TJ across the continent.

Upon approval of the Panel of the Wise report and its recommendations, the AU policy-making organs mandated the AU Commission (AUC), through the Department of Political Affairs, to work with all stakeholders, particularly AU Member States and members of the Human Rights and Transitional Justice cluster of the African Governance Architecture (AGA), to develop the TJ policy. This policy is therefore a dream come true as a guide to AU Member States in need of TJ interventions.

On this note, I thank all AU Member States, particularly the AU Specialised Technical Committee on Justice and Legal Affairs’ Taskforce on Transitional Justice, for taking the leadership role in finalizing this important document. Deep commendation is also due to the sterling leadership of the Human Rights and Transitional Justice Unit of the AUC’s Department of Political Affairs, under the leadership of the Director of Political Affairs. The AGA’s Human Rights and Transitional Justice cluster, the legal drafters and consultants and others too

numerous to reference here also deserve appreciation. Additionally, the AU appreciates the role of various civil society organizations in the development of this policy.

In conclusion, although a lot has been done to develop and adopt this policy, it is worth emphasizing that an adopted policy is merely a piece paper if the provisions and guidelines are not domesticated and implemented as expected. I therefore recommend this policy to all relevant AU Member States and wish them success in its effective implementation.

## **SECTION I: INTRODUCTION, GOAL AND OBJECTIVES, RATIONALE, DEFINITIONS AND PRINCIPLES**

### **Introduction**

1. This Transitional Justice Policy (TJP) is conceived as a continental guideline for African Union (AU) Member States to develop their own context-specific comprehensive policies, strategies and programmes towards democratic and socio-economic transformation, and achieving sustainable peace, justice, reconciliation, social cohesion and healing. African societies with legacies of violent conflicts and systemic or gross violations of human and peoples' rights face peculiar challenges in respect of their pursuit of these objectives. The TJP is meant to assist AU Member States to address these objectives in an integrated and sustainable manner.

2. The AUTJP is an African model and mechanism for dealing with not only the legacies of conflicts and violations but also governance deficits and developmental challenges with a view to advancing the noble goals of the AU's Agenda 2063, The Africa We Want. African societies have been dealing with transitional processes for many decades in their quest to come to terms with the traumas of slavery, colonialism, apartheid, systematic repression and civil wars. Since the 1990s, transitional justice (TJ) processes have been implemented in a number of African countries as they seek to address the legacies of violent conflicts and/or periods characterized by systemic or gross violations of human and peoples' rights.

3. Article 4(o) of the Constitutive Act of the AU calls for peaceful resolution of conflicts, respect for the sanctity of human life and the condemnation and rejection of impunity. Article 4(h) further confers enormous powers on the AU to intervene within its Member States in cases of mass atrocities, grave human rights abuses, crimes against humanity and genocide. Article 19 of the African Charter on Human and Peoples' Rights (ACHPR) guarantees the right of all peoples to equality, hence proscribing oppression.

4. Articles 6 and 14 of the Protocol Relating to the Establishment of the Peace and Security Council of the AU mandate peacekeeping and peacebuilding with respect to restoration of the rule of law and establishment of conditions for post-conflict rebuilding of society. This ought to inevitably include a comprehensive TJ policy framework.

5. Articles 31, 32 and 33 of the AU Policy on Post-Conflict Reconstruction and Development (PCRD), under its chapter on Human Rights, Justice and Reconciliation, recognize the need to protect human and peoples' rights. It allows the AU to develop mechanisms to deal with past and ongoing grievances; provide opportunities for a context-based approach to the PCRD; offer principled guidance on balancing the demands of justice and reconciliation; encourage and facilitate peacebuilding and reconciliation activities from national to grassroots levels; allow for opportunities to invoke traditional mechanisms of reconciliation and/or justice, to the extent that they are consistent with the ACHPR; establish efficient and independent justice sectors and provide for the use of AU structures and other



relevant AU shared-values instruments to reinforce human rights, justice and reconciliation.

6. The appointment of the AU High-Level Panel on Darfur (AUPD), with a mandate to consult various stakeholders in Sudan and make recommendations for addressing peace, social healing, reconciliation, justice, accountability and combating impunity, was the first bold step that the AU took in addressing TJ with its Member States. The 2008 report of the AUPD, while responding specifically to the situation in Darfur, made generic recommendations on integrated TJ and reconciliation responses for Africa as a whole, and the utility of comprehensive national processes and principles for establishing special courts in parallel with truth-seeking and reconciliation processes. On 29 October 2009, this historic report of the AUPD was adopted by the AU Peace and Security Council.

7. The mandate of the AU for developing this policy additionally builds on recommendations and decisions of relevant AU bodies. The AU's Agenda 2063 made a declaration to end all wars in Africa by 2020; the AUPD report, which outlines key TJ principles relevant to Africa, foretold the importance of an African TJ policy. The AU Panel of the Wise report, "Non-Impunity, Truth, Peace, Justice, and Reconciliation in Africa: Opportunities and Constraints", recommends the development and adoption of an African policy framework on TJ. The AU Assembly decision on the theme of the January 2011 Summit: Towards Greater Unity and Integration through Shared Values (Assembly/AU/Decl.1 (XVI)) called the AU Commission (AUC) to ensure greater synergy between the shared values on human rights, governance, democracy, development and peace and security. Finally, the AU Assembly decision that declared "2014–2024 as the Madiba Nelson Mandela Decade of Reconciliation in Africa" (Assembly/AU/Dec.501 (XXII)) calls on the AUC, in collaboration with Member States, to take appropriate measures to promote reconciliation as a means of securing peace, stability and development in Africa, as well as to promote lessons learnt from Nelson Mandela's indelible legacy in the areas of truth, reconciliation and peacebuilding.

8. Pursuant to the foregoing policy imperatives and normative frameworks of the AU, this policy was formulated on the basis of consultations with a wide range of stakeholders for its review, enrichment and validation.

### **Objectives**

9. The overall objective of the AUTJP is to provide the policy parameters on holistic and transformational TJ in Africa, drawn from – amongst others – the AU Constitutive Act, Agenda 2063, the ACHPR and the AU shared-values instruments. The policy offers guidelines, possible benchmarks and practical strategic proposals for the design, implementation, monitoring and evaluation of African TJ processes.

10. The policy establishes the principles and approaches that should guide such holistic and transformational TJ. In this regard, the specific objectives of the AUTJP include the following:

- i. Improving timeliness, effectiveness and coordination of TJ activities in post-conflict and non-conflict countries, laying the foundation for social justice and sustainable peace and preventing recurrence of violence;
- ii. Enhancing social cohesion, nation building and, where necessary, comprehensive State reforms as means of addressing the root causes of conflict;
- iii. Defining the policy agenda for holistic and inclusive socio-economic transformation and development of societies emerging out of periods of conflict, serious human rights and humanitarian law violations, legacies of exclusion and historical injustices;
- iv. Encouraging and fast-tracking planning and implementation of reconstruction, national healing and accountability of State and non-State actors for serious violations of human rights activities;
- v. Enhancing synergies and coordination between and among diverse actors engaged in TJ processes, including State and non-State actors;
- vi. Establishing clear parameters for the application of principles of complementarity and subsidiarity in the design, implication, monitoring and evaluation of TJ processes.

## **Rationale**

11. This AUTJP provides guidelines to translate comprehensive strategies for TJ into specific actions that empower affected countries to take the lead in the process of providing restorative and transformational justice with respect to not only the legacies of conflicts and violations, but also governance deficits and developmental challenges.

12. This policy provides AU Member States, non-State actors and other stakeholders within the TJ field with adaptable and flexible principles, policy parameters and strategic frameworks that will facilitate the planning and implementation of transformational TJ programmes, consolidate peace in the emergency/transition phase, and hence increase the chances of successful long-term sustainable development.

13. This policy will provide parameters to improve coherence and coordination of all actions between State and non-State actors operating at local, national, regional or/and international levels, during all phases of the TJ process.

14. This policy will build on and complement the PCRDR. The AUTJP seeks to guide the AU on how it can complement and support the role of Member States, including by facilitating the initiation of TJ processes and supporting their formulation and implementation.

15. The AU has various legal instruments and a number of policy pronouncements concerning peace; combating impunity; promoting accountability, reparation and reconciliation; and social healing. These are not found in one instrument but scattered in various instruments and decisions. A stand-alone framework that articulates the AU's position on TJ lends clarity and comprehensiveness to the principles in AU instruments, frameworks and policies, allowing ease of reference and normatively consistent application.

## **Definitions**

16. Within the context of the AU's conception of TJ, it is essential to define key concepts, including "justice", "traditional justice", "transitional justice", "transition", "victims" and "rule of law".

17. The notion of **justice** refers to the provision of judicial and non-judicial measures that not only ensure accountability of perpetrators of violations but also redress to individuals and communities that suffered violations. Apart from the actions that remedy the wrongs done, justice additionally entails the availability of fair institutional, social and economic systems of governance and inclusive development.

18. **Traditional** and complementary **justice** mechanisms are the local processes, including rituals, which communities use for adjudicating disputes and for restoring the loss caused through violence in accordance with established community-based norms and practices. They include traditional adjudicative processes such as clan or customary courts and community-based dialogue. Such mechanisms form an important part of the AUTJP conception of TJ. They should inform and be used alongside the formal mechanisms to address the justice, healing and reconciliation needs of affected communities with due regard to the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. African traditional justice mechanisms may assume the following characteristics:

- i. Acknowledgement of responsibility and the suffering of victims;
- ii. Showing remorse;
- iii. Asking for forgiveness;
- iv. Paying compensation or making reparation;
- v. Reconciliation.

19. For purposes of this policy, **transitional justice** refers to the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation. Transitional justice is meant to assist societies with legacies of violent conflicts and systemic or gross violations of human and peoples' rights in their effort to achieve transition to the future of justice, equality and dignity. Going beyond retribution and drawing on traditional justice approaches emphasizing conciliation, community participation and restitution, the conception of TJ advanced in this policy seeks to address African concerns on violent conflicts and impunity through a holistic policy that considers the particular context and cultural nuances of affected societies, as well as the gender, generational, ethno-cultural, socio-economic and development dimensions of both peace and justice.

20. Rather than referencing a particular time period, **transition** in this policy refers to the journey of societies with legacies of violent conflicts, systemic or gross violations of human and peoples' rights towards a state of sustainable peace, justice and democratic order.

21. The concept of **victims** is used in this policy to refer to 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.

22. The **rule of Law** refers to a principle of governance in which all persons, institutions and entities, public and private, including the State, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights and humanitarian laws, norms and standards. Rule of law requires adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

### **Principles**

23. This policy is underpinned by principles that constitute the basic minimum values and standards that inform action across all TJ processes. These principles are based on the rationale for the TJP and will ensure that TJ activities address the root causes of conflict and contribute to the creation of sustainable peace, accountability, social justice and transformative democratic and socio-economic reform. The principles are:

#### **a) African Leadership**

24. This principle is critical to ensure that the priorities and oversight of the implementation of the TJ processes remain the responsibility of African governments and that other stakeholders should respect this leadership.

25. Because TJ is first and foremost a political rather than a technical process, the AU provides strategic leadership and oversight of TJ on the continent, and in the continent's relations with others, including setting the terms of engagement of all actors involved in the TJ processes on the continent.

26. The AU remains seized with the TJ agenda, defining its parameters and leveraging the different processes relating to it, including resource mobilization and division of roles.

27. AU Member States as well as AU organs and institutions provide support and solidarity to countries implementing TJ processes.

#### **b) National and Local Ownership**

28. This principle is critical to ensure that TJ processes are aligned to local needs and aspirations, enhance a common understanding of a shared vision, and maximize public support and ownership.

29. Nationally driven TJ processes contribute to the rebuilding of legitimate State authority.

30. National leadership applies to all aspects of TJ, from assessment and implementation to monitoring and evaluation.

31. Partnerships, particularly at the national level, between beneficiaries and the government, State and non-State actors, are critical to nationally driven successful TJ processes.

32. Substantively national ownership entails:

- i. *Process leadership and decision making* whereby the design and implementation of TJ is led and driven by national stakeholders involving all sides of the conflict and all sections of society. Victims and other members of society affected by violence have as a matter of principle the right to justice and to truth in their own country, based on mechanisms and processes in whose design they take an active part;
- ii. *Primacy of national resources and capacities* whereby the formulation of TJ should appropriately adapt and exhaust all the suitable formal and traditional judicial and non-judicial resources and capacities that the society can mobilize at the national and local levels for justice and reconciliation responses before borrowing from non-national sources and capacities.

### **c) Inclusiveness, Equity and Non-Discrimination**

33. This principle is fundamental in addressing exclusion and the inequitable distribution of power and wealth, which have traditionally been amongst the root causes of conflict. In this regard:

- i. An organic link between those managing TJ and the general populace is imperative;
- ii. A fair and equitable distribution of power and wealth is key to preventing the escalation of unresolved or new grievances;
- iii. TJ processes promote the participation and address the needs of marginalized and vulnerable groups such as women and girls, the elderly, disabled and youth (especially child soldiers);
- iv. Promote the participation of the Diaspora to secure their input in all TJ processes.

### **d) African Shared Values**

34. TJ processes are premised on the African shared values relating to peace and security, justice or non-impunity, reconciliation and human and peoples' rights elaborated in various AU instruments. In this regard:

- i. These African shared values should guide the formulation and implementation of TJ processes in equal measure;
- ii. The choice of the combination of TJ mechanism/s should be made with due regard to the requirements of impartiality/independence, inclusive consultative processes, due

process of the law and accountability as well as the imperative of preventing new violations and consolidating peace;

- iii. The pursuit of TJ should comply with the principles of equality, non-discrimination, equity and fairness both in its process and implementation.

#### **e) Context Specificity**

35. The TJ processes described in this policy do not envisage a one-size-fits-all approach to TJ at the national level.

36. The choice of TJ should be context specific, drawing on society's conceptions and needs of justice and reconciliation, having regard to:

- i. The nature of the conflict and the violations it occasioned, including the situation of women and children as well as other groups in vulnerable conditions;
- ii. The conditions and nature of the country's legal system, traditions and institutions as well as its laws.

37. A society in transition may choose, through inclusive consultative processes, to put more or less emphasis on the reconciliation, healing or justice dimension of the combination of TJ measures required for its realities.

#### **f) Synergizing, Sequencing and Balancing TJ Elements**

38. In the fragile post-conflict setting, a balance and compromise must be struck between peace and reconciliation on the one hand and responsibility and accountability on the other. In this regard:

- i. 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;
- ii. The formulation of accountability and reconciliation measures should be approached, both conceptually and procedurally, in an integrated manner and imbued with restorative and responsibility elements respectively;
- iii. Relevant socio-economic development programmes focusing on members of society whose livelihoods have been disrupted by recurrent violence and marginalization should complement such measures;
- iv. The promotion and pursuit of the interrelated but at times competing TJ objectives in a transitional setting often necessitate sequencing and balancing;
- v. Sequencing means that the various TJ measures should be comprehensively planned and complementarily organized in their formulation and programmatically ordered and timed in their implementation;

- vi. Balancing entails achieving a compromise between the demand for retributive criminal justice and the need for society to achieve reconciliation and rapid transition to a shared democratic future.

**g) Due Regard to the Gender and Generational Dimensions of Violations and Transitional Processes**

39. Given the gendered dimension of violence, criminal investigations and national and local processes for truth and reconciliation should give particular attention to sexual and gender-based violence as well as to patterns of gender inequality in the society that enable gender-based violence. Therefore:

- i. TJ processes should envisage special measures of support for women and youth as victims to ensure their physical and psychosocial rehabilitation and social reintegration;
- ii. Provision should also be made for ensuring active participation of women and youth through affirmative action measures in designing and implementing the full measure of transitional processes crafted for the transitional needs of the affected country.

**h) Cooperation and Coherence**

40. The complex challenges of TJ, 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. In this regard:

- i. Cooperation and coherence clarify and define roles and responsibilities in ways that guarantee national ownership, African leadership, legitimacy and accountability;
- ii. Coordination of actors and TJ processes optimizes the use of resources, increases effectiveness and efficiency, and improves timeliness of response;
- iii. It promotes transparency, accountability and shared objectives between the various local, national and international actors involved, which enhances trust;
- iv. It enhances synergy of action, integrated planning and operations.

**i) Capacity Building for Sustainability**

41. All TJ processes have as their goal the attainment of sustainable peace, justice and accountability and should, as a matter of priority, build and/or strengthen national and local capacities. Therefore:

- i. All TJ processes need to have a capacity-building component that strengthens the capabilities of the society to support and legitimize national processes;

- ii. TJ processes ought to utilize local expertise and, where it is weak, leverage relevant African capacity at the regional and continental levels, as well as from the Diaspora;
- iii. Provide guidance on modalities of international engagement in building local capacity.

## **SECTION II: INDICATIVE ELEMENTS OF THE TJ POLICY**

42. The TJP is made up of the following elements covering the various dimensions of the TJ issues that arise in transitional societies.

### **a) Peace Processes**

43. The peace process element of the TJP is concerned with bringing an end to any ongoing violence and removing the threats of further violence impacting the affected population. It covers the provision of protection and security guarantees to civilians in the conflict- or violence-affected areas, including those specific to the security needs of women and children as well as other vulnerable and marginalized groups.

44. The mechanism for pursuing the peacebuilding element of the TJP includes peace negotiations and agreement, which should incorporate TJ considerations from the outset of negotiation or mediation processes. TJ considerations should form part of the agenda in peace processes, to ensure that they positively influence the resolution of all dimensions of the conflict.

45. Effective negotiation or mediation of peace agreements should take account of, amongst others:

- i. The need to identify TJ goals in peace processes and the measures to end violent conflicts;
- ii. The establishment of robust guarantees ensuring prevention of new violence against civilians, particularly women and children, ceasefire and cessation of hostilities and preventing the resumption of hostilities;
- iii. In negotiating peace and justice, measures should be taken to investigate and expose serious violations that have been committed.

46. The benchmarks and standards for peace processes may include:

- i. The adoption of measures that end ongoing violence and prevent the perpetration of new violations/crimes, including cessation of hostilities and permanent ceasefire, protection of civilians with special measures for women and children, disarmament of militias and removal of small arms and weapons in public circulation;
- ii. Policy of zero tolerance against perpetration of violence against civilians as part of the peace negotiation and by instituting the



- monitoring, reporting and public shaming/condemnation of parties engaged in such acts;
- iii. The re-establishment of law and order through urgent reconfiguration and reinvigoration of local administration and the institutions for the administration of justice;
  - iv. The existence of opportunities and mechanisms that enhance participation of civilians, and in particular those affected by conflict, including women, youth and children, in peace processes;
  - v. The inclusion in comprehensive peace agreements of provisions relating to justice, human rights, reconciliation, accountability, trust building, social cohesion and ending impunity.

47. Further action should be taken to prevent the commission of new violations and crimes. In this regard, the measures to be taken and the benchmarks should include:

- i. Collecting and preserving evidence for violations already perpetrated, including for sexual and gender-based crimes;
- ii. The existence of mechanisms for monitoring, documenting and reporting violations.

48. Ultimately, security should be established through settling all dimensions of the violence or conflict through concluding a comprehensive peace agreement that fully addresses the structural causes of violence and through establishing democratic governance structures.

49. Where the parameters of TJ measures are negotiated in peace agreements, it is essential that they take full account of the imperative both for ensuring accountability for past violations and for reconciliation between sections of society with varying transitional demands.

#### **b) Transitional Justice Commissions**

50. The truth, justice and reconciliation element of the AUTJP involves the provision of public processes for probing societies with legacies of violent conflicts and systemic or gross violations of human and peoples' rights. It is implemented through TJ and reconciliation commissions, which are legal bodies established to examine and address violations and abuses. They also serve to establish a full historical record of such violations, including the various experiences of different groups such as women, children and youth, the identity of the victims and perpetrators as well as the role of various State and non-State institutions, and to provide for measures of reconciliation and healing.

51. TJ commissions may also name individuals and institutions that are perpetrators, accomplices, accessories or facilitators of human rights violations, with a view to holding them accountable. In addition, TJ commissions should outline institutional responsibility for crimes and make recommendations to reform institutions, laws, policies and practices that enabled abuses to occur.

52. TJ commissions may focus on one or a combination of the following objectives:

- i. Examining and documenting patterns of human rights violations over time;
- ii. Providing a safe and supportive environment for victims to testify about the violations they have suffered and gain some satisfaction;
- iii. Provide an opportunity for perpetrators to break with the past, confess and reflect upon violations, and be reintegrated back into society;
- iv. Contribute to justice and accountability by revealing the truth about the past and providing the country with a collective narrative about the truth;
- v. Provide governments an opportunity to underscore the separation from a history of human rights violations and to obtain domestic political legitimacy.

53. Benchmarks and standards for successful TJ commissions may include:

- i. Independence of commissioners: The success of TJ commissions is directly linked to the selection of commissioners who are independent and impartial. Selection processes should be open and transparent;
- ii. A fact-finding mandate: TJ commissions should have sufficient time and appropriate powers enabling them to complete their work, such as powers of subpoena, search and seizure, and access to national archives and other official records;
- iii. Truth commission recommendations: The recommendations of TJ commissions should address the root causes of violent conflicts and violations of human and peoples' rights and provide a basis for democratic reform in which human and peoples' rights play a central role. In addition, they should seek to promote societal reconciliation;
- iv. Publication and dissemination of reports: Legislation establishing TJ commissions should include provisions relating to reports being published in a timely manner, and disseminated to all stakeholders, including government, victim communities and the broader public;
- v. Implementation of recommendations: Legislation establishing TJ commissions should provide that the State addresses the commission's recommendations through written responses, parliamentary debates on recommendations, and public consultations with victims and civil society. Such legislation should also incorporate mechanisms for monitoring and evaluating implementation of the recommendations;
- vi. Dealing with denial and acknowledgement: TJ commissions should create opportunities for victims and ordinary people to speak out in the face of possible official denial in order to get public recognition and official acknowledgement of crimes and injustices they have suffered;

vii. TJ commissions should pay special attention to sexual and gender-based violations, including harmful cultural practices, rape and sexual violence. Special hearings should be arranged, focusing on violations affecting women and girls. TJ commissions should, in their reports, address the cultural, socio-economic, legal and political status of women. Special chapters on women and girls should detail issues of discrimination and inequality affecting them. Reports should include recommendations to advance women's and girls' rights.

54. TJ mechanisms should strive not only to deliver justice for women, but also to transform fundamental gender biases in transitional societies that hinder women from claiming and enjoying their socio-economic and political rights. Gender-sensitive TJ processes should reveal patterns of gender abuse, improve access to justice for women, inform institutional reform to promote gender justice and create a space for women to inform sustainable peacebuilding.

55. TJ commissions engaging children in their procedures are recommended to accomplish the following:

- i. Paramount consideration should be given to the best interests of children, which can include prioritizing the child's anonymity;
- ii. Accommodate children's sessions "in camera" in the presence of commissioners trained in child-related abuses and with the support of a trusted child psychosocial supporter to provide ongoing psychosocial support;
- iii. Include a chapter on children in the commission's report, which should include the participation of children in its drafting. The report should be child-friendly and appropriate for integration into school and university curricula. Recommendations should address means to improve children's plight and future development;
- iv. Member States should ensure that violations against children are documented and analyzed to build a broader understanding of and end patterns of violations against children in order to break such cycles of violence and ensure their wellbeing and stability as they are reintegrated into society.

### **c) The African Traditional Justice Mechanisms**

56. This policy recognizes TJ mechanisms as playing an important role in TJ, as elaborated in section I. These should be adapted and used alongside the formal mechanisms to address justice, peace, accountability, social cohesion, reconciliation and healing.

57. To obtain this objective, the following actions need to be considered:

- i. Support and respect community-based accountability mechanisms that seek to foster integration and reconciliation;

- ii. Promote communal dispute settlement institutions at appropriate levels for relevant cases, provided a person shall not be compelled to undergo any harmful traditional ritual;
- iii. Explore alternative and non-formal dispute resolution mechanisms where necessary;
- iv. Integrate generic African practices into international norms and standards that would enhance international commitment to end impunity and promote peace, justice and reconciliation;
- v. Recognize the contribution of positive traditional practices and customary norms in Africa that have proven to be useful complements to criminal prosecutions for certain categories of crimes.

58. Benchmarks and standards for successful African traditional justice mechanisms may include:

- i. Use of functioning local reconciliation mechanisms among the various sectors of the community;
- ii. Institutional and legal reforms that recognize alternative and traditional dispute resolution mechanisms in matters of accountability and reconciliation.

59. Provision of technical and political support to local communities and traditional leaders for adapting and using their traditional justice mechanisms for addressing their TJ needs.

#### **d) Reconciliation and Social Cohesion**

60. Reconciliation is both a goal and a process premised on building the trust necessary for a degree of cooperation between individuals and communities. Full redress and reparation are essential to building reconciliation. Reconciliation involves addressing legacies of past violence and oppression, reconstructing broken relationships and finding ways for individuals and communities to live together.

61. Reconciliation may be strengthened by further efforts to achieve forgiveness between victim(s) and perpetrator(s), including expressions of remorse and willingness to make reparations.

62. Social cohesion requires healing, which includes regard for each other's suffering; coming to terms with the totality of what happened; promoting shared truth; constructing a common narrative about the past, justice and the need to restore and experience a sense of security; and overcoming a sense of victimization.

63. Benchmarks and standards for effective reconciliation and social cohesion may include:

- i. Programmes that promote social cohesion, coexistence and reconciliation at all levels of society;

- ii. Programmes that address structural inequalities, and promote inclusive development, equitable management of diversity and social cohesion;
- iii. Measures securing human rights for all and promoting truth recovery through truth commissions and public trials to satisfy appeals for justice;
- iv. Education programmes which reinforce equality, dignity and common humanity;
- v. Institutions, programmes and platforms that bring members of different groups together;
- vi. Offers of forgiveness and provision of facilities for platforms for mediation and psychosocial support.

#### **e) Reparations**

64. Reparative justice consists of effective and adequate financial as well as non-financial redress or restitution for violations or losses suffered.

65. The forms that reparation take are:

- i. Material reparation, which may include the restitution of access and/or title to property taken or lost, rebuilding of property destroyed by violence, provision of a job, a pension and monetary compensation;
- ii. Healing complements and completes truth and reconciliation and constitutes one of the objectives of truth and reconciliation. It is the process by which affected individuals and communities mend the physical and psychological wounds that they have suffered and recover from the emotional and moral effects of violence;
- iii. Rehabilitation, which is the provision of basic services, including victim-specific support such as medical and psychosocial services, as well as services specific to women and children;
- iv. Collective reparation, which may include the restitution of communal lands; rebuilding health, education, security, judicial and other public service infrastructure as well as the livelihood systems of affected communities, with due regard to the interests of children and youth; and compensation in the form of money or services to the community;
- v. Moral reparation, which involves non-material forms including disclosure of facts about the actors and circumstances of a victim's mistreatment or death, public acknowledgement and apology, the identification and exhumation of the bodies of loved ones and provision of support for burial ceremonies and memorialization.

66. Benchmarks and standards for successful reparative justice may include:

- i. Member States should develop comprehensive and holistic policy frameworks that not only provide for public reparation programmes but also encourage non-governmental reparation initiatives along with transparent and administratively fair

- procedures to access reparation, and institutions to administer them effectively;
- ii. Reparation programmes should be transformative and promote equality, non-discrimination and participation of victims and other stakeholders. They should build solidarity across victim communities, restore dignity, be fair and just and tailored in their form to the needs of different categories of victims, particularly children and youth;
  - iii. Member States should adopt holistic approaches to reparations for harm inflicted by sexual and gender-based violence which address the societal structures and conditions that permit such violations;
  - iv. Reparation should be prompt, adequate and effective in addressing the harm suffered by the victim;
  - v. The reparation programme should have a clear strategy for resource mobilization – this could include a reparation fund;
  - vi. Where it is expected that there will be a significant time lapse before a full reparation programme is implemented, there should be provision for interim reparations;
  - vii. Guidelines for coordination between the different actors involved in reparations programmes must be developed to ensure that the approach is comprehensive and the widest range of groups affected by the conflict are reached;
  - viii. There should be proper oversight of reparation programmes, which may include submission of regular reports to the appropriate designated body regulated by national law.

#### **f) Redistributive (Socio-Economic) Justice**

67. Redistributive (socio-economic) justice entails the socio-economic and development measures designed to rectify structural inequalities, marginalization and exclusion for achieving social justice and equitable and inclusive development.

68. Along with the reparative measures, forward-looking redistributive measures that address underlying socio-economic marginalization and exclusion and contribute to preventing relapse to violence should be adopted.

69. The benchmarks and standards for redistributive justice may include:

- i. Land reform and protection of property rights, including traditional ownership, access and use of land and resources on land, having regard to the need to guarantee the inheritance and property rights of women in accordance with national laws;
- ii. Affirmative action development packages for historically marginalized groups/regions and those affected by violence, having regard to inequalities within communities, particularly those affecting women, including displaced and refugee women;
- iii. Adoption of all-inclusive and equitable fiscal and development strategies as well as wealth/resource-sharing and power-sharing arrangements.

70. The implementation of policies that offer educational and employment opportunities for youth, including through prioritizing and mobilizing investment in social services such as technical and vocational training, infrastructural development and rural agricultural and pastoralist development schemes.

#### **g) Memorialization**

71. Memorialization entails the measures beyond the immediate transitional period that are necessary for truth, reconciliation and healing, involving public acknowledgement of victims and institutionalizing both societal dialogue across generations and non-impunity in national discourse.

72. Acknowledging that respect for the dead is a fundamental human obligation and a prerequisite for peace and reconciliation among the living, the AUC has set an international precedent by establishing a continental human rights memorial, the African Union Human Rights Memorial (AUHRM). Based on the ethics and practices of memory and education, the AUHRM project helps to remind warring parties and peacemakers of the value of memorialization as an expression of respect for the dead and survivors of violence and for confronting atrocities.

73. Memorialization could include commemorative activities, erection of monuments and symbols, renaming of public spaces or buildings, review of artistic or cultural expressions as well as national symbols and holy days and/or revision of history texts and educational curricula. As a long-term inclusive process, it requires a policy foundation ensuring the sustained engagement of a range of actors, targeting the youth in particular.

74. Benchmarks and standards for successful memorialization may include:

- i. Participation: Memory initiatives should promote inclusion of multiple voices across political, class, ethno-cultural and generational lines, paying particular attention to women and other marginalized groups, including at local and community levels;
- ii. Complementarity: Memory initiatives should foster transformative justice and build on and take forward the works of complementary mechanisms of truth, justice, reparation and non-impunity;
- iii. Process: Memorialization should foster intergenerational dialogue and involve educational activities targeting children and youth, including through commemorative programmes and annual ceremonies;
- iv. Multiple narratives: Memorialization should allow for the expression of multiple narratives, recognizing the inevitability of multiple discourses and different understandings of the past as well as varying experiences of different groups, including women, children, youth and vulnerable groups such as persons with disabilities;
- v. Intergenerational focus: Memorialization processes should prioritize and promote the active inclusion of younger generations as agents for change and as a guarantee of non-recurrence of violence.

#### **h) Diversity Management**

75. The diversity management element of the AUTJP addresses the group dimension of conflicts and violations where violence was organized and perpetrated on the bases of race, ethnicity, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. This is particularly important in societies where ethno-cultural and religious polarization and animosity feature as prominent parts of conflicts or where violence targets particular ethnic, religious or regional groups.

76. Benchmarks and standards for constructive diversity management may include:

- i. Recording and acknowledging the identity dimension of violence in the criminal and truth and reconciliation dimension of TJ, having regard to the gendered dimension of such violence;
- ii. Instituting educational programmes that target stereotypes and social prejudice and promote respect for ethno-cultural diversity and the dignity of fellow human beings, irrespective of their origin, through school curricula, religious and cultural teachings, radio and television shows;
- iii. Establishing policies and institutions that promote national cohesion and tolerance and accommodation between members of different communities;
- iv. Regulatory measures for combating hate speech on the basis of religion, ethnicity and language and similar acts that incite violence and fuel communal divisions and tension;
- v. Periodic dialogue between and celebration of diversity involving religious, community and political leaders as well as representatives of affected communities, targeting in particular the youth and youth groups;
- vi. Institutional measures that ensure equitable representation of members of various communities in national and local decision-making structures, with particular regard to representation of members of the most marginalized communities or regions.

#### **i) Justice and Accountability**

77. The justice and accountability element of the AUTJP 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. As a matter of principle, it should apply to all sides to the conflict and investigate and prosecute all crimes, including sexual and gender-based violence, albeit without disregarding the weight of responsibility of the different sides. Alongside its focus on holding perpetrators accountable, and hence on retribution, in the African transitional setting the justice and accountability element should involve conciliation and restitution. Procedures should involve granting compensation to victims and facilitating full participation of victims and community members in proceedings and reconciliation and healing.



78. The justice and accountability component of the TJP is to be delivered, as a matter of the primacy of national systems, through independent national courts – where they exist and have the capacity and the confidence of the affected Member State’s society – and based on relevant national laws. Where national courts lack capacity and the confidence of affected communities, steps should be taken to use special courts, extraordinary chambers or hybrid courts that bring in the required capacity and legitimacy to ensure the support and confidence of affected members of society, including victims on all sides of the conflict.

79. Alternatively, in contexts where Member States are unable to facilitate the prosecution of perpetrators using such avenues due to legal, political, economic or social challenges, they should galvanize national and regional consensus for and cooperate with relevant regional or international judicial processes that have jurisdiction.

80. Alongside the formal system of national and/or special or hybrid courts, African traditional justice systems should be adapted for dealing with appropriate crimes at the community level.

81. The measures to be taken and the benchmarks for successful criminal justice may include the following:

- i. Adoption of relevant laws reflective of international crimes, including sexual and gender-based violence, that will be applied for investigation and prosecution;
- ii. Legislative reforms that remove legal impediments to effective prosecution, such as immunity for security personnel or statute of limitations;
- iii. Provision of independent judicial and investigative institutions that are endowed with qualified personnel able to perform judicial and investigative functions and that have adequate representation of female judicial and investigation experts;
- iv. Procedures drawing on religious or cultural legal sources that guarantee the participation of victims, particularly women, in proceedings, the cooperation of perpetrators and the awarding of reparations;
- v. Guarantees of due process of the law, including fair trial rights;
- vi. Procedures that accord particular attention to sexual and gender-based violence and ensure both the participation of women victims and their physical, psychological and social rehabilitation;
- vii. Processes that accord particular attention to violations against children and incorporate confidential and child-friendly proceedings that ensure the participation of children, particularly girl victims, as well as greater accountability for crimes committed against children in justice and accountability processes;
- viii. Laws, prosecution policies and procedures that promote cooperation of suspects are developed in a transparent process in consultation with victims and affected communities and stakeholders.

82. The justice and accountability element of the AUTJP leaves a margin of appreciation for Member States to use plea bargains and pardons, where such procedures are agreed, as part of the TJ measures and/or where found to be necessary in the implementation of such measures. The AUTJP does not exclude the use of mitigation and alternative forms of punishment at the stage of sentencing.

### **Plea Bargains and Pardons**

83. Plea bargaining is a prosecution strategy that offers assurances of reduced penalties or lighter charges for perpetrators in exchange for their full cooperation through fully revealing the truth about the crimes under consideration, and securing evidence regarding others' responsibility for abuses.

84. A pardon is an official act that exempts a convicted criminal from serving the prescribed full punishment. Pardons, in contrast to amnesties, are conferred after a prosecutorial process has been followed to its conclusion. Pardons provide opportunities for further truth telling as a viable TJ measure.

85. When using plea bargains and pardons, Member States should be guided by the same goals, procedures and principles as those spelled out for amnesties below. It is imperative that Member States also adhere to the spirit and intent of the agreed TJ process in implementing plea bargains and pardons.

### **Mitigation of Sentence and/or Alternative Forms of Punishment**

86. The AUTJP requires that there should be no limitation to the full investigation and prosecution of serious violations, notably those specified under Article 4(h) of the Constitutive Act of the AU, including sexual and gender-based violations. The principle is that prosecution should lead to conviction and imposition of punishment ordinarily applied in national and international criminal processes and following the due process of the law.

87. Where the implementation of some TJ elements, such as truth, reconciliation and healing, is such that full investigation and prosecution cannot be pursued without innovative compromises in sentencing, the use of mitigation of sentences and alternative forms of punishment other than death or prison term should not be excluded.

88. Benchmarks and standards for alternative forms of punishment may include:

- i. Cooperation of suspects for full investigation and prosecution of crimes for which they are suspected;
- ii. The participation of victims and affected communities in the consideration by the court of mitigation of sentences or alternative forms of punishment;
- iii. The selection and implementation of alternative forms of punishment should be informed by the needs of victims and affected communities and deliver meaningful benefits to them;

- iv. Be implemented in a transparent manner based on clear and agreed criteria;
- v. There should be effective monitoring and reporting mechanisms that ensure that alternative forms of punishment are implemented to the full and comply with all the conditions attached thereto;
- vi. Policies and procedures should be developed in a transparent manner and in consultation with victims, affected communities and stakeholders.

## **Amnesties**

89. Amnesties are general reprieves for offences. They are used for a wide range of purposes, particularly as part of political transitions and before criminal processes commence. They are often implemented in TJ processes as part of the mandate of truth commissions. Cooperation with alleged perpetrators through provision of amnesties has to be for the purpose of preventing further violence and the facilitation of accountability and reconciliation, including the rights of victims to truth and reparations. Amnesties should create institutional, political and security conditions to ensure observance of the rule of law and human rights and humanitarian law.

90. Where amnesties are used in transitional processes, they should be formulated with the participation and consent of affected communities, including victim groups, and have regard to the necessity of the right of victims to remedy, particularly in the form of getting the truth and reparations.

91. Transitional processes should not allow “blanket” or unconditional amnesties that prevent investigations (particularly of the most serious crimes referred to in Article 4(h) of the AU Constitutive Act), facilitate impunity for persons responsible for serious crimes or perpetuate negative institutional cultures.

92. Consistent with the foregoing, the benchmarks that amnesties should meet may include the following:

- i. Deliver full measure of truth on violations and some form of accountability for cases which are not selected for prosecution;
- ii. Facilitate remedies to victims, including, notably, by way of public acknowledgement of their suffering, expression of remorse by perpetrators and payment of reparations;
- iii. Contribute to a broad range of conflict transformation goals that go beyond an exclusive focus on prosecutions;
- iv. Allow for victim participation in deliberations on individual cases being considered;
- v. Be implemented in a transparent manner based on clear criteria, where information is publicly disclosed;
- vi. Be administered in an impartial manner.

## **j) Political and Institutional Reforms**

93. The political and institutional reforms proposed in this AUTJP are aimed at reforming critical institutions of State and, where necessary, creating such

institutions to give full expression to the spirit and letter of this policy. Institutional reforms must be supplemented and complemented by the creation of political and institutional arrangements, practices and values that ensure democratic and socio-economic transformation and the prevention of the emergence of future violations.

94. Political and institutional reform should ensure respect for the dignity of all members of society based on their inclusion and effective participation in decision-making processes. Particular attention should be paid to the representation, participation and voices of women and youth through law reform and other policy measures that address patterns of discrimination and inequality that make them vulnerable to violations.

95. Benchmarks and standards for successful political and institutional reform may include:

- i. Constitutional and legal reforms based on inclusive and fully consultative processes, including devolution of power and wealth-sharing arrangements, guarantees on the representation of women and marginalized groups in decision-making structures, justiciable bill of rights, independent constitutional commissions like a national human rights commission and ombudsperson, institutional safeguards that limit executive power and institutionalize separation of powers and checks and balances, and independence of the judiciary with constitutional review powers, empowerment of traditional authorities;
- ii. The adoption of legislation on non-discrimination, hate speech and review of criminal law to incorporate international crimes recognized in African and international law, including sexual and gender-based crimes;
- iii. Disarmament, demobilization and reintegration processes and security sector and judicial reforms covering police, intelligence, corrections, prosecutions and the judiciary as envisaged in the PCRD and having regard to both the role of women as ex-combatants, cooks and porters and children and youth forced into armed groups;
- iv. Purging, vetting or lustration that may be used to address past abuses by individual office holders. Assessment of individual integrity should be undertaken to determine their suitability for election or appointment to public office. Assessments should be done transparently, using clear criteria on an individual basis by a legitimate and publicly accountable institution;
- v. States are encouraged to develop or revise ethical guidelines and codes of conduct for public officials in order to facilitate effective and sustainable institutional reform;
- vi. Providing institutional space for integrating into and making use of indigenous values and socio-political practices, including through empowering traditional and religious leaders and community-based organizations.

96. Apart from constitutional, legal and institutional restructuring, political and institutional justice requires the democratization of the conduct of politics and

public affairs, including through education programmes, particularly for youth. This demands institutionalization of the principles of accountability, legality, transparency, responsiveness and respect for human rights, including non-discrimination and equality in government decision making and in the conduct of the affairs of the State, as well as civilian control of security institutions.

97. Effective consultation of members of society likely to be affected by the decisions or acts of government entities. The integration of their views in pursuing such decisions or acts should be institutionalized and constitutionally guaranteed.

98. Reforms should provide constitutional and institutional guarantees for enabling the media, education institutions, non-governmental organizations and community-based organizations to promote transparency, accountability and respect for human and peoples' rights, including through documenting and reporting.

### **k) Human and peoples' rights**

99. This element entails the promotion and institutionalization of a culture of human and peoples' rights within the framework of the African Charter on Human and Peoples' Rights, the AU shared-values instruments and relevant international human rights instruments. Situations that give rise to the need for TJ are often characterized by a breakdown of the rule of law as well as lack of respect for human and peoples' rights. Restoring human dignity and humanity in interpersonal and intercommunal relationships is key to TJ.

100. Benchmarks and standards for promoting and institutionalizing a culture of human and peoples' rights in transitional situations may include:

- i. Restoring constitutional and legal rights to sections of society that might have lost them during conflict and/or authoritarian rule, such as refugees, internally displaced persons (IDPs), stateless persons, people with disabilities, women, youth and children, etc.;
- ii. Guaranteeing and protecting socio-economic and cultural rights, including the right to development as provided for in the African Charter on Human and Peoples' Rights;
- iii. Prioritizing access to education, a fundamental right, particularly in view of the overwhelming preponderance of youth among combatants, and the increase in the number of street children following conflicts;
- iv. Guaranteeing and protecting women's rights and participation in political, social and economic spheres of life;
- v. Guaranteeing and protecting the rights of marginalized and vulnerable social groups, such as people with disabilities, people with albinism, minorities, the elderly, etc., to participate in political, social and economic spheres of life;
- vi. Promoting institution building of national structures mandated to promote and protect human rights, such as national commissions for the protection of human rights;

- vii. Creating adequate space for non-State actors to advance the entrenchment of a human rights culture at national, regional and continental levels.

### **SECTION III: CROSS-CUTTING ISSUES**

#### **a) Women and Girls**

101. As envisaged in the Maputo Protocol, transitional processes should recognize the gendered nature of conflicts in which women and girls get affected disproportionately, both directly and indirectly, by violence. Gender concerns must be incorporated into TJ through mainstreaming gender as a cross-cutting issue. The nature of the violations to which women and girls are usually subjected, and the impact of such violations on them, mean that the issue of women and TJ should be treated on its own, as outlined below.

102. States emerging from conflicts or authoritarian repression should ensure women's representation and participation at all stages of TJ processes by writing women's participation into peace agreements and TJ laws and policies.

103. With respect to the investigation and prosecution of sexual and gender-based violence, TJ processes should adopt measures that protect victims of such violence from social and cultural stigma and ameliorate procedural and evidentiary requirements that militate against their effective prosecution. Provision should also be made for adopting urgent measures to address the psychosocial, medical and livelihood needs of survivors of sexual and gender-based violence, including educational opportunities for child victims.

104. The benchmarks and standards may include:

- i. Participation of women and women groups in consultation and decision-making processes on the design of TJ processes;
- ii. TJ measures should address not only the actual violations against women and girls but also the structural basis involving patterns of gender bias, discrimination and inequality in the social and public spheres;
- iii. Facilitating targeted public education campaigns and community dialogue on the imperative of social acceptance and protection of victims of sexual and gender-based violence;
- iv. Using culturally sensitive investigative experts to overcome challenges of securing forensic evidence, full participation of victims and community support for victims in TJ processes;
- v. Provision of services to survivors of sexual and gender-based violence adapted to their social and cultural realities, including discreet medical, psychological and counselling services;
- vi. Prescribing avenues that seek and ensure the participation of women and women groups in all TJ processes as well as adequate representation of women in decision making in such processes;

- vii. Provision of measures catering for the needs of female IDPs and refugees, particularly in relation to nationality laws, access to justice and land and property rights.

## **b) Children and Youth**

105. The AUTJP recognizes that children are most vulnerable to and affected by conflicts, including as direct targets of violence through killings, acts of mutilation or torture, abductions, recruitment as well as enrolment as soldiers and sexual violence. All transitional processes, including peace and justice processes, should take account of the disproportionate impact of violence on children and youth (including deprivation of socio-economic rights such as food, health and schooling) and make adequate provision for children as victims, irrespective of their roles, in accordance with the African Charter on the Rights and Welfare of the Child.

106. The principle of the best interests of the child should guide the measures that are adopted in transitional processes to cater for children affected by violence, including as IDPs and refugees. In cases of children who were forced into armed groups and to perpetrate violence, the best interest of the child entails that alternative accountability processes other than judicial proceedings should be used.

107. Based on full assessment of the impact of violations on children and the needs of children in the transitional setting, TJ processes should adopt child-centred approaches both in their design and outcome. Transitional processes should in particular pay attention to socio-economic programmes that facilitate access to education, including appropriate vocational and technical education for youth affected by violence.

108. Benchmarks and standards may include:

- i. Provision of avenues for the participation of children, youth and youth groups in consultation and decision-making processes for the formulation of TJ processes;
- ii. Children's participation in criminal proceedings as witnesses should be used only as a measure of last resort, for major cases involving crimes against children and using child-friendly procedures. These should involve personnel with expertise in handling child witnesses, who are susceptible to imminent trauma after recalling events and incidents they were involved in in the course of testifying in cross-examination, and ensuring confidentiality, particularly with respect to sexual crimes;
- iii. With respect to accountability measures, the provisions of the African Charter on the Rights and Welfare of the Child, which set the minimum age of criminal responsibility at 18 years, should apply as supported by the practice of the Special Court for Sierra Leone and Sierra Leone's and Liberia's truth and reconciliation commissions;
- iv. The adoption of programmes for family tracing and reunification and the reintegration of children and youth into their communities;

- v. The establishment of policies and programmes that aim at addressing the socio-economic, political and cultural alienation and disempowerment of youth;
- vi. The adoption of measures to rebuild the resilience of children and youth survivors who were involved with armed groups in the perpetration of violence and to ensure that they are able to access appropriate protection services, including medical and psychosocial services, as well as educational programmes designed for such young victims of violence;
- vii. Providing incentives for educational institutions and civil society organizations to implement programmes that facilitate conversation and critical debate on transitional processes involving children and youth;
- viii. Making provisions for adopting, as appropriate, proceedings specific to children and youth in truth and reconciliation processes that are child-friendly and guarantee confidentiality for those under the age of 18 years;
- ix. Ensuring full investigation and prosecution of sexual violence against children of both sexes, having regard to the disproportionate extent that it impacts on girls.

### **c) Persons with Disabilities**

109. As vulnerable members of society, persons with disabilities face the risk of being invisible in transitions. Transitional processes that marginalize these groups of people engender resentment that undermines their legitimacy and perpetuates patterns of discrimination and inequity in social relations. The substantive inclusion of persons with disabilities is one of the prerequisites for transitional processes to realize their transformative potentials towards a socially just democratic dispensation.

110. Benchmarks and standards may include:

- i. Participation in the processes of consultation and decision making on the establishment of TJ processes;
- ii. Ensuring that persons with disabilities are not left invisible in TJ processes, including through creating proceedings for their representation and participation in these processes;
- iii. Opportunities for people with disabilities, including those with the status prior to the onset of the violence, to relate their experience of the conflict, how they have been affected by the violence and on the measures for mitigating the impact of the conflict;
- iv. Providing avenues to incorporate measures specific to persons with disabilities in the formulation and implementation of projects for the rehabilitation and reparation of people affected by the conflict;
- v. Provision of services that are accessible to and meet the needs of persons with disabilities.

### **d) Internally Displaced Persons, Refugees and Stateless Persons**



111. Without substantive inclusion of IDPs and refugees, transitional processes face the risk of failure. The divisions that conflicts caused cannot be fully mended, and reconciliation and healing will only be partial without addressing the issues affecting IDPs, refugees and stateless persons in conflict and post-conflict situations.

112. Benchmarks and standards may include:

- i. The right to be consulted about transitional processes and making provisions to solicit the views of IDPs, refugees and stateless persons, including through visits in the territories, camps and countries where they are seeking refuge;
- ii. Investigative processes in both criminal processes and truth commissions should cover the violations that IDPs, refugees and stateless persons suffered, with particular attention to sexual violations against women and children;
- iii. The inclusion of displacement and statelessness as violations of human rights and humanitarian law in justice and accountability processes;
- iv. The provision in reparation programmes of appropriate benefits to refugees and displaced persons for the violations that caused them to flee and those they suffered while displaced, with due regard to women and children IDPs and refugees;
- v. The inclusion of measures for the secure and appropriately planned return of IDPs, refugees and stateless persons to their place of residence, with programmes at the place of residence that facilitate their resettlement, including restitution of lost land and rebuilding of homes and property.

#### **e) Older Persons**

113. The AUTJP recognizes older persons as defined in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa. Older persons are one of the most vulnerable groups affected by conflicts in Africa. Their experiences include killings, torture, abductions and sexual molestation and violence. All transitional processes, including peace and justice processes, should take account of the disproportionate impact of violence on older persons (including deprivation of socio-economic rights such as food and health) and make adequate provision for them as victims, in accordance with the above-mentioned Protocol.

114. The principle of the best interests of older persons should guide the measures that are adopted in transitional processes to cater for older persons who are affected by violence, including as IDPs and refugees. Based on a full assessment of the impact of violations on older persons and their needs in transitional settings, TJ processes should adopt older-person-centred approaches both in their design and outcome, including the establishment of residential care as provided for in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa. Transitional processes should pay particular attention to socio-economic programmes that facilitate access to the health and economic welfare of older persons.

115. Benchmarks and standards may include:

- i. Providing avenues for the participation of older persons in consultation and decision-making processes for the formulation of TJ processes;
- ii. Adopting programmes for family tracing and reunification and the reintegration of older persons into their communities;
- iii. Establishing policies and programmes that aim at addressing the socio-economic, political and cultural alienation and disempowerment of older persons, including establishment of residential care for them;
- iv. Making provisions for adopting, as appropriate, proceedings specific to older persons in truth and reconciliation processes that are user-friendly and guarantee confidentiality for them;
- v. Ensuring full investigation and prosecution of all manner of violence against older persons.

## **SECTION IV: ACTORS, PROCESSES AND IMPLEMENTATION MECHANISMS**

### **a) Actors**

#### **National Level/State Responsibility**

116. Member States shall have the primary responsibility with respect to pursuing TJ processes. They bear the responsibility for removing political and social impediments to the effective pursuit of transitional processes, guaranteeing the space for debate and advocacy on TJ and mobilizing the support of all sections of society across political lines.

117. The success of the TJP will be determined by the political commitment, leadership and capacity of national and local actors in the country concerned. It is imperative that national and local actors take the lead in planning, implementing, monitoring, evaluating and reporting on lessons learnt in all stages and phases of the implementation of the TJP. This will ensure national ownership and broad-based consultation and participation of key stakeholders. Thus, collective leadership at national level is key to developing an inclusive national vision and to clarifying the division of labour, roles and responsibilities of each of the key stakeholders.

118. Actors at national level will:

- i. Develop strategies, policies, programmes and projects and put in place appropriate structures and mechanisms to ensure that a comprehensive and coherent TJP exists;
- ii. Promulgate enabling legislation, simplify administrative processes and eliminate obstacles to the implementation of TJP;
- iii. Coordinate all TJP interventions;
- iv. Seek regional, continental and international support for the implementation of the TJP.

119. Member States should establish institutions and media space and create conditions that promote educational programmes which reinforce equality and dignity and emphasize people's common humanity.

120. Member States should establish social institutions and events that bring members of different groups together. These institutions should be equipped with experts who will facilitate communities' forgiveness and make mediation and trauma counselling available for strengthening social cohesion.

121. Educational curricula on memory initiatives should be formulated, among other means, through integrating truth commission findings in school and university curricula to inform national history and advance peacebuilding.

122. Member States should form partnerships with AUHRM for purposes of efficient documentation, codification and clarification of traditional justice mechanisms, including memorialization, education and training.

### **Regional Level**

123. At the regional level, Regional Economic Communities (RECs) should encourage all national actors to pursue transitional processes that permanently remove the conditions for instability and violations of human and peoples' rights, including accountability processes. RECs play a key role in helping address the regional and trans-boundary dimensions of conflicts or violent repression, including through promoting normalization of relationships between affected neighbouring countries and creating common understanding on transitional processes.

124. RECs should avail regional diplomatic and resource support for the TJ processes of Member States and designate mechanisms that encourage implementation of TJ in accordance with agreed terms. Additionally, they should endeavour to design means of documentation, codification and clarification of TJ programmes in accordance with the principles and benchmarks outlined in this policy.

125. Regional actors should ensure harmonization between regional and continental policy instruments to enhance coordination.

### **Continental Level**

126. The implementation of this AUTJP will not be successful without the overall strategic political leadership of the AU at the continental level. The AU leadership of the TJP should be complemented by interventions of continental non-State formations. Key AU organs and institutions to provide leadership in the implementation of this TJP include the AUC; the Peace and Security Council; the ACHPR; the African Court on Human and Peoples' Rights; the African Committee of Experts on the Rights and Welfare of the Child; the African Peer Review Mechanism; the Economic, Social and Cultural Council; the AU Board on Corruption; and the Pan-African Parliament in collaboration with other continental bodies such as the African Development Bank and the African Capacity Building Foundation.

## **Non-State Actors**

127. Civil society members, community-based organizations and the media should campaign for and facilitate the emergence of the necessary public national conversation and debate on pursuing TJ processes. Provision should also be made for enabling these and other actors to play their role in creating forums for and documenting and reporting on TJ processes.

128. Beyond and above the formal structures of the State, the important role of faith-based and cultural processes in offering affected communities and members of society avenues for healing, reconciliation and local justice should be harnessed as part of the transitional process.

129. The process for national dialogue, reconciliation and healing should enable faith leaders, traditional and/or community leaders not only to play an active part in such processes at national level, but also to pursue intra- and intercommunity dialogue, reconciliation and healing at local levels.

### **b) Resource Mobilization**

130. The design and implementation of TJ processes should be made with due regard to resource constraints facing the affected country and should adopt innovative approaches in making TJ processes resource sensitive. Simultaneously, the resources necessary for meeting the transitional needs of the affected society should be mobilized at national, regional and continental and international levels.

131. At the national level, the measures for resource mobilization that should be adopted include:

- i. As an essential component of the transitional process and national ownership, allocations of funds should be made in national budgets for the implementation of national TJ policies and programmes;
- ii. Complementing the national budget allocated to transitional processes, consideration should be made for establishing an independent fund with the mandate to mobilize resources through various fund-raising activities involving the private sector.

132. At the regional level, actors should support transitional processes through:

- i. Regional solidarity resource mobilization should be pursued at the subregional level with the participation of neighbouring countries and through the relevant RECs;
- ii. Sharing of best practices and lessons learnt;
- iii. Availing relevant technical support, including through assigning expertise.

133. At the continental level, the resource mobilization measures include:

- i. The Chairperson of the AUC may establish an African Transitional Justice Fund to ensure the availability of resources to enable prompt interventions. Budget allocation for prompt intervention with TJ initiatives should be afforded to affected societies within the respective regions;
- ii. The AU should undertake, based on the assessed needs of the affected country, resource mobilization activities, including through convening pledging conferences involving not only State actors but also continental private operators;
- iii. The development of a database of expertise and funding support for the deployment of experts from the database in support of national TJ processes.

### **c) Knowledge Management and Advocacy**

134. As part of the implementation of this policy, there should be knowledge-based strategic communication on and advocacy of the pursuit of TJ in societies that have TJ needs in accordance with the normative guidance provided in this policy.

135. In pursuing the TJ envisaged in this policy, the AU, in collaboration with regional, national and international actors, should:

- i. Facilitate clear strategic communications with relevant local, national and regional actors for nurturing awareness about and consensus in support of transitional processes;
- ii. Support the production of relevant research and studies;
- iii. Collect best practices and facilitate the sharing of such best practices with societies contemplating or pursuing TJ processes.

### **d) Monitoring, Reporting and Reviewing**

136. The AUC should follow up and evaluate transitional processes and the implementation of such processes in accordance with this TJ policy, as well as the participation and role AU bodies have assumed in such processes.

137. The AUC should submit an annual report to the relevant organs of the AU on transitional processes in Africa, highlighting issues facing such processes and the role of various national, regional, continental and international actors.

138. The follow-up on the implementation of this policy should be facilitated through a coordinating point to be based in the Department of Political Affairs, with inputs from relevant interdepartmental units and the various relevant AU organs with mandates involving TJ.

## **Annexes**

1. **Declaration on the Theme of the Summit: Towards Greater Unity and Integration through Shared Values. Assembly/AU/Decl.1 (XVI).**

2. **Decision on the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa. Assembly/AU/Dec.501 (XXII).**
3. **Declaration by the Assembly on the Theme of the Year 2016. Assembly/AU/Decl.1 (XXVII) Rev.1.**

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