



AFRICAN UNION
TRANSITIONAL JUSTICE FRAMEWORK (ATJF)

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A. INTRODUCTION

African states have long been at the forefront of the fight against impunity and the search for truth, justice, and reconciliation. Moved by the experiences of wars and conflicts in the 1990s, national, regional and continental institutions have developed judicial and non-judicial mechanisms to deal with political violence and the legacies of conflict. The formation of the African Union (AU) epitomized Africa's determination to promote accountability and eradicate impunity in order to foster sustainable peace, democracy, good governance and development.

This AU Transitional Justice Framework (ATJF) is intended to assist countries emerging from conflict in their pursuit of accountability, sustainable peace, justice and reconciliation. The ATJF (or policy Framework) reflects contemporary issues in the area of transitional justice and aims to serve as a guide that can be adapted by countries in the design and implementation of transitional justice mechanisms.

Questions of transitional justice are not new in Africa; they embody the mandates and objectives of the instruments and institutions of the AU and Regional Economic Communities (RECs). Since the establishment of the AU, Africa has established regional and continental mechanisms, instruments, and institutions that aim to resolve conflicts, ensure accountability, and promote peace, justice and reconciliation. The preamble to the Constitutive Act of the African Union acknowledges the threat posed by the scourge of conflicts and commits the AU to the promotion of peace and security, human rights, and the fight against impunity. Article 4(h) of the Act prescribes intervention by the AU in member states where grave crimes have been committed.

In addition to the Constitutive Act, the significance of transitional justice is captured in the AU policy pronouncements on the Principle of Universal Jurisdiction, the Review of the Rome Statute of the International Criminal Court, the African Union High Level Panel on Darfur (AUPD), the African Union Policy Framework on Post Conflict Reconstruction and Development (PCRD), and the AU Panel of the Wise report on Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity.

Rather than creating new obligations on member states, the ATJF seeks to deepen the links between transitional justice, governance, human rights, peace and security, and development. Equally vital, the policy Framework aims to improve the timeliness, effectiveness, and coordination of efforts by states emerging from conflicts and oppressive rule. In laying the foundations for accountability, social justice, sustainable peace, healing and reconciliation, the ATJF is consistent with Article 4 (o) of the Constitutive Act of the African Union which calls for peaceful resolution of conflicts, respect for the sanctity of human life, and the condemnation and rejection of impunity.

This policy Framework seeks to guide the AU on how it can complement the capacity of member states to implement transitional justice processes and realize their obligations. It is thus a practical and actionable tool to:

- Help end repressive rule and conflicts and nurture sustainable peace with development, social justice, human and peoples' rights, democratic rule and good governance.
- Consolidate peace, reconciliation and justice in Africa and prevent impunity.

- Draw lessons from various experiences across Africa in articulating a set of common concepts and principles to constitute a reference point to strengthen peace agreements and transitional justice institutions and initiatives in Africa.
- Develop AU benchmarks for assessing compliance with the need to combat impunity.

Given the domination of the transitional justice debates by actors promoting models that are oblivious to country and regional contexts, this policy Framework consolidates Africa's contribution to the field of transitional justice and international law by incorporating African dispute resolution and reconciliation approaches.

B. RATIONALE FOR THE ATJF

The need for the ATJF is imperative as Africa exhibits greater capacity in the management of its affairs and as it seeks to complement international efforts to combat impunity and promote accountability, achieve peace and foster reconciliation, and social healing.

The development of the ATJF was given further impetus by the decision of the AU Assembly in January 2011 to promote unity and integration through shared values such as governance, democracy, and human rights.

Although the principles undergirding the ATJF are embedded in other instruments and frameworks, a stand-alone policy Framework lends clarity and comprehensiveness to these principles. Moreover, the ATJF is necessary because there is no single reference document or policy framework that articulates the AU's position on transitional justice.

B.1 The policy Framework is premised on the following:

B.1.1 A programmatic and normative imperative

As the embodiment of Africa's quest for peace, justice and reconciliation, the AU is obliged to take the lead in the realization of the aspirations of the ATJF. Furthermore, given that achieving peace, reconciliation and justice in the aftermath of mass atrocities is often a complex matter, it is essential to have a policy Framework that elaborates the measures required to demonstrate the commitment to peace, justice and reconciliation in a holistic manner, and lays down minimum standards and benchmarks for combating impunity. The policy Framework is anchored on African conceptions of justice and sketches approaches that are adaptable to specific country situations in order to encourage affected countries to design appropriate transitional justice mechanisms.

B.1.2 Learning from each other

- Many African states emerging from conflict have furnished numerous experiences of transitional justice. Some of these countries include South Africa, Democratic Republic of Congo, Burundi, Rwanda, Kenya, Uganda, Sierra Leone, Liberia, Ghana, Ivory Coast, Togo, Tunisia, Libya and Egypt. While each of them have adopted various processes and mechanisms, the following key lessons are instructive:

- It is necessary to avoid mechanistic approaches and focus instead on flexible normative approaches to articulate the broad goals of each country. All mechanisms need to be framed within the achievement of these broad goals.
- Since no single mechanism is capable of addressing the profound demands of justice and reconciliation, transitional justice mechanisms are most effective when implemented as part of a flexible and holistic strategy.
- In most cases, the fact that it is not possible to implement all transitional justice mechanisms simultaneously makes careful sequencing, planning and timing necessary. The design of transitional justice mechanisms must carefully balance the demands for justice with the search for peace and reconciliation.
- Since transitional justice occurs within broader contexts of peace building, trade-offs for peace may be necessary. Aside from addressing the immediate concerns of maintaining peace and restoring security, member states must address deep societal cleavages and rebuild public institutions that can restore democracy, service delivery, and economic development. In addition, where there is need to rebuild the judicial system, the magnitude of the crimes may hamper investigation, prosecution, and reparations. States may also lack the resources needed to implement human rights policies and thus confront difficult and unavoidable trade-offs in the implementation of transitional justice mechanisms.
- There is no model transitional justice approach that can easily be transferred from one country to another. Each situation requires that the parties to the conflict, civil society, and victim groups negotiate the mechanisms appropriate to their circumstances. Valuable lessons, however, can be gleaned from various country experiences to inform institution-building based on functional and fair mechanisms.
- It is important for a country's transitional justice policy to be locally owned and informed by extensive public consultations among all relevant actors and constituencies.
- The design of mechanisms and processes must be gender sensitive and transformative, paying special attention to the particular harms suffered by women because they are disproportionately affected by conflicts.
- Since rebuilding public trust in the rule of law is a critical aspect of the ATJF, the independence of transitional justice institutions is vital.
- Provide an African platform for engagement with international actors to enhance global accountability
- The ATJF demonstrates Africa's determination to combat impunity and achieve sustainable peace and reconciliation; these objectives are at the heart of continental and regional instruments. More vital is the fact that these norms constitute part of the new international justice mechanisms captured in the principle of Responsibility to Protect (R2P) and institutions such as the International Criminal Court (ICC). Given this convergence, the ATJF can serve as a useful tool to bridge the gap between Africa and international actors and facilitate global dialogue in promoting accountability and the effective implementation of international justice initiatives in Africa.
- Addressing knowledge gaps on transitional justice in Africa
- The ATJF recognizes the need to codify, clarify, document and publicize the practical and philosophical underpinnings of diverse and multiple African traditional justice mechanisms. In this respect, the

implementation of the policy Framework provides African countries with an opportunity to create training institutes and centres for documentation, learning, and dissemination of local accountability and justice mechanisms.

C. PRINCIPLES AND VALUES UNDERPINNING THE ATJF

C.1 The entrenchment of African Shared Values in Transitional Justice

C.1.1 The pillars of this principle are:

- The ATJF seeks to address African concerns on impunity through a holistic policy, which takes into account the particular context, cultural nuances, and value systems in Africa and seeks to broaden the scope and reach of transitional justice to include the effective realization of socio-economic rights, gender justice, and the right to development.
- The policy Framework is designed and premised on the shared African values of peace, justice, accountability and reconciliation, which are interrelated, interdependent and mutually reinforcing. These values are critical in promoting governance, human rights, sustainable peace, security and development.
- The policy Framework recognizes that transitional justice takes place in diverse political, socio-economic, and cultural contexts that should inform its design and implementation.

The AU and member states should provide support and solidarity to countries emerging from conflict to implement effective transitional justice measures that meet national and international standards.

The design and implementation of activities under this policy Framework should prioritize the use of specialized African agencies and regional bodies, as well as African technical expertise and knowledge at local, national, regional and continental levels.

C.2 The Promotion of National and Local Ownership and Inclusive Participation in Transitional Justice Processes

C.2.1 The pillars of this principle are:

- State and non-state actors at national and local levels, including victim groups and civil society, should be core actors in rebuilding trust and peace and they should be at the forefront in the design, implementation, monitoring and evaluation of transitional justice initiatives.
- The principles of effective consultation and participation and informed consent should guide all engagements with affected groups particularly in deciding on priority areas in transitional justice processes.

ATJF initiatives should be based on the principles of non-discrimination, justice, equity and fairness which are central to ensuring that societies do not relapse into conflict precipitated by unresolved or new grievances.

C.3 The Promotion of Reconciliation with Accountability and Responsibility

C.3.1 The pillars of this principle are:

- Reconciliation efforts should underpin all aspects of the ATJF to lend meaning to the African sense of justice which also privileges accountability and responsibility.
- The links between reconciliation, accountability, and responsibility depart sharply from the inordinate focus on retributive justice that dominates transitional justice debates elsewhere and acknowledges that a comprehensive approach to achieve peace in the region is necessary.

In framing any transitional justice mechanism, there needs to be broad national consultation and consensus on how to meet the triple objectives of reconciliation, accountability and responsibility so as to prevent the recurrence of conflict.

C.4 Victim-Centred Justice

C.4.1 The pillars of this principle are:

- All actors in the pursuit of peace, justice and reconciliation in Africa, including states and non-state actors, international institutions, civil society and advocates, have obligations to respect and protect the dignity and rights of victims and victim communities, witnesses, and intermediaries.
- Transitional justice mechanisms must earn the respect of people most directly affected by mass atrocities; the participation and support of victims is critical to the successful implementation of these mechanisms.

The obligations to the victims include duties of care, provision of appropriate protection and assistance, accurate and timely information, facilitation of good faith dealings, and diligent discharge of both legal and ethical responsibilities.

Gender equity and participation of women should be at the core of the design and implementation of all ATJF initiatives. Provisions should be made to protect women and children affected by conflicts, place the protection of victims and their participation at the centre of all proceedings, and measures implemented to address the root causes and sources for the continuation of conflicts.

The special needs of vulnerable groups such as children, the elderly, minorities, the disabled and the youth should be taken into account in the design and implementation of transitional justice policies and processes.

C.5 Ensure cooperation, coherence and coordination of ATJF initiatives

C.5.1 The pillars of this principle are:

- The roles and responsibility of actors engaged in ATJ should be defined early in the process in order to ensure coherence, coordination, accountability and ownership.
- There should be coordination of actors and activities to optimize the use of resources, increase effectiveness and efficiency, and improve timeliness of response.

It is necessary to enhance trust between various local, national, regional and international actors involved, through the promotion of transparency and exchange of information.

The articulation and design of national processes should be in tandem with regional and international norms and standards.

D. THE CONSTITUTIVE ELEMENTS OF THE ATJF

This policy Framework envisages a holistic comprehensive approach to transitional justice in Africa that addresses truth recovery, justice, reparations and the guarantee of non-recurrence incorporating various mechanisms and tools. These include comprehensive peace agreements; truth commissions; prosecutions at domestic and international level i.e. courts, ad hoc international tribunals, hybrid courts/systems including domestic chambers; traditional justice mechanisms; memorialization, acknowledgement, reparation programmes at an individual and collective level; institutional vetting and security sector reform, and conditional amnesty, as constitutive elements of the ATJ framework. To be in compliance with the spirit and standards in this framework any initiative must ensure accountability, and promote peace, reconciliation and justice.

D.1 Negotiation and Mediation of Peace Agreements

Negotiation and mediation initiatives in Africa are increasingly seeking to identify the transitional justice goals and parameters to end violent conflicts. The AU has derived authority from its Constitutive Act by actively engaging in negotiations for peace, conflict resolution and political settlement in a number of member states. Articles 6, 13 and 14 of the AU's PSC Protocol delineate the roles of the AU in peace-making, including the use of good offices, mediation, conciliation and enquiry. Although peace-making and justice are often perceived as competitive objectives, it is increasingly accepted that peace and justice can be mutually reinforcing in ending cycles of impunity and conflict. Thus negotiators and mediators need to ensure that comprehensive approaches are considered in the search for peace. The issues of justice and reconciliation must be at the core of peace agreements; agreements that avoid addressing these salient questions are no longer viable. While negotiating peace and justice in Africa, measures should be undertaken to protect civilians and investigate the serious crimes that have been committed. Such measures should include robust arrangements to prevent the resumption of hostilities and guarantee respect and implementation of peace agreements.

D.1.1 To attain this objective, the following actions need to be considered:

While taking into account local dynamics and needs, every peace agreement concluded must emanate from the solemn declaration that peace, justice, and reconciliation are interconnected, mutually interdependent and equally desirable. Peace should constitute the foundation for justice in Africa.

Through ceasefire agreements, parties should agree to an unconditional end to hostilities and provide immediate security for the affected populations to allow inclusive participation in all aspects of the peace process. In realizing this central objective of the ceasefire agreements, it must be ensured that only mandated forces have the authority to bear arms and provide security. Fair, humanrights-guided processes of disarmament, demobilization and reintegration (DDR) are essential to these arrangements. It is important to formalize the criteria for demobilizing combatants in order to guarantee that demobilized soldiers do not resort to unlawful conduct.

Political processes to end violent conflicts should address the political, economic, and social drivers of these conflicts and should adopt ameliorative measures such as democratic transformation, powersharing, wealth sharing, and national reconciliation. Given the nature conflict in Africa, peace processes should also address the regional and external dimensions of these conflicts.

Negotiations should include representatives of internally displaced persons (IDPs), refugees, traditional leaders, and civil society. The restoration of the constitutional and legal rights to sections of society who were deprived of these during the conflict must be a key priority.

Women should be included in peace negotiating teams and additional measures should be taken to ensure that agreements advance gender equality and participation.

Peace processes and agreements must be wellplanned, wellresourced, and undertaken within agreed timeframes.

Peace agreements need to conform to international legal obligations. It is crucial for mediation teams to include experts in the principles and procedures of international humanitarian and international human rights law.

Implementation and monitoring mechanism with clear mandates should be established to oversee peace agreements.

There should be active mobilization of neighboring countries, to support constructively the peace process in states emerging from conflict.

D.2 Benchmarks and Indicators shouldfor negotiation and mediation should include the following:

- Armed violence is ended or greatly reduced to enable the return to an accountable and legitimate state, the protection of civilians, and safe return of IDPS and refugees.
- The existence of opportunities and mechanisms that enhance participation of civilians and those affected by the conflict inpeace processes.
- All delegations of the negotiating parties should have sufficient representation, with women constituting at least 30 percent.

- Comprehensive peace agreements should incorporate provisions relating to justice, human rights, reconciliation and ending impunity.
- Regional actors and neighboring states should constructively engage in the search for a negotiated settlement by providing moral, technical, and financial resources to parties engaged in the search for peace.
- A well-resourced monitoring mechanism should be established, spelling possible consequences in cases of violations in the terms of peace agreements.
- Accountability processes should be set up to ensure military and humanitarian actors comply with international law and established codes of conduct.

E. TRANSITIONAL JUSTICE NORMATIVE FRAMEWORK

E.1 Links between Transitional Justice and Accountability

In responding to mass violations perpetrated during conflict and repression, states have multiple obligations under international law to protect human rights and restore or establish peace and stability. Transitional justice as defined by the United Nations Secretary General in 2004 comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with the legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Accountability for serious violations of international humanitarian or human rights law is not a matter of choice or policy but is an obligation under domestic and international law which goes beyond the investigation and prosecution of serious crimes that have been committed; rather it is a broad process that addresses the political, legal and moral responsibility of individuals and institutions for past violations of human rights and dignity.

E.1.1 Transitional Justice Goals

The goals of an African Union Transitional Justice policy include the right to know (achievement of truth), the right to justice and reparations for victims, institutional reform with a focus on rebuilding institutions compromised through the conflict, vetting and security sector reform and requires an official acknowledgment by the State of its role and responsibility as well as that of non-state actors in violating the rights of its citizens, when such violation has occurred.

E.1.2 The Right to Know-Truth Seeking

Includes the right of any individual victim or relative to the truth of what happened and the collective right of a society drawing upon history to prevent violations from recurring in the future. Its corollary is a "duty to remember", which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people's national heritage and as such must be preserved. Measures to implement this right have included Truth Seeking bodies such as truth commissions, mapping programs, commissions of inquiry and the preservation and access to archives.

E.1.3 The Right to Justice

Includes the right to a fair and effective remedy and implies that all victims have the opportunity to assert their rights and are entitled to a fair and effective remedy including investigations, prosecutions, witness protection and effective legal assistance.

E.1.4 The Right to Reparation

Has been established in a number of international documents dealing with reparations including the International Law Commission's Articles on State Responsibility (ILC Articles), which focus on state-to-state responsibility and the 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 adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

E.1.5 Guarantee of Non-Recurrence

Guarantee of non-recurrence is intended to prevent future conflict and atrocities from occurring and includes institutional reform, vetting and security sector reform with the goal of restoring trust by citizens in the institutions of the state.

E.2 Balancing Transitional Justice Goals and Sequencing

The goals of transitional justice may be difficult for a State to realize simultaneously but given the positive duty to satisfy each of these goals, states should seek to develop complementary mechanisms sequencing them where appropriate rather than fulfilling certain legal obligations at the expense of others. Fulfilling these positive obligations should take account of broader policy objectives to achieve justice, such as ending the conflict or repression; restoring public order and stability; establishing democratic structures and the rule of law; dealing with the underlying causes of the conflict or repression; ending exclusion and discrimination, achieving equality, repairing broken relationships, obtaining compensation and restitution, rehabilitation, promoting reconciliation and sustainable peace as well as other similar objectives.

Transitional justice does not require or advocate a "one-size-fits-all" formula but recognizes the need for mechanisms and processes to be defined in accordance with national assessments involving broad citizen participation and which are therefore responsive to their needs and aspirations and which are also compliant with international standards. Processes should incorporate the right to know, the right to justice, the right to reparations and the guarantee of non-recurrence.

E.3 Sequencing

While it is widely understood that real peace cannot exist without justice, the UN and other bodies have acknowledged that the relentless pursuit of justice may sometimes be an obstacle to peace. However there is an emerging consensus that suggests that sensible peace-building strategies should combine elements of both peace and justice, whether by sequencing peace and justice activities (as in the case of some Latin American countries, such as Argentina and Chile, where justice/accountability issues were addressed decades after

democratic transitions), or by undertaking peace and justice activities simultaneously (as in the case of Rwanda, Sierra Leone, Uganda, Timor Leste). "Justice and peace" therefore, should not be seen as conflicting or contradictory forces. Rather, properly pursued, they promote and sustain one another.

The question should not be: whether to pursue justice and accountability, but rather when and how." In reality it is about keeping alive the possibility of justice and accountability and finding the right combination and the right sequence in each specific context.

F. TRANSITIONAL JUSTICE MEASURES

F.1 Truth Seeking and Truth Commissions

Truth seeking and truth telling have been a central aspect of transitional justice initiatives in Africa, with Uganda establishing the first such commission in 1986, followed by Chad in 1991. The South African Truth and Reconciliation Commission (TRC) established in 1995 was the first truth commission to explicitly include reconciliation in its mandate following a national consultative process and was vested with the power to grant amnesty. The national dialogue, which preceded the Commission's establishment as well as a public consultative selection process of its commissioners increased the Commission's legitimacy, credibility and the authority of its findings. Truth Commissions have subsequently been established in Nigeria, Sierra Leone, Ghana, the DRC, Morocco, Liberia, Togo, Kenya and Côte d'Ivoire. Truth commissions are defined as "official non-judicial bodies established to investigate a country's past period of human rights abuses or violations of international humanitarian law" and have usually emerged out of a political compromise between a strong outgoing regime and strong public demand for accountability.¹

Citing Priscilla Hayner, a leading expert on transitional justice, truth commissions are temporary bodies mandated to clarify and acknowledge the truth about past human rights violations that occurred in the country hence establishing a clearer, more accurate historical record.

Truth commissions are inherently concerned with victims, including ensuring a safe and supportive environment for victims to testify about the violations they have suffered, develop and recommend appropriate reparations for victims and their families, address the fate of the missing and disappeared as well as exhumations.

Although truth commissions are not judicial bodies they can contribute to justice and accountability by forwarding the evidence they compile to the country's courts. Truth commissions are expected to name individual and institutional perpetrators subject to due process with a view to holding them accountable for the gross violations committed. In addition, truth commissions outline institutional responsibility for crimes and make recommendations to reform institutional structures and laws that enabled abuses to occur. Finally, truth commissions attempt to promote reconciliation and reduce tensions that result from past violence. Truth commissions should be vested with the powers of subpoena, search and seizure and access to national archives.

The work of truth commissions can impact positively on victims and perpetrators as well as influence the future of the transitional state. For the families of victims, the truth-seeking process may offer a way to discover the whereabouts and fate of a loved one. For perpetrators, it may present an opportunity to break with the past, to confess and reflect upon violations committed, and to reintegrate back into society. For the new transitional government, the work of the truth commission may help to underscore a separation from a history of human rights violations and can also help obtain greater domestic political legitimacy. Finally, for the transitional society, a truth commission's work can help to heal a nation in the aftermath of a traumatizing and oppressive regime.

F.1.1 Factors that may impede the impact of Truth Commissions

The success or failure of the work of a truth commission depends on several factors, some of which are determined by the body that establishes the truth commission or by the truth commission itself; other factors remain outside of a commission's control. Among the determining factors are:

F.1.1.1 Scope of Mandate

A truth commission's mandate lays out the parameters of its investigation. The mandate should clearly define the types of violations and time period to be investigated. Furthermore, abuses included in the mandate should be representative of the most egregious human rights violations that occurred during the period under consideration. A mandate too broad in scope may overwhelm a truth commission; an overly limited or unrepresentative mandate may undermine the commission's legitimacy and fail to respond to the needs of victims and their relatives.

F.1.1.2 Duration

Depending on the period of human rights violations under investigation by a truth commission, its length of duration to compile testimony, investigate, and deliver a report should ideally range between two and three years. Sufficient time is necessary to appoint commissioners, to organize staff and methodology, and most important, to fully engage in the truth-seeking process and to finalize a report setting out its findings and recommendations. An indefinite amount of time or an ambiguous deadline for achieving these objectives may cause the commission's work to lose momentum as well as public support.

F.1.1.3 Legal Powers

Truth commissions should be vested with the necessary legal powers that can assist in their search for truth such as the power of search and seizure, the power to subpoena witnesses and the power to access archives of both state and non-state actors. The power to subpoena witness testimony as well as documents from critical sectors of the government can assist truth commissions in creating a clearer picture of past abuses and in determining responsibility for these. Truth Commissioners should also be provided with the necessary immunities while in office as well as the power to ensure confidentiality for their work and processes.

F.1.1.4 Naming Perpetrators

Since the establishment of the South African Truth and Reconciliation Commission, most truth commissions have been mandated to name those responsible for human rights violations subject to due process. Those who advocate naming names believe this contributes to accountability, justice, and furthers the possibility of reconciliation and forgiveness between victims and perpetrators. In volatile situations, where the former regime maintains some power, truth commissions should exercise caution for fear of reprisals by those named.

F.1.1.5 Political Context

An African Union TJ policy framework should take account of the political context before establishing a truth commission and avoid a “one size fits all” approach. It is necessary to establish a national dialogue and conducive environment before setting up a truth commission.

F.1.2 Benchmarks and Indicators for a successful Truth Commission should include the following:

F.1.2.1 Independence of Commissioners

- The success of a truth commission is directly linked to the selection of commissioners who are perceived to be independent. Any selection process should be open and transparent.

F.1.2.2 Publication and Dissemination of Reports

- Legislation establishing a truth commission should include provisions relating to final reports being published and disseminated not only to government but the broader public constituency.

F.1.2.3 Implementation of Recommendations

- Legislation establishing a truth commission should provide that the state in question address the commission’s recommendations through a written response, the holding of a parliamentary debate on the recommendations as well as public consultations with victims and civil society.

F.1.2.4 Truth Commission reports should include the following:

- Reporting on the documentation of the violations of the past and satisfying the inalienable right of victims and their families to the truth about the past violations.
- Providing a historical record of the past conflict in order to address the right of a society to the truth of about the past and ensuring that there is a not a negation of the past.
- Contain a list of the names of all victims whose statements were taken by the Commission.

- List the names of perpetrators and institutions responsible for the violations
- Make recommendations which providing accountability and ensuring that at a minimal level, perpetrators are held accountable.
- Truth Commission Recommendations should seek to achieve the following:
 - Ending the cycle of violence and addressing the root causes of the conflict in order to ensure its prevention in the future (the transformation of violence into words and institutional practices).
 - The laying of a foundation for a domestic democratic order that respects and enforces human rights.
 - The consolidation and legitimization of a new democratic regime.
 - The promotion of reconciliation among former opponents.
 - The promotion of psychological healing for individuals, groups, victims, bystanders, and offenders.
 - The restoration of the victims' dignity.

F.1.3 Dealing with denial and acknowledgement

Truth Commissions should address the issue of denial and ensure the public acknowledgement by the State of violations that have been committed as well as a public commitment to ensure that the violence will never occur again.

F.1.4 Archives and the Right to Truth

Archives are an important measure to promote the right to truth which has been extended to cover the preservation of archives and promotion of access to archives linked to the violations of the past. An ATJP should provide that States are obliged to “ensure the preservation of, and access to archives concerning violations of human rights and humanitarian law”.

States should provide legislation enabling transitional justice institutions to access the archives of the various state institutions for the purposes of investigations, prosecutions, vetting and security sector reform as well as truth seeking and reparations.

Records include the records of Government (especially records of the military and the police and security services, (overt or covert); records of non-governmental and international organizations; records of churches and businesses, banks, schools, hospitals and morgues; copies of radio and television broadcasts; records of Government-owned media. Records include all physical types of records: paper, electronic, photographic, mapping and satellite imagery and databases.

States should ensure that laws establishing a transitional justice institution should provide for the management and securing of all records and documents created in the course of such body's work i.e. a truth commission, commission of inquiry, special prosecution mechanism, vetting panels,

exhumation projects and reparation bodies. Furthermore States implementing transitional justice initiatives should ensure that the archive of transitional justice institutions are preserved and protected and made accessible. Archives also enable every nation to exercise its right to an undistorted written record and the right of each people to know the truth about its past.

F.2 Justice and Prosecutions

The ATJF recognizes that the prosecution of international crimes is a key tool in the struggle against impunity and may also contribute to a number of other legitimate objectives such as deterrence, retribution, rehabilitation and reconciliation.

The ATJF also acknowledges that in many post-conflict contexts there are often substantial legal, political, economic, and social challenges to pursuing widespread prosecutions. It may not be possible or practical to prosecute all offenders as the judicial system may require rebuilding.

In practice, all legal systems, including international criminal law, allow for some prosecutorial discretion in deciding which suspects or which incidents to select and prioritize for prosecution. Prosecution strategies should therefore be developed to deal with the criteria and/or basis to select and prioritize crimes that will be investigated and prosecuted, which offences will not be prosecuted and which prosecutions will be delayed until crimes deemed to be of a higher priority have been processed.

While the prosecution of serious human rights violations is an important mechanism to address these infringements, it is imperative that we acknowledge that its role and significance may be limited in situations of mass violations. This mechanism often only satisfies the need of some victims and of directly concerned societies. It must be supplemented, by measures which meet the economic and social needs of victims and particularly in situations of mass atrocity, address the underlying political, socio-economic conditions which underlay the conflict or repression.

An ATJF should ensure that States who establish courts and intend to prosecute international crimes should take account of the rights of victims to access and participate in criminal prosecutions of international crimes. This should include both the investigation and trial stage.

F.2.1 Benchmarks and indicators of successful prosecution strategies which take account of victims' rights:

- The right to submit a complaint to the authorities regarding such violations.
- The right to have an effective and impartial investigation conducted with reasonable expedition.
- The right to be informed of the reasons for a prosecutor's decision not to prosecute a and/or any violation.
- The right to be informed of the conduct of criminal procedures and of major decisions taken therein.
- The right to be present at trial and sentencing phase.
- The right to be heard throughout the various stages of the criminal procedures particularly at key stages.

- The right to offer, examine and challenge evidence at the trial phase
- The right to be heard on compensation due.

An ATJF should ensure that where States prosecute mass atrocity crimes, prosecutorial strategies allow for victims access to and participation in proceedings. The rationale for this is that such access and participation can make criminal proceedings more meaningful to directly victimized communities by fostering a sense of involvement in, and ownership of, the proceedings by these communities.

In addition, victim access to the investigation phase can help to ensure that prosecutors observe in the exercise of their prosecutorial discretion with respect to the commencement and discontinuance of investigations and prosecutions as well as the charges brought against a defendant in situations of mass atrocity, the minimum principles of equal treatment and for due consideration of the gravity of the crimes and victims' views.

F.3 Measures to prosecute International Crimes

F.3.1 International Criminal Court

The entry into force of the Rome Statute of the International Criminal Court in 2002 establishing the first ever permanent court tasked with adjudicating international crimes has been a pivotal achievement in the struggle against impunity for international crimes. The ICC is complementary to domestic criminal jurisdictions as a case is admissible before the ICC only when a State is unwilling or genuinely unable to carry out the investigation or prosecution of these crimes. It is the court of last resort.

F.3.1.1 Complementarity

The principle of complementarity implies that in line with this, national states have the primary responsibility to investigate, prosecute and bring to judgment, perpetrators of serious crimes such as genocide, crimes against humanity and war crimes. An ATJP should seek to strengthen regional and domestic prosecutions of the most serious crimes. The principle of complementarity envisages a system in which continental, regional and national jurisdictions take the lead in the investigation and prosecution of international crimes. An ATJP should play a central role in addressing the role played by continental, regional and domestic courts.

F.3.2 The Role of Continental Courts

Consistent with the principle of positive complementarity, African continental mechanisms play a central role in the ATJF. The normative framework for these institutions exists under the African Charter on Human and People's rights (ACPHR). Continental institutions, notably the African Court on Human and People's Rights (AfCHPR), complement international, regional, and national institutions holding states accountable and promoting and protecting human rights. The proposal to create an extended criminal jurisdiction for the AfCHPR to include crimes of genocide, war crimes, and crimes against humanity is a momentous development. The challenges, however, include ensuring that the continental judicial system corresponds to international standards and norms. In

addition, the role of the continental mechanisms will hinge on the political will of member states and the ability of these mechanisms to effectively enforce their mandates.

F.4 The Role of Regional Courts

RECs have moved decisively to empower regional courts to handle matters of transitional justice, including the prosecution of international crimes. Regional courts such as the ECOWAS Court of Justice and the East African Court of Justice could potentially strengthen national systems including mechanisms that allow civil society organizations to file cases directly under article 34(6) of the Protocol to the ACHPR. Questions of the hierarchy between national and regional courts on transitional justice will need to be addressed as part of regional dialogues and consultations on implementing the ATJF.

F.5 The Role of Hybrid Courts and Special Chambers

In recent years, hybrid courts such as the Special Court for Sierra Leone and the Extraordinary African Chambers established by Senegal in February 2013 to prosecute Hissène Habré, the former president of Chad, have emerged to lend further weight to the spirit of positive complementarity in managing impunity. States such as Kenya and Uganda have built on these efforts by setting up International Crimes Divisions in their high courts. All these initiatives need to be acknowledged in the articulation and implementation of the ATJF.

F.6 Amnesty

Amnesties are used for a wide range of purposes during on-going conflicts and repression or as part of political transitions. At different stages, positive objectives of amnesties can include:

- Encouraging combatants to surrender and disarm
- Persuading authoritarian rulers to hand over power
- Building trust between warring factions
- Facilitating peace agreements
- Releasing political prisoners
- Encouraging exiles to return
- Providing an incentive to offenders to participate in truth recovery or reconciliation programmes

An ATJF should ensure that states do not enact 'blanket' unconditional amnesties and which have the effect of preventing investigations and ensuring impunity for persons responsible for serious crimes. Amnesties when enacted should be designed to create institutional and security conditions for the sustainable protection of human rights, and require individual offenders to engage with measures to ensure truth, accountability and reparations.

F.6.1 Legal Effects

Amnesty may have multiple legal consequences for individual beneficiaries in relation to the designated offences. These can include:

- Preventing new criminal investigations being opened
- Stopping ongoing criminal investigations and trials
- Reducing prison sentences
- Releasing prisoners
- Granting pardons
- Erasing criminal records
- Barring civil liability

F.6.1.1 Where an amnesty bars civil liability

Either explicitly in the amnesty legislation or implicitly where access to civil remedies is dependent on prior criminal convictions, administrative reparations programmes should be considered to provide remedies to victims.

F.6.1.2 Amnesty and International Obligations to Prosecute

Accountability should be pursued for international crimes and gross violations of human rights such as crimes against humanity, genocide, grave breaches of the Geneva Conventions, torture and enforced disappearances.

F.6.2 Amnesty and Children

Special attention should be paid to amnesty dealing with children responsible for acts that may qualify as national or international crimes. International law and most domestic legal systems provide for a minimum age of criminal responsibility. Where an individual is below this age at the time of the offence and thus is not criminally responsible, a fortiori he or she need not be included within the scope of an amnesty. Where access to demobilization and reintegration programmes is dependent on participation in an amnesty process, it is important to take care of the needs of children who do not fall within the amnesty because of their lack of legal criminal responsibility. Children who exceed the minimum age of criminal responsibility but are younger than 18 years at the time of committing offences may be liable for criminal prosecution. They may therefore be included within amnesty processes, and care should then be taken to address their particular needs and experiences.

F.6.3 Benchmarks and Indicators for amnesty processes should take account of the following:

- Linking Amnesty with Accountability
- Amnesties should be designed to complement or operate sequentially with judicial and non-judicial accountability processes in a way that furthers a state's multiple obligations and objectives. Such combined approaches can:
 - Deliver some form of truth and accountability for cases, which are not selected for prosecution.
 - Contribute to a broader range of conflict transformation goals than an exclusive focus on prosecutions.
 - Deliver greater consistency with a state's international obligations than broad amnesties that prevent all prosecutions.
 - The criteria for determining which acts qualify for amnesty should be clearly specified and limited in scope to minimise the potential for conflict with any applicable obligation to prosecute under international criminal law or international human rights law.

F.6.4 Prior Conditions on Amnesty Beneficiaries

Amnesty programmes should include specified conditions before obtaining amnesty. These conditions may enable an amnesty to contribute to preventing further violence and to facilitate accountability and the fulfillment of victims' rights to truth and reparations.

The inclusion of such conditions may serve to increase an amnesty's legitimacy and legality and further compliance with a state's international obligations to investigate and provide remedies. Where individuals fail to comply fully with applicable conditions, amnesty should be withheld. Preconditions for the conferral of an amnesty may include:

- Submitting individual applications
- Surrendering and participating in disarmament, demobilization and reintegration programmes
- Participating in traditional or restorative justice processes
- Fully disclosing personal involvement in offences, with penalties for false testimony
- Providing information on third party involvement with respect to offences
- Testifying (publicly or privately) in a truth commission, public inquiry or other truth-recovery process
- Testifying at the trial of those who were not granted or eligible for amnesty
- Surrendering assets illegitimately acquired
- Contributing materially and/or symbolically to reparations

F.7 Pardons, Plea Bargains and Mitigation of Punishment

F.7.1 Pardons

Pardons, in contrast to amnesties, are conferred after a prosecutorial process has been followed to its conclusion. Pardons can provide opportunities for further truth-telling and should not necessarily be disregarded as a viable transitional justice mechanism.

F.7.2 Plea Bargains

Similar to conditional amnesties, plea bargains require cooperation by the perpetrator for the purpose of providing truth in return for a reduction in sentence. It is essential to consider proportionality when negotiating plea bargains.

F.7.3 Mitigation of Punishment

International law allows for consideration of the degree of responsibility on the basis of the perpetrator's position in the command hierarchy, and for this to be factored when punishment is being meted out.

F.8 Reparations

Reparations are measures taken by States to redress gross and systematic violations of international human rights law and/or international humanitarian law through the administration of some form of compensation or restitution to the victims. Reparation following violent conflict and mass atrocities is an important tool to acknowledge the wrongdoing suffered by victims as well as to address the harm suffered and the needs of victims. The normative framework for Reparation is the United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005 which places an emphasis on state-to-individual responsibility for reparations. The principles and guidelines set out that reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. These remedies can be applied either singly or in combination in response to a particular violation. Reparations includes both material and moral forms and are intended to provide victims with justice, help with survival and future livelihoods and to provide a guarantee of non-recurrence. Reparations are both individual and collective and are a public acknowledgement by a new society of the harms suffered; they provide recognition for a victim as well as redress.

F.8.1 Categories of Reparations

F.8.2 Material Reparations

Material reparations for an individual may include the restitution of access, and title to, property taken or lost, a job or freedom, a pension or the reinstatement of a person's good name. It may also

include rehabilitation in the form of medical, psychiatric or occupational therapy. Material reparations may encompass monetary compensation, in the form of a lumpsum, a pension, or a package of services, for the victim and for the survivors of those killed.

F.8.3 Collective Reparations

Collective forms of reparations may include the restitution of cultural or religious property, of communal lands, of destroyed public buildings, education or health facilities—and compensation in the form of money or services to the community.

Memorialization is a form of collective reparations—which may include establishing days of remembrance, naming parks and building public monuments, the renaming of streets or schools, preserving archives or establishing sites of conscience on previous sites of detention and torture. Sites of conscience serve as a powerful vehicle in addressing public memory and linking this to the next generation. Reparation also encompasses the “guarantee of non-recurrence” and includes educational reform and the writing of an inclusive history taking different viewpoints into account, and the inclusion of human rights education in the national curriculum for schools.

F.8.4 Moral Reparations

Moral reparations are often more important for victims than material reparations as they cover a wide range of measures: Telling one's story and having it acknowledged by a public or state body is an important part of the healing process and also falls under the category of “satisfaction” which may include disclosure of the facts of a victim's mistreatment or a loved one's death, disclosure of the names and positions of those responsible. “Satisfaction” may also include official acknowledgement by the State and its agents of the wrongdoing to victims as well as an apology. For many victims, the ultimate form of satisfaction is experienced in the state's efforts to ensure that those responsible are brought to justice, and removed from positions of power.

Moral reparations may also include the identification and exhumation of the bodies of loved ones, assistance in reburials, tombstones and culturally appropriate mourning ceremonies. Finding the bodies of the disappeared (those abducted and killed usually by security forces) and returning the remains to the family allow indigenous and tribal societies to deal with closure, for which the return of the remains is essential.

While reparations are usually framed as repairing past damage and ensuring that the victim is restored to the position where he or she would have been if the wrong had not occurred, in reality it is impossible to completely repair the damage done. Many victims would also like to see an improvement to the position they were in originally, which means that reparations should also be forward looking and should seek to correct the wrong done. Reparations may also restore the good name of victims that has been disparaged and led to their isolation; which allows for reintegration into society. It may also provide the opportunity for poor communities to improve the conditions under which they live, having previously been excluded from access to economic opportunities.

F.9 Defining a “Victim”

The notion of "victim" entitled to reparation as a result of a human rights violation has significantly developed over time, particularly through the adoption of declarative instruments such as the UN Basic Principles and Guidelines, the Guidelines and Principles on Fair Trial and Legal Assistance in Africa, General Comment No. 3 and the Robben Island Guidelines, as well as the jurisprudence of regional mechanisms which recognizes not only direct victims of human rights violations, but also next of kin of such victims by virtue of their own suffering due to their relationship with the victim. Successors and dependents are also entitled to be beneficiaries of reparation as are individuals who intervened to help victims or to prevent the commission of crimes. The status of victim is not reliant on "whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familiar or other relationship between the perpetrator and the victim."

The process of designing and implementing a reparation program involves complex interactions between economic, political and social factors.

Achieving a balance between these factors is critical as an unsatisfactory reparation programme can lead to continued social and political problems between the victim population and the rest of the society. There is always the potential for tension within the victim population as competition amongst victims is common to victims' groups universally.

An ATJP should seek to achieve equality and an appropriate balance particularly in developing countries where institutional support for victims can be relatively limited where there are greater constraints on resources.

An ATJP should seek to ensure that reparation programs are legitimate and designed with the participation of victims and stakeholders and that they contribute to the restoration of dignity and justice for victims. Where massive and systematic harm has occurred, the interests of justice extend beyond individuals to the reconstitution of the society more generally. This requires that States approach reparations as a broad political project, under which institutional and attitudinal restructuring is sought.

The failure to provide reparation can have important psychological effects at both the individual and collective levels. At an individual level, if victims cease to be productive members of their community, this may lead to a drain on local resources, or the active infliction of further harm on other individuals or the society in general. At the collective level, perceived injustices can remain alive in the conscience of a population for decades and across generations which may be an incentive for future conflict. The African Commission has also interpreted Article 7(1) which is the individual's right to remedy to include not just the right to be heard but also to be given "adequate relief". In instances where amnesty processes have been in place, victims who have through the amnesty process lost the right to claim damages from perpetrators who are given amnesty must be compensated.

F.10 Official Acknowledgement and Apology

An important aspect of an ATJP on symbolic reparations includes an official acknowledgement by states of the conflict and its impact on society. An official apology, if appropriately articulated can contribute to peace building by countering the culture of secrecy and silence which are the foundation of repressive regimes.

F.11 Benchmarks and Indicators for successful reparation programs should include the following:

- States should develop comprehensive and holistic reparation programs as well as transparent and administratively fair procedures to access reparations. States should also establish appropriate institutions to administer them effectively.
- Reparation Programs should be transformative and promote the principles of equality, non-discrimination and participation of victims and stakeholders. They should also build solidarity across victim communities and restore dignity and inherently build fairness and be just.
- The design of a reparation program should take account of the scope of the program, the completeness and complexity of measures taken as well as coherence and issues of finality as well as financing.
- A holistic approach to reparation for harm inflicted by gender based violence requires multi-faceted and multi-disciplinary responses, involving medical, psychological, social as well as legal measures that are gender sensitive.
- Reparations should be prompt, adequate and a clear strategy for resource mobilization should be included in the reparations policy.
- Provision for urgent/interim reparations must be included, where it is expected that there will be a significant time lapse before the full reparations programme is implemented.
- Guidelines for co-ordination 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.
- Innovation should be encouraged where reparations programmes can be linked with development initiatives; however, clear guidelines are needed to separate out individual and communities' right to reparation from the broader development agenda of the society.

F.12 Reconciliation

The term reconciliation generally refers to the process of developing a mutual conciliatory accommodation between enemies or formerly antagonistic groups and refers to the process of moving toward a relatively cooperative and amicable relationship, typically established after a rupture in relations involving extreme injury to one or more sides in the relationship.

An ATJP recognizes that reconciliation is a necessary component of post-violence reconstruction. In “post-conflict” societies, the pattern is generally that the warring sides negotiate a settlement in the form of new democratic structures for governance in which former enemies - often with a long history of violence between them – are faced with the challenge of implementing the new negotiated structures for the future management of their differences.

There is a perception that reconciliation in the African context is focused on forgiving and forgetting. For reconciliation to be meaningful, it should include processes, which engender a minimum level of trust necessary for a degree of cooperation between former enemies.

Reconciliation is a complex term and is both a *goal* - and a *process* and should address the *relationships between former enemies at all levels*. Reconciliation is an over-arching process, which includes the search for

truth, justice, forgiveness and healing and at the most basic level, it entails finding ways to live alongside former enemies. The process of reconciliation should not be an excuse for impunity or a substitute for truth, justice and accountability.

Reconciliation should not be confused with forgiveness, which is a personal matter between an individual victim and perpetrator as the state cannot forgive on behalf of an individual.

An ATJP should promote reconciliation as a profound process which entails finding a way to live that permits a vision of the future, the re-building of relationships, the coming to terms with past acts and enemies and involves societies in a long-term process of deep change. In this context, it is widely accepted that the essential pre-requisites for reconciliation which are essential for conflict transformation and peace-building in post-war societies include a shared truth between former enemies and the acceptance of a common narrative about the past, justice, regard for each other's suffering, the need to restore and experience a sense of security and overcoming a sense of victimization.

F.12.1 Benchmarks and Indicators for reconciliation should include the following:

- Development of programs which promoting coexistence and reconciliation at all levels of society.
- Structural programs, which address inequality and the absence of symmetry and encourage ties to form across group boundaries.
- Establishing measures, which secure human rights for all and promoting truth recovery processes through truth commissions and public trials to satisfy appeals for justice.
- Promoting education programs which reinforce equality and dignity and emphasize people's common humanity.
- Establishing social institutions and events that bring members of different groups, together, offers of forgiveness, and making mediation and trauma counseling available and building social cohesion.

F.13 Memorialization

Memorialization is an important tool of transitional justice and is conceived both as commemoration and an important component of symbolic forms of reparations. Memorialization plays an important role in dealing with the past, including the right to truth and to justice. Memorialization is therefore an important instrument in dealing with contemporary issues of social justice and must contribute to social reconstruction based on a fundamental belief in universal human rights specifically taking note of the experiences of marginalized groups and communities.

The capacity of memory initiatives to contribute to both retrospective and prospective objectives after the perpetration of gross human rights violations can exert a potentially significant influence on cultures of silence and impunity.

An ATJP should ensure that memorialisation contributes to building an inclusive society in which there is a shared narrative, which provides the opportunity for dialogue in respect of preventing future repression and violent conflict.

F.13.1 Benchmarks and indicators for successful memorialization programs should include the following:

- Participation

Memory initiatives should promote the inclusivity of a plurality of voices particularly at local and community level. Participation should ensure that local needs, traditions, human rights, and socio-cultural sensitivity are respected with local communities included in the design and development, and where possible the implementation, of memorialization initiatives. Approaches should include a gender focus.

- Complementarity

Memory initiatives should be considered as integral to a framework for transformative justice that includes complementary mechanisms for the guarantee of truth, justice, reparations and the non-recurrence of violence. Memory initiatives can contribute to political and institutional reform, addressing socio-economic inequalities, demands for human rights, as well as the range of individual and community needs after conflict. Where possible, memorialization initiatives should be linked with community development/empowerment.

- Process

Memorialization is a long-term, participatory process that requires the sustained involvement of all actors and in particular the involvement of younger generations through inter-generational dialogue.

- Multiple Narratives

Memorialization should allow for multiple narratives given that there can be no single truth after violence; given the multiple discourses and different understandings of the past. The value of social dialogue should be acknowledged in the understanding that this does not inevitably lead to reconciliation or require affected communities to relinquish their claims for justice.

- Youth

Memorialization must prioritize and promote the active inclusion of younger generations as agents for change, for the non-recurrence of violence and for dignifying the memories of survivors.

- Politicization

The politicization of memorialization must be avoided because it is an inherently political process, which can either be utilized for the reclamation of violated rights or appropriated to serve malevolent purposes that can entrench impunity and subvert fundamental rights.

- Taking account of regional dimensions

Given the regional dimensions of the conflicts in Africa, memory initiatives with a regional perspective should be developed.

F.13.2 Benchmarks and Indicators for memorialization should include the following:

- Official acknowledgment of the conflict and its impact should aim to be inclusive, and not fuel violence.
- A comprehensive approach to memory initiatives needs to be adopted, which can include renaming of public spaces, revision of history texts and educational curricula.

F.14 Guarantee of Non-Recurrence including institutional reforms

Sturdy and durable ATJF mechanisms need to guarantee that neither violent conflicts nor the conditions that contribute to mass atrocities and impunity will recur. Non-recurrence assumes that in addition to effective pre-emptive mechanisms, peace, justice, and accountability institutions have sufficient legitimacy to deter the relapse into violent conflicts and contribute to the stabilization of social relations, political bonds, and economic exchanges.

Fundamentally, alongside legislative and institutional reforms in post-conflict transitional societies that strengthen effective justice and accountability systems, non-recurrence is broadly linked to the achievement of democratic and socio-economic transformation and the strengthening of community and individual rights.

Reforming public institutions is a core task in countries in transition from authoritarianism or conflict to democracy and peace as these institutions may have perpetuated a conflict or served an authoritarian regime and need to be transformed into institutions which support the transition and preserve the rule of law. Institutional reform contributes to providing transitional justice in two principal ways; in the first instance, fair and efficient public institutions play a critical role in preventing future abuses. Following a period of massive human rights abuse, preventing its recurrence constitutes a central goal of a legitimate and effective transitional justice strategy. Secondly, institutional reform contributes to transitional justice in that it enables public institutions, in particular in the security and justice sectors, to provide criminal accountability for past abuses.

F.15 Vetting

Vetting is an important aspect of personnel reform in countries in transition. Vetting can be defined as assessing integrity to determine suitability for public employment. Integrity refers to an employee's adherence to international standards of human rights and professional conduct, including a person's financial propriety. While international law obliges States to adopt measures—including vetting—to prevent the recurrence of human rights abuse, there is nevertheless significant flexibility regarding the form such processes should take. Vetting strategies need to address the unique historical, social and political challenges of each society confronting a legacy of serious human rights abuses and seeking to reform institutions in order to prevent the recurrence of such abuses.

In order to attain the above objectives the following should be considered:

- There is no “one-size-fits-all” response to vetting and personnel reform in transitional contexts.
- A vetting program must be context-specific and should be based on public consultations. A realistic assessment of needs and available resources is, therefore, a basic condition for effective reform.
- Effective and sustainable institutional reform is a complex and challenging task. Institutional reform measures may include, for example, the creation of oversight, complaint and disciplinary procedures; the reform or establishment of legal frameworks; the development or revision of ethical guidelines and codes of conduct; changing symbols that are associated with abusive practices; and the provision of adequate salaries, equipment and infrastructure. Effective reform efforts might also have to review the functioning of an entire public sector and consider merging, disbanding or creating public institutions. The precise content and scope of those measures will depend on the country’s circumstances.
- Vetting processes must take account of due process and should comply with international human rights standards.

F.16 Gender Justice

Recognizing that conflicts affect women and men disproportionately, transitional justice measures should be transformative as transitional justice has the potential to transform the lives of women who live under patriarchal systems and in circumstances where entrenched forms of gender-based violence also make women and girls particularly vulnerable to conflict-related human rights abuses, including systematic sexual violence which often continues unabated even after conflict ends. While many of the forms of harm to which women are subjected are similar to those men also suffer, women are affected differently as a result of pre-existing socioeconomic and legal status and the embedded cultural norms in a patriarchal society.

Women are not a homogenous group and nor is their experience universal, a multiplicity of identities and lifestyles exist within each gender; with women being both rich and poor, illiterate and educated, and both rural and urban, factors which make their experiences during times of war and peace very different.

The Sierra Leone Truth and Reconciliation Commission made the essential connection between the way women are treated before and after a conflict with their treatment during a conflict, thus demonstrating how patterns of discrimination and degradation emerge. In the period prior to armed conflicts women’s lives are disrupted with increased militarization drawing on gender stereotypes of masculinity and femininity. Among the consequences of the increased mobilization of soldiers is often an increase in human trafficking and the commercial sex trade attached to military bases creates a dangerous environment for women and young girls.

During an armed conflict, women’s mobility is lesser than that of men, as they remain at home, taking care of the children and the elderly. This exposes them to greater harm at the mercy of occupying troops, unable to flee and often at the front lines exposing them to extreme violence and trauma. When men go to war, are disabled, disappeared, or killed, traditional forms of labour are dissolved and women are forced to assume traditionally male responsibilities in addition to their usual roles. The added economic strain also exposes women to increased levels of domestic violence particularly when essentials such as access to food, health care, water, and fuel, diminish.

Conflicts expose women to increased levels of sexual violence. In this regard, the last 20 years has witnessed the recognition in international law of a broad range of gender-based crimes including rape, torture, persecution, sexual slavery, trafficking, sexual mutilation, forced impregnation, forced marriage, forced nudity, forced sterilization and forced abortion. However despite the unprecedented advance in law, prosecuting these crimes remains a challenge given questions of legal complexity, the lack of forensic evidence, investigative and prosecutorial expertise. Security concerns and witness protection as well as confidentiality challenges also impact negatively on accountability for gender-based crimes. Stigma and cultural taboos prevent women from coming forward as the repercussions against women who raise allegations of rape and sexual violence are severe. However the harms committed against women during armed conflicts cannot be reduced to sexual violence alone. Courts have traditionally only recognized a small subset of the harms committed against women and fall far short of addressing all gender-based harms.

Women at all stages of an armed conflict experience harm that is both a result and reinforcement of their vulnerable position in society. Truth commissions play an important role in addressing these particular forms of harm as a focus on sexual violence crimes may also demonstrate a patriarchal prejudice that reduces women to mere sexual beings. The social stigma and trauma associated with reporting such crimes and women's exclusion from public-decision making processes make it particularly challenging for women to engage with transitional justice mechanisms.

Transitions create a unique window of opportunity to improve the status of women at a socio-economic, political and legal level promoting equality at a legal and substantive level. Women are usually excluded from mediation and conflict resolution initiatives as well post-conflict transformation efforts.

An ATJP should ensure women's representation and participation at all stages of transitional justice processes through encouraging States to write women's participation into all peace agreements and transitional justice laws and policies. All states in the region should be required to ensure gender representivity and law reform providing for equality for women and ensuring access to justice at all levels of the legal system.

An ATJP should ensure that transitional justice measures adopted by states in the region should ensure through enabling legislation that gender is taken into account with a particular focus on advancing the rights of women at a substantive and legal level as well as accountability for gender based crimes including rape and sexual violence.

F.16.1 Gender-based Violations and Reparations

An ATJP should take account of the African Commission's Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence which provides guidance for States- as well as the Commission itself- to ensure that reparation afforded to victims of sexual violence is adequate and comprehensive, in particular in light of "the extent of physical and psychological trauma that women and girls face as a result of sexual violence". The Resolution calls on State parties to the African Charter to ensure accountability of perpetrators of sexual violence and to "[P]ut in place efficient and accessible reparation programmes that ensure information, rehabilitation and compensation for victims of sexual violence."

F.16.2 Benchmarks and Indicators to attain the objectives of gender justice and accountability as well as advancing the rights of women:

- Transitional justice mechanisms must thus provide for special measures to ensure that women are able to participate fully in transitional justice processes and that their rights and perspectives are fully addressed.
- Transitional justice measures should ensure that women receive fair and adequate redress for conflict-related violations.
- Transitional justice mechanisms should incorporate a gender and women's human rights perspective including prosecution initiatives that punish those responsible for committing sexual violence and other women's rights abuses during conflict and providing non-judicial measures which address other forms of harms suffered by women.
- States should ensure broad consultations with women to determine their priorities for transitional justice initiatives which address accountability for conflict-related women's rights abuses and ensure that oppression or maltreatment of women is not perpetuated into the future by punishing offenders, both those responsible for committing the immediate crime and those that contributed to the offence by ordering or facilitating its occurrence, Documenting the full scope of past atrocities and providing measures to remember
- Reparation programs should be designed to address the range of harms suffered through gender-based violations.
- States should ensure that women participate in the elaboration, adoption and implementation of reparation programmes, respecting and responding to the needs of victims, ensuring that they participate in its implementation. Reparation programs should also be tailored to respond to the particular forms of harm suffered as a result of rape and sexual violence.
- Procedural obligations to guarantee access to justice, in particular for women and communities:
- States should be encouraged to pass laws and develop policies which promote access to justice for women through both formal and informal procedures which expeditious, fair, inexpensive and accessible.' States furthermore should 'inform victims of their rights in seeking redress through such mechanisms.' States should ensure that measures provided pay specific attention to the needs of rural communities and women.
- States should be encouraged to provide opportunities for Women in Post-Conflict Society and ensure the necessary access to economic resources to facilitate this

F.17 Expanding the Mandate of Transitional Bodies to include a focus on Socio-Economic and Cultural Rights

Economic, social and cultural rights have since 1948 been enumerated as including the right to an adequate standard of living, including food and shelter, the right to education, to physical and mental health, to social security, to decent conditions of work, protection of children and of maternity, to the benefits of culture, and to property. ESC rights have however been neglected and not perceived to be of the same importance as civil and political rights. Violations of ESC rights have a devastating effect on communities, often extending over

several generations, as victims are denied access to educational and medical services, shelter and social protection as well as employment opportunities. This is exacerbated in situations of armed conflict where deprivations of land, food, water, and medical care lead to large scale deaths and diminish the quality of life of survivors. Unequal distribution of ESC rights is at the heart of many armed conflicts where the struggle for a more equitable distribution of opportunities and resources facilitates dictatorships. Widespread displacement, and forced dispossession of land affects basic rights to food and shelter. Water wells, crops, and other sources of sustenance are often deliberately destroyed, and access to food impeded.

F.17.1 Historical Events

ESC violations related to historical events continue to prohibit the enjoyment of the economic, social and cultural rights of individuals and peoples. The consequent serious violations have remained unpunished and there has been no reparation for these including slavery, colonization, apartheid and the looting of the developing world's cultural heritage.

F.17.2 Contemporary Violations

Contemporary violations of economic, social and cultural rights are the result of international practices, which include debt, structural adjustment programmes, deterioration of terms of trade, corruption, laundering of drug money and the fraudulent activities of transnational corporations. Violations committed on national territory, most of which are considered to be justiciable offences, include: misappropriation of public funds, misuse of company assets, corruption, tax and customs evasion, financial speculation, fraudulent or unlawful enrichment, exploitation of illegal labour and migrant workers.

An ATJP should ensure that states enacting transitional justice measures incorporate ESC rights and address the structural underpinnings of ESC violation. Reparations for ESC rights have tended to focus largely on land and property dispossession and have led to the establishment of land restitution commissions in many countries. An ATJP should encourage states to design reparations programmes, which would address the structural nature of ESC violations. Non-state actors and beneficiaries should be encouraged to participate in such programs.

G. GENERAL INTERPRETATION

This policy Framework reaffirms that peace, justice, and reconciliation require that the human rights and dignity of affected populations are respected and upheld, that grave abuses of human rights are addressed; that a prevailing culture of impunity is eradicated; and that perpetrators are held accountable through a robust, credible system of accountability. The choice for prioritizing any of the mechanisms stipulated under this Framework will be based on the needs of the victims, possibility of enforcement, behavior of the parties, nature and levels of criminality, prevailing political, social and economic circumstances, and the interests of justice. The AU shall, in consultation with responsible governments, African transitional justice experts, African citizens, the

international community, UN agencies and African civil society conduct broad consultation and coordinate the effective and timely implementation of specific measures envisaged in this Policy Framework.