



“The full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large scale past abuses, in order to ensure accountability, service justice and achieve reconciliation, which include both judicial and non-judicial mechanisms”

Defining transitional justice: Former UN Secretary General Kofi Annan

Briefing Note: ENHANCING THE ROLE OF THE AFRICAN UNION IN TRANSITIONAL JUSTICE IN AFRICA

Executive Summary

Under the auspices of the Department of Political Affairs of the African Union Commission, AU organs with technical support from the Centre for the Study of Violence and Reconciliation (CSVSR), South Africa and other stakeholders, have held several consultations on the role of the African Union in transitional justice in Africa. These meetings took place in Banjul, the Gambia; Cape Town, South Africa; Irene, South Africa; and Lome, Togo.

The aim of these consultations has been to develop a clear and more coherent understanding of the contemporary application of transitional justice in Africa in light of the ongoing processes towards the development of an African policy framework on transitional justice (ATJF).

The ATJF is a product of recommendations contained in a report by the Panel of the Wise on “Non-Impunity, Justice and National Reconciliation.” It is intended to provide the AU with a tool to respond judiciously to the intertwined objectives of securing peace and the longer-term importance of establishing the rule of law and preventing future conflicts.

This Briefing Note outlines the various consultations to date and details some of the main outcomes of each meeting.

Banjul Consultation

The first consultation took place in Banjul, the Gambia, at the sidelines of the 49th ordinary session of the African Commission on Human and Peoples’ Rights. In attendance were representatives from the AUC, AU Organs, RECs, UN Agencies and Civil Society Organizations, with CSVSR, OSIEA, UNDP and UNOHCHR supporting the meeting.

Main Outcomes: Defining Transitional Justice

At this meeting, the importance and relevance to the African Union of transitional justice as a concept containing issues related to dealing comprehensively with past human rights violations, repression and conflicts in order to attain sustainable peace, rule of law and good governance was affirmed.

“We need to popularise African efforts at addressing impunity and accountability. We need a coordinated approach.”

It was noted that transitional justice initiatives have included accountability measures; truth seeking measures; reparations to victims; memorialization processes; national reconciliation programmes; institutional and legal reforms and realization of socio-economic rights and gender justice.

Participants confirmed that despite the relative absence of the term ‘transitional justice’ in AU documentation, transitional justice has featured prominently within both the mandate of the AU and its recent activities. The 2009 Panel of the Wise Report on Non-Impunity, Truth, Peace, Justice and Reconciliation in Africa: Opportunities and Constraints; and the Report of the African Union: High Level Panel on Darfur (AUPD) were identified as important documents which laid the foundation for the development of a transitional justice framework.

Bringing Transitional Justice into the AU: A Transitional Justice Policy Framework.

It was decided that there is a need for the identification of limitations, opportunities and chal-

lenges of transitional and international justice

models and the adoption of appropriate and context specific solutions to effectively address the problems of impunity, human rights violations and injustices in countries emerging from conflict. It was further concluded there is a need for the popularization of African efforts and a coordinated approach. In this regard, it was necessary to develop an information kit and strengthen Member State capacity and that of AU organs to be able to respond to challenges in post-conflict situations through a comprehensive and appropriate transitional justice framework, containing the following elements:

- (a) Development of a flexible set of guidelines and principles to guide transitional justice processes, as opposed to a prescriptive model that overlooks the national context.
- (b) The importance of reconciling peace and justice.
- (c) The need to foster complementarity between national justice mechanisms and international justice systems.
- (d) An understanding that transitional justice goes beyond the narrow conceptions of penal justice; that it should include aspects of economic, social and political justice, restorative justice and reconciliation, reforming and strengthening existing institutions and the setting up of institutions of democracy, rule of law and human rights that will prevent recurrence of past atrocities and violations.
- (e) The inclusion of mediation, monitoring and evaluation as part of a comprehensive transitional justice process.
- (f) Commitment to the fight against impunity and the need for accountability.
- (g) The need for the AU and sub-regional mechanisms to draw on the existing mutu-

ally reinforcing measures on justice and accountability. (h) The need for a consultative process that includes civil society and citizens to inculcate a sense of ownership and identify individual and community needs as well as national imperatives.

Cape Town Consultation

From 12-13 September, a second two-day expert consultation on transitional justice with AU member states was organized by the AUC, in collaboration with CSVR. Representatives from AU Member States, the Legal Council of the AUC, the Secretariat of the Panel of the Wise, UN Women, independent experts on transitional justice and representatives from civil society met in Cape Town.

Main Outcomes: Broadening the Scope of Transitional Justice: Gender and Socio-economics.

Aligning with, and elaborating on the conclusions reached during the first Consultation, participants agreed that the scope and reach of transitional justice should be broadened.

Specifically, participants highlighted the need to redefine “violations” beyond civil and political rights to include socio-economic rights violations such as targeted underdevelopment, economic crimes, corruption and land grabbing.

There was also agreement on the need to broaden the scope of accountability to include third party states, transnational corporations and non-state actors. The participants further stressed the need to foster positive complementarity between the national and international justice systems, with a view to ultimately strengthen domestic accountability for interna-

tional crimes and serious violations of human rights.

Furthermore, while elaborating on the role of gender in transitional justice, the participants concluded that the impact on women and their need for redress should be taken into account, and decided that gender considerations should be mainstreamed into all components of an effective transitional justice framework. It was further agreed that immediate and durable reparations should be made available to victims of gender violence.

“Transitional justice mechanisms should go beyond addressing civil and political rights violations– it must consider socio-economic rights violations”

The role of Amnesties within Transitional Justice.

It was emphasized that amnesties at the domestic level must at all times comply with principles of international and national legality. It was further agreed that despite amnesties being a possible tool for truth-seeking processes to establish comprehensive accounts of the past, they should only be used as a very last resort. The participants rejected the use of blanket amnesty for international crimes.

The Way Forward

Validation workshops with RECs, independent experts and transitional justice professionals were proposed by the participants as a means to ensure that the transitional justice policy framework becomes an effective tool.

Irene Consultation

The third consultative experts' meeting on the ATJF was hosted by CSVR in Irene, Pretoria on 12-13 March 2012. At this consultation, the experts conducted a thorough review of the then existing African Transitional Justice Policy Framework; made a number of specific recommendations to improve the structure, scope and context of the work; and highlighted a number of issues for consideration.

Main Outcomes: Constitutive Elements of an African Transitional Justice Policy Framework

In addition to elaborating on previously specified elements, several new, separate constitutive elements of the framework were identified, including:

- Truth, reconciliation and national cohesion processes.
- Acknowledgement, apology and memory.
- Economic, cultural and social rights.
- Legal and institutional reform; security sector reform; DDR; vetting & lustration.
- Accountability (international, regional, national and traditional)
- Implementation, resource mobilization, monitoring and evaluation.

Immediate and durable reparations should be made available to victims of gender violence."

Key Recommendations and Proposals

The experts defined, explained and considered each of the constitutive elements, and made a

large number of recommendations. The most concrete proposals included the need to:

- Articulate minimum TJ standards for mediators.
- Propose monitoring and evaluation (M&E) as a feature of all TJ processes.
- Define and justify truth commissions and clearly distinguish them from other bodies.
- Include a section on archiving, highlighting its significance.
- Specify the functions, nature and different categories of reparations and their value.
- Stipulate the nature of and rationale for reforms.
- Restructure accountability measures from the national to the international (bottom-up approach).
- Delineate and include alternatives to both amnesties and prosecution (e.g. pardons)

Togo Consultation

The consultation in Lome, Togo took place on 3-4 August, 2012, and was attended by representatives from UN Women, CSVR, DPA/AUC and broad representivity from regional civil society organizations. CSVR provided the technical support for this meeting.

In Lome, there was a more specific agenda than during previous consultations.

Recommendations on gender issues, including the need to mainstream gender across all constitutive elements, had been made at the South African consultations, and the Lome consultation was dedicated to further explore these gender issues and ensure that a holistic gender approach to the ATJF was adopted.

Main Outcomes: Minimum Standards for gender responsive transitional justice processes.

The experts identified a number of key areas where gender issues should be incorporated more actively, including:

- Education: Communication, information and documentation are crucial to ensure awareness of gender issues.
- Monitoring: Mechanisms in the form of peer reviews or other methods ensure the accountability of states
- Reparations: Local ownership, direction and resourcing are required.
- Victim-centered mechanisms should include assistance to victims such as psychosocial support.

It was concluded by the experts that a Human Security Paradigm is a valuable conceptual framework which could advance achievement of a progressive gender outcome and could be related to already existing AU frameworks, for example, the AU Non-Aggression and Common Defence Pact.

For any further information on the development of the African Transitional Justice policy framework please contact the:

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