



**STATEMENT BY**

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**AT**

**THE CONSULTATION WITH EXPERTS FROM AU MEMBER STATES  
EMERGING FROM CONFLICT/POST CONFLICT ON TRANSITIONAL  
JUSTICE**

**CAPE TOWN, SOUTH AFRICA  
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**Madam Ntsiki Sisulu, Representative of the Board of Directors of the Centre for the Study of Violence and Reconciliation (CSV)**

**Distinguished Delegates**

**Human Rights Experts and Representatives of Civil Society Organizations**

**Colleagues**

**Ladies and Gentlemen,**

It gives me great pleasure to welcome you all to these consultations with representatives from concerned African Union Member States and African Experts convened to reflect on contemporary developments and understanding of the field of transitional justice as well as its application and implementation in Africa. Our gathering is particularly significant coming at a time when the Panel of the Wise of the Peace and Security Council of the African Union in its meeting in May 2011, adopted a report that recommends the development and adoption of an African transitional justice policy framework.

These consultations are equally timely and appropriate in the context of the recent political and legal developments mushrooming in all corners of our beloved Continent. In particular, the events in North Africa reaffirm our collective need to guarantee and respect human and peoples' rights, the rule of law, free and fair elections, good governance and upscale efforts towards achieving sustainable peace and development on the Continent.

At its latest meeting, the Human Rights Council of the United Nations also welcomed the fact that more peace agreements now provide for transitional justice processes and do not offer blanket amnesty. The Council requested the Office of the High Commissioner for Human Rights to initiate research on the relationship between disarmament, demobilization and reintegration and transitional justice. This recommendation comes at a time when considerable numbers of African countries are making the transition from conflict to democracy. Therefore, a critical reflection on and discussion of the role of the African Union Organs and Regional Economic Communities on transitional justice in Africa is timely and appropriate.

Whilst the field of transitional justice as we know it today, is relatively new as a concept, it does not seek to address new issues. An appraisal of the AU policy pronouncements on Universal Jurisdiction, Review of the International Criminal Court Statute, High Level Panel Report on Darfur – that was chaired by H.E. Mr. Thabo Mbeki, former President of South Africa, and the recent report by the Panel of the Wise on Non-Impunity, Truth, Peace, Justice and Reconciliation in Africa all reaffirm the need for greater African coherence, understanding and ownership on transitional justice.

The African Union and its Member States have increasingly called for greater African leadership and more opportunities for internal dialogue on issues that we are confronted with at the continental and global levels. I cannot but underscore that establishing an African Policy Framework on Transitional Justice provides, perhaps, the best hope for coherence and African ownership in all areas of transitional justice aimed at achieving the ultimate goal of building sustainable peace in Africa.

The AU has initiated a consensus building process to reflect on African experiences on transitional justice, and to establish frameworks and parameters for mutual support. I would like to recall the earlier consultation on transitional justice with AU organs, Regional Economic Communities and stakeholders held in April 2011 in Banjul, The Gambia. At that consultation, stakeholders acknowledged that transitional justice is not a new concept and the issues it embodies find themselves reflected in various AU instruments as well as the mandates of the AU organs. Thus it is important that we reflect on the linkages and convergence between transitional justice, peace building and conflict resolution.

In addition and of equal importance, is the need to connect these discussions with other policy processes such as the implementation of the African Union Policy Framework on Post Conflict Reconstruction and Development (PCRD), the Human Rights Strategy for Africa (HRSA) and elaboration and implementation of the African Shared Values.

Against this backdrop, the objective of this consultation is to develop consensus on how the AU can complement and enhance the capacity of its Member States to implement transitional justice. The role of the AU should be situated within the current challenges of the transitional justice discourse which include inadequate appreciation and understanding of transitional justice broadly and holistically; limited conceptualization of the potential opportunities and interrelationships between transitional justice processes and mechanisms with broader governance and development agendas; inadequate follow-up and monitoring of implementation of the negotiated political settlements, as well as the role of continental and regional bodies in transitional justice in Africa ; domination of the transitional justice debate by international organizations thus promoting ideal-type models of transitional justice on a 'one size fits all' basis which do not necessarily take into account specific country contexts; and alternative and non-formal models of justice, the regional dimension and cross-border nature of conflicts in Africa including how these could impact on transitional justice processes.

### **Distinguished delegates and experts,**

Whilst a collective but differentiated approach to transitional justice is desirable, it is important to also emphasize at this stage that the primary responsibility for conceptualization, implementation and monitoring of these processes rests with our Member States. The central mandate of the AU relative to transitional justice is to support its Member States' efforts, initiatives and processes and in this regard, Member

States must remain at the forefront of this process. The AU's experiences in Burundi, Central Africa Republic, Chad, Darfur, Ivory Coast, Kenya and Sierra Leone, on matters of transitional justice indicate that this support could include mediation, peacemaking and peace building in conflict and post-conflict situations. Drawing from these experiences that reflect the varied nature and development of transitional justice in Africa, the AU can facilitate the development and adoption of continental standards and norms on transitional justice by Member States which would in turn be adapted to national contexts in implementation.

We also recognize that given the wide mandate of the AU, and the commitment of Member States to deal with impunity, much more can be done. It is my sincere hope that through constructive, open and honest discussions, this meeting will help the African Union organs to better appreciate the subject matter and provide guidance on how to support Member States in their efforts relating to transitional justice.

Glancing through the programme and agenda of this consultative meeting, I am confident that we shall contribute to the ongoing initiatives by the African Union in the development and adoption of an African Transitional Justice Policy Framework. In doing so, we should recognize the initial contributions made by the Panel of the Wise in drafting a Policy Framework, which has been made available to us for further consideration and inputs. Without in any way prejudging the outcome of this meeting, allow me to share some perspectives on some of the key issues that could be considered while reviewing such guidelines:

- The final policy framework should not be prescriptive. Rather, it should serve as a guide that can be adapted and applied to individual countries or sub-regions emerging from conflicts to assist them in their endeavours towards reconstruction and democracy building and consolidation.
- Beyond addressing civil and political rights violations, transitional justice processes and mechanisms should include examining and redressing violation of economic, social and cultural rights, equitable development and environmental rights.
- The policy framework should also address the issue of peace and justice. In that regard, it is important to recall that Article 4(h) of the Constitutive Act, the PSC Protocol, the African Charter on Human and Peoples' Rights, the African Charter on Democracy, Elections and Governance and other relevant instruments and indeed the Governance and Peace and Security Architectures of the AU point to a policy orientation that human rights is crucial to achieving lasting peace in countries devastated by conflict. However, this policy orientation is more than an attempt to strike a balance between peace and justice. Whilst within the framework of human security, peace and justice are inseparable, what is imperative here, is to develop strategies that seek to address the complementarities between them.
- The role of the AU and external actors should also be considered. The AU has remained consistent in its fight against impunity. The Constitutive Act of the

Union, the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, the fact that AU Member States constitute about 30% of Membership to the ICC is evidence of this collective commitment and it must therefore be affirmed that the AU mandate in matters of transitional justice should be complementary.

- The framework should also outline roles and responsibilities of the various AU organs and other stakeholders such as civil society and the private sector in transitional justice in Africa.

Finally, as we work towards proposals for possible revisions to the draft policy framework, it is important for this meeting to reflect on an adaptive, practical and realistic framework. This must draw on the concrete experiences of our peoples throughout the Continent and it should be situated in the context of the critical human rights challenges in Africa as well as the objective to promote Africa's Shared Values.

**Dear delegates, Distinguished ladies and gentlemen,**

Before I conclude, allow me to commend the Panel of the Wise, of the Peace and Security Council, which is represented in this consultation by a member of its Secretariat, for adopting the Report on Non-Impunity, Truth, Peace, Justice and Reconciliation in Africa: Opportunities and Challenges. The recommendations by the Panel in their Report are an important step in the process of developing an African Policy Framework on Transitional Justice. In taking forward the process, it is important that we review the Panel's recommendations and map out a clear road map and way forward towards the development and adoption of the envisaged policy framework on transitional justice.

In concluding, let me express gratitude to the representatives of the concerned Member States and Experts here present for accepting our invitation at short notice to be part of these important deliberations. I would also like to thank Centre for the Study of Violence and Reconciliation and in particular its able Director, Dr. George Mukundi and dedicated staff, for their continued support to the Department of Political Affairs and for facilitating the convening of these consultations. It is our hope that we will sustain our interactions, relationships and work with all those who are engaged in seeking durable peace and development on the Continent.

On that note, it is my singular honour and privilege, to declare this meeting open and wish all participants fruitful deliberations as we together examine ways and means through which the AU could concretely assist and support Member States' efforts in the area of transitional justice.