

AFRICAN UNION TRANSITIONAL JUSTICE POLICY



CSVR
Centre for the Study of
Violence and Reconciliation

FACT SHEET



The African Union Transitional Justice Policy (AUTJP), adopted in 2019, is a guiding framework for African Union (AU)¹ Member States to create their own context-specific plans for achieving peace, justice, reconciliation, and healing in societies with histories of violent conflict, war, and repressive rule.

The AUTJP provides a comprehensive approach to transitional justice, encompassing measures such as truth-seeking, accountability, reparations, and institutional reform. The policy defines transitional justice as “the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation.”

1. <https://atjhub.csvr.org.za/african-union-frameworks/>



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History

- Informed by previous AU instruments and frameworks, the AUTJP aims to address not only the effects of conflict and human rights violations, but also governance issues and development challenges, in line with the AU's Agenda 2063, *The Africa We Want*.
- The AU's 1986 African Charter on Human and Peoples' Rights and 2001 Constitutive Act emphasize the importance of peaceful conflict resolution, human rights, and equality, giving the AU the power to intervene in cases of atrocities and human rights abuses.
- The AU's 2003 Protocol Relating to the Establishment of the Peace and Security Council mandates peacekeeping and peacebuilding, including the establishment of a comprehensive transitional justice policy framework.
- The AU's 2006 Policy on Post-Conflict Reconstruction and Development recognizes the need to protect human and people's rights and provides guidance on justice, reconciliation, peacebuilding, and the use of traditional reconciliation mechanisms.
- The report of the AU's High-Level Panel on Darfur, adopted in 2009 by the AU Peace and Security Council, makes recommendations for addressing peace, reconciliation, justice, and accountability.
- In addition to the above-mentioned instruments, the development of the AUTJP was based on recommendations and decisions of relevant AU bodies, including the AU's Agenda 2063, AU Panel of the Wise 2013 Report and the AU Assembly decision declaring 2014–2024 the Madiba Nelson Mandela Decade of Reconciliation in Africa.
- AU Panel of the Wise 2013 Report – "Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity", is fundamental to the AUTJP specifically calling for development of the African Transitional Justice Policy Framework with an Annexure being a draft framework for the Policy.
- The AU formulated the AUTJP through consultations with numerous diverse stakeholders.
- The AUTJP is implemented through various mechanisms, including the establishment of national transitional justice mechanisms, capacity building initiatives, and technical assistance to AU Member States. The AU also collaborates with international partners to support the implementation of the policy.



Rationale

- The AUTJP provides guidelines to translate comprehensive strategies for transitional justice into specific actions that empower AU Member States to provide restorative and transformational justice.
- The policy is a stand-alone framework that articulates the AU's position on transitional justice, lending clarity and comprehensiveness to AU instruments, frameworks, and policies and allowing for ease of reference and consistent application.
- It complements and supports the role of AU Member States, including by facilitating the initiation of transitional justice processes and supporting their formulation and implementation.
- It provides adaptable principles, policy parameters, and strategic frameworks for AU Member States, non-state actors, and stakeholders in the transitional justice field to facilitate the planning and implementation of transitional justice, consolidate peace, and increase the chances of successful long-term sustainable development.
- The policy aims to improve the coherence and coordination of actions between state and non-state actors at the local, national, regional, and international levels throughout transitional justice processes.

The AUTJP is guided by the following values:

> **Victim-Centered Approach:**

Prioritizing the needs and rights of victims of conflict and human rights abuses.

> **Accountability:**

Ensuring that perpetrators of crimes are held accountable for their actions through fair and transparent processes.

> **Transparency:**

Promoting openness and transparency in transitional justice processes to build trust and legitimacy.

> **Inclusivity:**

Engaging all relevant stakeholders, including victims, civil society, and marginalized groups, in decision-making processes.

> **Non-discrimination:**

Ensuring that transitional justice measures are applied without discrimination based on ethnicity, gender, religion, or other factors.

> **Sustainability:**

Building long-term mechanisms and institutions to address the root causes of conflict and prevent future violations.

> **Rule of Law:**

Upholding the principles of legality, fairness, and justice in all transitional justice processes.

> **Reconciliation:**

Promoting healing, social cohesion, and reconciliation among communities affected by conflict and violence.



Objectives

PREVENT THE RECURRENCE OF VIOLENCE

ADDRESS THE ROOT CAUSES OF CONFLICT

INCLUSIVE SOCIO-ECONOMIC TRANSFORMATION

RECONSTRUCTION AND NATIONAL HEALING

MONITORING AND EVALUATION OF JUSTICE



Improving the timeliness, effectiveness, and coordination of transitional justice activities in both **post-conflict** and **non-conflict** countries to establish social justice and sustainable peace and **prevent** the **recurrence of violence**.

Enhancing social cohesion, nation-building, and comprehensive state reforms to **address** the **root causes of conflict**.

Defining the policy agenda for **inclusive socio-economic transformation** and **development** in societies emerging from periods of conflict, human rights violations, exclusion, and historical injustices.

Encouraging and **expediting** the **planning** and **implementation** of **reconstruction,** **national healing,** and **accountability** for serious human rights violations.

Establishing clear parameters for the application of principles in the design, **implementation,** .



Principles

1 African Leadership

- The AU provides strategic leadership and oversight of transitional justice processes in Africa, with the responsibility remaining with AU Member States.
 - AU institutions and Member States support countries implementing transitional justice processes.
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2 National and Local Ownership

- Transitional justice processes are aligned to local needs and aspirations to maximize public support and ownership.
 - National leadership applies to all aspects of transitional justice, from assessment and implementation to monitoring and evaluation.
 - Nationally driven transitional justice processes contribute to the rebuilding of legitimate state authority.
 - Partnerships among state and non-state actors are critical to nationally driven, successful transitional justice processes.
 - Victims and other members of society affected by violence have as a matter of principle the right to transitional justice in their own country, based on mechanisms and processes in whose design they take an active part.
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3 Inclusiveness, Equity, and Non-Discrimination

- Transitional justice processes promote the participation and address the needs of marginalized and vulnerable groups, such as women, girls, the elderly, the disabled, youth, and the diaspora.
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4 African Shared Values

- Transitional justice processes are guided by and based on African shared values relating to peace, security, justice, reconciliation, and human and peoples' rights, from start to finish.
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5 Context Specificity

- Transitional justice processes are context-specific and draw on each society's conceptions of and needs for justice and reconciliation, taking into account the nature of the conflict, violations, legal system, traditions, and institutions.
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6 Synergizing, Sequencing, and Balancing Transitional Justice Elements

- A balance and compromise are struck between peace and reconciliation on the one hand and responsibility and accountability on the other.
 - Socio-economic development programs complement accountability and reconciliation measures.
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7 Due Regard to the Gender and Generational Dimensions of Violations and Transitional Processes

- Transitional justice processes give particular attention to sexual and gender-based violence and patterns of gender inequality in society.
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8 Cooperation and Coherence

- Transitional justice processes do not use a one-size-fits-all approach; instead, they are context-specific and draw on society's conceptions of and needs for justice and reconciliation.
 - Transitional justice takes into account the nature of the conflict and the violations it occasioned, including the situation of women and children as well as other groups in vulnerable conditions.
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9 Capacity Building for Sustainability

- Transitional justice processes build and strengthen national and local capacities and utilize local expertise.
 - All transitional justice processes have a capacity-building component that strengthens the capabilities of each society to support and legitimize national processes.
 - Transitional justice processes use local expertise and, where it is weak, they look to relevant African capacity at the regional and continental levels, as well as from the diaspora.
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Indicative Elements

1 Peace Processes

- The peace process element of the AUTJP is about stopping ongoing violence and making sure people in conflict areas are safe. It includes protecting women, children, and other vulnerable groups.
- To achieve peace, negotiations and agreements should consider justice from the beginning. They should aim to end violence, protect civilians, and investigate serious crimes. The peace process should also involve the participation of civilians, especially those affected by the conflict.

Some benchmarks of peace processes:

- ➔ Stop violence and prevent new crimes, including by protecting civilians, disarming militias, and removing weapons.
- ➔ Have a zero-tolerance policy for violence against civilians and involving civilians, especially women, youth, and children.
- ➔ Include provisions for justice, human rights, reconciliation, and accountability.
- ➔ Take action to prevent new violations and crimes, such as collecting evidence and monitoring violations.
- ➔ Ultimately, establish security by addressing the root causes of violence and creating democratic governance structures.
- ➔ When negotiating peace agreements, it is important to consider both accountability for past wrongs and the need for reconciliation among different groups in society.
- ➔ Peace processes aim to bring an end to violence, protect people, and create a lasting peace that addresses the root causes of conflict.



2 Transitional Justice Commissions

- Transitional justice commissions, also known as truth commissions, are an important part of dealing with the past in societies that have experienced violent conflicts and widespread human rights violations. These commissions are official processes set up by the government to investigate and address these wrongs.

Some benchmarks of transitional justice commissions:

- ➔ Create a public process for looking into past conflicts and human rights abuses.
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Establish a complete historical record of what happened, including the experiences of
- ➔ different groups like women, children, and other vulnerable people, as well as the roles of different organizations and individuals.
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- ➔ Document what happened over time in terms of human rights violations.
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- ➔ Provide a safe space for victims to share their experiences and find some closure.
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- ➔ Give perpetrators a chance to admit to what they did and try to reintegrate into society.
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- ➔ Work towards a shared understanding of the truth about the past in order to help a country move forward.
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- ➔ Help the government show that it is committed to addressing past wrongs and gain support from its citizens.
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- ➔ Transitional justice commissions can name people and groups responsible for violations and recommend ways to hold them accountable. They can also suggest changes to laws, policies, and institutions to prevent these abuses from happening again.



3 African Traditional Justice Mechanisms

- African traditional justice mechanisms are important for achieving justice, peace, and reconciliation and should be used alongside formal mechanisms.
- They support community-based accountability, promote traditional dispute settlement, and foster local ownership of transitional justice processes by encouraging local actors to explore non-formal ways to resolve conflicts when needed.

Some benchmarks of African traditional justice mechanisms:

- ➔ Include functioning local reconciliation processes and recognize alternative dispute resolution methods.
- ➔ Ensure support to local communities and traditional leaders as they adapt their traditional justice systems to address their needs.
- ➔ Encourage the use of functioning local reconciliation mechanisms among various groups in the community.

4 Reconciliation and Social Cohesion

- Reconciliation and social cohesion mean working towards rebuilding trust and cooperation between individuals and communities. It involves addressing the effects of past violence and oppression, repairing broken relationships, and finding ways for everyone to live together peacefully.
- To make reconciliation and social cohesion stronger, victims and perpetrators can try to forgive each other, which can involve apologizing and being willing to make amends. Healing and coming together as a society also mean acknowledging each other's pain, understanding what happened, and creating a shared understanding of the past, justice, and the need for security.

Some benchmarks of reconciliation and social cohesion:

- ➔ Foster programs that promote unity and understanding as well as efforts to address unfairness and promote equal treatment, in order to ensure human rights for everyone.
- ➔ Educate people about equality and respect, create opportunities for different groups to come together, and provide support for forgiveness and mediation.
- ➔ Aim to build trust, reconstruct broken relationships, and find ways for individuals and communities to live together.
- ➔ Strengthen reconciliation efforts through forgiveness and expressions of remorse.



5 Reparations

- Reparation means making things right for people who have suffered during times of conflict or injustice. Reparations can include both financial and non-financial ways to address the harm that has been done.

Some benchmarks of reparations:

- ➔ Create fair and transparent ways for people to access reparations, including both governmental and non-governmental programs.
- ➔ Make sure that reparations promote equality, dignity, and participation of all victims, and are tailored to meet the needs of different groups, especially vulnerable groups.
- ➔ Ensure that reparations are given fairly and promptly to address the harm suffered.
- ➔ Develop a clear plan for how to get the resources needed for reparations, including setting up a special fund if necessary.
- ➔ Provide interim reparations if there will be a long wait for the full reparations program to start.
- ➔ Make sure that different groups involved in reparations work together and reach as many affected people as possible.
- ➔ Have proper oversight of the reparations program, including regular reports to the appropriate authorities.
- ➔ Provide financial and non-financial redress or restitution for violations or losses suffered, including material, symbolic, individual, collective, and moral reparations.



6 Redistributive (Socio-Economic) Justice

- Redistributive (socio-economic) justice means taking actions to make society fairer and more equal by addressing structural inequalities and making sure everyone has a chance to succeed. It addresses structural inequalities, marginalization, and exclusion to help achieve social justice and equitable and inclusive development.
- Redistributive justice entails making changes to fix unfairness and exclusion and helping to create a more just and equal society. Along with making up for past wrongs, it means taking steps to prevent unfairness and exclusion from happening again in the future.

Some benchmarks of redistributive justice:

- ➔ Make sure that everyone has fair access to land and resources, including protecting the rights of women.
- ➔ Provide special help for groups or regions that have been left behind or affected by violence, especially focusing on inequalities within communities, particularly those affecting women, displaced people, and other vulnerable groups.
- ➔ Create fair and inclusive plans for how resources are used and for sharing power fairly.
- ➔ Create opportunities for young people to get an education and find good livelihoods, including investing in training, infrastructure, and development in rural areas.



7 Memorialization

- Memorialization means taking actions beyond the immediate period of change to honor the truth, promote healing, and create a shared understanding of the past. It involves publicly recognizing victims and making sure that discussions about what happened continue across different generations, as well as that those responsible for abuses are held accountable.
- Memorialization involves measures for public acknowledgment of victims and institutionalizing societal dialogue and non-impunity in national discourse.

Some benchmarks of memorialization:

- ➔ Create activities and monuments to remember those who have suffered, which might include building memorials and naming public places or buildings after victims.
- ➔ Review artistic and cultural expressions, national symbols, and educational materials to reflect the true history and experiences of different groups, including women, children, and other marginalized groups.
- ➔ Make sure that memorialization efforts involve a wide range of people, including from different backgrounds and generations, with a focus on engaging young people.
- ➔ Encourage ongoing discussions and educational activities, including ceremonies and programs, to ensure that the memory of past events is kept alive and understood by future generations.



8 Diversity Management

- Diversity management is about addressing conflicts and violations that have happened because of differences between groups of people, such as race, ethnicity, religion, and other factors. This is especially important in societies where these differences have caused divisions and where certain groups have been targeted for violence.

Some benchmarks of diversity management:

- ➔ Recognize how these differences have played a role in conflicts, including how they have affected different genders.
- ➔ Create educational programs that challenge stereotypes and promote respect for different cultures and people's dignity, through schools, religious teachings, and the media.
- ➔ Establish policies and institutions that encourage unity and understanding among different communities.
- ➔ Put rules in place to stop hate speech and actions that stir up violence and create divisions between different groups.
- ➔ Have regular conversations and events that celebrate diversity, involving leaders and representatives from affected communities, especially focusing on young people.
- ➔ Make sure that all communities have a fair say in making decisions at both the national and the local levels, with special attention given to marginalized groups.
- ➔ Address group-based conflicts and violence, promoting respect for ethno-cultural diversity and the dignity of all individuals.



9 Justice and Accountability

- Justice and accountability deals with making sure that the people who committed human rights violations are held responsible for their actions. This includes using legal systems, both traditional and formal, to investigate and prosecute crimes, including those related to sexual and gender-based violence.
- It is important to ensure that all sides involved in the conflict are held accountable, and that victims have the opportunity to participate in the legal process and receive compensation.

Some benchmarks of justice and accountability:

- ➔ Focus on legal measures for investigating and prosecuting crimes, establishing accountability, and providing judicial remedy to victims.
- ➔ Use national courts to prosecute perpetrators, but also consider special or hybrid courts if national courts are not capable or trusted by the affected communities.
- ➔ If national courts are unable to prosecute perpetrators, seek cooperation with regional or international judicial institutions that have the authority to do so.
- ➔ Adapt traditional justice mechanisms to address certain crimes at the community level.
- ➔ Make sure that laws reflect international standards, remove legal barriers to effective prosecution, and provide independent and qualified personnel for judicial and investigative functions.
- ➔ Ensure fair trial rights, particularly for victims of sexual and gender-based violence and children and promote cooperation of suspects in a transparent process that involves victims and affected communities.
- ➔ Consider using plea bargains and pardons as part of the transitional justice process, along with alternative forms of punishment at the sentencing stage.



10 Political and Institutional Reforms

- Political and institutional reforms aim to change important government and organizational structures to promote democracy, prevent future violations, and ensure the fair treatment of all members of society.

Some benchmarks of political and institutional reforms:

- ➔ Reform critical institutions of the state and create political and institutional arrangements that ensure democratic and socio-economic transformation.
- ➔ Make changes to the constitution and laws through inclusive and consultative processes, including by ensuring fair representation of marginalized groups in decision-making, creating an independent human rights commission, and limiting the power of the executive branch.
- ➔ Pass laws to prevent discrimination and hate speech, and reform criminal laws to include internationally recognized crimes, especially those related to sexual and gender-based violence.
- ➔ Make changes to the security sector, including by disarming and reintegrating former combatants and reforming the police, intelligence agencies, corrections institutions, the prosecutor's office, and the judiciary.
- ➔ Assess the integrity of public officials transparently and ensure ethical guidelines and codes of conduct for them.
- ➔ Promote the principles of accountability, transparency, and respect for human rights in government decision-making and affairs of state.
- ➔ Ensure that the views of affected members of society are considered in government decisions and actions, and guarantee the freedom of the media, education institutions, and non-governmental organizations to promote transparency and human rights.



11 Human and Peoples' Rights

- Human and peoples' rights in transitional situations involves promoting and making a part of everyday life the idea that everyone deserves to be treated with dignity and respect, as outlined in the African Charter on Human and Peoples' Rights and other international human rights agreements.
- In situations where there has been a breakdown of rule of law and a lack of respect for human rights, it is important to restore human dignity and respect in relationships among individuals and communities.

Some benchmarks of promoting human and peoples' rights:

- ➔ Aim to create a society where everyone's rights are respected and protected, and where everyone has the opportunity to participate in all aspects of life
- ➔ Restore the rights of groups in society that may have lost them during conflicts or repressive rule, such as refugees, internally displaced persons, stateless persons, people with disabilities, women, youth, and children.
- ➔ Ensure and protect socio-economic and cultural rights, including the right to development.
- ➔ Prioritize access to education, especially considering the significant number of young people involved in conflicts.
- ➔ Ensure and protect the rights of women to participate in political, social, and economic aspects of life.
- ➔ Ensure and protect the rights of marginalized and vulnerable social groups, such as people with disabilities, minorities, and the elderly, to participate in political, social, and economic aspects of life.
- ➔ Build national structures to promote and protect human rights, such as human rights commissions.
- ➔ Provide opportunities for non-governmental organizations and other groups to promote a culture of human rights at the national, regional, and continental levels.
- ➔ Promote and institutionalize a culture of human and peoples' rights within the framework of relevant international human rights instruments.



Cross-Cutting Issues

1 Women and Girls

- In situations of conflict or repression, women and girls are disproportionately affected by violence, both directly and indirectly. It is essential to ensure their inclusion and protection in the process of achieving justice and peace.
- Women and girls should be represented and participate in all stages of a transitional justice process, from peace agreements to legislation, policies, and operations guiding transitional justice mechanisms.
- Gender concerns must be integrated into transitional justice through mainstreaming gender as a cross-cutting issue.

Some benchmarks of addressing needs of women and girls:

- ➔ Ensure women and women's groups participate actively in consultation and decision-making processes on the design and implementation of transitional justice processes.
- ➔ Address not only direct violations against women and girls, but also the underlying patterns of gender bias and discrimination and inequality in the social and public spheres.
- ➔ Provide culturally sensitive services and support for victims of gender-based violence.
- ➔ Adopt measures to protect victims from social and cultural stigma, use culturally sensitive investigative experts to overcome challenges in securing forensic evidence, and adjust procedural and evidentiary requirements to facilitate effective prosecution.
- ➔ Facilitate targeted public education campaigns and community dialogues on the imperative of social acceptance and protection of victims of sexual and gender-based violence.
- ➔ Take urgent measures to address the psychosocial, medical, and livelihood needs of survivors, including educational opportunities for child victims.



2 Children and Youth

- Children and youth are disproportionately affected by conflicts, being direct targets of violence and facing deprivation of socio-economic rights such as food, health, and education. Transitional processes should make adequate provisions for children as victims, in line with the African Charter on the Rights and Welfare of the Child.

Some benchmarks of addressing needs of children and youth:

- ➔ Adopt the principle of the best interests of the child, catering for children affected by violence, including those forced into armed groups.
- ➔ Use child-centered approaches, paying attention to socio-economic programs that facilitate access to education and vocational training for children and young people affected by violence.

3 Persons with Disabilities

- Persons with disabilities should be included in consultation and decision-making processes for the design and implementation of transitional justice processes.

Some benchmarks of addressing needs of people with disabilities:

- ➔ Incorporate measures specific to persons with disabilities in rehabilitation and reparations programs and projects.

4 Internally Displaced Persons, Refugees, and Stateless Persons

- Internally displaced persons, refugees, and stateless persons have the right to be consulted about transitional justice processes.

5 Older Persons

- Older persons are vulnerable to and affected by conflicts, facing deprivation of socio-economic rights such as food and health. Transitional processes should make adequate provisions for older persons as victims, in accordance with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.



Actors, Processes, and Implementation Mechanisms

1 National/State Level

- AU Member States bear the primary responsibility for pursuing transitional justice processes, including removing political and social impediments and guaranteeing space for debate and advocacy.
- National and local actors play a crucial role in planning, implementing, and monitoring transitional justice processes, ensuring national ownership and broad-based participation of key stakeholders.
- The success of the AUTJP will be determined by the political commitment, leadership, and capacity of national and local actors in the country concerned.
- It is imperative that national and local actors take the lead in planning, implementing, monitoring, evaluating, and reporting on lessons learned in all stages and phases of the implementation of the AUTJP.

2 Regional Level

- Regional economic communities (RECs) should encourage national actors to pursue transitional justice processes that address regional dimensions of conflicts and promote normalization of relationships between affected neighboring countries.
- RECs should provide diplomatic and resource support for AU Member States' transitional justice processes and facilitate documentation and clarification of transitional justice programs.

3 Continental Level

- The AU provides strategic political leadership on the implementation of transitional justice, complemented by interventions of continental non-state formations.
- Key AU organs and institutions, such as the Peace and Security Council and the African Court on Human and Peoples' Rights, play essential roles in leading and supporting transitional justice processes.



4 National/State Level

- Resource mobilization should be made with due regard to resource constraints, with allocations of funds in national budgets and establishment of independent funds at the national and regional levels.
- The AU should establish an African Transitional Justice Fund and undertake resource mobilization activities to support national transitional justice processes.

5 Non-State Actors

- Civil society, community-based organizations, and the media should campaign for and facilitate public dialogue on pursuing transitional justice.
- Faith-based and cultural processes offer avenues for healing, reconciliation, and local justice, complementing formal structures of the state.

6 Resource Mobilization

- Resource mobilization should be made with due regard to resource constraints, with allocations of funds in national budgets and establishment of independent funds at the national and regional levels.
- The AU should establish an African Transitional Justice Fund and undertake resource mobilization activities to support national transitional justice processes.

7 Knowledge Management and Advocacy

- Strategic communications and advocacy efforts should nurture awareness and support for transitional processes, facilitated through collaboration with relevant local, national, and regional actors.

8 Monitoring, Reporting, and Reviewing

- The AU Commission should follow up and evaluate transitional processes, submitting annual reports to relevant AU organs on issues facing such processes and the roles of various actors.



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