

**POLICY PAPER**

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# **ENLIVENING TRANSITIONAL JUSTICE WITHIN THE AFRICAN UNION'S AGENDA OF SILENCING THE GUNS:**

LOOKING BEYOND 2020

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## Tracing the Origins of the Silencing the Guns Agenda

The African Union (AU) declared 2020 the year of “Silencing the Guns: Creating Conducive Conditions for Africa’s Development.” The motivation for this theme was to provide impetus for and take stock of the activities that had been undertaken in furtherance of the 2013 Solemn Declaration by Africa’s Heads of State and Government to realise a conflict-free Africa by 2020. The Solemn Declaration, which was made on the milestone of the AU’s 50th anniversary, consisted of several elements. First, the Solemn Declaration identified the resolution of economic and social disparities as well as ending impunity to be key pillars of addressing the underlying causes of conflict. The fight against impunity was to be underpinned by strong judicial institutions at the national and continental level, as a realisation of the AU’s core principle of non-indifference.

Transitional justice is an essential ingredient for a conflict-free Africa, as it provides states with pathways to addressing legacies of protracted violence and massive human rights abuses.

Another feature of the Solemn Declaration was the elimination of recurring and emerging sources of conflict, which include piracy, human and narcotics trafficking, terrorism, extremism, transnational organised crime and cybercrime, to name but a few. Operationalising the African Peace and Security Architecture (APSA) and the African Standby Force were prioritised as part of a wider agenda to advance conflict prevention, peace-making, national reconciliation and post-conflict reconstruction and development. With regard to weapons of war, the Solemn Declaration pledged a nuclear-free Africa and the fulfilment of obligations related to eliminating landmines and the non-proliferation of small arms and light weapons. Finally, the Solemn Declaration undertook to tend to the plight of forced migrants by fully implementing continental and universal obligations pertaining to the rights of internally displaced persons and refugees.

Two further developments cemented Silencing the Guns (STG) as a foremost priority for the AU. First was the designation of STG as one of the flagship projects under Agenda 2063, which was adopted in 2015 as the AU’s “shared framework for inclusive growth and sustainable development for Africa to be realized in the next fifty years.”<sup>1</sup> The second development was to concretise the undertakings of the Solemn Declaration by adopting the AU Master Roadmap on Practical Steps to Silence the Guns by the Year 2020 (AUMR) with an implementation period that ran from 2017 to 2020. The AUMR served to translate the aspirations of the Solemn Declaration into a series of activities that were clustered into political, economic, social, environmental and legal aspects, with a view to tasking various AU agencies to undertake them in collaboration and in consultation with member states. It is on this basis that the AU and member states designated 2020 as a year to illuminate the work undertaken on the STG agenda and appraise the progress made since the adoption of the AUMR.

Before venturing into the evaluation and future of the AUMR, it is essential to appreciate another important policy development that emerged alongside the Solemn Declaration: the adoption of the AU Transitional Justice Policy (AUTJP).

## The Articulation of a Transitional Justice Policy for Africa

Transitional justice is an essential ingredient for a conflict-free Africa, as it provides states with pathways to addressing legacies of protracted violence and massive human rights abuses by embarking on initiatives that rebuild broken societal bonds and usher in inclusive societies. Indeed, Africa has long grappled with the challenge of addressing perennial armed conflict, the existence and fallout from authoritarian regimes and the persistent legacies of colonialism—all of which have served to fuel the underlying causes of conflict identified in the Solemn Declaration. It is on this basis that the AU embarked on a series of multi-stakeholder consultations and a policy-making

1 African Union, *Background Note 01 on Agenda 2063: The Africa We Want* (2015), 2.

process that spanned close to a decade and resulted in the adoption of the AUTJP in February 2019.

A pivotal point in the AUTJP development process was the 2011 adoption of a report by the AU's Panel of the Wise, which focused on the issue of tackling impunity and its relationship to truth, justice and reconciliation in Africa. This report drew from various seminal experiences from across the continent and recommended that the AU prepare a continent-wide policy framework on transitional justice. The Panel of the Wise concluded that such a framework could contribute to securing peace and rule of law and preventing further conflict by balancing the imperatives of peace and justice while also advancing African leadership on this issue by harnessing the continent's indigenous knowledge as well as its rich and diverse experiences. This is the essence that is contained in the AUTJP's definition of 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.<sup>2</sup>

In envisioning the goals of democratic and socio-economic transformation, the AUTJP charts a transformative and holistic approach to transitional justice that resonates with the core element of the Solemn Declaration, which seeks to address the underlying issues of conflict by ending impunity and resolving economic and social disparities. Furthermore, the AUTJP provides policy guidance for undertaking redistributive justice as a remedy for structural inequalities, marginalisation and exclusion. To this end, it prescribes land reform and protection of property rights, affirmative measures in favour of marginalised groups and victims of violence, an all-inclusive and equitable approach to development and fiscal strategies, and preparing resource-sharing as well as power-sharing arrangements.<sup>3</sup>

With regard to accountability, the AUTJP emphasises the need for complementarity between formal justice mechanisms and African traditional justice mechanisms, such as clan or customary courts, community-based dialogues and community rituals that facilitate restorative justice between perpetrators and the aggrieved. This builds on documented and emerging experiences such as the *Gacaca* system of Rwanda and *Mato Oput* in Northern Uganda, among others. Importantly for STG, the AUTJP establishes the nexus between peace-making and transitional justice by noting peace negotiations as an ideal entry point for securing agreement on transitional justice goals and the measures to be utilised for providing redress for violations committed during conflict. Therefore, comprehensive peace agreements should include provisions on justice, human rights, reconciliation, accountability, trust building, social cohesion and ending impunity.<sup>4</sup>

*The AUTJP emphasises the need for complementarity between formal justice mechanisms and African traditional justice mechanisms.*

Victim-centred approaches to transitional justice are revealed as a core tenet of the AUTJP through its special focus on vulnerable groups, including women and girls, children and youth, persons with disabilities, forced migrants and stateless persons, and older persons. The AUTJP also underscores the importance of locally led and owned transitional justice processes by insisting on the participation of a broad set of stakeholders and recognising the role of civil society in advocating for, designing and implementing transitional justice agendas at the national level.

With these provisions, the AUTJP presents itself as a key component of the AU's "Justice Architecture," to stand alongside the APSA and the Africa Governance Architecture and therefore contribute to the broader

2 African Union Transitional Justice Policy (February 2019) [19].

3 *Idem* [67]-[69].

4 *Idem* [46v].

vision of a conflict-free Africa that is integrated, prosperous and peaceful.<sup>5</sup>

## Reflecting on the Status of the Silencing the Guns Agenda in 2020

In the wake of 2020, Africa is far from STG. A report by the AU Peace and Security Council (PSC) covering the period of February 2019 to February 2020 pointed to all five of the AU geographic regions having occurrences of conflict, political crisis or delicate transition.<sup>6</sup> November 2020 saw armed conflict erupt in the Tigray region of Ethiopia between the Ethiopian National Defence Forces and the Tigray People's Liberation Front. This conflict has occasioned the forced displacement of over 30,000 persons to Sudan and seen the occurrence of mass human rights abuses, including the killing of a reported 600 civilians in Maikadra in the Tigray region.<sup>7</sup>

Violent extremism remains an ongoing concern, as seen also in November 2020 when an armed militant group massacred more than 50 people while abducting women, children and burning down homes in the Cabo Delgado province of Mozambique.<sup>8</sup> In Somalia, Al Shabab and other terror groups remain a credible threat to peace and security as they continue to mount attacks and targeted assassinations to destabilise the federal government and disrupt the march towards a stable democracy. The security situation in the Sahel remains precarious due to sustained attacks by terrorist, armed and criminal groups, with further consequences to political stability and socio-economic development in

the region. The conflict in Libya also persists, with the concerning dynamics of inflows of illicit weapons and foreign fighters as well as a deteriorating humanitarian situation that has seen the rights of refugees and other African migrants violated.

Beyond being a health crisis, COVID-19 has unfolded into a governance and economic crisis as well.

Elections have also become a flashpoint for conflict. Guinea, Côte d'Ivoire and Tanzania all recently concluded elections that featured considerable violence in their run up to or immediate aftermath.<sup>9</sup> The Central African Republic held presidential elections against the backdrop of continued clashes among armed groups in the country, which pointed to the fragile nature of the 2019 Political Agreement for Peace and Reconciliation in CAR (APPR-RCA).<sup>10</sup> Uganda also held elections amid a worrying trend of shrinking civic space and the brutal suppression of opposition candidates.

A factor that has compounded these challenges is the COVID-19 pandemic. Beyond being a health crisis, COVID-19 has unfolded into a governance and economic crisis as well. Africa's economy has been severely impacted in the form of broken supply chains, job and revenue losses in the formal and informal sectors, a decline in foreign direct investment and development assistance, and a rise in external debt and related servicing costs.<sup>11</sup>

- 5 Solomon Dersso, 'Lecture: The State of Transitional Justice in Africa,' <https://www.csvr.org.za/publications/2814-lecture-the-state-of-transitional-justice-in-africa-between-wide-application> (accessed 16 December 2020).
- 6 African Union, *Fifth Report of the Peace and Security Council of the African Union on the Implementation of the African Union Master Roadmap of Practical Steps for Silencing the Guns in Africa by the Year 2020, for the Period February 2019 to February 2020*, Assembly/AU/6 (XXXIII) (2020).
- 7 African Commission on Human and Peoples' Rights, 'Press Release,' <https://www.achpr.org/pressrelease/detail?id=550> (accessed 17 December 2020).
- 8 'UN Chief Shocked at "Wanton Brutality" in Northern Mozambique,' UN News, 11 November 2020, <https://news.un.org/en/story/2020/11/1077382>.
- 9 International Federation for Human Rights, 'Côte d'Ivoire, Guinea, Tanzania: FIDH Denounces Victory of Authoritarianism over the Rule of Law,' <https://www.fidh.org/en/region/Africa/cote-d-ivoire/cote-d-ivoire-guinea-tanzania-fidh-denounces-victory-of> (accessed 17 December 2020).
- 10 'Central African Republic Election: Old Faces, Familiar Fears,' *The New Humanitarian*, 1 December 2020, <https://www.thenewhumanitarian.org/analysis/2020/12/1/central-african-republic-elections-boziz%C3%A9-touad%C3%A9-peace-deal> (accessed 17 December 2020).
- 11 African Union, *Impact of Coronavirus (COVID 19) on the African Economy* (2020).

COVID-19 has also adversely affected various elements of peace and security. State emergency responses such as curfews and lockdowns and restricted travel between towns has contributed to increased instances of excessive use of force by security forces as well as episodes of public unrest from people who have been deprived of their livelihoods as a result of these emergency measures. In addition, countries have registered a spike in the crime rate, with gender-based violence standing out as a major concern amid lockdowns and curfews.

Where transitional justice was being implemented, the pandemic has caused the postponement or temporary suspension of processes such as the public hearings of truth commissions.

COVID-19 has also resulted in restricted movement and even closed borders between countries, with the effect of inhibiting humanitarian assistance as well as the protections and full rights that should be accorded to migrants, refugees and internally displaced persons. It is for this reason that the AU at the onset of the pandemic reiterated to member states the importance of upholding their international law obligations to these groups despite the extraordinary circumstances.<sup>12</sup> Restricted movement also negatively affected the progress of mediation and peacekeeping efforts in situations such as Libya, South Sudan and the Central African Republic.<sup>13</sup> The same applies to the peacekeeping and counterterrorism efforts in West Africa and the Horn of Africa.<sup>14</sup> Where transitional justice was being implemented, the pandemic has caused the postponement or temporary suspension of processes such as the public hearings of truth commissions, some aspects of ongoing investigations or inquiries on human rights violations and the rolling out of reparation programmes for victims.<sup>15</sup>

Yet, despite these challenges, we must appreciate some of the positive developments that have emerged. In September 2020, the Economic Community of West African States (ECOWAS) and the AU successfully negotiated an 18-month, civilian-led transition as a pathway out of a military coup that had taken place in Mali in August 2020. Since the ouster of President Omar al-Bashir in April 2019 on the back of a popular revolution and intervention from the military, Sudan has embarked on a democratic transition under the stewardship of the Sovereign Council and a transitional government led by a civilian, Prime Minister Abdalla Hamdok. While the transition is not without challenges, its positive aspects include a commitment to undertake transitional justice measures, as seen in the preparation of the Transitional Justice Commission Bill, which is currently under consideration. Furthermore, the transitional government has attempted to consolidate peace by ending the various conflicts in the country, as seen with the Juba Agreement of August 2020 between the transitional authorities on one hand and the Sudan Revolutionary Front (SRF) and the Sudan Liberation Movement–Minni Minnawi (SLM–MM) on the other.

The Gambia also embraced a transitional justice agenda after ECOWAS successfully mediated the peaceful handover of power from former President Yahya Jammeh to current President Adama Barrow in the aftermath of the 2016 elections. The Gambia has since established the Truth, Reconciliation and Reparations Commission (TRRC). It is also in the midst of a constitutional review process and has committed to a series of institutional reforms. After a period of regression into armed conflict, the 2018 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) brought renewed hope that sustainable peace could be obtained in the country. While the process continues to encounter implementation challenges, various stakeholders remain highly engaged to try

12 African Union, 'Communique: Migration and Mobility in Contexts of COVID-19,' 10 April 2020.

13 Smail Chergui, 'OpED: Peace and Security amidst COVID-19 by H.E Amb. Smail Chergui AU Commissioner for Peace and Security,' African Union Peace and Security Department, 17 April 2020, <http://www.peaceau.org/en/article/oped-peace-and-security-amidst-covid-19-by-h-e-amb-smail-chergui-au-commissioner-for-peace-and-security> (accessed 17 December 2020).

14 Ibid.

15 International IDEA, *Transitional Justice and Social Cohesion (Re) Construction in African Countries during the COVID-19 Pandemic* (2020).

and operationalise its critical aspects, such as the fifth chapter which focuses on transitional justice.

This snapshot of developments points to a landscape of hope, some despair and tenacity when it comes to the STG agenda. While the ambitious target of accomplishing this goal by 2020 has not been met, it is evident that the agenda remains highly relevant and its pursuit must be maintained. It is for this reason that the AU Assembly of Heads of State and Government in December 2020 convened an Extraordinary Summit on STG and resolved to extend the AUMR by another 10 years while also declaring September of each year Africa Amnesty Month. This welcome decision enables the AU and its member states to consolidate the gains made since 2013 while also doubling efforts to overcome identified challenges and obstacles through a programme consisting of well-defined short-term and long-term milestones.

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Indeed, 2013–2020 has seen considerable progress by way of normative and institutional frameworks, such as the adoption of the AUTJP as well as the operationalisation of the APSA, the AU Policy on Post-Conflict Reconstruction and Development (PCRD), the Continental Early Warning System (CEWS), the African Standby Force (ASF) and the Peace Fund, to name a few. However, a gap remains between the enthusiastic adoption of these frameworks at the AU level and the domestication of the same at subregional and national level. Also, more can be done in terms of commitments by member states to provide financial and other resources which ensure that the AU Commission (AUC) is well equipped to apply these frameworks in conflict settings.

Since 2013 we have seen the AU and Regional Economic Communities (RECs) successfully mediate conflicts

and usher in peaceful transitions with prospects for justice and reform. As already highlighted, ECOWAS was instrumental in resolving the situations in Mali and the Gambia, while the AUC is currently providing technical support to the Gambia with regard to its transitional justice measures. IGAD led in the brokering of the South Sudan revitalised peace agreement and, from that agreement, the AUC is responsible for establishing a hybrid court as part of South Sudan's transitional justice mechanisms. Still, improvements can be made in the areas of coordination and communication between the AU and RECs, and among the various AU organs with mandates that apply to conflict settings, such as the PSC and the African Commission on Human and Peoples' Rights (ACHPR).

The AU has displayed leadership by either presiding over or supporting subregional peacekeeping deployments to various conflicts on the continent, such as the African Union Mission in Somalia (AMISOM). However, such operations need to move away from overreliance on financial support from external partners, which hinders the AU's leadership and independence on peace and security matters. This makes the full operationalisation of the AU Peace Fund a topmost priority for the next phase of the AUMR.

### **Situating Transitional Justice in the Post-2020 Silencing the Guns Agenda**

In contemplating the gains, gaps and challenges of the STG agenda thus far, it is apparent that the AUTJP should feature prominently in AU programming for the next 10 years. In considering the fifth progress report on the implementation of the AUMR, the AU Assembly conceded that, going forward, more needs to be done on the economic, social, environmental and legal aspects of the roadmap.<sup>16</sup> The AUTJP provides the policy parameters for this endeavour as it outlines steps for the realisation of redistributive or socio-economic justice as well as reconciliation and social cohesion and political and institutional reforms. It is therefore essential to ensure that the post-2020 AUMR and the implementation roadmap for the AUTJP are aligned.

16 African Union, *Decision on the Fifth Report of the Peace and Security Council of the African Union on the Implementation of the African Union Master Roadmap of Practical Steps for Silencing the Guns in Africa by the Year 2020*, Assembly/AU/Dec.755 (XXXIII) (2020).

Since its adoption in February 2019, an implementation roadmap for the AUTJP has been in place under the stewardship of the AUC's Department of Political Affairs (DPA). The roadmap broadly consists of awareness raising for member states and AU organs on the provisions of the policy, providing technical assistance to states undertaking transitional justice processes, sensitising the wider public on the policy, and monitoring and evaluation of the policy's implementation. Therefore, in appreciating the AUTJP's provisions, its implementation roadmap and the prevailing context in as far as conflict on the continent is concerned, the following pillars should be central to situating transitional justice within the post-2020 STG agenda.

### ***Addressing the Underlying Issues of Conflict***

As already stated, addressing the underlying or root causes of conflict is at the heart of the STG agenda and transitional justice can play a huge part in realising this objective. The 2019 Africa Governance Report provided insight on these causes of conflict, which include poverty, the absence of democracy, a fusion of population imbalance with social and economic exclusion, sustained episodes of violence that stem from experience with large-scale violence, a ripple effect where the consequences of one country's conflict spreads beyond its territory to those of its neighbours and self-interested leadership as a facilitator for impunity and poor governance.<sup>17</sup> The solution to these causes of conflict lies in the transformative approach advanced by the AUTJP, which speaks to achieving democratic and socio-economic transformation by undertaking measures and processes that overcome past violations, divisions and inequalities. This need has only been amplified by the COVID-19 pandemic, which has exposed the governance deficits and lack of public trust that exists in various conflict and transitional settings.

Therefore, AU interventions in transitional contexts should advance the implementation and domestication of the AUTJP where the conception of justice would be holistic and consist of accountability, restorative,

reparative and redistributive elements. On a positive note, this approach is grounded on the AU's past practice and is currently underway in some contexts. The AU's involvement in addressing Kenya's 2007–2008 post-election violence through a panel of eminent personalities led by the late H.E. Kofi Annan resulted in a National Accord that dedicated an agenda item to "Long-term Issues and Solutions" (Agenda 4). This led to the establishment of Kenya's Truth, Justice and Reconciliation Commission (TJRC), constitutional reform, land governance reform and institutional reforms to the judiciary and police, among other developments. Sudan's transitional agreement set out "Missions of the Transitional Period," which include achieving comprehensive peace by addressing root causes of conflict, providing redress and utilising affirmative action, as well as instituting procedures and measures for transitional justice and reinvigorating its rule of law institutions. Sudan could draw inspiration from the AUTJP as it moves to complete the legislative process for its Transitional Justice Commission Bill.

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The Gambia, as already highlighted, is looking to the conclusion of the work of the TRRC and its constitutional review process as part of a broader transformative agenda that was conceived during the 2016 transition. These processes are part of the reform framework that is the Gambia's National Development Plan (NDP) for 2018–2021 and more specifically its first strategic pillar, which relates to the restoration of good governance, respect for human rights and the rule of law, and empowerment of citizens. Beyond the TRRC and the constitutional review, this strategic pillar has also enabled a review of the Gambia's penal code, the establishment of the National Human Rights Commission (NHRC) and the enhancement of judicial independence, among other governance reforms. These efforts have been strengthened by the presence of the AU Technical Support Team to the Gambia

17 African Peer Review Mechanism and African Governance Architecture, *The Africa Governance Report 2019* (2019).

(AUTSTG), which provides technical assistance to the country with respect to its transitional justice processes as well as security sector and rule of law reforms.

### ***A Focus on Process***

The aspect of process in establishing and undertaking transitional justice measures is key to the success or failure of these measures and whether they ultimately contribute to ending the legacies of conflict. As a starting point, the AUTJP recognises the negotiation or mediation of peace agreements as strategic entry points for establishing the goals and parameters for transitional justice in a given context. Indeed, this has been seen in the fifth chapter of the South Sudan Revitalised Peace Agreement, the “Missions of the Transitional Period” in the Sudan transitional agreement and Agenda 4 in the Kenya National Dialogue and Reconciliation of 2008. Therefore, in order to enhance the national and local ownership of transitional justice measures that arise from peace processes, it is essential to provide for the meaningful participation of victims’ groups and non-state actors such as civil society in these critical deliberations. In Kenya’s 2008 case, for example, the role of civil society was highly valued by the Kofi Annan-led team, which noted:

Civil society organizations made an immense contribution to the mediation process. Their submissions and meetings with the Panel contextualized the crisis and helped it to formulate appropriate corrective measures. They described the extent of the crisis, the atrocities committed, and the probable outcomes if the negotiations failed.<sup>18</sup>

A failure to undertake an inclusive process in formulating or implementing transitional justice measures can easily lead to an erosion of public trust and a repudiation of those processes. In Sudan, insufficient public consultations and information sharing have led to the erosion of public trust

regarding the capacity of government institutions to successfully implement the transitional justice agenda.<sup>19</sup> In the Gambia, at least four assassins associated with a hit squad from the Jammeh regime were released from prison after cooperating with the TRRC, which has led to considerable backlash from victims who felt that the decision was taken without due consultation and therefore betrayed the principle of a victim-led process.<sup>20</sup>

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With the increased role of the AU as well as RECs in facilitating transitional justice measures, there is need to regularise processes that advance coordination and coherence among them. Some good practices to be consolidated in this regard include jointly established mediation and fact-finding teams and inviting peace envoys from RECs to brief the PSC. What should be avoided is the proliferation of processes at different levels that then allow protagonists in a conflict to engage in “forum shopping” and delay tactics to undermine conflict resolution initiatives. Furthermore, the AUTJP requires coordination among the AU’s various organs as a way of providing member states with strategic political leadership on matters of transitional justice. Such coordination would enable the key aspects of providing technical assistance to states and providing an essential oversight role that encourages states to abide by their obligations under the AU Constitutive Act and other treaty-related obligations. Therefore, the operational model of the AUTSTG should be replicated and sufficiently resourced in other contexts. The DPA has already reached out to Sudan, South Sudan and Zimbabwe with similar assistance proposals.

18 African Union Commission Coordination and Liaison Office of the Panel of Eminent African Personalities, *Back from the Brink: The 2008 Mediation Process and Reforms in Kenya* (2014), 30.

19 United States Agency for International Development, *National Perception Study of Transitional Justice in Sudan: Final Report (Executive Summary)* (2020).

20 Louise Hunt, ‘The Truth Is Not Enough for Gambia’s Regime Victims,’ *The New Humanitarian*, 23 September 2019, <https://www.thenewhumanitarian.org/news-feature/2019/09/23/trrc-Gambia-truth-commission-rights> (accessed 17 December 2020).

On matters of oversight, the PSC and ACHPR by virtue of their respective mandates have provided leadership. This was exhibited in the case of South Sudan, where a decision by the PSC led to the establishment of the AU Commission of Inquiry on South Sudan (AUCISS), with an ACHPR commissioner in its membership. The recommendations of the AUCISS in turn inspired the provisions in Chapter 5 of South Sudan's revitalised agreement, which among other things provides for the establishment of a truth commission and a hybrid court. The PSC continues to monitor the implementation of the revitalised agreement and in April 2020 instructed the AUC to hasten the process of establishing the hybrid court as a key mechanism for accountability. The ACHPR has also advised the government of South Sudan on the implementation of transitional justice measures.

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In the case of Sudan, the PSC provided valuable oversight by suspending Sudan from the AU until a civilian-led transitional authority was established. This decision provided the necessary pressure that led to the establishment of the Sovereign Council, which consists of military and civilian officials as well as the Council of Ministers headed by a civilian prime minister. The PSC has also continued to urge Sudan's transitional authorities to follow through on the pledge to investigate and redress the killings and other violations committed on 3 June 2019 at the height of the revolution, which led to the transition. Additionally, the ACHPR in August 2020 issued a resolution calling on the transitional authorities to ensure that the conclusion of the Transitional Justice Commission Bill is done on the basis of broad consultations, undertake judicial reforms to enhance effectiveness and independence, and ensure that investigation mechanisms to address the 3 June 2019 violations do not include institutions that may be implicated in those violations.<sup>21</sup>

### ***Tangible Outcomes for Victims***

While instituting transitional justice measures is an integral step to ending cycles of conflict, the true impact and success of these measures lies in whether they contribute to positive, meaningful and sustainable change in the lives of victims. Sadly, there have been various examples of processes that have failed to meet the expectations of victims and instead left them dejected and disillusioned. In Kenya, despite the TJRC report being published in 2013, its proposed reparations framework has not been implemented, with various pledges from the presidency going unfulfilled. In the case of Chad, while the AU-supported Extraordinary African Chambers (EAC) found former leader Hissène Habré guilty of international crimes, victims have not been able to compel the state to cooperate in the implementation of reparations, including collective reparations. In South Africa, the failure to implement a comprehensive reparations programme in the aftermath of the Truth and Reconciliation Commission (TRC) has left a sense of betrayal in a large constituency of victims.

Moving forward, there is need to ensure that just as much emphasis is placed on securing reparations for victims as is placed on securing political settlements and power-sharing arrangements. The AU should insist that member states undertaking transitional justice measures prioritise reparations for victims through programmes that take due consideration of what victims identify as their urgent needs and what they conceive as justice. This includes envisioning reparations as an essential component that should be preserved and advanced even as difficult decisions are made with regard to reviving and stabilising economies in the wake of the COVID-19 pandemic.

### ***Knowledge Generation***

A critical component of entrenching the normative values that underpin the STG agenda is the generation of knowledge products that document Africa's past experiences and emerging practices in the arena of

21 444 Resolution on the Human Rights Situation in the Republic of the Sudan - ACHPR/Res. 444 (LXVI) (2020), <https://www.achpr.org/sessions/resolutions?id=475> (accessed 22 December 2020).

conflict resolution. Doing so encourages stakeholder compliance with these values through learning from comparative experiences and identifying emerging innovations. Indeed, the Panel of the Wise report of 2011 was the foundational policy proposal for the AUTJP, as it consolidated the seminal experiences of various African countries with transitional justice processes and also took stock of contemporary debates on accountability and, in particular, Africa's relations with the International Criminal Court.

As the AUTJP was being finalised, the ACHPR generated two studies that would be critical to the implementation of the policy and the STG agenda more broadly. The first was the Study on Transitional Justice and Human and Peoples' Rights in Africa (TJ Study). Beyond taking stock of various country experiences on the continent, the TJ Study documented how the ACHPR had up to that point applied its mandate to the issue of transitional justice. This study led to the establishment of a dedicated capacity within the ACHPR in the form of a focal point on transitional justice. This role is currently held by the chairperson of the ACHPR. Through the focal point on transitional justice, the ACHPR hopes to generate consistency in its interventions on transitional justice by engaging with affected groups and other relevant stakeholders while also carrying out periodic assessments and studies and issuing recommendations and advisories with regard to issues of concern on transitional justice.<sup>22</sup>

In addition to the TJ Study, the ACHPR also published a study on addressing human rights issues in conflict situations. In this study, the ACHPR undertook an analysis of the African human rights system and its application to conflict situations. The result was a proposal of a five-pillar approach that consists of: monitoring and response; prevention; mainstreaming of human rights into conflict prevention, management and resolution and post-conflict reconstruction and development; remedial action; and enhancing institutional coordination and synergy.<sup>23</sup> The study

also established the role of focal point with a mandate to continuously monitor and report on human rights violations occurring in the context of conflict and crisis situations as well as monitoring the application of emergency laws on the continent. This role also currently resides with the chairperson of the ACHPR.

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Non-state actors should contribute to the building of Africa's knowledge and community of practice on transitional justice. Civil society plays a key role in peacebuilding efforts, the pursuit of justice for victims and in policy formulation. Therefore, the documentation of their experiences is just as important as that of States and treaty-based organisations. African academia should encourage and facilitate research on transitional justice in various ways, such as scholarly publications and edited volumes on the implementation of the AUTJP. Civil society and academia should also collaborate to provide platforms for dialogue on comparative experiences between practitioners and researchers from across the continent. One such laudable initiative is the Africa Transitional Justice Research Network (ATJRN), which preceded the AUTJP but could now be reinvigorated and contemplated within the implementation roadmap for the policy and the next phase of the AUMR.

### ***Harnessing Political Will***

A major challenge to overcome for the STG agenda is the lack of political will to fully implement transitional justice measures. The last 10 years have been replete with examples of political actors who commit to comprehensive transitional justice agendas only to discard them or leave key aspects unimplemented as soon as they consolidate their

22 African Commission on Human and Peoples' Rights, *Study on Transitional Justice and Human and Peoples' Rights in Africa* (2019), 65.

23 African Commission on Human and Peoples' Rights, *Addressing Human Rights Issues in Conflict Situations: Towards a More Systematic and Effective Role for the African Commission on Human and Peoples' Rights* (2019), xiii.

hold on power or external pressure subsides. This situation is aptly captured as follows:

The limits imposed by national political economy factors may undermine the most reformed, transformational approach to justice on the part of international actors and domestic civil society to the point that it represents merely a symbolic salve for a gaping wound.<sup>24</sup>

It is for this reason that supporters of transitional justice must invest in true local ownership of these agendas as opposed to a top-down, prescriptive approach that is largely dependent on the goodwill and self-interest of political actors. Sudan's 2019 people-led revolution stands out as a promising example of this approach and, in particular, the fact that the AU's intervention was then based on standing with "the Sudanese in their aspirations to constitutional order that will enable them to make progress in its efforts towards democratic transformation of the country."<sup>25</sup> Going forward, there is need to insist that states respect civic space as a way of ensuring that democracy thrives and that dialogue rather than conflict becomes the platform for resolving disputes. The AU Assembly should be encouraged to enforce robust sanction regimes against member states that grossly violate the principles of the Constitutive Act of the AU. Civil society must also embrace cross-border solidarity with each other and demand increased space within continental decision-making organs such as the PSC, as part of a multitrack diplomacy strategy.

### ***Intergenerational Dialogues and Exchanges***

Africa's youth have perpetually been identified as either victims or perpetrators of conflict. Furthermore, the youth are the majority demographic of Africa's population and this places them at the epicentre of various peace and security considerations such as

addressing radicalisation and combatting terrorism as well as addressing social and economic exclusion. This reality has not been without adverse consequences; the youth have either been infantilised as being helpless and in need top-down policy interventions or characterised as major risks to peace and stability, which then draws punitive and securitised responses to their vocal agitations for change.

*Sustained dialogues must take place between the continent's political leadership and the youthful population it leads with a view to an eventual generational transfer of leadership that hopefully embraces the vision of Agenda 2063.*

However, the recurring trend of youth-led popular revolutions over the last decade demands a paradigm shift in how the STG agenda is conducted. These revolutions indicate that the culture of despotism and the 'third-term' instincts of some political leaders will not endure. Therefore, sustained dialogues must take place between the continent's political leadership and the youthful population it leads with a view to an eventual generational transfer of leadership that hopefully embraces the vision of Agenda 2063. Beyond being recipients of interventions, there is a need to enhance effective participation and leadership spaces for the youth in matters of governance and in peacebuilding and transitional justice initiatives. This means investing in youth-led initiatives by way of enhancing their technical capacities and deploying affirmative measures such as special representative seats in legislative bodies and regional decision-making organs, eliminating barriers to registration processes for youth political groups and nongovernmental organisations and availing funding for their initiatives. Ultimately, the STG agenda must be shaped, informed and implemented by Africa's largest demographic.

24 Pádraig McAuliffe, 'Weighing Domestic and International Impediments to Transformative Justice in Transition,' *London Review of International Law* 3, no. 1 (2015): 169–97, 197.

25 Africa Union Peace and Security Department, 'The 854th Meeting of the Peace and Security Council on the Situation in The Sudan-African Union-Peace and Security Department,' 2019, <http://www.peaceau.org/en/article/the-854th-meeting-of-the-peace-and-security-council-on-the-situation-in-the-sudan> (accessed 13 October 2020).

## Conclusion

Africa's path to stability and prosperity lies in ending cycles of conflict and entrenching a culture of human rights, the rule of law and good governance. It is for this reason that the AU and its membership of states must maintain fidelity to the noble objectives of the Solemn Declaration and utilise the extended 10-year period for the AUMR to ensure that actionable programmes which further peace, security and justice are achieved. A lot of normative progress has been achieved in the last decade and the AUTJP is testament to that; the persistent challenge lies in the effective implementation of these instruments at the regional, national and local levels. We have witnessed episodes of regression in the form of some countries relapsing into conflict and even in the emergence of new conflicts. This has called to question the

commitment of the continent's political leadership to truly ending the scourge of conflict in Africa.

However, we have also seen a potent constituency of an African public intent on securing a better future anchored on socio-economic and democratic transformation. The African people have shown a resilience and tenacity that cannot be ignored or denied. Therefore, Africa's political leadership must seize the next 10 years of the STG agenda as an opportunity to reconnect with its public by expanding spaces for civic engagement, addressing the legacies and underlying causes of conflict and building a just and equitable future. It is in this context that the AUTJP becomes a valuable policy tool to steer this journey of transition for the continent in a manner that is holistic, inclusive and, most importantly, responsive to the needs of those most affected by conflict.

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