

**POLICY PAPER**

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# **ENVIRONMENT IN TRANSITIONAL JUSTICE PRACTICE IN AFRICA**

**MUNINI MUTUKU**



## Introduction

In the face of the unrelenting climate change crisis, environmental destruction, crimes and abuse that amount to ecocide,<sup>1</sup> the quest for an ecologically just existence has become more urgent in Africa, a continent long ravaged by conflict.<sup>2</sup> The undeniable vulnerability of the human condition, ecosystems and their biodiversity invites us to reflect on how, after the guns have been silenced, the damage suffered by both people and the environment can be mitigated to avert mutual destruction.

Conflict and the environment often form a complex and multidimensional relationship in Africa. The environment can become a root cause of conflict, a means of sustaining conflict, a beneficiary of the dynamics of conflict or, above all, a victim of conflict.<sup>3</sup> The environment's victimhood manifests as massive destruction of forests and their ecosystems, damage to biodiversities in their rich varieties of life, pollution of water, land and other natural resources and habitats, and wanton killing of wild animals and harvesting of their parts for economic gain. It can also be observed in the degradation of terrain and landscapes through mining, bombing and scorched-earth techniques of war.

The nexus between conflict and the environment is increasingly gaining traction as more actors incorporate environmentally sensitive approaches

in post-conflict peacebuilding, development and reconstruction efforts.<sup>4</sup> Yet, transitional justice processes have rarely addressed environmental crimes, despite the need for, as the World Economic Forum notes, "building a better equilibrium between humans and the elements of nature".<sup>5</sup> In addition, sound arguments have been made for broadening the focus of transitional justice to include such crimes.<sup>6</sup> While the African Union Transitional Justice Policy, adopted in 2019, takes an innovative and holistic approach to transitional justice, it does not directly address issues related to climate change and environmental abuse and crimes within its provisions.<sup>7</sup>

### The AUTJP does not directly address issues related to climate change and environmental abuse and crimes within its provisions

To continue overlooking the ecological disasters in post-conflict African countries is to deny the realities of destructive extractivist development models, neocolonial relationships that enable the plunder of the continent, and the legacies of colonial capitalism and imperialism committed against Africa's peoples and their environment.<sup>8</sup> It is to continue perpetrating an injustice that entrenches practices of pillage, resource plunder and environmental degradation, which stifle attempts to reframe the

\* Munini Mutuku is a Senior Programme Officer with the National Cohesion and Integration Commission, Kenya.

1 See Independent Expert Panel for the Legal Definition of Ecocide, <https://ecocidelaw.com/independent-expert-drafting-panel/> (accessed 12 January 2023). This expert panel was launched in November 2020 to draft a definition of ecocide which could sit alongside genocide, crimes against humanity, war crimes and the crime of aggression in the Rome Statute of the International Criminal Court.

2 Christelle Terreblanche, "Ubuntu and the Struggle for an African Eco-Socialist Alternative", in *The Climate Crisis: South African and Global Democratic Eco-Socialist Alternatives* (Johannesburg: Wits University Press, 2018), 168.

3 Luisa Gomez-Betancur, "The Rights of Nature in the Colombian Amazon: Examining Challenges and Opportunities in a Transitional Justice Setting", *UCLA Journal of International Law and Foreign Affairs* 25(1) (2020).

4 Amnesty International, *Witnessing the Environmental Impacts of War: Environmental Case Studies from Conflict Zones around the World* (2020), 4.

5 World Economic Forum, *What if Nature Became a Legal Person* (2020).

6 Emily E. Harwell and Philippe Le Billon, "Natural Connections: Linking Transitional Justice and Development through a Focus on Natural Resources", International Center for Transitional Justice research brief (2009), 2.

7 John G. Ikubaje and Usani Odum, "Envisioning a Transitional Justice Based Approach to Climate Induced Conflicts in Africa", *Horn of Africa Bulletin*, Life and Peace Institute (2022), 3.

8 Hamza Hamouchene, "Environmental and Climate Justice in North Africa" (2020), <https://roape.net/2020/03/20/environmental-and-climate-justice-in-north-africa/> (accessed 20 January 2023).

environment as an issue of collective security in a fragile and increasingly interdependent world.<sup>9</sup> It further enhances the accountability gap relating to environmental crimes and abuses, especially those that meet the threshold for ecocide.<sup>10</sup>

Transitional justice practitioners are obliged to lead the change in the justice paradigm by challenging rigidly anthropocentric perspectives that reduce the environment, its resources and other species to exploitable elements that only serve human needs. This means adopting approaches that conceive the relations among life systems and validate their intrinsic value through the recognition of environmental and nature rights.<sup>11</sup>

## Transitional Justice and the Environment

Transitional justice mechanisms confront the daunting challenge of rebuilding societies, which makes them crucial for the promotion of justice, development and peace and security in post-conflict societies. They employ diverse strategies and frameworks to provide holistic ways of addressing past conflict and supporting sustainable peace.

The African Union Transitional Justice 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”.<sup>12</sup>

Despite its focus on transformation, the policy does not reference the negative impacts suffered by the environment during conflict. The environment has always been a silent casualty,<sup>13</sup> with nature treated as an exploitable resource deliberately targeted to achieve human goals. This has resulted in the objectification of the environment, with transitional justice engaging only with its usable and disposable elements. Thus, redress is based on damages inflicted on the human population and not on the environment. People may be compensated, but the environment does not benefit to heal and restore its functional ability.

*The environment has the right, without interference from humans, to exist and to maintain and regenerate its vital cycles to optimise its functional ability*

The environment has value in itself, regardless of the benefits it offers to human beings. As a life system in itself, and as a host of other life systems that coexist and depend on each other, the environment has the right, without interference from humans, to exist and to maintain and regenerate its vital cycles to optimise its functional ability.

Transitional justice should therefore conceptualise people not as the only subjects of rights or the centrepiece of nature around whom other beings rotate, but rather as part of integrated life systems that are larger than them and that exist through relations and respect for the other’s intrinsic value.<sup>14</sup> Hence, a call for justice to be cognisant of the environment’s natural processes is not farfetched for transitional justice.

9 United Nations, “The Greatest Threat to Global Security: Climate Change is Not Merely an Environmental Problem” (2007), <https://www.un.org/en/chronicle/article/greatest-threat-global-security-climate-change-not-merely-environmental-problem> (accessed 30 December 2022).

10 Mutoy Mubiala, “Mass Deforestation as an Alarming Form of Ecocide: Adopting Transitional Justice Measures to Complement Criminalization”, TOAEP Policy Brief Series No. 139 (2022).

11 Constitutional Court of Ecuador, Case No. 1149-19-JP/20 (2021), Plenary Session of the Constitutional Court of Ecuador: Opinion, 12–13.

12 African Union Transitional Justice Policy (2019), para. 19, [https://au.int/sites/default/files/documents/36541-doc-au\\_tj\\_policy\\_eng\\_web.pdf](https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf) (accessed 20 December 2022).

13 “From Conflict to Peacebuilding: The Role of Natural Resources and the Environment”, UNEP Post-Conflict and Disaster Management Branch Policy Paper No. 1 (2009), 15.

14 See Constitutional Court of Ecuador, *supra* note 11.

## Environmental Protection in Africa

African environmental philosophy recognises the interconnectedness of all beings and expresses concern over the health of the ecology and the impact of environmental degradation on future human and nonhuman generations.<sup>15</sup> The underlying belief of the philosophy is the ethical linkage of nature, community and humans.<sup>16</sup> The interdependence of human beings and the natural world is an African worldview that not only regards the Earth as a source of survival, but also regards human beings and the nonhuman world as extensions of each other.<sup>17</sup>

### The underlying belief of African environmental philosophy is the ethical linkage of nature, community and humans

Well-being is viewed as relational – it is dependent on the well-being of the Earth to have a balance of the whole.<sup>18</sup> As such, it is a way of living where nothing exists in isolation but all is intricately connected to contribute positively to welfare and harmony.<sup>19</sup> Balance in terms of the totality of the relations that can be maintained between human beings as well as between human beings and nature is core to the concept of harmony.<sup>20</sup>

African environmental philosophy brings to light African dual ontology, which comprises both spiritual (invisible and intangible) and physical (visible and tangible) beings.<sup>21</sup> It enshrines a code that obligates humans to coexist and relate with the holistic ecosystem constituted of God, spirits of superhuman beings and the dead, people living and yet unborn, animals, plants and other biological life, and phenomena and objects without biological life – all in a respectful and non-exploitative manner.<sup>22</sup>

Connecting the human, natural and spiritual realms is drawn from the concept of Ubuntu,<sup>23</sup> which is critical for developing an integrated approach to justice for environmental harms. According to Ibhawoh, Ubuntu, as defined by Archbishop Desmond Tutu, “represents an indigenous African philosophy of justice centered on healing, forgiveness and reconciliation aimed at restoring the humanity of both victim and perpetrator. It encapsulates the notion of an interdependent humanity, the core of traditional African cosmology”.<sup>24</sup> The moral code espoused in Ubuntu enhances a consciousness within people that enables them to revere the special relationship they have with the physical environment and nonhuman species.<sup>25</sup>

From the outset, Africans’ collective identity and morality is laden with the duty towards environmental conservation and wildlife preservation, which is inculcated through African

15 Workineh Kelbessa, “Environmental Philosophy in African Traditions of Thought”, *Environmental Ethics* 40(4) (2018), 323.

16 Timothy Adie Okpe and Friday Achu Oti, “Towards an African Philosophy of Environment”, *International Journal of Environmental Pollution and Environmental Modelling* 2(3) (2019), 105.

17 See Kelbessa, supra note 15 at 321.

18 Ibid.

19 Godfrey Museka and Manasa Munashe Madondo, “The Quest for a Relevant Environmental Pedagogy in the African Context: Insights from Unhu/Ubuntu Philosophy”, *Journal of Ecology and the Natural Environment* 4(10) (2012), 259.

20 Mogobe Ramose, “Ecology through Ubuntu”, in *Environmental Values: Emerging from Cultures and Religions of the Asean Region* (GCRC, AU / KAS, 2015), 71.

21 See Okpe and Oti, supra note 16 at 105.

22 Ibid., 105–106.

23 Danford Tafadzwa Chibvongodze, “Ubuntu is Not Only about the Human! An Analysis of the Role of African Philosophy and Ethics in Environment Management”, *Journal of Human Ecology* 53 (2016), 157.

24 Bonny Ibhawoh, “Beyond Retribution: Truth and Reconciliation in South Africa as Universal Paradigm for Restorative Transitional Justice”, *Covenant University Journal of Politics and International Affairs* 2(2) (2014), 2–3.

25 See Museka and Madondo, supra note 19 at 259.

indigenous knowledge systems, among other mediums.<sup>26</sup> Indigenous knowledge systems promote human tolerance towards plants, animals, mountains and rivers, through cultural beliefs and norms embedded in, for example, taboos, totems, folklore and proverbs.<sup>27</sup>

Unfortunately, African environmental philosophy and Ubuntu have for a long time been disrupted, especially by colonialism. Colonisation brought with it capitalist exploitation, imperialist domination of African peoples and racialisation of ecology, all of which devalued Africans and their ecology. Economic, social and spiritual activities that were intimately linked to the natural environment were labelled “backward”, “primitive” and in need of civilisation and modernity. This laid the ground for what Chibvongodze calls the “radical exclusion” of people from nature. It resulted in the disruption of the human–spiritual–nature tripartite, the backbone of Africans’ being, religious ontology and social identity.<sup>28</sup>

While African ecology was not a perfect and blissful approach to environmental protection, recognition of how traditional and modern social structures have led to environmental degradation is critical to understanding the holistic nature of the environmental crisis and developing an integrated approach for transitional justice to address environmental injustices.<sup>29</sup>

Ojomo discusses Ogungbemi’s view of an African perspective on the environmental crisis and highlights his opinion that conflict and other factors that expose Africans to living conditions that lead to the destructive exploitation of the environment do not exonerate us from our contribution to environmental hazards. Generally, modern African societies have caused mass destruction to the environment and have to bear the responsibility.<sup>30</sup>

## Policy Recommendations

Connections among diverse fields in the peace and justice space can help transitional justice practitioners redesign and enrich how post-conflict societies are engaged in finding stability. The reality of degraded, contaminated and depleted environments, which have adverse impacts not only on the ecology and biodiversity of African ecosystems but also on human and peoples’ rights, is continuously ushering environmental concerns into the realm of justice, peace and post-conflict development and reconstruction.

As a continent at the forefront in transitional justice implementation, an integrated approach that enables people to address post-conflict environments – which is only one dimension of the larger environmental assault taking place – is critical to peace and stability.

*An integrated approach that enables people to address post-conflict environments is critical to peace and stability*

In their attempts to address environmental concerns, transitional justice practitioners should desist from grounding their work only in Western perspectives and cultural experiences. In respect to African experiences, they should reckon that conflicts have been waged over access, use and ownership of natural resources. This has been influenced by internal dynamics and external constraints and forces, which then give the environmental crisis on the continent a particular character. Transitional justice should be anchored in African perspectives on environmental ethics and peoples’ cultural understandings of environmental crises. This is not aimed at showcasing the superiority of an African over a Western or other approach; rather, it is intended to establish and integrate African eco-wisdom for post-conflict peace and justice, development and reconstruction.

26 See Chibvongodze, *supra* note 23 at 159.

27 *Ibid.*, 162.

28 *Ibid.*, 159.

29 P.A. Ojomo, “Environmental Ethics: An African Understanding”, *African Journal of Environmental Science and Technology* 5(8) (2011), 574.

30 *Ibid.*

Transitional justice, particularly as regards historical environmental injustices and inequalities, should enable the fair and equal distribution of environmental burdens and benefits.<sup>31</sup> Truth telling from this perspective should seek to give voice to peoples' understandings and experiences, to indigenous science and traditional ecological knowledge. Communities could take part in post-conflict participatory mapping initiatives and post-conflict environmental assessments to inform transitional justice processes and ensure inclusion in recovery and reconstruction plans. Victim impact statements could be submitted in "green hearings", with the environment and ecosystems as the "victims" in the hearing, and not as collateral damage and an afterthought in the process of rebuilding society. This means the environment would be considered as a victim, a beneficiary of the transitional justice process and a subject of rights.<sup>32</sup>

Reparative measures, as Killean argues, should seek to respond to environmental destruction by "introducing the concept of eco-sensitive reparations and assistance designed to respond to other anthropocentric harms, awarding reparations that explicitly respond to environmental destruction or exploring the possibilities of environmentally 'transformative' reparation".<sup>33</sup>

In addition, post-conflict resource restoration, aimed at restoring an ecosystem or natural resource to its "natural" or pre-conflict condition, should evolve from a technical endeavour to a more comprehensive effort that contributes to dealing with the past while incorporating realistic projections of likely changes and their effects,<sup>34</sup> especially in light of the climate change crisis.

Transitional justice, as Ojomo writes, should promote the "recognition and acceptance of the interdependence and harmonious coexistence between Earth, plants, animals and humans".<sup>35</sup>

31 Bridget Lewis, "Human Rights and Environmental Wrongs: Achieving Environmental Justice through Human Rights Law", *International Journal for Crime, Justice and Social Democracy* 1(1) (2012), 65.

32 Munini Mutuku, "Supplementary Note to the African Union Transitional Justice Policy on Environment and Natural Resources in Transitional Justice Processes and Mechanisms", Bosch Alumni Network (2022), 6–7.

33 Rachel Killean, "From Ecocide to Eco-Sensitivity: 'Greening' Reparations at the International Criminal Court", *International Journal of Human Rights* 25(2) (2020), 11.

34 David Jensen, "Natural Resources and Post Conflict Assessment, Remediation, Restoration and Reconstruction: Lessons and Emerging Issues", in *Assessing and Restoring Natural Resources in Post-Conflict Peacebuilding* (UNDP, 2012), 418–419.

35 See Ojomo, *supra* note 29 at 576.

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