THE STATE OF TRANSITIONAL JUSTICE IN AFRICA
CONTINENTAL TJ FORUM

Johannesburg, South Africa
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CONCEPT NOTE

Introduction

Although Africa's experience with transitional justice predates the rise to prominence of transitional justice as a field of academic inquiry and policy practice in the 1990s, the recent developments have highlighted critical transitional justice opportunities and challenges. A number of countries have initiated transitional justice processes as part of a post-conflict or post-authoritarian transformation. Over the last three decades, numerous initiatives and measures have been undertaken to address gross violations and meet the needs of victims. Examples include: truth commissions in South Africa, Sierra Leone, Liberia, Togo and Kenya; international tribunals and special courts for Rwanda and Sierra Leone; and adaptation of local and traditional practices in Rwanda and Uganda, among many others. Civil society have also played a prominent role in initiating and shaping the transitional justice processes on the continent. The Coalition for Reconciliation in Uganda (CORU), a coalition of civil society actors succeeded in galvanizing support for and championing the cause for peace, justice and reconciliation in Uganda to address the consequences of Uganda's over 22 violent conflicts and insurgencies. These experiences offer useful insights and lessons on a range of issues including the formulation and implementation of transitional justice processes.

Together with these experiences, there is now an increasing awareness among members of the public about transitional justice. Apart from the rise in the number of civil society organizations that engage in the discourse and practice of transitional justice in Africa, transitional justice processes have attracted increasing media and scholarly attention. It is thus no surprise that transitional justice generates public interest in all the countries undergoing transition, be it South Sudan, Central African Republic, Mali or The Gambia.

Another development of major significance for the field of transitional justice in Africa relates to the changing normative landscape of the continent. In this respect, although much of the debate and the media attention have been around the role of the International Criminal Court (ICC), the shifting expectations and demands of the continent are in large measure linked to the coming into existence of the African Union (AU) with commitments to human security.

The African Union (AU) system is one that commits the Union and its member states to a range of interlinked norms and values. At one level are the norms that commit the Union to timeously and effectively respond to situations threatening the peace and security of member

states and the continent.[1] In an effort to create a break from Africa's past characterized by violations and impunity, the AU is also committed to norms that not only require it to intervene to prevent mass atrocities such as war crimes, crimes against humanity and genocide but also to respond to abuses that have occurred by rejecting impunity and establish accountability. Article 4 (o) of the Constitutive Act commits member states to respecting human life and condemnation and rejection of impunity. There is thus a clear commitment to achieve a shift from a culture of impunity to one of respect for the lives and dignity of the citizenry.

A further step to the AU's commitment is the adoption of various agendas such as the Agenda 2063, ending conflicts and silencing the guns on the continent by the year 2020 and declaration of "2014-2024 as the *Madiba Nelson Mandela Decade of Reconciliation in Africa*"[2] to promote reconciliation as a means of securing sustainable peace, stability and development in Africa. The AU has also been engaged in building a justice architecture aimed at implementing these commitments. At the June 2014 Malabo Summit, the AU adopted a protocol establishing the criminal jurisdiction of the African Court on Human and Peoples' Rights. Perhaps the most important recent development towards an AU justice architecture is the ongoing process of the development of an AU Transitional Justice Policy (AUTJP). This process builds on the recommendation of the Panel of the Wise, which produced a study on peace, justice and reconciliation in 2013.[3] The AUTJP has now been finalised and will be presented for consideration to Member states at the next Specialised Technical Committee on Justice and Human rights scheduled for November 2017.

Prevailing context and major issues

From Algeria in North Africa to South Africa in Southern Africa, from Sierra Leone in West Africa to Ethiopia in East Africa, almost all African countries that experienced violent conflicts or authoritarian oppression have faced the challenge of addressing the demands of justice, peace and reconciliation in one form or another. Yet, how African societies deal with this issue in fragile post-conflict or post-authoritarian or historically non-inclusive political settings remains a major policy challenge on the continent.

In almost all of the experiences with transitional justice on the continent, questions continue to abound. In many of the countries that have experimented with transitional justice there is ongoing debate about the successes and/or failures of transitional justice processes and what accounts for such successes and/or failures. Given that there are many countries on the continent affected by violent conflicts or contestations for achieving an inclusive political and socio-economic order, the issues of when, how and what kind of transitional justice processes are appropriate to each context remain a priority for the continent.

While the importance of transitional justice is recognized through the normative developments in the AU, there are still very significant gaps in the scholarly and policy insights on transitional justice in Africa. Despite its recent prominence, the definition, scope and purpose of transitional justice is not commonly understood in the African context. While the scholarly knowledge on specific experiences of transitional justice in Africa has expanded, synthesizing the knowledge on what does and does not work into a body of knowledge is still ongoing. How to avoid the pitfalls of past mistakes and tailor approaches to particular contexts remains an ongoing challenge. Similarly, we have as yet to examine how we can match the normative

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[1] As pointed out in the preamble to the Constitutive Act of the AU, in founding the AU one of the principal considerations was the recognition of 'the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda'.

[2] Decision on the report of the Peace and Security Council on its Activities and the state of peace and security in Africa Doc. Assembly/au/4(xxii)

[3] See African Union Panel of the Wise, 'Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity' (New York: International Peace Institute, 2013)

commitments on transitional justice to the exigencies of the security, political and institutional as well as socio-cultural context of the specific societies in transition.

It is clear from the foregoing that there is a need to reflect on the state of transitional justice in Africa. Such an analysis should help shed light on the various issues pertaining to, among others, the discourse on transitional justice in Africa, and the particular transitional challenges facing African countries, the experiences of African countries with transitional justice, and the AU's normative and policy processes.

To this end, the African Union Commission –Department of Political Affairs and the Centre for the Study of Violence and Reconciliation plan to convene a Continental Forum on Transitional Justice. This forum seeks to provide a platform to take stock of the status of transitional justice in Africa and to identify and discuss the various issues that require further in-depth study for filling the gaps in existing knowledge. The Forum will also create a space to explore new opportunities to build collaboration across different sectors to guide and strengthen the transitional justice policy and interventions. The continental forum will bring together scholars, policy researchers, practitioners, policy makers and representatives of civil society organizations.

Thematic Focus

Although the continental forum is organized around the broad theme of the state of transitional justice in Africa, the following themes will be of particular focus and interest:

- *Evaluating the discourse on transitional justice in Africa* – tracing the trajectory of the discourse on transitional justice in Africa, examining the lessons from various African experiences on the limits of the mainstream discourse on transitional justice and articulating an African conception of TJ;
- *Balancing peace, justice and reconciliation* – looking at African experiences in reconciling the competing objectives of transitional justice;
- *The weight and relevance of contexts in formulating TJ mechanisms in Africa* - focusing on how contextual realities have either enabled or hindered the successful application of TJ in Africa;
- *Traditional/community-based justice in transitional justice in Africa* – analyzing how traditional/community-based justice/healing/reconciliation serves as inspiration and a mechanism for transitional justice; and
- *CSOs' contribution to shaping, promoting and challenging TJ norms in Africa* – exploring how CSOs have initiated, shaped and facilitated transitional justice processes in Africa.
- *Healing as an integral component of transitional justice and a catalyst for sustainable peace*– exploring issues of collective trauma and woundedness during conflict and how addressing at all levels of society is central to building lasting peace.

Expected outcome of the Continental Forum

1. Publication compiling Forum presentations
2. Reflective report