

## FORUM REPORT

# REVITALISING AFRICAN TRADITIONAL JUSTICE MECHANISMS

Report on the Fifth African  
Transitional Justice Forum

Virtual meeting, 20–22 October 2021



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# INTRODUCTION

On 20–22 October 2021, the Department of Political Affairs, Peace and Security (PAPS) of the African Union Commission (AUC) and the Centre for the Study of Violence and Reconciliation (CSVR) hosted the Fifth African Transitional Justice Forum. Since 2017, this annual event has brought together AU member states and policy makers, civil society representatives and other stakeholders from around the continent to promote knowledge sharing and cooperation on African approaches to transitional justice.

The African Union Transitional Justice Policy (AUTJP), adopted in 2019, 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>1</sup> Like this progressive policy, the Forums seek to expand and refine transitional justice ideas and practices to address contemporary challenges.

In keeping with this aim, the Fifth African Transitional Justice Forum explored a number of issues raised by the increasing unrest, violence and democratic deficits in Africa, which the COVID-19 pandemic has exacerbated. Based on in-depth discussions, the Forum proceedings offer recommendations for revitalising traditional justice

mechanisms as mainstream transitional justice measures, as well as applying a gender lens to transitional justice processes while addressing sexual and gender-based violence against women and girls, men and boys, and LGBTQI+ persons. They present insights for tackling historical injustices and socioeconomic inequality in relation to governance deficits; dealing with transnational conflicts and violations, including violent extremism, through transitional justice; and applying transitional justice approaches to address climate change impacts and harms. They also propose strategies for harnessing the large youth population for participation in transitional justice, as well as leveraging the opportunities presented by the pandemic, particularly from the perspective of mental health and psychosocial support as a core aspect of transitional justice.

The range of themes addressed by the Forum panels in 2021 demonstrates the diversity and extent of the challenges facing the continent. The proceedings highlight the need to identify solutions rooted in local experiences, increase knowledge and share best practices, and institutionalise cooperation among diverse stakeholders so as to ensure the implementation of the progressive instruments adopted on the continent. The recommendations of the five African Transitional Justice Forums serve to advance the aims of transitional justice as articulated in the AUTJP.<sup>2</sup>

1 See para. 19, <https://au.int/en/documents/20190425/transitional-justice-policy>.

2 See “Charting the Course for Transitional Justice in Africa: Recommendations of the 2017–2020 African Transitional Justice Forums,” Centre for the Study of Violence and Reconciliation Policy Brief (2021). See also the reports of the previous four African Transitional Justice Forums: Sebatso Manoeli, *First Continental Transitional Justice Forum: The State of Transitional Justice in Africa* (Johannesburg: African Union Commission and Centre for the Study of Violence and Reconciliation, 2018); Jasmina Brankovic, *Towards an African Approach to Transitional Justice: Report on the Second African Transitional Justice Forum* (Johannesburg: African Union Commission and Centre for the Study of Violence and Reconciliation, 2019); Maxine Rubin, *The State of Transitional Justice in Africa: Report on the Third African Transitional Justice Forum* (Johannesburg: African Union Commission and Centre for the Study of Violence and Reconciliation, 2020); Jasmina Brankovic, *Transitional Justice and Silencing the Guns in Africa in the Context of COVID-19: Report on the Fourth African Transitional Justice Forum* (Johannesburg: African Union Commission and Centre for the Study of Violence and Reconciliation, 2021).

# SUMMARY OF FORUM DISCUSSIONS

Tefo Raditapole, CSVR Board Chairperson, began the opening ceremony by noting the need for African expertise, best practices and innovative approaches to address existing and emerging challenges on the continent, and to continue to build on the strengths of the AUTJP and other transitional justice (TJ) tools.

In his opening remarks, Solomon Dersso, Chairperson of the African Commission on Human and Peoples' Rights, reflected that we still do not know the extent not only of the health consequences of COVID-19 but also its political and socioeconomic consequences. He noted that the pandemic has disrupted the functioning of societies on the continent, including countries' peace and TJ processes, pointing out as examples delays in the release of The Gambia's truth commission report and the implementation of South Sudan's peace process. The pandemic has exposed the fragility of, and gaps in, governance systems and the need to address the underlying conditions that drive conflict and repression, including their impact on victims and survivors, as advocated by the AUTJP and the African Commission for Human and Peoples' Rights' study on *Addressing Human Rights Issues in Conflict Situations*<sup>3</sup> and *Study on Transitional Justice*.<sup>4</sup> Dersso concluded that in order to prepare for the next pandemic and other crises on the continent, stakeholders need to embrace and implement the reforms and, more so, transformation advocated in the AUTJP and other regional TJ instruments.

In officially opening the Forum, Bankole Adeoye, Commissioner for Political Affairs, Peace and Security of the AUC, emphasised the importance of building on

African experiences to strengthen TJ on the continent, particularly in relation to traditional justice mechanisms, which are a key indicative element of TJ, as stated in the AUTJP. Pointing to the examples of gacaca in Rwanda and palaver huts in Liberia, he noted that traditional justice mechanisms are imperative to addressing violations and in promoting reconciliation and dialogue, and that for this reason stakeholders need to learn from past experiences and examine ways to amplify and improve these mechanisms, including by bringing them in line with human and peoples' rights norms. Adeoye also identified TJ mechanisms, including traditional approaches, as central to post-conflict reconstruction and development, and thereby building and sustaining peace in Africa.

## ***Panel 1 – Revitalising Traditional Justice Mechanisms as Alternatives and Complements for Addressing Mass Violations: Lessons, Challenges and Way Forward in Incorporating Traditional Justice in Mainstream Transitional Justice***

Moderator Khabele Matlosa, Lecturer and former Director of Political Affairs at the AUC, launched the panel with an overview of African traditional justice mechanisms, noting that the focus of the Forum is in line with the AU's declaration of 2021 as the year of "Arts, Culture and Heritage: Levers for Building the Africa We Want."<sup>5</sup> He indicated that the core principles of such mechanisms are: material compensation, reconciliation and forgiveness, truth telling and responsibility, cleansing and welcome, and punishment. The main

3 African Commission on Human and Peoples' Rights, *Addressing Human Rights Issues in Conflict Situations* (2019).

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

5 See <https://au.int/en/theme/2021/arts-culture-and-heritage> (accessed 25 November 2021).

processes are grounded in African traditional governance systems and entail acknowledgement of guilt, showing remorse and repenting, asking for and giving forgiveness, offering compensation or reparations, and pursuing reconciliation.<sup>6</sup>

The emphasis is therefore on perpetrator integration and restoring social harmony, viewing the problem as collective rather than individual, applying restorative penalties, enforcing decisions through social pressure, and not relying on legal representation or rigid rules of evidence and procedure. The processes tend to be voluntary and participatory and the decisions are based on agreement, while the arbitrators are appointed based on status or lineage. Matlosa noted that they are also far less expensive and time-consuming than other TJ mechanisms.<sup>7</sup> Turning to the AUTJP, Matlosa showed that the policy identifies traditional justice mechanisms as one of its seven indicative elements, and as equal and complementary to other kinds of TJ measures. He noted that the AUTJP encourages member states to undertake institutional reforms that acknowledge these mechanisms as central to peacebuilding and post-conflict reconstruction and development.

**“The AUTJP urges member states to use traditional justice mechanisms in complementarity with other TJ mechanisms.”**  
*Khabele Matlosa*

Focusing on a particular traditional justice measure, Hauwa Dikko, of the Jaiz Orphans and Widows Initiative (JAWI), described how her organisation works with members of local communities in the North East of Nigeria to increase the effectiveness of salku, a widely practiced Islamic conflict resolution mechanism. Noting that salku is used to address conflicts over cattle

rustling, access to water and land, and domestic violence, among other issues, Dikko said that JAWI has identified salku practitioners in multiple communities, brought them together into community fora and offered them training to fill gaps in the practice. These gaps include dealing with more serious crimes, delays in decision making, limited capacity to hear all cases and, especially, women’s limited access to justice, despite their disproportionate vulnerability in conflicts. Women have equal representation in the fora and now extend better access to justice to other women in local communities.

JAWI is also creating linkages between these traditional measures and formal justice mechanisms, particularly state sharia courts and conflict resolution panels, while engaging in advocacy to increase state funding for community-based conflict resolution mechanisms and capacity to transfer cases between the community and state level, depending on the type of conflict that needs to be addressed.

In his presentation, Stephen Oola, Director of Amani Institute Uganda, argued that traditional mechanisms should become mainstream TJ measures in Africa, as they have been practiced since pre-colonial times and remain more accessible and contextually relevant than mechanisms such as tribunals and truth commissions. Oola described *mato oput*, used by the Acholi in northern Uganda to conclude a restorative process of confession, mediation and payment of compensation linked to serious offenses, particularly murder or manslaughter. The main principles of *mato oput* are collective responsibility for righting a wrong, voluntary and public participation, guarantees of non-repetition and restoration of social harmony.

Referring to the value of *mato oput* in northern Uganda, Oola argued that traditional justice mechanisms need to be revitalised as part of TJ in Africa. He suggested that stakeholders review the recommendations in the AU

6 See Nomathansanqa Masiko-Mpaka, “Traditional Transitional Justice Mechanisms: Lessons from Africa,” Centre for the Study of Violence and Reconciliation Policy Brief (2020).

7 Lyandro Komakech, “Traditional Justice as a Form of Adjudication in Uganda,” in *When Law Meets Reality*, eds. Moses Chrispus Okello, Chris Dolan, Undine Whande, Nokukhanya Mncwabe, Levis Onegi and Stephen Oola (Nairobi: Fahami, 2012); Luc Huyse and Mark Salter, eds., *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International IDEA, 2008).

Panel of the Wise report.<sup>8</sup> He also suggested that they identify, document and promote traditional mechanisms for all except the most serious crimes, as well as initiate the codification of principles of traditional justice. He advocated the use of community-level mechanisms, such as family or clan courts, for appropriate offenses, along with strengthening the capacity of national justice systems to complement not just international mechanisms but also traditional justice measures.

**“We need to do more in codifying traditional justice principles. We need to also promote community-level dispute resolution, as well as strengthen the capacity of judicial systems at all levels to complement the activities of traditional justice institutions and international justice mechanisms.”**

*Stephen Oola*

Engaging with questions from participants, Oola noted that traditional justice mechanisms are not limited to specific clans or ethnic groups but can in fact be used for conflict resolution between different groups. He offered the example of the Acholi and Lugbara in Uganda, who used garo and other traditional measures to put an end to revenge killings connected to offenses committed under the Idi Amin dictatorship. Oola asserted that, while different, traditional justice mechanisms have enough similarities across groups to be applied in intergroup conflicts, as they are rooted in the same fundamental principles.

Dikko, in turn, focused on the question of the social reintegration of perpetrators, noting that if communities are actively and inclusively involved in a traditional justice mechanism, they can ensure that the process works effectively. Using the example of communities applying salku to reintegrate former members of Boko Haram in Nigeria, she stated that perpetrators have been enabled to express their remorse and be absorbed

into their communities. Dikko noted that this can be done at scale, in a manner complementary to state-run reintegration efforts.

In conclusion, Dikko recommended that information on all the traditional justice mechanisms in Africa be collated in an accessible repository, in order to inform the mainstreaming of such measures in TJ. Oola similarly highlighted the need to fill the knowledge gap on traditional justice mechanisms on the continent, adding that this would aid in the identification and promotion of the common principles that underpin the various measures, which can then be expanded on and applied at scale. He also reiterated his recommendation that the mainstream definition of TJ in Africa and at the international level be widened to include traditional justice measures.

In closing the panel, Matlosa argued that international jurisprudence is ignorant about traditional justice measures and that African stakeholders have an obligation to sensitise international actors so they can contribute to addressing past abuses on the continent in a locally relevant manner. He also recommended that PAPS and other stakeholders proactively approach AU member states to develop national strategies for TJ, instead of waiting for member states to request assistance. Matlosa further recommended the appointment of an AU envoy on TJ in Africa to promote a regional TJ agenda, which would include traditional justice mechanisms as one of the seven indicative elements of the AUTJP.

**“It would be helpful if we could make literature on all types of traditional justice mechanisms in Africa available. ... This would go a long way to giving you ideas and enhancing your own processes while finding complements for the TJ processes in your own country.”**

*Hawwa Dikko*

8 African Union Panel of the Wise, *Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity* (2013).

**Panel 2 – Addressing Gender and Masculinity Challenges through Transitional Justice: Moving Transitional Justice beyond Addressing SGBV during Conflict or Repression, to Crafting a Path towards Achieving Gender Justice**

Starting the discussion, moderator Gugu Nonjinge, Senior Advocacy Officer at CSVR, emphasised that the spotlight on gender justice has never been brighter globally, particularly with social movements such as #MeToo internationally and #SeeMe in South Africa raising awareness of gender inequality and insecurity. She noted that conflict-related sexual and gender-based violence (SGBV) is now acknowledged as a war crime, and that TJ processes in Africa are increasingly incorporating SGBV as a key issue.<sup>9</sup> Nonjinge argued, however, that addressing SGBV is just one component of achieving gender justice, and that focusing only on SGBV undermines stakeholders’ capacity to deal with the deeper structural factors that marginalise individuals and groups based on their sex and gender identity in Africa.<sup>10</sup>

“By focusing on one component of gender justice, such as SGBV alone, we fail to address the structural and social factors that hold and perpetuate gender injustice in the first place.”

*Gugu Nonjinge*

Christine Alai, Transitional Justice Advisor to the United Nations Commission on Human Rights in South Sudan, noted that men, women and children symbolise different roles and responsibilities in their communities, which affects both how they participate in conflict and how they are affected by conflict. These gender norms may be disrupted by conflict, for example with the breadwinner role by necessity shifting from men to women. Alai also discussed intersectionality, using the

example of how people’s gender identity combined with their ethnic identity differentiates their experience of a conflict from that of other groups. She referenced Kikuyu men’s forced circumcision of Luo men during Kenya’s 2007/8 post-election unrest, which was intended to bring the latter’s masculinity into question. Gender norms, Alai added, influence which violations are visible, how they are defined and who participates in measures designed to address them in the post-conflict period.

“Studies draw our attention to the need to structure and design TJ mechanisms in a way that challenges apparent as well as unconscious biases about the nature of violations, especially SGBV, against different groups—women, men and others.”

*Christine Alai*

Alai noted that TJ processes have evolved in their approach to gender in Africa, shifting from an exclusive focus on women’s victimisation during conflict and their representation in post-conflict measures, towards women being seen more as active agents, combatants and perpetrators, as well as peacebuilders. She also noted the increasing inclusion of SGBV against men and boys, as well as LGBTQIA+ persons, as a TJ concern. Alai argued that TJ mechanisms need to do more to acknowledge gender biases in their design and implementation, in addition to applying a gender lens to all analyses of the drivers and consequences of violations. As examples, she referenced the truth commissions in Sierra Leone and Kenya, which investigated gender injustices and recommended specific institutional reforms in response, as well as other mechanisms that have included special (in camera) hearings and witness protection to lower barriers to victim participation.<sup>11</sup>

9 See Global Initiative for Justice, Truth and Reconciliation, *Truth, Bread and Tea: A Toolkit for Reintegration of Women Survivors of Conflict-Related Sexual Violence and Children Born of War* (2021).

10 See Maxine Rubin, “State Responsiveness to Conflict-Related Violence against Women,” CSVR Policy Brief (2018); Helen Scanlon and Kelli Muddell, “Gender and Transitional Justice in Africa: Progress and Prospects,” *African Journal of Conflict Resolution* 2 (2009).

11 See Thokozani Mbwana, “Transitional Justice and the Inclusion of LGBTQIA+ Rights,” Centre for the Study of Violence and Reconciliation Policy Brief (2020).

Returning to the theme of the first panel, Alai raised the question whether promoting gender justice through traditional justice mechanisms would entail transforming or reinstating traditional gender norms which may have become distorted, especially considering the breadth and diversity of African communities. She argued that traditional mechanisms, based as they are on collective responsibility and social repair, offer an opportunity to reflect on gender norms, undertake gendered context analyses and adopt solutions that provide holistic solutions to gender injustices. Going forward, Alai argued for inclusion and equality being the end goal of all TJ mechanisms, with gender providing an intersectional lens to acknowledge and address structural factors that promote violence and injustices. She recommended additional investment in funding and capacity building for gender justice efforts, with a focus on implementation within TJ and beyond.

“Implementing the principles and objectives of the AUTJP would ensure the prevention and non-recurrence of violence, and transformation of militarised masculinities which are transposed from the battle field to the institutions that are set up after the conflict.”

*Christella Niyonzima*

Christella Niyonzima, Programme Coordinator and Researcher in the Gender Justice Programme of Impunity Watch Burundi, built on Alai’s presentation, stressing that gender encompasses more than women. She argued for going beyond social constructions of gender as binary—men and women, masculinity and femininity—and taking into account the effect of conflict on different genders. Niyonzima noted that the AUTJP points to women and girls as a cross-cutting issue and argued that the policy presents an opportunity to address the structural and cultural barriers they face. She also argued that TJ processes need to be linked to

other measures, such as disarmament, demobilisation and reintegration, to enable the transformation of militarised and violent masculinities and thereby enable sustainable peace.

Niyonzima suggested that violent masculinities are a barrier to women’s participation in peace processes, when TJ mechanisms are initially discussed. She noted that women were not included in the Arusha peace negotiations, which means their experiences, needs and opinions on fundamental conflict-related violence and the political transition in Burundi were not considered. This has had long-term effects, leaving a narrow view of the TJ and other measures that followed. She recommended that stakeholders define legal frameworks governing peace talks that are based on AUTJP principles, ensuring inclusivity. She also recommended the establishment of technical teams that are gender sensitive and can incorporate a gender lens into peace processes, TJ and other measures.<sup>12</sup>

“It is important that whatever we do on TJ, we are consulting women, we do not take a top-down approach—we must go to the grassroots level. What might work in Geneva or The Hague may not work in The Gambia. We must look at our own African ways, things we can do to advance women’s rights.”

*Fatou Baldeh*

Fatou Baldeh, Founder and Director of Women in Liberation and Leadership Gambia, in turn stated that TJ needs to address the roots of SGBV, not only the symptoms, by addressing structural and everyday violence. She argued for gendering TJ, which requires addressing the exclusion of women from TJ frameworks, moving beyond the widespread notion of women as only victims of SGBV, and working against the silencing of women’s and girls’ stories as active agents, while also viewing violations against women holistically and over time. It also entails engaging directly with men about

12 Philipp Shulz, “Towards Inclusive Gender in Transitional Justice: Gaps, Blind-Spots and Opportunities,” *Journal of Intervention and Statebuilding* 14 (2020).

SGBV and gender inequality, while promoting economic, social and cultural rights.

Sharing experiences of women victims, Baldeh indicated that The Gambia's Truth, Reconciliation and Reparations Commission (TRRC) did not address social and cultural norms and the deep-rooted patriarchy in the country, and how they contribute to continuing violations. She noted that while the TRRC actively sought to include women, only 68 of the 277 people who testified before the commission were female. In community dialogues around TJ, men tended to dominate the discussion because women tend to wait for them to finish speaking, in accordance with cultural norms. For this reason, attempts at inclusion are not enough. Strategies Baldeh has developed to address these challenges include enabling dialogues with women only, creating safe spaces for women to participate in and speak openly about SGBV and gender justice, and seeking to build their confidence to take part in decision making, which requires consistent and long-term engagement as well as awareness of mental health and psychosocial support. Another strategy is forming a community management committee that includes women chosen by the community for their outspokenness, who can challenge gender dynamics and occupy male-dominated spaces.

**“We must allow victims to define needs and priorities so that if victims’ needs are more about socioeconomic assistance, we must be able to frame remedies in that way.”**

*Christine Alai*

In conclusion, Baldeh advocated for normalising discussion of SGBV in society in order to address its roots. Alai, in turn, advocated for initiatives that embrace all forms of gender identity and sexual orientation—and acknowledgement of how violence affects them before, during and after armed conflict—

which would have implications for the practice of TJ on the continent. Niyonzima noted that TJ should not be seen as limited to state-run mechanisms, but can also include civil society initiatives, such as truth telling and community sharing. She advocated for TJ measures to integrate a gender lens into all their phases, going beyond just women's representation, and highlighted that TJ is an opportunity not only to treat the effects of conflict but also to transform society into a more equal and just one.

***Panel 3 – Addressing Structural Injustices and Democratic Deficits through Transitional Justice: Expanding the Scope of Transitional Justice to Deal with Historical Injustices, Socioeconomic Issues and Governance Deficits in Africa***

Opening the discussion, Annah Moyo-Kupeta, Executive Director of CSV, noted that structural injustices of the past continue to affect the continent in the present, serving as drivers of armed conflict. She also reflected on the recent spate of coups in Africa as evidence of democratic deficits, pointing out that unrest caused by socioeconomic issues was being used by militaries as justification for seizing power. Using the examples of Mali and Zimbabwe, Moyo-Kupeta highlighted that these coups have not led to greater security as promised but rather encouraged further corruption, repressive violence and inequality. She asked what solutions TJ, particularly as framed in the AUTJP, presents for promoting sustainable peace and stability in Africa.<sup>13</sup>

**“The AUTJP takes us on a path that addresses not only the immediate consequences of conflict in Africa but also some of the legacies of our past that continue to haunt us in the present.”**

*Annah Moyo-Kupeta*

13 See George Mukundi Wachira, “The African Union Transitional Justice Policy Framework and How It Fits into the African Governance Architecture (AGA),” in *The African Court of Justice and Human and Peoples’ Rights in Context: Development and Challenges*, eds. Charles C. Jalloh, Kamari M. Clarke and Vincent O. Nmeihelle (Cambridge: Cambridge University Press, 2019).

Hugo van der Merwe, Research Specialist at CSV, responded to this question by focusing on TJ's role in dealing with structural injustices. While TJ has traditionally not addressed these injustices, he noted, the AUTJP is innovative in stating that not doing so may undermine attempts at sustainable peace. Van der Merwe argued that there is a distinction between promoting economic and social rights, which are increasingly included in truth commission mandates and litigation for abuses relating to land and corruption, and structural injustices, which are about more systematic domination and exclusion that is deeply socially embedded.<sup>14</sup> Proposing ways to address these injustices, van der Merwe suggested extending TJ mechanisms' historical lens further into the past and treating transitions as long-term processes that cannot be resolved with one or two short-term mechanisms. He argued for differentiating between political, economic, cultural and other systems that require transition.

**“Not all African leaders are ready to embrace TJ. In many places the African state is a perpetrator state and given a chance would rather perform than implement TJ—we call it pseudo-TJ. This chicanery is a massive injustice which non-state actors must address.”**

*Dzikamai Bere*

Pointing out the need to enable active citizenship and political participation in the context of transition, van der Merwe advocated for viewing TJ mechanisms as spaces to create awareness of injustices and build citizens' capacity to maintain momentum for social change. Pointing out that business and political elites in Tunisia rolled back the socioeconomic gains of the country's transition, he argued that TJ processes need to be grounded in the grassroots, both with the state partnering with grassroots actors and grassroots actors leading the processes. Discussing public hearings on poverty held in South Africa and Mozambique, which highlight the everyday and ongoing suffering of ordinary people, van der Merwe reflected that civil

society needs to find a way to make these as compelling as hearings on spectacular violence like torture and extrajudicial killings, which would increase governments' investment in such hearings and their outcomes.

In his presentation, Dzikamai Bere, Director of the Zimbabwe Human Rights Association, noted that, as a TJ practitioner, he sees TJ as an intergenerational dialogue and an effort to leave a new and better world for coming generations. In Africa, gross human rights violations go beyond direct violence to include structural and cultural violence, rooted in slavery and colonialism, which Bere asserted have condemned generations to a subhuman identity. Addressing this goes beyond education, healthcare and other development issues and delving into the injustices that are at the heart of Africa's stigmatisation, as well as thinking about TJ as a forward-looking project that prevents the creation of further victims.

Bere critiqued the AUTJP's focus on state-run mechanisms, noting that in many countries state actors are complicit in abuses and lack political will to implement TJ fully, either avoiding it or using it to pursue their own interests. He advocated for inclusion of more non-state processes in the definition and development of new approaches to TJ, particularly bottom-up civic actions and alternative accountability and truth-recovery processes led by affected communities.

Musa Gassama, Director of the Human Rights Division for the United Nations Mission in South Sudan, echoed Bere's comments in arguing that formal peace and TJ processes have been found wanting in addressing not only structural injustices but also democratic deficits, noting the need for informal measures and rituals to complement formal ones. He reflected that governance institutions on the continent tend not to distribute state resources equally and to perpetuate discrimination and marginalisation of certain groups, ensuring unequal access to education, shelter, employment, information and other basic needs and goods. Democratic deficits, meanwhile, ensure that key decisions affecting citizens are compromised by the elected few. Gassama argued

14 Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011).

that structural injustices combined with democratic deficits create the foundations for intrastate conflicts, as marginalised citizens turn to armed violence to address their situation. Under these conditions, rebel groups are in a strong position to recruit disgruntled youths from marginalised communities, particularly in cases where natural resource extraction is in question.

“Through its instruments, the AU provides guidance in addressing not only legacies of conflicts and civil and political rights violations but also democratic deficits and structural injustices.”

*Musa Gassama*

TJ thus needs to address communities’ long-term grievances, Gassama argued, and enhance community participation in peace and TJ measures as well as decision making and political processes. He recommended invoking the AU Agenda 2063<sup>15</sup> and the AUTJP, which provide guidance for addressing legacies of past abuses, including through socioeconomic transformation. He also recommended invoking the Sustainable Development Goals, particularly SDG 16, which includes targets relevant to TJ. Finally, Bere recommended exploring traditional justice mechanisms where official mechanisms are insufficient, which helps ensure a sense of local ownership and responsibility in processes of repairing social relations.

In her concluding remarks, Moyo-Kupeta pointed out that TJ mechanisms require long-term follow-up change processes, as well as creative thinking around how to address the injustices that are entrenched within us, and the ones we continue to perpetrate, whether consciously or unconsciously. Van der Merwe, in turn, argued that well-meaning truth commissions are based on an authoritarian model, with the commission acting as the intermediary taking passive victims’ statements to government for action as a once-off situation. He

asserted that TJ measures are opportunities to practice democratic processes and begin overcoming the divide between the state and citizens, so as avoid a return to the old style of government where victims and other citizens are ignored and marginalised.

“How do we engage citizens to know their rights, articulate what their demands are, formulate them on platforms of engagement with government so we practice these rights we’re talking about, these democratic processes of participation, transparency, accountability. This is what truth commissions and other processes need to demonstrate: how we are going to do things differently.”

*Hugo van der Merwe*

#### **Panel 4 – Addressing Transnational Conflicts, Crimes and Violations through Transitional Justice: Pushing the Boundaries of Transitional Justice and Regional Mechanisms to Tackle Cross-border Challenges**

Andrew Songa, Civil Society Secretariat Coordinator of the Charter Project Africa, introduced the panel by noting that civil wars on the continent have become internationalised in terms of both warring parties and victims. He raised the following questions: How do we define transnational conflict in Africa? Why should we address such conflicts through TJ? And can we point to examples of TJ being applied to transnational conflicts and violations?<sup>16</sup>

In beginning to answer these questions, Allan Ngari, Regional Organised Crime Observatory Coordinator for West Africa at the Institute for Security Studies, focused on violent extremism and terrorism. He commented that efforts to address these challenges tend to be

15 See <https://au.int/en/agenda2063/overview> (accessed 25 November 2021).

16 See Melvis Ndiloseh and Hafsa Maalim, “Transitional Justice in Crisis Situations: Addressing Violent Extremism, Beyond a Militarised Approach,” African Union and Centre for the Study of Violence and Reconciliation Policy Brief (2021).

state-centric and highlight the role of security forces. He argued that despite the serious violations, indiscriminate detentions, widespread discrimination and other problems resulting from this militarised approach in Mali, Nigeria and other contexts, the Southern African Development Community lost an opportunity to go a different way in dealing with the ongoing insurgency in Cabo Delgado, Mozambique. Experience shows the need for a holistic approach to bring an end to such conflicts. Ngari noted that while money is being channelled to military interventions, criminal justice systems have been left underfunded and ill equipped to handle violations by extremist and military actors alike, especially as they number in the thousands in African contexts.

**“We are full of normative frameworks on the continent but they rarely speak to each other, they are seen almost as silos, yet organised groups, extremist groups don’t specialise in one area only—it’s all connected and it’s important for our responses to be connected.”**

*Allan Ngari*

Turning to the drivers of violent extremism, Ngari listed socioeconomic inequality, historical injustices, divisions along social identity lines and mistrust within communities. While most contexts facing extremism in Africa are not yet in transition, he noted that TJ mechanisms can be useful tools, particularly along with complementary measures from other fields, like peacebuilding and development. He advocated for a multi-sector and multi-disciplinary approach that incorporates lessons from TJ, including guidance from the AUTJP. Using the example of the Lake Chad Basin, he argued for a mix of regional, national and subnational prosecutions, truth recovery measures, reparations and institutional reforms (guarantees of non-recurrence) that include but also look beyond mainstream TJ mechanisms. Ngari highlighted the need for military and other state actors to respect due process for violent extremists, despite the latter’s disregard for rule of law. He also highlighted civil society’s importance in

providing humanitarian, rehabilitation and other support in affected areas.

Responding to comments and questions from participants, Ngari argued that the Malabo Protocol offers a rich well to draw from, with violent extremism falling under the remit of the African Court of Justice and Human Rights. He also argued for a return to discussions of activating the Court, particularly with regard to accountability not only for individual actors but also for states, as well as transnational crimes.<sup>17</sup> He lamented the siloed approach of the different actors dealing with such crimes, at the national and international levels, advocating for better use of regional frameworks that enable cooperation, as well as more bilateral and multilateral arrangements with international actors, for example in Europe. Turning to regional economic community instruments and agreements, Ngari recommended evidence-based research on how TJ can address transnational violations and that regional bodies reflect on existing platforms and infuse them with TJ ideas and practices, while also making sure their application is contextualised.

**“We can’t have the national function when we don’t have the regional bodies providing some leadership.”**

*Jasper Ukachukwu*

Jasper Ukachukwu, Senior Program Officer at the Centre for Democracy and Development West Africa, echoed Ngari’s argument for moving beyond a solely militarised approach to reducing violent extremism. He lauded combining ‘hard’ and ‘soft’ interventions, particularly as extremism is driven by issues of socioeconomic inequality and exclusion. Ukachukwu highlighted that divisions based on ethnicity and other social identities are another driver, which traditional justice mechanisms within the framework of TJ may be best placed to address, noting that there are many commonalities among the cultural practices of different peoples across borders in Africa. He similarly noted criminal justice systems’ lack of capacity and the need for a broad suite

17 See Sarah Nimigan, “The Malabo Protocol, the ICC, and the Idea of ‘Regional Complementarity,’” *Journal of International Criminal Justice* 17 (2019).

of TJ measures to fill the gaps. Arguing for more complementarity and cooperation between national and regional efforts, Ukachukwu recommended expanding the AUTJP framework to regional bodies, like the Economic Community of West African States is doing; founding regional bar associations; and establishing a continental reparations fund for victims of national and transnational violations.

Songa closed the panel by reflecting that transnational violations require a holistic approach that is enabled by existing regional and international instruments, which also requires political will at multiple levels. Despite substantial progress in TJ mechanisms in Africa, more needs to be explored and done, particularly by the AU, regional economic communities, national governments and civil society, with shared responsibility.

“Effective remedies for victims of transnational conflicts and crimes would require a holistic approach to TJ that seeks to eliminate zones of impunity, and we have AU normative instruments as well as international principles that open the door to this approach, even if it’s politically difficult.”

*Andrew Songa*

### **Panel 5 – Addressing Climate Change Impacts through Transitional Justice: Adopting Transitional Justice as a Tool and Lens for Securing Climate Justice**

Sarah Kihika Kasande, Head of Office for the International Center for Transitional Justice Uganda, launched this panel by stating that climate change is a worldwide crisis with numerous human security risks, compounded by environmental degradation and conflict. Climate impacts and harms are disproportionately affecting countries that did not

contribute the majority of greenhouse gas emissions, which emerged from the rapid industrialisation and burning of fossil fuels by countries in the global North. In Africa, populations are affected the most by climate change while contributing the least to it and facing the additional burden of adapting and responding to its effects. Kasande asked what role climate change plays in conflicts in Africa and which TJ approaches could be used to address historical and ongoing injustices related to climate, which is particularly relevant with the COP27 occurring in Africa in 2022. She also noted that the International Criminal Court is discussing the possibility of including the crime of ecocide in its remit, highlighting the need for African state and other actors to engage in this debate.<sup>18</sup>

“The issue of inclusion is key, looking at who sets the climate agenda, who gets to determine the approaches to remedying climate impacts, and do the people most affected have a voice in these conversations, and how we make sure they do.”

*Sarah Kihika Kasande*

Jasmina Brankovic, Senior Researcher with CSV, discussed using TJ ideas and measures to address responsibility for past emissions and build solidarity for future collective action on climate change, arguing for the application of the more transformative African approach to TJ promoted by the AUTJP, which is in line with climate justice principles. She suggested options for applying AUTJP provisions to the climate context, including an international, regional or domestic truth commission on climate harms and responsibilities run by a United Nations body, the AU or civil society, and redress administered by an international reparations commission that is guided by national expert panels providing evidence of climate harms and losses. Brankovic also proposed redistributive justice and diversity management as part of ensuring a fair and just

18 See Jasmina Brankovic, Augustine Njamnshi and Christoph Schwarte, “Climate Focused Transitional Justice,” Centre for the Study of Violence and Reconciliation, Pan-African Climate Justice Alliance and Legal Response International Policy Brief (2021); Gugu Nonjinge, “Peacebuilding and Conflict Resolution in Africa Must Include Impacts of Climate Crisis,” *Daily Maverick*, 14 April 2021.

transition to climate-neutral economies, and expanding the horizons of climate solutions to institutionalise a culture of human and peoples' rights.

**“Our responses to climate change are not the first time people have had to navigate complex, historically rooted tensions about the relationship between responsibility for past and future actions. TJ provides ideas and practices for addressing harms done in the past while building solidarity in the present to lay the groundwork for a better future with fewer harms.”**

*Jasmina Brankovic*

Brankovic noted that TJ provides 30 years of experience and learning from failures in addressing transitional needs, while also demonstrating that progressive norm change is possible in the climate space if actors can think outside the constraints of current technicist solutions and negotiations. She pointed out that addressing climate change adequately requires addressing systemic problems and inequalities, which calls for identifying synergies among the activities of diverse actors and ensuring their collaboration to build solidarity. She recommended starting with one or two TJ mechanisms for climate change, such as a truth commission or a memorial to victims of climate harms, and thereby creating a precedent to which people could respond and build on, which might spur additional TJ measures and normalise the application of TJ tools in this new arena.

Augustine Njamnshi, Continental Executive Board Member of the Pan-African Climate Justice Alliance, reiterated the extent to which African countries are disproportionately affected by climate change, despite not causing it, while those who did cause it continue to benefit. Since the signing of the Rio Declaration in 1992, the concept of climate responsibility has been steadily diluted, Njamnshi noted, and climate negotiations have been plagued by a lack of trust and leadership. The fading discussion of reparations for loss and damage is a case in point. Njamnshi

suggested that the success of the global North's mobilisation to address COVID-19 demonstrates that it is lack of good faith that is causing delays in addressing climate change, along with limited direct experience of climate harms. He argued that by looking backwards at responsibility for climate change, we can bring trust and empathy back into the climate negotiations looking forward. He also brought attention to the oil lobby and corporations, which have ignored evidence of climate change since the 1970s in pursuing fossil fuel production, and need not only to be held to account but also to take responsibility themselves, alongside state actors.

**“It is not lack of means, technology or even scientific knowledge that is delaying climate action, it is lack of good faith and trust.”**

*Augustine Njamnshi*

Referring to the wide range of TJ processes, Njamnshi emphasised that different measures can be used creatively in the climate space and complement other international and national efforts, from technicist to more substantive ones. He noted that governments in Africa discuss climate finance but themselves do not take adequate responsibility for their people, at times to the extent of absorbing financing through corruption. Pointing to the increasing acceptance of the idea of a special rapporteur on climate change and the rise of climate justice as a framework since 2008, Njamnshi asserted that TJ will be equally accepted in the climate context in time. It is Africa, with its special circumstances and experiences, that can bring these tools into the climate negotiations and other efforts to address climate change and promote climate justice. By showing the harms climate change is causing ordinary people in their daily lives, we can put a human face on our efforts and show how essential they are—for example, with a truth commission. Njamnshi concluded by likening our planet to the Titanic, with the global South on the lower decks and the global North on the upper decks, but all on a sinking ship whose course needs to be corrected by working together.

### **Panel 6 – Youth and Transitional Justice: Harnessing Africa’s Demographic Dividend for Participation and Engagement in Transitional Justice Processes**

Mandipa Ndlovu, a research analyst, stated that the panel would focus on youth participation and identifying inroads to their participation in TJ, calling on attendees to hold in mind that TJ is enacted through communication and socialisation. She argued for implementation of existing instruments and institutions in order to address the effects of exclusion and conflict on young people.<sup>19</sup>

**“Our mechanisms exist, the policies exist, the frameworks exist, but the rollout is a different story. There are structural guns pointed at young people as the most vulnerable in society.”**

*Mandipa Ndlovu*

John Ikubaje, Senior Political Officer for Human Rights and Transitional Justice in the AUC PAPS, presented on what the AU is doing to promote youth participation in TJ on the continent, asserting that the participation of youth and other marginalised groups has always been an AU priority. He noted that popular participation is a defining factor for the legitimacy and sustainability of policies, which is why the AU ministers for economic planning and development and the United Nations Economic Commission for Africa adopted the African Charter for Popular Participation in Development and Transformation in 1990, which underpins the AU’s work in this area.<sup>20</sup> Ikubaje argued that as youth constitute the large majority of the African population, they should be at the centre of all policy processes from conceptualisation to implementation, and not just in TJ.

Ikubaje listed the following AU initiatives that promote youth participation: the African Youth Charter,<sup>21</sup> which

enables youth to be active in democratic governance, peace and security; the African Youth Volunteer Programme, which recruits youth after their first degree to work within AU organs; and the African Youth for Peace programme under PAPS, which involves youth in peace processes and trainings, with youth as executives. He also pointed out the AU’s plan to establish YouthWise, which will be similar to the Panel of the Wise and FemWise, to support peace processes on continent; capacity building initiatives leading to the Pan-African University; and AU–regional economic community youth capacity building programmes. Ikubaje noted that the AU succeeded in ensuring young people were involved in the development of the AUTJP. Recognition of the prevalence of youth tokenism led to the inclusion of Section 3 on cross-cutting issues in the policy, with the aim being not just consultation but participation. The AUC has developed a roadmap for the implementation of the AUTJP for 2020–2024. The roadmap includes research, technical support to member states, trainings and fellowships for African youth involvement in TJ.<sup>22</sup>

**“Popular participation has always been a priority for the AU, and not just for youth.”**

*John Ikubaje*

Steven Bernardus Harageib, of the Office of the First Lady of Namibia, reflected that there is a groundswell in youth engagement in political processes in Africa and official support for it, using the example of the appointment of an AU Youth Envoy for mainstreaming and expediting youth issues and concerns. While acknowledging this progress, he noted a need to improve how stakeholders work together and find synergies for youth involvement, especially given the challenge of states turning inward to deal with COVID-19 instead of investing adequately in regional cooperation. With efforts to strengthen TJ and build

19 See “Youth Inclusion in Transitional Justice Policy in Africa: Youth Contribute to Shaping the Way Forward,” Centre for the Study of Violence and Reconciliation Policy Brief (2022).

20 See <https://repository.uneca.org/handle/10855/5673> (accessed 25 November 2021).

21 See <https://au.int/en/treaties/african-youth-charter> (accessed 25 November 2021).

22 African Union, *Roadmap for the Implementation of the African Union Transitional Justice Policy* (May 2020).

post-conflict societies, Harageib argued for investing in education, healthcare (including mental health) and entrepreneurship to promote inclusive development, avoid young people facing inequality and being caught in cycles of poverty, and prevent this undermining the success of TJ work on the continent.

Noting that Namibians are still struggling with legacies of violations and intergenerational trauma, but there are only two public psychologists in the country, Harageib recommended streamlining and funding mental health and psychosocial support services across the board in member states, making community-based counselling more accessible and raising awareness of mental health in the population. He suggested that young people involved in TJ should come from different sectors and disciplines to reflect the diversity of the population and different experiences of trauma. Reflecting that he had witnessed a higher level of political engagement with and discussion of mental health on the continent, he argued for leveraging that energy and translating lived experience into policy, while linking community and national efforts.<sup>23</sup>

**“Inequality is the focus as we approach 2030, and we need to think about closing the inequality gap in our development agenda, climate change, peace, and across different sectors, and part of the solution is making sure young people are represented at regional, national, community level.”**

*Steven Bernardus Harageib*

Usani Odum, a human rights lawyer, started by referring to protests in Nigeria, Sudan, South Africa and elsewhere on the continent, which were led by young people and led to social change. Reflecting that young people face disproportionate impacts from socioeconomic exclusion and conflict, he noted that the AUTJP identifies young people and children as a

priority. Discussing Boko Haram attacks, Odum pointed out that young people are both the main victims and perpetrators, and that the lack of education and development caused by the insurgency is trapping youth in socioeconomic exclusion.<sup>24</sup> He then argued that given the positive and negative involvement of young people in social media, policy makers and other stakeholders need to engage actively with youth via social media. Odum suggested that the AU and regional economic communities can do more to engage young people in peace and TJ processes with proper implementation of instruments and programmes, using the benchmarks in the AUTJP. He also suggested that member states need to do more to effect the redistributive justice provided for in the AUTJP by states, as exclusion fuels conflict.

**“It is often said that war is not possible without the youth—this is the truth. It is also invariably the truth that peace processes, including TJ, will not succeed unless young people are made an important pillar of such a process.”**

*Usani Odum*

Responding to the moderator’s and participants’ comments, Odum said it is not really existing legal instruments at the regional level that perpetuate impunity, but rather the lack of leadership and implementation at the national level. Governments need to go beyond tokenism and properly involve young people. Ikubaje focused on corruption and patronage networks, stating they breed marginalisation, oppression and insecurity, as they exclude certain groups and negatively impact on service delivery and cause civil unrest. Pointing to The Gambia’s upcoming Anti-Corruption Commission, he identified such initiatives as part of institutional reforms within TJ. He concluded that member states should take proactive measures, like the AU, to have programmes to entrench active youth participation in policy processes, and that youth must be

23 See Jasmina Brankovic, *Integrating Mental Health and Psychosocial Support into Transitional Justice in The Gambia: Practitioner Perspectives* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2021).

24 See Idayat Hassan and Justin Tyvoll, *After Boko Haram: Prospects for Transitional Justice in North East Nigeria* (Abuja: Centre for Democracy and Development, 2018).

proactive in pursuing this. Harageib, meanwhile, advocated for contextually focused mental health and psychosocial support services in transitional countries.

### ***Panel 7 – Examining the Impacts of the Pandemic in Transitional Justice and Peacebuilding in Africa: Leveraging Technology and Adopting a Human Rights and Transitional Justice Lens to Addressing COVID-19 Impacts on the Continent***

Makmid Kamara, Director of the Africa Transitional Justice Legacy Fund, introduced the panel by pointing to the scale and multifaceted nature of the impacts of COVID-19 in Africa, including on TJ. Using the example of Guinea, he noted that the pandemic exacerbated lack of political will for TJ, with the government holding a referendum to change the constitution and increase presidential powers amid the pandemic, with the result of a coup. Across Africa, civic spaces shrank as states instituted restrictive measures to curb the spread of COVID-19. In South Sudan, The Gambia and elsewhere, official TJ processes were not begun or suspended, as were more informal community-based measures. Most civil society organisations put projects on hold and even had to let staff go. In this context, Kamara asked what challenges the pandemic raised for TJ and what opportunities for innovation it presented. He noted that the presenters would answer this question through the lens of mental health and psychosocial support (MHPSS).<sup>25</sup>

**“A shift in the paradigm in TJ is key—a focus on psychosocial support and interventions, on mental health, on trauma healing, on the community level is really key.”**

*Makmid Kamara*

Angi Yoder-Maina, Executive Director of the Green String Network, responded that the pandemic and official responses to it exacerbated inequality and other causes

of conflict. At the same time, many peacebuilding efforts were put on hold. This, along with the isolation, stress and other consequences of the pandemic, impacted negatively on the mental and emotional wellbeing of many people, including peacebuilding and TJ practitioners. People tend to think of mental health as an individual responsibility, but Yoder-Maina argued that it is a communal issue that requires a collective response. This means building organisations, communities and other collectives for supporting each other. Yoder-Maina reflected that, for most people, self-care implies activities like taking a bath, massage, exercise and not checking work emails. Using the example of a peacebuilder she knows who cannot take a bath because she does not have easy access to clean water, Yoder-Maina argued that many do not have the time and privilege to engage in such activities. It is also hard for self-care to be effective in an unjust world where one’s daily life is marked by microaggressions and discrimination.

**“Mental health is a social justice issue—one that human rights defenders and peacebuilders must engage with.”**

*Angi Yoder-Maina*

Community care enables people to show compassion to each other and support others to do self-care—people do not even have to ask for help as support is simply available. Yoder-Maina suggested that the Western therapeutic model is largely a deficit-based discipline, and that TJ provides an opportunity to look at the local level for additional community-based approaches that build on strengths and enable people to be present for each other. Turning to innovations the pandemic spurred, Yoder-Maina noted that her organisation built on their in-person approaches to start peer support programmes as well as engage 12–14 people in 12-week journeys in WhatsApp groups in Kenya, with facilitators sharing short videos on how the brain works, how stress occurs and embodied practices like breathing to prompt conversations on how to take care

25 See Olivier Kambala wa Kambala, “COVID-19, Transitional Justice and Victims’ Experiences in Africa,” Centre for the Study of Violence and Reconciliation Policy Brief (2021).

of ourselves and our collectives. The organisation is also using a fintech platform to pair a facilitator with savings groups and others in Somalia, accounting for the relationship between peace and livelihoods.

Celeste Matross, Manager of the Mental Health and Psychosocial Support Programme at CSV, agreed that peacebuilding and TJ need to be contextual and driven by people affected by conflict. She noted that traditional Western psychological interventions are not the end-all with regard to healing, instead promoting a multi-level, multi-systemic approach to address the fracturing in African societies caused by historical and ongoing traumas, which has been exacerbated by the pandemic. Matross argued for recognition of the biological, psychological and social impacts of poverty, inequality, lack of opportunity, HIV and other pandemics, as well as historical, ongoing and intergenerational violence, which are worsened by violations by security forces and stigmas around mental health challenges.

Referring to lessons from the Pan African Reparations Initiative, Matross listed innovations in MHPSS arising from the pandemic. In Uganda, organisations used social media to raise awareness of MHPSS, targeting youth, and offered tele-services to hard-to-reach populations, such as those in prison. In CSV's trauma clinic in South Africa, practitioners noticed that the pandemic raised awareness of mental health, the value of getting help and its importance in preventing violence. She recommended additional research on the effects of violence in the context of historical trauma and COVID-19; trainings of community members to provide psychosocial support at the community level, including as a source of income; and community dialogues to promote social cohesion and healing. She also recommended support groups for key actors in communities to change from trauma carriers to peace carriers, especially for men and youth; empowerment programmes for communities to advocate for their rights to the government, including the right to rehabilitation; media campaigns on trauma healing; and crisis interventions for frontline and other vulnerable workers. Matross highlighted the need to undertake

these interventions in different languages to ensure greater local impact.<sup>26</sup>

Responding to moderator and participant comments, Yoder-Maina reiterated that technology has enhanced existing practices, with Green String Network translating in-person facilitation into story-based short videos and infographics to share with wider networks, while making sure that it is contextually, culturally and linguistically specific. She added that peacebuilding and TJ are not simply technician, and concluded that TJ must always adapt to the changing needs and opportunities in each context. Matross agreed that technology allows more people to access capacity building initiatives to push for their vision of TJ and engage with MHPSS. Referring to the example of Guinea, she noted that the pandemic and the coup had created an opportunity for civil society partners to restart the TJ conversation, via town hall meetings, mobile exhibitions of violations and working with communities to identify mass graves. Emphasising the growing acceptance of the place of MHPSS in TJ on the continent, Matross ended by recommending that stakeholders cooperate on pushing a holistic TJ agenda.

**“Mental health impacts on your ability to be economically independent. Lack of employment leads to mental health challenges. It’s this vicious cycle. When a country is in a fragile economic state, it’s the most marginalised people who suffer the most, their mental health is the most affected. You need to work on both.”**

*Celeste Matross*

On behalf of Commissioner for Political Affairs, Peace and Security Bankole Adeoye, John Ikubaje closed the Forum, stating that the AU will make a concerted effort to take the recommendations emanating from the event forward, and noting the need for various stakeholders to partner on making this a reality.

26 See the posts on the Centre for the Study of Violence and Reconciliation Trauma Clinic Blog, <https://traumaclicblog.wordpress.com/>; Jasmina Brankovic, *Integrating Mental Health and Psychosocial Support into Transitional Justice in The Gambia: Practitioner Perspectives* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2021).

# RECOMMENDATIONS OF THE FIFTH AFRICAN TRANSITIONAL JUSTICE FORUM

These recommendations should be read alongside the tailored recommendations of the first four African TJ Forums.<sup>27</sup>

## For the African Union and Regional Economic Communities

1. Appoint an AU Special Envoy on TJ in Africa or a related focus area to promote a regional TJ agenda. Link the missions of the new Special Envoy and the AU Special Envoy on Peace and Security to promote a holistic approach tackling the cultural impunity of past and present mass human rights violations.
2. Follow the *Roadmap for the Implementation of the African Union Transitional Justice Policy*.
3. Develop TJ policies for regional economic communities that are in line with the AUTJP.
4. Found regional bar associations.
5. Establish an AU-coordinated continental reparations fund for victims of violations in national and transnational conflicts.
6. Ensure coordination among the AU, other regional bodies and their member states, while aligning the implementation of regional instruments on peace and TJ issues on the continent.
7. Invest in research and knowledge generation on African TJ experiences, including options for applying AUTJP principles to diverse situations beyond mainstream TJ concerns, including transnational conflicts and violations, violent extremism and climate change impacts and harms.
8. Expand research and initiatives on promoting socioeconomic transformation through TJ on the continent, particularly for women, young people and other marginalised groups.
9. Sensitise member states and regional and international stakeholders to traditional justice mechanisms as a key component of mainstream TJ and one of the seven indicative elements of the AUTJP.
10. Create a repository of knowledge on the range of traditional justice mechanisms in Africa to inform the mainstreaming of such measures in TJ.
11. Support not only state-run TJ measures but also a range of civil society and community-based TJ initiatives, including but not limited to traditional justice mechanisms.
12. Proactively approach member states to develop national strategies for TJ, instead of waiting for requests for assistance.
13. Apply a gender lens to all TJ initiatives by addressing gender biases in TJ mechanism design and implementation; acknowledging women's and girls' role not only as victims of SGBV but also as combatants and as peacebuilders; addressing SGBV against men and boys; and addressing SGBV against LGBTQI+ persons.
14. Invest in funding and capacity building for gender justice within TJ initiatives.
15. Establish technical teams with training in gender justice to support TJ efforts.
16. Promote the Malabo Protocol and the activation of the African Court of Justice and Human Rights.
17. Accounting for their majority in the African population, position young people at the centre of policy processes from conceptualisation to implementation, including TJ processes, through

<sup>27</sup> See "Charting the Course for Transitional Justice in Africa: Recommendations of the 2017–2020 African Transitional Justice Forums," Centre for the Study of Violence and Reconciliation Policy Brief (2021).

cooperation with a range of stakeholders on the continent.

18. Integrate and normalise MHPSS in TJ initiatives.
19. Regarding climate change, apply AUTJP provisions and African TJ policies and measures to address responsibility for past emissions and climate harms, and to build solidarity for collective action, with an appropriate oversight mechanism.

#### For Member States

1. Design and implement peace and TJ processes in line with the frameworks laid out in the AUTJP and the complementary ACHPR *Study on Transitional Justice* and study on *Addressing Human Rights Issues in Conflict Situations*.
2. Align TJ policies and practices with the *Roadmap for the Implementation of the African Union Transitional Justice Policy*.
3. Instead of one or a few short-term mechanisms from the TJ 'toolkit', invest in numerous long-term TJ processes, sponsored by the state and civil society, which promote national dialogue and collective healing, reducing opportunities for conflict recurrence.
4. Implement African traditional justice mechanisms as central to mainstream TJ, as well as peacebuilding and post-conflict reconstruction and development.
5. Apply traditional, civil society-run and community-based mechanisms for appropriate offenses, while strengthening the capacity of the national justice system to complement these measures.
6. Ensure TJ mechanisms engage not only with violations in the recent past but also historical injustices and socioeconomic marginalisation to address the root causes of conflict, with reference to the AUTJP, AU Agenda 2063 and the Sustainable Development Goals (especially 16).
7. In line with the transformative approach in the AUTJP, invest in education, healthcare and entrepreneurship to promote inclusive development, particularly to support young people and prevent their participation in conflicts.
8. Move beyond a solely militarised approach to addressing violent extremism by combining 'hard' and 'soft' interventions.

9. Integrate and normalise MHPSS in the design, implementation and follow-up of TJ processes.
10. Fund, expand and streamline MHPSS as part of healthcare at the national level, combining Western therapeutic models and local support practices, making community-based counselling accessible and raising awareness of mental health needs in the population.
11. Provide financial and technical resources for trainings for women, youth and other marginalised individuals and communities to participate in policy formation and peace and TJ processes.
12. Regarding climate change, apply AUTJP provisions and African TJ policies and measures to address responsibility for past emissions and climate harms, and to build solidarity for collective action.
13. Invest in information technologies that facilitate democratisation and peace and TJ processes.
14. Invest in formal and informal educational curricula and materials that normalise the principles in the AUTJP and other regional and international instruments that promote peace and human dignity.

#### For Civil Society

1. Invest in a knowledge generation and dissemination agenda on TJ in Africa to raise awareness of the AUTJP and promote innovative ideas and practices that improve and complement existing approaches among regional actors, AU member states, young people, the larger public and other stakeholders.
2. Normalise traditional justice mechanisms as mainstream TJ measures and highlight non-state processes, particularly bottom-up ones, in the definition and development of new approaches to TJ.
3. Contribute to a repository of knowledge on the range of traditional justice mechanisms in Africa to inform the mainstreaming of such measures in TJ.
4. Emphasise the links between conflict and socioeconomic marginalisation, including via broad-based public hearings on poverty and inequality, to highlight the everyday suffering of ordinary people and the need to address it to prevent violence.
5. Apply an inclusive gender lens and principles of gender justice in all TJ-related efforts.

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6. Promote the participation of young people, women and other marginalised groups in policy formation and the design, implementation and follow-up of TJ measures.
  7. Regarding climate change, apply AUTJP provisions and African TJ policies and measures in research and advocacy to address responsibility for past emissions and climate harms, and to build solidarity for collective action.
  8. Promote MHPSS as a core component of every stage of TJ and its follow up.



Government of the Netherlands