

## Strategies for the effective implementation of the African Union Transitional Justice Policy

Tim Murithi

### Introduction

In February 2019, the African Union (AU) Assembly of Heads of State and Government formally adopted the African Union Transitional Justice Policy (AUTJP) which outlines a broad range of processes for addressing the legacies of past violations and mechanisms for building inclusive societies. The AU's adoption of this policy is a unique innovation, as it is the first time in its history that the African continent has enumerated and institutionalised its own approach to addressing the past as a necessary pathway to building more inclusive and stable societies in the future. However, despite the AUTJP's adoption, this policy brief will discuss how both governmental and societal actors in AU member states have not fully engaged and implemented the policy at the national level. Similarly, regional economic communities (RECs) have not sufficiently engaged with the AUTJP and developed their own regional strategies to advise and guide their member states. This can contribute towards stabilising their countries and forging more inclusive and democratic societies. The policy brief will also discuss the importance of the creation of a continental network of transitional justice practitioners and analysts who can provide technical support and guidance to all 55 African countries. All of the continent's countries require some form of transitional justice intervention, if they have not already implemented a national process of addressing the past as a means of sustaining peace in the future.

### Adoption of the AUTJP

The African continent remains afflicted by violent conflicts, the disproportionate suffering of civilians from human rights violations including gender-based violence, violent extremism, and illicit trafficking of weapons, narcotics and people through globalised exploitation. These processes fuel the displacement of people across the continent and perpetuate humanitarian crises. In the past two decades, there has been a proliferation of mechanisms to address past violations in war-affected countries and regions. It is now evident that it is vitally important to improve our understanding of how to ensure the durability and sustainability of national processes for reconciliation, peace and security interventions. There is now a recognition that the cyclical nature of conflict points to the critical need to move beyond temporary stalemates and ceasefires, peacekeeping deployments and military operations, that are so common in this era. There is a need to move towards a continental policy informed by intentionally confronting the underlying grievances that have fueled decades of animosity and violence on the continent.

The formal adoption of the AUTJP in February 2019 has provided a framework to engage national governments, RECs, civil society networks, analysts

and other stakeholders on the importance of implementing processes that will contribute towards sustaining peace and security in Africa. Civil society actors were closely involved in working with the AU Department of Political Affairs to provide technical support and input that led to the formal adoption of the AUTJP.

The term ‘transitional justice’ remains largely a misunderstood notion. The adoption of the AUTJP provides a common African set of policy guidelines that national governments and societal actors can utilise to plan, design and implement their own in-country process to promote redress and accountability for past grievances. The AUTJP also illustrates the link between transitional justice, peacebuilding and security, specifically relating to the connection between bringing together former enemies in a process of sustained dialogue, ensuring redress for past wrongs, as a pathway towards developing a common vision to shape a new inclusive future. Furthermore, the AUTJP demonstrates that transitional justice is now understood to involve a broad spectrum of interventions that are embedded in peacebuilding and developmental processes.

### The importance of transitional justice to Africa

It is evident that there is an urgent need across Africa to enhance the capacity of national institutions and societal actors to promote transitional justice, peace and security. Several African countries have adopted and implemented transitional justice processes and designed institutions to guide their national processes, such as Burundi, Côte d’Ivoire, Gambia, Ghana, Liberia, Kenya, Mauritius, Rwanda, Sierra Leone, Tunisia and Uganda. In addition, some countries are still deeply affected by crises and have not even attempted to establish the necessary transitional justice frameworks at a national level to guide their in-country processes, such as the sectarian crisis in Cameroon and the escalation of violent extremism in northern Mozambique’s Cabo Delgado region. Moreover, it is necessary to further stabilise the situation in countries such as the Central African Republic (CAR), Ethiopia, Democratic Republic of the Congo (DRC), Mali, South Sudan, Sudan and Zimbabwe, which have attempted to implement fledgling transitional justice processes. In some instances, African countries need to establish new institutions to promote and sustain national reconciliation, such as in Lesotho, Libya and

Somalia. Somalia continues to be affected by instability despite the long-standing presence of the AU Mission to Somalia (AMISOM).

## Implementation of the AUTJP

### Implementation provisions of the AUTJP at the national level

The AU has a track record of the non-implementation of its broad range of policy documents, which is why the AUTJP anticipates this challenge and dedicates the entire Section Four of the policy to identifying *Actors, Processes and Implementation Mechanisms*.<sup>1</sup> Specifically, the AUTJP identifies four actors who should take responsibility for its implementation:

1. AU member states;
2. Regional economic communities (RECs);
3. AU institutions;
4. Non-state actors including members of civil society.<sup>2</sup>

The AUTJP states that AU ‘member states shall have the primary responsibility with respect for pursuing transitional justice processes’ and that ‘they bear the responsibility for removing political and social impediments to the effective pursuit of transitional justice processes.’<sup>3</sup> The AUTJP also stipulates that member states are responsible for ‘guaranteeing the space for debate and advocacy on transitional justice and mobilising the support of all sections of society across political lines.’<sup>4</sup> The AUTJP is the outcome of a process that recognised the right of citizens to participate in framing transitional justice processes, specifically in the manner that it solicited and engaged the views of Africans across the continent. The AUTJP is framed in a manner that pre-emptively acknowledges that there will be inherent resistance from governments when it comes to genuinely confronting the violations and injustices that were perpetrated in the past and putting processes in place that will address grievances as a means of preventing the cyclical recurrence of tension and conflict in societies. The AUTJP anticipates that governments may not readily create and sustain societal spaces for African citizens to engage with issues relating to transitional justice, evident in its appeal to state actors to remove political and social obstacles as well as to commit to ‘guaranteeing space for debate and advocacy.’ Therefore, AU member states should adopt strategies that will facilitate a national dialogue on transitional justice in an open and inclusive manner.

AU member states should also adopt strategies that can domesticate the provisions of the AUTJP into national legislatures and embed its recommended processes within permanent national institutions to ensure the sustainability of transitional justice initiatives at a national level. In effect, the AUTJP places a significant amount of responsibility on AU member states to oversee, plan and execute the implementation of the policy.

The AUTJP also states that ‘RECs should encourage all national actors to pursue transitional justice processes.’<sup>5</sup> In terms of the continental level, it calls for ‘key AU organs and institutions to provide leadership in the implementation of the AUTJP, including the African Union Commission’ and the ‘AU Peace and Security Council, African Court of Human and Peoples Rights, African Development Bank, African Capacity Building Foundation’ and the Pan-African Parliament.<sup>6</sup> At the societal level, the AUTJP states that ‘civil society members, community-based organisations and the media should campaign for and facilitate the emergence of the necessary public national conversations and debates on pursuing transitional justice processes.’<sup>7</sup> Furthermore, the policy stipulates that ‘provision should be made for enabling these and other actors to play their role in creating forums for the documenting and reporting on transitional justice processes.’<sup>8</sup> In effect, the AUTJP recognises the central role that African citizens will play in pursuing and sustaining the implementation of transitional justice processes at the communal, national and regional levels.

Despite the existence of these demarcated roles for governments, inter-governmental and civil society actors, AU member states have not fully engaged with the AUTJP and are currently not sufficiently utilising it to guide their own internal transitional justice and peacebuilding processes. The uptake for the AUTJP has faltered and this is particularly due to the unprecedented pressures that the Covid-19 pandemic imposed upon governments and societies in terms of mitigating against the effects of the virus and addressing its effect on society and economic well-being across the continent. Covid-19 also fuelled and deepened trauma due to its amplification of already existing inequality and poverty on the African continent. The AUTJP can be utilised in combination with socio-economic programmes to alleviate the psychosocial effects of the pandemic and strengthen the inherent ability of African citizens to rebuild their societies and countries.

## Regional reconciliation and AUTJP implementation

Africa’s RECs have not sufficiently engaged with the AUTJP to develop their own regional strategies to advise and guide their member states. These strategies could contribute towards stabilising their countries and forging more inclusive and democratic societies. Section Four of the AUTJP states that ‘RECs play a key role in helping address the *regional and trans-boundary dimensions of conflicts or violent regression*, through promoting the normalisation of relationships between affected neighbouring countries and creating a common understanding of transitional justice processes.’<sup>9</sup> In effect, the AUTJP recognises that since conflicts, atrocities and violations take place across borders, then they have to determine how reconciliation can also take place through ‘regional and trans-boundary’ processes.

This would require implementing processes of truth recovery, accountability and redress across borders as preliminary processes to the pursuit of regional reconciliation.<sup>10</sup> The practicalities of how we operationalise regional reconciliation are challenging but not impossible to institute. The reluctance of nation states to devolve their sovereignty and to adopt processes that fall outside of their sphere of authority and control – through the establishment of cross-border institutions – will be the primary obstacle to implementing regional reconciliation. The AUTJP’s championing of a policy of regional and trans-boundary transitional justice is a recognition of the limitations of retaining a state-centric approach towards dealing with the past and ensuring redress and accountability.

Applying a regional lens to transitional justice and reconciliation processes requires that the war-affected states and communities close to each other recognise their regional interdependence. Furthermore, these states and communities need to engage in a genuine regional dialogue, based on a democratic attitude, to identify the issues that have caused deep divisions and generated violence in the past. Ultimately, the states and communities need to actively work collaboratively to address the legacies of socio-economic exploitation. As with processes promoting reconciliation nationally or locally, regional reconciliation mechanisms also require the creation of spaces to develop inclusive narratives on the past and shared visions for the future. There is a need to move beyond transitional justice and reconciliation processes which have been largely state-led and restricted to national borders. Consequently, despite

the growing acknowledgment of regional conflicts, regional reconciliation has *not* been the norm. The emphasis has been on pursuing national solutions or inward-looking state-centric solutions, to problems that require the adoption of a more expansive regional perspective. Consequently, governments and inter-governmental organisations could adopt regional and trans-boundary transitional justice initiatives as a strategic objective of their policies that focus on stabilising and promoting inclusive societies.

In practical terms, regional actors have to find collective solutions to the conflicts contained in their sphere of influence by leveraging the AUTJP to guide countries to implement their own localised national processes. Consequently, RECs should develop regional strategies to ensure a coordinated approach to promoting regional and trans-boundary transitional justice and reconciliation processes. Specifically, RECs must develop their regional strategies for the implementation of the AUTJP to complement their existing peace and security frameworks. However, the lack of resources and capacity means that these mechanisms remain incapable of promoting and sustaining regional peace, justice and reconciliation.

### Civil society, network building, and the implementation of the AUTJP

The AUTJP states that ‘it is imperative that national and local actors take the lead in planning, implementing, monitoring, evaluating and reporting on lessons learned in all phases of the implementation of the policy.’<sup>11</sup> In addition, it proposes that ‘the process for national dialogue, reconciliation and healing should enable faith leaders, traditional and community leaders, not only to play an active part in such processes ... but also pursue intra- and inter-community dialogue, reconciliation and healing at local levels.’ In effect, the AUTJP mandates local actors, including community leaders, to play a proactive role in the implementation of the AUTJP and in the creation of national spaces for dialogue on the approach that will be appropriate for specific countries and communal groups. The AUTJP presents an opportunity for the African continent to recalibrate the legacy of the enduring adversarial relationship between state and society, by assigning specific tasks to non-state actors, civil society organisations, faith leaders and traditional leaders. Specifically, the shared implementation of the AUTJP between state and non-state actors will encourage closer collaboration on the promotion of peacebuilding and reconciliation, which can have

positive side-effects in terms of forging platforms that can increase the interaction and exchanges between the state and society.

The AUTJP also envisages a technical role for civil society and think-tank actors to ‘support the production of relevant research and studies’ through processes that systematically ‘collect best practices and facilitate the sharing of such best practices with societies contemplating or pursuing transitional justice processes.’<sup>12</sup> Therefore, it is important to create a continental network of transitional justice practitioners and analysts, from civil society, think-tanks and governments, who can provide technical support and guidance to all of the continent’s 55 countries. These countries all require some form of transitional justice intervention if they have not already done so, to sustain peace in the future. African civil society actors need to take advantage of the opportunities presented in the AUTJP to establish a Pan-African network of enablers, who can provide strategic advice to AU member states, inter-governmental and civil society organisations on the implementation of the provisions of the AUTJP.

### The prospects for the AUTJP and the way forward

The adoption of the AUTJP is a significant milestone for the continent, in terms of providing a guideline for countries and societies to design and drive their own processes of redress and accountability for the harm done in the past. However, the uptake by AU member states and regional institutions of their own transitional justice policy has been disappointingly slow, which means that non-state actors have had to take the lead in sensitising, popularising and capacitating governmental and inter-governmental actors to engage with the provisions of the document.

The African continent continues to be a terrain of innovation in terms of the roll-out and experimentation with transitional justice approaches. However, a key challenge remains the failure by some governments, such as Sudan and South Sudan, to engage and utilise the AUTJP to design and implement specific nationally-generated transitional justice strategies. This is due to the political expediency of avoiding intrusive, in-depth and transformative interventions that might unearth and reveal the violations committed by members of the political and business elites in African countries. Governments may delay and frustrate the process of

pursuing redress and accountability, but they cannot prevent such processes from being implemented by other actors, such as youth and women collectives, particularly through communal processes. Furthermore, the attempts by some state actors to control and design the national institutions for pursuing transitional justice, as witnessed in South Sudan and Ethiopia, without adequately consulting and engaging with their wider societies, means that they will launch processes that are structurally flawed in their design and incapable of delivering on the hopes and aspirations of victims and survivors of past violations.

The centrality of the agency of state, regional, continental and non-state actors is also of vital importance if the African continent is to genuinely address the grievances which continue to perpetuate the cyclical violence witnessed across its regions. In the absence of state-driven transitional justice processes, local communal actors are taking the initiative to design and drive the implementation of their own peacebuilding and reconciliation processes. Such processes will continue to emerge and evolve across African countries because redress for harm done does not have to wait for state-led initiatives. These processes will also generate additional insights that can provide key insights and modalities for local actors in countries across the continent that are struggling to implement peacebuilding and reconciliation initiatives in communities.

Increasingly African conflicts, atrocities and violations are situated across borders, and therefore there are limitations in terms of continuing to adhere to a state-centric approach to deal with the past and pursuing redress and accountability. This policy brief assessed the importance and utility of the notion of regional reconciliation as a necessary strategy to contribute towards consolidating peace and security. Regional reconciliation as a deliberate and targeted approach does not have any precedence in terms of Africa's international relations – not in general nor in particular regarding Pan-African transitional justice and reconciliation processes. Such an approach would require implementing processes of truth recovery, accountability and redress across borders as preliminary processes to the pursuit of regional reconciliation. The practicalities of how we operationalise regional reconciliation are challenging but not impossible to institute. The reluctance of nation-states to devolve their sovereignty and to adopt processes that are outside of their sphere of

authority and control – through the establishment of cross-border institutions – will be the primary obstacle to implementing regional reconciliation.

## Policy recommendations

In light of the analysis above, this brief makes numerous policy recommendations to the following stakeholders:

### To the African Union member state governments and national stakeholders:

- Utilise the provisions of the AUTJP to design processes and institutions which will drive and implement their own national interventions relating to redress and accountability;
- Avoid delaying and frustrating the processes of pursuing redress and accountability that are vital for national stability and reconciliation;
- Consult widely and ensure citizen participation on the provisions of the AUTJP and how they are relevant to the society;
- Support the initiatives of local communal actors who are designing and driving the implementation of their own peacebuilding and reconciliation processes.

### To the African Union and RECs:

- Proactively raise awareness about the AUTJP during high-level summits and inter-governmental meetings;
- Develop their REC strategies for the implementation of the AUTJP, to complement existing peace and security frameworks;
- Adopt a regional reconciliation strategy to address trans-boundary dimensions of violent conflict and implement processes of truth recovery, accountability and redress across borders, to contribute towards continental peace and security.

### To African civil society actors:

- Accelerate efforts to sensitise, popularise and capacitate African governmental and inter-governmental actors to engage and implement the provisions of the AUTJP;
- Mobilise national and community-based organisations, specifically women and youth collectives, as well as the media, to campaign for, and animate, public national conversations and debates on adopting and pursuing the provisions of the AUTJP;

- Create forums for documenting and reporting on transitional justice processes;
- Support the production of relevant research and studies and collect best practices and share them with societies contemplating or pursuing transitional justice processes;
- Utilise the AUTJP to advocate for efforts to address the psychosocial trauma which has been exacerbated by the insidious effects of Covid-19 as part of the efforts to redress the legacies of historical injustices which have generated inequality and poverty in Africa;
- Create a continental network of transitional justice practitioners and analysts from civil society, think-tanks and governments, who can provide technical support and guidance to all of the continent's 55 countries.

**To the United Nations system and international partners:**

- Analyse and understand the provisions of the AUTJP, to effectively support national and regional reconciliation initiatives;
- Align policy frameworks and interventions targeting Africa, with the provisions of the AUTJP, to ensure that efforts are complementary, to avoid duplication and sabotage of African-led initiatives on the continent;
- Allocate resources in a manner that strategically supports the implementation of the provisions of the AUTJP.

## **Conclusion**

The AU declared 2014–2024 the Madiba Nelson Mandela Decade of Reconciliation in Africa, so it is timely and prescient that the AUTJP was adopted during this period. However, the continent still has a way to go to stabilise all of its regions and consolidate peace and security for its people. This policy brief assessed the most effective strategies to implement the AUTJP as a pathway to promoting peace and security at a communal, national, regional and continental level. The fact that all countries around the world need to engage in some form of introspection in order to address

the existing grievances in their societies means that the AUTJP stands out as a global example for other regions to follow. The AUTJP is a welcome addition to the arsenal of policy documents that can contribute towards identifying key strategies to prevent the recurrence of violence and to sustain peace and security initiatives. But it is not a panacea or a magic bullet that will solve the continent's problems. Governments and societies will have to undertake the challenging, arduous, painstaking and in-depth work of addressing the violations and exploitation of the past that is vital towards forging and building stable communities across the continent.

The adoption of the AUTJP is a significant milestone for the continent, in terms of providing a guideline for countries and societies to design and drive their own processes of redress and accountability for the harm done in the past. However, the strategic uptake by AU member states and regional institutions of their own transitional justice policy has been disappointingly slow, which means that non-state actors have had to take the lead in sensitising, popularising and capacitating governmental and inter-governmental actors to engage with the provisions of the document. Globally, Africa is playing a leading role in the innovation and development of transitional justice processes, mechanisms and institutions. Furthermore, through the adoption of the AUTJP, Africa has advanced its own home-grown approach to dealing with the violations of the past. Africa's experimentation with a broad range of norms has re-affirmed the interface between transitional justice, peacebuilding and reconciliation. African countries emerging from conflict will immediately be confronted by the demands for justice for the victims and survivors as well as the challenges of peacebuilding. In these situations, they will be able to draw upon the experiences of their fellow countries. In terms of future trajectories, the field of transitional justice will become increasingly relevant in a world in which an emphasis on redress and accountability for past injustices is becoming more pronounced.

## Endnotes

- 1 African Union (2019). Transitional Justice Policy, Section 4: Actors, Processes and Implementation Mechanisms, p. 25, Addis Ababa: African Union, [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 1 March 2021].
- 2 African Union (2019). Transitional Justice Policy, pp. 25–26.
- 3 African Union (2019). Transitional Justice Policy, p. 25.
- 4 African Union (2019). Transitional Justice Policy, p. 25.
- 5 African Union (2019). Transitional Justice Policy, p. 26.
- 6 African Union (2019). Transitional Justice Policy, p. 26.
- 7 African Union (2019). Transitional Justice Policy, p. 26.
- 8 African Union (2019). Transitional Justice Policy, p. 26.
- 9 African Union (2019). Transitional Justice Policy, p. 26.
- 10 Tim Murithi and Lindsey McClain Opiyo (2014). Regional reconciliation in Africa: Policy recommendations for cross-border transitional Justice. IJR Policy Brief no. 14, Cape Town: IJR, <http://www.ijr.org.za/home/wp-content/uploads/2012/07/IJR-Policy-Brief-No-14-web.pdf> [accessed 1 March 2021].
- 11 African Union (2019). Transitional Justice Policy, p. 25.
- 12 African Union (2019). Transitional Justice Policy, p. 28.

## Acronyms

AMISOM	– African Union Mission to Somalia	DRC	– Democratic Republic of the Congo
AU	– African Union	RECs	– Regional Economic Communities
AUTJP	– African Union Transitional Justice Policy		
CAR	– Central African Republic		

## About the author

Tim Murithi is Head of Programme, Peacebuilding Interventions at the Institute for Justice and Reconciliation, and Extraordinary Professor of African Studies, Centre for African and Gender Studies at the University of the Free State. He is also a Research Associate, at the Institute for Democracy, Citizenship and Public Policy in Africa at the University of Cape Town. He is a Board Member of the African Union Leadership Academy (AULA) and a former member of the Technical Committee of the Tana High-Level Forum on Security in Africa. He was previously, Head of the Peace and Security Council Report Programme at the Institute for Security Studies in Addis Ababa; Senior Research Fellow, Department of Peace Studies at the University of Bradford, United Kingdom; Senior Researcher, Centre for Conflict Resolution at the University of Cape Town, South Africa; and Programme Officer, United Nations Institute for Training and Research (UNITAR) in Geneva. Has worked with the African Union, including the Political Affairs, Peace and Security Departments. He is the author and/or editor of 11 books, including *The African Union: Pan-Africanism, Peacebuilding and Development*, *The Politics of Transitional Justice in the Great Lakes Region of Africa* and *The Routledge Handbook of Africa's International Relations*.

## ABOUT THE INSTITUTE FOR JUSTICE AND RECONCILIATION

The Institute for Justice and Reconciliation (IJR), established in 2000, is a pan-African organisation that works collaboratively with governments as well as inter-governmental and civil society actors to contribute towards building fair, democratic and inclusive societies across the continent, through transitional justice and peacebuilding interventions. The IJR's work is informed by the insights gained from working with governmental stakeholders and grassroots communities in countries such as Burundi, Central African Republic (CAR), Ethiopia, Eastern Democratic Republic of the Congo (DRC), South Sudan, South Africa and Zimbabwe. Historically, IJR has worked on interventions in Ghana, Kenya, Nigeria, Rwanda, and Uganda. Internationally, IJR has provided strategic and technical advice to stakeholders in Colombia, South Korea, Sri Lanka, Thailand, UK, and USA.

The IJR is a trusted advisor to key decision makers and inter-governmental actors on transitional justice and peacebuilding initiatives, and engages with the African Union (AU), Southern African Development Community (SADC), East African Community (EAC), International Conference on the Great Lakes Region (ICGLR), Intergovernmental Authority on Development (IGAD), European Union (EU) and the United Nations (UN) system. IJR has partnered with the UN Development Programme (UNDP) on a number of in-country interventions in Africa. IJR has positioned itself as a provider of choice of reliable qualitative data on public perception in the areas of peace and security. The pioneering South African Reconciliation Barometer, enables the IJR to be the leading African think tank in terms of providing public-opinion data in these areas. We welcome collaboration with like-minded partners and invite you to find out more about our work on our website: [www.ijr.org.za](http://www.ijr.org.za).

The Institute for Justice and Reconciliation would like to express its appreciation for the support that it receives from the Royal Norwegian Embassy and Ministry of Foreign Affairs, as well as the Swedish International Development Agency (SIDA).



### CONTACT US

Tel: +27 21 202 4071  
Email: [info@ijr.org.za](mailto:info@ijr.org.za)

### Physical and Postal Address

105 Hatfield Street  
Gardens  
8001  
Cape Town  
South Africa



[www.ijr.org.za](http://www.ijr.org.za)

The opinions expressed in this paper do not necessarily reflect those of the Institute for Justice and Reconciliation (IJR). Authors contribute to the IJR Policy Brief series in their personal capacity.

© IJR 2021

Designed, typeset and proofread by COMPRESS.dsl | [www.compressdsl.com](http://www.compressdsl.com)