Civil society engagement with the African Union Transitional Justice Policy

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Introduction

This policy brief will assess the role of societal actors in African Union (AU, or the Union) member states in engaging and supporting the implementation of the AU Transitional Justice Policy (AUTJP, or the Policy) at the national and regional level. The Constitutive Act of the AU states that one of the objectives of the Union is 'to build a partnership between governments and all segments of civil society' and to promote the 'participation of the African peoples in the activities of the Union'.[1] This policy brief will argue that Africa's transitional justice interventions have predominantly been driven by state actors, with the nominal support of non-state actors often in roles that are ad hoc and ineffectively defined. In addition, these transitional justice interventions across the African continent have not had the necessary impact to produce transformative outcomes in terms of peacebuilding and societal healing. This is partly due to the politicisation of state mechanisms and institutions. This brief will conclude with a number of policy recommendation on how to enhance the role of civil society organisations (CSOs) in supporting and implementing the AUTJP.

Civil society and African state relations

A key challenge has been the relationship between the state and civil society in Africa. At the heart of the nation-state project in Africa has been the attempt to consolidate these artificial political communities through processes of nation-building and state-building. A vital aspect of this attempt to forge states out of a plethora of 'ethnic nations' has been the sphere of civic association and social mobilisation around issues of concern and interest.[2] Civic, and increasingly political, associations in colonial Kenya, Uganda, South Africa and Algeria were at the forefront of the struggles against 'settler colonialism' in Africa. Over a period of time these civic associations, through their engagement and partnership with other formal groupings like unions and print media, became more organised and focused on their campaigns for independence and against injustice. In response to the emergence of civic associations in Africa which appeared to contest their authority, colonial states, for the most part, adopted even more repressive policies to contain the forces which were being fuelled by the social mobilisation activities of these civic and political associations. In turn, civic associations could appeal to the so-called 'legal' processes proscribed and controlled by the colonial state, or they could opt for more insurgent strategies, include armed rebellion and international engagement. Consequently, through their actions, colonial administrations in Africa fostered a culture of mistrust, in which civic actors viewed the apparatus for the control and administration of their

political communities with suspicion. It was at this point that the 'prism of mistrust' between the state and the civic sphere was fomented and nurtured.

Since its establishment in 2000, the AU has articulated a normative commitment to engaging with civil society in the implementation of its objectives.[3] The statutes of the AU Economic, Social and Cultural Council (ECOSOCC) describe civil society as including social, professional groups, non-governmental organisations (NGOs), community-based organisations (CBOs), as well as voluntary and cultural organisations.[4] However, this normative commitment has remained at the level of lip service and has not translated into a widespread engagement with civil society actors on a range of interventions, including promoting peacebuilding through transitional justice processes.[5] This is partly due to the prism of mistrust that clouds the perception of governmental actors in terms of their relationship with their own civil society.

This prism of mistrust has been further exacerbated by the phenomenon of 'state capture' that is increasingly prevalent across the continent. Evidenced by encroaching authoritarianism, democratic reversals, constitutional manipulation and the closure of civic space, state capture creates conditions that entrench crisis and tension as well as will undermine the ability to implement transitional justice processes, which has a knock-on effect on the stability of states. A culture of complacency has afflicted the AU's African Peace and Security Architecture (APSA) and the African Governance Architecture (AGA) institutions in terms of their efforts to promote peacebuilding, transitional justice and reconciliation.[6] In addition, the much lauded AU campaign to 'Silence the Guns by 2020' did not materialise as anticipated by the organisations' leadership. This was partly due to the failure to sustain society-wide peacebuilding and transitional justice interventions which address the legacies of the violations of the past and provide societies with better opportunities to quell the threat of internal violence. In fact, there was a precipitous increase in crisis situations, punctuated with incidences of gender-based violence. These have placed an emotional, mental and psychological strain on the people of the continent, in Sudan, in the Tigray region of Ethiopia, and the Cabo Delgado region of Mozambique, as well as continuing destabilisation and military coups in Sahel region, notably in Burkina Faso, Chad, Guinea and Mali. The prevalence of violent extremism – in the form of Al Shabaab in Somalia,

Boko Haram in Nigeria, Isis in the Greater Sahel, and Al Quaeda in the Sahel and Lake Chad Basin – is a persistent threat to the future peace and security of the African continent. In addition, there is ongoing recurring tension and violence in strife in Cameroon, the Central African Republic, Libya, the Darfur region of Sudan, and the eastern Democratic Republic of the Congo. Furthermore, political and constitutional tensions have been escalating in Eswatini, Lesotho and Zimbabwe. Consequently, there is an urgency in promoting and supporting the agency of civil society actors across these countries to contribute towards enhancing peacebuilding through transitional justice interventions.

AUTJP and the role of civil society

The AUTJP was adopted in February 2019 by the AU Assembly of Heads of State and Government, and is conceived as a continental guideline for AU member states to develop their own context-specific comprehensive policies, strategies and programmes towards democratic and socio-economic transformation, and achieving sustainable peace, justice and reconciliation. The AUTJP provides guidelines for addressing the legacy of violence, including colonial brutality, as well as confronting the governance and development deficits that continue to confront the African continent. The AUTJP advocates for an inclusive approach that ensures that a wide variety of stakeholders can be engaged and included in developing and implementing transitional justice interventions, in a forward-looking approach which contributes to rebuilding and restoring the dignity of African citizens who have endured past violations.

Section Four of the AUTJP outlines its identification of 'Actors, Processes and Implementation Mechanisms' to support the wide-spread utilisation of the Policy. Specifically, the AUTJP identifies four actors who should take responsibility for its implementation, including:

1. AU member states;
2. Regional Economic Communities (RECs);
3. AU institutions; and
4. Non-state actors, including members of civil society.[7]

The AUTJP stipulates that member states have the responsibility for 'guaranteeing the space for debate and advocacy on transitional justice and mobilising the support of all sections of society

across political lines'.[8] The AUTJP is an outcome of a process that recognised the right of citizens to participate in framing transitional justice processes, specifically in the manner in which it solicited and engagaged the views of Africans across the continent. 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'.[9]

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.[10] 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.'[11] 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 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-effect in terms of forging platforms that can increase the interaction and exchanges between the state and society.

The AUTJP also evisages 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.'[12] 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 – all of which require some

form of transitional justice intervention, if they have not already done so, in order to ensure sustaining 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 entities and civil society organisations on the implementation of the provisions of the AUTJP. On this basis, the Institute for Justice and Reconciliation (IJR) has established the Pan-African Reconciliation Network (PAREN) as a forum to bring together key experts and CSOs working on transitional justice from other parts of Africa, to identify key entry points in AU member states to provide support strategic advocacy, research and capacity building to draw upon the provisions of the AUTJP.

CSO regional network building to implement the AUTJP

It is necessary to empower civil society actors to work at national and regional levels so that they can contribute more strategically to the transitional justice and peacebuilding outcomes that the continent aspires to achieve as enumerated in Agenda 2063.[13] This will require rethinking the prism through which we understand and approach peace and security interventions. Traditionally, in Africa, crises have been framed as *national crises* which need to be addressed at the state level primarily by state actors. However, the degree of cross-border interaction and exchange, as well as the deepening reach of globalisation, means that we now need to frame Africa's conflict situations as *regional crises* with national dimensions. In adopting this framework, it will then be necessary from a strategic perspective to pursue regional transitional justice and peacebuilding interventions, which draw in and engage with all of the regional players who are implicated in that particular crisis. Civil society actors have to be empowered to also operate on a regional basis, through network building and coalition formation. Specifically, this approach will be predicated on identifying in-country 'anchor civil society actors' who will act as the focal points for regional reconciliation interventions. Concretely, these regional anchor civil society actors will implement dedicated programmes to enhance the capacity of network partners, to directly engage with governmental and inter-governmental processes and institutions in a manner that directly adds value to the transitional justice and peacebuilding interventions which are being pursued.

Policy recommendations

To the African Union member state governments and national stakeholders:

- Engage civil society actors directly in designing processes and institutions which will drive and implement national interventions drawing from the AUTJP;
- 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 Regional Economic Communities:
- Include civil society actors in awareness-raising initiatives relating to the AUTJP, particularly during high-level summits and inter-governmental meetings;
- Develop regional economic community strategies for the implementation of the AUTJP, to complement existing peace and security frameworks.

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;
- Develop an advocacy campaign targeting key stakeholders – principally the media, government, victims and the public – around awareness of the AUTJP and how it can be used in national contexts;
- 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 the documenting of, 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 exercabated 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, in order to adopt policies that effectively support civil society actors in promoting its implementation;
- Allocate resources in a manner that strategically supports civil society actors in the implementation of the provisions of the AUTJP.

Conclusion

The centrality of the agency of civil society in supporting and implementing transitional justice and peacebuilding processes is of vital importance if the African continent is to genuinely address the grievances which continue to perpetuate the cyclical violence that is brutalising civilians. The adoption of the African Union Transitional Justice Policy is a pioneering achievement for the continent in terms of providing a guideline for countries and societies to design and drive their own processes of redress, accountability and healing for the harm done in the past. However, the AU member states and regional institutions have not sufficiently engaged and utilised the AUTJP. This policy brief explained why civil society actors have to enhance their role as societal stakeholders and take the lead in sensitising, popularising and capacitating governmental and inter-governmental actors to engage with the provisions of the document. In addition, this policy brief argued that the adoption of this regional transitional justice and peacebuilding approach will enable civil society actors to create a mutually supportive network of intervention, which will enhance their ability to bring about positive outcomes in the pursuit of peacebuilding and reconciliation across Africa.

Endnotes

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2 J. Herbeson, D. Rothchild, and N. Chazam, (Eds.), *Civil Society and the State in Africa.* (Boulder: Lynne Rienner, 1994).

3 M. Muchie, A. Habib, and V. Panayachee, 'African Integration and Civil Society: The Case of the African Union', *Transformation: Critical Perspectives on Southern Africa*, Vol. 61, 2006, pp. 3-24.

4 African Union, *Constitutive Act of the African Union*.

5 B. Moyo, 'Civil Society and the African Union Architecture: Institutional Provisions and Invented Interfaces', in Adejumobi, S. and Olukoshi, A. (Eds.), *The African Union and New Strategies for Development in Africa,* (Dakar: CODESRIA & DPMF, 2009), pp.182-196.

6 S. Bah, E. Choge-Nyangoro, S. Dersso, B. Mofya, B., and T. Murithi, (2014). *The African Union Peace and Security Architecture: A Handbook.* Addis Ababa: Friedrich Ebert Foundation.

7 African Union Transitional Justice Policy, p. 25.

8 African Union Transitional Justice Policy, p.25.

9 African Union Transitional Justice Policy, p.25

10 African Union Transitional Justice Policy, p.25.

11 African Union Transitional Justice Policy, p. 25.

12 African Union Transitional Justice Policy, p.28.

13 T. Karbo, and T. Murithi, (Eds.), *The African Union: Autocracy, Diplomacy and Peacebuilding in Africa,* (London: I.B. Tauris, 2018).

Acronyms

APSA   – African Peace and Security Architecture

AUTJP   – African Union Transitional Justice Policy

AU   – African Union

CBO   – community-based organisation

CSO   – civil society organisation

ECOSOCC – AU Economic, Social and Cultural Council

NGO   – non-governmental organisation

PAREN   – Pan-African Reconciliation Network

REC   – Regional Economic Community

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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, the AU Citizens Directorate (CIDO). He is author and editor of eleven books, including author of *The African Union: Pan-Africanism, Peacebuilding and Development*, published by Ashgate, and editor of *The Politics of Transitional Justice in the Great Lakes Region of Africa*, published by Jacana Media and editor of 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 grassroot 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.

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