

RESEARCH REPORT

Gender Justice and Accountability

An Analysis of the African Union Transitional Justice Policy

November 2025



Cover Image: During the civil war in Sierra Leone, Aminata Sesay was forced to flee to Guinea with her children, while her husband was imprisoned. After the war, she opened a small provisions store located in one of the busiest squares of Freetown. (Glenna Gordan/ICTJ)

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Acknowledgments

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About ICTJ

The International Center for Transitional Justice (ICTJ) works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit www.ictj.org

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Executive Summary

The African Union Transitional Justice Policy (AUTJP) was adopted in 2019 amidst criticism of top-down approaches and Western bias in the transitional justice field. The policy was a direct response to concerns over the failings of transitional justice processes to achieve sustainable peace in Africa. As such, it seeks to embrace holistic approaches to redressing the past. Given the unique contexts and urgent need for post-conflict reconstruction in many parts of Africa, much can be learned from important local contributions to transitional justice that have emerged. This includes approaches that may have diverged from the prevailing understanding of international human rights law. Drawing on these local experiences, the AUTJP provides a roadmap for creating mechanisms that are unique to Africa and embedded in local approaches to delivering justice.

This report draws on a range of transitional justice practices and scholarship from the continent to identify how African Union (AU) member states, donors, and civil society can build on the opportunities offered by the AUTJP. Given the wide range of transitional justice experiences on the continent, numerous lessons can be learned about the implementation of gender-sensitive approaches to justice. By drawing on these experiences, the report is intended to provide guidance to transitional justice practitioners and human rights defenders seeking to implement the AUTJP. In particular, it sets out how best to utilize the policy to respond to victims of gender-based crimes in ways that affirm their dignity and human rights.

The AUTJP has been applauded for its concerted effort to address gender-based harms in a comprehensive way, and the policy certainly offers more progressive guidelines than any other regional organization to date. It not only acknowledges the need to incorporate gender issues in transitional justice processes but also stresses the importance of promoting transformative justice. It provides guidelines, benchmarks, and practical proposals for the design and implementation of African transitional justice processes. In these proposals, it is acknowledged that gendered patterns of human rights abuse have deep roots in social norms, institutions, and systems on the continent and that addressing these is critical to advancing justice and accountability.

Nonetheless, there are several ambiguities in the policy's language and assurances that must be acknowledged. For example, despite the commitment to pay "due regard to the Gender and Generational Dimensions of Violations and Transitional Processes," the policy limits its interpretation of the word "gender" to "women," "women and girls," or "women and youth."¹ As such, the policy tends to frame gender as a binary concept in which women are representative

1 African Union, "Transitional Justice Policy: An Integrated, Prosperous and Peaceful Africa," (February 2019).

of all things gender. Consequently, men's experiences are cast as normative and neutral within the context of transitional justice. For the AUTJP to deliver on its promise of providing justice that is homegrown and unique to Africa, a more holistic approach to delivering gender justice is needed.

Definitions employed in the policy could be expanded to better respond to the diverse and plural nature of victims' experiences on the continent. The AUTJP states that women and children are disproportionately at risk of violence, but those implementing the policy need to ensure that transitional justice processes cater to all gender-based crimes. On a continent as diverse as Africa, many intersecting identities exist, encompassing a multiplicity of ethnicities, classes, and religious and political affiliations. Failing to address how gender forms but one intersecting part of a range of identities can lead to an incomplete understanding of individuals and their experiences of injustice. This, in turn, will compromise the delivery of justice.

The AUTJP is the result of a nearly decade-long drafting process involving civil society organizations and independent experts. These consultations resulted in the development of guidelines that aided in the mainstreaming of gender throughout the draft policy. However, it is clear that effective implementation will only be realized through continued engagement with a plurality of human rights organizations.² As the International Center for Transitional Justice (ICTJ) has observed, civil society groups should “be involved as supportive collaborators [and] constructive watchdogs ... to ensure that the process is continuously alert to exclusions and marginalization.”³ Local research capacity should also be built and supported in order to feed into local transitional justice policies. This is important during and after all stages of the implementation of transitional justice processes.

It is likewise critical that a wealth of gender expertise is employed to support implementation of the AUTJP in a way that allows transitional justice processes to develop beyond simplistic definitions of gender and generic representations of women. By shifting from cosmetic approaches to gender mainstreaming to addressing gendered structures of power, the AUTJP's intended goal of promoting human rights and justice, peace and security, and good governance and development will be achievable. While the policy acknowledges important issues, such as how structural violence and unequal power relations are gendered, it is important that this is translated into pragmatic areas of policy intervention. It is also critical that the policy is adapted to ensure gender justice for the range of violations emerging because of violent extremism, military coups, and climate change. This will ensure all victims of human rights violations receive some degree of justice.

Objectives of the Study

This report analyzes the gender sensitivity of the AUTJP. This was approached by:

- Outlining best practices and lessons learned from African transitional justice contexts that can inform the implementation of the AUTJP;
- Suggesting strategies to better understand the gender implications of the policy for men, women, boys, and girls, including the most effective ways to address gender-based violence;
- Identifying how to plug the gaps in the AUTJP to ensure gender inclusion;

² Vasuki Nesiah, International Center for Transitional Justice (ICTJ), “Truth Commissions and Gender: Principles, Policies, Procedures,” (July 2006), 47.

³ *Ibid.* at 3.

- Providing specific recommendations for improving the gender responsiveness of the policy, including developing gender-sensitive measures and indicators for monitoring and evaluation purposes.

Methodology

The report is based on both consultations with regional experts and background research on legal, policy, and academic discussions about gender-based crimes and transitional justice. This included analysis of international policy documents, academic research, and civil society reports that have reflected on gender, conflict, and the role transitional justice can play on the continent. This background research provided the foundation for interviews with leading practitioners in the area. Critical inputs and insights were provided by a number of transitional justice actors, including Yasmin Sooka, Friederike Bubenzer, Fatou Baldeh, Shuvai Nyoni, and Annah Moyo.

Recommendations

1. For the AUTJP to deliver on its promise of providing unique, homegrown justice in Africa, a holistic approach to gender justice is essential. A gendered interpretation of the AUTJP requires recognizing the many intersecting identities across the continent, including ethnic, class, religious, age, and political differences. Ignoring gender's role in shaping identities can lead to an incomplete understanding of individuals and their experiences. It is vital for transitional justice frameworks to adopt an expansive and intersectional gender framework that includes men, boys, gender non-conforming individuals, and sexual minorities, thus going beyond a binary view of "women and girls." Such recognition enables addressing of the experiences of all survivors of gender-related crimes.
2. The policy should incorporate a clear and comprehensive definition of sexual violence and exploitation that is aligned with international standards. While the AUTJP pays heed to the imperative of addressing the scourge of sexual violence on the continent, it fails to offer a clear definition. Gender constructs often underpin the classification of this violence in transitional justice mandates. As we have seen in numerous transitional justice contexts, limiting definitions of sexual violence to crimes experienced by women and girls fails to address the range of sexual violence committed during conflict and authoritarian rule. These contexts often also include violations against men, boys, and sexual minorities. To avoid reproducing the stereotype of women's victimhood present in previous transitional justice initiatives, future processes must create mechanisms sensitive to a broad definition of gender-based crimes, as envisaged under international law. This includes recognition that states need to better anticipate, prepare for, and respond to sexual exploitation and abuse allegations in transitional justice processes.
3. Implementation of the AUTJP should avoid tokenism by focusing on substantive representation of women and marginalized groups in transitional justice processes and other leadership roles. While promoting affirmative action is crucial, it is essential to ensure women are not merely given compensatory roles. Previous use of quotas has led to descriptive rather than substantive representation of women. Representation does not guarantee advancement of gender concerns, and quotas often benefit elites, excluding the marginalized. To effectively include those most typically excluded, it is necessary to engage comprehensively with political and economic power dynamics within societies when devising affirmative action

programs. When used, quotas should be implemented inclusively, with due recognition given to diverse realities.

4. Gender expertise and advisory mechanisms should be institutionalized and integrated into the design and implementation of reparations, truth-seeking, institutional reform, and memorialization efforts. Furthermore, the AU should establish a gender advisory group comprising African feminist scholars and activists that could review transitional justice mandates and ensure an intersectional analysis in truth commissions, reparations programs, and peace processes. For example, truth commissions should be mandated to include specific hearings for male and nonbinary victims of sexual violence.
5. To effectively integrate gender issues into all facets of transitional justice policies, policy-makers and donors must address the current gap between policy and implementation. The AU has already made considerable strides toward gender justice, which is evident through initiatives such as the African Commission on Human and Peoples Rights' Guidelines on Combating Sexual Violence and its Consequences in Africa, along with the Maputo and Malabo Protocols. Therefore, it is crucial to establish mechanisms that uphold the commitments made in the AUTJP. These efforts must include ensuring that the implementation process is transparent and accountable.
6. Civil society, policymakers, and transitional justice practitioners enacting the AUTJP must uphold the policy's values equitably and integrate decolonial and gender-sensitive approaches that address colonial impacts on gender roles. The policy acknowledges that injustices in Africa are tied to colonial histories, power imbalances, and global economic structures. Recognizing the continent's historical contexts is essential for holistic justice, as is consideration of colonialism's varied impacts on gender perceptions. Acknowledging how colonial and neo-colonial systems disproportionately affect women and marginalized groups is vital to preventing these dynamics from recurring. Mandates and processes should recognize colonialism's legacy on gender equality, including issues of gender and sexuality, and critique stereotypes that singularly portray women from the Global South as victims.
7. The various actors implementing the AUTJP must develop guidelines to address violent masculinities that perpetuate sexism, homophobia, and violence in the military and security sectors. They should incorporate gender-sensitive training to help understand the root causes of violent masculinities and how they reinforce harmful stereotypes. Supporting initiatives that educate on alternative masculinities and prioritize leadership change is essential. The AUTJP only minimally addresses the need for reform of militarized masculinities. Closing this gap is crucial for just transitions, particularly considering recent military coups.
8. Both civil society and donors can better support gender integration in the AUTJP by ensuring that due consideration is given to gender issues within each of the policy's 11 indicative elements. This can be best achieved by utilizing the preexisting wealth of African gender expertise derived from experiences in The Gambia, Kenya, Sierra Leone, and Uganda, among other contexts. Specialized knowledge and understanding of how gender dynamics intersect with the constitutive elements of the AUTJP are needed to realize the policy's potential. This may involve harnessing gender expertise during the design and implementation of distinct transitional justice processes, such as truth commissions, traditional justice initiatives, and memorialization efforts. For instance, technical advisory groups of African women civil society activists could be deployed to ensure a holistic approach to transitional justice.

9. Civil society and donors have a key role to play in monitoring and evaluating African transitional justice processes, including to avoid any regression of gender rights in the aftermath of these processes. Monitoring helps guarantee compliance with obligations and the holding of governments and other stakeholders to account for fulfilling their commitments to gender justice.
10. All actors involved in designing, implementing, and monitoring transitional justice policies must ensure strong partnerships with civil society (particularly women's organizations) to ensure grassroots inputs. Local research capacity should also be built up and supported to inform gender-sensitive transitional justice policies.
11. Climate-related conflicts are having significant and gendered economic impacts on the continent, exacerbating existing inequalities and vulnerabilities that disproportionately affect women and marginalized gender groups. Some of these impacts include unequal access to resources, increased displacement and migration, disruption of the informal economy, and diminished access to markets and employment. It is therefore essential to operationalize the AUTJP to tackle the gendered economic impacts of climate-related conflicts by integrating climate justice into reparations and redistributive justice programs. Reparations packages should be designed to prioritize women's access to land and markets. Transitional justice actors should partner with environmental organizations to monitor the intersections between climate and conflict and ensure that transitional justice processes include climate-affected communities.

Introduction

The African Union Transitional Justice Policy (AUTJP) was adopted in 2019 amidst criticism of top-down approaches and Western bias in the transitional justice field, as well as calls for processes to better respond to Africa’s unique history of slavery, colonialism, apartheid, oppressive rule, and conflict.¹ The policy seeks to outline locally relevant and contextually specific approaches to transitional justice in an attempt to help counter “the excessive focus on legalistic, perpetrator-centric and past-oriented models in mainstream transitional justice.”² In so doing, the AUTJP sets out to provide roadmaps that achieve “the ambition of assisting the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future.”³

The concept of transitional justice constitutes the globally dominant framework that informs states undergoing political transition. It exists as one component of the broader project of state building that is centered on the realization of democracy, rule of law, and respect for human rights. The AUTJP 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.”⁴

Building sustainable peace requires that legacies of violence are addressed and that the state functions for all citizens irrespective of ethnicity, religion, gender, or race. Yet, to date, transitional justice processes have yielded ambiguous and contradictory results in Africa. Consequently, the 2010s saw the emergence of both scholarship and interventions by civil society that sought to challenge the politicization of transitional justice and acknowledge the practical limitations of its implementation on the continent. Since many African contexts continue to battle enduring legacies of their colonization and abusive pasts, civil society and regional actors came together to forge policies that would respond more effectively to local challenges. Among these challenges, it was recognized that gender-based crimes—crimes involving acts of sexual, reproductive, and other forms of gender-based violence—must receive greater and more concerted attention than previously achieved.

1 African Union, “Transitional Justice Policy: An Integrated, Prosperous and Peaceful Africa” (February 2019). See also Elias Opongo, “Gendering Transitional Justice Processes in Africa: A Feminist Advocacy Approach to Truth Commissions,” *Journal of the British Academy* 9 (2021): 35.

2 Solomon Dersso, Centre for the Study of Violence and Reconciliation (CSV), “The African Union Transitional Justice Policy: Expanding the Frontiers of Transitional Justice” (May 2021), 2.

3 Louise Arbour, “Economic and Social Justice for Societies in Transition,” Second Annual Transitional Justice Lecture hosted by the Center for Human Rights and Global Justice at New York University School of Law and ICTJ, (October 2006), 2.

4 African Union, “Transitional Justice Policy,” 4.

This report is intended to analyze the gender sensitivity of the AUTJP. At the continental level, the policy has been widely hailed as a landmark development in the promotion of justice and accountability. Its acknowledgment of the necessity to deliver gender-sensitive transitional processes is infused throughout the document. No other regional organization has provided such a clear and extensive framework for the transformative potential of transitional justice. For example, the European Union's 2015 "Policy Framework on Support to Transitional Justice" calls for "investment in, and focus on, gender-sensitive transitional justice which addresses the full range of rights violations and abuses during conflict, and responds to the differentiated vulnerabilities and needs."⁵ However, unlike the AUTJP, it fails to commit to providing a road map intended to "transform fundamental gender biases in transitional societies that hinder women from claiming and enjoying their socio-economic and political rights."⁶ Nonetheless, as outlined in this report, gender gaps exist in both policies.

For this report, UN Women's definition of gender will be employed. According to this definition, gender refers to the "social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes." As such, gender is both context-specific and changeable, and it intersects with a range of other identities, such as class, race, ethnicity, disability, sexual orientation, and age.⁷

5 European Union, "The EU's Policy Framework on Support to Transitional Justice," (2015).

6 African Union, Transitional Justice Policy, 11.

7 UN Women, "Concepts and Definitions," website: www.un.org/womenwatch/osagi/conceptsanddefinitions.htm

The African Union Transitional Justice Policy

According to Moussa Faki Mahamat, Chairperson of the African Union (AU) Commission, the AUTJP provides a roadmap for transitional justice that is “home-grown, unique to Africa, rich in its progressive methodologies and approaches, and rooted in African shared values, traditional justice systems and experiences.”⁸ The policy was the culmination of nearly a decade of deliberations by civil society and member states and was formally adopted by the AU Assembly of Heads of State and Government in Addis Ababa, Ethiopia in 2019. It provides a much-needed framework for national governments, regional economic communities, civil society, and human rights defenders to develop processes that will contribute to sustainable peace. Among the AUTJP’s many commitments to ensure the “Africa-we-want” is its promotion of “shared values relating to peace and security, justice or non-impunity, reconciliation and human and peoples’ rights.”⁹ According to Chairperson Mahamat, its purpose is to move away from the “dogmatic pursuit of justice, as promoted by some international stakeholders, with...a selective disregard of local context.”¹⁰

To achieve this, the policy emphasizes the need for context-specific and comprehensive policies, strategies, and programs that involve a range of transitional justice measures, including truth recovery, reparative justice, criminal accountability, traditional justice mechanisms, and redistributive justice. Integral to achieving the aims of “holistic and transformational transitional justice in Africa” is addressing impunity for gender-based harms, including harmful cultural practices, rape, and other forms of sexual violence. As observed by the International Center for Transitional Justice (ICTJ), “women’s experience of political violence is often neglected in transitional justice approaches. Far too often, truth commission mandates, judicial opinions, and policy proposals for reparations and reform have been written, interpreted, and implemented with little regard for the distinct and complex gendered experiences of the conflict and injuries women have suffered.”¹¹ The AUTJP goes further to note that gender-sensitive transitional justice processes need to “reveal patterns of gender abuse, improve access to justice for women, inform institutional reform to promote gender justice and create a space for women to inform sustainable peacebuilding.”¹² Echoing the tone of the AUTJP, Christabel Unobe has argued controversially that in Sierra Leone, the failure of transitional justice to advance the status of women was “due to the ‘one-size-fits-all’ model of transitional justice

8 African Union, Transitional Justice Policy, 3.

9 Ibid. at 6.

10 Ibid. at iv.

11 Nesiah, “Truth Commissions and Gender,” 3.

12 African Union, “Transitional Justice Policy.”

that does not cater to local dynamics.”¹³ Through a multi-dimensional approach, legal scholar Solomon Dersso and others claim that the AUTJP “addresses the emotional, psychological and social impacts of violent conflicts and authoritarian rule, which transitional justice theory and practice have largely neglected.”¹⁴

The AUTJP has made important strides in its calls for transitional justice processes to address gender-based harms on the continent, as well as in its commitment to gender sensitivity. It provides guidelines, benchmarks, and “practical strategic proposals for the design, implementation, monitoring and evaluation of African TJ [transitional justice] processes.”¹⁵ Since the AUTJP is intended to assist member states to achieve more locally-rooted justice solutions, it seeks to balance the goal of achieving just transitions with the realities and values of African governments, which tend to emphasize restorative over retributive justice solutions. In its Constitutive Act, the AU commits to “promote and defend African common positions on issues of interest,” a goal that the AUTJP shares.¹⁶ The policy pays heed to the diversity of language, culture, and history on the continent but notes the need for “an African model and mechanism for dealing with not only the legacies of conflicts and violations, but also governance deficits and developmental challenges.”¹⁷

From the outset, the AUTJP declares a commitment to policies that not only consider the “particular context and cultural nuances of affected societies,” but also “the gender, generational, ethnocultural, socio-economic and development dimensions of both peace and justice.”¹⁸ Gender is mentioned twice as part of the policy’s overarching thematic concerns, and it is again recognized among its nine guiding principles. The seventh principle of “Due Regard to the Gender and Generational Dimensions of Violations and Transitional Processes” identifies the need for “special measures of support for women and youth as victims” and calls on transitional justice processes to ensure the active participation of “women and youth.”¹⁹ Additionally, the AUTJP acknowledges a number of cross-cutting topics that should inform all aspects of transitional justice processes, the first of which is women and girls. Recognizing the commitments made in the 2005 Maputo Protocol on the Rights of Women in Africa, the AUTJP notes that the “nature of the violations to which women and girls are usually subjected, and the impact of such violations on them, means that the issue of women and TJ should be treated on its own.”²⁰

The AUTJP also explicitly notes that women and girls are “affected disproportionately...by violence.”²¹ At various points in the document, this violence is described as both direct (including harmful cultural practices, rape, and sexual violence) and indirect (the cultural, socioeconomic, legal, and political status of women).²² As a result, the policy notes that “TJ mechanisms should strive not only to deliver justice for women, but also to transform fundamental gender biases in transitional societies that hinder women from claiming and enjoying their socio-economic and political rights.”²³ To address these issues, the AUTJP calls for transitional justice commissions to detail “issues of discrimination and inequality affecting” women as well as to include recommendations to advance women’s and girls’ rights. The policy thus recognizes that underlying

13 E. Christabel Unobe, “Justice Mirage? Sierra Leone’s Truth and Reconciliation Commission and Local Women’s Experiences,” *Peace and Conflict: Journal of Peace Psychology* 28.4 (2022): 429.

14 Dersso, “The African Union Transitional Justice Policy,” 2.

15 African Union, “Transitional Justice Policy,” 2.

16 African Union “Protocol on the Amendments to the Constitutive Act of the African Union,” (2000), 5.

17 African Union, “Transitional Justice Policy,” 3.

18 *Ibid.* at 4.

19 *Ibid.* at 7.

20 *Ibid.* at 21.

21 *Ibid.* at 21.

22 *Ibid.* at 11.

23 *Ibid.*

socioeconomic injustices are both a “cause and effect of physical, material and psychological harms” experienced during times of conflict and authoritarian rule.²⁴ This approach recognizes that those transitional justice processes that extend the range of visible harms are better able to acknowledge the root causes of marginalization and gender inequality. This, in turn, allows them to have greater transformative potential.²⁵

24 Wendy Lambourne and Vivianna Rodriguez Carreon, “Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women,” *Human Rights Review* 17.1 (2016): 73.

25 African Union, “Transitional Justice Policy,” 5.

Gender as a Category of Analysis

Despite the commitment to pay “due regard to the gender and generational dimensions of violations and transitional processes,”²⁶ the policy limits the meaning of “gender” to either “women” or “women and girls.”²⁷ Women are mentioned 46 times in the document, but there is no mention of men’s experiences of gendered violence, for example, sexual violence. It is only when the need to ensure the “full investigation and prosecution of sexual violence against children” is identified that “both sexes” are specified.²⁸ As such, the policy tends to frame gender as a binary concept with women as representative of all things gender. Conversely, men’s experiences become cast as normative and neutral within the context of transitional justice. This lacuna was identified in a Centre for the Study of Violence and Reconciliation (CSV) study of youth perspectives on the AUTJP, which notes the lack of attention to masculinities as a “blind spot” of the policy.²⁹ This is despite the fact that militarized masculinities on the continent have been shown to reinforce harmful gender stereotypes and contribute to issues such as sexism, homophobia, and violence both within and outside of military contexts. Given the scourge of recent military coups in West and Central Africa, the role of militarized masculinities is not something that can be ignored. The CSV report urges those implementing the AUTJP to develop guidelines on understanding violent masculinities, as well as to support initiatives that promote “non-violent, co-responsible masculinities to challenge hegemonic masculinities associated with violence.”³⁰

Interpreting the meaning of gender in a more inclusive or nuanced way would allow for greater consideration of the interconnected aspects of human identity and experience during conflict, authoritarianism, and transitions. On a continent as diverse as Africa, many intersecting identities exist, encompassing a multiplicity of ethnic, class, religious, and political differences. Failing to address how gender forms just one part of a range of identities can lead to an incomplete understanding of individuals and their experiences of injustice. This is particularly relevant for the AUTJP because, as ICTJ has observed, during conflict, ideas of heteronormativity are often mobilized to “define military strength or depict enemy vulnerability [and]... such situations have often seen attempts to enforce compliance with dominant stereotypes of masculinity and femininity and [targeting of] those who cannot or will not be assimilated.”³¹ While the AUTJP

26 Ibid at 7.

27 Ibid. at 21.

28 Ibid. at 23.

29 Impunity Watch and CSV, “Youth Perspectives on Gender and Masculinities in Burundi, the DRC, Mali and South Sudan: Promoting Effective Transitional Justice Policies in Africa, Policy Brief” (July 2023), 2.

30 Ibid. at 12.

31 Nesiiah, “Truth Commissions and Gender,” 46.

does note the existence of the “structural basis involving patterns of gender bias, discrimination, and inequality in the social and public spheres,” this is likely to be understood as solely relating to women given the absence of attention to masculinities throughout the rest of the document.³²

Inclusive discussions about gender in the aftermath of violence and conflict can challenge the gender stereotypes that limit individuals’ freedom of expression and choice in terms of both gender identity and sexual orientation. To mitigate these risks, it is imperative that those implementing or supporting the implementation of the AUTJP ensure a holistic understanding of the complex issues surrounding gender-based harms in transitioning societies.

³² African Union, “Transitional Justice Policy,” 21.

Affirmative Action

In order to pay “due regard” to the “gender dimension of violations,” the AUTJP calls for the use of affirmative action policies to ensure “the active participation of women and youth.”³³ Underpinning the AUTJP’s call for affirmative action for historically marginalized groups, including women, is the expectation that representation will result in transitional justice processes being more inclusive. Affirmative action policies are widely accepted as a tool to address historical injustices, increase diversity, create role models, and generate long-term change. As a 2022 UN report on “Women’s Meaningful Participation in Transitional Justice” observes, women’s representation can confront and compel power structures to directly recognize and affirm women’s dignity, equality, and rights. “Though participation and leadership are only steps, they are tangible and personal means for women—whether survivor-victims, their allies or other female stakeholders—to directly stand against impunity by holding patriarchal power structures and perpetrators of violations and discrimination against women to account.”³⁴

The AUTJP does not specify which methods of affirmative action might be used, but quotas for women have been a common feature in truth commissions, such as those in The Gambia, Kenya, Liberia, and Sierra Leone, as well in the *gacaca* courts in Rwanda.³⁵ In the majority of these cases, the target was 30 percent representation of women. In terms of the AU’s strategy for Gender Equality and Women’s Empowerment “equal and effective participation by women” is called for through the promotion of gender parity.³⁶ Quotas have been an important temporary means to get women into spaces where decisions are made and/or where their presence has historically been resisted.³⁷

However, several African activists have already raised concerns that the use of quotas in transitional justice processes can result in tokenism, or the descriptive as opposed to the substantive representation of women. As has been evident in a variety of contexts, representation of women does not equate with the advancement of gender concerns. Indeed, the use of quotas has not historically resulted in a markedly more gender-sensitive truth recovery processes, for example. As the UN report notes, “the complexity of women’s interests within a society, including those formed by other aspects of their identities, means that gender equality is not an automatic

33 Ibid. at 7.

34 UN Women and United Nations Development Programme (UNDP), “Women’s Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace” (March 2022), 16.

35 Jeremy Sarkin and Sarah Ackermann, “Understanding the Extent to Which Truth Commissions Are Gender Sensitive and Promote Women’s Issues: Comparing and Contrasting These Truth Commission Roles in South Africa, Guatemala, Peru, Sierra Leone, and Liberia,” *Georgetown Journal of International Affairs* 50 (2022).

36 African Union, “Gender Equality and Women’s Empowerment Strategy 2018-2028.”

37 UN Women and UNDP, “Women’s Meaningful Participation in Transitional Justice,” 16.

priority for female participants.”³⁸ The 1995 UN Beijing Platform for Action clearly states that gender balance is not the same as quotas: “Rather, it refers to a balanced composition of women and men in order to bring equality to the current male-dominated institutions.”³⁹

It is also worth mentioning that affirmative action policies such as quotas often benefit elites while excluding more marginalized sectors of society. Indeed, gender inclusion may serve to alleviate the pressure for more substantive and transformative changes in a society. It should also be noted that if not implemented responsibly, affirmative action policies can face resistance and backlash. Thus, to adequately include those most marginalized and most excluded in transitional justice processes, a comprehensive engagement with political and economic power dynamics within each society is necessary. As such, it is important that the intersections of gender with nationality, age, class, ethnicity, and other social structural fault lines (including political affiliation, marital status, sexual orientation, religion, and disability) are recognized in these policies.⁴⁰

Further, while the AUTJP’s prioritization of the principles of African leadership is to be applauded, it is important to ensure that representation of women in leadership is not selectively implemented nor that it is only employed for certain positions. Given that only 22 women have served as heads of state in Africa since 1970, there is cause for concern.⁴¹ Similarly, while women’s participation in African parliaments has doubled in the last two decades, the majority of political leadership on the continent remains solidly male-dominated.⁴² Selective implementation of commitments to women’s leadership extends to peace processes. In the three recent cases where African women were present as lead mediators during peace negotiations, they remained the minority. For example, in Kenya’s 2008 peace process, women made up one-third of lead mediators. Furthermore, in situations of formal peace processes sponsored by the AU, when women have been present, they have most often been on mediation rather than negotiation teams.⁴³ Consequently, women’s “leadership” in peace processes typically continues to happen on the margins of formal negotiations.

While the AUTJP recognizes that affirmative action measures should be employed, it does not explain how these will relate to political leadership positions even though it does explicitly state that transitional justice “is first and foremost a political rather than a technical process.”⁴⁴ It cautions that the “success of the AUTJP will be determined by the political commitment, leadership, and capacity of national and local actors in the country concerned.”⁴⁵ Thus, it is important that measures are taken to mitigate any potential contradiction between the promotion of African leadership and assurances of women’s effective involvement in processes.

38 Ibid. at 22.

39 Cited in Nesiha, “Truth Commissions and Gender,” 11.

40 African Union, “Transitional Justice Policy.” See also Nesiha, “Truth Commissions and Gender.”

41 *Africa.com*, “Introducing the 22 African Women Who Have Served as Head of State,” March 29, 2022.

42 International IDEA, “Women’s Representation in African Parliaments Edges Up, Rises in Executive Positions but Declines in Local Government,” (July 2024).

43 Helen Scanlon, Pravina Makan-Lakha, and Molly Hamilton, ACCORD, “The 20th Anniversary of UNSCR 1325: What’s Next in the Era of COVID-19?” (2020).

44 African Union, “Transitional Justice Policy,” 5.

45 Ibid. at 25.

Sexual Violence in Conflict

The AUTJP makes explicit references to sexual violence against women and children and calls for transitional justice commissions to “pay special attention to sexual and gender-based violations, including harmful cultural practices, rape and sexual violence.”⁴⁶ The policy’s emphasis on sexual violence forms part of increased international attention to this “weapon of war,” as evidenced by the 2018 Nobel Peace Prize being awarded to Nadia Murad and Denis Mukwege. It also reinforces existing commitments made by member states to the African Commission on Human and Peoples’ Rights in its 2017 Guidelines on Combating Sexual Violence and its Consequences in Africa. These guidelines identify the need to combat sexual violence and its consequences through “concrete, cross-cutting and coordinated measures aimed at preventing these violations, by attacking their root causes, providing protection and support to victims and witnesses, bringing the alleged perpetrators to justice, and offering guarantees of non-repetition.”⁴⁷

In the last two decades, the African continent has witnessed critical developments in jurisprudence and convictions for sexual violence in international, hybrid, and national courts, including the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL). The ground-breaking trial of Hissène Habré, the former president of Chad, by the Extraordinary African Chambers was hailed as a victory for survivors of sexual violence due to his conviction for rape and sexual slavery as crimes against humanity. In 2021, the International Criminal Court (ICC) convicted former LRA Commander Dominic Ongwen on all 19 counts of sexual and gender-based crimes, including forced marriage, torture, rape, enslavement, forced pregnancy, and outrages upon personal dignity.⁴⁸ Nonetheless, the successful investigation and prosecution of conflict-related sexual violence remain sporadic, both on the continent and internationally.

While the AUTJP pays heed to the imperative of addressing the scourge of sexual violence, it fails to provide a clear definition for the term. This is despite the fact that gender constructs and dynamics often underpin classification of sexual violence in transitional justice mandates and programs. As seen in numerous transitional justice contexts, limiting the definition of sexual violence to crimes experienced by women and girls ultimately fails to address the range of sexual violence acts committed during conflict and authoritarian rule, including the experiences of men, sexual minorities, and gender nonconforming individuals.

46 Ibid. at 11.

47 African Commission on Human and Peoples’ Rights, “Guidelines on Combating Sexual Violence and Its Consequences in Africa” (2017).

48 Sarah Kasande and Jesse Mugero, ICTJ, “The Ongwen Verdict: A Step Closer to Acknowledgment and Justice for Victims in Northern Uganda” (2021).

Evidence from conflicts in the Democratic Republic of the Congo (DRC), Kenya, and Uganda, among other contexts, has revealed a range of acts of sexual violence perpetrated against men and boys, including rape, forced masturbation, sexual slavery, and genital mutilation.⁴⁹ In Liberia, over 32 percent of male combatants experienced some form of sexual violence.⁵⁰ In the same vein as addressing sexual violence against women and girls, recognizing the scope of violence experienced by men and boys helps expose the deeper structural powers behind the violations. However, mandates and prosecution strategies often obscure these violations and can end up harming the victim instead. For example, the ICTR saw only one conviction for sexual violence against men, and the SCSL did not bring a single charge for the crime when committed against male victims.⁵¹ The impact of excluding men and boys from transitional justice mechanisms like truth commissions and courts can be significant. Reparations programs and other support structures are often linked to these mechanisms' findings. This means that when excluded, male victims may be prevented from accessing the repair to which they are entitled.⁵²

While it does make important commitments in the fight against sexual violence and its consequences, the AUTJP could also do more to consider how the marginalization of some victims continues in the public and social spheres. For example, the silencing of male victims of sexual violence could be better addressed by destigmatizing male victimhood and raising awareness about their experiences. Motives for sexual violence include attempts to intimidate populations, humiliate or demoralize victims, and demonstrate dominance, none of which are gender specific. It is thus important to ensure that frameworks encompass the experiences of all survivors, regardless of gender.

It is imperative that mechanisms to address sexual violence examine it as a symptom of broader societal dynamics. This in turn could help illuminate the ways that sexual persecution is deployed as a political weapon in many contexts of mass human rights abuses.⁵³ Accounting for gender perceptions and dynamics surrounding sexual assault also helps understand persistent practical limitations in the context of transitional justice. This includes challenging the “shroud of secrecy [that] may continue to operate around issues of sexual orientation,” which is the result of shame and stigma in the AU’s 32 member states that criminalize homosexuality.⁵⁴

It is also worth noting that while the AUTJP acknowledges conflict-related sexual violence, it is silent on the widespread phenomenon of sexual exploitation and abuse (SEA). Jessica Anania has pointed to the widespread evidence of SEA by international intervenors, such as UN peacekeepers, during and in the aftermath of conflict. Reports of SEA, including both criminal (such as rape and forced prostitution) and non-criminal (for example, transactional sex) have been evident in multiple contexts such as the DRC, The Gambia, and Central African Republic. According to Justice Rapid Response, organized prostitution and international trafficking for sexual exploitation has been seen in refugee camps in Guinea, Liberia, and Sierra Leone.⁵⁵ Anania notes that while the UN’s Women, Peace, and Security framework acknowledges the “continuum of violence” that characterizes gender-based violence in conflict,

49 Anne-Marie de Brouwer, “The Importance of Understanding Sexual Violence in Conflict for Investigation and Prosecution Purposes,” *Cornell International Law Journal* 48 (2015).

50 *Ibid.* at 644.

51 Amrita Kapur and Kelli Muddell, ICTJ, “When No One Calls It Rape: Addressing Sexual Violence Against Men and Boys in Transitional Contexts” (2016), 19.

52 *Ibid.*

53 Sara E. Davies and Jacqui True. “Reframing Conflict-Related Sexual and Gender-Based Violence: Bringing Gender Analysis Back In,” *Security Dialogue* 46.6 (2015): 495–512.

54 Nesiiah, “Truth Commissions and Gender,” 47.

55 Justice Rapid Response, “Investigating Allegations of Sexual Exploitation and Abuse of Children Occurring in Humanitarian Settings: Reflections from Practice” (May 2022), 8.

transitional justice processes such as truth commissions (with the exceptions of Sierra Leone and Liberia), trials, and reparations programs have largely overlooked SEA. Those implementing the AUTJP should approach SEA and conflict-related sexual violence as “distinct but related issues...Doing so would prevent the tendency to subsume SEA under conflict-related sexual violence, thereby erasing it.”⁵⁶

56 Jessica Anania, “Transitional Justice and the Ongoing Exclusion of Sexual Exploitation and Abuse by International Intervenor,” *International Affairs* 98.3 (2022).

Decolonizing Transitional Justice

A critical facet of the AUTJP is its recognition that “African societies have been dealing with transitional processes for many decades in their quest to come to terms with the traumas of slavery, colonialism, apartheid, systematic repression and civil wars.”⁵⁷ The policy is thus grounded in the understanding that many of the injustices experienced in Africa are deeply intertwined with colonial histories, power imbalances, and global economic structures. This recognition of the specific contextual histories on the continent is critical for holistic justice and should also be inclusive of the varied impact colonialism had on systems of thought around gender roles. This extends to acknowledging how colonization remade social, economic, and sexual roles in various ways, including the gendered division of reproductive and productive labor.

It is therefore important that the ways colonial and neocolonial systems have disproportionately affected women and marginalized gender groups be acknowledged to stop them from being reproduced in transitional justice processes. As such, mandates and processes need to be cognizant of the broader impacts of the legacy of colonialism on gender equality, including the area of gender and sexuality. This includes critiquing stereotypes that essentialize the role of women from the Global South during conflicts to that of victims. The script of “saving brown women from brown men” has repeatedly been used to justify protective and imperial interventions at the expense of rights-based responses to gendered human rights violations.⁵⁸ This also potentially obscures the plethora of roles played by women during conflicts, including those of perpetrators and agents of change. One of the most common critiques of transitional justice processes, such as truth commissions and criminal justice mechanisms, is that conflict-related sexual and gender-based violence have only gained traction because they fit neatly into transitional justice’s traditional scope. Africans need to improve on this by designing justice mechanisms that respond to gender-based injustices that are deeply intertwined with colonial histories.

To promote a gender-sensitive, decolonial transitional justice framework, the full range of colonial legacies thus need to be challenged. This would include acknowledging how social and economic roles have been historically gendered. It also necessitates promoting the empowerment of all African gender identities, including nonbinary ones. While the AUTJP nods at the need for decolonization, this can only be realized by transforming the gender norms, structures, and systems of power that have perpetuated inequality for centuries.

57 African Union, “Transitional Justice Policy,” 1.

58 Heaven Crawley, “Saving Brown Women from Brown Men? ‘Refugee Women,’ Gender and the Racialised Politics of Protection,” *Refugee Survey Quarterly* 41.3 (2022): 355.

Indicative Elements of Transitional Justice in the AUTJP

The substance of the AUTJP lies in the outlined “Indicative Elements of Transitional Justice.” These are classified as 11 “dimensions that arise in transitional societies” and are made up of the following elements:

Peace Processes

The policy identifies the key role that peace processes play in ending violence, as well as in ensuring the security and protection of civilians. In particular, the AUTJP recognizes the specific security needs of women and “other vulnerable and marginalized groups,” including the need to provide “robust guarantees ensuring prevention of new violence against civilians, particularly women and children.” In addition, it calls for “opportunities and mechanisms” to ensure the participation of “those affected by conflict, including women, in peace processes” and “the inclusion of provisions relating to justice” in peace agreements.⁵⁹

The AUTJP thus advocates for peace processes to be cognizant and inclusive of the specific needs and experiences of women and children in conflict resolution mechanisms. This is an important inclusion, both for addressing immediate security concerns and for ensuring that disarmament, demobilization, and reintegration processes cater to the needs of both female and male ex-combatants. Research has revealed that the absence of gender-sensitive reintegration strategies has ramifications for women, including the stigmatization of ex-combatants, psychosocial struggles, and persistent gendered divisions of labor.⁶⁰ In some contexts for example, reintegration support has been offered to male combatants but not to women who provided other forms of support to the conflict. Furthermore, an analysis of 98 peace agreements that took place between 2000 and 2016 showed that peace agreements are more likely to have gender provisions when women have participated in track one or two peace processes.⁶¹ One positive example is the 2014 Central African Republic agreement, which made specific provisions for services and infrastructure to support women’s recovery from conflict.⁶² Evidence also suggests that active participation by women’s organizations is central to the inclusion of gender provisions in peace agreements.

59 African Union, “Transitional Justice Policy,” 9.

60 Sanne Weber, “From Gender-Blind to Gender-Transformative Reintegration: Women’s Experiences with Social Reintegration in Guatemala,” *International Feminist Journal of Politics* 23.3 (2021).

61 Scanlon, Makan-Lakha, and Hamilton, “The 20th Anniversary of UNSCR 1325,” 9.

62 Ibid.

However, the analysis of peace processes over the last two decades also revealed that the inclusion of African women in national and regional peace processes has been inconsistent. A 2016 review by the AU Commission of their “Implementation of the Women, Peace and Security Agenda in Africa” plan indicated persistently low levels of women’s participation.⁶³ For example, women from Central African Republic, Sudan, and South Sudan have experienced obstacles, including outright resistance, to their participation.⁶⁴ As one analysis notes, “not all mentions of women in peace agreements are positive, indeed some restrict rather than extend the participation of women.”⁶⁵

Thus, the inclusion of a gender perspective in peace agreements requires women’s systematic engagement in peace talks. For the AUTJP to be effective, it is important to go beyond the promotion of gender quotas for transitional justice mechanisms to include the establishment of mechanisms to monitor the implementation of gender-related provisions in the agreement. Those supporting peace processes should be encouraged to offer incentives to the negotiating parties, such as training or logistical support, to ensure the realization of all parts of the policy.

Furthermore, including a gender perspective in peace agreements is also about much more than mentioning women. It should include an examination of a range of topics, including how civilian/combatant distinctions are dealt with and how socioeconomic inequalities are addressed.⁶⁶ For transitional justice processes to be effective, monitoring and evaluation needs to be integral to the advancement of gender-sensitive peacebuilding as advancing rights requires a longitudinal approach. Thus, effective scrutinization of how peace processes are “gendered” should be a priority in the implementation of the AUTJP.

Transitional Justice Commissions

The AUTJP identifies the need for: “the provision of public processes [to probe] legacies of violent conflicts and systemic or gross violations of human and peoples’ rights ...to establish a full historical record of such violations, including the various experiences of different groups such as women.” It also specifies that “special hearings should be arranged, focusing on violations affecting women and girls” and that “special chapters on women and girls should detail issues of discrimination and inequality affecting them.”⁶⁷ As transitional justice practitioner Yasmin Sooka has observed, specific analysis of how colonial and post-colonial laws and policies have contributed to inequity is critical to transitional justice commissions playing a meaningful role in addressing it.⁶⁸

The commitment to truth-recovery processes to promote justice and accountability is an important one. ICTJ has noted that “truth commissions can provide an extraordinary window of opportunity to highlight neglected abuses, research the enabling conditions of gendered violations, provide a forum for victims and survivors, recommend reparations that redress injustices, and leave a long-term legacy that is responsive to women’s history and quest for reform.”⁶⁹ In recognition of this, the AUTJP calls for transitional justice measures that not only address the actual violations against women and girls, but also pay attention to societal patterns of gender inequality that have enabled gender-based violence.⁷⁰

63 Ibid. at 6.

64 Ibid.

65 Ibid. at 10.

66 Ibid.

67 African Union, “Transitional Justice Policy,” 11.

68 Yasmin Sooka, “Dealing with the Past and Transitional Justice: Building Peace through Accountability,” *International Review of the Red Cross* 88.862 (2006).

69 Nesiah, “Truth Commissions and Gender,” 2.

70 African Union, “Transitional Justice Policy,” 7.

There is a rich body of literature on the role of truth commissions in addressing gender-based harms, and, as Scully has noted, which pasts get recounted and which people are included “tells us something about the reconciled nation being envisaged and birthed by a truth and reconciliation commission.”⁷¹ The South African Truth and Reconciliation Commission (TRC) was silent on women’s experiences, but there have been considerable advancements in how gender issues have emerged in subsequent truth commission mandates and proceedings, such as those in The Gambia, Kenya, Sierra Leone, and Tunisia. These include gender-sensitive outreach initiatives, interview techniques, and capacity building. However, evidence from previous truth commissions indicates that women tend to prioritize the experiences of other family members or are often reluctant to share their experiences due to stigma, fear, and reservations about truth-recovery processes. Many survivors of gender-based violence suffer from post-traumatic stress disorder and are reluctant to speak about the atrocities they experienced. But silence can also be motivated by women exercising their political agency, as Ntabiseng Motsemme revealed in the South African context.⁷²

As such, those seeking to “engender” transitional justice commissions should look beyond special hearings and give thought to alternative deliberative spaces (such as those held in The Gambia) as well as other forms of truth recovery. In addition, it is important for gender-sensitive transitional justice commission proceedings to be supported in their aftermath through dedicated support for the enactment of recommendations. As UN Women and United Nations Development Programme (UNDP) have noted, if “women participate in a truth commission process but are not present in the legislative body implementing its recommendations, then many of the gains made by the truth commission may be lost.”⁷³ Mandates and proceedings of commissions thus need to ensure a nuanced understanding of how different forms of discrimination and violence intersect, as truth recovery is just the beginning of the process. Increasing recognition is being made of the impact of intergenerational trauma in transitional settings and the need for more comprehensive mental health and psychosocial support as a key component for a holistic approach to transitional justice.⁷⁴

Furthermore, taking an intersectional approach involves recognizing that gender is not always the most politically significant lens to illuminate patterns of abuse. As Vasuki Nesiiah has observed, “rather than assuming that every truth commission should emphasize gender, only a historically grounded study of each situation can determine how to understand contexts of human rights abuse and their impact.”⁷⁵

African Traditional Justice Mechanisms

Integral to the AUTJP is the recognition that African traditional justice mechanisms play an important role in transitional justice. These are defined as “local processes, including rituals, which communities use for adjudicating disputes and for restoring the loss caused through violence.” The policy calls for these processes to be adapted and used in conjunction with formal transitional justice mechanisms to better “address justice, peace, accountability, social cohesion, reconciliation, and healing.” Utilizing “generic African practices,” it is argued, can offer an important tool to “enhance international commitment to end impunity and promote peace.”⁷⁶

71 Pamela Scully, “Gender History, Truth Commission Reports, and the Irrevocable Past,” in *Feminist African Histories*, eds. Alicia Decker and Jacqueline-Bethel Mougoue (Athens, Ohio: Ohio University Press, forthcoming).

72 Ntabiseng Motsemme, “The Mute Always Speak: On Women’s Silences at the Truth and Reconciliation Commission,” *Current Sociology* 5.2 (2004).

73 UN Women and UNDP, “Women’s Meaningful Participation in Transitional Justice,” 16.

74 Virginie Ladisch and Shayna Lewis, ICTJ, “The Search for People’s Well-Being: Mainstreaming a Psychosocial Approach to Transitional Justice” (September 2024).

75 Nesiiah, “Truth Commissions and Gender,” 44.

76 African Union, “Transitional Justice Policy,” 12.

The efficacy of local justice mechanisms as a tool of transitional justice has been well documented in Mozambique, Rwanda, and Uganda, among other contexts. In each of these cases, indigenous justice processes have broadened access to justice and created “a spiritual sense of belonging to a community, imagined or real.”⁷⁷ In Sierra Leone, Fambul Tok became an extension of the country’s “unfinished TRC” process in modeling a new, community-led approach to reconciliation. The AUTJP establishes some clear guidelines for the use of traditional justice and suggests that due regard be paid to the Maputo Protocol on the Rights of Women in Africa. The protocol notes that “despite the ratification of the African Charter...women in Africa still continue to be victims of discrimination and harmful practices.”⁷⁸ As a result, the Maputo Protocol sought to address some of the public/private disparities evident in the charter by validating the positive aspects of culture while allowing for African women’s agency in harmful practices. The AUTJP also cautions that “a person shall not be compelled to undergo any harmful traditional ritual.”⁷⁹

However, it is important to learn from both the positive and negative experiences of traditional justice as a form of transitional justice. For example, in Rwanda, the gacaca courts implemented a quota system requiring that over 30 percent of judges be women. At the outset, the most serious crimes, including rape, were not tried before gacacas, but were instead dealt with by the national courts or the ICTR. However, studies have shown that women revealed more negative experiences of the gacacas than men and that many women believe the gacaca process intensified their suffering.⁸⁰ It is also worth noting that several studies indicate how local justice mechanisms often overlook gender imbalances or inequalities, and may even serve to reinforce them. For example, a UN study on the implementation of UN Security Council Resolution 1325 found that many indigenous mechanisms focus on a community truth told from a male perspective, while women’s truth is not a priority.⁸¹ Another concern linked to traditional justice is that sexual and gender-based crimes universally carry significant social stigma, which may create obstacles to victims revealing their experiences. This results in challenges over testifying against someone within their community, even in contexts such as Rwanda where closed hearings were allowed.

As a result, it is important that traditional justice processes are implemented in a way that both uphold the values of the Maputo Protocol and pay attention to the possible gendered impact of proceedings. It is only in this way that accountability and healing can be properly facilitated.

Reconciliation and Social Cohesion

As the South African TRC report acknowledged, reconciliation and healing cannot occur in the absence of knowledge and understanding.⁸² The AUTJP identifies reconciliation as “both a goal and a process” to address “legacies of past violence and oppression, reconstructing broken relationships and finding ways for individuals and communities to live together.” It calls for efforts to achieve “forgiveness between victim(s) and perpetrator(s),” the promotion

77 Helen Scanlon, Institute for Justice and Reconciliation, “Gender and the Politics of Reconciliation” (2016) (quoting Parusha Naidoo, unpublished notes, 2016), 7.

78 African Union, “Protocol to the Africa Charter on Human and Peoples’ Rights on the Rights of Women in Africa” (2003), Preamble.

79 African Union, “Transitional Justice Policy,” 12.

80 Karen Brounéus, “The Women and Peace Hypothesis in Peace-Building Settings: Attitudes of Women in the Wake of the Rwandan Genocide,” *Signs: Journal of Women in Culture and Society* 40.1 (2014).

81 Radhika Coomaraswamy, UN Women, “Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325” (2015).

82 Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report, Volume 1* (1998).

of “shared truth” and “overcoming a sense of victimization.”⁸³ Various measures are identified to advance this, including education programs and platforms that bring members of different groups together. The policy supports the idea that forgiveness re-humanizes perpetrators by allowing them to acknowledge their responsibility and agency and respond humanely to the pain inflicted.

While the promotion of the principles of reconciliation is often linked to transitional justice processes, the concept has also been criticized for its ambiguous meaning as well as for its politicization in transitioning societies. Among its broad interpretations is the aim “to render no longer opposed,” or as Johan Galtung observes, “reconciliation is a theme with deep psychological, sociological, theological, philosophical and profoundly human roots.” However, he goes on to note that “nobody really knows how to successfully achieve it.”⁸⁴

Concerns have also been identified that the discourse of reconciliation enables “those ordinary citizens collectively implicated in past injustices as beneficiaries of a regime to evade assuming any real responsibility by lapsing into sentimental politics of guilt or shame.”⁸⁵ Of relevance to those implementing the AUTJP should be caution over how interpretations of reconciliation have impacted women. For example, during a number of truth commission proceedings, commissioners have problematically assumed that due to religious and cultural conditioning, women were able to forgive and reconcile more easily than men. There is also concern that promotion of ideas of forgiveness might teach victims to accept their oppression rather than struggle against it. Researcher Rebecca Saunders has noted that, “slavery, oppression, and victimization are made worse, not better, when people are rendered content in their victimization.”⁸⁶

Reparations

A central component of transitional justice’s commitment to survivors of violence is reparative justice, which the AUTJP defines as “effective and adequate financial as well as non-financial redress or restitution for violations or losses suffered.”⁸⁷ Included within this definition are both material reparations (restitution, monetary compensation, rehabilitation, and collective reparations) and non-material ones (“moral” or symbolic reparations such as public acknowledgment, apologies, and exhumations). Echoing the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, the AUTJP calls for “prompt, adequate and effective” reparations and notes that a “clear strategy for resource mobilization” should be identified.⁸⁸

The policy recognizes the need for “victim-specific support” through material reparations, including “services specific to women and children,” and calls for reparations programs to “promote equality, non-discrimination and participation of victims.” It also calls for “holistic approaches to reparations for harm inflicted by sexual and gender-based violence which address the societal structures and conditions that permit such violations.”⁸⁹

83 African Union, “Transitional Justice Policy,” 12.

84 Johan Galtung, “After Violence, Reconstruction, Reconciliation, and Resolution: Coping with Visible and Invisible Effects of War and Violence,” in *Reconciliation, Justice, and Coexistence: Theory and Practice*, ed. Mohammed Abu-Nimer (Lanham, Maryland: Lexington Books, 2001), 4.

85 Andrew Schaap, “Reconciliation as Ideology and Politics,” *Constellations* 15.2 (2008): 258.

86 Rebecca Saunders, “Questionable Associations: The Role of Forgiveness in Transitional Justice,” *International Journal of Transitional Justice* 5.1 (2011): 138.

87 African Union, “Transitional Justice Policy,” 13.

88 UN General Assembly, 60th Session. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law*, 2005 (New York: Official Record A/RES/60/147).

89 African Union, “Transitional Justice Policy,” 13.

As the AUTJP recognizes, employing a gender perspective in reparations programs helps identify the specific needs of victims and survivors of different genders. Those devising reparations programs need to recognize forms of structural discrimination that may impede victims' access to repair, such as a lack of access to education or productive resources. They must also recognize how homophobia and attempts to emasculate or feminize victims may result in stigma and discrimination that impedes survivors from seeking justice. If reparations are intended to acknowledge the experiences of all victims of gender-based crimes and address their needs, the design, implementation, and monitoring of reparations programs should ensure the meaningful involvement and participation of victims from the outset.

In some contexts, civil society organizations have been included in reparations policy making bodies (for example, two civil society representatives sat in the Sierra Leone reparations steering committee). In other contexts, consultations were undertaken by reparations-implementing agencies, including at the community level.

In whichever way victims are given an opportunity to express their views and expectations, it is important to recognize that victims may have more than one view and that even within victims' groups, marginalization and silencing exist. Recognizing both the need for and challenges of gathering survivors' experiences can lead to more targeted and effective reparations and restitution measures that address the specific harms suffered by individuals due to their gender. These concerns contributed to the creation of the Global Survivors Fund in 2019, which responds to calls for reparations for survivors of conflict-related sexual violence. The Fund is currently operating in 10 countries, including Central African Republic, Colombia, the DRC, Guinea, Iraq, Nepal, Nigeria, Timor-Leste, Türkiye, and Ukraine.

The AUTJP's call to address the root causes of violence and transform gender relations in reparations programs is an important objective, and this needs to be heeded to ensure that reparations programs avoid replicating the discrimination that made women particularly vulnerable to violence during conflict. As the 2007 Nairobi Declaration on Women's and Girl's Right to a Remedy and Reparation states, "Reparations must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women's and girl's lives."⁹⁰ This is an important point because ensuring reparations address violations of economic, social, and cultural rights is central to advancing gender justice.

However, it is important that pragmatism also be employed when devising reparations. Much can be learned from previous reparations programs. These include, for example, initiatives in the DRC that focused solely on survivors of sexual violence and resulted in the re-victimization of many women.⁹¹ Also, authors Sunneva Gilmore and Luke Moffett caution over "voices being picked out, appropriated and then re-presented to suit other transitional justice actors," a practice that can result in victims' voices being "increasingly abstracted, depoliticized, and re-represented."⁹² Those implementing the AUTJP should ensure best practices are followed when devising reparation programs.

⁹⁰ International Federation for Human Rights, *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, International Meeting on Women's and Girls' Right to a Remedy and Reparation*, Paris, France, 2007.

⁹¹ Katherine Albutt, Jocelyn Kelly, Justin Kabanga, and Michael VanRooyen, "Stigmatisation and Rejection of Survivors of Sexual Violence in Eastern Democratic Republic of the Congo," *Disasters* 41.2 (2017).

⁹² Sunneva Gilmore and Luke Moffett, "Finding a Way to Live with the Past: 'Self-Repair,' 'Informal Repair,' and Reparations in Transitional Justice," *Journal of Law and Society* 48.3 (2021): 456.

Redistributive and Socioeconomic Justice

One of the key innovations of the AUTJP is its call for redistributive and socioeconomic justice, which is defined as “measures designed to rectify structural inequalities, marginalization and exclusion for achieving social justice and equitable and inclusive development.” These include land reform, affirmative action development packages for historically marginalized groups and regions, as well as wealth or resource-sharing and power-sharing arrangements. Within this, it identifies the need to prioritize those “affected by violence... particularly those affecting women, including displaced and refugee women.”⁹³

Through the promotion of redistributive and socioeconomic justice, the AUTJP offers a route for societies to achieve more equitable and inclusive outcomes for all individuals, regardless of their gender identity or expression. Several truth commissions, including Kenya’s Truth, Justice, and Reconciliation Commission, have noted that though many did not experience direct violence, economic marginalization exacted suffering on various population groups.⁹⁴ The ways in which violence and economics intersect is nonetheless often overlooked. For example, there is evidence that violent extremist groups in the Sahel region have been beneficiaries of arms trafficking. These groups may be involved in other lucrative black markets, such as the trafficking of drugs and cultural artifacts, as revealed in the conviction of Ahmad al-Faqi-Al Mahdi by the ICC.⁹⁵

Rama Mani has noted how redistributive justice is by far the most neglected aspect of transitional justice and that causes of conflict cannot be properly addressed without addressing structural and systemic injustices.⁹⁶ Analyses of the relationship between domestic roles and relations of production provide a better understanding of the reproduction of gender inequalities. South Africa’s limited transitional justice experiment and its ongoing status as the most unequal society in the world supports the calls for measures to rectify structural inequalities.⁹⁷ It also reveals the importance of effectively engaging with issues of gender justice. While new frameworks to enshrine gender rights have been created in the country, they have been accompanied by spiraling levels of violence and inequality in the post-apartheid era. In 2022, over 41 percent of South African women were unemployed, and 71 percent of South African women were living below the poverty line. For those that are employed, the gender pay gap remains at 30 percent.⁹⁸

It should also be noted that climate-related conflicts are having significant gendered economic impacts on the continent, exacerbating existing inequalities and vulnerabilities that already disproportionately affect women and marginalized gender groups. Some of these impacts include unequal access to resources, increased displacement and migration, disruption of the informal economy, and diminished access to markets and employment. The AUTJP could be operationalized to address these gendered economic impacts of climate change by ensuring equitable access to resources and opportunities for all members of society in the aftermath of violence.

93 African Union, “Transitional Justice Policy,” 14.

94 See, for example, Kenya Truth, Justice, and Reconciliation Commission, *Report of the Truth, Justice, and Reconciliation Commission, Volume 4*, (2013), 49-53.

95 Prosecutor v. Ahmad Al Faqi Al Mahdi, Case No. ICC-01/12-01/15-171, International Criminal Court, Judgment and Sentence, (September 27, 2016).

96 Rama Mani, “Balancing Peace with Justice in the Aftermath of Violent Conflict,” *Development* 48.3 (2005).

97 World Bank, “Inequality in Southern Africa: An Assessment of the Southern African Customs Union” (March 2022).

98 Nikayla Naidu, Studies in Poverty and Inequality Institute, “Resonance FM: Poverty and the Dire State of Women in South Africa” (September 2021).

Memorialization

Memorialization is identified by the AUTJP as a long-term, inclusive process that extends “beyond the immediate transitional period.”⁹⁹ As Sahla Aroussi observes, memorialization is based on the assumption “that learning about the past carries a deep moral knowledge that will consequently prevent past atrocities from happening again.”¹⁰⁰ This involves public acknowledgment of victims through commemorative activities, the erection of monuments and symbols, and the renaming of public spaces or buildings. It also cites revision of history texts and educational curricula as an important facet of memorialization. Benchmarks include participation, complementarity, and the inclusion of multiple narratives. In addition to calling for the representation of youth, the policy calls for attention to be paid to the voices of “women and other marginalized groups.”¹⁰¹

Memorialization is seen as a symbolic form of reparations, but it can raise complex questions about which history we choose to remember. Sites of conscience on the continent that have played a crucial role in preserving collective memory and fostering dialogue about past injustices include the Kigali Genocide Memorial, Goree Island in Senegal, and the Apartheid Museum in South Africa. One of the challenges to providing impactful memorialization centers on who is defined as a victim and how they are represented.

Memorialization initiatives thus need to carefully consider whose memories, points of view, values, and perspectives will be represented. Since memory building often serves political and nation-building agendas, it is important to ensure that they are inclusive. As Marianne Hirsch and Valerie Smith have shown, “cultural memory is always about the distribution of and contested claims to power” and gender is always about differentiated power relations.¹⁰² A failure to address histories of gender-based crimes in memorialization initiatives risks concealing how violence, marginalization, and trauma have gendered effects and reverberate through so-called peacetime. This, in turn, allows physical and sexual violence against women to become further entrenched, instead of challenged as part of a post-conflict transition.

Management of Plurality and Diversity

The AUTJP seeks to acknowledge the group dimension of conflict, including how violence is perpetrated on the basis of race, ethnicity, color, sex, language, religion, and political or any other opinion. It notes the importance of this in societies where polarization is a prominent part of conflict or where violence targets particular ethnic, religious, or regional groups.¹⁰³ Political actors often weaponize identity to mobilize support and justify violence. And where identity-based grievances are central in conflict, notions of masculinity may become intertwined with group identities, leading to the glorification of violence as a means of protecting one’s community or identity.

To address this, the policy calls for the identity dimensions of violence, including the gendered dimension, to be addressed in truth recovery and other transitional justice processes. It also notes the important role of educational programs that target stereotypes and social prejudice. As noted above, gender diversity is critical for inclusive transitional justice processes, and the AUTJP’s commitments are intended to facilitate a wide-ranging environment, promote fairness, and reduce gender-based biases and disparities. However, diversity management must avoid tokenism, wherein which diversity quotas are prioritized over substantive engagement.

99 African Union, “Transitional Justice Policy,” 14.

100 Sahla Aroussi, Faculty of Law, University of Antwerp, “Gender Silences in Memorialisation” (working paper).

101 African Union, “Transitional Justice Policy,” 15.

102 Marianne Hirsch and Valerie Smith, “Feminism and Cultural Memory: An Introduction,” *Signs* 28.1(2002).

103 African Union, “Transitional Justice Policy,” 15.

While the policy recognizes the role of educational programs, it is these kinds of initiatives that are often neglected. As UN Women has noted, gender equality and intersectional concepts of diversity should be basic organizing principles in the design, staffing, and leadership of all transitional justice processes.¹⁰⁴

Justice and Accountability

The AUTJP identifies the role of both formal and traditional legal measures as modes of accountability and judicial remedy and calls for specific attention to be paid to sexual and gender-based violence. In addition to modes of retribution, the policy notes that “in the African transitional setting, the justice and accountability element should involve conciliation and restitution.” It calls for procedures that accord particular attention to sexual and gender-based violence and ensure both the participation of women victims and their physical, psychological, and social rehabilitation. The AUTJP also requires that there should be no limitation to the full investigation and prosecution of serious violations, including sexual and gender-based violations.¹⁰⁵ However, one of the glaring gaps in the policy is its lack of reference to sexual violence against men, which reinforces the invisibility and stigma that these victims often suffer from and perpetuates impunity for these crimes.

The role of judicial mechanisms in addressing extensive gender-based crimes has been well documented. Jurisprudence developed at the ICTR, the SCSL, and the ICC has expanded the definition of crimes against humanity and war crimes to address a wide range of gender-based violations, including trafficking of women, enforced prostitution, forced pregnancy, and forced marriage.¹⁰⁶ Scholars have stressed the importance of international law in deterrence, confronting impunity for gender-based crimes, and promoting women’s rights.¹⁰⁷ Internationally, UN Security Council Resolution 2106 has stressed the need to deal with sexual violence in conflict through demands to exclude sexual violence from amnesty provisions.¹⁰⁸

However, it remains important to be mindful of the various challenges that have faced the successful pursuit of accountability for gender-based violations on the African continent, including the historic invisibility of crimes due to denial, societal acceptance of gender-based crimes, and the silence created by stigma. Justice for conflict-related sexual violence has been hampered by inadequate and incoherent investigation and prosecution policies, charges of sexual violence frequently being dropped during the course of proceedings, charges not encompassing the extent of sexual violence committed, and the inability to link the accused to charges of sexual violence.¹⁰⁹ Accountability has also been hampered by the inconsistent commitment of justice actors to treat gender-based crimes with the same rigor and determination as other crimes. Professor Anne-Marie de Brouwer notes that this can be explained by persistent perceptions that crimes of sexual violence are lesser crimes, as well as “a continued tendency to mischaracterize sexual violence crimes as incidental, non-violent crimes.”¹¹⁰

104 UN Women and UNDP, “Women’s Meaningful Participation in Transitional Justice,” 16.

105 AU, “Transitional Justice Policy,” 16.

106 Rosemary Grey, “International Criminal Law and Sexual Violence: Recent Developments and Feminist Critiques,” in *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice*, eds. Martha Albertson Fineman and Estelle Zinsstag, (Cambridge: Intersentia, 2019).

107 Louise Chappell, *The Politics of Gender Justice at the International Criminal Court: Legacies and Legitimacy* (Oxford: Oxford University Press, 2016).

108 UN Security Council, *Resolution 2106 (2013) [on Women and Peace and Security]* (New York: Official Record S/RES/2106(2013), June 24, 2013).

109 de Brouwer, “The Importance of Understanding Sexual Violence in Conflict for Investigation and Prosecution Purposes,” 660.

110 *Ibid.* at 661.

Those seeking to implement the AUTJP should utilize the numerous standards that have been developed to help guide the investigation and prosecution of sexual violence crimes. These include, for example, the Inter-Agency Standing Committee's Guidelines for Gender-Based Violence Interventions in Humanitarian Settings, which were created in 2005 in response to the Darfur crisis and updated in 2015.¹¹¹ More recently, the Murad Code has established benchmarks and frameworks for the safe and ethical collection and use of information obtained from survivors of systematic and conflict-related sexual violence.¹¹² In addition, in 2014, the ICTR produced a Best Practices Manual on the investigation and prosecution of sexual violence. The manual explores a range of issues, including how to improve the investigation and prosecution of sexual violence, how to best use witness testimony, and how to optimize the role of a court's senior management. Coupled with the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, as well as examples of the successful national prosecution of conflict-related sexual violence, there are many best practices that can be built upon.¹¹³ Additionally, addressing the lack of political will to pursue prosecutions is needed to ensure momentum be awarded to the investigation and prosecution of gender-based crimes.

Political and Institutional Reforms

The AUTJP identifies the need for political and institutional reforms to “ensure respect for the dignity of all members of society based on their inclusion and effective participation in decision-making processes.” It recognizes that “particular attention...to the representation, participation and voices of women and youth through law reform and other Policy measures” is needed. Measures to achieve this include guaranteed representation of women and marginalized groups in decision-making structures, the adoption of legislation on non-discrimination, and the review of criminal law to incorporate international crimes recognized in African and international law, including sexual and gender-based crimes.¹¹⁴

Central to reforming institutions is addressing how gender intersects with the police, the military, and other security agencies who have often been the most serious perpetrators of human rights violations on the continent. Security sectors are often sites of a type of violent masculinity “that deepens the differentiation of men and women, masculinity and femininity, preparing men to fight and women to support them in doing so.”¹¹⁵ According to the UN, in the DRC, government security forces (including the armed forces, national police, and members of the national intelligence agency) were responsible for 32 percent of conflict-related sexual violence in 2016.¹¹⁶ Further, in many contexts, such as Zimbabwe, it has become clear that until security forces are reformed, attempts at truth seeking or other accountability mechanisms will be fruitless. Training is an important element in reforming the culture of institutions to make them more gender inclusive and human rights compliant. However, its impact is limited due to the hierarchical nature of these institutions. In such structures, training can only be impactful if it is catalyzed and driven by those in leadership positions.

111 Inter-Agency Standing Committee, “Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing Risk, Promoting Resilience, and Aiding Recovery” (2015).

112 See Murad Code Project, website: www.muradcode.com (accessed February 2025).

113 Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, UK Foreign and Commonwealth Office, “International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law, Second Edition” (March 2017).

114 African Union, “Transitional Justice Policy,” 18-19.

115 Cynthia Cockburn, “Gender, Armed Conflict and Political Violence,” background paper for the World Bank conference “Gender, Armed Conflict, and Political Violence,” Washington, D.C., June 10-11, 1999.

116 United Nations Joint Human Rights Office, “Report on Human Rights Violations in the Democratic Republic of the Congo in the Context of the Events of 19 December 2016” (2017).

As noted above, those employing the AUTJP also need to be mindful of the implementation gap. Many AU member states already have national gender machineries in place, albeit often ad hoc, piecemeal, and uncoordinated. In contexts such as South Africa, the heavy reliance on these gender machineries for implementation of all things related to women has compromised their efficacy. The creation of national gender ministries has often been done at the expense of developing an approach whereby all sectors of government contribute to executing commitments to gender equality. In the South African case, among others, it has been suggested that the establishment of a dysfunctional gender machinery has created the illusion that women's issues are being taken seriously.¹¹⁷

Thus, it is important to ensure that gender is not arbitrarily woven into policymaking and that those enacting the AUTJP fulfill its commitment to meaningful gender transformation. For gender machineries to be effective, they must receive adequate funding and be subject to account through realistic benchmarks. Support for the representation of women must be accompanied by a similar commitment to countering the backlash that often follows the heightened visibility of women in public spaces. It is also crucial to recognize that economic and social vulnerability often continue despite gender-sensitive laws and constitutional frameworks. Incorporating international crimes, including sexual and gender-based crimes, into domestic legislative frameworks is only useful if they are prosecuted effectively.

Human and Peoples' Rights

The final element outlined by the AUTJP is the “promotion and institutionalization of a culture of human and peoples' rights.” The policy notes that restoring human dignity and humanity in interpersonal and intercommunal relationships is key to transitional justice. Benchmarks include rebuilding constitutional and legal rights among sectors of society that might have lost them during conflict and/or authoritarian rule, such as refugees, internally displaced persons, women, youth, and children and guaranteeing and protecting women's rights and participation in political, social, and economic spheres of life.¹¹⁸

While the AU has already enacted several measures to promote human and peoples' rights, including the Maputo Protocol on Women, many citizens continue to be unaware of their rights or how to claim them. Through the protocol, the AU defined an explicit framework outlining the rights of women on the continent and specifically calling for women's protection against all forms of violence, including “deprivation of fundamental freedoms in private or public life in peace time.”¹¹⁹ In terms of conflict, it specifies that perpetrators should be brought to justice before a competent criminal court. The protocol is also groundbreaking in its outlawing of female genital mutilation, which has been deemed by many gender activists as a form of violence against women.

To augment the Maputo Protocol, the AU adopted the Solemn Declaration on Gender Equality in Africa (SDGEA) in July 2004. Among other things, the SDGEA commits governments and heads of state to report annually on the progress they have made to support women's empowerment and promote gender equality both within government and civil society. It also calls for sensitization about gender-based violence on the continent.¹²⁰ However, to date, few

117 Amanda Gouws, “Violence Against Women Is Staggeringly High in South Africa — A Different Way of Thinking About It Is Needed,” *The Conversation*, November 29, 2022.

118 African Union, “Transitional Justice Policy,” 20.

119 African Union, “Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa” (2003), 4.

120 African Union, “Solemn Declaration on Gender Equality in Africa” (2004).

member states have submitted their SDGEA reports and those that have failed to include the progress their country has made toward implementation of the protocol. Furthermore, implementation of these systems remains fragmented. Tangible change to the extent of violence against women has yet to be realized.

Limited awareness of rights is compounded by the existence of dual legal systems in many African countries, which allows for harmful practices to continue. It is also important to recognize the lack of political will by many member states to implement the Maputo Protocol, which those employing the AUTJP will have to consider. The AU's 2021 Africa Gender Scorecard cautioned that "unless women's rights are secured and protected, Africa runs the risk of missing the Agenda 2063 and SDG [Sustainable Development Goals] deadlines. Those would be missed opportunities in terms of Africa's socioeconomic transformation."¹²¹ It further cautions that slow progress in achieving women's socioeconomic, civil, and political rights will drastically limit the impact of economic growth on inequality and poverty, which remain high on the continent.

121 African Union, "The 2021 African Union Gender Scorecard" (2021), 37.

Conclusion

The AUTJP emerged in response to concerns regarding the failings of transitional justice processes to achieve their objectives of sustainable peace in Africa. According to Dersso, “the conception of justice in the Policy embraces holistic approaches that focus on redressing the wrongs done to affected groups, healing wounds, restoring broken social relations and institutionalizing values and systems for resolving the root causes of conflict and preventing the emergence of the conditions that precipitate violations.”¹²² The policy offers a more comprehensive engagement with gender than policies by any other regional organization. The AUTJP’s recognition of the structural roots of gender-based violations—embedded in social norms, institutions, and colonial legacies—offers a progressive roadmap for fostering sustainable peace and justice across the continent.

While the policy demonstrates several strengths, its binary framing of gender as primarily concerning women and girls marginalizes the experiences of men, boys, and gender non-conforming individuals, particularly in addressing sexual violence. This limitation reflects a failure to fully engage with the diversity of gender-based harms, including those perpetuated by violent masculinities in military coups and conflict settings. A more expansive definition of gender, rigorous intersectional analysis, and proactive measures to bridge the implementation gap are essential to ensure that transitional justice processes respond to the diverse experiences of all survivors.

As ICTJ has noted, gendered patterns and structures of abuse are frequently obscured in post-conflict and post-authoritarian contexts. These patterns are reinforced by underlying social structures and discriminatory ideologies embedded in legal systems, political exclusion, and even within human rights institutions themselves.¹²³ It is therefore essential that the AUTJP recognizes that such social norms, ideologies, and institutional arrangements not only characterize contexts of war, but also persist during peacetime.

By leveraging African gender expertise, challenging colonial legacies, and adopting an expansive and intersectional understanding of gender, the AUTJP can move beyond symbolic gestures to deliver transformative justice that fosters sustainable peace and upholds human rights for all.

Recommendations

1. For the AUTJP to deliver on its promise of providing unique, homegrown justice in Africa, a holistic approach to gender justice is essential. A gendered interpretation of the AUTJP requires recognizing the many intersecting identities across the continent, including ethnic,

122 Dersso, “The African Union Transitional Justice Policy,” 2.

123 Kelli Muddell and Sibley Hawkins, ICTJ, “Overview Speaker Notes of ICTJ’s Gender and Transitional Justice Training Modules.”

class, religious, age, and political differences. Ignoring gender's role in shaping identities can lead to an incomplete understanding of individuals and their experiences. It is vital for transitional justice frameworks to adopt an expansive and intersectional gender framework that includes men, boys, gender non-conforming individuals, and sexual minorities, thus going beyond a binary view of "women and girls." Such recognition enables addressing of the experiences of all survivors of gender-related crimes.

2. The policy should incorporate a clear and comprehensive definition of sexual violence and exploitation that is aligned with international standards. While the AUTJP pays heed to the imperative of addressing the scourge of sexual violence on the continent, it fails to offer a clear definition. Gender constructs often underpin the classification of this violence in transitional justice mandates. As we have seen in numerous transitional justice contexts, limiting definitions of sexual violence to crimes experienced by women and girls fails to address the range of sexual violence committed during conflict and authoritarian rule. These contexts often also include violations against men, boys, and sexual minorities. To avoid reproducing the stereotype of women's victimhood present in previous transitional justice initiatives, future processes must create mechanisms sensitive to a broad definition of gender-based crimes, as envisaged under international law. This includes recognition that states need to better anticipate, prepare for, and respond to sexual exploitation and abuse allegations in transitional justice processes.
3. Implementation of the AUTJP should avoid tokenism by focusing on substantive representation of women and marginalized groups in transitional justice processes and other leadership roles. While promoting affirmative action is crucial, it is essential to ensure women are not merely given compensatory roles. Previous use of quotas has led to descriptive rather than substantive representation of women. Representation does not guarantee advancement of gender concerns, and quotas often benefit elites, excluding the marginalized. To effectively include those most typically excluded, it is necessary to engage comprehensively with political and economic power dynamics within societies when devising affirmative action programs. When used, quotas should be implemented inclusively, with due recognition given to diverse realities.
4. Gender expertise and advisory mechanisms should be institutionalized and integrated into the design and implementation of reparations, truth-seeking, institutional reform, and memorialization efforts. Furthermore, the AU should establish a gender advisory group comprising African feminist scholars and activists that could review transitional justice mandates and ensure an intersectional analysis in truth commissions, reparations programs, and peace processes. For example, truth commissions should be mandated to include specific hearings for male and nonbinary victims of sexual violence.
5. To effectively integrate gender issues into all facets of transitional justice policies, policy-makers and donors must address the current gap between policy and implementation. The AU has already made considerable strides toward gender justice, which is evident through initiatives such as the African Commission on Human and Peoples Rights' Guidelines on Combating Sexual Violence and its Consequences in Africa, along with the Maputo and Malabo Protocols. Therefore, it is crucial to establish mechanisms that uphold the commitments made in the AUTJP. These efforts must include ensuring that the implementation process is transparent and accountable.
6. Civil society, policymakers, and transitional justice practitioners enacting the AUTJP must uphold the policy's values equitably and integrate decolonial and gender-sensitive

approaches that address colonial impacts on gender roles. The policy acknowledges that injustices in Africa are tied to colonial histories, power imbalances, and global economic structures. Recognizing the continent's historical contexts is essential for holistic justice, as is consideration of colonialism's varied impacts on gender perceptions. Acknowledging how colonial and neo-colonial systems disproportionately affect women and marginalized groups is vital to preventing these dynamics from recurring. Mandates and processes should recognize colonialism's legacy on gender equality, including issues of gender and sexuality, and critique stereotypes that singularly portray women from the Global South as victims.

7. The various actors implementing the AUTJP must develop guidelines to address violent masculinities that perpetuate sexism, homophobia, and violence in the military and security sectors. They should incorporate gender-sensitive training to help understand the root causes of violent masculinities and how they reinforce harmful stereotypes. Supporting initiatives that educate on alternative masculinities and prioritize leadership change is essential. The AUTJP only minimally addresses the need for reform of militarized masculinities. Closing this gap is crucial for just transitions, particularly considering recent military coups.
8. Both civil society and donors can better support gender integration in the AUTJP by ensuring that due consideration is given to gender issues within each of the policy's 11 indicative elements. This can be best achieved by utilizing the preexisting wealth of African gender expertise derived from experiences in The Gambia, Kenya, Sierra Leone, and Uganda, among other contexts. Specialized knowledge and understanding of how gender dynamics intersect with the constitutive elements of the AUTJP are needed to realize the policy's potential. This may involve harnessing gender expertise during the design and implementation of distinct transitional justice processes, such as truth commissions, traditional justice initiatives, and memorialization efforts. For instance, technical advisory groups of African women civil society activists could be deployed to ensure a holistic approach to transitional justice.
9. Civil society and donors have a key role to play in monitoring and evaluating African transitional justice processes, including to avoid any regression of gender rights in the aftermath of these processes. Monitoring helps guarantee compliance with obligations and the holding of governments and other stakeholders to account for fulfilling their commitments to gender justice.
10. All actors involved in designing, implementing, and monitoring transitional justice policies must ensure strong partnerships with civil society (particularly women's organizations) to ensure grassroots inputs. Local research capacity should also be built up and supported to inform gender-sensitive transitional justice policies.
11. Climate-related conflicts are having significant and gendered economic impacts on the continent, exacerbating existing inequalities and vulnerabilities that disproportionately affect women and marginalized gender groups. Some of these impacts include unequal access to resources, increased displacement and migration, disruption of the informal economy, and diminished access to markets and employment. It is therefore essential to operationalize the AUTJP to tackle the gendered economic impacts of climate-related conflicts by integrating climate justice into reparations and redistributive justice programs. Reparations packages should be designed to prioritize women's access to land and markets. Transitional justice actors should partner with environmental organizations to monitor the intersections between climate and conflict and ensure that transitional justice processes include climate-affected communities.

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