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Transitional Justice, Reconciliation and Peacebuilding: *Assessing the Nexus*

Life & Peace INSTITUTE

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Introduction

Transitional Justice, Peacebuilding and Reconciliation: Assessing the Nexus

Tim Murithi
(Guest Editor),

Eden Matiyas,

Tsion Belay

The African continent remains afflicted by the terrible toll of violent conflicts, civilians continue to suffer disproportionately from human rights violations including gender-based violence, violent extremism, illicit trafficking of weapons, narcotics and people through globalised exploitation. These processes fuel the displacement of people across the continent and perpetuate a humanitarian crisis. In the past two decades, there has been a proliferation of mechanisms to address past violations in war-affected countries and regions. It is now evident that it is vitally important to improve our understanding of how to ensure the effectiveness, durability and stainability of national processes for reconciliation, peace and security interventions. The formal adoption of the African Union Transitional Justice Policy(AUTJP), in February 2019, by the Assembly of Heads of State and Government, has provided a framework to engage national governments, Regional Economic Communities (RECs), Civil Society Networks, analysts and other stakeholders on the importance of implementing transitional justice and reconciliation processes that will contribute towards sustaining peace and security in Africa. In this process, civil society actors were closely involved in working with the African Union Department of Political Affairs to provide technical support and input that led to the formal adoption of the AUTJP.

Transitional justice remains a misunderstood term. Furthermore, there is a lack of clarity with regards to the link between transitional justice, peacebuilding and reconciliation, This ambiguity specifically relates to the connection between bringing together former enemies in the process of sustained dialogue, ensuring redress for past wrongs, promoting the restoration of human dignity, as a pathway towards developing a shared vision to shape a new inclusive future based on a durable peace. Transitional justice is the generic name for processes that enable societies that are emerging from violent conflict or

authoritarian rule to come to terms with the past and lay the foundations for the future through the building of peaceful societies. The range of transitional justice processes includes elements of truth recovery, accountability and redress, including retributive and restorative justice to redress the violations that victims have endured. In addition, transitional justice processes can include forms of reparation and restitution, symbolic or otherwise, to restore the human dignity of the victims and survivors. Furthermore, processes linked to institutional reform of governance, the judiciary, security and intelligence sectors are necessary to consolidate transformed societies and reassure citizens that the harm of the past will not recur. Consequently, transitional justice interventions naturally intersect with peacebuilding initiatives, and both seek to pursue the ultimate goal of promoting gradual reconciliation processes.

The AUTJP has incorporated insights, knowledge and wisdom from a wide range of experiences and processes of AU Member States transitioning from violent conflicts, war and authoritarian regimes. The AUTJP includes a broad range of guidelines and benchmarks which can empower and enable Member States to formulate their own context-specific and holistic national policies, strategies and programmes geared towards achieving democratic and socio-economic transformation, sustainable peace, justice, reconciliation, social cohesion and national healing.[1] Furthermore, "the AUTJP address deficits and developmental challenges to advance the noble goals of the AU's Agenda 2063."[2] Nevertheless, the AUTJIP has not been fully engaged with and it is currently not being adequately utilised by AU member states to guide and design their internal transitional justice, peacebuilding and reconciliation processes.

The Intergovernmental Authority on Development (IGAD), as a regional mechanism, seeks to promote peace, security and economic development. However, IGAD does not have a definitive policy on the transitional justice and

1.   African Union.2019." The State of Transitional Justice in Africa: 3rd Edition of the Continental Transitional Justice Forum" <au.int/en/newsevents/20190924/state-transitional-justice-africa-3rd-edition-continental-transitional-justice> (accessed 17 April 2020).

2.   African Union. 2019. "Transitional justice Policy. "<https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf > (accessed 17 April 2020).

reconciliation process in the region or a strategy to support implementation of the AUTJP. As the issue of transitional justice, peacebuilding and reconciliation will remain critical to the Horn of Africa region for the next decade and beyond, there is a real need to research trends, gaps, and opportunities for IGAD organs relative to transitional justice.

This Horn of Africa Bulletin (HAB) Issue is dedicated towards assessing the nexus between transitional justice, peacebuilding and reconciliation, by engaging with case studies in the region, including Somalia, South Sudan as well as the work of the Intergovernmental Authority on Development (IGAD). The Bulletin also draws upon the comparative experiences of The Gambia, to provide some practical insights and lessons for ongoing efforts to promote transitional justice, peacebuilding and reconciliation in the Horn of Africa.

The first article by Moyo, engages with the AUTJP and argues that this document was developed by integrating the practical experience of promoting transitional justice, peacebuilding and reconciliation drawn from across the African continent. Specifically, Moyo suggests that by drawing from this broad range of fields, the AUTJP explicitly illustrates the intersectionality between transitional justice, peacebuilding and reconciliation and serves as an important guide for AU member states to develop their own context-specific approaches to effectively address the legacies of the past to build fairer, inclusive and democratic societies.

The second article by Tshuma, interrogates the concept of regional reconciliation and its three levels of implementation, notably, leader-to-leader engagement; government-to-government interventions; and people-to-people exchanges. Tshuma then makes the case that IGAD should adopt such a framework as a means of addressing the persistence of conflict in the Horn of Africa Region. Further, Tshuma argues that a carefully planned, coordinated and executed regional reconciliation and peacebuilding process is likely to generate peace dividends for the region which promise to transform the region's peace and security prospects positively.

The third article by Nyadera examines the elusiveness of peace in Somalia, due to the identity-based nature of the contestation and grievances between clans in the country. Nyadera argues that transitional justice mechanisms implemented in Somalia, such as a prospective truth and reconciliation commission, must guarantee competing clans freedom from fear in the future through these processes of truth-recovery. In addition, transitional justice mechanisms need to prioritise addressing clans' grievances, as well as the creation of a vision of a cohesive national society in which they are included and treated fairly. In addition, transitional justice mechanisms need to prioritise addressing their grievances are addressed, as well as the creation of a vision of a cohesive national society in which they are included and treated fairly.

The fourth article by Logo observes that the establishment of a Hybrid Court for South Sudan (HCSS), was incorporated as part of the September 2018 Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS). However, despite its provision in the R-ARCSS, the political and military elites resisted the establishment of the HCSS, because they did not want to establish a court that could potentially hold them accountable for human rights violations and crimes against humanity. In the absence of any movement on criminal accountability, Logo argues that South Sudan should advance its implementation of other mechanisms of transitional justice, specifically truth-telling and reparations, the failure of which will continue to foment and sustain societal instability, which could lead to the disintegration of the state.

The fifth and final article by Ikubaje and Dr. Matlosa, draws upon the experience of the Republic of The Gambia, in West Africa, in framing its transitional justice processes following its transition to a new political dispensation in 2017. Specifically, they assess how the Gambia's Truth Reconciliation and Reparation Commission (TRRC) made commendable progress in promoting peace, accountability, justice and reconciliation in the country. Subsequently, they argue that Gambia's accomplishments and challenges provide important insights and lessons for the Horn of Africa, in general,

and the Republic of South Sudan, in particular. Ikubaje and Matlosa argue that the Gambian experience provides some concrete and practical recommendations, which South Sudan can utilise as it strives to implement and operationalise its transitional justice and peacebuilding processes.

This HAB issue is timely in its thematic focus due to the number of countries which are emerging from violent conflict or transitioning from an authoritarian rule to democracy in the continent. Consequently, we recommend it to you and invite you to share it widely among your constituencies and networks to better inform ongoing transitional justice, peacebuilding and reconciliation efforts across the HoA region and also the continent in more broadly.

Guest Editor's Information & Contact

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African Union's Consolidation of the Transitional Justice, Reconciliation and Peacebuilding Nexus

Annah Moyo

Introduction

The convergence and divergence of peacebuilding and transitional justice fields have been a subject of academic enquiry for more than two decades.[1] The debate on whether peacebuilding and transitional justice complement or contradict each other is an ongoing one. Proponents for complementarity highlight, amongst other things, the symbiotic relationship between the two fields through the shared space and common goals as they frame and guide interventions in post-conflict settings.[2] Commentators who highlight the contradictions between transitional justice and peacebuilding, especially from the peace versus justice debate wherein peace and justice were previously viewed as having competing and conflicting demands,[3] continue to highlight the competing and conflicting objectives and outcomes of transitional justice, and peacebuilding.

Since the 1990s, the practice of transitional justice in Africa has demonstrated the complementarity among transitional justice, peacebuilding and reconciliation, signalling a move away from the mainstream legalistic transitional justice framing, approach and objectives towards an integrated approach wherein the two fields are mutually interdependent, with transitional justice as an element of peacebuilding. The UN Secretary-General's 2004 report on "Rule of Law and Transitional Justice in Post-Conflict Societies" also embodies the integration of transitional justice and peacebuilding that has now become part of post-conflict reconstruction practice. This integration has further been consolidated into a continent-wide policy on transitional justice, the African Union Transitional Justice Policy (AUTJP), which was adopted by the African Union Heads of State and Government in February 2019. The AUTJP was developed in response to a recommendation in a report published by the African Union's Peace and Security Council's 2011 Panel of the

Wise, which is one of the pillars of the AU Peace and Security Architecture (APSA).

The Panel of the Wise report entitled "Non-Impunity, Truth, Peace, Justice and Reconciliation in Africa: Opportunities and Constraints"[4] recommended that the AU develop a Transitional Justice Policy Framework and strengthen instruments for justice and reconciliation on the continent. The proposed Framework was to consolidate peace, reconciliation and justice in Africa, to address impunity, conflicts and repression and promote sustainable peace, social justice, human and people's rights, democratic governance and development. The subsequent development of the AUTJP was based on insights from a broad range of sources, including the reports of national truth commission processes, the work of international criminal tribunals in Africa, and key documents such as Thabo Mbeki's Report of the African Union High-Level Panel on Darfur (AUPD) titled "Sudan: Darfur - the quest for peace, justice and reconciliation".[5]

This article assesses how the African Union Transitional Justice Policy (AUTJP), which is the first continental Framework of its kind to be developed globally, consolidates the provisions of transitional justice, peacebuilding and reconciliation. The article further argues that the complementarity among transitional justice, reconciliation and peacebuilding and the nexus among these fields has been consolidated through ongoing African transitional justice practice, and formally adopted in the AUTJP. The article also includes recommendations to African stakeholders on how to utilise the AUTJP to develop their own context-specific transitional justice processes.

1. Catherine Baker & Jelena Obradovic-Wochnik, "Mapping the Nexus of Transitional Justice and Peacebuilding," Journal of Intervention and Statebuilding, 10, no. 3 (2016): 281-301, https://www.tandfonline.com/doi/full/10.1080/17502977.2016.1199483 p. 282

2. Dustin N. Sharp, "Beyond the Post-Conflict Checklist: Linking Peacebuilding and Transitional Justice through the Lens of Critique," Chicago Journal of International Law, 14, no 1: 165-196, (2013). https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1401&context=cjil p. 186

3. Magnus R. Nielsen. 2010. "Transcending the 'peace vs. justice' debate: a multidisciplinary approach to transitional justice (sustainable peace) in Northern Uganda after the International Criminal Court's involvement in 2004." MA diss., Stellenbosch University p. 32

4. Now titled "Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight against Impunity". Accessed July 20, 2020. https://www.ip-inst.org/wp-content/uploads/publications/ipi_epub_peace_justiceafrica2.pdf

5. African Union High-Level Panel on Darfur. 2009. "Sudan: Darfur - the quest for peace, justice and reconciliation". Accessed July 24,2020 https://reliefweb.int/sites/reliefweb.int/files/resources/2A061A49A2933E-73C1257663003ACC38-Full_Report.pdf

Mapping the nexus among transitional justice, peacebuilding and reconciliation in the African context

Transitional justice, reconciliation and peacebuilding fields have evolved over time, and their focus has expanded over the years. This expansion has bridged the conceptualisation and outcome divide between them. How these concepts have been defined in the African context highlights the interconnectedness and complementarity between these fields for both policy and practice, as will be discussed below.

Transitional justice

Transitional justice was initially conceived and applied within the context of the end of the Cold War as a process for dealing with transitions to democracy in Latin America and Europe. As such, the original articulation of transitional justice had its goals narrowly framed in terms of legal criminal accountability. Its initial application in Africa was to address the contextual reality of transition from war to peace. The field has since expanded beyond its previous narrow legalistic framing into an interdisciplinary field. This has created opportunities for transitional justice processes to address the socio-economic dimensions of human rights abuses, as well as the structural and systemic issues stemming from the colonial era inequalities and abuses as well as democratic deficits and developmental challenges. The Secretary General's Report titled "Rule of Law and Transitional Justice in Conflict and Post Conflict Societies"[6] alluded to this expanded scope and interdisciplinary dimension of transitional justice by defining transitional justice as "... the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation". These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals or a combination thereof."[7] The AUTJP underscores the expanded scope and definition of transitional justice, affirming that it consists of "...various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation.".[8] The AUTJP further outlines the eleven indicative elements of transitional justice,[9] which specifically provide for restorative, retributive, redistributive or socio-economic and developmental or transformative justice dimensions, addressing a wide range of African contextual realities and lived experiences of African people. These dimensions of justice and the AUTJP's expanded view of transitional justice take into consideration Africa's unresolved legacies of the past going as far back as the colonial era crimes and abuses, the root causes of conflicts, inequality and current manifestations of conflict, systematic oppression and violence.[10]

Peacebuilding

Peacebuilding has its origin in the peace studies field, and has been understood as "...a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable, peaceful relationships".[11] Peacebuilding seeks to achieve a constructive transformation of conflicts and prevention of future

6.   United Nations Security Council Report. 2004. "The rule of law and transitional justice in conflict and post-conflict societies." UN Doc S/2004//616

7.   See endnote vi above, p.4 para 8

8.   African Union Transitional Justice Policy. Accessed July 20, 2020. https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_,web.pdf p. 4, para 19

9.   See endnote viii above, p. 9-20, para 43-100

10.   See endnote viii above, p.1 para 1-2

11.   See endnote iii above, p. 55

conflicts through addressing the underlying structural issues including the root causes of conflict, and the relationships between conflicting parties to facilitate conducive conditions sustainable peace.[12] Peacebuilding, therefore, addresses conflicts and seek to prevent future conflicts through its conflict prevention, conflict management and conflict transformation strategies.[13] Experts argue that peacebuilding is a bottom-up approach, which occurs from grassroots to the highest government level, one which requires the combined action of both local and external actors through locally-owned and locally-driven processes.[14] The AUTJP lends itself to this conceptualisation of peacebuilding through its focus on transitional justice, by underpinning the policy on principles that include national and local ownership, inclusiveness, equity and non-discrimination as well as context specificity.

Reconciliation

Reconciliation is considered as a complex set of processes, occurring at multiple levels – individual, interpersonal, socio-political and institutional – involving building or rebuilding of relationships and trust following the widespread violation of human rights.[15] Reconciliation has been described as an objective of transitional justice constituting the elements of establishing trust based on shared norms at a horizontal level, amongst citizens, and at a vertical, governed and governing institutions level.[16] Nielsen discusses the nexus between reconciliation, transitional justice and peacebuilding when he argues that peace and justice meet in reconciliation.[17] Reconciliation is also perceived as a goal of both transitional justice and peacebuilding, and as a much wider process that is necessary to overcome and transform violent conflicts, thus creating social harmony and peaceful co-existence between conflicting parties.[18] The AUTJP affirms the latter by presenting reconciliation as both a goal of transitional justice and a separate indicative element of transitional justice, with its processes, outcomes and benchmarks for success.[19] It has also been argued that both transitional justice and reconciliation are complementary within the inclusive peacebuilding context in response to conflicts and repressive rule, as they both deal with the legacies of the brutal past and seek to promote social healing.[20] Although inter-connected and inter-linked, they do not necessarily, or automatically, lead to mutually reinforcing outcomes.[21]

The nexus: The complementarity among transitional justice, reconciliation and peacebuilding

The UN has facilitated the mutual complementarity of peace and justice in its assertion that "justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives".[22] Scholars have highlighted the often-shared space and common goals of transitional justice and peacebuilding that requires advocating for complementarity.[23] Transitional justice is increasingly being viewed as an integral element of both the international community's post-conflict reconstruction and peacebuilding agenda, as well as the African conceptualisation and application of a post-conflict transformative agenda aimed at achieving sustainable peace. The AUTJP addresses the peace versus justice debate through its principle of synergising, sequencing and balancing the transitional justice elements of peace, justice and reconciliation.[24] It outlines these not as competing ideas and outcomes, but by noting the following:
In the fragile post-conflict setting, a balance and compromise must

12. See endnote iii above, p. 54

13. ACCORD. n.d. Accessed July 22,2020. https://www.accord.org.za/work/peace-building/

14. Ibid. See also endnote iii above, p.56

15. Paul Seils, ICTJ Briefing Paper, "The Place of Reconciliation in Transitional Justice: Conceptions and Misconceptions" (2017), accessed July 22,2020 https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf p. 1

16. Brian Kagoro, The paradox of alien knowledge, narrative and praxis: Transitional justice and the politics of agenda setting in Africa, Where Law Meets Reality.(Pambazuka Trust, 2012) p. 11.

17. See Nielsen in endnote iii above, p.63-65

18. See Nielsen in endnote iii above, p.53

19. See AUTJP in endnote v above, p. 12, para 60

20. SIDA. n.d. "Transitional Justice and Reconciliation." Accessed July 22, 2020. https://www.sida.se/contentassets/69bb-013c27e64cfcb8b6c6e05aeb71ab/transitional-justice-and-reconciliation.pdf

21. See Siels in endnote xv above, p.1

22. See endnote vi above, p. 1

23. See endnote ii above, p.186-7

24. See AUTJP in endnote v above, p. 7 para 38

be struck between peace and reconciliation on the one hand and responsibility and accountability on the other. In this regard:

i.   The choice of the combination of Transitional justice measures should endeavour to mutually reinforce, and ensure the complementarity of, the objectives of peace and reconciliation on the one hand and justice and accountability, as well as inclusive development, on the other;

ii. The formulation of accountability and reconciliation measures should be approached, both conceptually and procedurally, in an integrated manner and imbued with restorative and responsibility elements respectively;

iii. Relevant socio-economic development programmes focusing on members of society whose livelihoods have been disrupted by recurrent violence and marginalisation should complement such measures;

iv. The promotion and pursuit of the interrelated but at times competing for TJ objectives in a transitional setting often necessitate sequencing and balancing;

v.   Sequencing means that the various TJ measures should be comprehensively planned and complementarily organised in their formulation and programmatically ordered and timed in their implementation;

vi. Balancing entails achieving a compromise between the demand for retributive criminal justice and the need for society to achieve reconciliation and rapid transition to a shared democratic future.

Consolidating transitional justice, reconciliation and peacebuilding through the African Union Transitional Justice Policy

The AUTJP guides African Union member states to develop their context-specific comprehensive policies, strategies and programmes towards democratic and socio-economic transformation and achieving sustainable peace, justice, reconciliation, social cohesion and healing. It challenges mainstream transitional justice, which is characterised by an over-emphasis on prosecutions of those responsible for violations, truth commissions that clarify the causes and consequences of past abuses, material and symbolic reparations for victims, and institutional reforms to guarantee non-recurrence of conflict. These processes tend to fall short in addressing African experiences of conflict, of historical legacies of violations and abuses, unresolved traumas of such past abuses, inequality stemming from historical unequal treatment and unequal access and distribution of resources and opportunities as well as localised justice initiatives and measures aimed at reconciliation, social cohesion, restorative justice and social reintegration.

The AUTJP consists of eleven elements of transitional justice and provides a model of transitional justice that is not limited to formal processes but one that also prioritises informal processes and approaches, which takes into account ethnocultural nuances to justice and socio-economic and developmental dimensions of peace and justice. The indicative elements of transitional justice include Peace Processes; Transitional Justice Commissions; African Traditional Justice Mechanisms; Reconciliation and Social Cohesion; Reparations; Redistributive (socio-economic) Justice; Memorialisation; Diversity Management; Justice and Accountability; Political and Institutional Reforms; and Human and People's Rights. These elements of transitional justice are grounded on the lived experiences of African people, and they push boundaries of mainstream transitional justice standards by seeking to address the contextual nuances of historical injustices, systemic violations, vulnerability and victimhood, and incorporate localised conflict resolution and justice mechanisms to address the consequences of conflict and gross human rights violations. The AUTJP also addresses

the experiences of women and girls, children and youth, persons with disabilities, older persons and internally displaced persons, refugees and stateless persons as cross-cutting transitional justice issues. This is important, given the added layer of vulnerability that these groups of victims are subjected to during conflict situations, thus requiring specialised focus and measures to address their lived realities and vulnerability.

A key feature of the AUTJP is its focus on the implementation of the policy through the identification of multiple actors who are critical for the success and effective implementation of the policy. The policy identifies African Union member states as primary implementers of the policy and further recognises the role of the Regional Economic Communities as well as Regional Mechanisms in the implementation of transitional justice. This presents an opportunity for the Intergovernmental Authority on Development (IGAD) – an eight-country trade bloc in Africa, including countries in the Horn of Africa and the Africa Greater Lakes most affected by conflicts and authoritarian rule – to develop its own context-specific, regional transitional justice strategy to strengthen its response to regional issues and challenges.

Conclusion

The AUTJP incorporates the collective insights drawn from peacebuilding and reconciliation practices from across Africa, including, for example, South Africa's Truth and Reconciliation Commission (TRC), Kenya's Truth, Justice and Reconciliation Commission (TJRC), and Rwanda's indigenous Gacaca court system, as well as legal insights drawn from the International Criminal Tribunal of Rwanda (ICTR). It includes a broad range of provisions that can guide countries, such as Ethiopia, Somalia, Sudan, and South Sudan, in the Horn of Africa region, to develop their own local and context-specific transitional justice processes. Issues of transitional justice, reconciliation and peacebuilding are interconnected and mutually reinforcing within the African context. Transitional justice and peacebuilding fields, with their intended goal and outcome of reconciliation, interface with conflict, war and repression, and the need to overcome brutalisation, violations and violence that accompany such violent realities. The AUTJP highlights the interlinkages among peace, justice and reconciliation, and with its indicative elements of transitional justice which include peace and reconciliation processes, further reinforce the complementarity and the interconnectedness of transitional justice, reconciliation and peacebuilding fields. The AUTJP, therefore, consolidates the convergence, interconnectedness and mutual reinforcement of transitional justice, reconciliation and peacebuilding, which provides an important wide-ranging framework for African countries and societies to pursue and achieve the goals of transformative justice, reconciliation and sustainable peace.

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IGAD's Role in Promoting Regional Reconciliation

Darlington Tshuma

Introduction

The tension between serving justice on the one hand and creating peace on the other inspired the emergence of the field of transitional justice. Transitional justice refers to judicial and non-judicial processes designed to address past human rights violations, as a pathway to enabling previously conflict-ridden and war-torn societies to recover and eventually stabilise.[1] Transitional justice measures can include criminal prosecutions, truth commissions, reparation programmes and a range of institutional reform processes that may involve drawing up new constitutions, strengthening the judiciary, and implementing media, economic and political reforms. Addressing violations and injustices that traverse national territorial boundaries generates specific challenges relating to how to navigate the constrictions of state sovereignty and territorial integrity. This article will discuss a conceptual framework for regional reconciliation, prior to assessing the role that the Intergovernmental Authority on Development (IGAD) can play in promoting such processes. The article will conclude by suggesting concrete policy recommendations on how regional reconciliation processes can be conceived and implemented in the Horn of Africa region.

Towards a Regional Framework for Reconciliation and Peacebuilding

In the article entitled, 'The Interface between Peace Operations and Regional Reconciliation Processes Framing an Exit Strategy for Africa's Conflict,' Murithi[2] provides ground-breaking pathways for regional reconciliation, that draws upon the principles stipulated in the African Union Transitional Justice Policy (AUTJP). According to Murithi, regional reconciliation can be implemented through transnational processes and mechanisms for truth recovery and justice aimed at pursuing accountability for past violations that transpired across borders.[3] These processes work across borders to proactively address past divisions, promote trust and rebuild relationships broken by mistrust, war and violent conflict. Within a regional reconciliation framework, justice and accountability for past violations are pursued through a combination of restorative and retributive justice processes. Embedded within a regional framework for reconciliation are guidelines that the AUTJP advance to assist African Union member states, specifically those emerging from protracted violent conflict, to pursue accountability and achieve sustainable peace, justice and reconciliation.[4] Specifically, the AUTJP states that

Regional Economic Communities (RECs), "play a key role in helping address the regional and trans-boundary dimensions of the conflict."[5] Policy discussions in favour of a regional reconciliation process have been precipitated by shifting conflict dynamics on the continent where violent conflicts are no longer neatly confined to territorial boundaries. Against this background, it is not a surprise that regional conflict systems have become a persistent feature of Africa's peace and security landscape, particularly in the Horn of Africa, the Great Lakes region, and the Lake Chad Basin. The regionalisation of violent conflict, atrocities and violations continue to challenge traditional state-centric approaches to peace and security in Africa. For instance, some seemingly 'unrelated' and 'distant' conflicts in the Horn of Africa have become interconnected through complex inter-ethnic group alliances, transnational enmity and opportunism designed to exploit the illicit trade and trafficking of goods and people across borders. These and other challenges raise important considerations on how regional reconciliation processes that transcend borders can be pursued and implemented on the continent.

1. See for example, Chrispus Okello, M. et al., "Where Law Meets Reality: Forging African Transitional Justice" Pambazuka Press (2012); See also Editorial Note, the International Journal of Transitional Justice, 7, Issue 1, (2013).

2. Murithi, T. The Interface between Peace Operations and Regional Reconciliation Processes Framing an Exit Strategy for Africa's Conflicts, Africa Insight, 49, Issue 3, (2019).

3. Murithi, T. Regional Reconciliation in Africa: The Elusive Dimension of Peace and Security. Claude Ake Memorial Paper No. 10. Nordic Africa Institute, 2019.

4. Wachira, G.M The African Union Transitional Justice Policy Framework: Promise and Prospects, (2017).

5. African Union Transitional Justice Policy, 'Actors, Processes and Implementation Mechanisms', para.123, p.26.

The following section assesses how transnational peace and reconciliation processes can be established and consolidated in the Horn of Africa.

The Role of IGAD in Promoting Regional Reconciliation

Murithi[6] notes that regional reconciliation remains the missing link in attempts to address conflict and consolidate peace and security in Africa. An additional challenge is that individual states are yet to develop and adopt coordinated strategies for promoting and entrenching peace.[7] Taking the Horn of Africa as an example, a carefully planned, coordinated and executed regional reconciliation and peacebuilding processes are likely to generate peace dividends for the region that will positively transform the region's peace and security prospects. Some notable milestones include renewed diplomatic engagements between Ethiopia and Eritrea; Eritrea and Djibouti and Eritrea and Somalia and the fledgeling peace processes in South Sudan, through the Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS). Peace overtures between leaders of Horn countries, for example, the Joint Declaration on Comprehensive Cooperation between Ethiopia, Eritrea and Somalia and bilateral arrangements between Eritrea and Djibouti have incrementally enhanced diplomatic relations between concerned countries. The Joint Declaration on Comprehensive Cooperation between Ethiopia, Eritrea and Djibouti deals with unresolved border issues which remain a constant source of violent conflict.

A regional peace and reconciliation process could build on these and other developments to consolidate peace and stability and entrench democratic governance. A regional reconciliation infrastructure tasked with implementing processes of truth recovery, promoting accountability and redress for conflicts spanning borders in the Horn of Africa would ideally be led by IGAD for two major reasons. Firstly, IGAD is the primary institution tasked with overseeing peace and security processes in the region and is recognised as such by the international community, including the African Union. Secondly, IGAD has over the years accumulated substantial experience in facilitating peace processes in the Horn of Africa. For example, IGAD has been instrumental in facilitating peace processes in South Sudan, Somalia and is currently engaged in Sudan. IGAD also enjoys considerable support from the international partners who can collaborate as strategic partners in implementing a regional reconciliation initiative of this magnitude. A regional reconciliation initiative would need to be operationalised through leader-to-leader and government-to-government engagements, at the formal level, as well as people-to-people interventions largely driven by civil society, academia, sporting activities and cultural festivals at the informal level.

Civil Society's Support for Regional Reconciliation Processes

Civil society remains a crucial and strategic partner in the design and implementation of regional reconciliation processes. Civil society broadly defined to include academia, faith-based and community organisations as well as research think tanks can work to promote people-to-people engagement through cultural exchange programmes and cross-border sporting and music activities. Civil society can also organise cross-border dialogues and spaces for convening challenging and introspective debates and discussions, to promote genuine engagement with transitional justice processes and to develop mechanisms for addressing impunity by holding perpetrators of atrocities accountable. The ultimate objective of these engagements must be to ensure that victims and survivors of cross-border violence and conflict have an opportunity

6.   Murithi, T. Regional Reconciliation in Africa: The Elusive Dimension of Peace and Security. Claude Ake Memorial Paper No. 10. Nordic Africa Institute, 2019.

7.   Ramsbotham, A. 'Paix sans frontières: Building peace across borders'. New Routes: A Journal of Peace Research and Action, 17, Issue 6, (2012).

to access justice. Similarly, such platforms can be utilised to identify conflict drivers at the community level and potential mechanisms for resolving them, drawing on traditional mechanisms for conflict resolution that exist across borders. For instance, Ethiopians and Eritreans could use their historic ties in addition to cultural exchanges through music festivals, to generate people-to-people support from the ground-up, which can sustain diplomatic overtures and leader-to-leader interactions between Abiy Ahmed and Isaias Afwerki. Such cultural exchanges could be scaled up to government-to-government interventions which can contribute towards managing any tension, and progressively build confidence and trust. Key stakeholders such as the

African Union, IGAD, United Nations and Civil Society can help mobilise technical support and resources needed to implement a broad-based regional reconciliation process. At the state level, governments can utilise their resources and technical expertise to develop new policy frameworks and legislation that underpin political and regional reconciliation. For example, the countries in the region can drive the development of a Horn of African Regional Reconciliation Commission, embedded within IGAD's Peace and Security Division to oversee the implementation of multi-level peace interventions. This is primarily because the Peace and Security Division is the principal unit tasked with overseeing peace and security issues in the region.

The South Sudan Crisis

Despite its status as the world's youngest nation, South Sudan remains embroiled in serious intrastate conflict since gaining independence from Khartoum in 2011. The recently concluded R-ARCSS remains extremely fragile amid concerns that in the absence of a coordinated regional approach to managing the crisis in South Sudan, the peace agreement may miss opportunities to entrench peace and stability. South Sudan presents an interesting case because what seemed like a 'distant' and internal conflict involving two members of the Sudan People's Liberation Movement (SPLM), soon became a regional conflict connected through complex regional alliances, which drew in Sudan, Uganda, Kenya and Ethiopia, through complex interactions and configurations. The interactions

ranged from formal military alliances between state leaders to state support for armed militia movements, support to ethnic and clan alliances, and in some instances coalitions of armed militia groups. Leadership disputes within the rank and file of the Sudan People's Liberation Movement/Army (SPLM/A) between supporters of Kiir and Machar, led to the tragic massacre of Nuer civilians in 2013, that claimed over 300 lives.[8] The diplomatic sentiments at the time were that the only way to guarantee lasting peace and stability in South Sudan was through a comprehensive peace armistice involving Yoweri Museveni of Uganda and Sudan's former leader Omar al-Bashir. This demonstrates not just the intractability of the conflict in South Sudan but reveals its regional dimension.

8.   Ramsbotham, A. 'Paix sans frontières: Building peace across borders'. New Routes: A Journal of Peace Research and Action, 17, Issue 6, (2012).

Regional Reconciliation between Ethiopia and Eritrea

In April 2018, Ethiopia elected Prime Minister Abiy Ahmed who took over from Hailemariam Desalegn. Prior to this, Ethiopia and Eritrea had remained in a state of "no peace, no war" after a war between the two countries ended in 2000. A final peace agreement was only reached in 2018, almost two decades after the war began. With his ascension to power, Abiy signalled intentions to pursue a range of 'corrective measures' which, if fully implemented, could have far-reaching implications for both Ethiopia and Eritrea and the region in general. Domestically, Abiy released political prisoners and opened up the political space to previously banned groups. Regionally, Abiy sought to pursue similar policies of rapprochement and détente, by meeting with leaders across the region to generate consensus on areas of mutual interest. On 11 September 2018, he formally met with Isaias as a follow up to a peace agreement (Eritrea-Ethiopia summit) signed in July 2018. The September meeting discussed a range of bilateral issues, which led to the reopening of the Eritrean Embassy in Addis Ababa, as well as the Ethiopian/Eritrean border

which had been the site for war and conflict over decades.[9] However, in the absence of an expansive regional reconciliation process, some of these promising gains have failed to become sustainable. For instance, the lack of transparency around an agreement to reopen the border led to its closure a few months later. Besides, rising tensions in Ethiopia on the back of unresolved ethnic and political divisions, the instability in Somalia and a fragile peace process in South Sudan, coupled with a shaky transition in Sudan could undermine peace efforts in the region.

These developments present IGAD with a golden opportunity to institute a regional reconciliation process to 'harvest' emerging trends and take advantage of any progressive political dynamics in the region. For example, IGAD could seek to build on initiatives to develop genuine and sustainable reconciliation processes in Ethiopia, South Sudan and Sudan. For example, South Sudan has mooted the idea of instituting a Truth and Reconciliation Commission (TRC) through the R-ACRSS, which can also include a regional dimension to address the issue of cross-border violations.

Conclusion

This article has argued that while regional reconciliation processes are crucial for consolidating peace and security on the continent, such processes cannot be achieved in the absence of carefully planned and coordinated peace infrastructures for cross-border peacebuilding. There is no one-size-fits-all approach for designing and implementing regional reconciliation and peacebuilding processes. This article has argued that peace processes must be underpinned by a genuine desire for peace and a strong commitment to reconciliation. This requires that all affected

societies and communities actively participate in designing interventions to address impunity, promote accountability and the rule of law. Furthermore, the article argued that local ownership of peace processes is paramount to building self-sustaining peace initiatives. In the past, the imposition of solutions and external interventions have not only faced resistance but exacerbated security concerns in communities emerging from protracted violence. Admittedly, a regional reconciliation process proposed here has no precedence on the continent; designing and

9.   Meseret, E. 'Ethiopia and Eritrea Leaders Officially Open Border to End Decades of War and Tension'. The Independent: UK, 11 September 2018. https://www.independent.co.uk/news/world/africa/ethiopia-eritrea-border-leaders-abiy-ahmed-isaias-afwerki-reconciliation-peace-a8532516.html

implementing one will be a significant
challenge. However, the AUJTP
provides a policy framework which
African Union member states can
draw upon to frame their own
national and regional reconciliation
processes.

Policy Recommendations in favour of a Regional Reconciliation Approach

- Evolving conflict dynamics on the continent require that processes for confronting impunity and pursuing justice and accountability across borders adopt regional reconciliation approaches.
- Implementing cross-border reconciliation implores us to rethink how notions of 'state sovereignty' and 'territoriality' can impede or enhance efforts to pursue accountability and justice for victims.
- It is necessary to challenge state-centric and inward-looking approaches to national reconciliation, which have proven to be ineffective and incapable of stabilising volatile regions.
- Civil society should be proactively engaged as a crucial and strategic partner in the implementation of regional reconciliation through its ability to promote people-to-people interventions which can complement high-level processes and engagements.
- Policy actors need to develop cross-border frameworks to promote reconciliation and identify whether such peace infrastructures must exist independently or be embedded within existing structures as IGAD for the Horn of Africa, and the International Conference on the Great Lakes Region (ICGLR) for the Great Lakes region.

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The Impact Of Identity On Transitional Justice and Peacebuilding In Somalia

Israel Nyaburi Nyadera

This article seeks to examine the question of an elusive peace in Somalia and the challenges facing transitional justice in the country, by utilising an interdisciplinary synthesis of literature from the field of sociology, political science, and peace studies. It highlights the role of clan-based, religious, economic, and political identity in exacerbating conflict and enabling peacebuilding processes. This article will argue that identity is one of the main factors undermining transitional justice in Somalia. The article will conclude by recommending policy interventions that can address the challenge of identity in ongoing peace efforts.

The Nexus Between Transitional Justice, Reconciliation and Peacebuilding

The nexus between transitional justice, reconciliation and peacebuilding has increasingly featured in debates and processes that seek to understand and reconcile the concepts of accountability, redress and the restoration of human dignity in conflict and post-conflict societies. Peacebuilding advocates have struggled with the question of whether investigating, punishing, or prosecuting individuals deemed responsible for conflict can strengthen peace, or whether it can escalate tensions and leads to further violence. Societies around the world that have experienced mass murder and genocide have responded differently, with some preferring to achieve peace with justice, while in other cases, the pathway of forgiveness and reconciliation has been emphasised. Irrespective of how society approaches post-conflict peacebuilding, it will always be confronted with the question of how to deal with the perpetrators of the violence. The prevailing public opinion within a given society, particularly where the needs of victims and survivors need to be addressed through transitional justice processes, can have a significant impact on the peacebuilding process.

Somalia: An Identity-Based Conflict

The crisis in Somalia continues to have devastating direct and indirect consequences on millions of people inside and outside the country. Similarly, a trail of disappointment has been felt by local, regional, and international actors who have been involved in pursuing peace in this Horn of Africa country. In the last three decades, the conflict in Somalia has been transformed and reshaped by various domestic and international dynamics, but this paper argues that identity has remained a common denominator as to why previous interventions have faltered in their efforts to bring sustainable peace in the country.[1] The situation in Somalia continues to follow a trend that began after the end of the Cold War when conflicts driven by religious, ethnic, clan, and racial identity visibly increased. Identity conflicts have had severe consequences on civilians because they provoke deep divisions within the society with the resulting tensions becoming intractable and protracted.[2] The unique feature of identity-based conflict has been the narrow focus of peace operations on halting widespread violence, which fails to adequately address the deep-rooted communal, collective divisions and grievances. In Somalia, the failure to effectively engage with the causes of identity disputes has hindered the adoption of transitional justice and reconciliation strategies that would bridge the divisions among the people and pave the way for sustainable peace. Increasingly, identity in Somalia is becoming more diverse with differing political ideologies, generational and demographic transformation, religious identity, diaspora vs locals as well as newly

1.   Sadowski, Yahya. "Ethnic conflict," Foreign Policy no, 111 no. 2 (1998 Summer): 12-23 10.2307/1149375

2.   Coleman, Peter T., Antony G. Hacking, Mark A. Stover, Beth Fisher Yoshida, and Andrzej Nowak. "Reconstructing ripeness I: A study of constructive engagement in protracted social conflicts," Conflict Resolution Quarterly 26, no. 1 (2008): 3-42.

emerging economic and social interests worsen the deep-rooted clan divisions.

The ongoing violence in Somalia is a culmination of clan identity conflict and divisions following years of systematic marginalisation, bad governance, competition for positions and resources, as well as ideological intolerance that dates back years before the 1991 collapse of the central government.[3] The resurgence of clan-based identity politics in Somalia is based on the perception of injustice, discrimination, and collective antagonism, which fuels the construction of a separation between the "other" and the "we/self." Noteworthy, divisions among individuals or their collective groups against the other is a common occurrence within multi-communal societies and do not necessarily lead to the outbreak of violence. The identity-based conflict escalates into violence when there is a continued decline in "social capital" such as inter-group communication, the weakening of trust, and the absence of reciprocity in terms of political and economic inclusion.[4] This trajectory of exclusion is further reinforced by the view that the "other" does not fit society's "moral order." In this process of exclusion, once the other is seen as an enemy then, the

use of violence against them is not only legitimised but also justified. Systematic and well-calculated transmission and legitimisation of this negative view of the "other" are transmitted from one generation to another through communal memories, stories, and myths. Calls have been made for African countries facing conflict to embrace transitional justice frameworks, similar to the African Union Transitional Justice Policy (AUTJP), to assess the cycle of intractable violence that Somalia is currently trapped in, as groups continue to engage in reciprocal violence. The main distinction between the previous peace efforts in Somalia and the AUTJP framework is that the latter emphasizes advocates for historical injustices to be part of the peacebuilding process while condemning impunity and calls for the respect of human rights. While the reconciliation process in Somalia did call for an end to violence, it fell short of providing a realistic approach to addressing historical injustices, impunity as well as inclusivity. Similarly, economic inequality and grievances have not been well captured in the previous peace efforts yet it can hold a critical key to peace and stability in the Horn of Africa country.

Identity as an Obstacle to Sustainable Peace

Somalia's case is unique when it comes to examining the relationship between identity and conflict. First, the country is one of the few states which is dominated by people who share the same language, ethnicity, religion, and culture. These characteristics seem to be ideal conditions for establishing a state, yet the country became fragmented and divided into exclusionary micro-identities among the different clans in the country (see Figure 1). There have been efforts to address the complexities of the Somali identity-based conflict, by attempting to integrate indigenous institutions and customs with conventional state structures.

There are four major clans in Somalia, as illustrated in Figure 1, each of them with a complex mix of extended family and sub-clan networks that flexibly split or join in a process of "decomposition".[5] Customary laws are deeply ingrained in Somali society and used to promote peace and govern members of the clan. The challenge of this system of governance is that it is in a constant state of tension with Eurocentric Westphalian state bureaucratic systems, especially as with regards to their legitimacy and authority. Furthermore, decades of colonialism, urbanisation, globalisation, and violence and interaction with European and Arabian societies have weakened

3.   Nyadera, Israel Nyaburi, and Mohamed Salah Mohamed. "The Somali Civil War: Integrating Traditional and Modern Peacebuilding Approaches," Asian Journal of Peacebuilding 8, no. 1 (2020): 153-172 doi:10.18588/202005.00a081

4.   Staub, Ervin. The Roots of Evil: The Origins of Genocide and Other Group Violence. Cambridge: Cambridge University Press, 2009.

5.   Ssereo, Florence. "Clanpolitics, clan democracy and conflict regulation in Africa: The experience of Somalia," The Global Review of Ethnopolitics 2, no. 3-4 (2003): 25-40.

the indigenous governance structure as a fraction of the country seeks to sustain the traditional structure while the nature of the contemporary state is founded on the Westphalia model. While these two systems can be compatible, there ought to be a clear demarcation of their jurisdiction. The collapse of the central government in the early 1990s combined with an increasingly eroded indigenous governance system means that Somalia ranks among the most fragile states globally. However, it is important to observe that since the violent disintegration of the country, some

regions, such as Somaliland and Puntland, have been able to revive some indigenous legal and governance structures to establish relatively stable zones within the country, although the level of stability in these regions is only relative to crises in other parts of the country. For example, the semi-autonomous region called Puntland which is dominated by a sub-clan of the Daarood (Haariti clan) is an example of clan-led regions in the country that have utilised indigenous systems of peacebuilding and governance to achieve a relative degree of "stability".
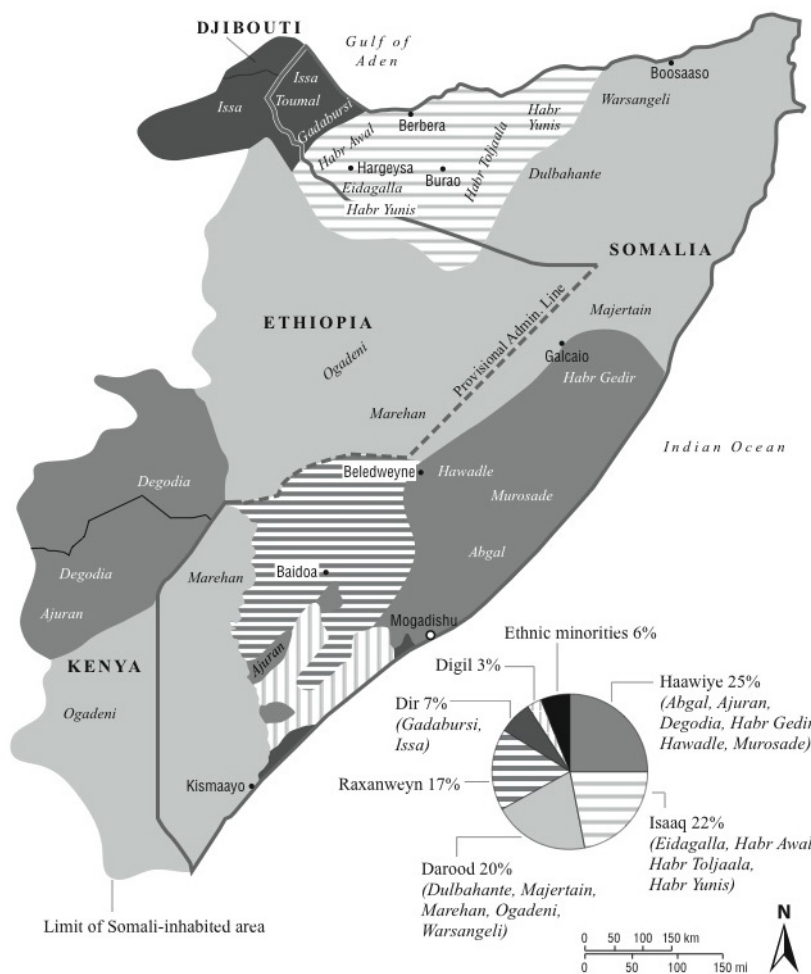

Figure 1: Clan Distribution in Somalia

The reality of the clan identity groupings illustrates the challenges of bridging divisions by addressing grievances, which previous peace efforts sponsored by regional neighbours and international actors have not been able to adequately address. The failure of previous initiatives can be attributed to the repeated attempts to impose a centralised administrative system, without adequately resolving the tensions between clans and preparing the citizens on their obligations and responsibilities in building bridges despite the saliency

of their micro-identities, as a pathway to forging a robust nation-state system. The top-down peacebuilding strategy adopted during some of the conferences such as Djibouti (1991), Cairo (1997), Arta (2000), Mbagathi (2004) and the more recent Djibouti conference (2020), exposed the significance of identity in the process and outcomes of peacebuilding. It also uncovered the perception of exclusion that some clan representatives expressed, which only worsened the existing grievances and undermined the peace efforts. In effect, the

previous peace efforts did not address the question of how to bridge the divisions among clans beyond sharing political positions, nor did they effectively address the deeper identity grievances and socio-economic factors that led to the disintegration of the state and the collapse of the "social contract" between the people and the government.[6] Consequently, it is worthwhile to assess how transitional justice and peacebuilding processes can be utilised to achieve reconciliation in Somalia.

Challenges of Achieving Transitional Justice and Peacebuilding the Context of an Identity Crisis

There have been over 45 Reconciliation and Truth Commissions (TRC) established to help countries attain sustainable peace. There have been some notable outcomes and important lessons learned from the implementation of these transitional justice institutions in countries such as Uruguay, Nepal, El Salvador, Rwanda, Sierra Leone, Haiti, Chad, Yugoslavia, Bolivia, South Africa, and East Timor. Several countries have faced challenges in leveraging their transitional justice institutions to create the foundations for bridging the divisions within their societies, such as in Kenya and Sri Lanka, which have failed to genuinely implement the recommendations from their truth commissions. Nonetheless, these commissions have provided a basis for societies to reframe their national discourses and pursue pathways towards reconciliation.

The question as to whether the implementation of transitional justice initiatives in Somalia will help forge peace in the country remains elusive. However, to address such a question, it is necessary to assess two key dimensions. Firstly, it is important to interrogate the nature of TRCs, and secondly, it is vital to consider how transitional justice initiatives can address the issue of identity. These commissions often focus on atrocities that had been committed in the past, but unlike other similar entities such as war crimes commissions or tribunals, TRCs do not have the mandate or powers to prosecute offenders.[7] This means that in engaging with these commissions, members of society are required to have a moral and national outlook, and to endeavour to transcend their micro-identities such as ethnic or clan identities. Secondly, scholars such as Lake and Rothchild have previously argued that identity-driven conflicts are not caused only by past atrocities and injustices but also by fear of the future, especially in already polarised societies.[8] This means that even if a prospective TRC is implemented in countries such as Somalia, the different clans must be guaranteed freedom from fear in the future, by ensuring that their grievances are addressed, as well as the creation of a vision of a cohesive national society in which they are included and treated fairly. Some transitional justice processes advocate for the principles of apology and forgiveness to be utilised in bridging the divisions that affect identity groups, as a necessary pathway to promoting reconciliation and peacebuilding. The use of apologies has been attempted in Kenya, Rwanda, and South Sudan. In the context of Somalia, the offending clans have to demonstrate that their apologies are genuine while the offended clan has to offer a no-revenge pledge, to de-escalate tensions and create a common platform to undertake deeper transitional justice processes, relating to restoring human dignity and establishing institutions to sustain inclusive governance. The case of Somalia has become more complicated as other tangential issues such as terrorism, piracy, human trafficking, and ideological intolerance have created barriers to building bridges. Consequently, it is necessary to build upon the momentum generated by apologies to uphold genuine equality, tolerance, justice, and pursue a national vision that will require people to remould their identities and forge a collective national identity.

As the over-arching objective of transitional justice processes, reconciliation plays an essential role in consolidating sustainable peace. Conflicts are often fuelled and sustained by actors who have hidden economic and political agendas, which can influence and

6.   Nyadera, Israel N., Mohamed Salah M, and Billy Agwanda. "Transformation of the Somali Civil-War and Reflections for a Post-Conflict Social Contract." Gaziantep Üniversitesi Sosyal Bilimler Dergisi 18, no. 4 (2019): 1346-1366.

7.   Hayner, Priscilla B. "Fifteen truth commissions-1974 to 1994: A comparative study," Hum. Rts. Q. 16 (1994): 597.

8.   Lake, David A., and Donald Rothchild. "Containing fear: The origins and management of ethnic conflict." International security 21, no. 2 (1996): 41-75.

undermine the implementation of national reconciliation initiatives.[9] This is because groups that benefit from war will often be opposed to peace and reconciliation efforts. After all, peaceful environments may expose their illegal and corrupt activities. Besides, reconciliation becomes a challenge if external pressure adopts a cultural and religious identity leading to the perception of the "other" as an existential threat, as has been witnessed in the Palestinian-Israeli conflict, then transitional justice becomes difficult to achieve.

Transitional Justice Processes for Somalia: Policy Recommendations

The trans-generational impact of the Somali conflict, which also has regional dimensions for the Horn of Africa, requires urgent efforts to be put in place to revitalise peace processes that are framed through a transitional justice prism. The AUTJP provides a broad range of processes, mechanisms and institutions which can be utilised to frame and revitalise Somali peacebuilding and reconciliation initiatives. Concretely, the key stakeholders in the Somali context need to utilise the AUTJP as a framework to inform their future interventions and efforts. The process of peacebuilding should not just appear to reward the political elites with positions but must be felt to be addressing the grievances of the very common citizen in Somalia. Given the atrocities that have been committed, it will be difficult to forge genuine peace if the inputs of the ordinary citizens are not captured in a robust peace process that will require a commitment to justice and reconciliation. This long-term peace process must also widen its terms of reference to address the problems of governance, decentralisation, national identity and more importantly demarcation and redrawing of the country's local administrative boundaries and create new cosmopolitan districts and provinces. The 2019 National Reconciliation Framework (NRF) is the closest the country has come to achieving transitional justice. Proponents of this approach sought to develop a people-driven approach to peace in Somalia. Indeed, with some of the meetings being held in Mogadishu, the NRF showed a departure from the trend in other previous peace efforts which were held in the capitals of other countries in the continent. The challenges facing NRF despite promising to be a locally-driven process rest on critical questions such as how to handle the threat of terrorism? Should they be included in the peace negotiations? What about their victims? What sort of compensation will they be accorded? Secondly, the NRF does not offer a framework of dealing with the territories calling for further autonomy or independence. This article argues that the NRF can at best lead to cessation of violence in the country, however lack of an independent guarantor that can ensure political, economic, and social security of the people is guaranteed complicates the potential for success. Similarly, transitional justice will require taking responsibility for one's role in the violence and asking for forgiveness and reconciliation. If respect of other people's identity and beliefs will not be enshrined in the peace process, then there are fewer chances of success.

This article also recommends that reconciliation efforts in Somalia ought to be pursued through efforts to address the psycho-social and socio-economic grievances of clan-based identity. This will require the Somali clans to adopt initiatives, such as truth-telling and apology as a basis for addressing the grievances of the past, by engaging all perpetrators and survivors and laying the foundation for forging a collective national identity.

To ensure effective efforts to address the Somali conflict, peacebuilding strategies ought to address three fundamental issues. Firstly, they need to move beyond efforts to pursue the cessation of violence and adopt measures that will help repair psychological divisions of society. An ongoing process of addressing the psychological divisions can then provide a basis upon which to reconstruct the national identity and embrace a renewed nation-building process. The transitional and peacebuilding processes in Somalia

9.   Webersik, Christian, and Crawford, Alec. "Commerce in the Chaos: Bananas, Charcoal, Fisheries, and Conflict in Somalia." In Livelihoods, Natural Resources, and Post-Conflict Peacebuilding, (eds) Young, Helen and Goldman, Lisa, foreword by Egeland, Abingdon, UK: Routledge, 2015 pp 365–90

need to address the social divisions in society. To address this issue, policies to promote social diversity as well as integration programmes such as the national cultural day, student exchange programmes, and establishing an effective Cohesion and Integration Commission will be key strategies going forward. Through memorialisation processes, which are outlined in the AUTJP, a key recommendation is a necessity of dealing with the collective memories associated with past experiences. If different groups are left to interpret the past by themselves, there will be possibilities of given "mythologies" and "truths" arising. These given truths only highlight the other side's violence, misdeeds, and atrocities, while the other group focuses on their self-righteousness, self-justification, victimisation, and glorification.[10] Somalia has to therefore utilise transitional justice and memorialisation processes, in particular, to address the persistence of enemy images and contribute towards sustaining peace.

Despite the constraints that have undermined peacebuilding in Somalia, there is hope for a brighter future if the country can effectively implement transitional justice and peacebuilding processes. The demography of Somalia has changed and is characterised by a young, vibrant population that can be the driving force of the transformation in the country. Despite the inter-generational transmission of grievances to the younger Somali population, the genuine engagement with transitional justice processes may be more amenable to the younger citizens because some of tensions, grievances and atrocities were committed before they were born. Also, many young Somali's have acquired education and gained life experiences, and even opened up businesses and pursued entrepreneurial opportunities both in the country and in the diaspora. Therefore, there is scope for Somalia to revitalise the efforts to pursue sustainable peace, through the adoption and implementation of effective transitional justice and reconciliation processes in the country.

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10.   Bar-Tal, Daniel. "Collective memory of physical violence: Its contribution to the culture of violence." In The role of memory in ethnic conflict, London: Palgrave Macmillan, 2003 pp. 77-93.

The Politics of Criminal Accountability and Peacebuilding in South Sudan

Kuyang Harriet Logo

Introduction

Transitional Justice Mechanisms, including the establishment of a Hybrid Court for South Sudan (HCSS), were incorporated as part of the September 2018 Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS).[1] Chapter Five of the R-ARCSS was a blueprint for the state to deal with its past, address impunity, and to foster state stability and peace.[2] However, the political and military elites continue to resist the establishment of the HCSS because they do not want to establish a court that could potentially hold them accountable for human rights violations and crimes against humanity.[3] Therefore, it remains imperative that key stakeholders need to engage the political leaders to agree on what other options can be explored to promote transitional justice and to ensure that peace and reconciliation processes are operationalised in the country. This article will argue that in the absence of the implementation of the alternative mechanisms of transitional justice on truth-telling and reparations, societal instability will continue to persist and the state could potentially disintegrate.[4]

A Roadmap for Transitional Justice in South Sudan

Chapter Five of the R-ARCSS provides a roadmap on how the state could deal with issues of human rights violations occurring in the wake of the recurrent conflicts which erupted between 2013 and 2018. Despite the signing of R-ARCSS in September 2018, parties to the agreement continued to violate the Cessation of Hostilities Agreement. Armed forces of both the incumbent government and of the opposition armed militia groups continue to commit massive human rights violations against civilians with impunity.[5] The final report of the African Union Commission of Inquiry on South Sudan published in October 2015, documented massive human rights violations, crimes against humanity, and other brutal crimes committed by both the Sudan People's Liberation Army (SPLA) as well as by the opposition forces, such as the Sudan People's Liberation Movement in the Opposition (SPLM/IO), the National Salvation Front (NSF), National Democratic Front (NDF) and the Federal Democratic Party (FDP) which is allied to the South Sudan Armed Forces (SSAF). Other actors such as the United Nations Mission in South Sudan (UNMISS),[6] the South Sudan Human Rights Commission (SSHRC) and the International Crisis Group[7] documented similar human rights violations and crimes against humanity committed by both parties to the conflict.[8] The reports made recommendations on how the Intergovernmental Authority on Development (IGAD), the Troika countries (consisting of the United Kingdom, the United States of America, Norway), the European Union and to a lesser extent China, the United Nations (UN) and the African Union (AU) could address the challenge of the promotion of reconciliation, reparations and most importantly pursuing criminal accountability through the HCSS to deal with confronting impunity.[9] Addressing impunity and the violations of the past are integral to the resolution of the conflict in South Sudan, but this has faced considerable challenges due to the lack of political and democratic transition that could enable and facilitate such processes. Historically, the Comprehensive Peace Agreement (CPA) of 2005, was preoccupied with ending the twenty-one year-long Sudanese civil war, one of the most intractable civil wars in Africa, and it did not pay sufficient attention to issues of justice nor the primacy of holding both the Sudanese government and the Sudan People's Liberation Movement (SPLM) accountable for atrocities committed against civilians.[10] In other words, IGAD, with the engagement of international stakeholders, such as the Troika countries, helped to

1. Chatham House, South Sudan's Peace Process: Reinvigorating the Transition, London, the Royal Institute of International Affairs, February 2016. http://www.chathamhouse.org

2. Nhial, Kwesi Sansculotte, and Emile Taban, Reconciliation without Regret, South Africa, ACCORD, 2013. http://www.accord.org.za

3. Amnesty International, Do You Think We Will Prosecute Ourselves?" No Prospects for Accountability in South Sudan, London, 2019. http://www,amnesty.org.

4. International Crisis Group, a Civil War by Any other Name, Africa, 2014.www.crisisgroup.org

5. Aly Verjee, Ceasefire Monitoring in South Sudan 2014 - 2019: A Very Ugly Mission, United States Institute for Peace, Washington DC, 2019.

6. The United Nations Mission in South Sudan, Conflict in South Sudan: A Human Rights Report, Juba 2014.www.crisisgroup.org.

7. International Crisis Group, a Civil War by Any other Name, Africa, 2014.

8. United Nations Commission on Human Rights on South Sudan, report of the Commission on Human Rights in South Sudan, Human Rights Council New York, 2020.

9. Ibid.

10. Mahmood Mamdani, Who's to Blame in South Sudan, Boston Review, Africa, 2016. Bostonreview.net.

broker the 2005 CPA with the sole purpose of ending the war. However, the provisions of this agreement undermined commitments to democratic change and including provisions for the judicial redress for past violations as part of the 2005 peace deal.[11] For instance, while the agreement of 2005 dealt with power-sharing, wealth-sharing, institutional reforms, and reconciliation, it did not make adequate provisions for criminal accountability and reparations to victims and survivors. Consequently, the SPLM's political leadership that emerged to govern the country, as well as opposition members, were not held accountable for human rights violations that occurred during the liberation and civil wars.[12] IGAD's engagement in brokering the peace agreements of 2015 and 2018, sought to purposefully include transitional justice as a peacebuilding tool, and also as a mechanism to address issues of criminal accountability.[13]

The dilemma remains that, while transitional justice was considered critical to addressing the situation in South Sudan, in the absence of a genuine democratic and political transitions, the same political and military elites who could potentially be held accountable for the commission of human rights violations, were also the same actors who were engaged in negotiating the peace agreement and in defining the scope of transitional justice.[14] Therefore, as South Sudan emerged from the crisis, the political and military leadership that took charge of the transitional government in

2015 and 2018, was paradoxically also responsible for making decisions regarding the adoption and implementation of transitional justice mechanisms, including the establishment of the HCSS. In such situations, it is logical that both political and military elites in South Sudan would do anything to sabotage the establishment of the HCSS, because they know it possesses the potential to prosecute them.[15]

In order for the South Sudan society to have a workable framework for transitional justice, it is necessary for parties to engage in an all-inclusive political dialogue, to assess what is feasible for transitional justice in the current context and in the absence of both political and democratic transitions. These dialogues should be based on an empirical assessment of the context in South Sudan, and an analysis of what is achievable given the prevailing situation.[16] The insistence on the establishment of the HCSS, by key stakeholders, made both the military and political leadership reluctant to proceed with the processes and caused delays in the launch of peacebuilding processes, reparations, reconciliation and undertaking institutions reforms as enshrined in the R-ARCSS.[17] In the absence of implementation of other transitional justice mechanisms on truth-telling and reparations, the wider society is becoming frustrated and there is a resurgence of localised conflicts which does not augur well for state stability.[18]

Evidence of Massive Human Rights Violations and the Case for Criminal Accountability

The reports by the UN and AU reinforced the importance of holding perpetrators of human rights violations accountable for acts committed during the civil war from the year 2013 onwards.[19] In 2014, a monitoring and verification mechanism for South Sudan was created to monitor the parties' compliance with the 2015 agreement, and the mechanism was subsequently reconstituted in compliance with

the 2018 Revitalised Agreement.[20] It was assumed that regular reports on the status of the parties' compliance to ceasefire arrangements in 2015, and later in the Revitalised 2018 Agreement, would deter human violations by the parties to the agreement.[21] However, due to a lack of any consequences for serious violations, the monitoring and verification reports had minimal impact on the conduct of the parties

11. Evidence of Massive Human Rights Violations and the Case for Criminal Accountability

12. Mahmood Mamdani, 2016.

13. IGAD, The Revitalised Agreement on the resolution of the conflict in South Sudan, Addis Ababa, 2018.

14. Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun and Friederike Mieth, transitional justice theories, Routledge, New York, 2014.

15. Amnesty International, Do You Think We Will Prosecute Ourselves?" No Prospects for Accountability in South Sudan, London, 2019. http://www.amnesty.org

16. Elin Skaar, Camila Malca andTrine Eide, after war: Transitional justice, peace and democracy, Routledge, New York, 2015.

17. Kumalo, Amanda Lucey and Liezelle, How the African Union can Promote transitional justice in South Sudan, Institute for Strategic Studies, Oslo, 2017.

18. ibid

19. Kumalo, Amanda Lucey and Liezelle, 2017.

20. Aly Verjee, Ceasefire Monitoring in South Sudan 2014 - 2019: A Very Ugly Mission, United States Institute for Peace, Washington DC, 2019.

21. Aly Verjee, 2019.

who continued to violate ceasefire arrangements while disregarding warnings of punitive action by IGAD and its international partners.[22]

In 2015, UNMISS produced a report entitled "The State of Human Rights in the Protracted Conflict in South Sudan" which detailed massive human rights violations against civilians, including the killing of civilians in hospitals and places of worship. UNMISS's report detailed several incidents where civilians were targeted based on their ethnicity.[23] The United Nations Commission on Human Rights in South Sudan reported incidents of human rights violations by the parties and continues to collect and preserve evidence and clarify responsibility for alleged gross human rights violations in South Sudan.[24] Therefore, evidence of large scale human rights violations as collated in several reports, illustrated to key stakeholders the necessity of including transitional justice provisions, especially a hybrid court in the peace agreements of 2015 and the Revitalised Agreement of 2018.[25] Ultimately, there will be a requirement for some degree of criminal accountability for these documented violations, however, in the absence of any momentum on the hybrid court, it is still worthwhile to explore the prospects of operationalising other transitional justice processes as a means of creating a pathway to

peacebuilding and reconciliation in South Sudan.

Even though a criminal accountability mechanism, in the form of a hybrid court was an integral part of the 2018 Revitalised Agreement, the parties to the agreement were only receptive to truth-telling and reparations mechanisms. Historically, transitional justice as a field inherited its legacy from the processes that preceded the end of the Second World War, during which the Nuremberg and Tokyo trials which were convened to administer justice to the perpetrators of the fascist regimes of Germany and Japan, respectively. Furthermore, transitional justice also drew its historical legacy from the wave of democratic and political transitions in the Latin America in the 1980s, notably in Chile and Argentina, which sought criminal accountability and redress for human rights violations against pro-democracy and the rule of law activists.[26] In these cases, while transitions were considered key to the pursuance of criminal prosecutions, there were concerns regarding the introduction of criminal prosecutions in precarious political contexts.[27] Consequently, there remains an ongoing requirement to balance the competing moral and legal imperative to pursue legitimate claims for survivors and victims' demand for justice, and the state's claims for stability and order.[28]

Pathways towards Peacebuilding and Criminal Accountability in South Sudan

If South Sudan's political leaders continue to postpone and avoid pursuing justice for victims and survivors, because they would be implicated in a prospective criminal accountability system like the HCSS, then it remains necessary to chart other pathways to balancing peacebuilding with criminal accountability.[29] Specifically, civil society, communal leaders, and international partners need to work with South Sudan's political leadership to pursue a range of processes, including leveraging mechanisms for truth-telling

and reparations. Chapter Five of the Revitalised 2018 Agreement provides for the establishment of the Commission for Truth, Reconciliation, Healing, and Reparations Authority.[30] Since, truth-telling, reparations and reconciliation processes are not as contested by the current political leadership, efforts could be made to launch these transitional justice initiatives, by establishing the Commission for Truth and Reconciliation and the Reparations Authority. Before the collapse of the 2015 peace agreement, South Sudan had launched countrywide

22. Ibid.

23. United Nations Mission in South Sudan, Attacks on Civilians In Bentiu & Bor, 2014, Juba.

24. United Nations Commission on Human Rights, 2020.

25. Chatham House, South Sudan's Peace Process: Reinvigorating the Transition, 2016. http://www.chathamhouse.org

26. Teitel Ruti, Transitional Justice Genealogy, Harvard Human Rights Journal, 70 – 94.

27. Arthur Page, How Transitions Reshaped Human Rights: A Conceptual History of Transitional Justice, Human Rights Quarterly, 321 – 367, 2009.

28. Davenport, Cyanne E, Loyle and Christian, Transitional Injustice: Subverting Justice in Transition and Post conflict Societies, Human Rights Quarterly, 126-149, 2016.

29. Kumalo, Amanda Lucey and Liezelle, 2017.

30. IGAD, The Revitalised Agreement on the resolution of the conflict in South Sudan, Addis Ababa, 2018.

consultations on the establishment of the commission for truth, reconciliation and healing.[31] A Technical Committee was formed by the national Ministry of Justice to consult the wider South Sudanese society on the framework of this Commission. Consequently, there remains an already established framework which can be leveraged to establish a pathway to fostering transitional justice and reconciliation processes, to lay the foundations for peacebuilding in South Sudan.

It is believed that undertaking a national reconciliation process could bring relative stability, peace and healing to the people of South Sudan. Consequently, by launching a national reconciliation initiatives and reparations processes, the state and key stakeholders could provide the necessary momentum to encourage members of society to promote individual and collective responsibility for harm done in the past. South Sudan's leaders need to adopt an introspective approach to acknowledge their roles in the violations of the past, as a pathway to finding peace within themselves, which remains necessary if they are to lead others towards a national reconciliation process which would significantly reduce the recurrence of violence.[32] Therefore, as argued above establishing momentum for reconciliation through the operationalisation of transitional justice mechanisms, can then create processes that can enable the development of the proposed Hybrid Court.[33] In effect, the status quo without any visionary and forward-looking consideration of how to promote reconciliation processes, even though the political situation does not allow this would be detrimental to pursuing stability and peace in a fragile context like South Sudan.

Conclusion

This article raises the key dilemma of the challenge of implementing transitional justice processes in the absence of a genuine political and democratic transition that enables such interventions, as is the case with South Sudan. Pursuing criminal accountability through the HCSS remains important in confronting the levels of impunity and in responding to the legacies of human rights violations in the country. However, in the absence of a genuine political and democratic transition,[34] it has been a challenge to implement criminal accountability, because of the political leadership's reluctance to establish a structure that could potentially prosecute them.[35] In the absence of any momentum on criminal accountability, it is still necessary for key stakeholders, including civil society and international partners, to engage the political and military leaders in South Sudan, to operationalise other transitional justice processes, specifically through truth-telling and reparations mechanisms. Ultimately, some form of redress and accountability is required to continue to influence the national political discourse on what is acceptable in South Sudan in terms of transitional justice processes. The political leadership as well as key stakeholders in South Sudan, need to continue to pursue the provisions stipulated in the Revitalised Peace Agreement, of September 2018, which is necessary to consolidate reconciliation and build peace in the country.

31.   Xinhua, South Sudan launches consultations on truth and reconciliation, Juba 2015.

32.   Nhial, Kwesi Sansculotte, and Emile Taban, Reconciliation without Regret, South Africa, ACCORD, 2013. http://www.accord.org.za.

33.   Arthur Page 2009.

34.   Ibid.

35.   Amnesty International 2019.

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Transitional Justice in the Horn of Africa: Lessons from The Gambia

John G. Ikubaje and Khabele Matlosa

The Horn of Africa region has been undergoing momentous transitions during the recent past. These transitions are constructing, deconstructing and reconstructing the regional governance and peace architecture in ways that national, regional, continental and international actors cannot ignore.[1] The Ethiopian transition began in earnest in 2018 when the current Prime Minister, and Nobel Peace Laureate, Abiy Ahmed Ali assumed power introducing wide-ranging governance reforms and led to major regional peace initiatives such as the Ethiopia-Eritrea rapprochement, as well as the normalisation of the Djibouti-Eritrea relations.[2] The transition in Somalia started on a promising note following the 2017 general elections that ushered in the presidency, Mohammed Abdullahi Mohammed, a reformist popularly known as Farmaajo. However, this initial optimism has been tampered by the intransigent clan-based violent conflicts as well as the conflict between the Federal Government of Somalia and al-Shabaab.[3] Both Sudan and South Sudan are still engulfed in protracted intra-state violent conflicts, manifesting the dangers of militarisation and ethnicisation of politics, economy and society.[4]

Given the above, there is no doubt that if the transitions are to bear palatable fruit in the Horn of Africa, transitional justice should

The Gambian Transition

The Republic of The Gambia achieved independence in 1965 and subsequently became a Republic in 1970. Late Dawda Kairaba Jawara, the then Prime Minister, became the first Head of State of the Republic. A coup d'etat ensued in 1981, which left several hundred people dead. The Government appealed to its neighbour, Senegal, for military assistance, and the armed militia force was defeated. Following this development, both Senegal and The Gambia signed a Treaty of Confederation in 1982, but The

be at the front and centre of their effective implementation, involving constructive dialogue between state and non-state actors. National and regional actors should be proactively and effectively implementing the 2006 Post-Conflict Reconstruction and Development (PCRD) Policy, as well as the 2019 African Union (AU) Transitional Justice Policy[5] (AUTJP). They should draw useful lessons of experience from elsewhere on the continent rather than always mimicking interventions from elsewhere which lead to incomplete processes, sometimes with disastrous consequences. This article will assess what lessons the Horn of Africa can learn from West Africa.

This article will assess the experience of the Republic of The Gambia, in West Africa, in framing its transitional justice processes, since 2017. In particular, the article will assess how the Gambia Truth Reconciliation and Reparation Commission (TRRC) is making commendable progress in promoting peace, accountability, justice and reconciliation in the country.[6] It will also examine Gambia's accomplishments and challenges, with the objective of drawing lessons for the Horn of Africa, in general, and the Republic of South Sudan, in particular, as the latter strives to implement and operationalise its transitional justice and peacebuilding processes.

Gambia subsequently withdrew from the confederation in 1989.

In July 1994, Lieutenant Yahya Jammeh seized power from Jawara, declaring himself the Head of State before winning elections two years later.[7] During his 21-year reign from July 1994 to January 2017, Jammeh's regime perpetrated massive human rights violations and abuses. These included torture, extra-judicial killings, gender-based violence, rape, enforced disappearance, corruption, arbitrary arrest and detention

1. See Kidane Mengisteab, The Horn of Africa, Cambridge: Polity Press, 2014.

2. Jason Mosley, 'Ethiopia's Transition: Implications for the Horn of Africa and the Red Sea', SIPRI Insight on Peace and Security, No. 5, Stockholm, Sweden, March.

3. Najum Mushtaq, 'Somalia under Farmaajo: Fresh start or another false dawn', Horn of Africa Bulletin, Volume 29, Issue No. 1, January-February 2017

4. Andrew Natsios, Sudan, South Sudan & Darfur: What everyone needs to know, Oxford: Oxford University Press, 2012.

5. See Tim Murithi, 'The Politics of Transitional Justice', in Murithi, T. ed. The Politics of Transitional Justice in the Great Lakes Region of Africa, Johannesburg: Fanele, 2016; also see Solomon Ayele Dersso, AU Pushes the Frontiers of Transitional justice in Africa, Pub; Mail and the Guardian Newspapers, South Africa, 20 Jan 2020

6. Institute for Security Studies, Will the Gambia be a Turning Point for AU Peace Efforts? See https://issafrica.org/iss-to-day/will-the-gambia-be-a-turning-point-for-au-peace-efforts, 2019, South Africa, viewed 13 July 2020.

7. Arnold Hughes and David Perfect "A Political History of the Gambia, (1816-1994)" in African History and the Diaspora, NED - New edition, 2006, Pub: Boydell & Brewer, University of Rochester Press, P. 549

to blatant denial of fundamental freedom in violation of the laws of The Gambia, as well as international human rights and humanitarian laws.[8] On 1 December 2016, Adama Barrow won the Gambia's Presidential election, and subsequently became the Gambia's third President. Although Jammeh refused to relinquish power, eventually the Economic Community of West African States (ECOWAS) compelled him to step down by force.

The history of authoritarianism, injustice and gross human rights violations, reinforced by enfeebled institutions and an impoverished economic system, compelled the newly elected government to adopt the new National Development Plan (NDP), in January 2018. The planned reforms in the NDP include the security sector, socio-economic, governance, constitutional and electoral reforms. Subsequently, the Government immediately embarked on a comprehensive national peacebuilding and reconciliation programme.

At the heart of the Gambian transition was a deliberate focus on human rights and transitional justice, involving the establishment of the National Human Rights Commission (NHRC) and the TRRC, which has yielded some positive results. The country is transitioning from authoritarianism to democracy, but the situation remains fragile and embryonic. The country is currently experiencing fewer human rights violations compared to the heyday of the Jammeh dictatorship. However, there are still several challenges, even though the Coalition of Opposition Parties, known as the United Democratic Party (UDP), that defeated Jammeh and brought Barrow into power, agreed on a three-year transitional government. Upon assumption of office, Barrow disregarded the agreement and insisted on the 1997 constitutional provision of five years' presidential tenure.[9] He equally defected from UDP to form his party, the National People's Party (NPP), which has further polarised the country. Regrettably, these developments could reverse the gains that have already been achieved in pursuing nation-building, democratisation, human rights and peacebuilding, which have been undertaken with significant support from ECOWAS, the African Union and the United Nations (UN).

Transitional Justice Mechanisms in The Gambia

The Gambian TRRC was established by an Act of the National Assembly in December 2017. The Commission is a quasi-judicial truth-seeking mechanism composed of 11 members. The objectives of the TRRC are to:

i.   create an impartial historical record of violations and abuses of human rights from July 1994 to January 2017;

ii. establish and make known the fate or whereabouts of disappeared victims;

iii. provide victims with an opportunity to relate their accounts of the violations and abuses suffered; and grant reparations to victims in appropriate cases.[10]

The transitional justice initiatives are ongoing in the Gambia, despite the polarisation between the political formations in the country. The establishment of Gambia's transitional justice mechanisms has contributed towards positively shaping and influencing the country's political environment. This provides important insights for countries in the Horn of Africa region, where the tendency has been to postpone the establishment of transitional justice interventions and mechanisms due to the political tensions within society. Paradoxically, developing and operationalising transitional justice mechanisms can positively contribute towards shaping the political discourse in countries such as Sudan, South Sudan and Somalia. Interestingly, Ethiopia has prioritised the establishment of a National Reconciliation Commission through a parliamentary declaration adopted in February 2019.[11]

8.   TRRC (2020), The Gambia's Reconciliation and Reparations Commission, Interim Report (2018-2019), Pub: TRRC Secretariat, Banjul, The Gambia.

9.   Constitution of the Republic of The Gambia 1997, Reprinted 2002, provides that "tenure of office 63 (1) The term of office of an elected President Of President shall, subject to subsection (3) and (6), be for a term of five years; and the person elected President shall before assuming office take the prescribed oaths".

10. Truth, Reconciliation and Reparations Commission Act, The Gambia, No. 9 of 2017

11. Solomon Ayele Dersso, 'Ethiopia's Experiment in Reconciliation', United States Institute for Peace, 23 Sept.

Lessons for the Horn of Africa

Many useful lessons can be learnt from the Gambian experience for the Horn of Africa region. Firstly, despite the different contexts within which The Gambia and South Sudan are operating in, the latter can draw significant lessons of experience from the former in respect of peacebuilding and transitional justice, which also has wider insights for the Horn of Africa, while also avoiding a one-size-fits-all formula.[12] In general terms, it is evident that South Sudan should aim to promote four cardinal pillars of peacebuilding through transitional justice, namely: i) peace; ii) criminal accountability; iii) justice; and iv) national reconciliation. These also apply across the Horn of Africa in countries such as South Sudan, Somalia, Sudan, and Ethiopia.

Secondly, citizen engagement and meaningful participation is a necessity in peacebuilding and transitional justice processes, and this aspect comes out poignantly in The Gambia. To promote popular participation in, and ownership of, the processes, official and local South Sudanese dialects and languages should be utilised. Also, radio and television, including newspapers and social medial, should be utilised to communicate the objectives and plan of implementation of the country's transitional justice processes. The Gambian transitional justice processes were established in a politically tense environment, but they have had the effect of shaping and influencing the discourse about the pathways that the country can follow into the future, which has created platforms for political actors to work collaboratively to address their differences in the spirit of the South African Ubuntu or the Ethiopian Medemer.[13] In effect, the operationalisation of transitional justice processes and interventions, can contain the escalating tensions in countries such as Ethiopia, South Sudan, Sudan, and Somalia, and promote a sense of belonging among the diverse and deeply divided

ethnic groups and guarantee citizen ownership which legitimises the outcomes of the efforts to address the injustices of the past.

Ethiopia's Reconciliation Commission, for example, is yet to win the confidence and support of Ethiopia's diverse social and political groups, and there was no public participation in the development of the commission's enabling law, nor in the nomination and appointment of the 41 members of the Commission.[14] These shortcomings could imperil the commission's legitimacy, and therefore lessons should be drawn from the Gambia's participatory approach. Similarly, countries such as Sudan, Uganda and Somalia who are in the process of implementing or planning to implement transitional justice mechanisms could also draw lessons from Gambia's experience. On its part, the Republic of Sudan's Transitional Government envisioned several reforms, including the establishment of human rights institutions that are critical for justice and accountability. On 20 August 2019, the government adopted a "transitional document" and the policy document called for the creation of a national Transitional Justice Commission (STJC). Sudan's STJC should also borrow from the above good practices that the Gambia's TRCC has exemplified. Thirdly, Chapter five of the Revitalised Agreement on the Resolution of the Conflicts in the Republic of South Sudan (R-ARCSS) explicitly provides that the Revitalised Transitional Government of National Unity (RTGoNU) shall fully cooperate and seek the assistance of the AU, UN and the African Commission on Human and Peoples Rights (ACHPR), to design and implement the four transitional justice mechanisms, namely the:

i. Hybrid Court for South Sudan (HCSS);
ii. Commission for Truth, Reconciliation and Healing (CTRH);

12.   The African Union Transitional Justice Policy (AUTJ), adopted February, 2019

13.   Moti Daba Fufa, Faith-based Institutions and Peace-building in Ethiopia's New Context, Horn of Africa Bulleting, Volume 30, Issue No. 4, November-December 2018.

14.   Solomon Dersso, Ethiopia's Experience in Reconciliation, Pub: United States Institute of Peace, Analysis and Commentary, Monday, September 23, 2019

iii. Compensation and Reparation Authority (CRA); and,
iv. Compensation and Reparation Fund (CRF).

It is imperative that IGAD and Reconstituted Joint Monitoring and Evaluation Commission (RJMEC)are actively involved in this process.[15] The AU, UN, and IGAD should provide technical support to the South Sudan transitional justice processes based on comparative technical, resource and political advantages. The AUTJP and AU Post- Conflict Reconstruction Development Programme (PCRDP) should be utilised to complement and supplement the provisions of the R-ARCSS. Besides, support should also be extended to the following Horn of Africa countries implementing and planning to implement transitional justice processes namely, Sudan, Ethiopia, and Somalia, as well as to assist in consolidating the efforts of countries that are implementing their processes including Kenya and Uganda.

Fourthly, reconciliation commissions have to possess the requisite technical capacity to effectively discharge their mandates. South Sudan's transitional justice mechanisms should establish responsive units that will address the diverse needs of the citizens. A comprehensive programme of action, including research, investigation, public hearings, outreach interventions, campaigns, and victims support programmes should be developed. These programmes should ideally be defined by the citizens including refugees, internally displaced persons,

prisoners, youth and women's groups. A national coordination platform, under the leadership of the RTGoNU and AU, with support from the UN should be established to coordinate, supervise and prevent duplication of transitional justice initiatives, and the misappropriation of limited resources. This recommendation also applies to other countries in the Horn of Africa which are aspiring to implement their transitional justice processes.

Fifthly and finally, given that resources are critical and usually pose challenges to the successful implementation of peacebuilding and transitional justice initiatives, a resource mobilisation strategy should be developed. The Government of South Sudan, IGAD, the RJMEC, AU, UN and other international actors should prioritise mobilising resources in support of the Peacebuilding and the Transitional Justice Fund.[16] The African Union Commission of Inquiry on South Sudan (AUCISS), the African Commission on Human and Peoples' Rights (ACHPR), and the UN Human Rights Commission for South Sudan should provide necessary technical support to all the transitional justice processes with their human rights findings and documentations. The countries of the Horn of Africa can also draw upon the recommendations in this article, and adapt them to their specific context, by taking into consideration their unique socio-cultural, political and economic environments.

Conclusion

This article has reviewed transitional justice and peacebuilding processes in West Africa, with a specific focus on The Gambia, intending to provide insights for the Horn of Africa. It has made a compelling case that the Horn of Africa can learn some important lessons from The Gambia's experience transitional justice mechanisms and processes.

This article identified five important

lessons, drawn from The Gambia, which can be applied to the processes that are evolving in South Sudan, as well as other Horn of Africa countries. Firstly, transitional justice processes should focus on four cardinal pillars: i) peace; ii) criminal accountability; iii) justice; and iv) national reconciliation. Secondly, citizen engagement is key in formulating and establishing transitional justice mechanisms and

15. IGAD, Revitalised Agreement on the Resolution of the Conflicts in the Republic of South Sudan (RARCSS), Addis Ababa, Ethiopia, 12, September 2018

16. Amanda Lucy and Liezelle Kumalo, How the AU can promote Transitional justice in South Sudan, Pub: ISS, NYU- CIC and PRIO, 2017

processes for purposes of political buy-in, legitimacy and public trust. Thirdly, while national actors are the primary actors in transitional justice processes, regional, continental and international actors must be leveraged for the greater good of sustainable peace. Fourthly, reconciliation commissions must be professionally competent with relevant divisions and units addressing specific mandates of the commissions. Fifth and finally, commissions need to develop resource mobilisation strategies to ensure that they have requisite financial, human, infrastructural and technological resources needed to execute their mandates.

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Tim Murithi

Conclusion

Africa has played a leading role in the global promotion of practices and norms of transitional justice, peacebuilding and reconciliation. Africa, in this sense, has advanced its home-grown norms to deal with the violations of the past. This HAB Issue has illustrated that Africa's experimentation with a broad range of norms and practices for dealing with the past confirms the interface between transitional justice, peacebuilding and reconciliation. Several countries are emerging from conflict and the challenge of peacebuilding is immediately confronted by the demands for justice for the victims of human rights atrocities. Traditionally, the pursuit of justice in international relations was considered detrimental to achieving peace and reconciliation, which are inherently political processes. However, the articles in this HAB Issue illustrated that the experiences from the Horn of Africa, in general, and South Sudan and Somalia, in particular, suggests that there are necessary nexus between transitional justice, peacebuilding and reconciliation processes.

The Horn of Africa's experiences have demonstrated the need to scale up transitional justice and reconciliation processes from their country focus towards a normative shift based on a regionalised approach to dealing with the past. This Bulletin assessed how regional reconciliation is now a necessity because of the recognition that we are increasingly dealing with regional conflict systems, not only in the Horn of Africa but in other parts of the continent. Institutions such as IGAD can lead the innovation and development of a regional transitional justice and reconciliation norms and practices, because several countries, particularly those in the Horn of Africa, will be emerging from conflict in the next decade and beyond. The adoption of the AUTJP has provided the continent with a standard template from which to draw upon and develop context-specific transitional justice processes at the national and regional levels. Therefore, it is timely that the AUTJP was adopted in 2019 because the continent still has a way to go to stabilise all of its regions and consolidate peacebuilding and reconciliation for its people. While the AUTJP is a welcome addition to the arsenal of policy documents that can contribute towards the promotion of peacebuilding and reconciliation, but it is not a panacea or a magic bullet that will solve the continents multi-facated problems. Governments and societies will have to determine how to utilise the provisions of the AUTJP in undertaking the challenging, arduous, painstaking and excavational work of addressing the violations and exploitation of the past, which is vital towards building stable and peaceful communities across the continent. The articles contained in this HAB Issue are an important contribution to understanding how the fields of transitional justice, peacebuilding and reconciliation intersect and complement each other. It provides a valuable resource for African governmental, inter-governmental and societal actors who are striving to promote peace and reconciliation in their countries and regions.