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Centre for the Study of  
Violence and Reconciliation

# **POLICY BRIEF: ADDRESSING GENDER JUSTICE AND COLONIALISM THROUGH TRANSITIONAL JUSTICE IN AFRICA**

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### **Centre for the Study of Violence and Reconciliation**

The Centre for the Study of Violence and Reconciliation (CSVR) is an independent nongovernmental organisation established in South Africa in 1989. We are a multi-disciplinary institute that seeks to understand and prevent violence, heal its effects and build sustainable peace at community, national and regional levels. We do this through collaborating with, and learning from, the lived and diverse experiences of communities affected by violence and conflict. Through our research, interventions and advocacy we seek to enhance state accountability, promote gender equality and build social cohesion, integration and active citizenship. While primarily based in South Africa, we work across the African continent through collaborations with community, civil society, state and international partners.

### **Comparative Study of Transitional Justice in Africa**

This publication is one of the outputs of the Comparative Study of Transitional Justice in Africa. The study presents a comparative analysis of 12 African countries where transitional justice mechanisms have been implemented. Mapping the range of processes in this field, the study pays particular attention to transitional justice mechanisms employed between 1990 and 2011 to deepen understandings of how these processes were developed, and the role of their respective contributions to the prevention or recurrence of war and repression. Specifically, the study examines the factors that shaped state policy decisions in framing the diverse set of responses to dealing with legacies of dictatorship, civil war, and mass human rights abuses, and assesses the consequences of these decisions for achieving sustainable peace and preventing future human rights abuses. <https://www.csvr.org.za/african-transitional-justice-comparative-study>

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## Introduction

Transitional justice is a crucial element for the promotion of human rights, justice, peace, good governance and development in Africa. Africa as a continent with legacies of violence and human rights abuses requires that transitional justice processes expand to include colonialism as an essential period within its mandates in different countries, as colonialism was a violent act that cannot be limited to history as it continues to have resultant effects on all aspects of African life. The effects of colonialism are far-reaching and continuous, as it affected political institutions, social structures that continue to exist within the institutional memories of governance structures in Africa, leading to bad governance and limited development.<sup>1</sup> Transitional justice addresses these effects using both judicial and non-judicial methods; it is understood as (formal and non-formal) policy measures and institutional mechanisms that societies implement in order to overcome past violations, divisions and inequalities in order to create conditions for security and democratic and socio-economic transformation<sup>2</sup>.

Transitional justice is a set of mechanisms in a phase in which countries, based on their different histories, priorities and the actors involved, will make choices from processes and mechanisms that include: truth-telling commissions, memorialisation, reparations, institutional reforms, vetting and lustration and African traditional justice mechanisms.

Transitional justice has been taking place on the African continent without using the coined term and has been occurring outside of the dominant legal and liberal democratic norms. Such processes have intervened to ensure that there is no reoccurrence of violence, and have also assisted in dealing with the traumas of slavery, colonialism, apartheid, systemic repression, and civil wars using an indigenised language of human rights and community-based accountability mechanisms. This is an essential element of transitional justice in Africa, which countries must take cognisance of when addressing the legacies of violence from colonialization. They cannot however be viewed as a decolonial solution without also engaging with a deep historical understanding of the impact of colonialism on such practices, much of which has historically being gendered. This historical engagement should include understanding why certain practices survived and others did not, who benefited from their survival beyond colonialism. It is also important to include the external influences that impacted tradition, territory and social structures that influence these community-based mechanisms and their practices.

Colonialism was a violent act from its conceptualisation in the 18th century to its far-reaching implementation, which included genocides, war, countless human rights violations, loss of land and displacement, and which affected different African countries based on: the type of colonisation, the agency of local people and the interests of colonial agents that were primarily traditional male leaders. This policy brief will provide an overview of the types of colonisation that took place, the gendered dynamics of colonialism and the lost political institutions of African women in attempt to promote innovation within transitional justice, specifically in how it views gender justice in Africa. An African feminist approach to transitional justice will be used to frame this policy brief. This counteracts transitional justice's historical preoccupation with western feminism and the liberal democratic language of women's rights. This policy brief will also address the historical erasure of women and attribute it to the effects of colonialism on gender relations, ideas of domesticity and production, and the removal of women's agency in political institutions, their decision-making power and their indigenised women's rights in Nigeria and Uganda.

## **Transitional Justice, Development and Gender-Mainstreaming**

***“The impact of feminism on the global development industry has led to many things, only some of which are as radical and progressive as their instigators dreamed”***

- Amina Mama, 2004, *Demythologising Gender in Development: Feminist Studies in African Contexts*.

Feminist analysis in international development draws its understandings of gender, the state and the experiences of women in contexts of conflict from western feminism that has dominated development industry since the UN decade for Women (1975-85). This feminist analysis draws its theoretical and practical application from the global and local subordination of women and the feminist interventions that have taken place in the development industry have grappled with how to transform the power structures that oppress women. Gender technocrats in second-wave feminism have been involved in development work that addresses gender inequality under the umbrella of Women in Development (WID), Women and Development (WAD), Gender and Development (GAD) and gender mainstreaming<sup>3</sup>. Gender-mainstreaming dominates strategies to address gender inequality in the development industry and transitional justice methods used to redress gender-based harms and to ensure the substantive representation and participation of women in peace processes in transitional justice.

Gender-mainstreaming is presented as a cross-cutting solution for understanding the gendered nature of conflicts, deficits on development, and violations that disproportionately affect women and girls<sup>4</sup>. However, this solution, as progressive as it may be in terms of how it positions women in fields such as transitional justice and the development industry, often succumb to liberal politics in their interventions and to what has been termed as ‘entryism’. ‘Entryism’ is described as the act of placing women into existing institutions and into development rather than transforming these political institutions<sup>5</sup> in order to ensure substantive representation and participation for sustainable peace, effective redress for gendered violations and justice. Both state feminism and development feminism have been presented as progressive approaches for addressing gender inequality and promoting the participation of women in transitional justice and peace-processes. Both are susceptible to the politics of entry-ism and other forms of opposition from powerful actors, which hinders transitional justice in having a long-term and transformative vision of post-conflict state and nation-building.

### **Transitional Justice and State Feminism**

State feminism describes a situation where the state is the key driver in the implementation of feminist policies with the larger vision of securing material gains for women<sup>6</sup>. In terms of transitional justice, state feminism has influenced the approaches for ensuring gender justice in many African contexts, and is evidenced in the transitional justice mandates in Kenya, Liberia, Rwanda and Tunisia<sup>7</sup>. Although state feminism has contributed to how gender justice and gendered harms are understood in conflict in Africa, it has not effectively transformed the conditions of ordinary lives of women and men in former colonies in Africa. For example, in Tunisia, state feminism brought about significant gains for women’s rights, but it was also implicated in the silencing of oppressive activities of the ruling party and in the pacifying of any threats to the dictatorial regime from opposing political elites.

By using state feminism, there is the assumption that the state is the key actor that champions and drives all the solutions. However, much of feminist scholarship within the framework of transitional justice understands gendered harm through the perspectives of the elite and the framework of law<sup>8</sup>. Feminist scholars have drawn attention to the neglect of harm (wartime rape, conflict-related sexual and gender-based violence) that takes place in the private spaces and the historical complexities of gender power relations in different societies is not included into transitional justice mandates. Effective accountability and prevention requires the state's political will to recognise gendered harms, understand structural gender inequalities and ensure the participation of women in all aspects of peace processes. However, there are countless examples in Africa, where the state is overwhelmed by its responsibility to its citizens, particularly its responsibility to Africa women<sup>9</sup>. State feminism does not highlight the challenges faced by post-conflict states and the patriarchal biases inherent in their laws that are directly linked to the colonial legacies that have permeated into state behaviour and cultural misunderstandings in present day Sub-Saharan Africa.

## **Colonialism and the African State**

The colonial state was illegitimate as, together with the law, it has been used to loot, extract, exploit, violate and control Africans, particularly African women. The colonial state served the interests of colonial administrators, their local agents and the economies of Europe. Central to issues of bad governance, conflicts and the development deficits with which transitional justice is preoccupied, are these unaddressed colonial legacies. These colonial legacies involve how the colonial state stripped African people of their resources and wealth, dignity, identity and affected gendered relations for the detriment of African women<sup>10</sup>. Colonial rule was an imperfect system of rule with many contradictions, complexities and structural fragilities that were legitimised by war and violence. Colonial rule, which was formalised by the Berlin Conference in 1884, began the Scramble for Africa from the British, Portuguese, Italians, Germans, French and the Belgians whom all had certain distinct ways of ensuring their control over indigenous populations that still manifest as bad governance and authoritarian rule, slow development and military intervention into politics that all affect sustainable peace, justice and development in Africa. To give a sole solution to address the human rights violations that originated from the colonial conquest that included forced displacement to divide territory, ethnic group and exploit with the use of force and the threat of war. To not include the complexities of the colonial conquest would erase the experiences that different countries had with Europe, so this policy brief will explore below the types of colonialism that Nigeria and Uganda had in order to understand the gendered impact of colonialism.

In pre-colonial Africa, African women took on various political and social roles and gained status in their societies as “farmers, traders, mothers, members of secret societies, and religious figures”<sup>11</sup>, which dominant liberal human rights discourse ignores as an essential part of understanding indigenous forms of women's rights and gender justice in Africa. The disruption in governance structure, the interruption in development and the shifting of women's roles in the colonial era affected women's access to the colonial state as cases that were brought before the law under colonialism were linked to African women being either sold off into slavery or married off to slave owners, without access to justice and



legal rights in the colonial state. The cooperation of the colonial state and the African male elders created customary laws that consolidated the power of African males and their position as political elites. Customary law, often also looked to in traditional justice<sup>12</sup> transitional justice interventions, is directly linked to the colonial state and to the cooperation of African male political elites that controlled the political agency of women, misunderstood the political activities of African women and limited the movement of women to towns, to their crops and mines. Therefore, state feminism is mismatched to the African continent because it inadequately addressed the histories of pillage linked to the state, the reconfiguring of gender relations and the inheritance of an African state that has discriminated against women consistently both in its colonial and post-colonial forms.

To solely rely on the state to implement transitional justice limits the transformative potential of the post-conflict state, instead there should be multiple sites for addressing women's rights such as women's interest groups, women's autonomous community networks and women's cultural groups that may be stigmatised because of colonial norms. These multiple sites should be guided by African feminism as an approach that recognises African gender histories, the different political activities of women, patriarchal harmful culture practices, governance deficits that affect women, intersectionality and gendered inequalities.

## **Intersectionality**

Transitional justice in Africa needs to use a language that is adapted to how African women understand their experiences and towards their role as essential players for the promotion of human rights, peace and security, good governance and development in Africa. Without doing so, transitional justice would not be centering the lives of those who should be on the receiving end of gender justice in Africa, African women.

One such way in which transitional justice initiatives have broadened in how they understand the complex gender relations is by including intersectionality into how governance, development and peace and security issues are understood and towards the focus of who transitional justice should work for, given African women's historical relationship with the state. Intersectionality challenges the binary of men and women by including the issues of poverty, inequality and the causes of conflict. Also, intersectionality connects patterns of gender discrimination that affect the day to day lives of African women, for example the strong link between SGBV that occurs every day and the SGBV in conflict is understood holistically for the prevention of future recurrence. There are also exclusions that occur when the representation and participation of women is tabled in transitions<sup>13</sup> that intersectionality highlights as a tool that gives visibility to all the patterns of power. A tool such as this assists with the inclusion of differently positioned women, in terms of their socio-economic and political positions, which goes directly against the tendencies of trials, courts, political and institutional reforms, truth commissions, amnesties and clemency – which are largely elite-driven and focused<sup>14</sup>. Transitions are a period which open up room to put into place progressive initiatives and for equal opportunity, even for the most marginalised. “Thirteen of fourteen post-conflict countries have banned discrimination based on sex”<sup>15</sup> and due to these policy developments, women have claimed one third of parliamentary

seats in countries such as Rwanda, South Africa and Tanzania. However, presence does not equate to transforming the gender ideologies that have their origins in the colonial state and social and economic inequalities. Intersectionality as a tool can be utilised to ensure that political and social inequalities are tabled in negotiations during peace processes and also as part of diversity management.

## **A Case for an African Feminist Approach to Transitional Justice**

African feminism is an approach that would assist transitional justice deal with the experiences of African women in multiple sites and address the colonial legacies that erased the political activities and contributions of Black women in Africa. It directly works against the erasure, expropriation and the exploitation of the labour and political contributions of African women for the benefit of the African colonial state. This way of understanding the lives of African women presents greater possibilities for understanding humanity, peace and justice that will lead to transformative changes for women in former colonies of the West<sup>16</sup>. African feminism is anti-racist, anti-imperialist or postcolonial and therefore recognises the complex gender relations that have resulted from the violent act that colonialism was and challenges the dominant form of feminism in the development and peace and security sectors.

Western feminism assumes that there is a universal ‘woman’, which African feminism challenges with recognising plurality in Africa. In Africa, there is no homogenous populations of women even within the same country. Therefore, African feminism would guide transitional justice interventions to adequately address “representation, identities, subjectivities, and sexualities, discourses on democracy, governance and human rights, as well as geographical and linguistic diversities<sup>17</sup> in Africa and the conflicts that take place because of historical tensions rooted in colonial legacies, bad governance, development deficits or civil wars. African feminism has its roots in the continent, so it would not be dependent on ideas about gender roles, gender representation, human dignity and freedom from liberal western feminism that dominates international law. This dominant western feminism permeates development and transitional justice interventions and does not integrate African gender histories into the theory and practice of transitional justice. As transitional justice begins to go against its dominant legal roots in Africa through the *African Union Transitional Justice Policy*, it is imperative that African feminism is considered in the various formal and non-formal policy developments and in the institutional measures. African feminism would centre the experiences of African women in inclusive consultative processes and would guide the inclusion of non-state actors that are of value in order to create conditions for the security, democratic and socio-economic transformation<sup>18</sup>. In transitional justice, choices are important. Using African feminism is one of the choices that will make sure that transitional justice is aligned with local needs and the aspirations of women, youth and other marginalised groups and their ideas of peace, justice and transformation.

## Colonialism in Africa - Case Studies

***"Traditional African political systems were infused with democratic values. They were invariably patrimonial, and consciousness was communal; everything was everybody's business, engendering a strong emphasis on participation. Standards of accountability were even stricter than in Western societies."***<sup>19</sup>

- Claude Ake

### Nigeria

Nigeria had its first contact with Europeans from 1450 in the form of trade of slaves with the Portuguese and subsequently experienced a combination of two types of colonial rule implemented by British rule in Africa. This initial contact began from the coastal areas of Nigeria, where the type of colonial rule was implemented initially was 'Direct Rule'. Direct Rule is a type of colonisation that directly drew from British systems of rule and governance, which in effect, lead to the formation of Crown colonies that mirror the British monarchy<sup>20</sup>. The type was combined with the indirect rule in other territories that form the state of Nigeria as it currently demarcated. Indirect rule was Britain's most pervasive method of colonial rule in its colonies, which entailed the rule of an indigenous population separate from British institutions and ideas in the form of chieftaincies. This entailed forming administrations that would rule over the local populations, with the administrative unit termed 'a tribe'. The social organisation of these units can be compared to the sovereignty of a state. Under Indirect Rule, kings or chiefs were recognised by the British and were under the command of the colonial administrator, who was linked to the British metropole.

Nigeria, being, a multi-ethnic and multi-religious territory, suffers from the legacy of the arbitrary grouping of its ethnic groups and as a result, still suffers from a national identity crisis which is compounded by remnants of the colonial military force that pillaged any resistance to colonial rule from chiefs and kings from the individual territories. British colonial rule exacerbated ethnic divides that existed before colonial rule and manipulated traditional leadership structures that existed in order to separate the land into three regions: Northern: Hausa- Fulani, the Eastern parts as Ibo territory and the Western as parts as Yoruba territory<sup>21</sup>. In attempt to address this instability that this initial demarcated causes, Federalism was introduced in 1946 with the introduction of the Richard's Constitution. The federal government rules every aspect of governance in Nigeria and the separation of the 3 regions into 36 states has been the source of violence as the military has dominated every sphere of governance and has led to political instability in the state with the threat of war, coups and initiated vicious cycles of violence that manifest as: domestic violence, sexual and gender-based violence, robbery, violent extremism, brigandage, religious riots and lawlessness.

### The Colonial State and the Institutions of Women in Nigeria

The colonial state was associated with male power by recognising power through the patriarchal institutions such as chieftaincies, kingdom and male labour in the form of migrant labours, interpreters and employees. African women, under norms that originate from the Weberian state and western sovereignty, had no direct ties to the British colonial state. The result of this was that African women's



political institutions were erased and instead were subjected to colonial desire that sexualised African women and did not allocate any social, economic or political status or power. Colonialism destroyed pre-existing gender relations and the systems of democracy that indigenous groups had that gave voice, visibility and agency to African women<sup>22</sup>. Despite this, women resisted the detrimental effects of altered gender relations and used traditional justice mechanisms and their agency to create unofficial positions of influence for themselves from their own political institutions.

### ***Ogu Uwunwany* and *Mikiri* in Igbo Society in Nigeria**

*Ogu Umunwany*, referred to as the Nigerian Women's War of 1929, occurred in the Calabar and Owerri provinces in South-Eastern Nigeria in November and December of 1929<sup>23</sup> is an example of a traditional political institution that was used by Igbo women to challenge British colonial rule. The Nigerian Women's War was used to hold male political leaders, the Warrant chiefs, accountable to the Igbo people they serve, in a territory where political power was historically diffuse. *Ogu Uwunwany*, is an example of African women's self-rule and large-scale resistance to British colonial law and taxation on their palm crops, which the British colonial administration failed to see as initiated by women because they did not associate political roles and the political power with Igbo women. The British administration's response to this act of collective resistance was to set up the Aba Commission of Inquiry to discern from witness testimonies which men were involved in organising the women involved in *Ogu Uwunwany*. This organised response that was coordinated through complex inter-community networks led by women in the two provinces and involved Igbo women using their bodies to destroy buildings, loot factories, assault chiefs and British administrative offices.

The Aba Commission of Inquiry for *Ogu Uwunwany* presents many lessons, one of which is the way that transitional justice was instrumentalised by colonial rulers. Commissions of inquiry were used by the British colonial administration to reinforce men as leaders and to erase women's political power and influence. The witness testimonies reflect that the questioning and the interpretation at truth-telling can frame the 'facts' to reflect the thinking and understanding of those leading the inquiry, in this example they reflected the western Victorian values of the British colonial administration that frame women within the private space and a passive domesticity without influence on production and politics in society. With such a history, transitional justice, outside of a colonial context, needs to take caution to avoid this historically western approach that erases the power and influence of women's political institutions and fail to recognise the fluidity of gender relations in African societies.

Secondly, the Aba Commission of Inquiry was not part of Igbo women's traditional mechanism of justice and accountability, so it was mismatched and not contextualised to address the matter in a way that centres the experiences of African women and their cultural context. The traditional political organisation that grievances, such as these are dealt with occur in gatherings, called '*Miriki*' or 'Sitting on a Man', which were women's most effective tool of attaining gender justice and were of a much smaller scale than *Ogu Uwunwany*. The *Miriki* were held when there was there was a need within Igbo society, and served as an institution that supported women's agency, self-rule and decision-making capabilities. In a *Miriki*, women would resolve issues that directly affected them in the social and economic roles that they had as mothers, farmers, traders and wives and to also sanction men for any

violations against women in the community. Such violations include: sexual violence, the mistreating of wives and contravening women’s market rules or their crops. To ‘sanction’ or ‘to make war’ on a man involved invoking female ancestry and a power gained through collective organising and gathering at a male compound late at night, dancing, singing songs that detail the grievance and also call into question the manhood of the perpetrator through the use of vulgar language and disruption. This is a political institution that defined gender justice using an indigenised language and in which women found solidarity and recourse for the social and economic injustices they had faced, as a threat to their crops constituted a threat to their reproduction or fertility as women<sup>24</sup>. Transitional justice mechanisms that address colonial legacies should also include addressing the detrimental structural effects of colonialism that re-structured gender relations and erased powerful institutions, like the *Mikiri* and misunderstood the political power of their inter-community networks as evidenced in *Ogu Uwunyanyi*.

## **The Baganda Kingdom in Central Uganda**

In the region that is now known as Uganda, there were many territories that had organised around the region before Uganda became a British Protectorate in 1894. Before the British Protectorate, there had been Arab traders in search of slaves and ivory in 1862 and then Speke and Stanley’s expeditions in 1875. Speke and Stanley in the late 19th century interacted with the Buganda Kingdom that had its own centralised democratic system. Apart from the Buganda Kingdom, there coexisted de-centralised forms of governance such as the Chiga and the Basoga and also more centralised ways of governance in the Baganda, Banyoro, Batoro and the Ankole clans. The constellation of all of these kingdoms is essential for the understanding of the colonial encounter in the region, and the position of Buganda was one of the most powerful Kingdoms. In 1894, the region was declared a British protectorate and their colonial powers extended control over the western kingdoms of the Ankole, Toro and Bunyoro, and combined to form the Uganda Protectorate.

The Kingdom of Baganda has a rich and extensive history dating back to the 16th century, with indigenous forms of democracy that made this a stable, strong and influential kingdom in the region. The Baganda people practiced a form of democracy that was based on consensus-based decision making and was inclusive in terms of governance and representation in its socio-political administrative systems. The Baganda clan system was hierarchal system, where roles were assigned according to gender, people’s relationship with the *kabaka* and the means of production<sup>25</sup>. The smallest unit of the Buganda clan is the family, where each person is assigned a role in the division of labour and each individual had a voice in the governance of the clan. The role of women in the Kingdom was primarily subordinate, but gender roles were fluid and also depended on the relationship with the *Kabaka*. The *Namasole* (queen mother), the *kabaka*’s co-heir (commonly the older sister) occupied positions of political and economic authority in the Baganda Kingdom and the *Ssenga* (the paternal aunt) took on the role of being a tutor to young girls and also sanctioned gender-based violence and abuse that took place within families. This gave the *Ssenga* special status within then clan. Unlike the domesticity that came with colonial role that limited women to influence in the private sphere, the domestic roles of women were attached to production and, depending on their social and cultural position that derived them status and influence in governance. Therefore gender has always been fluid and negotiable, where new categories were created to explain temporary, permanent and situational gender identities. For example, *ekikazikazi* is

a gender category used to explain a womanly man who is biological male and *nakwanga* is used to explain a manly women who is biologically female<sup>26</sup>. The rigidity of gender identity came with imported European gender relations that are linked to domesticity, motherhood, labour within private sphere and the nuclear<sup>27</sup>.

Another interesting status women had that is important to consider when considering institutions that have been stigmatised because of the colonial gender norms is Nnaalongo. The institution of nnaalongo for women and ssaalongo for men translates to superwoman, superman or superhuman and is the highest hierarchal gender position that changes the entire lifestyle of the nuclear family once the twins are born<sup>28</sup>. This gender position affords those who give birth to twins' special treatment and privileges in terms of communal governance. The social position of the Nnaalongo involves being revered at public functions, community immunity that allows for fluidity and subversion of the cultural and social constructions of women and womanhood. Nnalonggo is also consulted in community governance and decision-making<sup>29</sup>. In present day Ugandan society, the names of Nnnalongo and Ssalonggo are used to describe parents of twins although the rites, ceremonies and social privileges of this position. However, this positions has become stigmatised, largely due to the effect that religion has had on tradition and colonialism's effect on indigenous socio-political institutions<sup>30</sup>.

The socio-political roles of African women and African indigenous democratic institutions that predate colonialism and western democracy that were explored through the case studies in this policy brief, were not included to recommend that transitional justice begin the impossible task of returning to Africa's pre-colonial political systems. Instead, the Buganda and Igbo case studies present African traditions of democracy, gender relations, African women's inter-community networks and socio-political institutions. These examples highlight the work that needs to be done to redress colonial violations, to address cultural misunderstandings in transitional justice and to introduce traditional/ local justice systems that dignify, celebrate and substantively represent women in governance and judicial systems indigenous to the socio-cultural context.

## Recommendations

- Transitional justice should acknowledge its own colonial legacies and how it was manipulated to frame African women's political activities, such as through commissions of inquiry and legal frameworks that marginalised and distorted the role of women, and contributed to creating African male political elites that preserved patriarchal social norms.
- Transitional justice processes should include in their mandates the mass abuses and wars under colonialism, cultural and historical erasure and the institutional destruction. It is critical that these processes trace the long-lasting social, economic and political effects that these abuses had on subsequent periods and present contexts. Without this inclusion, transitional justice choices, priorities and attempts to attain sustainable peace and justice will be susceptible to following a neo-colonial agenda in Africa
- Historical analyses should be a central feature of transitional justice processes so as to avoid reinforcing the erasure of women's political institutions and mismatching the process from the type of colonisation that was experienced.
- It is essential to recognise and engage with traditional justice mechanisms in order to understand the gendered effects of colonialism on tradition and ethnic groups that engage in community-based processes.
- African feminism should serve as a framework and a guide in order to understand social, economic and political position of African women and the complexities of gender relations in Africa, and not rely on western feminism that has dominated the transitional justice field.
- Transitional justice should prioritise the revival and the de-stigmatisation of traditional mechanisms that protect women's agency and women's decision-making power on a both a community level and a state-level
- Policy makers must avoid reliance on liberal democratic norms that dominate formal processes of transitional justice mechanisms, at the expense of erasing an indigenised language of human rights, and women's rights, which have been in existence for centuries in Africa.
- Multiple sites, outside of the state, should be included in consultations about women's rights, redress for sexual and gender-based violence in conflict and in peace time, in order to share the responsibility of implementation and to guard against political opposition.

1. For a broader overview of transitional justice engagement with colonial legacies in Africa see, Chelin R. and H van der Merwe, (2018) *Transitional Justice and Colonialism*, Policy Brief, Centre for the Study of Violence and Reconciliation, available at <https://www.csvr.org.za/pdf/Transitional%20Justice%20and%20Colonialism%20-%20Policy%20Brief.pdf>
2. African Union. 2019. Introduction, Goal, Objectives, Rationale, Definitions and Principles in Transitional Justice Policy. Available at: [https://au.int/sites/default/files/documents/36541-doc-au\\_tj\\_policy\\_eng\\_web.pdf](https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf) CSO%20Forum%20programme. Accessed 1 December 2019
3. Mama, A. 2005. Demystologising gender. *Feminist Studies in African Contexts*. *IDS Bulletin* 35(4) p 121
4. African Union. 2019. Section 3: Cross Cutting Issues in Transitional Justice Policy. [https://au.int/sites/default/files/documents/36541-doc-au\\_tj\\_policy\\_eng\\_web.pdf](https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf) CSO%20Forum%20programme.
5. Mama, A. 2005. Demystologising gender. *Feminist Studies in African Contexts*. *IDS Bulletin* 35(4) p 121
6. Ketelaars, E. 2019. "Gendering Tunisia's Transition: Transformative Gender Justice Outcomes in Times of Transitional Justice Turmoil?" *International Journal of Transitional Justice* 12.(3): 407-429
7. Centre for the Study of Violence and Reconciliation. 2016. *The Comparative Study of Transitional Justice in Africa*, CSVSR. Further details can be accessed at <https://www.csvr.org.za/african-transitional-justice-comparative-study>.
8. Ketelaars, E. 2018. "Gendering Tunisia's Transition: Transformative Gender Justice Outcomes in Times of Transitional Justice Turmoil?" *International Journal of Transitional Justice* 12.(3): 407-429
9. Scully, P., 2009. Should we give up on the State? Feminist theory, African gender history and transitional justice. *African Journal on Conflict Resolution*, 9(2).29-44
10. Ibid
11. Ibid
12. Traditional justice mechanisms are also referred to as community based, customary, indigenous, informal and local justice mechanisms. For further details on the links between transitional justice and traditional forms of justice in Africa, see Masiko-Mpaka, E. (2019) *Traditional transitional justice mechanisms: Lessons from Africa*, CSVSR Policy Brief. Available at <https://www.csvr.org.za/publications/2853-traditional-transitional-justice-mechanisms-lessons-from-africa>
13. Aolin, F. & E. Rooney, 2007, Underenforcement and Intersectionality: Gendered Aspects of Transition for Women, *International Journal of Transitional Justice*, 1(3).
14. Ibid
15. Tripp, A., I. Casimiro, J. Kwesiga and A. Mungwa 2009. *African women's movements: Transforming political landscapes*. Cambridge, Cambridge University Press. p.6
16. Gqola, P. 2001, Ufanele Uqavile Black Women Feminisms and Postcoloniality in Africa, *Agenda*, 50.
17. Adomako-Ampofo, Akosua, Beoku-Betts, J & J. Osirim, Mary 2008. "Researching African Women and Gender Studies: New Social Science Perspectives." *African and Asian Studies* 7.
18. For a more detailed analysis of the ways that transitional justice seeks to address inclusion and diversity, please see van der Merwe, H and N. Masiko-Mpaka, 2019, *Addressing Diversity and Inclusion through Transitional Justice*, CSVSR Policy Brief. Available at <https://www.csvr.org.za/publications/2850-addressing-diversity-and-inclusion-through-transitional-justice>
19. Ake, C. 1996. Rethinking African Democracy. In L. Diamond and M. F. Plattner (eds) *The Global Resurgence of Democracy*. Baltimore: John Hopkins University Press.
20. Hakeem Yusuf, 2017. *Nigeria: The Colonial Legacy and Transitional Justice*. CSVSR Research Report. Available at <http://www.csvr.org.za/pdf/Nigerian-Report-Electronic.pdf>
21. Ibid
22. For further analysis of the impact of colonialism on the meaning of gender and gender relations please see Mbwana, T. 2019, *Transitional Justice and the Inclusion of LGBTQIA+ Rights*, CSVSR Policy Brief, Available at <https://www.csvr.org.za/publications/2851-transitional-justice-and-the-inclusion-of-lgbtqia-rights>
23. Van Allen, J., 1972. "Sitting on a man": colonialism and the lost political institutions of Igbo women. *Canadian Journal of African Studies/La Revue canadienne des études africaines*, 6(2).
24. Ifeka-Moller, C., 1975. Female militancy and colonial revolt: The Women's War of 1929, Eastern Nigeria. *Perceiving Women*, pp.127-57

25. Tamale, S., 2005. Eroticism, sensuality and “women’s secrets” among the Baganda: A critical analysis. *Feminist Africa*, 5(1), pp.9-36.
26. Nannyongo-Tamusuza, S. (2009) 'Female-men, male-women, and others: constructing and negotiating gender among the Baganda of Uganda', *Journal of Eastern African studies*, 3(2), pp. 367-380
27. For a more detailed analysis of the impact of colonial conceptions of gender and sexual identity, see Mbwana, T. 2019, Transitional Justice and the Inclusion of LGBTQIA+ Rights, CSVV Policy Brief, Available at <https://www.csvv.org.za/publications/2851-transitional-justice-and-the-inclusion-of-lgbtqia-rights>
28. See note 2
29. Nannyonga-Tamusuza, S. (2005) *Baakisimba: gender in the music and dance of the Baganda people of Uganda*, New York: Routledge.
30. Lumunu, I. (2019) 'Uganda/Buganda. The twins a special children', *South World*, 1 August, p. 5.







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