

COVID-19, TRANSITIONAL JUSTICE AND VICTIMS' EXPERIENCES IN AFRICA

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Introduction

In 2019, the African Union adopted a new tool to guide processes of coming to terms with difficult pasts and mass atrocities on the African continent – the African Union Transitional Justice Policy (AUTJP).¹ The policy had not been around long when the public health crisis induced by COVID-19 hit Africa, albeit with a relatively lower impact than on other continents. Transitional justice processes have been affected in different ways by this crisis. Victims of past human rights abuses, who are key to all transitional justice measures, have been hit hard.

In this paper, I explore the situation of victims vis-à-vis transitional justice processes in selected African countries when COVID-19 appeared. I look at the performance of these transitional justice processes and attempt to ascertain the prospects for the AUTJP to improve remedies for victims. I also make suggestions on ways to orient the AUTJP's scope to alleviate victims' plight, including through synchronisation with other regional processes, during and beyond COVID-19.

Victims and Transitional Justice in the Pandemic

The COVID-19 crisis affected victims of human rights violations on the continent in different ways. Overall, it exacerbated the plight of victims already facing structural hardships, increasing their vulnerability by worsening their socioeconomic situation. In relation to transitional justice issues, victims have faced ongoing human rights abuses, political instability and post-truth commission setbacks, leading to stalled or incomplete transitional justice processes and problems with the design and implementation of victim-specific measures.

Ongoing Violations

When the first cases of COVID-19 were confirmed on the African continent in March 2020, a number of countries were dealing with human rights violations and a growing number of people seeking multifaceted redress. This was a sobering challenge for the African Union, which had adopted "Silencing the Guns" as its theme for that year.

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In the Democratic Republic of Congo (DRC), about 1,300 civilians were killed by June 2020 in eastern Congo conflict hotspots, including Ituri, North Kivu and South Kivu. The Office of the United Nations High Commissioner for Human Rights stated that "some of the incidents involving killings and other abuses and violations may amount to crimes against humanity or war crimes."2 Insecurity increased significantly in certain locations, despite the pandemic. In North Kivu, areas surrounding Beni and Lubero, where the Allied Democratic Forces rebels are active, were deemed inaccessible for the supply of humanitarian assistance.3 Last year also marked 10 years since the 'mapping report' was published in October 2010, documenting the most serious violations of human rights and humanitarian law that occurred between 1993 and 2003 in the DRC.4 Victims of grave violations and abuses of domestic and international law have been in a limbo for many years, seeing no break in the cycle of violence,

¹ African Union Transitional Justice Policy, adopted February 2019, https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf.

Office of the High Commissioner for Human Rights, "1,300 killed civilians killed in the DRC in past eight months – Bachelet," Geneva, 5 June 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25928& LangID=E.

³ United Nations Office for the Coordination of Humanitarian Affairs, "DR Congo, North Kivu: Impact of the insecurity on the humanitarian situation in the territories of Beni and Lubero," November 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/impact_secu_beni_lubero_dec2020.pdf.

⁴ Mapping Report, http://www.mapping-report.org/en/.

despite the adoption of a number of minimal accountability and truth-seeking measures.

In South Sudan, remedies for victims of human rights violations have been lagging, while atrocities and political rivalry continue uninterrupted. The Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan has not delivered on its promise regarding accountability mechanisms. Instead, new atrocities parallel those that occurred between 2013 and 2019.⁵ The establishment of the Commission for Truth, Reconciliation and Healing and the Hybrid Court for South Sudan⁶ is still being debated and seems to be hinging on political will and a conducive environment.⁷

In the Central African Republic (CAR), victims of gross human rights violations committed between 2003 and 2016 are still waiting for remedies agreed upon in the 2015 Bangui National Forum, particularly a truth commission. Meanwhile, the Special Criminal Court has yet to render a single judgment. The electoral cycle of 2021—aimed at renewing the National Assembly and electing a new president—unleashed a fresh wave of violence between pro-government and rebel groups, specifically following the invalidation of former President François Bozizé's presidential bid. The renewed instability and attendant rights violations epitomised the consequences of the impunity prevailing in CAR since the advent of a national

government in 2016. Indeed, questions regarding the deterrent effect of prosecutorial initiatives were brought to the fore, as two important prosecution initiatives, by the Special Criminal Court and the International Criminal Court, were in motion, yet the country was hit by fresh atrocities. This was a clear illustration that peace and stability cannot be built at the expense of accountability.⁹

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Mali also continued to experience human rights violations, especially in the central Mopti region. By June 2020, about 589 civilians had been reported killed in an escalation of ethnic conflict, which carried an undertone of radical ideology. Yet, the country's Truth, Justice and Reconciliation Commission continued to attend to the gross human rights violations perpetrated in Mali since 1960. Following its first public hearing in December 2019, the commission organised another in December 2020, amid ongoing instability and rights violations, under a regime installed after the military coup of August 2020 that ousted President Ibrahim Boubacar Keïta.

- United Nations Human Rights Council, "Despite new renewed political commitment, staggering levels of violence continued across South Sudan for the second successive year," https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26761&LangID=E.
- 6 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), 12 September 2018, Chapter 5 Transitional Justice, Accountability, Reconciliation and Healing.
- 7 Human Rights Council, A/HRC/45/CRP.4, "Transitional justice and accountability: A road map for sustainable peace in South Sudan," 5 October 2020.
- 8 Olivier Kambala wa Kambala, "Benchmarking the role of African youth in transitional justice processes," CSVR, 2017, pp. 12–13, https://www.csvr.org.za/pdf/TJ-Youth-Report-Electronic.pdf.
- 9 United Nations Office of the High Commissioner for Human Rights, "CAR: Violations of human rights and international humanitarian law must be punished to prevent ongoing violence and conflict," 15 January 2021, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26664&LangID=E.
- 10 United Nations Office of the High Commissioner for Human Rights, "589 killed in central Mali so far in 2020 as security worsens Bachelet," https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26005&LangID=E.
- 11 Ordinance no. 2014-003/P-RM of 15 January 2014, Article 3, http://cvjrmali.com/data/documents/ordce_cvjr-.pdf
- 12 Commission Verité Justice et Reconciliation, La deuxième audience publique de la CVJR s'est tenue le 5 décembre 2020 au Centre International de Conférence der Bamako, 11 décembre 2020, http://www.cvjrmali.com/home/la-deuxieme-audience-publique-de-la-cvjr-s-est-tenue-le-05-decembre-2020-au-centre-international-de-conference-de-bamako/.

Political Instability

With the pandemic, victims continued to wait for remedies from their governments, while the political situation in certain countries remained unstable.

In Guinea Conakry, victims who suffered atrocities at the hands of the military in September 2009 have seen neither accountability nor reparations. A process of coming to terms with past abuses started while the country was celebrating its 50th year of independence in 2008. The military putsch of December 2008 interrupted this process and plunged the country into political instability, which culminated in the atrocities of 2009. A reflection on reconciliation and accountability was initiated in 2011,13 which resulted in a national consultation process that produced a report in June 2016. Meanwhile, domestic judicial proceedings against those involved in the massacre of September 2009 are pending.14 The International Criminal Court announced a preliminary examination of Guinea in October 2009.15 Initially projected to take place in June 2020, the trial seems to have been postponed again as 2020 was an electoral year, with its lot of repetitive violence.16

In Côte d'Ivoire, the re-election of President Alassane Ouattara in October 2020 caused another cycle of violence, which left about 55 dead, 282 wounded and a number of internally displaced people.¹⁷ The president then appointed one of his opponents in the presidential race, Kouadio Konan Bertin, as minister of national reconciliation.¹⁸

In addition to the destabilisation and continued insecurity around Mali, a military putsch was staged in the capital Bamako in August 2020.¹⁹ Ironically, one of the coup leaders, Major-Colonel Ismaël Wagué, was appointed minister of national reconciliation and stated his support for the Truth, Justice and Reconciliation Commission in its attempt to build a collective memory to curb the recurrence of gross human rights violations.²⁰

Post-Truth Commission Setbacks

In some African countries, transitional justice processes are experiencing setbacks after the end of an official truth-seeking process.

In Côte d'Ivoire, the Truth, Dialogue and Reconciliation Commission ended its activities in 2016, when it

- 13 On 24 June 2011, President Alpha Conde (elected in November 2010) established an Interim Commission to Reflect on National Reconciliation.
- 14 Human Rights Watch, "Guinea: A decade later, no justice for massacre investigation complete; trial should be scheduled," September 2019, https://www.hrw.org/news/2019/09/25/guinea-decade-later-no-justice-massacre#:~:text=The%20 security%20forces%20killed%20more,September%2028%20and%20their%20aftermath.
- 15 International Criminal Court, Guinea Preliminary Examination, Phase 3: Admissibility, https://www.icc-cpi.int/guinea.
- 16 As usual, electoral processes are not violence-free in Guinea Conakry. In 2020, President Alpha Condé was re-elected and obtained a comfortable majority in the National Assembly. The electoral cycle was marred by violence, with an ethnic undertone, claiming two dozen lives. See Aljazeera, "Nearly two dozen dead in Guinea post-election violence: State TV," 27 October 2020, https://www.aljazeera.com/news/2020/10/27/guinea-post-election-violence-left-21-dead-state-tv; Human Rights Watch, "Guinea: Post-election violence, repression investigate use of excessive force; hold those responsible to account," November 2020, https://www.hrw.org/news/2020/11/19/guinea-post-election-violence-repression.
- 17 National Human Rights Commission of Cote d'Ivoire, Declaration no. 6 of 10 November 2020, https://www.koaci.com/article/2020/11/12/cote-divoire/politique/cote-divoire-declaration-du-cndh-relative-aux-atteintes-aux-droits-de-lhomme_146606.html.
- Deutsche Welle, "Quelle place pour le rapport de la CDVR dans le processus de réconciliation en Côte d'Ivoire," 17 December 2020, https://www.dw.com/fr/quelle-place-pour-le-rapport-de-la-cdvr-dans-le-processus-de-r%C3%A9conciliation-en-c% C3%B4te-divoire/a-55978992.
- 19 United States Institute of Peace, "Five things to know about Mali's coup," 27 August 2020, https://www.usip.org/publications/2020/08/five-things-know-about-malis-coup.
- 20 Commission Vérité Justice et Réconciliation, Réunion de prise de contact avec la CVJR du Ministre de la Réconciliation Nationale, le colonel major Ismaël Wague, 23 October 2020, http://www.cvjrmali.com/home/reunion-de-prise-de-contact-avec-la-cvjr-du-ministre-de-la-reconciliation-nationale-le-colonel-major-ismael-wague/.

submitted its report to the executive. The commission made recommendations on key reforms to avoid post-electoral violence as well as interethnic conflict.²¹ The electoral cycle of 2020 pushed the country back into the same manifestations of the root causes of conflict noted by the commission. The government made tremendous efforts to heal the wounds of the past, notably through a complex reparations programme that included individual,²² community/ collective and symbolic reparations. The various stages of transitional justice could not stop Ivorians from re-experiencing the bitter events of 2010 when President Ouattara sought to be re-elected in 2020.

Much can be said about what might have happened during the pandemic if transitional justice processes had been implemented properly and in a timely fashion before it began.

In Togo, presidential elections in February 2020 resulted in the landslide victory of Faure Gnassingbé, for the third time. Elected in 2010 and in 2015 amid electoral violence, President Gnassingbé was presented with the recommendations of the Truth, Justice and Reconciliation Commission in 2012, which documented political violence in the country between 1958 and 2005. The commission made recommendations for institutional reforms to ensure that elections are run peacefully and that the government protects the fundamental rights of all citizens.²³ However, the 2020 presidential elections led to violent incidents in which opposition leaders were intimidated, proopposition rallies were violently dispersed and civil society leaders were arrested.²⁴ While the commission investigated human rights violations in great

detail—notably the deaths of nearly 500 people in electoral violence in 2005—its recommendations for accountability were unclear,²⁵ and as a result no one has been held accountable for these events.²⁶

Effects of COVID-19 on Transitional Justice in Africa

The COVID-19 crisis has had a negative effect on transitional justice on the continent. It has also aggravated sociopolitical crises in a number of countries. Determining factors for the success of transitional justice processes, such as political and socioeconomic conditions, as well as strategic matters pertaining notably to sequencing of various mechanisms, remain unchanged or have worsened, pushing victims' issues to the bottom of states' priority lists.

Much can be said about what might have happened during the pandemic if transitional justice processes had been implemented properly and in a timely fashion before it began. Much can also be said about how violence could have been averted if transitional justice processes had been firmly in place when COVID-19 hit the continent. The reality is, however, that in Côte d'Ivoire, the same rhetoric that led to the post-electoral violence of 2010 caused mayhem in 2020, albeit with less intensity. The brutal repression of political dissent in Guinea Conakry was magnified during the elections of 2020, as the country continued to fail to address the legacies of structural violence. And the second military coup in eight years could not have been averted in Mali while its truth commission continued to pretend to address patterns of injustices and violence in a country relentlessly facing violence, political instability and violent extremism.

²¹ Commission Dialogue, Verité et Reconciliation, Rapport final, December 2014.

^{22 &}quot;Réparation Communautaire des victimes de la crise: La Ministre Mariatou Kone annonce le démarrage en juillet 2017," 9 May 2017, http://www.gouv.ci/_actualite-article.php?recordID=7595.

²³ Truth Justice and Reconciliation Commission, Final Report, Volume 1: Activities, investigations' report and recommendations, April 2012, p. 250, https://hcrrun-tg.org/wp-content/uploads/2017/09/Rapport-Final-CVJR-TOGO-.pdf.

²⁴ Amnesty International, "Togo – Submission to the United Nations Human Rights Committee 128th Session," 2–27 March 2020, p. 4, https://www.amnesty.org/download/Documents/AFR5716532020ENGLISH.PDF.

²⁵ Truth, Justice and Reconciliation Commission, Final Report, Volume 1: Activities, investigations' report and recommendations, April 2012, p. 252, https://hcrrun-tg.org/wp-content/uploads/2017/09/Rapport-Final-CVJR-TOGO-.pdf.

²⁶ Amnesty International, "Togo – Submission to the United Nations Human Rights Committee 128th Session," 2–27 March 2020, p. 6, https://www.amnesty.org/download/Documents/AFR5716532020ENGLISH.PDF.

The AUTJP: Critical Prospects to Remedy the Situation of Victims

Adopted in 2019, the AUTJP's overall goal is to "to provide the policy parameters on holistic and transformational TJ in Africa, drawn from—amongst others—the AU Constitutive Act, Agenda 2063, the ACHPR and the AU shared-values instruments."²⁷ The rationale of the AUTJP is presented as providing "guidelines to translate comprehensive strategies for TJ into specific actions that empower affected countries to take the lead in the process of providing restorative and transformational justice with respect to not only the legacies of conflicts and violations, but also governance deficits and developmental challenges." Scholars have hailed the adoption of the policy as a "turning point for the AU in the fight against impunity."²⁸

Many practitioners and scholars maintain that transitional justice has entered something of a mid-life crisis.

The question remains whether the AUTJP represents a new paradigm in the strategic positioning of transitional justice as a concept. Many practitioners and scholars maintain that transitional justice has entered something of a mid-life crisis. Some have begun "to question the relevance of transitional justice in the communities it is intended to serve and worry that it is simply a 'toolbox' of international or national interventions, replicated from one country to the next."²⁹ In considering the various country contexts described in this paper, the essential question would be: Has the AUTJP brought

a strategic positioning to transitional justice as a concept needing implementation and results to the countries and communities it is intended to serve?

From a practitioner perspective, the debate regarding the field needs to go beyond the definitional level to focus on how transitional justice can benefit victims and affected societies. Transitional justice needs to find a justification through its functions to protect the interests of victims. The COVID-19 pandemic laid bare countries' structural deficiencies in protecting their citizens (via health systems and social protection). It has demonstrated that reluctance to act swiftly to resolve accountability issues can only make victims' situation worse. It has also confirmed the necessity of the timely rolling out of remedies aimed at providing redress to victims.

In countries where transitional justice initiatives are on hold and facing setbacks, victims' conditions have indeed deteriorated during the pandemic. The situation in Mali is a compelling illustration. The transitional justice process started in Mali with the establishment of the Dialogue and Reconciliation Commission in 2012,30 which was in 2014 renamed the Truth, Justice and Reconciliation. It implemented a mandate whose transformative effects have not been felt by either victims or society to this day. Then the International Criminal Court opened cases in the situation of Mali, including for war crimes in attacks on religious and historical buildings in Timbuktu in June and July 2012. These ended with a sentence of nine years' imprisonment of Al-Mahdi in 2016,31 the acceptance of one euro as "token reparation" by the

²⁷ African Union, Transitional Justice Policy, adopted February 2019, p. 11, https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf.

²⁸ George Mukundi Wachira, "The African Union Transitional Justice Policy Framework and how it fits into the African Governance Architecture (AGA)," in *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges*, ed. Charles C. Jalloh and Kamari M. Clarke (Cambridge: Cambridge University Press, 2019).

²⁹ Undine Kayser-Whande and Stephanie Schell-Faucon, "Transitional justice and civilian conflict transformation at 12," Marburg Centre for Conflict Studies Working Paper no. 10, 2008.

³⁰ Olivier Kambala wa Kambala, "Stratégie de justice transitionnelle au Mali," American Bar Association Rule of Law Initiative, 2015, p. 7, https://www.legal-tools.org/doc/a151d8/pdf/.

³¹ International Criminal Court, Al Mahdi case: ICC Trial Chamber VIII issues reparations order, 17 August 2017, https://www.icc-cpi.int/Pages/item.aspx?name=pr1329.

government of Mali and UNESCO in 2021,³² and an announcement of the beginning of individual and collective reparations. Domestic prosecutions had a serious blow, as a Bamako court ordered the end of criminal proceedings against General Sanogo, who is accused of the killings of 21 red berets.³³

While the AUTJP's definition of transitional justice emphasises the need for a holistic package—putting into symbiosis truth seeking, accountability, reparations, institutional reform and memory initiatives to ensure non-recurrence and positively transform the lives of victims—the real situation of the country contexts described in this paper shows that a holistic approach is instead aspirational. In essence, the implementation of transitional justice seems to respond to a logic of what is possible rather than what is required. Chances for the victims of political violence in Togo to see perpetrators face justice are elusive, for example, while the Truth, Justice and Reconciliation Commission only painted a picture of atrocities and allowed for individual reparations to be paid.34 This suggests a paradigmatic understanding of transitional justice as an "art of the possible," which requires a focus on priorities, sequencing, innovation and adaptability to context.

The public health crisis induced by COVID-19 seems to reinforce this understanding. It forced a certain notion

of priorities and, in some cases, caused mechanisms to stall, shifting resources towards from transitional justice remedies to a health response. It imposed a sense of sequencing, not necessarily beneficial to victims but rather oriented towards preserving lives and protecting against COVID-19. It fostered innovative means of dealing with victims that are not in competition with public health necessities. Finally, the pandemic imposed adaptive coping mechanisms on victims and societies.

Making the AUTJP Relevant to Victims in the Time of COVID-19

Notwithstanding the realisation that transitional justice is an art of the possible, the plight of victims of gross human rights violations seems to be stubbornly begging for coherent, consistent and persistent undertakings of society as a whole to be relevant. More than anything, COVID-19 has taught us that synchronised efforts are necessary to get rid of a collective threat. Lessons learnt from attempting to come to terms with mass atrocities demonstrate the necessity of a comprehensive set of remedies to attend to the plight of victims in a swift, concerted and achievable manner.

Launched not long before the COVID-19 crisis, the AUTJP faces an existential dilemma, given

The art of the possible What can be done when the conditions to address the legacies of human rights violations are nonexistent? What to do when there is no political will to address the root cause of an intrastate conflict? What to do when persisting instability hinders the implementation of a rights-based approach? priorities sequencing creativity/innovation

- 32 UNESCO, "Mali and UNESCO to receive a 'symbolic euro' in token reparation for the heritage of Timbuktu," 29 March 2021, https://en.unesco.org/news/mali-and-unesco-receive-symbolic-euro-token-reparation-heritage-timbuktu.
- 33 Africanews, "Mali court ends trial of former coup leader Sanogo," 15 March 2021, https://www.africanews.com/2021/03/15/mali-court-ends-trial-of-former-coup-leader-sanogo//.
- 34 HCRRUN: Indemnisation des victimes individuelles des Savanes, 18 September 2020, https://www.republiquetogolaise.com/social/1809-4642-hcrrun-indemnisation-des-victimes-individuelles-des-savanes.

that it landed in a situation where victims realise that they do not seem to be the priority of policy makers and governments. To keep the momentum announced around its launch, implementation of the AUTJP needs to be adjusted to each context and adopt a more results-oriented approach.

Recommendations for the AUTJP to Adjust to Contexts and Adopt a Results-Oriented Approach

a. Synchronise the AUTJP with (a) sub-regional initiatives to curb impunity, fight gender violence and strengthen the rule of law (e.g., in West Africa, the Niamey Declaration of September 2018), and (b) lessons learnt and standards of transitional justice across the continent. I believe this effort of making the rhetoric clear will be useful for the next steps, as too much confusion and a lot of picking and choosing of mechanisms produce placebo effects. For example, do we need transitional justice to respond to violent extremism? Or is this a matter of stabilisation, or an area of complementary interventions of both? The question is omnipresent in many Sahelian countries, such as Mali and Niger, where the

- growing threat of violent extremism and radical ideologies push policy makers and international actors to gauge what needs to be done, but to conveniently believe that transitional justice and stabilisation are interchangeable.
- b. Operationalise the AUTJP through practical, effective and meaningful steps for victims and the field of transitional justice. For the AUTJP to remain a policy tool seeking to improve the operational transitional justice model in various African contexts, it would need to rely on and/or create hubs of knowledge management and peerlearning and support, such as affinity groups on prosecutions, truth seeking, reparations, traditional accountability, sequencing and other topics.
- Develop a strong socioeconomic niche/agenda to

 (a) contribute to addressing the root causes of rights violations and violence, and (b) embark on more holistic and complementary transitional justice mechanisms.
- Mobilise resources for victims and initiatives, as serving a normative framework is good but investing money into its implementation is great.

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