

Benchmarking the Role of African Youth in Transitional Justice Processes



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Kambala is a rule of law expert and a transitional justice practitioner. He holds a Law degree from the University of Kinshasa and graduated from the joint International Center for Transitional Justice (ICTJ) and Institute for Justice and Reconciliation (IJR), Transitional Justice Fellowship program in 2004. He has over 15 years of experience working on human rights, rule of law, judiciary reforms, transitional justice, access to justice and post conflict reconstruction.

He worked extensively for the establishment of comprehensive remedies for victims of gross human rights, notably in Burundi, Togo, Cote d'Ivoire, Guinea Conakry, Namibia, Mali and the DRC. In Mali, Kambala developed a transitional justice strategy, including a wide range of remedies and recourses at national and local levels. He has developed expertise with the Sahel where he worked as project Manager for the HD Centre, Country Director for the ABA ROLI in Mali, Deputy Chief of Party for a USAID Justice project in Mali and a transitional justice advisor in Mauritania. He recently conducted an access to justice assessment for the United Nations Development Programme (UNDP) in the G5 Sahel countries (July-August 2017) as well as a transitional justice assessment for Open Society Initiative for West Africa (OSIWA) in Cote d'Ivoire, Sierra Leone and Liberia (September 2017). He taught transitional justice modules at programs organized by the ICTJ (South Africa and Morocco), IJR (South Africa), the New School (New York) and the *Ecole de Maintien de la Paix* (Mali).

Kambala has been following the International Criminal Court developments since its inception; in 2013, he conducted the monitoring of confirmation of charges hearing in the case the *Prosecutor v. Laurent Gbagbo* (Cote d'Ivoire) for the Open Society Justice Initiative. Kambala held various positions for several international organizations including ICTJ, Global Witness, ICGLR, etc.

ACRONYMS

AU	African Union
AUC	African Union Commission
AUTJP	African Union Transitional Justice Policy
AGA	African Governance Architecture
CAR	Central African Republic
CSO	Civil Society Organisation
DDR	Disarmament Demobilisation Reintegration
DRC	Democratic Republic of Congo
DRCom	Dialogue and Reconciliation Commission
ECOWAS	Economic Community of West African States
FAMA	Malian Armed Forces
ICTJ	International Center for Transitional Justice
IJR	Institute for Justice and Reconciliation
IDPs	Internally Displaced Persons
MDRP	Multi-Country Demobilisation and Reintegration Program
MINUSCA	Multidimensional Integrated Stabilisation Mission in the CAR
MINUSMA	Multidimensional Integrated Stabilisation Mission in Mali
MUJAO	Movement for Oneness and Jihad in West Africa
MISAHEL	African Union Mission for Mali and the Sahel
NGO	Non-Governmental Organisation
NCDRR	National Commission for Demobilisation, Reinsertion and Reintegration
OSIWA	Open Society Initiative for West Africa
PCRD	Post Conflict Reconstruction and Development
PSC – AU	Peace and Security Council of the African Union
SADF	South African Defense Forces
SFP	Strategic Framework for Peacebuilding
SWAPO	South West Africa People’s Organisation
TDC	Truth and Dignity Commission
TJRC	Truth Justice and Reconciliation Commission
TJRRC	Truth Justice Reparations and Reconciliation Commission
UN	United Nations
UNDP	United Nations Development Programme

I. INTRODUCTION

The past 10 years witnessed an increasing role of African youth in political transformation processes. From Tahrir Square, Egypt (February 2011); to the streets of Ouagadougou, Burkina Faso (October 2014); through Bourguiba Square, Tunisia (January 2011); and the “*Place de l’Obelisque*” in Dakar (February 2012), African youth positively contributed to democratic transitions, stemming from youth aspirations to economic emancipation, political identity and freedom of expression. Adversely, the African youth played an instrumental role in spreading violence, supporting asymmetric, deadly attacks and committing human rights violations. Combatants in the Lord Resistance Army, in various Eastern Congo militia groups, in Seleka and Anti-Balaka movements in the Central African Republic, young people also form the main power of jihadist movements in Northern Mali, Libya Niger and Nigeria. Unequivocally, young people also constitute the peloton of victims of conflicts: they are refugees, displaced, deprived of education and are the first targets of discriminatory politics.

The increasing role of African youth in political transformations and conflicts in the African continent is inevitably linked to the demographic reality that Africa is a continent of the Youth. This increasing role is also attributable to the capacity of mass mobilisation through new technology of information and communication, notably social media.¹

More than 50% of the African population is between the age bracket of 15 to 24 years old.² According to African Economic Outlook, “there are almost 200 million youths in Africa and, that number will double by 2045”. The African Union suggests that among the one billion estimated people living in the African continent, 60% are young men and women under the age 35.³ At the same time, African Youth faces numerous challenges peculiarly linked to better means of living. African Economic Outlook also mentions in its 2015 release, that the African Youth faces “slow human progress” and that in “sub-Saharan Africa, nine out of ten working youth are poor or near poor”.⁴ The conjunction of fast growing population, economic marginalisation and persisting

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conflicts put African Youth at the risk of further “instrumentalisation”, prone to more negative roles in conflicts or conflict-ridden regional and national contexts. The African Youth Decade 2009 -2018 Action Plan recognizes that “many disadvantaged youth are unwittingly conscripted into armed struggle, used to settle political scores”.⁵

In 2016, all 4 sub regional blocks of the African continent were faced with turmoil. In Northern Africa, Libya continued to be destabilized by tribal factionalism and invasion of jihadist groups; Tunisia witnessed a wave of continued

1. The likelihood of successful mass mobilisation through social media is relative, considering that only 28.7% of Africans have access to the Internet [see Internet World Stats, Internet Usage Statistics for Africa (Africa Internet Usage and 2016 Population Stats), <http://www.internetworldstats.com/stats1.htm> - last accessed 1 December 2017]
 2. United Nations, Department of Economic and Social Affairs, Population Facts, May 2015 - http://www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2015-1.pdf (last accessed 1 December 2017)
 3. African Union, African Youth Decade 2009 -2018, Plan of Action, Accelerating Youth Empowerment for Sustainable Development, Road Map towards the Implementation of the African Youth Charter, vii
 4. Press Release African Economic Outlook 2016 (23/05/2016), Lusaka, <http://www.africaneconomicoutlook.org/en/press-release-african-economic-outlook-2016> (last accessed 5 December 2016)
 5. African Union, African Youth Decade 2009 -2018, Plan of Action, Accelerating Youth Empowerment for Sustainable Development, Road Map towards the Implementation of the African Youth Charter, viii

ideological radicalisation, illustrated by the participation of Tunisian youth in Islamic State-led attacks, notably the attack of the border town of Ben Guerdane (March).⁶ In West Africa, cross-border fragility resulting from insurrectional movements in Northern Mali, associated with jihadist asymmetric threats and radicalisation owing to Al Qaeda in the Islamic Maghreb, Boko Haram in Nigeria and Niger remained unchanged. In Mali, the security instability moved South towards the centre of Mali, resulting in deadly attacks against MINUSMA and members of the Malian Armed Forces (FAMA), and contributing to the resurgence of interethnic conflicts. Cote d’Ivoire was hit by jihadist attacks at the beach resort of Grand Bassam (March). In East and Central Africa, political instabilities continued to constitute the bedrock of armed violence in Burundi, Central African Republic (CAR) and Democratic Republic of Congo. In Southern Africa, countries like Mozambique and Zimbabwe remain at the edge of military escalation, owing to post-colonial economic and political disorders.

Transitional justice processes – broadly identified as sets of judicial and non-judicial mechanisms aimed at ensuring justice, peace and reconciliation – have either remained at embryonic stages or have not yielded the minimum levels of maturity to make significant contributions to stability and prosperity. In the 2016 Fragile States Index, more than 90% of African States feature under the categories “Warning”, “Elevated Warning”, “High warning”, “Alert”, “High Alert” and “Very High Alert”.⁷ If we were to go by the Fragile States Index, most African states need transitional justice processes.

With this outlook, the following questions then arise: Is the African Youth sufficiently involved and concerned by transitional justice processes? Do transitional justice processes have the potential to improve the social conditions of the youth or at least respond to their basic expectations? Are transitional justice processes the best avenue to handle African youth issues such as unemployment, political identity and religious radicalisation? Is there a role that young African people can play to further transitional processes as an element to avert negative impacts of multi-pronged crises that the African continent continues to endure? What could be the benchmark of such a role for the African youth? Is the African Union a conduit for resolving instabilities and conflict ridden situations impacting on African youth? Or is there merit to approach transitional justice processes with relevant reverberations on the youth in national and regional contexts? This paper will endeavour to address these non-exhaustive questions in the framework of formal and informal contexts and platforms that exist or are in the making at a continental level.

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⁶ In 2015, three deadly attacks led by youth jihadists rocked Tunisia, notably the Attack of the Bardo National Museum (March), the Sousse beach resort attack (June) and the suicide bombing of the presidential guard bus in Tunis (November).

⁷ Fund for Peace, Fragile States Index: Assessing State Fragility in 2016

II. TYPES OF CONFLICTS, TRANSFORMATIVE CHALLENGES AND AFRICAN YOUTH PECULIARITIES

Africa is faced with several conflicts and challenges which underpin African youth issues. Three main categories of conflicts/transformational challenges can be identified, notably

1. authoritarian rule to democratic dispensations,
2. war to peace transitions,
3. marginalisation and discrimination to recognition of diversity transitions.

1. AUTHORITARIAN RULE TO DEMOCRATIC DISPENSATION TRANSITIONS

In these types of transitions, African countries deal with challenges related to establishing constitutional democracies, “institutionalized through regular, mainly free and reasonably fair elections, combined with meaningful restraints on executive power and practical guarantees of essential political rights, especially of free speech and assembly, and individual freedoms”.⁸ General challenges related to this type of transition is to discard four axioms that personify state powers.⁹ The African Union refers to challenges of this period as “political governance in post conflict situations”, posing that priority actions should include the promotion of “inclusive politics and pluralism in a manner that contributes positively to nation building”.¹⁰

African youth challenges in this type of transformation involve, among others, (1) handling the values of democracy (securing political freedom), (2) reaping the benefits of legal order and basic rights, (3) partnering with a competent state and (4) dealing with representative and sensitive leaders. In recent continental developments, young people played an important role in related transformational processes, notably in Egypt, Tunisia, Senegal and Burkina Faso. In Senegal and Burkina Faso, youth militancy – through groupings like “*Y en a marre*”¹¹ and “*Balai citoyen*”¹² effectively contributed to the weakening of ruling regimes and authoritarian leaders (Abdoulaye Wade in Senegal and Blaise Compaore in Burkina Faso).

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In emulation to Senegal and Burkina Faso, similar youth movements have emerged in the DRC, notably “*Filimbi*”¹³ and “*LUCHA*”¹⁴ seeking to play an active role in the political transformational agenda ahead. In the same registry, South Africa’s 1976 youth played an equally determinant role in denouncing the repressive apartheid regime.

⁸ Abraham F. Lowenthal and Sergio Bittar, *From authoritarian rule towards democratic governance – learning from political leaders*, International Institute for Democracy and Electoral Assistance (2015), p. 15

⁹ The four axioms include: (1) the state power is the fundamental mechanism of social integration and regulation (2) the state is an organism which stands above all other forms of social organisation and exerts control over them; it uses violence when needed (3) the state is always controlled by the minority; the rule of the majority is a mere illusion (4) the ruling minority is best prepared for governing the state; its wisdom may manifest in various ways: through discovery of the laws governing historical processes, through competence, through experience in government, through a flair for leadership; usually through all of the above

¹⁰ African Union, Policy on Post-Conflict Reconstruction and Development (July 2006), p. 20

¹¹ We are sick of it

¹² Citizen broom

¹³ Whistles

¹⁴ Struggle for change (“*Lutte pour le Changement*”)

2. WAR TO PEACE TRANSITIONS

This typology is peculiar to war-torn countries in which a process of securing peace is underway or completed through peace agreements and/or the military victory of a party to the conflict. It is commonly agreed that the aim of the war to peace transitions is to “achieve a secure environment, accountable political structures, economic and social revitalisation, and promoting societal reconciliation”.¹⁵

African youth challenges in this typology revolves predominantly on demobilisation and reintegration. The main interventions in this typology aim at creating an “enabling environment for youth in post-conflict situations, by protecting them from forced recruitment, giving them a job perspective, furthering their personal development”.¹⁶ These are peculiar challenges to Angola, Burundi, Cote d’Ivoire, DRC, Liberia, Mali, Sierra Leone and South Sudan, among others, where young people have contributed and are still contributing to waging war, and playing an active role in perpetrating gross human rights violations. In these transitions, the challenge is to transform the roles and lives of the youth into positive and preventive patterns.

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3. MARGINALISATION AND DISCRIMINATION TO RECOGNITION OF DIVERSITY TRANSITIONS

This typology constitutes the feat of political exclusion or deep socially rooted practices which result in the marginalisation and discrimination based on race, class and social status. Some patterns of institutionalized marginalisation can result in strong affirmation of political and cultural identities, which could spiral into socio-political radicalisation. Transitioning out of these patterns of marginalisation imply the recognition of diversity and the transformation of systems which served as a conduit of the marginalisation and discrimination. It could also imply running de-radicalisation programs.

In Mauritania, state sponsored policies of discrimination and marginalisation against Black Africans have paved the way to multi-pronged abuses and prejudices, which took the form of purges in the armed forces and a legal injustice, leaving thousands of people in a situation of statelessness. The Black African youth of Mauritania peculiarly experienced this situation, as their rights to participate in political institutions of their country have been denied to them. Various Black African youth of Mauritania created the movement “*Touche pas a ma nationalite*”.¹⁷ In Northern Mali, Tuareg youth seem to have shifted from cultural irredentism to Islamic radicalisation, joining groups such as Al Morabitoun and Ansar-Dine.

¹⁵ Yvonne Kemper, Youth in war to peace transitions: approaches of international organizations, Berghof Research Center for Constructive Conflict Management (2005), p. 10

¹⁶ Ibid, p. 4

¹⁷ Hands off my citizenship

III AFRICAN TRANSITIONAL JUSTICE PROCESSES: STATE OF THE ART

NATIONAL ENDEAVORS TO COME TO TERMS WITH LEGACIES OF ABUSES

Various African countries have established, or are attempting to establish transitional justice processes to come to terms with legacies of past abuses and gross human rights violations. These processes and attempts seek to pursue justice against those responsible for violations; uncover the truth about what violations occurred; nurture reconciliation between communities; redress harm suffered through reparations; commemorate and preserve the memories of victims; and promote institutional reforms.¹⁸

1 Case Study: Tunisia

In November 2016, the Truth and Dignity Commission of Tunisia began the process of public hearings for victims of human rights violations perpetrated by the various authoritarian regimes (1955-2013). Middle East Arabic media reported the event a trendsetter in the Arab World: “Tunisia truth and Dignity Commission (TDC) has started its first ever public hearings, setting the example for transitional justice for other Arab Nations”.¹⁹ One of the successful Arab Spring revolutions, Tunisia decided to establish transitional justice mechanisms that will deal with the legacy of past abuses and human rights violations. Post political transition lawmakers, the National Assembly, opted for the adoption in December 2013, of a comprehensive legislation that will form the basis of transitional justice in Tunisia. The law provided for the creation of the TDC, but also catered for other transitional justice processes such as reparations, criminal prosecutions, institutional reforms and reconciliation.

The Truth and Dignity Commission is a 15 members commission²⁰ vested with the mandate to establish the truth about events that occurred between the 1st of July 1955, to the time of publication of the TDC law (24 December 2013);²¹ its lifespan is 4 years, running from the appointment of commissioners, renewable once and for a year only.²² The 15 commissioners took office in June 2014 and therefore the proceedings of the TDC will run till 2019. The TDC can transfer alleged human rights violations for prosecutions and maintain channels of being informed about the criminal proceedings and access the criminal files.²³ The TDC can also (1) make recommendations for institutional reforms in various areas of public life, including politics, administration, economy, security, judiciary, media, education, culture to prevent the reoccurrence of past authoritarian dispensations²⁴; (2) recommend and take appropriate actions to preserve national memory about victims of rights violations²⁵;

¹⁸ Olivier Kambala wa Kambala, *Decentralizing transitional justice: reflections from a practitioner dialogue*, ABA ROLI and USAID (2015), p. 1, citing Harvey M. Weinstein, *The Myth of closure, the illusion of Reconciliation: Final Thoughts on Five Years as Co-Editor-in-Chief*, *International Journal of Transitional Justice* 1-10 (2011)

¹⁹ Dr Radwan Ziadeh, *Tunisia sets the example time again*, *Al Araby*, 29 November 2016 (<https://www.alaraby.co.uk/english/Comment/2016/11/29/Tunisia-sets-the-example-time-and-again>; last accessed December 1st, 2016)

²⁰ Transitional Justice Organic Law (December 2013), article 19

²¹ *Ibid.*, article 17

²² *Ibid.*, article 18

²³ *Ibid.*, article 42

²⁴ *Ibid.*, article 43

²⁵ *Ibid.*, article 44

(3) facilitate reconciliation and arbitration, after receiving the consent of the victims, bearing in mind that reconciliation processes do not constitute a bar to criminal prosecutions²⁶. The TDC is mandated to deal with human rights violations and economic crimes, notably corruption related crimes.²⁷ When it started its public hearings in November 2016, the TDC received about 62,341 files²⁸ and operates 9 regional offices.

The Transitional Justice Organic Law also planned for the establishment of specialized chambers within the Appeal Court of Tunisia.²⁹ The specialized chambers will deal with subject matters related to homicide, rape and other sexual offences, torture, enforced disappearance, extra-judiciary execution. They will also handle cases pertaining to electoral fraud, economic crimes, corruption, embezzlement of public funds and forced exile. The chambers' jurisdictional activities have not been launched yet, and it is alleged that military courts have started to prosecute cases related to the violations which occurred during the uprising.³⁰

There are no specific aspects related to the youth, other than the normal matters that the TDC is mandated to handle. This is quite unfortunate in the sense that the Tunisian revolution started on the premises of the self-immolation of a young trader, Mohamed Bouazizi, who had been beaten and humiliated by officials.³¹

2 Case Study: Mali

Cyclic conflicts in Northern Mali reached a peak in January 2012 when a full-blown insurrection, Tuareg-obedient, occupied most of northern regions from Kidal to Central Mali (Mopti) in early 2013, prompting France led intervention to stop the siege of Bamako. The face of the insurrection proved to be a conglomerate of various interests, including the Al Qaeda in the Islamic Maghreb, West Africa Jihadist networks (notably the Movement for Oneness and Jihad in West Africa – MUJAO). In March 2012, the situation was complicated by a military coup staged in Bamako by low ranking members of the Malian Armed Forces (FAMA), who relinquished power in April 2013 following regional mediation led by the Economic Community of West African States (ECOWAS). Multilateral negotiations with armed groups operating in Northern Mali, including the United Nations (UN) and the African Union, brokered a peace and reconciliation agreement in June 2015 which provides for peace, security and reconciliation in Mali. The agreement is being implemented under the auspices of the AU Mission in Mali and Sahel (MISAHEL) and the UN Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA). The agreement, known as the “Algiers Agreement” recognizes the need for a transitional justice process that will fight impunity, reveal the truth about atrocities perpetrated against civilians, demobilize and reintegrate combatants, reform justice and security sector institutions and support nation-wide reconciliation initiatives.

Truth seeking mechanisms initiated in March 2013, with an emphasis on dialogue and reconciliation, mutated in 2014 to include a more classic truth commission configuration

²⁶ Ibid., article 45

²⁷ Ibid., article 46

²⁸ Source: TDC Official website: <http://www.ivd.tn/fr/?cat=30> (last accessed December 5, 2016)

²⁹ Transitional Justice Organic Law (December 2013), article 8

³⁰ ICTJ Briefing, *Tunisia in Transition*, Rim El Gantri, September 2015, p.7

³¹ National Democratic Institute, Focus Groups in Tunisia Reveal young people's hopes for democratic transition, April 2011: <https://www.ndi.org/print/17468>

and was named Truth Justice and Reconciliation Commission (TJRC). Vested with the mandate to investigate human rights abuses perpetrated between 1960 and 2013, the 25 member-staffed TJRC is continuing to establish itself through various activities, including capacity building, reaching out to victims and opening regional offices.

At the same time, initiatives to fight impunity of human rights violations perpetrated during the conflict is underway. After a referral of the government of Mali to the International Criminal Court (ICC) in July 2012, the prosecutor opened an investigation which culminated in the first Mali case against Ahmad Al Faqi Al Mahdi, a jihadist, who ordered the destruction of religious and historic buildings in Timbuktu in June and July 2012.³² The ICC conducted its first ever short case which proceeded for about a year. Indicted on September 18, 2015 (and transferred to The Hague on September 25, 2015), the trial of Al Mahdi took place for 2 days, from 22 to 24 September 2016, culminating in the guilty verdict of September 27 and the sentencing to 9 years' imprisonment.³³ Domestically, the Appeal Court of Bamako started the trial of the military coup leader of March 2012, and the 15 co-accused, for their alleged implication in the killing of 21 rival red berets in April/May 2012. Launched on November 30, 2016, proceedings of the trial were suspended on December 8, 2016, and will resume in March 2017.

The process of reparations for victims of gross human rights violations initiated by a decree of July 2012, has stalled, amid lack of clarity on the beneficiaries.

As a recommendation of the Algiers Agreement, Mali created a Commission for disarmament, demobilisation and reintegration (DDR) of former combatants. Managed by a former combatant of 1990 insurrectional waves in Mali, Zahabi Sidi Ould Mohamed³⁴, the DDR commission plans to bring about 10,000 combatants in 8 cantonment camps for 45 days and offer 3 options to the cantoned combatants: integration in security services of Mali, integration in public services or reintegration in civilian life. The chair of the commission announced recently that international donors have donated 50% of the funds necessary for a successful DDR process in Mali.³⁵

Consultation and convergence of views on the transitional justice process in Mali have either been superficial or non-existent. During the military coup of 2012 and the consequent political transition (April 2012-November 2013), seminal accountability and reconciliation mechanisms were unilaterally decreed. Mechanisms pertaining to truth seeking (*Commission Dialogue et Reconciliation*), as well as the ICC referral of July 2012, were not subjected to popular consultation. After the restoration of the constitutional order (November 2013) with the election of President Ibrahim Boubacar Keita, a close consultation was organized at the National Assembly (2014) at the occasion of the transformation of the Dialogue and Reconciliation Commission (DRCom) into the TJRC. The form that the consultation took, i.e. briefing the Law Committee of the National Assembly on the shortcomings of DRCom and projections for the future truth seeking mechanism, did not reach the threshold of decent public consultation.

In addition, the peace negotiations have demonstrated lack of convergence between the parties on accountability and reconciliation mechanisms; in effect, all milestone steps of

³² International Criminal Court fact sheets, <https://www.icc-cpi.int/mali/al-mahdi> (last accessed 1 December 2016)

³⁴ Ibid.

³⁴ Zahabi Sidi Ould Mohamed was appointed to chair the DDR Commission by cabinet decision of November 16, 2016 (<http://primature.gov.ml/primature/index.php/communiqués-du-conseil-des-ministres/11451-communication-du-conseil-des-ministres-du-mercredi-16-novembre-2016>) ; the same cabinet decision also appointed General Gabriel Poudiougou to chair the "integration Commission"

³⁵ Radio France International, *Mali: le point sur le programme "desarmement, demobilisation et reinsertion"*, <http://www.rfi.fr/afrique/20161211-mali-programme-ddr-ressources> (last accessed 12 December 2016)

the peace process have resulted in limited statements on accountability and truth seeking mechanisms and/or have exposed the competing/contradictory views of the parties on the mechanisms to be established. While all parties rejected impunity, there was still ambiguities, (1) on the roles of the TJRC and International Commission of Inquiry, (2) on the conjunction between criminal and traditional accountability settling mechanisms.

Youth matters related to the conflict have not been addressed adequately, neither in the framework of the TJRC, nor the DDR modalities.

3 Case Study: Burundi

Burundi is grappling with a legacy of gross human rights violations perpetrated alongside political violence since its independence in 1962. Women suffered the most from the conflict in Burundi. When they were not direct victims of atrocities or inequalities, they were bearing the consequences of the conflict through the pain of losing husband, relatives and children.

The Arusha peace and reconciliation agreement on peace and reconciliation in Burundi (August 2000), constitutes the most advanced attempt by protagonists to engage in conciliatory grounds with the aim to settle the bloody, cyclic, ethnic and political conflict. It singled out both political and military solutions as means for peace and reconciliation in Burundi. But it also circumspectly identified cyclic violations of human rights and the inherent impunity attached to it as the driving power and factors of continued violence and disunity. The agreement then identified judicial and non-judicial mechanisms to help solve the conflict and heal the wounds of Burundians. In so doing, the Arusha peace and reconciliation agreement of August 2000 laid the foundation for transitional justice in Burundi, in the acceptance by all belligerent groups that pogroms, which were committed since 1962, should be dealt with both through judicial and non-judicial measures. The people of Burundi welcomed the resolution to deal with past atrocities, with the view to avoid repetition and to build a future based on non-ethnic, nondiscriminatory and democratic principles.

After many rounds of negotiations between the Government of Burundi (GoB) and the United Nations between 2006 and 2009, it was agreed that Burundi would establish twin transitional justice mechanisms, a Truth and Reconciliation, and a Special tribunal.³⁶

The post conflict peacebuilding in Burundi is also marked by milestones in global development towards assistance for countries emerging from crisis. The United Nations Peacebuilding Commission, which was established in December 2006 to support efforts to avoid countries relapsing into conflict, selected Burundi (and Sierra Leone) as a beneficiaries of its assistance. In June 2007, the GoB and the UN jointly agreed on a set of interventions to strengthen the consolidation of peace, and to preserve democratic gains under the Strategic Framework for Peacebuilding (SFP)³⁷.

³⁶. United Nations Security Council, S/2005/158, 11 March 2005, p.18: “The mission [Ö] recommends a two-phase approach: the establishment of a non-judicial accountability mechanism in the form of a truth commission, and the establishment of a judicial accountability mechanism in the form of a special chamber within the court system of Burundi”.

³⁷. The SFP is complemented with a document encompassing monitoring and tracking mechanisms

The government of Burundi and the United Nations decided to organize national consultations on the establishment of the TRC and the Special Tribunal. A tripartite steering committee composed of delegates from the government, the United Nations and civil society was created to manage consultations which took place in 2009 and 2010. After the release of the consultations report (November 2010), the government opted for the establishment of a TRC in January 2012³⁸. Finally, in December 2014, the TRC commissioners were appointed, after a relatively open selection process at the National Assembly of Burundi. Based on the organic law no. 1/18 of May 15, 2014, the 11 commissioners and the Secretary General started working, launching essentially, a process of submission of testimonies. This process is still underway and the plenary sessions are yet to be launched.

A National Commission for Demobilisation, Reinsertion and Reintegration (NCDRR was established in August 2003)³⁹ to implement the National Plan for Demobilisation, Reinsertion and Reintegration (NPDRR) supported by the World Bank and the Multi-Country Demobilisation and Reintegration Program (MDRP).

It must however be noted, that Burundi seems to have descended into a political crisis, after the decision of President Nkurunziza to run for a third term in 2015.

4 Case Study: Central African Republic

Central African Republic (CAR) political transition ended in March 2016 with the restoration of the constitutional order, notably through the election of President Faustin Archange Touadera and the establishment of the National Assembly. However, insecurity and lack of social cohesion continue to undermine the efforts of stabilizing CAR, after decades of instability. On one hand, Intercommunal tensions across the country, and particularly in the capital Bangui, continued to maintain societal divide alongside religious and political lines. In June 2016, the killing of a Muslim youth by a Christian youth pitted communities against each other.⁴⁰ On the other hand, the country is faced with the threat of armed groups operating throughout the country, notably the *ex-Seleka*⁴¹ (north-eastern CAR), the *anti-balaka* (north-western) and the Lord's Resistance Army (south-eastern).

A combination of judiciary and non-judiciary measures are being established to restore cohesion and ensure non-repetition of atrocities in CAR. In May 2015, the transitional government organized a nationwide forum, referred to as the "Bangui National Forum". The forum recommended the creation of a Truth Justice Reparations and Reconciliation Commission (TJRRC). While the contours of the TJRRC are being discussed, local dialogue sessions among national stakeholders have been organized to "address communal tensions over internal and cross-border transhumance issues, the return of internally

³⁸. American Friends Service Committee, Transitional Justice mechanisms, Lessons learned from truth and reconciliation commissions, 2001, p.3

³⁹. World Bank, Technical Annex for a proposed grant of SDR 22.2 Million (US\$ 33 Million equivalent) to the Republic of Burundi for an emergency demobilisation, reinsertion and reintegration program, February 2004

⁴⁰. United Nations Security Council, *Report of the Secretary-General on the situation in the Central African Republic*, S/2016/824, 29 September 2016, p.4

⁴¹. Seleka refers to a coalition of Muslim rebels who overthrew the regime of President Bozize in March 2013

displaced persons and refugees, and threats posed to communities by armed groups”.⁴² The United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA), United Nations country team and international actors supported the organisation of local dialogue sessions. Local peace and reconciliation committees have also been created and contributed to the voluntary return of some members of the Muslim community.⁴³ Local dialogues have contributed to stopping the involvement of youth, referred to as “young people at risk”, in armed groups. About 13,000 young people are receiving training in income-generating vocational skills.⁴⁴

Based on a memorandum of agreement between the transitional authorities and MINUSCA⁴⁵, a Special Criminal Court is being established. Its statute was published in June 2015, through Law No. 15-003, relating to the establishment, organisation and functioning of the Special Criminal Court. The Court will be staffed by 10 international and 11 national judges⁴⁶, a national registrar and an international deputy registrar⁴⁷, an international prosecutor and a national deputy prosecutor.⁴⁸ The SCC will have jurisdiction to investigate, prosecute and judge individuals who have committed serious human rights violations and violations of international humanitarian law in the CAR territory since 1 January, 2003⁴⁹. Preparations for the operationalisation of the court are underway, notably the establishment of mechanisms for the appointment of international magistrates, as well as the Deputy Registrar, the selection of national personnel, the budget and logistics of the court for the appointment of magistrates.

Following various recommendations of the Bangui National Forum, CAR is preparing to adopt a national programme on disarmament, demobilisation, repatriation and reintegration of combatants.⁵⁰

5 Case Study: Namibia

The current political and economic stability of Namibia, sweeps the painful historical transitions that Namibia went through, under the carpet. From a genocidal colonisation by Germany, Namibia transitioned to an internationally managed territory, then occupied by South Africa, who eventually conceded to the independence of the country in 1990, after decades of liberation struggle. South Africa exported its apartheid style of governance in Namibia, segregating local population and incarcerating its leaders in South African jails. South West Africa People’s Organisation (SWAPO) staged a liberation war against the occupying South African Defense Forces (SADF) before being accused of internal abuse, including harassment, torture, summary executions and disappearances against its own combatants in various camps outside Namibia. And the latest accusation being the disappearance of approximately 4,000 People’s Liberation Army of Namibia (PLAN)

⁴² United Nations Security Council, *Report of the Secretary-General on the situation in the Central African Republic*, S/2016/824, 29 September 2016, p.6

⁴³ *Ibid.*, p.6

⁴⁴ *Ibid.*, p. 6

⁴⁵ United Nations General Assembly, Human Rights Council, Report of the Independent Expert on the situation of human rights in the Central African Republic, Marie-Thérèse Keita Bocoum, 24 July 2015, p. 17

⁴⁶ Law No. 15-003 relating to the establishment, organisation and functioning of the Special Criminal Court, articles 11-14

⁴⁷ *Ibid.*, art 15

⁴⁸ *Ibid.*, art 18

⁴⁹ *Ibid.*, art. 3

⁵⁰ United Nations Security Council, *Report of the Secretary-General on the situation in the Central African Republic*, S/2016/824, 29 September 2016, p.2

fighters. Testimonies of former PLAN members, as well as Siegfried Groth's book, *Namibia: the Wall of Silence – the dark days of the liberation struggle* (1994), exposed abuses that had taken place in SWAPO camps.⁵¹

Successive SWAPO regimes have failed to comprehensively and openly deal with past atrocities, including those attributed to the SADF. SWAPO often refers to a post-independence policy of National Reconciliation⁵², which is still unclear to the victims. As far as the Herero Genocide is concerned, the government of Namibia cooperated with Germany in the framework of developmental projects instead of putting an emphasis on reparations, even though Germany recognized the killing of the Herero people and issued an official apology.

Civic groups sustain that negotiations between the German and Namibian governments pertaining to the German genocide do not include the Herero and the Nama communities' representatives. In 2015, the German Parliament recognized that the events that took place in Namibia between 1904 and 1908 satisfied the definition of genocide, although there is still a debate on the legal implication of such a recognition.⁵³ In bilateral negotiations between Germany and Namibia in November 2016, German negotiators, however, rejected the idea of "direct payments" of reparations to the victims, favouring rather the creation of a "foundation for youth exchanges and funding various infrastructure projects, such as vocational training centres, housing developments and solar power stations".⁵⁴ Namibian Youth issues related to years of liberation struggle have not been addressed as such. Young adults born in exile under the care of SWAPO, often referred to as "struggle kids", constantly mobilise and raise socio-economic integration issues to the SWAPO government.⁵⁵

CONTINENTAL EFFORTS TO ENSURE JUSTICE, PEACE AND RECONCILIATION

At the continental level, the African Union has made efforts to coordinate its post conflict justice efforts and consolidate its panoply of human rights instruments. The latest developments revolve around the draft African Union Transitional Justice Policy (AUTJP).

Premised on several African Union instruments, policy documents that "seek to address impunity"⁵⁶ and that are instructive of "current efforts to evolve ways of combating impunity and promoting peace and justice in Africa"⁵⁷, the AUTJP emanates from several recommendations, specifically recommendations formulated to the Panel of the Wise, by a report titled "Peace, Justice, and reconciliation in Africa: opportunities and challenges in the fight against impunity". The report establishes a list of non-exhaustive basis for transitional justice in the African Union legal framework, including the AU Constitutive Act, the Protocol Relating to Establishment of the

⁵¹ International Center for Transitional Justice, *Southern Africa Regional Assessment Reports* (October 2007 – December 2008), Namibia Chapter, p. 54

⁵² Government of Namibia webpage, "Our future overview" (<http://www.gov.na/our-future-vision> - last accessed 1 December 2016)

⁵³ Kate Brady, "Germany officially refers to Herero massacre as genocide", Deutsche Welle online, 13 July 2016 (<http://www.dw.com/en/germany-officially-refers-to-herero-massacre-as-genocide/a-19396892> - last accessed 1 December 2016)

⁵⁴ Jason Burke and Philip Oltermann, "Germany moves to atone for 'forgotten genocide' in Namibia", in *The Guardian Online*, 25 December 2016 (<https://www.theguardian.com/world/2016/dec/25/germany-moves-to-atone-for-forgotten-genocide-in-namibia> - last accessed 25 December 2016)

⁵⁵ *Tuyeimo Haidula, Marx Itamalo, "We do not want training – 'struggle kids'", in The Namibian*, 22/09/2016 (<http://www.namibian.com.na/155973/archive-read/We-do-not-want-training-%E2%80%93-struggle-kids> - last accessed 1 December 2016)

⁵⁶ *International Peace Institute, Peace, Justice, and reconciliation in Africa: opportunities and challenges in the fight against impunity* (February 2013), p. 28

⁵⁷ Ibid.

Peace and Security Council of the African Union, the AU’s Policy Framework for Post-Conflict Reconstruction and Development, the African Charter on Democracy, Elections and Governance and The Mbeki Panel report on Darfur.

The AUTJP is still being reviewed by the African Union and will serve as a “guide that can be adapted and applied to individual countries or subregions emerging from conflicts and repressive rule, to assist them in their pursuit of accountability, sustainable peace, justice and reconciliation”.⁵⁸ Its objective is purported to, (1) improve the timeliness, effectiveness and coordination of the efforts of societies emerging from conflicts and oppressive rule and (2), lay the foundations for accountability, social justice, sustainable peace, healing and reconciliation.⁵⁹ It will eventually serve as a “practical and actionable tool to, (1) consolidate peace, reconciliation and justice in Africa and prevent impunity, (2) help end repressive rule and conflicts and nurture sustainable peace with development, social justice, human and people’s rights, democratic rule and good governance, (3) draw lessons from various experiences across Africa, in articulating a set of common concepts and principles to constitute a reference point for developing and strengthening peace agreements and transitional justice institutions and initiatives in Africa, and (4), develop benchmarks for assessing compliance with the need to combat impunity.⁶⁰

⁵⁸. International Peace Institute, *Peace, Justice, and reconciliation in Africa: opportunities and challenges in the fight against impunity* (February 2013), Annex “African Union Draft Transitional Justice Policy Framework”, p.72

⁵⁹ Ibid, p.73

⁶⁰. Ibid.

IV BENCHMARKING AFRICAN YOUTH ROLE AND CONTRIBUTION

Key features of transitional justice processes studied above illustrate that the mechanisms to tackle past abuses are as important as the processes of establishing them. The case studies also inform on the non-linear trajectories of these processes, owing either to the prevailing conflict or atrocities, but also dependent on the level of participation and ownership of the public and the victims who will benefit from them.

One other important feature of the processes identified above is the impact that these processes have on the youth of the respective countries. Despite being an important constituency in TJ processes, the youth remain on the margin of conceptualisation, implementation and follow up of TJ processes. In some instances, the youth are at risk of being dragged into the conflict, if the deterrent or preventive effect of transitional justice take time to materialize. This is practically the reality of most TJ processes, which take time to come to life, and longer to start addressing the issues.

Despite being an important constituency in TJ processes, the youth remain on the margin of conceptualisation, implementation and follow up of TJ processes

Another striking reality of TJ processes in the African continent is that they do not properly address economic, cultural and social rights. Economic data suggests that more than 90 % of African Youth live in dire situations of poverty or pauperisation, confirming, therefore, their economic marginalisation. Urban and rural youth face multidimensional challenges for their survival and integration into political and

economic life. In the age of new technologies and innovation, young African people globally face impediments related to, (1) language barriers, (2) skills and (3) access (notably to Information Communications Technologies)⁶¹. With such an assessment, it is a “challenge for youth formations and groupings to be meaningfully engaged in their country’s socio-cultural political system”.⁶²

Although the African Youth Charter underlines the importance of “youth participation”,⁶³ it still has a long way to go to ensure young people participation in their respective national countries, let alone in the African Governance Architecture (AGA). This is the goal that the AGA-Youth Engagement Strategy expects to achieve.

As far as transitional justice processes are concerned, young Africans can play a multi-pronged role at different stages of the process, from conceptualisation to implementation and follow up.

DESIGN AND IMPLEMENTATION OF TJ PROCESSES

Young people’s experiences of abuse and violations need to be at the center of tailored mechanisms to address impunity, establish the truth, provide reparations, ensure institutional reforms, establish and preserve memory and facilitate reconciliation.

⁶¹ United Nations Economic Commission for Africa, Youth and innovation in Africa: harnessing the possibilities of Africa’s youth for the transformation of the continent (Summary Report of Online (D-Groups) Discussion, New technologies and Innovation Section – Special Initiatives Division (July 2014), pp. 3-4

⁶² African Governance Architecture, Promoting Young People’s Rights towards attainment of Agenda 2063, Regional Youth Consultations Project 2016, p. 2

⁶³ African Youth Charter, article 11

CONCEPTUALISATION OF TJ PROCESSES

- (1) Democratic transitions: participation of youth in the conceptualisation of TJ processes should match their contribution to the change envisaged through such processes.
- (2) War to peace transitions:
 - (a) young people should be represented at negotiation processes to ensure inclusion of their expectations in the peace dispensation
 - (b) young people’s negative role needs to be given special attention to ensure an adequate reintegration and re-socialisation.
- (3) Marginalisation/discrimination transitions: experiences of young people of marginalisation and discrimination need to be captured and utilized for a better design of TJ processes.

Design and implementation	
Truth seeking mechanism	Youth issues in the Truth commission’s mandate
Truth seeking mechanism membership	Youth quota
Other non-judiciary bodies	Youth issues and quota
Prosecutions	Youth specific offenses (victims and offenders)
Victims/Witnesses protection and care	Youth sensitive policies
Reparations	Youth specific reparations
Institutional reforms	Youth specific expectations and sensitive reforms
Memory	Youth sensitive
Reconciliation	Youth perspectives and approaches
Recommendations	Youth specific recommendations in reports

Follow up	
Truth seeking mechanism	Youth issues in the report and recommendations
Other non-judiciary bodies	Youth experience throughout non-judiciary accountability settling processes
Prosecutions	Specific sentencing and punishment
Victims/Witnesses protection and care	Youth sensitive policies Specific measures and policies for
re-socialisation/trauma care	Youth specific expectations and sensitive reforms
Reparations	Youth specific programs and mechanisms
Institutional reforms	Youth specific approaches and programs
Memory	Youth sensitive approaches and programs
Reconciliation	Youth sensitive perspectives and approaches
Mechanisms	Youth specific mechanisms and membership

V RECOMMENDATIONS

It is indisputable that youth issues are at the core of transitional justice processes, regardless of the types of conflict and transformative challenges that certain African countries are faced with. Transitional justice processes, and its mechanisms, are not panacea in the sense that they cannot address all youth issues. They do however, present an opportunity to comprehensively address societal issues, including youth issues. As mentioned above, the best approach to ensure that youth issues are addressed in transitional justice processes, is to benchmark the role of African youth at 3 critical phases of transitional justice processes, notably the (1) conceptualisation, (2) design and implementation as well as (3) follow up of transitional justice processes.

As mentioned above, the best approach to ensure that youth issues are addressed in transitional justice processes, is to benchmark the role of African youth at 3 critical phases of transitional justice processes, notably the (1) conceptualisation, (2) design and implementation as well as (3) follow up of transitional justice processes.

The African continent, through the African Union, but also through national relevant processes, has frameworks to address youth issues. However, it should be mentioned that streamlining youth interest in various continental and national frameworks are at embryonic phases, and therefore, there is an obligation to do more to ensure that youth aspirations are catered for adequately. These efforts of devising youth-sensitive, transformative processes, will have specific relevance in connection to transitional justice processes as elements of peaceful and stable African societies. The following recommendations will ensure that a minimum response to youth issues is handled swiftly and efficiently in transitional justice processes.

Recommendations to the African Union

- The AU should finalize consultations with African youth to ensure that youth expectations and aspirations are incorporated into AU supported transitional justice processes and instruments, such as the African Union Transitional Justice Policy Framework
- The African Union Transitional Justice Policy should develop guidelines to ensure that youth expectations and aspirations are streamlined in various phases of transitional justice processes, notably the conceptualisation, the design and implementation and the follow up phases.

Recommendations to African Youth institutions

- African Youth Institutions should seize the opportunity of the development of the African Union Transitional Justice Policy, to establish sets of benchmarks for youth compliant transitional justice processes
- African Youth Institutions should establish a compilation of youth related issues which need to be tackled by transitional justice processes based on lessons learnt from past transitional justice processes
- African Youth Institutions should develop capacity building initiatives for urban and rural youth on transitional justice processes, to orient national, continental and international transitional justice processes

Recommendations to African governments

- African governments should support the effective operationalisation of national youth institutions and guarantee their implication in the conceptualisation, design and implementation, and follow up of transitional justice processes

Recommendations to transitional justice mechanisms

- Transitional justice mechanisms need to ensure that youth sensitive operations, settings and topics are reflected in their conceptualisation, design and implementation and follow up mechanisms.

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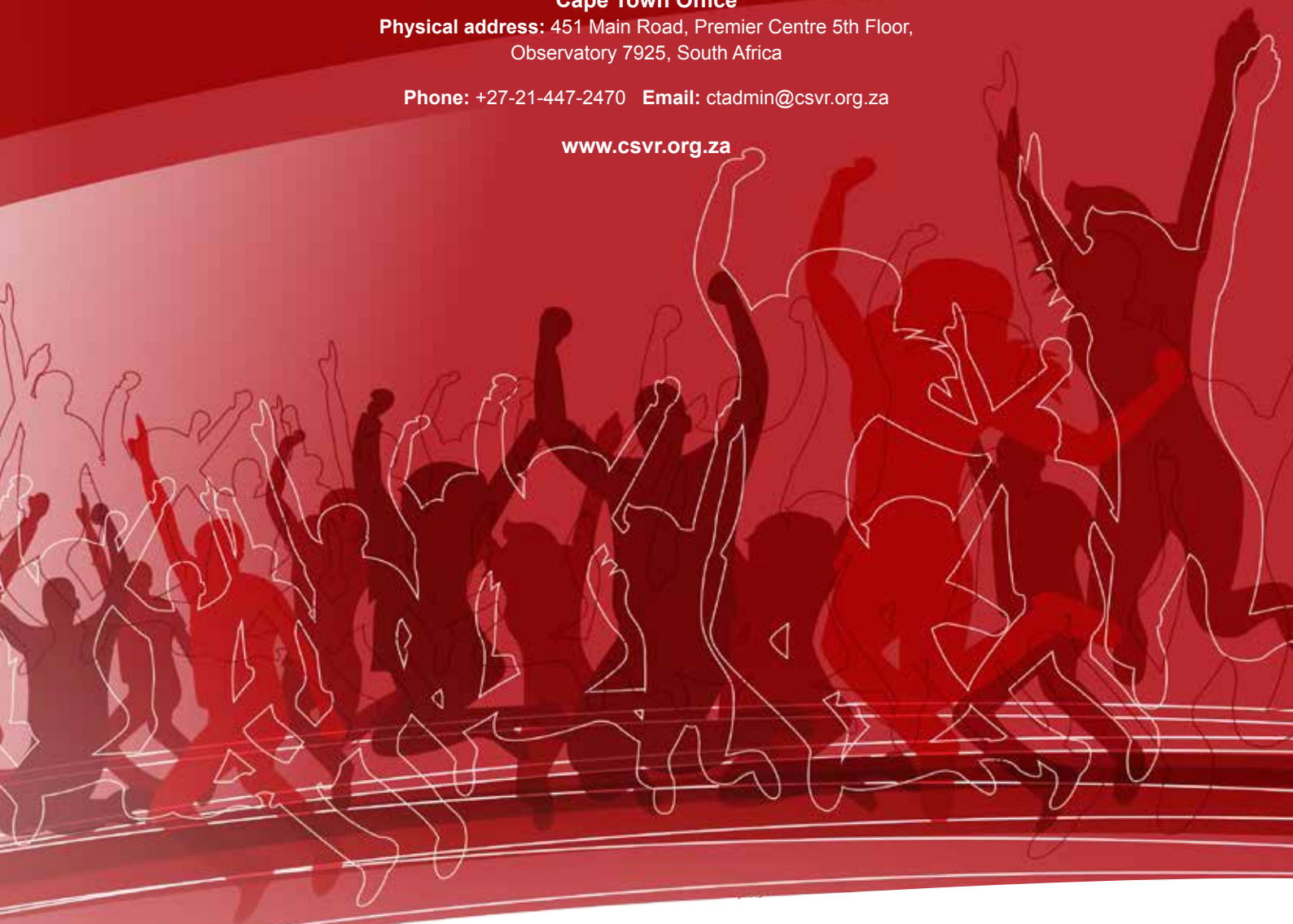
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