TRANSITIONAL JUSTICE IN CRISIS SITUATIONS:

ADDRESSING VIOLENT EXTREMISM, BEYOND A MILITARISED APPROACH

MELVIS M. NDILOSEH AND HAFSA M. MAALIM

African Union

CSVR
Centre for the Study of
Violence and Reconciliation

Introduction

While transitional justice mechanisms have been repeatedly proffered and experimented in virtually every African country that has undergone armed conflict since 1990, its application in situations of unconventional warfare, as is the case with violent extremism, is relatively nascent and sometimes radically discounted in favour of hardcore military approaches. In the last decade, despite multiple military responses, violent extremism has surged exponentially in frequency, brutality and spatially across Africa and globally. The same trend has been observed in the COVID-19 context, with a record-breaking 37 percent increase in violent attacks in Africa's hotspots in barely a month between mid-March and mid-April 2020.[1]

The consequent death toll, enforced displacement and billions in financial costs show that violent extremism currently constitutes one of the leading threats to peace, security and state existence in Africa. As such, it is imperative to rethink the current responses to addressing violent extremism on the continent in a bid to explore complementary policy options that are strategic, operational and holistic.[2] In this vein, it becomes relevant to interrogate if, why and how non-military responses like transitional justice mechanisms can effectively supplement military solutions for atrocities resulting from violent extremism.

The consequent death toll, enforced displacement and billions in financial costs show that violent extremism currently constitutes one of the leading threats to peace, security and state existence in Africa.

This paper draws from the discussions of the Fourth African Transitional Justice Forum, held virtually on 26–28 October 2020 under the theme "Silencing the Guns in the Context of COVID-19: Progress, Problems and Prospects." The paper particularly draws from Session 2, which focused on "Transitional Justice in Crisis Situations: Addressing Violent Extremism, Going Beyond a Militarised Approach to Addressing Insurgency in Africa." Following an overview of the growing threat posed by violent extremism in Africa, the paper highlights limitations of militarised approaches. It further builds a case for mobilising transitional justices measures to address violent extremism, and proposes the tools enshrined in the African Union Transitional Justice Policy (AUTJP) as a viable option.

Counting the Cost of Violent Extremism in Africa

The rise in violent extremism in Africa and its devastating impact have seen the reversal of gains made in the peace, security and development spheres. According to the Global Terrorism Index, the epicentre of terrorism in the last year has shifted from the Middle East North Africa (MENA) region to Sub-Saharan Africa. Out of the multiple identified extremist groups that pose a threat, three—Boko Haram, Al-Shabaab and the Islamic State through its affiliates—were responsible for 55 percent of the terrorism related deaths recorded in 2019 in Africa, amounting to 7,578 deaths. Mozambique alone saw a 140 percent increase in fatalities, with the recorded number of deaths rising from 133 in 2018 to 319 in 2019.[3]

Attacks by extremist groups are often targeted at both civilians and military personnel, with recorded civilian casualties higher in some cases. In Nigeria, Boko Haram attacks increased by 30 percent in 2019, claiming 1,245 lives, of which 1,097 were civilian casualties. The civilian-targeted attacks continue to rise, with the most recent Boko Haram attacks in north-eastern Nigeria

---

1   Armed Conflict Location and Event Data Project (ACLED), *ACLED 2020: The Year in Review* (2020).

2   United Nations Development Programme (UNDP), *Preventing and Responding to Violent Extremism in Africa: A Development Approach* (2019); Isel van Zyl, *Preventing Violent Extremism: Lessons from Africa* (Pretoria: Institute for Security Studies, 2019); International Crisis Group, *Niger and Boko Haram: Beyond Counter-insurgency* (2017); Matthew Schwartz, "Shifting the PVE Paradigm: A Think Piece on Human Insecurity, Political Violence, and New Directions for Preventing Violent Extremism," Global Center on Cooperative Security, 2018, https://www.globalcenter.org/publications/shifting-the-pve-paradigm; She is Africa, "Preventing Violent Extremism in Africa," http://sheisafrica.eu/2018/07/02/preventing-violent-extremism-in-africa.

3   Institute for Economics and Peace (IEP), *Global Terrorism Index* (2019).

claiming the lives of over 70 farmers for cooperating with the Nigerian military. Similarly, in the Horn of Africa, civilian deaths accounted for 36 percent of terrorism deaths attributed to Al-Shabaab.[4]

In addition to the recorded fatalities, violent extremism wreaked gross economic deficits and property destruction in the affected countries. Research estimates the impact of terrorism in Africa over the last decade at $171.7 billion. In 2019 alone, the cost for sub-Saharan Africa was approximately $12.5 billion. Nigeria suffered the highest expense, with a loss of about $142 billion in 2007–2019. Furthermore, out of the recorded 2019 attacks attributed to Al-Shabaab, 22 percent were targeted at businesses, while 20 percent were targeted at the government.[5] The Institute for Economics and Peace (IEP) argues that this figure would be higher if "the costs for lost business investment, tourism, lost informal economic activity, extra security spending, counter-terrorism and refugee or internally displaced persons could be included." In the same vein, the implied cost of violent extremism could be higher if the cost of refugees and displaced persons, ranging from "lost production, consumption and investment in the country of origin as well as the UNHCR annual expenditure," could be adequately estimated. In the Sub-Saharan context, this is more the case as the region hosts at least 26 percent of the world's refugee population.[6]

Arguably, while global indexes help provide a picture of the impact of terrorism, in reality the cost of violent extremism in Africa is difficult to measure. Looking beyond the recorded death toll, loss in property and the impact on the economy, the emotional and health care costs are significant. The overall quality of life is also affected as routine activities, such as schooling and farming, are severely disrupted by violent incidents. The above-mentioned implications of violent extremism are some of the key drivers that have compelled robust national, regional and global counteractive responses, with reflexive defaults to a broad range of militarised approaches. Such demarches, however, have proven to be limiting on several counts.

The Limitations of Militarised Responses to Violent Extremism

Historically, reponses to violent extremism have been predominantly millitarised. Military responses by states are often viewed as dissuading additional attacks by deploying soldiers or armed forces and weaponry. The transboundary nature of extremist groups has necessitated not just a state-centric military response, but also a coordinated regional and international military response. This, in turn, has seen the emergence of multilateral cooperation platforms targeted at responding, and supporting states to effectively counter the growing threat of violent extremism. The creation of global coalitions such as the Multinational Joint Task Force (MNJTF) against Boko Haram and the Joint Force of the Group of Five Sahel (JF-G5S) is indicative of such synergetic efforts. The recent deployment of 3,000 troops to the Sahel by the African Union in support of the existing G-5 Sahel mechanism demonstrates how the growing complex threat of extremism leads to additional securitised responses. Moreover, the looming threat of Al-Shabaab saw the African Union Mission in Somalia (AMISOM) attain a counterterrorism mandate aimed at containing, suppressing or neutralising terrorist activities. In essence, it would have been impossible for AMISOM to undertake its primary responsibility of supporting the transition in Somalia without a counterterrorism mandate.

Military responses by states are often viewed as dissuading additional attacks by deploying soldiers or armed forces and weaponry.

Militarised responses to violent extremism, while viewed as crucial components in combatting the threats posed by extremist groups, are not necessarily sufficient, efficient or sustainable. Felbab-Brown argues that "traditional military and judicial responses to such groups have proved at best ineffective, and at worst exacerbate the threat posed by such groups." In reality, these groups adapt to their environment with ease and,

---

4   Ibid.
5   Ibid.
6   Ibid.

as such, engagement strategies must be based on "real-time analysis and continuous updating and adaptation." In essence, these groups seem to be more familiar with their terrain, giving them a comparative advantage in guerilla warfare.[7]

While extremist groups continue to pursue their "Islamist statehood aspirations,"[8] states will continue to justify the need for military responses. Militarised approaches are proffered as quick and effective measures in containing imminent security threats. Military interventions have largely been occasioned by continued coordinated attacks on both civilian and security personnel. Attacks on the state apparatus are viewed as an existential threat to the legitimacy of the state, while attacks on civilians are seen as highlighting the gaps in the state's security responses. In essence, both types of attacks necessitate a militarised response, be it to reinforce state authority or as means of reassuring the citizenry that the state is still capable of upholding its responsibility to protect. The literature suggests that this instinctual response by states to prioritise military interventions in response to violent extremism is underpinned by the idea that the state has a legitimate monopoly on the use of physical force. Extremist non-state armed groups seeking to undermine the legitimacy of the state are therefore met with force.

Extremist groups remain resilient, however, despite concerted efforts at the global, regional and state levels. This is evidenced by the increasing number of violent incidents related to extremist groups. Additionally, despite the increase in military interventions on the continent, extremist groups appear to be increasing the intensity and scale of their attacks, holding more territory than previously recorded and, in some cases, morphing into an alternative form of government. In the case of Al-Shabaab, the group "move[s] around freely, extorting the local population for money in the form of Zakaats and forcibly recruits fighters group."[9]

Research indicates that some extremist groups are now using more sophisticated weaponry and tactics to resist militarised security approaches. The two-tonne bomb used in Mogadishu in 2017 was a clear indication that these groups' weapon-making capacity has increased. Furthermore, to offset the increased use of drone warfare, groups like Al-Shabaab are now operating from urban areas, a tactic that makes targeted drone use challenging due to the potential for greater civilian casualties.[10]

Extremist groups remain resilient, however, despite concerted efforts at the global, regional and state levels.

Heavy-handed security responses in dealing with violent extremism have also created new victims. Instances of targeted assassinations by states against suspected terror suspects, and the targeting of entire communities that turns villages and cities into police zones, have been criticised as excessive use of force by states. Similarly, the use of ethnic profiling, torture, extrajudicial killing and forcible evictions have been criticised by human rights groups. These punitive and unjust approaches have reinforced perceptions among marginalised communities that they are victims of the state, which serves to increase the level of radicalisation. In a study undertaken by UNDP,[11] lack of trust in government, especially the security apparatus, as well as a sense of victimhood were key drivers of radicalisation.

The most crucial factor in crafting responses to violent extremism continues to be adequately addressing the root causes. While military solutions curb its outward manifestations, they do not address the endemic levels of poverty and marginalisation, lack of governance, corruption and instability that drive extremism and increase its appeal. According to UNDP, a number of push-and-pull factors create a ripe recruitment

---

7   Vanda Felbab-Brown, *The Limits of Punishment: Traditional Justice and Violent Extremism—Nigeria Case Study* (Tokyo: United Nations University, 2018).

8   IEP, *Global Terrorism Index.*

9   United Nations University Centre for Policy Research and Institute for Integrated Transitions, *The Limits of Punishment: Traditional Justice and Violent Extremism* (Tokyo: United Nations University, 2018).

10 Ibid.

11 United Nations Development Programme (UNDP), *Journey to Extremism in Africa* (2017).

environment that is utilised by extremist groups, including "misguided security and political actions."[12] One of the most prevalent drivers is the lack of opportunities accorded to the growing young population in Africa. Using the Sub-Saharan hotspot – from the Sahel to the Horn of Africa belt – as an example, the region is home to over a billion people, with more than a half under the age of 25. The population is expected to double by 2050. The projected figures necessitate a discussion around investment in education and employment as part of broader efforts to mitigate incentives for violent extremism.

According to the Global Terrorism Index, the "impacts of rapid population growth are compounded by high variability in climatic conditions with more than half of the countries in the region facing droughts. Many of these countries are already experiencing vicious cycles where competition for scarce resources creates conflict and conflict in turn leads to further resource depletion."[13] Exorbitant military expenditure is another reason to discuss alternative approaches. Of the $3.6 trillion spent on global violence containment in 2019, 2.5 percent of it, or $90 billion, was spent in Africa. While military expenditure may not be entirely measurable due to lack of state transparency, the figures provided by IEP are notable. In a region like Sub-Saharan Africa, where over 40 million people are living in poverty, discussions regarding state spending on the military versus development become crucial, further showing the need for non-military interventions.

The COVID-19 pandemic provides an additional reason to rethink approaches to addressing violent extremism. According to the Global Terrorism Index, "the pandemic is expected to worsen the impact of terrorism in certain regions, and present complex challenges for national and international counter-terrorism responses."[14] This conclusion is largely drawn from the recent surge in terrorist incursions and propaganda, the projected impending threat of bioterrorism, and effects COVID-19

has had on the economy, where states across the board are now more inward looking. The Global Terrorism Index suggests that "the increase of government deficits caused by increased public spending during the pandemic will likely have negative impact for counter-terrorism budgets."[15] Support to regional counterterrorism efforts will also likely be affected by state responses to the pandemic. As countries in the short term redirect government expenditure to respond to immediate health security needs, less funding is going to multilateral organisations. While little data is available on the long-term impact of these cut-backs, it is likely that expenditure towards multilateral counterterrorism efforts will also be affected.

The COVID-19 pandemic provides an additional reason to rethink approaches to addressing violent extremism.

Research indicates that COVID-19 has not only impacted on responses to extremism but also affected the behavioural patterns of extremist groups. Such groups have been able to exploit the gaps in security created by states' inward-looking nature. The Global Terrorism Index reveals that the first six months of the pandemic in Nigeria saw an upwelling of violent attacks equivalent to those recorded in 2019 cumulatively, while in Mozambique, for example, terrorist groups seized a strategic port in the north of the country in September 2020, declaring it a new outpost in the establishment of a caliphate. Moreover, in cases where states are struggling to provide basic services, extremist groups are acting as alternative service providers, using the opportunity to recruit.[16]

Overall, while the use of militarised approaches cannot be dispelled as a strategy in response to extremism, it is clear that they are not sufficient and need to be supplemented. Provisions under transitional justice frameworks are crucial to explore in light of creating a holistic, people-centred approach.

---

12 Ibid.
13 IEP, *Global Terrorism Index*.
14 Ibid.
15 Ibid.
16 Ibid.

Transitional Justice: A Non-Militarised, Complementary Approach for Addressing Violent Extremism in Africa

The modern history of transitional justice can be traced to the immediate post-Second World War period in Europe, following the establishment of the International Military Tribunal at Nuremburg, de-Nazification programmes, and trials of Japanese soldiers for war crimes at the International Military Tribunal for the Far East (IMTFE), also known as the Tokyo Trials. Generally, transitional justice consists of a combination of formal and informal measures undertaken to redress legacies of gross or systematic violations of human rights and to create conditions for durable peace. These measures include criminal prosecutions, truth commissions, reparations programmes and institutional reforms. As etymologically implied, transitional justice is often marshalled in pursuit of justice as societies traverse the delicate bridge from violent conflict or protracted repression towards a more enduring peace, respect for human rights, democracy, constitutionalism and rule of law.[17]

Although transitional justice has been implemented with varied results in several African countries, such as South Africa, Uganda, Rwanda, Sierra Leone, Liberia, and more recently South Sudan, The Gambia and the Central African Republic, the application of best practices and lessons accrued from transitional justice to local, national and international responses to violent extremism is relatively new and often debated. Therefore, proposing transitional justice as an accompanying non-military approach in Africa must respond to two fundamental questions: why and how.

Why Transitional Justice Mechanisms for Addressing Violent Extremism?

The argument against the use of transitional justice mechanisms to address violent extremism often hinges on the asymmetric nature of the warfare and the legal character of the actors involved. More specifically, concerns revolve around questions regarding the rationality of negotiating with 'criminal groups,' the absence of a clearly delineated transitional context, and the reservations around overly punitive transitional justice measures. While these factors may emerge as implementation challenges, they do not undermine the potential added value of the full range of transitional justice mechanisms. Seven main considerations strengthen the case for mobilising transitional justice mechanisms to address violent extremism.

Proposing transitional justice as an accompanying non-military approach in Africa must respond to two fundamental questions: why and how.

First, the consequences of violent extremism—such as serious human rights abuses, mass atrocities and trauma, combined with their disproportional impacts on youths, women and girls—are similar to those of conventional armed conflicts and repression, for which transitional justice responses have been proposed and implemented since the Nuremberg and Tokyo trials to present.

Second, transitional justice offers a more holistic and multipronged approach for addressing both the structural drivers and the negative impacts of violent extremism. As already established, militarised approaches are important in combating the threat posed by violent extremist groups. However, alone, they can neither adequately address their causes and impacts nor reduce their threat.

Third, when effectively implemented, transitional justice mechanisms can be leveraged to broker a win-win solution, which allows for more local ownership of peace processes and yields sustainable dividends. By contrast, belligerent responses typically aim for a win-lose or winner-takes-all situation, which has sufficiently proven to be counterproductive.

Fourth, transitional justice alternatives can be more victim-centred. Centring the victims of human rights violations is crucial for curbing (re)

---

17   Charles Manga Fombad, "Transitional Justice in Africa: The Experience with Truth Commissions," Hauser Global Law School Program, https://www.nyulawglobal.org/globalex/Africa_Truth_Commissions.html.

traumatisation associated with robust military responses. It also allows for meaningful victim-sensitive support and protection through an inclusive consultative process.

Fifth, transitional justice mechanisms, especially non-judicial ones, allow for the cultivation of trust, which is fundamental for reconciliation.

Sixth, transitional justice can strengthen local capacities for mitigating and addressing a broad range of human security concerns arising from violent extremism.

Finally, by including targets such as rule of law, access to justice, inclusive institutions, gender equality, violence mitigation and combating corruption, Sustainable Development Goal 16 provides a common policy framework for transitional justice within the broader quest for peace, justice and recovery from violent extremism.

To be effective, however, the implementation of transitional justice measures to address violent extremism must be approached tactfully and contextually, using a well-defined common strategy.

All in all, in contexts of violent extremism, it is imperative to strike a balance between the need for peace and reconciliation on the one hand and responsibility and accountability on the other. In this regard, transitional justice offers an integrated approach to address a society's history of atrocities in a manner that is both victim-centred and creatively utilises a variety of formal and informal mechanisms and processes to further accountability, healing, peace and reconciliation. To be effective, however, the implementation of transitional justice measures to address violent extremism must be approached tactfully and contextually, using a well-defined common strategy, such as the African Union Transitional Justice Policy (AUTJP).

How? The African Union Transitional Justice Policy and Opportunities for Countering Violent Extremism in Africa

The programmatic discourse on the application of transitional justice policies in situations of violent extremism is often retrospective rather than prospective. However, addressing violent extremism should be perceived not merely as an event undertaken after an extremist offensive, but as a process that spans the full cycle of violent extremism, encompassing the prevention, intervention and reconstruction dimensions. In this vein, the AUTJP distinguishes itself as an innovative African model for dealing not only with the legacies of conflicts and violations, but also with the governance deficits and developmental challenges that trigger or sustain violent conflicts. Also, "rather than referencing a particular time period, transition in this policy refers to the journey of societies with legacies of violent conflicts, systemic or gross violations of human and peoples' rights towards a state of sustainable peace, justice and democratic order."[18]

Adopted in 2019, the AUTJP was conceived as a continental guideline for the development of comprehensive context-based policies, strategies and programmes aimed at democratic and socioeconomic transformation, sustainable peace, justice, reconciliation, social cohesion and healing. The policy envisages 11 indicative elements covering the various dimensions of core transitional justice pathways for re-establishing order in transitional societies. These include: peace processes; transitional justice commissions; African traditional justice mechanisms; reconciliation and social cohesion; reparations; redistributive (socioeconomic) justice; memorialisation; diversity management; justice and accountability (including plea bargains and pardons, mitigation of sentence and/or alternative forms of punishment, as well as amnesties); political and institutional reforms; and human and peoples' rights.

---

18 African Union Transitional Justice Policy (AUTJP), 2019, https://au.int/en/documents/20190425/transitional-justice-policy.

These indicative elements, as articulated in the ensuing sections, offer viable tools which can be deployed for the prevention, management and resolution of the growing problem of violent extremism on the continent.

Prevention Phase

In looking at prevention, transitional justice efforts should target the structural and psychological factors that drive violent extremism and radicalisation. These include interconnecting push-and-pull factors such as deep-seated marginalisation, poor governance, poverty, corruption and instability. The main indicative element of the AUTJP that can be leveraged to forestall violent extremism is diversity management.

Although the drivers of violent extremism are context-specific and multifaceted, scientific consensus suggests that the manner in which states and communities manage their religious, ethnic and/or racial differences is a reliable indicator of potential violent extremism. For example, UNDP notes that poor governance and perceived group marginalisation are primary incentives for violent extremism and radicalisation across the Sahel region.[19] Terrorist organisations often exploit, for recruitment and propaganda, the grievances of individuals and communities that, as a direct result of poor diversity management, feel side-lined across the political, social and economic spheres.

Although the drivers of violent extremism are context-specific and multifaceted, scientific consensus suggests that the manner in which states and communities manage their religious, ethnic and/or racial differences is a reliable indicator of potential violent extremism.

The diversity management element of the AUTJP "addresses the group dimension of conflicts and violations where violence was organized and perpetrated on the bases of race, ethnicity, colour, sex, language, religion, political or any other opinion,

national and social origin, fortune, birth or other status." It can be safely applied as a preventive measure in these contexts. The concrete strategic and operational measures for diversity management laid out in the AUTJP include:

> Acknowledging the identity dimension of violence, instituting educational programmes that target stereotypes and social prejudice and promote respect for ethnocultural diversity and the dignity of fellow human beings, irrespective of their origin, through school curricula, religious and cultural teachings, radio and television shows; Establishing policies and institutions that promote national cohesion and tolerance and accommodation between members of different communities; Regulatory measures for combating hate speech on the basis of religion, ethnicity and language and similar acts that incite violence and fuel communal divisions and tension; Periodic dialogue between and celebration of diversity involving religious, community and political leaders as well as representatives of affected communities, targeting in particular the youth and youth groups; Institutional measures that ensure equitable representation of members of various communities in national and local decision-making structures, with particular regard to representation of members of the most marginalized communities or regions.[20]

Intervention/Management Phase

Interventions in and management of violent extremism seek to counter attacks, buffer the immediate aftershocks on individuals and communities, mitigate extremism's spread and reoccurence, and lay the groundwork for the pursuit of durable solutions. The indicative elements of the AUTJP that are relevant for addressing violent extremism during this phase are: peace processes; justice and accountability; African traditional mechanisms; reparations; transitional justice commissions; and human and peoples' rights. Justice

---

19   UNDP, *Journey to Extremism in Africa*.
20   AUTJP.

and accountability concerns tend to overshadow discussions on transitional justice in general and specifically at this budding stage of transitional justice in situations of violent extremism.[21] The need to end all forms of impunity, hold perpetrators of violent extremism accountable for abuses and ensure justice for victims has been sufficiently established, as have the limits of overly punitive transitional justice measures. For these reasons, this paper focuses on peace processes as a key element for addressing violent extremism.

The peace process indicative element of the AUTJP is concerned with ending violence and its threats in affected communities. The policy requires that peace negotiations, mediation and agreement be proactively mainstreamed in transitional justice considerations from the outset and throughout to ensure that they positively shape the resolution of all dimensions of a conflict. Although negotiating with terrorists is often fiercely opposed, the concept, against all odds, is gaining traction and buy-in among key actors in countering violent extremism. A recent UNDP survey reveals that 75 percent of Malians believe that negotiation between the government and armed groups is the best way of addressing the crisis in the north of the country. Also, drawing from the peace talks between the Ugandan government and the Lord's Resistance Army, as well as pre-2011 negotiations between the regime of Muammar Gaddafi and the Libyan Islamic Fighting Group, a recent report underscores that "negotiation cannot be discounted as an option with 'violent extremist' groups, and … creative applications of transitional justice have the potential to make any negotiated deal not only more achievable, but also more legitimate."[22]

In the Lake Chad Basin, following a protracted struggle between the Multinational Joint Task Force (MNJTF)

Boko Haram factions, negotiations, initially announced by the Nigerian government in October 2016, have been reconsidered as part of broader efforts to curb violent extremism in the affected countries.[23] Similarly, Al-Shabaab's resistance to AMISOM's military efforts strengthens the case for applying transitional justice measures such as negotiations as part of the peace endeavours in the Horn of Africa and elsewhere in the Sahel.[24] Peace processes also provide, among other factors, opportunities for negotiating plea bargains and pardons, mitigation of sentence and/or alternative forms of punishment, and amnesties, all of which would lay a solid foundation for the third phase of countering violent extremism.

Post-Intervention/Resolution Phase

The AUTJP offers the following indicative elements to address the post-intervention and resolution phase of countering violent extremism: reconciliation and social cohesion; political and institutional reforms; and memorialisation.

> Although negotiating with terrorists is often fiercely opposed, the concept, against all odds, is gaining traction and buy-in among key actors in countering violent extremism.

The AUTJP defines reconciliation as both "a goal and a process premised on building the trust necessary for a degree of cooperation between individuals and communities." This entails "addressing legacies of past violence and oppression, reconstructing broken relationships and finding ways for individuals and communities to live together." It includes expressions of remorse and willingness to make reparations and

21   Aviv Cohen, "Prosecuting Terrorists at the International Criminal Court: Reevaluating an Unused Legal Tool to Combat Terrorism," *Michigan State International Law Review* 20 (2012); Coman Kenny, "Prosecuting Crimes of International Concern: Islamic State at the ICC?" *Utrecht Journal of International and European Law* 33(84) (2017).

22   Ronald Slye and Mark Freeman, *The Limits of Punishment: Transitional Justice and Violent Extremism—Framework Paper* (Tokyo: United Nations University, 2018).

23   Fonteh Akum, *The Reintegration Enigma: Interventions for Boko Haram Deserters in the Lake Chad Basin* (Pretoria: Institute for Security Studies, 2018).

24   Stephen Buchanan-Clarke and Rorisang Lekalake, "Violent Extremism in Africa: Public Opinion from the Sahel, Lake Chad, and the Horn," Afrobarometer Policy Paper No. 32 (2016).

forgiveness between victim(s) and perpetrator(s). Like negotiating, the notion of reconciling with violent extremist groups continues to be a controversial subject among scholars and policy makers.[25] However, as experience has shown, reconciliation cannot be overlooked in the search for durable peace, including in contexts of violent extremism. This can be an offshoot from the peace process.

Social cohesion, in conflict as in contexts of violent extremism, requires healing, which includes regard for each other's suffering; coming to terms with the totality of what happened; promoting shared truth; constructing a common narrative about the past, justice and the need to restore and experience a sense of security; and overcoming a sense of victimisation.

As experience has shown, reconciliation cannot be overlooked in the search for durable peace, including in contexts of violent extremism. This can be an offshoot from the peace process.

Within the framework of the AUTJP, political and institutional reforms entail "reforming critical institutions of State and, where necessary, creating such institutions to give full expression to the spirit and letter of this policy." The policy further specifies that "institutional reforms must be supplemented and complemented by the political and institutional arrangements, practices and values that ensure democratic and socio-economic transformation and the prevention of the emergence of future violations," such as constitutional and legal reforms, disarmament, demobilisation and reintegration (DDR), and security sector reform. As per the AUTJP, reforms also include:

> Constitutional, legal and institutional restructuring, political and institutional justice

requires the democratization of the conduct of politics and public affairs, including through education programmes, particularly for youth. This demands institutionalization of the principles of accountability, legality, transparency, responsiveness and respect for human rights, including non-discrimination and equality in government decision making and in the conduct of the affairs of the State, as well as civilian control of security institutions.[26]

With regard to politico-legal reforms, it is worth mentioning that Somalia has made significant constitutional and electoral reform strides in the context of violent extremism. Regarding DDR and countering violent extremism, the experiences of Somalia and Nigeria are illustrative. The National Programme for Handling Disengaged Combatants in Somalia, which was endorsed at the Somalia Conference in London in May 2013, aimed to establish a comprehensive process for low-risk ex-combatants/fighters from Al-Shabaab to reintegrate into communities and become productive citizens. Widespread disengagement has occurred throughout the country and it is estimated that there are presently 2,000 disengaged combatants.[27] In Nigeria, DDR programmes have been rolled out for Boko Haram defectors. State authorities have set up a small-scale rehabilitation programme for low-level fighters, as well as for low-risk women and children previously affiliated with Boko Haram. The strategic and operational challenges that have emerged from Nigeria's and Somalia's experiences have not dismissed the relevance of the practice of combining DDR and countering violent extremism. Rather, they have highlighted areas where further operational guidance, such as eligibility requirements and protection standards, are needed.[28]

Memorialisation, meanwhile, entails the measures beyond the immediate transitional period that are necessary for truth, reconciliation and healing, involving

25   Judith Renner and Alexander Spencer, eds., *Reconciliation after Terrorism: Strategy, Possibility or Absurdity?* (London: Routledge, 2013).

26   AUTJP.

27   International Organization for Migration (IOM), *Disarmament, Demobilization and Reintegration, Compendium of Projects 2010–2017* (2019).

28   Joanne Richards, "Demobilising and Disengaging Violent Extremists: Towards a New UN Framework," *Stability: International Journal of Security and Development* 6(1) (2017).

public acknowledgement of victims and institutionalising both societal dialogue across generations and non-impunity in national discourse. Acknowledging that respect for the dead is a fundamental human obligation and a prerequisite for peace and reconciliation among the living, the African Union Commission has set an international precedent by establishing a continental human rights memorial, the African Union Human Rights Memorial (AUHRM). Based on the ethics and practices of memory and education, the AUHRM project helps to remind warring parties and peacemakers of the value of memorialisation as an expression of respect for the dead and survivors of violence and for confronting atrocities. This represents an innovative institutional opportunity that can also be marshalled for addressing the legacies of human rights abuses inflicted by violent extremists.

As a long-term inclusive process, memorialisation requires a policy foundation that ensures the sustained engagement of a range of actors, targeting the youth in particular.

Memorialisation could also include commemorative activities, construction of monuments and symbols, renaming of public spaces and buildings, review of artistic and cultural expressions and national symbols and holy days, and/or revision of history texts and educational curricula. As a long-term inclusive process, memorialisation requires a policy foundation that ensures the sustained engagement of a range of actors, targeting the youth in particular.

In Nigeria, for instance, the "Wall of Missing Girls," a makeshift memorial constructed of cardboard and wood, was designed as a tribute to the Chibok Girls. It serves as a reminder of the tragic abduction of 214 girls by Boko Haram terrorists on 14 April 2014. There is also an outstanding petition to the government of Nigeria to commission a monument in the town of Chibok at the secondary school where the girls were abducted, as well as a monument at Unity Fountain Park in Abuja, a place that has become a symbol of hope and prayer for the Chibok Girls. Both monuments would serve as a symbol of love, hope and solidarity and a reminder that violent extremism-related tragedies should never reoccur.

The above not withstanding, nascent efforts to mobilise transitional justice tools to prevent, manage and resolve the challenges posed by violent extremism are constrained by a variety of emerging challenges and risks.

Emerging Challenges and Risks

Transitional justice mechanisms for countering violent extremism are plagued by a number of emerging strategic and operational challenges. Key among these is the implementation context. For over two decades, the international community, individual countries, policy makers and experts have explored pathways for improving transitional justice mechanisms. Yet, such processes are increasingly taking place while active insurgency, counterinsurgency and counterterrorism operations are in full swing—and in the context of active or intermittent terrorist attacks and religious radicalisation—which challenge many established transitional justice prerequisites and practices.

Other challenges include the persistent belief in the omnipotence of military approaches, weak political will to change dominant practices, and stereotypes and apprehensions about engaging with extremist groups. In addition, if not approached on a case-by-case basis, some transitional justice mechanisms, such as blanket amnesty for perpetators, could inadvertently consolidate the clout of extremist leaders.

Conclusion and Recommendations

Based on the analysis in this paper, the following five conclusions and recommendations are proposed:

1. There is consensus among scholars, practioners and policy makers that millitary approaches cannot be the sole solution for countering violent extremism.

2. Although relatively new, there is growing international buy-in for transitional justice pathways to addressing violent extremism. However, such measures must also be contextualised and approched on a case-by-case basis.

3. The AUTJP, which provides a comprehensive set of tools for addressing the legacies of atrocities and

repression, is innovative and relevant for countering violent extremism. However, it may not be applied in a traditional manner.

4. Local skepticism around transitional justice and countering violent extremism is rife, requiring robust and sustained sensitisation, advocacy and inclusivity in the choice, design and implimentation of measures.

5. Documentation and evaluation of transitional justice processes in African contexts of violent extremism is needed.

6. A comprehensive study and framework for transitional justice and countering violent extremism in Africa is needed, which exhaustively examines all 11 indicative elements of the AUTJP.