



AFRICA POLICY BRIEF

Building blocks for regional cooperation on Transitional Justice

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This policy brief is a report on the expert workshop on AU-EU cooperation on transitional justice which was organised in October 2021 by Egmont – The Royal Institute for International Relations, the University of Leuven, the Belgian Federal Public Service Foreign Affairs, the European External Action Service and the African Union. The workshop sought to examine some of the challenges and lessons learned so far from AU and EU support for transitional justice. Discussions focused on four areas: transitional justice's contribution to peacebuilding, the role of civil society in transitional justice, the integration of a socioeconomic dimension to transitional justice and the gendering of transitional justice.

INTRODUCTION

Transitional justice processes have expanded significantly, in terms of their geographical spread, the type of activities they encompass and the objectives they pursue. Broadly, transitional justice can be defined as the processes (whether judicial

or non-judicial) by which societies emerging from authoritarian rule, armed conflict, or other periods of severe socio-political turbulence, violence or trauma deal with a legacy of mass human rights violations. A notable recent development has been the growing institutionalisation of transitional justice. One manifestation of this is the trend on the part of individual states and international or regional organisations to adopt policy frameworks on transitional justice, to create administrative units specifically mandated to deal with transitional justice, and to allocate particular funding lines to support transitional justice initiatives. This has led to a progressive mainstreaming of transitional justice in human rights, conflict prevention, peacebuilding, and democratisation policies.

The United Nations has been a forerunner with the adoption of a [Guidance note on transitional justice](#) in 2010, which is currently being revised. But it has since been emulated by the European Union (EU), which adopted its [Framework on support to transitional justice](#) in 2015, while in February 2019 the African Union (AU) also adopted a [Transitional Justice Policy](#) framework. Since then, the African Union has also adopted a 'Roadmap for the Implementation of the African Transitional Justice Policy', and structures were set up to support transitional justice processes, such as

the [Africa Transitional Justice Legacy Fund](#), a grant-making initiative that supports community-based, survivor-led transitional justice projects and processes in West Africa, and the [EU Facility on Justice in Conflict and Transition](#), a facility aimed at providing expertise and training in support of transitional justice processes in third conflicts affected by conflict or undergoing a transition.

During the last three rounds of the EU-AU Human Rights Dialogue ([October 2019](#), [December 2020](#), [November 2021](#)) both organisations committed to work closely together on transitional justice, and to translate this commitment into concrete actions. Already in September 2016, an [expert seminar](#) on AU-EU cooperation on transitional justice was organised in Brussels by Egmont – The Royal Institute for International Relations, the Belgian Federal Public Service Foreign Affairs and the University of Leuven, in cooperation with the EU and AU to explore synergies in how both regional organisations can best support transitional justice processes. In October 2021, a second such [expert seminar](#) on AU-EU cooperation on transitional justice was organised.

The AU and EU's greater engagement on transitional justice is positive in that it contributes to developing clear frameworks and guidelines for states wishing to set up transitional justice processes and that it facilitates making resources available to these states. In addition, it cements a recognition that transitional justice has a central role to play in conflict prevention and peacebuilding: two policy areas that are long-standing core components of both regional organisations' mandates. Nevertheless, there remain significant challenges for AU and EU support to transitional justice, such as the need to

better understand key variables for transitional justice effectiveness, manage the attempted politicisation of transitional justice processes as well as the unintended (negative) effects of transitional justice, ensure the implementation of transitional justice outcomes, and engage with a variety of transitional justice stakeholders at an international, regional, national and community level. Furthermore, the [growing institutionalisation and bureaucratisation](#) of transitional justice — which is an inherent result of 'fixing' transitional justice in policy frameworks— also carries a risk of decontextualised, overly normative and tick-box approaches to transitional justice. This can have the effect of stymying transitional justice innovation and excluding certain voices from transitional justice debates and practices.

The workshop, which brought together researchers and practitioner-experts from both continents, sought to examine some of these challenges and the lessons learned so far from AU and EU support for transitional justice. Discussions focused on four areas of transitional justice which are of great interest to both the AU and EU: transitional justice's contribution to peacebuilding, the role of civil society in transitional justice, the integration of a socioeconomic dimension to transitional justice and the gendering of transitional justice. In this policy brief, we present a summary of the discussions on each of these topics, and then conclude with an overview of policy recommendations for the AU and EU that emerged from the workshop.

TRANSITIONAL JUSTICE AND SUSTAINING PEACE

The field of transitional justice is frequently connected to the field of peacebuilding, although

perspectives on these connections widely differ. For some, the two fields constitute separate areas of (inter)national policy making and practice. Others consider them as intimately intertwined, and view transitional justice as a set of peacebuilding activities ‘with a look at the past’, as much as they see peacebuilding as a movement to deescalate violent conflict and encourage reconciliation. Moreover, transitional justice can also be seen as a horizontal concern to be included in all peacebuilding activities. Whatever the exact perspective, there is an emerging consensus to attribute great importance to the area of [conflict prevention](#), which constitutes a core and complementary element of both transitional justice and peacebuilding policies and practices.

Transitional justice can contribute to the prevention of violent conflict by addressing more explicitly several of its root causes, particularly by focusing on (and avoiding) exclusions of individuals and groups, and structural injustices against them. Another means is to address grievances about violent conflict and structural injustices by providing reparations to victims for the harm inflicted upon them. And a third one relates to the reform of institutions that were involved –directly or indirectly- in the commission of violence and injustices, with the objective of preventing similar violations and crimes taking place in the future. Both adequate capacity and genuine political will are crucial prerequisites to make a difference in reality.

When considering transitional justice and peacebuilding as interconnected fields, it is crucial to avoid a ‘myopic understanding’ of transitional justice as a limited set of mechanisms primarily geared towards criminal prosecutions and criminal trials. These (and other) mechanisms and

processes are no separate activities, but they actually constitute forums where peacebuilding activities take place. It is therefore important to ‘think big’ and encourage comprehensive approaches to transitional justice. Such approaches include from the outset additional mechanisms of transitional justice, including truth-seeking procedures, victim reparation programmes, and the reform –and even abolishment– of abusive institutions and the political cultures that have enabled them. For this comprehensive approach to take root, it is crucial that victims can actively participate in each of these mechanisms and processes. As an example, debates about security sector reforms (SSR) cannot be limited to issues of capacity building, but necessarily also extend to questions of capacity dismantling and attention to victims’ needs. Promoting the large picture also implies paying attention to additional forms of human rights violations, such as corruption, and additional instruments of good governance, including the rule of law.

Discussions about transitional justice and peacebuilding cannot be limited to focusing on cases and situations in Africa, but also have to include histories and issues of European colonialisms and their aftermath. When opening up to such fundamental debates, both continents can learn a lot from one another. Again, one of the main challenges lies in thinking big enough, e.g. by exploring ways to build trust in state institutions in both continents. Another challenge resides in popularizing throughout broad sectors of very diverse societies the major headlines and some details of transitional justice, with a specific focus on truth seeking and victim reparations. In these endeavours, appropriate attention should be paid to the fact that societies have undergone diverse

paths of development, without letting their uniqueness stand in the way of proper comparisons across societies.

SOCIOECONOMICS OF TRANSITIONAL JUSTICE

Transitional justice's traditional neglect of [socioeconomic and cultural rights](#) (ESCR) violations and structural injustices has been a long-standing critique of the field. This is not only problematic because it creates a hierarchy between rights and harms, which is often not aligned with victims' own harm experiences. But also because it neglects that fact that the actors involved in civil-political and socioeconomic rights violations are often closely intertwined, that structural injustices can be key drivers of conflict and human rights violations, and that a continuity commonly exists between conflict and post-conflict human rights violations. As a result, transitional justice may often fail to have a genuine transformative effect.

Despite a recognition of the need to address this gap in transitional justice (the African Union Transitional Justice Policy Framework in particular includes a specific section on 'redistributive (socioeconomic) justice') there continues to be a reluctance at a policy level to mainstream socioeconomic rights and justice in transitional justice practice. For instance, few reparations programmes or guarantees of non-recurrence measures have so far reflected ESRCs in their design. Furthermore, in those instances where transitional justice has engaged with socioeconomic issues it has too often solely approached the latter as a root cause of conflicts rather than framing ESRCs as legal rights. The failure to do so has been particularly harmful since a legalistic and criminal justice-focused approach to

transitional justice has tended to dominate in practice.

It is important to keep in mind though that the notion of the 'socioeconomic dimension of TJ' has been used to refer to a wide variety of issues: land dispossession and distribution, redistributive justice and structural inequality, corruption, war economies, corporate responsibility and environmental harm. The extent to which transitional justice should and can deal with all of these issues remains a point of discussion, however it is evident that different types of transitional justice responses might be needed to address and redress these different forms of crimes. In light of the history of Europe-Africa relations, there is also a need for transitional justice to concern itself with responding to historical injustices and the legacies of colonial-era crimes. While such responses are starting to emerge in Europe, Canada and Australia, it is worth considering where such similar approaches could be applied by African countries to deal with the colonial legacies at home.

A key area of contention is the boundary between transitional justice interventions and development actions. Some warn of the risk involved in a 'developmentalisation' of transitional justice, as it can further downplay the status of ESRCs as legal rights in transitional justice frameworks and lead to neglect of the dimension of redress for harms caused specifically by the human rights violations, which is a key distinguishing factor between a transitional justice measure and a development measure. One way in which to conceptualise this boundary could be to consider that with regard to states' international human rights obligations — the obligation to respect, to protect and to fulfil — transitional justice could focus on the

obligations to respect and protect while development could focus on the obligation to fulfil.

Others however contend that the boundary between transitional justice and development is an artificial one: victims often have a broader understanding of justice, which encompasses the absence of all forms of violence (including structural violence) and the importance of addressing daily, socioeconomic needs. For instance, in Uganda the distinction experts made between transitional justice and development actions was difficult to grasp for victims and government actors; there was really no clear boundary between both in their minds. Hence, providing interim reparations/assistance may more adequately address victims' needs in the short term than, for instance, prosecutions or a truth commission. An important challenge though is the often difficult relationship, in practice, between development and transitional justice professionals who have in the past operated in isolation of one another. Building bridges between these two fields has, on the ground, sometimes led to competition for resources and influence but also difficulties in communication as both fields use very different language and concepts. An important question therefore is whether it would be possible, and also desirable, to develop a unifying language between transitional justice and development practitioners.

ROLE OF CIVIL SOCIETY IN TRANSITIONAL JUSTICE

Civil society organisations (CSOs), and in particular victims' groups, have a central role to play in transitional justice, a fact which both the AU and EU transitional justice policies explicitly recognise. CSOs can act in support of transitional

justice processes in a wide variety of ways: organising outreach and sensitisation campaigns, producing research reports, advocating for the rights of victims, facilitating and supporting victim participation, providing legal or psychosocial assistance to victims who participate in transitional justice mechanisms, engaging in human rights information collection and archiving, providing technical assistance, acting as a watchdog for the implementation of transitional justice outcomes, providing substantive inputs on transitional justice mechanism proposals etc. In Gambia, for instance, CSOs signed a memorandum of understanding with the [Truth, Reconciliation and Reparations Commission](#) to conduct joint programming in providing medical and psychosocial support to victims and information sharing. In Kenya, CSOs took a lead role in consultation processes carried out ahead of the creation of the Truth, Reconciliation and Reparations Commission.

The role of CSOs is not limited though to supporting formal, state-led transitional justice initiatives. CSOs can also have an important role to play as drivers of social and political change in the absence of state-led TJ initiatives. It is therefore important to recognise and support instances where victims and victimised communities organise themselves in the face of state inability or unwillingness to engage in transitional justice – even when such initiatives are critical or disruptive of national or global transitional justice discourses. Such informal transitional justice processes can be linked to alternative conflict-resolution mechanisms or customary justice systems, but need not be limited to these and can also involve other forms of community-led initiatives that are geared towards providing psychosocial support to victims, engaging in inter- or cross-community

dialogue, truth-telling exercises or articulating and responding to the everyday needs of victims and affected communities. We have seen in practice that such initiatives often offer more effective ways of strengthening the agency of victims than highly mediated ‘participation processes’ in more formal and national-level transitional justice mechanisms. Interesting examples include the pilot project for interim reparations set up by the [Panzi Foundation](#) and the [Global Survivors Fund](#) in the Democratic Republic of the Congo and the [CSVJ](#)’s work on psychosocial support to victims and actors involved in transitional justice processes, as well as the [Global Initiative for Justice, Truth and Reconciliation](#)’s support for grassroots projects aimed at supporting victim participation in transitional justice.

Both the AU and the EU already include support to CSOs as a central component of their transitional justice policies, and this engagement should be further strengthened. However, external support to CSOs also pose some challenges as it runs the risk of strongly circumscribing how transitional justice is done and whose voices are heard in these processes. External support can lead to a prioritisation of donor transitional justice preferences over victims’ needs and conceptions of justice. Donors are often also more likely to work with CSOs which align with the global human rights agenda or with professionalised, urban-based CSOs, to the neglect of [social movements](#) and community-based CSOs focused on social and political questions affecting marginalised communities and under-represented victims. As a result, there is a risk that external support stymies local transitional justice innovation and reproduces the structural exclusion of certain groups or voices from transitional justice spaces.

On the flipside, external partners like the AU and EU can also find it challenging to identify suitable CSO partners that are sufficiently representative of victims’ communities and that are not politicised. Significant diverging interests or objectives may also exist between CSOs within a same country or between CSOs and victims. While providing support to coalition-building between CSOs might help increase their ability to participate in transitional justice and effectively lobby their governments, it is not always easy to find common ground and may, ultimately, stymie local innovation as it induces CSOs to align with the lowest common denominator. Challenging operating environments, such as a shrinking civic space in Uganda or ongoing insecurity in the Democratic Republic of the Congo, can also push CSOs to adopt a more reactive or evasive than proactive positioning on transitional justice. While none of these elements should be taken to mean that external support to CSOs should not be provided, it is important to take these risks and challenges into account in the early planning stages of transitional justice support policies by the AU and EU.

GENDER DIMENSION OF TRANSITIONAL JUSTICE

Mainstreaming gender in transitional justice has been recognised as an important requisite for effective transitional justice processes. Women have and continue to play a significant role in rights advocacy in numerous transition processes in Africa and beyond. In various instances, efforts have been made to create spaces for women’s voices and participation within transitional justice processes as well as to include benchmarks that speak specifically to women’s victimisation and conditions. However, significant gaps remain. For

instance, a recent [comprehensive study on reparations](#) undertaken by the Global Survivors Fund finds that there exists an implementation gap regarding reparations for victims of gender-based violence.

Women are also too often treated as a homogeneous group and as only having an identity as innocent, vulnerable victims in need of (external) protection. Yet women, like men, can assume numerous identities in conflict and repression contexts, as victim-perpetrators, direct perpetrators, ‘wives’ of perpetrators, victims of complex sexual violence, protesters or resisters, ‘innocent’ victims, bystanders, collaborators or recruiters for armed groups, community leaders etc. It is therefore essential for transitional justice processes to create spaces where these different identities can find expression and recognition rather than pigeonholing women in the role of ‘vulnerable victims’. Women’s participation in transitional justice should be more than tokenistic: it should entail a genuine consultation and inclusion of women in their diversity of roles, take into account the competing demands that may restrict women’s ability to participate in transitional justice mechanisms (such as caregiving responsibilities), and also include organisational capacity-building support. Thus gendering participation in transitional justice requires placing the emphasis on the agency of women.

Within transitional justice there has also been a tendency to focus on sexual violence and to sideline other forms of victimisation suffered by women, as well as the variety of challenges women-survivors face, in particular socioeconomic challenges. Moreover, even within the focus on sexual and gender-based violence, insufficient attention has been paid to the

structural issues underpinning such violence as well as to the [broader forms that gender harm can take](#). Sexual violence against men, for instance, or the victimisation of sexual and gender minorities have so far received limited attention in transitional justice processes. A true gendering of transitional justice thus requires deconstructing masculinity and gender stereotypes, patriarchal structures in society and within communities, and dualistic conceptions of gender identity. Transitional justice can only act as a vehicle for a transformative gender justice if it contributes to challenging stigmas and discriminations grounded in hetero normative and patriarchal frames of gender identities and gender relations.

RECOMMENDATIONS FOR EU AND AU ACTIONS ON TRANSITIONAL JUSTICE

- EU and AU support to transitional justice should be integrated across its policy instruments and not be limited to technical support or funding transitional justice projects. Transitional justice should also be included in political dialogues, mediation efforts, conflict prevention mechanisms and peace support operations.
- It is important for the EU and AU to ‘think big’ and encourage comprehensive approaches to transitional justice, which are not limited to criminal justice processes but also include truth-seeking procedures, victim reparation programmes, and the reform –and even abolishment- of abusive institutions and the political cultures that have enabled them.
- Because transitional justice and peacebuilding are closely intertwined, they should not be seen as separate fields, but as highly connected ones that can mutually reinforce one another.

- The EU and AU need to engage in a dual strategy of supporting both state-led and civil society-led transitional justice initiatives.
- Adhere to a conflict-sensitive approach to transitional justice, which requires context awareness, inclusiveness, and a focus on the needs of individual victims and society.
- Continue to encourage bi-directional knowledge exchanges on transitional justice between transitional justice experts and practitioners in Africa and Europe:
- Create a permanent regional platform/forum for exchanges and dialogue between academics, TJ practitioners and policy-makers to discuss and develop cross-regional TJ agendas and initiatives. Ensure that this exchange is not only focused on transitional justice experiences in Africa but also on transitional justice experiences in Europe.
- Promote and/or facilitate peer-to-peer exchanges between civil society organisations from Europe and Africa.
- Provide support for cross-regional collaborative research, documentation and training initiatives on transitional justice.
- Encourage a broad approach to victim participation in transitional justice that goes beyond consultation. Participation should focus on empowering and enabling victims to define the transitional justice agenda(s) at the local, national, regional and international levels. Participation can also take the form of co-creation.
- Transitional justice initiative should be designed on the basis of an identification of victims' needs, including everyday needs, rather

than being informed by donor priorities or global human rights/transitional justice agendas.

- Ensure that funding mechanisms for civil society organisation are also accessible for smaller CSOs, marginalised communities and community-led groups. Funding and support should also not be limited to formal transitional justice processes, but be provided for grassroots structures and community actions on transitional justice too. Funding should support dynamic victim-driven approaches to transitional justice. The EU and AU could, for instance, engage in peer-to-peer exchanges with other existing funding structures that have experience with community-based funding (ATJLF, GIJTR, CSVN etc.).
- Mainstream socioeconomic rights and justice in transitional justice, in particular in measures of non-recurrence (for instance by also focusing on institutional reforms addressing socioeconomic issues, strengthen legal protections for ESRC in constitutions, or integrating early warning and early response procedures to socioeconomic issues within human rights bodies) and reparations (for instance, through the rapid implementation of interim reparations).
- Adopt a gender approach to transitional justice that is inclusive of the various identities of women in conflict and repression contexts and of the broad forms that gender harm can take.

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