

Lessons Learning Session on the Implementation of the AU Transitional Justice Policy: Impact on National Resilience and Democratisation

Lessons Learning Session on the Implementation of the AU Transitional Justice Policy: Impact on National Resilience and Democratisation | 22 August 2022

Tomorrow (22 August), the African Union (AU) Peace and Security Council (PSC) will convene its 1102nd session on 'Lessons Learning session on the implementation of the AU Transitional Justice Policy: Impact on National Resilience and Democratization'.

Following opening remarks of the Permanent Representative of The Gambia to the AU and Chairperson of the PSC for the month, Jainaba Jagne, AU Commissioner for Political Affairs, Peace and Security (PAPS), Bankole Adeoye is expected to make a statement. For the experience sharing, presentations are expected from the representatives of The Gambia, Libya, South Africa, South Sudan, Sierra Leone, and Rwanda.

Tomorrow's session will be the first time that Council discusses the AU Transitional Justice Policy (AUTJP) since its adoption in February 2019. However, Council has dedicated several sessions on the theme of 'peace, justice and reconciliation' since at least 2013 which in fact contributed great deal in articulating the African conception of transitional justice (TJ) and clarifying the policy options for Member States to undertake TJ process. For instance, during its 383rd meeting held at the ministerial level in

Algiers in June 2013, Council highlighted around six elements that could serve as a basis for the conduct of national reconciliation processes in Africa, including the use of traditional mechanisms of conflict resolution and reconciliation and the imperative of a judicious combination of measures relating to truth telling, repentance, justice, healing, forgiveness, solidarity, reparations, reintegration and socio-economic development. These elements are indeed incorporated in the AUTJP, which reflects the contributions of the Council in shaping the Policy. At its 672nd session convened in March 2016, Council recognized that the 'issue of achieving an equilibrium between reconciliation and justice is work in progress in the continent and that there is no universal approach or model in applying these two concepts on the ground.' Council also underscored the importance of balancing retributive, reparative, and distributive types of justice, further highlighting the intricacies in the idea of sequencing of peace, reconciliation, and justice in Africa. It is also to be recalled that during its 525th session in July 2015, Council agreed to make the theme 'Peace, Reconciliation and Justice' a standing item while the 899th session which was held in December 2019 at a ministerial level decided to dedicate annual session aimed at experience sharing and lessons learning on 'national reconciliation, restoration of peace and rebuilding of cohesion in Africa'.

As indicated in the Concept note prepared for the session, tomorrow's session is aimed at sharing the experience on the establishment and implementation of the AUTJP at various levels of governance in Africa, as well as sharing of experiences by Member States who have implemented transitional justice processes. Such experience sharing is expected to serve as an inspiration for other Member States who are dealing with violent past. The session also presents a platform to familiarize the AUTJP and its salient features.

The AUTJP is the culmination of a nearly decade-long legislative process, having its root in the 2011 report of the Panel of the Wise titled 'Non-Impunity, Truth, Justice and Reconciliation'. Building on the June 2006 AU Policy on Post Conflict Reconstruction and Development (PCRD) and drawing from the rich experiences of African countries in transitional justice, the Policy provides practical guide to Member States with violent and/or authoritarian legacies to navigate through difficult transition towards sustainable peace, justice, and democratic order. While the Policy takes significant inspiration from international norms and standards on TJ, it offers an alternative perspective to the dominant conception of TJ that is shaped by its own history, political and socio-economic realities. The Policy defines TJ to cover not only the formal mechanisms but also non-formal or traditional justice approaches that recognize the importance of symbolic and dialogic justice and traditional or religious ritual processes, as well as culturally and socially relevant forms of reparations. While the mainstream model prioritizes retributive approach focusing on criminal justice and accountability, the AUTJP tries to balance the demand for retributive criminal justice and the need for society to achieve reconciliation and rapid transition to a shared democratic future. The other salient feature of the Policy is the emphasis given to national ownership. As highlighted in para. 32 of the Policy, national ownership entails two substantive components. The first is 'process leadership and decision making' whereby national stakeholders involving all sides most importantly victims drive the design and implementation of TJ. The second is the 'primacy of national resources and capacities' which emphasizes the need to adapt and exhaust all suitable formal and traditional mechanisms that are available at the local level before resorting to foreign sources and capacities.

The AU is one of the actors identified in the AUTJP bestowed with the role of providing the strategic political leadership

at the continental level for the successful implementation of the Policy. It is in this framework that the AU Commission developed a Roadmap for the implementation of the Policy in 2020, which serves as the vehicle for coordinating AUC's activities regarding the implementation of the Policy for the period 2020-2024. In tomorrow's briefing, the Commission may highlight some of its activities towards the implementation of the AUTJP. The Commission is likely to mention range of technical assistances provided to Member States including the provision of trainings on the application of the Policy (The Gambia, Zimbabwe, and South Sudan), support to the development of national transitional justice strategy and policy (DRC and South Sudan), support to the development and implementation of TJ programmes (Libya), and translation of the AUTJP into local languages (such as Ethiopia).

The other aspect of the session is expected to be experience sharing where invited Member States are expected to shed light on their experiences, best practices, and challenges, as well as how they addressed peace versus justice dilemma.

In the case of The Gambia, one of the issues likely to be raised is how the proceedings of the transitional justice process enormously uplifted the political consciousness of the public and provided platform not only to expose the depth of the violations perpetrated by the previous regime but also for public hearing and acknowledgement of the brutalities victims and their families and communities endured. In his recent piece published on 8 June, the former Executive Secretary of The Gambia's Truth, Reconciliation and Reparation Commission (TRRC), Baba Galleh Jallow, stated that in a radical departure from previous experiences of truth commissions, 'the Gambian TRRC created an institutional structure, operational method, and strategic communication processes built on the twin principles of inclusivity and transparency that allowed it to be visibly transformative well before the completion of its work and submission of its final report and recommendations to

the Government.' This is on account of the strong interest that the works of the Commission, particularly its public hearings, evoked among the public, which was previously experienced profoundly during South Africa's Truth and Reconciliation Commission proceedings as well. In balancing between justice and reconciliation, the Commission combined different modalities including prosecution, amnesty, and reparation. TRRC delivered a final report documenting violations and abuses of human rights from 1994 to 2017 and the government also issued a white paper in May containing its response to the recommendations of the report. While these are steps in the right direction, the success story of The Gambia's TJ process would remain incomplete without translating those recommendations into action.

Rwanda's experience reveals the use of combination of customary African values with international and domestic criminal justice to deal with the crime of genocide. International, national, and traditional criminal courts operated together but the traditional *Gacaca* community justice process remain its key feature. The *Gacaca* court is lauded for its role in filling in for the formal court system that were decimated during the genocide. It was also instrumental in facilitating truth telling, promote reconciliation, and end impunity. However, forgetting that the *Gacaca* courts were dealing with extraordinary conditions of mass atrocities that also destroyed formal legal institutions and implicated extraordinarily large number of peoples, some have wrongly sought to hold the processes of the *Gacaca* courts to standards that are crafted and envisaged for ordinary times.

The TJ process in Sierra Leone was marked by the simultaneous operation of a Truth and Reconciliation Commission and a special hybrid court. It allowed the country to pursue both justice and reconciliation, and it is particularly raised in the context of its special attention to the subject of sexual abuses and to the experiences of children within the armed

conflict. The simultaneous existence of the truth commission and a hybrid special court however brought about confusion over mandates. The two processes were also constrained by the focus on national level actors and the vertical state-society relations, thereby leaving enormous vacuum for reconciliation & justice at the local level, which the traditional processes used at the local levels tried to fill in, enabling child soldier to be reintegrated back to the community and broken social relationships to start to heal.

In the world of transitional justice, the experience that received world-wide recognition for making truth and reconciliation commissions globally popular is South Africa. The TJ process in South Africa emphasized truth and reconciliation over criminal prosecution. The process has delivered political transformation and democracy to the country. There are today calls for consolidation of the gains achieved through the TRC process by implementation of the recommendations in the TRC Report, notably those relating to reparations, and by instituting process for addressing the socio-economic dimensions of South Africa's past that continues to impeded the structural transformation of the society and the dismantling of pervasive inequalities affecting the historically oppressed majority of South Africans.

In Libya and South Sudan, the TJ process is not only in its nascent stage but also facing enormous challenge. In case of South Sudan, the establishment of the Commission of for Truth, Reconciliation and Healing as well as Reparation Commission is a welcome development. For these processes to deliver the justice expectations of victims and survivors of the brutal civil war, it is imperative that they are organized and carried out in full compliance with the standards set in the AUTJP including the inclusive and transparent process of constituting the members of these bodies and ensuring their full independence from political interference and full

participation of victims and survivors. Additionally, attention should be paid on how to take advantage of the unique legal and policy resources that the AUTJP offers for operationalization of the hybrid court in a way that addresses the challenge to balance criminal accountability and reconciliation. In Libya, the process has been stalled as the country continues to reel under political and security crisis. However, the representative may shed light on recent activities including the support provided by AU Commission towards the development of a legitimate TJ programme and National Reconciliation Commission.

Issues of political buy-in from Member States and financial limitations are expected to be highlighted as challenge to the implementation of TJ in the continent. As rightly captured in the AUTJP, it is the primary responsibility of Member States to pursue TJ process and its success ultimately depends on the political commitment, leadership, and capacity of the concerned country. Financial constraint is another factor likely to compromise the level and quality of support that AU could provide to Member States. It was also for lack of funding that the AU ended its Technical Support Team in The Gambia (AUTSTG), one of its success stories in supporting countries in political transition. One important avenue that the Council may consider addressing this challenge is the utilization of the Peace Fund. It is worth recalling that transitional justice mechanisms, truth and reconciliation processes are identified as one of the strategic priorities under Window 2 for the utilization of the Peace Fund.

The expected outcome of tomorrow's session is a communique. Among others, Council may recognize the development and adoption of the AUTJP as an important milestone in having a comprehensive policy framework that guides not only Member States in their TJ undertakings but also the AU, RECs/RMs, and non-state actors in their effort to support such undertakings. While acknowledging that there is no 'one-size-fits-all'

approach to TJ, it may reiterate some of the key elements of the TJ Policy that should serve as a basis for the implementation of TJ. In this respect, Council may stress the imperative of national ownership of the process, the use of traditional mechanisms, and striking a balance between reconciliation and justice, as well as between retributive, reparative, and distributive types of justice. Council may highlight the importance of popularizing and sensitizing the Policy to ensure greater political buy-in from Member States given that the success of any TJ initiatives as well as the effective implementation of the Policy largely depends on the political will and good faith of the political leadership. It may also commend the AU Commission for the steps it has put in place to promote the implementation of the AUTJP in countries in transition and the need for ensuring that relevant AU organs, such as the African Commission on Human and Peoples' Rights, which contributed to the drafting of the AUTJP and to the TRRC, to contribute to and use their mandate for promoting the implementation of the AUTJP.

Council is expected to re-emphasize the imperative of sharing experiences and lessons learned in promoting TJ and assisting countries that confronted violent past to address their challenges of reconciliation, accountability, social cohesion, and nation-building. In this regard, it may stress on the need to follow up its decisions, at its 899th session, to dedicate annual session on TJ. Regarding the financial constraint, Council may allude to the utilization of the Peace Fund for AU's TJ activities as the Union moves towards the operationalization and pilot utilization of the Peace Fund. Council may call for enhanced cooperation and coordination between AU and RECs/RMs, as well as international partners in supporting Member States in their TJ initiatives. Council may commend the countries that shared their experiences with initiating and implementing TJ processes. The Council may note that transitional justice is not a one time process but a continuous one that aims at addressing ever more forcefully

and increasingly legacies of past wrongs and violations and the inequities that they have created in affected societies. It may call on the states to implement the recommendations of truth commissions and continue the work for achieving increased levels of reconciliation and healing as well as irreversible cohesion through implementing inclusive development policies and deepening democratic and accountable system of political governance.