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A Roadmap for Justice in Africa

Understanding the African Union’s Transitional Justice Policy

On February 12, 2019, the 32nd Ordinary Session of the Assembly of the African Union (AU) adopted the African Union Transitional Justice Policy (AUTJP, or “the policy”). The policy is aimed at providing AU member states with a continent-wide guide on effective and credible transitional justice processes that will help them to achieve sustainable peace, justice, reconciliation, social cohesion, and healing in accordance with Article 4 (o) of the Constitutive Act of the African Union, which provides for peaceful resolution of conflicts, respect for the sanctity of human life, and the condemnation and rejection of impunity. The policy is inspired by shared African values, as well as lessons learned, best practices, and norms that have come out of transitional justice processes pursued on the continent. The policy is a crucial one that seeks to contribute to the realization of Aspiration 3 of the African Union Agenda 2063 for “An Africa of good governance, democracy, respect for human rights, justice and the rule of law” and Aspiration 4 for a “peaceful and secure Africa.”¹

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The AUTJP contains strategic proposals for an African approach to designing, implementing, monitoring, and evaluating transitional justice processes in AU member states, based on key principles and indicative elements of transitional justice.² Notably, the policy encourages the design and implementation of transitional justice measures that address root causes of conflicts, legacies of violence, governance deficits, and developmental challenges in Africa.

The adoption of the AUTJP is an important development for the advancement of transitional justice on the continent and globally. The policy encourages a continual reflection on how

¹ African Union Commission, “Agenda 2063: The Africa We Want” (2015) available at www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf

² Africa Union, “African Union Transitional Justice Policy” (2019), paras. 23-100. The key principles that underpin the AUTJP include African leadership; national and local ownership; inclusiveness, equity, and nondiscrimination; shared African values; context specificity; synergizing, sequencing, and balancing transitional justice elements; due regard to gender and generational dimensions of violence; cooperation and coherence; and capacity building. The key indicative elements of the AUTJP include peace processes, transitional justice commissions, the African traditional justice mechanisms, reconciliation and social cohesion, reparations, redistributive (socioeconomic) justice, memorialization, transitional justice policy, diversity management, justice and accountability, political and institutional reforms, and human and peoples’ rights.

to achieve the objectives of transitional justice, particularly in light of new patterns of violations and conflict as well as the specificity of each context. At a time when transitional justice tends to be implemented using a simplistic or mechanistic approach that focuses more on projects and institutions instead of transitional justice objectives and outcomes, ICTJ welcomes the AUTJP as an important contribution. The policy reminds policymakers and practitioners that transitional justice is not a formula to be imposed from the outside or from above. Rather, as the policy notes, transitional justice is more political than technical.³ In other words, it is important to design and implement transitional justice initiatives using a nuanced approach that is rooted in an understanding of the context's social and political dimensions and that elicits broad public participation to ensure strong national ownership.

ICTJ encourages stakeholders to consider the AUTJP as guidance for advancing transitional justice processes across the African continent. The policy stresses the importance of the principles of local ownership, inclusiveness, context specificity, and sustainability when designing and implementing transitional justice initiatives. The Working Group on Transitional Justice and SDG16+, which ICTJ convened to study the role of transitional justice in achieving the Sustainable Development Goals in countries dealing with legacies of massive human rights violations, affirmed these same principles in its report and recommendations.⁴

The challenge, however, lies in the feasibility of designing and implementing transitional justice initiatives that fully incorporate all of the principles highlighted in the policy. With that in mind, this position paper presents the key contributions of the AUTJP, raises some concerns about the policy's practical implementation, and presents recommendations for next steps.

The AUTJP's Contributions to Transitional Justice

The AUTJP advances the field of transitional justice in several important ways. It goes beyond traditional approaches to transitional justice and covers new ground in both policy and practice. In particular, it defines transitional justice in more nuanced terms, acknowledges the importance of taking a gender-sensitive approach, places violations of economic and social rights and redistributive justice within the transitional justice agenda, emphasizes national and local ownership in part through the creation of an African Union Transitional Justice Fund, and includes displacement and statelessness among the violations that a transitional justice process ought to address. In addition to these key contributions to the transitional justice field, the AUTJP also links the education sector to transitional justice processes and includes a section on the importance on memorialization.

Transitional Justice as a "Journey"

How the AUTJP defines "transition" reflects Africa's rich historical context and recognizes the complex factors that have led to instability on the continent.⁵ By defining the term as a "journey" and referencing different legacies, the policy validates a number of practices that

³ Ibid., Section 25.

⁴ Working Group on Transitional Justice and SDG16+, "On Solid Ground: Building Sustainable Peace and Development After Massive Human Rights Violations" (2019), available at: www.ictj.org/publication/solid-ground-building-sustainable-peace-and-development-after-massive-human-rights

⁵ Africa Union, "African Union Transitional Justice Policy" (2019), Section 20. "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."

emerged in African contexts from Liberia to Tunisia, in which colonial and post-colonial injustices are seen as part of the legacies that must be examined. As noted in the introduction to the AUTJP, “African societies have been dealing with transitional processes for many decades in their quest to come to terms with the traumas of slavery, colonialism, apartheid, systematic repression and civil wars.”⁶ To date, some of Africa’s innovative approaches to transitional justice have had both material and political impacts. For example, the Mau-Mau lawsuit brought against the British government in Kenya led to reparations and memorialization for victims of British colonialism.⁷ The truth commission in Tunisia found institutions such as the World Bank and the International Monetary Fund responsible for violations during the Ben Ali dictatorship, including the “economic marginalization” of regions that ignited the Arab Spring.⁸ This framing of transitional justice points to the need for future European and international involvement in Africa to be guided by national and local priorities.⁹ It also makes clear that transitional justice is not a one-time event, but a series of opportunities for action that activists and policymakers can take to pursue truth, accountability, and reparations.

Overall, the policy’s historically cognizant definition of transitional justice recognizes the need to better understand how cycles of violence overlap and recur in different forms, especially in contexts where historical injustice and discrimination persist. For countries planning to pursue transitional justice, it can be useful to open up the discussion to approaches beyond those with narrow time limits. Viewing transitional justice as a journey also serves as an important reminder not to confuse transitional justice institutions, such as truth commissions or tribunals, as ends in themselves. Rather, the AUTJP reminds member states that transitional justice is part of a long-term process to attain “sustainable peace, justice, and democratic order.”¹⁰

Gender Justice

While for many years advocates have called for gender mainstreaming in transitional justice processes, it remains a challenge in practice. ICTJ welcomes the AUTJP’s recognition of the centrality of gender justice as a positive advance in both policy and practice, while also affirming the need to continually ensure gender mainstreaming is more than superficial and circumscribed participation of women. The AUTJP importantly highlights the need to acknowledge the gendered nature of conflicts;¹¹ address the cultural, socioeconomic, legal, and political status of women;¹² and guarantee transitional justice mechanisms help women claim and enjoy their rights.¹³ To achieve these goals, the policy calls for appropriate avenues for participation and measures to ensure women are not only represented in a tokenistic manner, but that they actually have decision-making power within peace and transitional justice processes.¹⁴ The AUTJP also lays out important benchmarks and standards for

6 Ibid.

7 ICTJ, “UK-Funded Mau Mau Memorial Acknowledges Colonial-era Abuses in Kenya” (September 17, 2015), available at www.ictj.org/multimedia/audio/uk-funded-mau-mau-memorial-acknowledges-colonial-abuses-kenya

8 Olfa Belhassine, “Tunisia’s Truth Commission vs. France, the IMF and World Bank,” JusticeInfo.net, September 3, 2019, available at www.justiceinfo.net/en/truth-commissions/42302-tunisia-truth-commission-vs-france-imf-world-bank.html

9 Africa Union, “African Union Transitional Justice Policy” (2019), Sections 28-32.

10 Ibid., para. 20.

11 Ibid., Section 101.

12 Ibid., Section 53 (vii).

13 Ibid., Section 54.

14 Ibid., Section 104 (vi).

gender mainstreaming, including addressing structural inequalities that enable gender-based violations, and urges transitional justice measures to transform gender relations and promote equitable gender norms to enable women to enjoy their political, economic, and social rights.

The policy's inclusion of these aspects of gender justice is crucial because the root causes of the violations that women experience in conflict or repressive regimes are largely connected to preexisting structural inequalities. Periods of transition offer an opportunity to tackle these underlying inequalities that allow gender-based harms and violations to occur. There can be no transition that improves women's lives if the social conditions that gave rise to the violations remain intact and if women are not fully engaged in the processes, making their voices heard, and participating in the decision-making processes. Women's meaningful and active participation in transitional justice processes is essential for both overcoming preexisting gender barriers and ensuring that the processes are relevant, legitimate, and credible.

It is important to note that gender justice is not exclusively the ambit of women but applies to individuals occupying the full range of gender roles within a particular community. The AUTJP mentions only women when referring to victims of sexual and gender-based violence. However, in several African countries, there are documented cases of sexual violence against men and boys, despite the taboo that largely silences people from broaching this topic.¹⁵ As member states implement the AUTJP, it will be important for them to take a comprehensive approach to gender mainstreaming, evaluating the roles of men and women in society and carefully addressing sexual violence against men and boys as they combat sexual and gender-based violations against women and girls.

Socioeconomic Considerations

Notably, the policy calls for a transitional justice approach that tackles not only violations of civil and political rights, but also violations of economic, social, and cultural rights (ESCR), which are often ignored during periods of transition. In many African countries, certain local and displaced populations have limited access to health care, education, clean water, land, and work, which adversely affects their livelihoods. It is not rare that systematic violations of ESCR are a root cause of conflicts on the continent.

In addition to traditional elements of transitional justice such as guarantees of non-recurrence, the policy frequently mentions socioeconomic transformation and sustainable peace as equally important components of transitional justice. In doing so, it represents a redistributive approach to transitional justice that shines a light on the roots causes of many conflicts in Africa and around the world and serves as guidance for economic and institutional reforms aimed at making society more equitable.

Existing policy frameworks meant for preventing conflict point to the close relationship between transitional justice and development. This relationship is particularly important given the long history of socioeconomic marginalization and deeply entrenched structural inequalities on the continent. Addressing socioeconomic grievances is also key to preventing further radicalization and violent extremism. Recent studies have shown that while there is no direct link between poverty and radicalization, there is evidence that radical groups have been able to exploit economic marginalization, high levels of poverty, unemployment,

¹⁵ Amrita Kapur and Kelli Muddell, ICTJ, "When No One Calls it Rape: Sexual Violence Against Men and Boys" (2016), available at www.ictj.org/publication/sexual-violence-men-boys

and a lack of access to basic services to recruit followers.¹⁶ In contexts of extreme poverty, research has shown that radical groups have been able to gain support by playing a service delivery role — providing essential services and filling the vacuum left by poor public infrastructure and weak government.¹⁷

National and Local Ownership

African leadership and ownership are key principles that infuse the entire policy. The AUTJP describes how transitional justice initiatives are funded, emphasizing the importance of local buy-in, leadership, and monitoring in these processes. It encourages practitioners to advocate for local and adaptable transitional justice measures. Further, it promotes national ownership by urging African states to contribute funding to transitional justice initiatives, noting that state ownership allows for local control in deciding on the priorities and agenda.¹⁸

Recognizing that resources on the continent are scarce, the policy envisions the creation of an AU transitional justice fund.¹⁹ AU member states would contribute to the fund, which would serve as an additional source of funding for transitional justice processes in affected countries. The fund would urge recipient states to use the money to support locally owned, context-specific, and participatory processes outlined in the AUTJP. By decreasing AU member states' dependence on international donors in this way, the fund would help member states to play a leadership role in such processes and enhance national and local ownership of them. The fund might also compel the United Nations, donor governments, and civil society groups based in the global North to revisit their assumptions about transitional justice and consider how they can then support South-South exchanges related to transitional justice.²⁰

Displacement

Considering the global crisis of displacement and its enormous impact on the African continent, ICTJ strongly endorses the inclusion of internally displaced persons (IDPs), refugees, and stateless persons in transitional justice processes. In particular, reparations programs should be established for these individuals.

16 UNDP, "Journey to Extremism in Africa" (2017), available at <http://journey-to-extremism.undp.org/content/downloads/UNDP-JourneyToExtremism-report-2017-english.pdf>

17 International Crisis Group, "Tunisia: Violence and the Salafi Challenge" (2013), available at www.crisisgroup.org/middle-east-north-africa/north-africa/tunisia/tunisia-violence-and-salafi-challenge

18 Africa Union, "African Union Transitional Justice Policy" (2019), Section 131. "At the national level, the measures for resource mobilization that should be adopted include: i. As an essential component of the transitional process and national ownership, allocations of funds should be made in national budgets for the implementation of national TJ policies and programmes; ii. Complementing the national budget allocated to transitional processes, consideration should be given to establishing an independent fund with the mandate to mobilize resources through various fundraising activities involving the private sector."

19 Ibid., Section 133 (i). "The Chairperson of the AUC may establish an African Transitional Justice Fund to ensure the availability of resources to enable prompt interventions. Budget allocation for prompt intervention with TJ initiatives should be afforded to affected societies within the respective regions."

20 An example of how global South-to-South exchanges on transitional justice can influence the implementation of transitional justice processes is the 2009 Rabat Conference on the Concept and Challenges of Collective Reparations that ICTJ co-organized with Morocco's Advisory Council on Human Rights, now the National Commission on Human Rights of Morocco. In the report ICTJ produced following the event, ICTJ noted that "it was not coincidental that the experiences that were shared were those of post-conflict or post-dictatorship developing countries from the global South, coming from Asia, Africa, and South America. This South-South conversation is also going to be a continuing one, since most of the developing countries represented at the conference that are exploring the idea of collective reparations have only begun to design or implement them." See ICTJ, "The Rabat Report: The Concept and Challenge of Collective Reparations" (2009), available at www.ictj.org/publication/rabat-report-concept-and-challenges-collective-reparations

It is worth paying attention to and learning from experiences in Libya, South Sudan, the Democratic Republic of Congo, and the Central African Republic — all of which have massive IDP and refugee communities and where programs serving these communities are primarily humanitarian. These humanitarian programs can rapidly access and deliver some resources and meet the short-term needs of IDPs and refugees. However, humanitarian interventions generally do not include solutions for the justice needs of IDPs and refugees — such as access to information about forcibly disappeared or detained family members, documentation, or property — and do not sufficiently address the impacts of the human rights violations that caused the displacement (such as attacks on the community and sexual and gender-based violence, for example). Further, a humanitarian program is unlikely to examine, and might even deliberately avoid addressing, the root causes of conflict that led to displacement — such as identity-based disputes, unequal access to land, or foreign and corporate interests in resource exploitation.

The responses to displacement must offer short-term and long-term remedies, as evidenced by the experience of resettlement and rebuilding of homes in Kenya, for example.²¹ Necessary short-term remedies include providing displaced persons access to housing and land for earning a livelihood. Long-term remedies might entail reparations or property restitution, though such initiatives should not perpetuate historical inequalities. Durable solutions to displacement cannot ignore root causes of conflict and displacement, including land inequality. The AUTJP's focus on land inequality provides a useful framework that can help civil society groups in Africa demanding a more transformative approach to transitional justice, such as those advocating for changes to laws governing land expropriation and distribution in South Africa or those in Kenya demanding that the government address the findings of the country's truth commission on land grabbing.

Shortcomings of the AUTJP

The drafters of the AUTJP noted that it is a living document and therefore provides room for practitioners to learn from its application.²² As such, ICTJ would like to call attention to a few areas of concern that can hopefully be mitigated through careful programming as the policy is implemented in various countries. These concerns include insufficient emphases on the need for a victim-centered approach, the challenge of balancing different elements of transitional justice, the danger that traditional justice measures can pose to equality and inclusion, the crafting of amnesties, and checks on power.

Victim-Centered Approach

All too often, state actors conceptualize and implement transitional justice processes with limited involvement of victims, members of civil society, and other stakeholders. The exclusion of victims from the design and implementation of transitional justice initiatives entrenches their marginalization and denies them an opportunity to actively shape the

21 The Kenyan government undertook a number of initiatives to address the plight of over 600,000 IDPs after the 2007-2008 post-election violence. These included measures to prevent further displacements and minimize its effect, raise national awareness of the problem, support trainings on the rights of IDPs, collect data for the implementation of durable solutions, develop a national policy on internal displacement, and facilitate IDPs participation in decision making processes. Prisca Kamungi, "National Response to Internal Displacement: Achievements, Challenges and Lessons from Kenya," in *From Responsibility to Response: Assessing National Approaches to Internal Displacement*, Elizabeth Ferris, Erin Mooney, and Chareen Stark (The Brookings Institution – London School of Economics Project on Internal Displacement, 2011), 231-257.

22 Opening remarks by Director of the AU Department of Political Affairs Dr. Khabele Matlosa, at the "Multi-stakeholder consultative meeting on the African Union Transitional Justice Policy, 21 March 2019, Addis Ababa.

justice processes that are meant to address their needs. It is thus troubling that the policy fails to explicitly articulate the need for a victim-centered approach to transitional justice. While noting the importance of victim participation in several places, the policy does not expressly articulate the human rights obligations of states or the rights of victims, including their right to participate. The latter is any especially crucial part of transitional justice, and any successful design and implementation of a transitional justice process requires that victims participate and are consulted at every stage.

Striking a Balance Among Elements of Transitional Justice

To ease the perceived tension between peace and retributive justice, the policy proposes striking a balance between these goals. This entails “achieving a compromise between the demand for retributive criminal justice and the need for society to achieve reconciliation and rapid transition to a shared democratic future.”²³ The policy describes peace, justice, and reconciliation as if they were opposed interests that need to be balanced. While it is true that the two may be in tension sometimes, several post-conflict contexts have demonstrated that both peace and justice are closely intertwined goals. They should not be viewed as competing with one another. Peace has proven to be weak without achieving some degree of accountability, including dismantling armed groups and reforming security sector agencies that are responsible for crimes against humanity through disarmament, demobilization, and reintegration; prosecutions; or vetting. Truth-seeking processes and other social, cultural, and public awareness-raising efforts aimed at combatting narratives that justify, diminish, or deny atrocities that were committed can also contribute to accountability. Sequencing transitional justice processes based on a pragmatic assessment of the appropriate timing for different judicial and non-judicial processes can help a country pursue peace, reconciliation, and criminal retribution. Such sequencing should put measures in place at specific moments and in such a way that each one lays the groundwork for the next — or at least does not close the door on subsequent measures — as well as contributes to the process’s long-term objectives.

Traditional Justice

The AUTJP acknowledges traditional justice mechanisms as valuable resources in the design and implementation of transitional justice processes.²⁴ This recognition supports the key principle of developing local and context-specific approaches to transitional justice. Traditional justice methods have been applied in several post-conflict societies, including Liberia, Sierra Leone, Mozambique, Rwanda, and Uganda, to deal with the legacy of mass atrocities, promote reconciliation, and rebuild social relationships.²⁵ Whereas traditional justice methods might be effective in resolving disputes related to past ethnic conflicts, access to resources, and other community-level issues, they cannot always address human rights violations resulting from the state’s failure to uphold its obligations or the abuse of power at the national level. Traditional mechanisms are meant to be local and applied within a particular community or ethnic group and to deal with isolated conflicts or violations.

23 Africa Union, “African Union Transitional Justice Policy” (2019), para. 38 (iv).

24 Ibid., Section 56. “This policy recognizes TJ mechanisms as playing an important role in TJ, as elaborated in Section I. These should be adapted and used alongside the formal mechanisms to address justice, peace, accountability, social cohesion, reconciliation and healing.”

25 Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation After Violent Conflict: Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance, 2008), p. xiii.

Most African countries are multiethnic societies composed of various ethnic communities with different traditions and beliefs. Despite many similarities among their traditions and beliefs, ethnic groups still approach dispute resolution in distinct ways. It is therefore nearly impossible to find a common traditional justice process that applies to all ethnic groups. The underlying values of various traditional justice mechanisms may be similar, but the specific ceremonies, rituals, and practices vary. Even Rwanda's Gacaca courts had to incorporate aspects of formal justice to make it applicable across the country.²⁶ Therefore, traditional justice processes cannot be effective on their own. Rather, they should be used in conjunction with and to complement other justice processes that seek to address impunity and reform structures of power at the national level.

Of particular concern is the policy's silence on the danger that traditional justice mechanisms can pose to equality and inclusion, as they may perpetuate and deepen existing inequalities and social exclusion, particularly in relation to gender and marginalized groups. It is thus important to put safeguards in place that protect of the rights of women, children, LGBT people, and members of marginalized ethnic or other minority groups when implementing these traditional processes.

Amnesties

The policy's inclusion of amnesties as a tool to advance justice and accountability and how it defines this tool raises concerns. The policy notes that amnesties "are often implemented in TJ [transitional justice] processes as part of the mandate of truth commissions."²⁷ However, this statement does not reflect the practice of truth commissions. While some commissions have recommended amnesties, only one truth commission actually had the power to authorize them, namely the commission in South Africa and their role in achieving accountability is still subject to debate.²⁸ The policy states that blanket or unconditional amnesties should not apply to the most serious crimes. Since the policy does not provide any further guidance or explanation, it implies that such crimes can be subject to a conditional amnesty. The policy does not state what kind of conditional amnesty might be appropriate for such crimes, nor does it set out what circumstances might justify amnesty for less serious crimes.²⁹ ICTJ recommends that the AU develop a follow-up brief that clarifies these issues and guides countries on how to best use amnesties in transitional justice processes.

Institutional Reforms

In the section describing political and institutional reforms, the policy relies on a number of well-established strategies for reform. However, it does not take into account a major factor that has contributed to the failure of most of these strategies, namely the large concentration of unchecked power in the hands of elites. The section does not recommend any checks and balances. It does not suggest that oversight, including civilian oversight empowered with real authority, should be exercised over executive actors, particularly in the security

26 The Gacaca courts were community-based courts set up in Rwanda to try individuals accused of participating in the 1994 genocide.

27 Africa Union, "African Union Transitional Justice Policy" (2019), para. 89.

28 Amnesty International, "Commissioning Justice: Truth Commissions and Criminal Justice" (2010), available at www.amnesty.org/en/documents/pol30/004/2010/en/

29 Fernando Travesí and Henry Rivera, ICTJ, H. "Political Crime, Amnesties, and Pardons: Scope and Challenges" (2016), available at www.ictj.org/publication/colombia-political-crime-amnesties; Ronald Slye, "The Legitimacy of Amnesties under International Law and General Principles of Anglo-American Law: Is a Legitimate Amnesty Possible?" *Virginia Journal of International Law* 43 (2002): 173-247; E. B. Ludwin King, "Amnesties in a Time of Transition," *The George Washington International Law Review* 41 (2010): 617-618.

and intelligence sectors. It does not broach the topic of key public appointments, which are generally, and often exclusively, made by heads of state. It does not recommend how the power to appoint could be more transparent and responsibly exercised to ensure people with the required skills, independence, and integrity get the job.³⁰ It fails to distinguish between administrative reforms based on group affiliation and those based on individual conduct, such as vetting, which is a more objective and fairer process and arguably more appropriate in post-conflict settings. Many countries undergoing transitions struggle with weak or corrupt institutions. Thus, more attention to and guidance on institutional reforms are needed.

Recommendations

Given the complexity of African experiences with conflict, the AUTJP has clear relevance and applicability in the continent. The policy includes a welcomed focus on reparations, gender justice, strengthening the rule of law, context-specific approaches, and addressing patterns of discrimination and inequality that make women and young people vulnerable to violations.

In light of the concerns raised in this position paper, ICTJ recommends that the following steps be taken during the implementation phase of the AUTJP to ensure that it advances sustainable peace, justice, reconciliation, social cohesion, and healing in societies dealing with legacies of massive human rights violations:

- In designing transitional justice processes, member states should balance and sequence the different elements in the way that responds best to the context.
- Member states should adopt a victim-centered approach in the conceptualization, design, and implementation of all transitional justice processes to ensure their relevance and legitimacy.
- Member states should ensure that victims and other marginalized people play a central role and are consulted at every stage in the transitional justice processes. The processes should systematically prioritize the needs and concerns of victims to guarantee that their rights are upheld and protected.
- Member states should implement a gender-sensitive approach to transitional justice as set out in the AUTJP as well as supervise and monitor this implementation. Member states should provide additional support for this purpose in countries where the cultural and social norms are less conducive to gender mainstreaming.
- Member states must acknowledge that gender justice is not exclusively the ambit of women but applies to individuals occupying the full range of gender roles within a particular community. This should include an examination of masculinity when addressing the gendered nature of violations and structures.
 - Member states should allocate resources to investigate sexual and gender-based violence against men and boys, in addition to women and girls, and should open up space for these victims in transitional justice processes.

³⁰ In Sri Lanka, the constitution was amended in 2015 to create a constitutional council made up of 10 members, including opposition members, to end the president's exclusive discretion in the appointment of key posts, including the attorney general. See Neil Iddawala, "The Constitutional Council in Brief," *The Daily FT*, May 22, 2015, available at www.ft.lk/article/423517/The-Constitutional-Council-in-brief

- Member states should exercise caution when using or relying on traditional justice, specifically with regard to issues of inequality and exclusion.
 - Member state should establish safeguards to ensure the protection of the rights of women, children, LGBT people, and members of marginalized ethnic or other minority groups when implementing traditional justice processes.
- Member states should ensure youth can meaningfully participate in the transitional justice process as citizens.
- In implementing the AUTJP, member states should incorporate the jurisprudence of the African Court on Human and Peoples' Rights and findings of the African Commission Human and Peoples' Rights, as part of a wider recognition of existing transitional justice policies.
- The AU should prepare a follow-up briefing for the implementation phase of the AUTJP that provides further practical guidance on institutional reform, amnesties, and other key areas. This briefing should guide member states on how to best use amnesties in transitional justice processes and strongly discourage amnesties that contravene victims' right to truth and redress.