THE STATE OF TRANSITIONAL JUSTICE IN AFRICA:

“Inclusive and Participatory Governance, Gender Equality and Socio-Economic Justice in Africa”

7TH EDITION OF THE AFRICAN TRANSITIONAL JUSTICE FORUM

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RABAT, MOROCCO
1. BACKGROUND

The Department of Political Affairs and Peace and Security (PAPS) at the African Union Commission (AUC), the Centre for the Study of Violence and Reconciliation (CSVR) and the National Human Rights Council of Morocco (CNDH), will organize the Seventh Edition of the African Transitional Justice Forum from the 12th to the 14th of September 2023 in Rabat, Kingdom of Morocco.

The Forum is an annual multi-stakeholder platform to review the state of Transitional Justice (TJ) in Africa. This review identifies emerging issues that present new opportunities for transitional justice theory, practice, and policy interventions. This seventh consecutive edition of the Forum is also the fifth continental dialogue held following the adoption of the African Union Transitional Justice Policy (AUTJP) in February 2019 and the fourth convening after the COVID-19 pandemic and its impacts on the continent and transitional justice processes.

The AUTJP is a continental framework that provides guidance for African States on recovering from existing protracted violent conflicts and authoritarian regime and, in the process, building peace, strengthening democratic governance, and advancing socio-economic development. The AUTJP also guides the AU Member States, Regional Economic Communities (RECs) and non-state actors on transitioning from war to peace and from authoritarianism to democracy while avoiding relapse into conflict and instability. The 2023 Forum will be convened within a context that presents emerging opportunities and, thus, solutions to anticipated challenges for an impactful transitional justice in Africa.

The African Union has declared 2023 the year of “Acceleration of African Continental Free Trade Area (AfCFTA) Implementation”. The year's theme coincides with the 60th anniversary of establishing the Organisation of African Unity (OAU) and the 20th anniversary of the Protocol to the African Charter on Human and Peoples' Rights on Women’s Rights in Africa (Maputo Protocol). These are all essential continental milestones that the AUTJP and this 7th Edition of the Forum will build upon to underscore the importance and impact of transitional justice in Africa amidst the emerging issues and challenges, while incorporating the lessons learned from nearly three decades of transitional justice practice.

2. RATIONALE

Since the inaugural African Transitional Justice Forum in 2017, the TJ Forum has probed the state of transitional justice in Africa. It aims to foster comprehensive reflections and discussions on the continent's advancements, innovations, shortcomings, and challenges in addressing the diverse range of obstacles faced by African people. As a multi-stakeholder platform that brings about African states, TJ experts and practitioners, NHRI, CSOs, RECs, AU organs, and victims' networks, the Forum also endeavors to promote sharing of best practices and provides recommendations for various actors aimed at improving regional TJ practices. In line with the AU Theme of the Year and the Commemoration of 20 years of the Maputo Protocol and the 60th anniversary of the OAU, the 7th Edition of the Forum will focus on Inclusive and Participatory Governance, Gender Equality and Socio-Economic Justice in Africa. It will also pay particular attention to other emerging issues, progress, and best practices in addressing these issues, thus further pushing the boundaries of transitional justice to provide solutions, shape approach(es) and build tools to address them.
**Gender Equality**

The TJ context has played a vital role in transforming the understanding of Gender Based Violence (GBV), including rape during conflicts, from being perceived as a "regrettable" and "inevitable" aspect of warfare. GBV is an unfortunate by-product of war times, thereby constituting a collateral damage, to recognizing, through TJ processes, the gendered dimensions of conflict and GBV experiences particularly of women and girls and therefore, giving them priority and better addressing them.

From South Africa's Truth and Reconciliation Commission, Rwanda's International Criminal Tribunal of *Rwanda's Prosecutor v Jean-Paul Akayesu case*, Morocco's Equity and Reconciliation Commission to the Hissene Habre decision of the AU Extra-Ordinary Chambers and The Gambia's Truth, Reparations and Reconciliation Commission, strides have been made to redress conflict-related sexual violence crimes. GBV and structural vulnerabilities of women that exacerbate and perpetuate their suffering during the conflict from interim relief to reparations programmes, redistributive justice programmes, and a gendered analysis of conflicts, gross human rights violations vis-à-vis truth commissions and commissions of enquiry, and how the gendered dimensions of harm are being redressed.

Transitional justice policies and continental studies have also placed gender at the core of discussions, development, and implementation. Cognizant of the significance of addressing the gendered dimensions of conflict, the AUTJP calls for gender-sensitive transitional justice processes that “reveal patterns of gender abuse, improve access to justice for women, inform institutional reform to promote gender justice and create a space for women to inform sustainable peacebuilding. The AUTJP explicitly refers to gender twice as part of its overarching thematic concerns and among the nine guiding principles that underpin the goals of the policy is one exclusively dedicated to “due regard to the gender and generational dimensions of violations and transitional processes” As such, the policy commits to ensure “TJ processes envisage special measures of support for women and youth” and that “provision should also be made for ensuring active participation of women and youth” be adopted.

Additionally, the AUTJP identifies women and girls as a “cross-cutting issue” for transitional justice processes. Due to their marginalized and vulnerable positions, issues related to women and girls should thus be included in the development and delivery of all transitional justice processes. The AUTJP urges states to adopt TJ processes that address gender biases in transitional societies that hinder women from claiming and enjoying their socio-economic and political rights. Also, the principles of popular participation and inclusivity in the policy, amongst others, are meant to redress the challenge of gender inequality, including poor participation of women and other marginalized groups in transitional justice processes across the continent.

The African Commission on Human and People’s Rights Study on Transitional Justice and Human and People’s Rights in Africa (ACHPR TJ Study) also highlights innovative measures designed to address gendered impacts of conflict, from women-only hearings to friendlier court processes as well as legal teams (prosecutors and judges) taking a progressive approach to facilitating gender justice and adopting a gender transformative approach to addressing the lived realities and experiences of women and girls. The AUTJP reaffirms the fundamental rights of women, as comprehensively outlined in the Maputo Protocol, which guarantees the protection of women's socioeconomic rights and their rights to peace and emphasizes the importance of Member States providing remedies for women and girls whose rights have been violated.

Notwithstanding the policy and practice strides towards achieving gender equality in TJ highlighted above, the gaps that still exist which require further reflection, sharing of best practices and progressive
recommendations aimed at moving us forward. Among others, these gaps include viewing gender as a synonym of women and girls, thus limiting gender to addressing women’s experiences, limitations in transforming fundamental gender biases in transitional societies; limitations in addressing social, cultural, religious, and structural factors that perpetuate gender inequality; limited participation of women in decision making and design of TJ processes, and socio-economic exclusion of women and girls.

It is important that gender justice is not exclusively the ambit of women but applies to individuals occupying the full range of gender roles within a particular society.

Other gaps include limited TJ interventions that address social, cultural, religious, and structural factors that perpetuate gender inequality, limited participation of women in decision making and design of TJ processes, and socio-economic exclusion of women and girls.

By addressing the gendered impact of conflicts, promoting women’s participation, and advocating for gender-responsive policies, the TJ Forum will reflect on both the achievements and the challenges encountered in making transitional justice processes inclusive, equitable, and attuned to the unique needs and rights of women. Moreover, it will foster collaboration to further advance gender equality within the context of transitional justice in Africa.

**Socio-economic justice**

Although the OAU achieved some of its objectives of “ridding the continent of the remaining vestiges of colonisation and apartheid”, the legacies of these systems have remained. Socio-economic injustice and inequality are one of the legacies of the continent’s violent past, with roots in colonialism. Achieving socio-economic justice and transformation is one of the goals of transitional justice highlighted in the AUTJP. The AUTJP also includes redistributive or socio-economic justice as one of the indicative pillars of transitional justice aimed at securing peace and redressing a history of structural inequality as well as violence, conflicts and repression on the continent.

Whereas TJ has primarily focused on violations of civil and political rights, there is increasing recognition of the importance of addressing socio-economic injustices and exploitation, which are often the root causes of the conflict. A few truth commissions have issued recommendations on addressing societal inequality and violations of economic and social-cultural rights.

There has been slow progress in addressing socio-economic injustice in national TJ processes, which has resulted in the perpetuation of socio-economic exclusion, particularly affecting women, youth, ethnic minorities, and other disadvantaged groups. This exclusion has had adverse effects, further exposing women to the risks of gender-based violence and increasing the vulnerability of youth to radicalization and violent extremism.

According to UNECA’s 2005 Governance Report, besides corruption, unemployment and poverty among the marginalised groups, including women and youth are the most serious national problems confronting African countries. The Africa Continental Free Trade Agreement (AfCFTA) innovatively addresses some of these challenges and harnesses the power of women and youth to participate in free trade, for their socio-economic transformation and justice. There is therefore a need to explore strong linkages between AfCFTA and TJ as well as opportunities to design TJ processes that place realisation of socio-economic rights for the marginalised groups and ultimately socio-economic justice at the centre.
**Other TJ challenges**

While paying homage to the AU theme of the year and commemorating the key milestones achieved on the continent policy-wise, challenges still abound. Free trade and free movement of people across African borders remains a challenge, particularly for the teeming unemployed African youth, one that is compounded by conflicts, creating challenges of internal displacements, refugee challenges and statelessness.

Other challenges include the negative roles of the private sector multinational corporations leading to violent conflicts to secure business interests and resulting into gross human rights violations and dispossession of land belonging to communities. Corporate accountability through TJ for the role played by the private sector in conflicts has been elusive, with much fewer successes through litigation at national, regional, continental and international human rights justice mechanisms and judicial courts.

The role of Mental Health and Psychosocial Support (MHPSS) in addressing both historical unresolved trauma and current trauma and psychological shocks brought about by conflicts, repression and structural inequality on the one hand, and guaranteeing non-recurrence of conflicts, on the other hand, has gained traction. The need for healing as an outcome of TJ and integration of MHPSS in TJ processes is central to achieving sustainable peace. Notwithstanding the growing recognition of the need to integrate MHPSS in TJ, MHPSS is frequently overlooked in TJ processes and seldom forms part of the larger post-conflict recovery strategies. Transitional justice interventions that include MHPSS often provide these services as *ad hoc* and short-lived interventions for victims, targeting specific groups of people at the expense of others, and as interventions that do not respond to the daily needs of the population.

Lastly, although there has been a significant normative shift towards support for inclusivity and diversity in transitional justice processes in Africa, translating this into practice has however proven a lot more challenging. Victims of human rights violations in settings of war and mass atrocity include a broad range of people targeted or made vulnerable for various reasons. They experience different forms of violations and present with different needs in relation to accessing redress and rebuilding their lives. Recognizing the full diversity of victims' experiences and requirements highlights the importance of approaching them as unique and essential constituents who should be consulted and understood. There is therefore a need to consider the diversity, participation and inclusivity of victimised groups in TJ processes, rather than treating them as a uniform mass.

### 3. THEMATIC FOCUS OF THE FORUM

Linking transitional justice, gender equality, and socio-economic justice in Africa recognises the interconnectedness of these dimensions and allows for a more comprehensive and effective approach to achieving lasting peace, equality, and development. By delving deeper into these interconnected challenges and exchanging best practices and innovative approaches during this edition of the Forum, African countries have an opportunity to collaborate towards creating just and inclusive societies that uphold human rights, secure justice, promote reconciliation, and foster socio-economic transformation.

To this end, the 7th edition of the Forum will focus on the following themes that will make up various panel discussions over the three days:
i. Free movement of goods and people in Africa and the African Continental Free Trade Area (AfCFTA): A Transitional Justice Lens to addressing Challenges and Opportunities for Marginalized Groups’ Socio-economic Transformation

ii. State of Transitional Justice in Africa: Developments and Progress from Ongoing National TJ Processes

iii. Business Sector Accountability through Transitional Justice: Lessons, Challenges and Opportunities for Pursuing Justice for Private Sector Violations and Crimes in Africa

iv. Conflict Related Sexual Violence, Gender and Masculinities and Transitional Justice: Reflections on Progress, Innovation, Gaps and Opportunities

v. Advancing Women and Socio-Economic Justice in Africa: Reflections on Progress, Limitations, and Innovation

vi. Africa’s Journey on Implementing Transitional Justice: Progress and Challenges for Member States, AU Organs, and RECs

vii. Children and Youth in Transitional Justice: Moving Beyond their victimhood to Active Participation in Transitional Justice Processes to Guarantee Non-Recurrence.

viii. The Role of African National Human rights Institutions (NHRI) in TJ: Safeguarding achievements and ensuring sustainability of results


x. Diversity, Equity, and Inclusivity in Transitional Justice: Shaping New Discourses, Lens and Approaches to Transitional Justice

4. OBJECTIVES

The Seventh Edition of the African TJ Forum aims to reflect on the state of transitional justice within the ambit of this year theme of “Inclusive and Participatory Governance, Gender Equality and Socio-Economic Justice in Africa” to achieve the following broad objectives of such a multi-stakeholder convening:

i. To provide a multi-stakeholder platform for identifying holistic solutions to the common challenges related to TJ, gender equality and socio-economic justice as well as other emerging issues, and proffering solutions that are rooted in collective and national experiences and reality.

ii. To share best practices, Africa’s success TJ experiences on specific themes of the Forum highlighted above, and generate new knowledge to advance a Pan African transitional justice discourse and transform its practice; and

iii. To facilitate ongoing interaction and collaboration between policymakers at national, regional and continental levels, civil society, national government stakeholders (at implementation level), the academia and transitional justice experts and practitioners on specific themes of reflection and discussion during the Forum, to aid effective implementation of the AUTJP in Africa.
5. EXPECTED OUTCOMES/OUTPUTS

The Forum will have the following outputs:

i. Database of TJ experts, researchers, institutions and practitioners, which will serve as a resource for implementation of transitional justice processes by African member states at a national level
ii. Reflective report
iii. Reflective analysis pieces
iv. Papers drafted by experts expounding on the thematic topics of the Forum as part of TJ knowledge development and management agenda.

6. MEETING METHODOLOGY

To facilitate reflective learning and discussion on TJ, the meeting will consist of panel presentations and high-level exchange and reflection sessions by TJ practitioners, experts, and policymakers on emerging and ongoing continental issues. All sessions will be held in person, and some will be shared on virtual platforms where participants will be invited to register to secure their participation and attendance. The working languages of the African Forum on Transitional Justice will be Arabic, English, Portuguese, and French. Simultaneous interpretation will be provided.

7. PARTICIPANTS

The Forum will bring together scholars, researchers, practitioners, policymakers, representatives of national human rights institutions, civil society organizations and other interested participants working on TJ issues in Africa.

8. CONTACT DETAILS

For RSVP and logistical support, contact details are below:

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