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Silencing the guns and COVID-19: A converging point for transformative transitional justice?

Author: *Andrew Harry Songa*

Consultant- Transitional Justice, Human Rights and the Rule of Law

ABSTRACT

The year 2020 has presented the African Union (AU) with two major challenges requiring continental coordination and collaboration. The first is the objective of ending the scourge of conflict on the continent by 2020, while the second is the ongoing COVID-19 global pandemic. Both challenges reveal similar themes: that of underlying issues or root causes that have exacerbated immediate impacts and inhibited effective responses; and the sustained calls for African States to transform their economies towards social equity, delivery of basic services to the people and sustainable development. In utilising desk review to assess the policy frameworks as well as contemporary decisions of the African Union, this paper will interrogate whether the convergence of “Silencing the Guns” and COVID-19 provides an opportunity for the pursuit of transformative transitional justice as a continental endeavour.

A. THE INTERLINKED CHALLENGES OF SILENCING THE GUNS AND ADDRESSING THE COVID-19 PANDEMIC

“Historically, pandemics have forced humans to break with the past and imagine their world anew. This one is no different. It is a portal, a gateway between one world and the next.

We can choose to walk through it, dragging the carcasses of our prejudice and hatred, our avarice, our data banks and dead ideas, our dead rivers and smoky skies behind us.

Or we can walk through lightly, with little luggage, ready to imagine another world. And ready to fight for it.” (Roy 2020).

The year 2020 has presented the African Union (AU) with two major challenges requiring continental coordination and collaboration. The first is the hitherto self-declared objective of ending the scourge of conflict on the continent by 2020, while the second is the ongoing COVID-19 global pandemic.

1. Silencing the Guns

The AU in July 2019 decided on its operational theme for 2020 to be “Silencing the Guns: Creating Conducive Conditions for Africa’s Development”. The theme serves as a culmination of initiatives that trace back to the Solemn Declaration made by Africa’s leaders during the 50th anniversary of the Organization of African Unity-turned-AU on 25 May 2013 (Solemn Declaration).

The Solemn Declaration envisioned a “conflict-free Africa” which was to be achieved through a series of constitutive elements. It called for addressing the root causes of conflicts by tackling economic and social disparities while also ending impunity through enhanced national and continental judicial institutions. The declaration required the pursuit of accountability to be undertaken as an endeavour of collective responsibility and in line with the AU’s principle of non-indifference. Another element was that of eradicating emerging sources conflict which include piracy, terrorism, drug and human trafficking, transnational organised crime and cybercrime just to name but a few. In order to further the agenda on conflict prevention, peace-making, reconciliation and post-conflict reconstruction, the declaration prioritised the operationalisation of the Africa Peace and Security Architecture (APSA). A pledge was also made to ensure that Africa would steer clear of nuclear weapons and implement agreements that would eradicate landmines and stem the proliferation of small arms and light weapons. Finally, the declaration also undertook to address the issue of forced migrants by fully implementing continental and universal frameworks pertaining to internally displaced persons and refugees.

The established timeline for the fulfilment of these pledges was December 2020 which was enshrined in the AU Master Roadmap of Practical Steps to Silence the Guns by the Year 2020 (AUMR). The AUMR is billed as “realistic, practical, time-bound implementable steps to silence the guns in Africa by 2020”, with an implementation timeline of 2017-2020 (African Union 2016:1). The AUMR essentially distils the pledges of the Solemn Declaration into activities clustered under political, economic, social, environmental and legal aspects. The importance of the silencing the guns initiative is further underscored by the fact that it is one of the flagship projects under the AU’s Agenda 2063, which is Africa’s 50-year forward-looking continental framework aimed at realising socioeconomic and political transformation (African Union n.d.).

It is self-evident that the goals of the Solemn Declaration are yet to be fully achieved as all 5 geographic regions of the AU are reported to be going through varying degrees of conflict, crisis situations or transition (African Union 2020a). However, in selecting the theme for 2020 to be “Silencing the Guns”, the AU demonstrated its intent to generate enhanced impetus for the implementation of the AUMR and achieve tangible gains before the December 2020 deadline. This was reaffirmed by President Ramaphosa of South Africa upon assuming the role of Chair of the AU for 2020. Among the priorities for his chairmanship, President Ramaphosa indicated that they would pay particular attention to the conflict situations in South Sudan and Libya while also accelerating the implementation of the AUMR which was to be the subject of an Extra-Ordinary Summit for 2020 (H.E. Ramaphosa 2020). The potency and ongoing concern of this agenda was further affirmed in the adoption of the 5th progress report on the implementation of the AUMR in which the AU Assembly called on Member States “to redouble their efforts to ensure other aspects in the AUMR namely, economic, social, environmental and legal are also implemented and well reported.”(African Union 2020b)

2. The COVID-19 Pandemic

In the immediate aftermath of the 33rd ordinary session of the AU which occurred in February 2020, the COVID-19 pandemic emerged as an urgent and momentous global concern that would need the AU to mount a coordinated response if Africa was to stave off the adverse impacts already being witnessed in other parts of the world. While it was first reported in China between the tail-end of 2019 and January 2020, COVID-19 is a communicable respiratory disease that has spread rapidly across the globe and has resulted in numerous fatalities as well as serious health complications in those who survive it. As at 23 September 2020, the Africa Centre for Disease Control and Prevention (Africa CDC) reported that in Africa, there had been 1,420,629 cases of COVID-19, 34,327 deaths as a result of the disease and 1,168,444 recoveries (Africa CDC n.d.). It is in this context that the AU immediately prioritized the reinforcement of the response capabilities of Africa's health infrastructure with a focus on procuring the medical supplies required to fight the pandemic. This was initiated in March 2020 through the establishment of the AU COVID-19 Response Fund with an initial pledge of US\$ 12.5 million, an additional allocation of US\$ 4.5 million to the Africa CDC and the establishment of ministerial coordination committees on health, finance and transport so as to streamline the implementation of the continental strategy (African Union 2020c).

Even as the emergency and public health response was underway, it soon became evident that the COVID-19 pandemic was far deeper than a health crisis. With no vaccine in sight and prevention and mitigation measures that include social distancing, city or town lockdowns and curfews, COVID-19 has resulted in adverse socio-economic consequences the world over. In an analysis published in April 2020, the AU noted the following as some of COVID-19's impacts on Africa's economy: massive revenue and job losses related to travel and tourism; significant losses in oil-revenue adversely affecting countries such as Angola and Nigeria; deteriorating trade and disrupted supply chains in China occasioning inflation in countries such as South Africa while also exposing countries that are heavily reliant on China as an export market such as South Sudan and Eritrea; a high probability of ballooning external debt and servicing costs; a steep decline in the levels of Official Development Assistance (ODA), Foreign Direct Investment (FDI), portfolio investment inflows and in remittances flows; nearly 20 million job losses (formal and informal) as the pandemic persists; and the rise of social unrest as a result of the containment strategies deployed by governments to fight the pandemic (African Union 2020d).

Migration and mobility has also emerged as key challenge in the time of COVID-19 with far reaching ramifications for Africa's developmental agenda under the AU's Agenda 2063. Indeed, the free movement of persons as well as that of goods and services are essential to Agenda 2063, yet COVID-19 has pushed States to close borders and restrict movement as way to curb the spread of the virus. A key unintended consequence of these measures is the erosion of protections for migrants and in particular refugees and Internally Displaced Persons (IDPs). This is particularly concerning with Africa accounting for 5.5 million forced displacements as at 2019 (April, Phiri and Gowreesunkar 2019). The COVID-19 pandemic has served to exacerbate the challenges faced by these migrant groups due to hampered access to humanitarian assistance even as they reside in conditions that make it difficult to comply with the sanitation and social distancing requirements that constitute most State containment measures. It is for these reasons that the AU reiterated "the inalienable rights of the Migrants, Refugees and IDPs which remain

intact at this extraordinary moment of restrictive mobility” and called on its Member States to act humanely and uphold their related obligations under international law (African Union 2020e).

With the COVID-19 pandemic super-imposing itself on already fragile contexts of conflict and instability, the impact has also been felt in the arena of peace and security. The socio-economic strains that accompany the pandemic risk accentuating drivers of conflict which include structural governance deficits, the absence of sufficient institutionalised dispute resolution mechanisms and resource-based grievances (Chergui n.d.). Fear and limited knowledge on the nature of the disease has fuelled xenophobia and stigma aimed at those infected as well those in recovery and their families (Chergui n.d.). Furthermore, the lockdown and curfew measures as well as the security operations that enforce them have seen a marked rise in human rights violations and abuses at the hands of State officers (Dersso 2020).

Mediation efforts and the implementation of peace agreements in delicate situations such as Libya, South Sudan and the Central African Republic have faced significant difficulty in moving forward in the face of COVID-19 restrictions (Chergui n.d.). Transitional governments such as those in Sudan, South Sudan and the Gambia are under considerable strain as they seek to mount effective emergency responses to the pandemic, navigate delicate negotiations to end live conflicts, revive economies that were already in dire-straits prior to COVID-19 and effectively address the justice demands emerging from their respective conflicts. Inevitably, the COVID-19 pandemic has also occasioned the postponement or temporary suspension of transitional justice processes such as public hearings for truth commissions, investigations into incidences of gross human rights abuses and the undertaking of reparation programmes in favour of victims (International IDEA 2020). The resurgence of armed conflict and terrorism in West Africa, the Horn of Africa and Mozambique in Southern Africa have also been attributed to the impairment of peacekeeping and counterterrorism efforts on account of COVID-19 containment measures (Chergui n.d.).

From the foregoing, it is evident that the challenges of silencing the guns and combating COVID-19 are interlinked and therefore, the prescriptions to achieve the envisioned goals of eradicating armed conflict and overcoming the pandemic should similarly converge. It is this proposition that opens the door to transformative transitional justice.

B. TRANSFORMATIVE TRANSITIONAL JUSTICE AS A PATHWAY TO HOLISTICALLY SILENCING THE GUNS AND ADDRESSING COVID-19

1. The Nexus of Underlying Issues or Root Causes in Silencing the Guns and Tackling COVID-19

In contemplating the end goals of silencing the guns and combating COVID-19, one theme that connects both agendas is that of addressing underlying issues or root causes that have exacerbated immediate impacts and inhibited effective responses in both respects. Indeed and as already highlighted, the Solemn Declaration which birthed the agenda of silencing the guns by 2020 did identify social and economic disparities along with impunity as some of the root causes of conflict. Furthermore, the 2019 edition of the Africa Governance Report identified the causes of conflict in Africa to include poverty, lack of democracy, population imbalance coupled with social and economic exclusion, continuous violence as a result of experience with large-scale violence, the ‘bad-neighbourhood’ effect where countries experiencing violence expose their

neighbours to it and self-serving leadership which enables impunity and poor governance (APRM and AGA 2019).

As we draw closer to the end of 2020, the issue of root causes remains a central agenda for policy makers as expressed here,

“There is need for a paradigm shift from theoretical discussions on what needs to be done on the silencing the guns agenda, to concretize collaborative efforts to address the underlying issues and prevent the continent’s degeneration to violence.”

(Media Tweets by Silencing the Guns in Africa (@STGinAfrica) / Twitter n.d.)

This position is also reflected in the latest progress report of the AUMR in which Member States, Regional Economic Communities (RECs) and other relevant stakeholders are encouraged to shift their focus towards achieving tangible results on the economic, social, environmental and legal aspects of the roadmap (African Union 2020f). This report further underscores that the pathway to a conflict-free Africa lies in its political and social-economic transformation as envisaged under Agenda 2063.

With regard to COVID-19, one of the ramifications of the pandemic for African States is that it has illuminated and magnified deep structural challenges that have long been insufficiently addressed. These challenges include continued under-investment in public health and fundamental research, food insecurity, malfeasance with regard to public finances and the prioritization of infrastructure projects at the expense of human wellbeing (Various Signatories 2020). In addition to economic models that fail to adequately contemplate human wellbeing, the securitized response to the pandemic and human rights abuses documented as a result, further manifest the eroding social capital as well as lack of social cohesion and political stability in various African States (Dersso, 2020).

It is for these reasons that conversations on the post-pandemic phase or COVID-19 recovery have fast gravitated around calls for a paradigm shift or structural transformation with regard to Africa’s governance systems, economic models and development priorities. A series of African intellectuals have outlined the agenda as follows, “It is to break with the outsourcing of our sovereign prerogatives, to reconnect with local configurations, to break with sterile imitation, to adapt science, technology and research to our context, to elaborate institutions on the basis of our specificities and our resources, to adopt an inclusive governance framework and endogenous development, to create value in Africa in order to reduce our systemic dependence.” (Various Signatories 2020)

Noting the recurring theme of transformation in the prescriptions of silencing the guns as well as in addressing COVID-19, this paper will now explore transformative transitional justice as a converging point for both priorities.

2. The Concept of Transformative Transitional Justice

To appreciate the concept of transformative transitional justice, we must first take stock of transitional justice. Transitional justice denotes the measures utilized by States to deal with the legacies of massive human rights abuses (De Greiff 2010:18). The United Nations (UN) outlines the goals as ensuring accountability, serving justice and achieving reconciliation (United Nations 2004: [8]). De Greiff (2010) on the other hand, frames recognition and civic trust as mediate

goals and reconciliation and democracy as final goals. Transitional justice measures include but are not limited to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals; these forged from the three epochs of the post-World War II phase, post-Cold War phase and the state-steady phase (Teitel 2003). Various contextual experiences over this period have brought with it critical reflections pertaining to normative soundness as well as the results and impacts of transitional justice; and it is these reflections that have opened the door to considerations on transformative justice.

A key criticism of transitional justice is that its normative evolution has established a global project that is imposed, technocratic and decontextualized in a manner that depoliticizes and narrows the scope of transitional justice; to the detriment of key themes such as gender, power and structural violence (Nagy 2008:276). This has ushered in considerations for a transformative turn to transitional justice where the aspiration is to tackle past injustices through measures that usher in an equitable future (Arbour 2007:3). Here, transitional justice is required to be a bridge rather than a wall, linking past and present policy with present injustices (Jung 2010:231); a continuum that enables even modest steps of social transformation (Arthur 2010:12).

One way of enhancing the transformative capacity within transitional justice is to introduce strategic coherence between transitional justice measures and social reforms such as preferential policies, land reform, redistributive schemes and changes in electoral systems (Arthur 2010). On the other hand, robust reformers do not view such modifications as adequately addressing the foundational limits within transitional justice, hence the proposition of transformative justice. Lambourne (2009) propounded transformative justice as a long-term and expansive view of justice that includes accountability or legal justice; 'truth' or knowledge and acknowledgement; socioeconomic justice; and political justice.

Gready (2019:4) provides a contemporary definition of transformative justice with the following constitutive elements: (1) Emphasizing local agency and resources (2) Prioritizing process and pluralism rather than singular paradigms and preconceived outcomes (3) Addressing a violent past, but in a way that acknowledges continuities between past and present and that creating a better future is an open-ended, ongoing project and (4) Challenging unequal and intersecting power relationships and structures of exclusion through strategic action spanning the local, national (the State) and global levels. This definition opens the door to transformative transitional justice as its theory of change conceptualizes "transitional justice interventions as a process, from conception to evaluation, and as part of broader social and political contextual developments, with the aim of using such theories as a focused tool to drive accountability and bottom-up approaches." (Gready 2019:8).

Still, criticisms of transformative transitional justice have emerged. A key criticism is failure to account for core domestic barriers to economic justice in presuming that transitional justice can have a transformative, catalytic effect on economic dynamics and outcomes simply by intention and design (McAuliffe 2017:xi). Others argue that based on inherent limitations and the importance of conducive contexts, transitional justice should have tempered ambitions fully cognizant of its short-term processes, limited mandates and political buy-in (Lynch 2018:18); rather than embark on the more ambitious goals of transformative justice.

With this conceptual framing in mind, it is now necessary to locate transformative transitional justice within the AU's normative structure before interrogating its applicability to the silencing the guns and COVID-19 agendas.

3. Locating Transformative Transitional Justice within the AU's Instruments

The key element of a bottom-up approach that is advanced within transformative justice does reside within the AU's stated vision which is "An Integrated, Prosperous and Peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena." (African Union n.d.). The Constitutive Act of the AU then lays out the foundational norms for justice by: providing for the AU's right to intervene in a Member State in the event of war crimes, genocide and crimes against humanity; provides for the AU to entertain requests for intervention to restore peace and security; calls for the respect for democratic principles, human rights, the rule of law and good governance; and requires respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities. Furthermore, the AU Protocol Relating to the Establishment of the Peace and Security Council (PSC Protocol) requires respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law.

Essential to the justice pillars within the AU system is the African Charter on Human and Peoples' Rights (African Charter) which has been described as the "foundation on which the edifice of the African human rights system is constructed" (ACHPR 2019:28). The African Charter outlines three categories of rights namely, civil and political rights, economic, social and cultural rights and peoples' rights. The African Charter further establishes the African Commission on Human and Peoples' Rights (ACHPR) as the continental body with the mandate of promotion, protection and interpretation of rights as articulated within the African Charter. In 2019, the ACHPR undertook a study on transitional justice in Africa and based on reflections from past experiences on the continent, concluded that there is need for a balanced approach to transitional justice that "not only enables a more nuanced approach to the wrongs of the past but also allows members of society to overcome the divisions and antagonisms of the past, and work towards a common future to achieve transformation." (ACHPR 2019:27).

Other notable AU instruments that operate alongside the African Charter and illuminate the intersectional realities of human rights include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the African Charter on the Rights and Welfare of the Child. The normative grounding for transformative ambitions such as socioeconomic and political justice can also be located in the AU's instruments on democracy and good governance, key of which are the African Charter on Democracy, Elections and Governance and the African Union Convention on Preventing and Combating Corruption.

With these normative foundations in mind, the foremost articulation of transformative transitional justice within the AU system is enshrined in the AU Transitional Justice Policy (AUTJP) which was adopted in February 2019. To begin with, the policy defines transitional justice as "the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation" (African Union 2019:4). The application of the AUTJP is meant to usher in democratic and socio-economic transformation by providing the policy bounds for the continent's conceptualization of holistic and transformational transitional justice (African Union 2019:2). Furthermore, the policy establishes a continuum between the past, present and creating a better future by perceiving transition to be a journey through which societies address legacies of conflict and gross human rights abuses and move towards a state of democratic order as anchored on sustainable peace and justice (African Union 2019:4).

The AUTJP advances a holistic conception of justice which includes fair institutional, social and economic systems of governance and inclusive development. It outlines redistributive justice as the source of redress for structural inequalities, marginalisation and exclusion. To this end, redistributive justice consists of land reform and protection of property rights; and affirmative action aimed at benefiting of groups or regions that had endured marginalization as well as those affected by violence and development strategies along with wealth/resource sharing and power-sharing arrangements. Additionally, the AUTJP underscores the principle of national and local ownership as a key element for transitional justice processes; that the design and implementation of transitional justice is led and driven by national stakeholders with a central role for victims and other members of society affected by violence in its various forms.

4. The Applicability of Transformative Transitional Justice in the Current Context of Silencing the Guns and COVID-19

With transformative transitional justice duly anchored in AU instruments and in particular the AUTJP, it is now important to interrogate the extent to which it is being utilised in applicable contexts to meet the dual objectives of silencing the guns and addressing the fallout from COVID-19. With the emphasis on democratic and socio-economic transformation, the conception of transformative transitional justice under the AUTJP can provide the required policy parameters for those States grappling with the legacies of conflict and/or authoritarianism as further compounded by the socio-economic and governance ramifications of COVID-19.

Indeed, the AU is seized of various country situations in which transitional justice processes were either underway or about to be embarked on but now have to run contemporaneously with emergency responses to COVID-19. Yet as we have already established, there is a convergence point in addressing the underlying issues that have driven conflict in these contexts and now inhibit effective responses to COVID-19. Upending the themes of socio-economic disparities, exclusion, poor governance and impunity which emerge as underlying issues in both silencing the guns and combatting COVID-19, are the primary focus for the transformation envisaged in the AUTJP. A pivotal question therefore, is the extent to which the AU has enlivened the transformative objectives of the AUTJP in applicable contexts; this will be interrogated through the select situations of Sudan and the Gambia which have recently experienced political transitions and rolled out transitional justice agendas that have been the subject of AU consideration.

Sudan

In April 2019 Sudan's President Omar al-Bashir was deposed from power by the military on the back of a popular revolution sustained through a series of public protests against an unfolding economic crisis and legacy of autocratic rule. In recognising this, the AUPSC expressed solidarity with "the Sudanese in their aspirations to constitutional order that will enable them to make progress in its efforts towards democratic transformation of the country" (AUPSD 2019a). Consequently, the AUPSC suspended Sudan's participation in all AU activities until a civilian-led transitional authority was established. This pressure along with that of the wider international community led to the execution of "The Political Agreement for the Establishment of Governing Structures and Institutions in Transitional Period between the Transitional Military Council and the Declaration of Freedom and Change Forces". Under this agreement, a Sovereign Council consisting of military and civilian membership was established as a collective head of state mechanism and a transitional government established with a council of ministers under the leadership of a civilian, Prime Minister Abdalla Hamdok.

The transitional agreement also established a comprehensive roadmap for reform as a pathway to resolving the issues that led to the revolution. Dubbed “Missions of the Transitional Period”, the agreement’s fifth section outlines a 12- point agenda which includes: obtaining comprehensive peace in Sudan by addressing root causes, providing redress and utilising affirmative action; remedying the country’s economic crisis while implementing urgent economic, financial and humanitarian programs; reforms to the human rights system and wider justice sector; enhancing the participation of women in public affairs and combating discrimination; constitutional reform; enhancing the independence and competence of public institutions, including reforms to the military apparatus; a balanced foreign policy and improved international relations; improved social welfare and provision of social services; instituting procedures and measures for transitional justice; and supplanting the enabling structures of the Bashir regime with revamped rule of law institutions (Anon. n.d).

Sudan’s “Missions of the Transitional Period” sets the stage for transformative transitional justice by aligning transitional justice measures with broader peacebuilding and governance priorities in a manner that presents the potential for strategic coherence among them. The active involvement and support from the AU also introduces the possibility of implementing the AUTJP within the transitional justice framework to be adopted by the Sovereign Council. Indeed, the AUPSC at its 931st meeting in June 2020 directed the African Union Commission (AUC) to work with the transitional government in undertaking a needs assessment exercise to inform the mobilization of international support in relation to the Sudan peace process (AUPSD 2020). Furthermore, the ACHPR in a resolution from its 66th ordinary session called on Sudan’s transitional authorities to establish a transitional justice framework that is based on broad consultation, is in line with the AUTJP and guided by the ACHPR Study on Transitional Justice in Africa (ACHPR 2020).

The transitional government has made significant progress in the arena of securing peace courtesy of the Juba Agreement of 31 August 2020. The Juba Agreement was executed between the transitional authorities on the hand and the Sudan Revolutionary Front (SRF) and the Sudan Liberation Movement–Minni Minnawi (SLM/MM) on the other. While not covering the entirety of conflicts in Sudan, the Juba Agreement is an important doorstep to sustainable peace in the regions of Darfur, South Kordofan and Blue Nile which have been subjected to protracted conflict, mass displacements and numerous fatalities (Marsden 2020). Yet despite this progress, challenges have emerged. Against the backdrop of COVID-19, Sudan’s economic crisis has exacerbated; the informal sector in particular has felt the adverse effects of the government-instituted lockdown and in May 2020 government revenue was down 37 per cent from previous projections (Crisis Group 2020). This coupled with public dissatisfaction at the pace of reforms being undertaken, has reignited public protests which have placed the transitional government under considerable strain (Aljazeera 2020).

While the transitional authorities have proposed draft legislation to establish the Commission for Transitional Justice as the institutional mechanism to further public aspirations in this regard, the proposal has been roundly criticized for insufficient public participation and consultations with stakeholders in its preparation. This was reiterated as a public trust deficit issue for the government in a recent national perception study of transitional justice in Sudan which found that, “Trust in government institutions to carry out transitional justice is low as a result of ineffective public consultations and lack of transparent information sharing to date.” (USAID 2020). This lack of public confidence is further underpinned by the yet to be fully dismantled legacy of State capture from the Bashir regime which is characterized by corruption and

mismanagement of the economy to the benefit of the ruling elites and corporate allies (Crisis Group 2020).

Therefore, the path to strengthening regime stability for the transitional government as well as addressing the economic crisis lies in shoring up public confidence which in turn is contingent on making progress in the implementation 12-point “Missions of the Transitional Period”. Utilizing the frame of transformative transitional justice would set it well on this path. The transitional government has received some interim relief in the form of \$1.8 billion in international assistance from the “Partners Forum for Sudan” as convened by the UN, European Union (EU) and German government in June 2020. However, it remains essential for the transitional government to make tangible progress on the transitional justice front primarily by embracing national dialogue and consultation with stakeholders in formulating the necessary framework. The AU could be instrumental in offering technical assistance to the transitional government so as to implement the AUTJP (Hudson 2020).

The Gambia

The Gambia in 2016 went through a highly contested election that saw President Yahya Jammeh who had been at the helm for 22 years, refuse to relinquish power after losing the election. This resulted in a political impasse that was characterized by sustained public protests calling for Jammeh to respect the election results. The crisis was resolved after the intervention and mediation by the Economic Community of West African States (ECOWAS), which resulted in the transfer of power to the candidate that had been declared winner of the 2016 election, President Adama Barrow. The 22-year tenure of Jammeh’s rule has been described as, “a system of arbitrary one-man rule, which subjugated the population to gross human rights violations, terror and serious abuses of office.” (Gambia Ministry of Finance and Economic Affairs 2017:5). Furthermore, this arbitrary rule led to economic plunder and mismanagement which in turn adversely affected the Gambia’s critical sectors such as education, health, agriculture and tourism. It is this history that motivated the Barrow administration to prepare the 2018-2021 National Development Plan (NDP) as a way of addressing the past and forging a just and equitable future. The NDP’s goal is to realise good governance and accountability, social cohesion, national reconciliation and a revitalized and transformed economy (Gambia Ministry of Finance and Economic Affairs 2017).

The NDP essentially provides the overarching policy framework of reform for the Gambia. Similarly as in the case of Sudan, the NDP lays out a platform for transformative transitional justice by undertaking transitional justice measures in concert with broader reforms in a manner that not only provides redress for past violations, but also shrinks the space between the governed and those who govern. This is seen in the NDP’s first strategic priority which focuses on restoring good governance, respect for human rights and the rule of law and citizen empowerment through decentralization and local governance. It is under this strategic priority that the establishment of the Truth, Reconciliation and Reparations Commission (TRRC) was provided for.

However, in addition to the TRRC, this strategic priority also provided for: Constitutional reform as steered by the Constitutional Review Commission (CRC); amendment of the criminal code and public order legislation; the establishment of functional Commissions with mandates on Human Rights and Anti-Corruption; compliance with human rights treaty obligations; and justice sector reforms aimed at enhancing the independence and efficiency of the Ombudsman,

Judiciary and State Law Office (Gambia Ministry of Finance and Economic Affairs 2017). Aspects of implementing this agenda have inevitably been affected by the COVID-19 pandemic.

The TRRC which began its work in January 2019 was still in the midst of undertaking public hearings when the pandemic struck. While the TRRC had hoped to conclude public hearings by October 2020, it has since had to suspend its hearings twice in the wake of the pandemic; the first time in March 2020 when the Gambia encountered its first reported case of COVID-19 and the second time in August 2020 as an indefinite suspension in the wake of numerous infections that had risen to 3,150 active cases and 99 deaths by 5 September 2020 (Darboe 2020a). Physical community outreach has also come to a halt as the TRRC resorts to utilizing radio as a way to overcome the lack of public gatherings. Another impact of the suspension of activities due to COVID-19 is the loss of strategic cohesion and sequencing of the reform agenda with the completion of the TRRC's work now set to take place in the middle of an election year with the next Presidential election set for December 2021 (Darboe 2020a).

The constitutional review has also encountered difficulties. While the CRC was able to complete its consultations and submit the final draft of the proposed new constitution on 31 March 2020, the draft was subsequently rejected by the Gambian Parliament after it failed to obtain the required number of votes to move on to the next stage of the legislative process (Kemo 2020). The result has been public discontent and uncertainty as to the future of the constitutional review process even as the Gambian Justice Ministry hopes to re-table the draft constitution by March 2021 and hold a referendum before the Presidential elections that year (Anon. 2020). The future of the TRRC and constitutional review processes must also contend with the adverse impacts of COVID-19 on the Gambia's economy; the government expects an estimated 20 per cent decline in revenue (Darboe 2020b). This reality may lead to a constriction in the resources steered towards these processes and the wider reform agenda.

Yet, transformative transitional justice remains essential to the Gambia's future stability. The rejection of the draft constitution has already been a source of public discontent with the government. Furthermore, prior to the suspension of its hearings, the TRRC process had also drawn strong criticism after 4 members of a notorious hit squad accused of killings during the Jammeh regime were able to secure their freedom after cooperating with the TRRC in providing information on the atrocities they committed (Hunt 2019). Some victims have decried this action as undermining the principle of a victim-led process since the victims were not consulted on the decision to release the perpetrators and furthermore, there is an added fear that the measure was an indication that President Barrow is willing to compromise on justice with a view to building alliances with Jammeh supporters in order to secure victory in the 2021 elections (Hunt 2019).

The political alliance that brought Barrow to power has since fractured and could set the stage for yet another highly contested election. It is for this reason that the AU must maintain a keen interest in the Gambia's transitional justice agenda and encourage the government to see through the critical reform measures it ascribed to under the NDP before the 2021 elections. The AU is already actively involved through the AU Technical Support Team to the Gambia (AUTSTG) which has been embedded with the TRRC and also provided support in relation to security sector reforms as based on the AUTJP (AUPSD 2019b). Furthermore, the AU can also galvanize international support towards ensuring that resources are accorded to completing the reform agenda even as the immediate priority shifts to addressing the COVID-19 pandemic and its economic impact.

C. CONCLUSION

This paper has focused on silencing the guns and COVID-19 as 2 key priorities for the AU and explored the role of transformative transitional justice in addressing them. An analysis of the AU instruments and interventions as well as other stakeholder observations in both respects, reveals a convergence in terms of underlying issues or root causes that have either amplified the immediate adverse effects of conflict and the COVID-19 pandemic or inhibited effective responses to the same. Indeed poor governance, impunity, poverty and social and economic exclusion are common themes as underlying issues that have fuelled conflict on the continent and now exacerbated the effects of the COVID-19 pandemic. Yet the sheer scale and global focus on COVID-19 has provided the much needed impetus to reflect on and address these underlying issues in a manner that has revitalized the AU's agenda on silencing the guns which has failed to realize its ambitious target of ending armed conflict on the continent by 2020. It is on this basis that the paper has interrogated the applicability of transformative transitional justice as a framework through which the underlying issues of conflict and COVID-19 can be addressed in transitional contexts.

Transformative transitional justice aspires to tackle past injustices through measures that usher in an equitable future and it does so by acknowledging continuities between the past and present and thereby pursuing strategic coherence between transitional justice measures and broader social reforms such as affirmative measures, redistributive justice measures and constitutional reform but to name a few. This approach is well captured in the AUTJP since it advances a bottom-up approach and its conception of transition establishes a continuum between the past, present and creating a better future. Furthermore, the AUTJP provides a holistic conception of justice which includes redistributive justice as a source of redress for structural inequalities, marginalisation and exclusion.

Sudan and the Gambia provide contemporary transitional experiences that demonstrate the applicability of transformative transitional justice and with support from the AU, the implementation of the AUTJP in particular. In both cases, the COVID-19 pandemic has superimposed itself on a fragile transitional context with far-reaching ramifications on the reform agendas deployed by the respective transitional governments. COVID-19 has served as an amplifier or illuminator of the underlying issues that need to be subject of transformation and in this sense served as a source of impetus for the ongoing transitional justice agendas in both countries. However, COVID-19 has also emerged to be a disruptor of the very same transitional justice processes; mitigation measures such as lockdowns have resulted in the suspension of critical processes such as public hearings of truth commissions and cost-cutting measures as a result of the economic downturn caused by the pandemic could mean a constriction in the resources devoted to transitional justice agendas.

Even more worrying, the immediacy of the COVID-19 emergency could be used as a pretext by some governments to recede from transformative transitional justice measures they had initially committed to. However, as seen in the cases of Sudan and the Gambia any attempts to slow the process of reform in these fragile contexts would only serve to reignite public discontent to the extent of causing political instability and withdrawing the social capital required to fight the COVID-19 pandemic. It is for this reason that the AU must reconcile the dual agendas of silencing the guns and combatting COVID-19 in transitional contexts.

The AUTJP provides the AU with the requisite policy parameters for such a convergence on tackling the underlying issues or root causes. Through this framework the AU must continue to

play its oversight, monitoring and support role to the various transitional contexts in the continent especially at a time when the resolve for transformation will come under considerable economic strain. Rather than a time for despair, the journey out of the COVID-19 pandemic could herald the adoption of transformative transitional justice as a continental endeavour; a paradigm shift that would contribute greatly to silencing the guns and ushering in a rights-based socio-economic transformation that would strengthen Africa's responses to pandemics such as COVID-19 as well as potential ecological crises in the future.

It is on this basis that the following recommendations should be duly considered by the AU, Member States and other stakeholders engaged in transitional contexts:

- i. The goal of silencing the guns must remain a foremost priority for the AU and be characterized by increased efforts to fully implement the AUMR with a particular focus on its economic, social and legal aspects.
- ii. In appreciating of the socio-economic impacts of the COVID-19 pandemic, the realization of social protection and social security should now be elevated to a key pillar or flagship project under the AU's Agenda 2063 alongside other earmarked projects such as silencing the guns and the establishment of the Africa Continental Free Trade Area (AfCFTA).
- iii. The AUTJP must strongly feature in the AU's interventions in transitional contexts. More specifically, there should be enhanced sensitization on the content of the policy for Member States as well as other stakeholders at the national level; increased technical support accorded to governments undertaking transitional justice measures; and improved synergy among the various AU organs whose mandates apply in these contexts. All these initiatives must be underpinned by a collective political will that sees sufficient resources allocated to the implementation of the AUTJP, especially at a time when the adverse economic impacts of COVID-19 are still being processed.
- iv. Most importantly, transitional justice agendas embarked on by Member States should in their essence be people-driven and people-owned initiatives of transformation. Therefore, there is need for significant investment in national dialogue and establishing avenues for effective public participation in a manner that centres the needs of victims and survivors with the ultimate objective of instituting redress mechanisms that are truly responsive to the harms that are uncovered by transitional justice processes. This is essential to restoring dignity to those who have endured atrocities and establishing a pathway to reconciliation that advances wholesome citizenship and becomes the driver for true transformation.

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About Author

Andrew Songa is a lawyer and human rights advocate with over 9 years of experience in the areas of legal research, policy formulation and analysis, domestic and international policy advocacy and civic education. He has previously served as the Program Manager-Transformative Justice for the Kenya Human Rights Commission (KHRC) and sat on the board of the Constitution and Reform Education Consortium (CRECO). He has advised and assisted the African Commission on Human and Peoples' Rights (ACHPR) to draft its Study on Transitional Justice in Africa and the General Comment on the Right to Redress for Victims of Torture and Other Ill Treatment. Mr. Songa is also a graduate of the Geneva Academy's Master of Advanced Studies in Transitional Justice, Human Rights and the Rule of Law. He currently works with the International Federation for Human Rights (FIDH) as the Advocacy Delegate to the African Union.

