

## LEGAL FRAMEWORKS AND TRANSITIONAL JUSTICE IN AFRICA: LESSONS FROM MOZAMBIQUE'S POST-CONFLICT RECONSTRUCTION

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### **Abstract**

*Using Mozambique as a case study, this article examines how African legal systems influence criminal justice, Transitional Justice (TJ), and the culture of impunity. By using a documentary review method to study pertinent legal and policy documents, the paper looks at both successes and shortcomings of Mozambique's post-conflict justice systems. The findings of the study show that amnesty laws frequently erode accountability and promote impunity when used as a TJ mechanism in Africa. TJ is mentioned in African law documents, but usually in passing and without any explicit implementation procedures. Because of this, they are unable to offer helpful advice on how to achieve restorative, reparative, or retributive justice. The situation in Mozambique serves as an example of these difficulties. The study concluded that TJ's efforts have mostly fallen short of providing victims with substantial compensation or ensuring that human rights violations do not recur. Amnesty laws have not avoided new conflicts. It is also determined that, notwithstanding its limited national application, the traditional Magamba method has demonstrated promise in fostering healing and reconciliation at the communal level. The study also concludes that Africa needs a more robust and enforced TJ framework. It suggests making the African Union Transitional Justice Policy (AUTJP) a legally binding agreement to provide clear legal duties and penalties for non-compliance.*

**Keywords:** Transitional justice – Mozambique - human rights - armed conflict – Africa

### **1.0 Introduction**

Mozambique has endured a long history of violent conflict, beginning with the struggle for independence in 1964 and extending to the present-day insurgencies in provinces such as Cabo Delgado and Niassa. Over the decades, millions of civilians have been killed, tortured, or displaced. Yet, no comprehensive or effective Transitional Justice (TJ) framework has been implemented to provide accountability, truth, or reconciliation (Pugh, 2019). The limited efforts made, such as the post-1992 amnesty law and the localized use of traditional practices like the *Magamba* spirit, have proven inadequate in addressing the scale and complexity of past human rights violations (Pugh, 2019). These failures highlight a practical gap in Mozambique's post-conflict justice process.

The practice of TJ gained global prominence in the late 1980s and early 1990s, particularly in countries transitioning from authoritarian regimes to democratic governance, such as South Africa, Argentina, and Chile (International Centre for Transitional Justice, 2024). In Mozambique, TJ began to take shape in late 1992, when communities in the Gorongosa District invoked the *Magamba* spirit as a traditional mechanism for societal healing. Additionally, Mozambique enacted four amnesty laws aimed at exempting perpetrators from criminal liability for crimes committed during the independence struggle, the post-independence civil war, and other abuses, including violations of the rights of internally displaced persons (IDPs).

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These include Law No. 15/1987 of 9<sup>th</sup> December 1987, the Amnesty Act No. 15/1992 of 14<sup>th</sup> October 1992, the Amnesty Act No. 17/2014 of August 12, 2014 (Igreja, 2007), and the Amnesty Act of 2016 (Human Rights Watch, 2020).

Despite these developments, a knowledge gap persists regarding the application of the African Union's legal and policy frameworks on transitional justice within member states, particularly in Mozambique. Article 19 of the African Union Transitional Justice Policy (2019) defines TJ as a tool to assist societies affected by violent conflict in achieving justice, equality, and dignity. However, regional legal instruments, such as Article 23 of the Constitutive Act of the African Union (2000) and Article 117 of the AU Transitional Justice Policy (2019), lack enforceable obligations and rely heavily on the political will of member states. Instead of complementing each other, these instruments often function in a fragmented and inconsistent manner, further undermining efforts to combat impunity and achieve a durable peace. Therefore, this article aims to: examine how the African TJ legal framework addresses the challenges of criminal justice and the entrenched culture of impunity; assess the impact of African legal instruments on the implementation of TJ mechanisms; analyze the extent to which victim-centered justice is incorporated within these frameworks; and evaluate the lessons learned from both achievement and failure drawn from Mozambique's experience with TJ.

This study is justified by the persistent failure of TJ mechanisms to address the legacy of violent conflict and human rights violations in Mozambique, despite decades of civil strife and regional support for post-conflict recovery. The recurrence of violence in regions such as Cabo Delgado and Niassa highlights the inadequacy of past interventions, including amnesty laws and traditional reconciliation efforts, in delivering sustainable peace, justice, or reconciliation. Moreover, while the African Union has developed important legal and policy instruments to guide TJ, their implementation remains inconsistent and largely dependent on the political will of member states. This has resulted in weak enforcement, limited victim participation, and continued impunity.

There is a significant gap in both academic and policy literature regarding the practical application and effectiveness of Africa's transitional justice legal framework in specific national contexts, such as Mozambique. This study aims to fill this gap by critically assessing how regional instruments interact with national and traditional justice mechanisms and whether such interactions promote or hinder justice for victims.

### **1.1 Theoretical Framework on TJ**

Four transitional justice theories inform this study. The Theory of Justice (Rawls, 1971) emphasizes fairness, equality, and institutional reform as essential to sustainable peace, highlighting Mozambique's failure to address structural inequalities. The Theory of Change (Gready and Simon, 2020) links transitional justice actions, such as truth commissions, to broader societal transformation, but it faces implementation challenges. The Narrative Theory (Susanne, 2014) underscores truth-seeking through storytelling, helping to establish responsibility and historical records of abuses. Finally, the Theory of Reparation (Laplante, 2014) stresses victim-centered justice through restorative, civic, and socio-economic redress. Together, these theories provide a multidimensional lens for evaluating transitional justice mechanisms in post-conflict societies, such as Mozambique.

## 1.2 Africa's Legal Framework on Transitional Justice

Currently, there is no single comprehensive legal instrument dedicated exclusively to Transitional Justice (TJ) at the international or African regional level. However, TJ principles can be derived from various international and regional legal instruments, alongside the African Union Transitional Justice Policy (AUTJP). Internationally, instruments such as the Universal Declaration of Human Rights (1948), Article 8; the Rome Statute of the International Criminal Court (2000), Article 75; and the UN Basic Principles on the Right to a Remedy and Reparation (2005), Part IX, recognize victims' rights to effective remedies and reparations. These provisions require states to provide prompt, adequate, and proportionate reparations for gross human rights violations. However, Mozambique has failed to comply with these standards following its periods of armed conflict (Laplante, 2014).

Regionally, African legal instruments address transitional justice only in limited ways. The Constitutive Act of the African Union (2000), ratified by Mozambique, affirms the rejection of impunity in Article 4(o), but it lacks effective enforcement mechanisms. The African Charter on Human and Peoples' Rights (1981) promotes a holistic view of rights but does not explicitly address TJ, except for a general reference to peace and security in Article 23. The AU Convention on Internally Displaced Persons (2009) Article 7 holds armed groups accountable for violations but does not resolve the conflict between accountability and the use of amnesty laws. Similarly, the Protocol Establishing the Peace and Security Council of the AU (2002) Articles 6(a) and (e) outlines post-conflict support measures such as disarmament and reintegration, but does not obligate states to adopt specific TJ mechanisms.

The Maputo Protocol (2003) Article 10(2)(e) encourages women's participation in post-conflict reconstruction, implying inclusivity in TJ processes. However, it stops short of mandating the use of specific TJ tools or mechanisms to ensure justice and prevent future violations. The African Union Transitional Justice Policy (AUTJP) (2019) is the most detailed regional instrument on TJ. It promotes a range of TJ mechanisms, including truth commissions, traditional justice, reparation, and accountability. It discourages blanket amnesties for serious crimes but remains non-binding, with implementation left to the discretion of member states as per Article 117. Overall, a significant gap remains in the enforcement of TJ obligations. The absence of binding mechanisms enables countries like Mozambique to circumvent accountability and reparations efforts. As a result, victims are left without justice, and the cycle of human rights violations remains unbroken.

## 2.0 Literature Review

This study explores the literature that is available and updated by prominent scholars who have worked on the concept of TJ and other terms applied in this study, the trajectories of TJ in Mozambique, and the subsequent peace initiatives after the end of the liberation struggle. The paper also reviews the reasons behind the resurgence of armed conflict in Mozambique.

### 2.1 Transitional Justice

TJ encompasses a range of judicial and non-judicial mechanisms, such as criminal prosecutions, truth commissions, reparations, and institutional reforms, aimed at addressing large-scale human rights abuses. It also includes traditional or community-based mechanisms that reflect local customs and cultural values (Bell, 2017). In light of this, this article defines TJ as referring to a variety of processes, including judicial (by prosecuting offenders), non-judicial (by truth-seeking, reparations, amnesty, and institutional reforms), and traditional

justice mechanisms (by using the traditional spirit) that have been adopted by the state affected by armed conflict. These mechanisms are intended to address past gross human rights violations that have remained uncovered, ensuring accountability through prosecutions and trials, serving justice through reparations for victims of abuse, and achieving reconciliation through a truth commission, institutional reforms, and any other agreed-upon mechanisms.

## 2.2 Post Armed Conflict

Post-armed conflict refers to the period following the cessation of active hostilities in an armed conflict. This phase is characterized by efforts to rebuild governance structures, restore law and order, promote reconciliation, and address the root causes of the conflict. It often involves peacebuilding, transitional justice, disarmament, demobilization, and reintegration (DDR) of former combatants (UN Peacebuilding Support Office, 2010). Initiatives of post-conflict peacebuilding should often follow the cessation of fire. Post-conflict peacebuilding refers to efforts aimed at preventing the recurrence of violence by addressing the underlying causes of conflict and promoting sustainable peace through institutional reforms and social healing (Paris, 2004).

## 2.3 Reconstruction

According to Barakat (2005), reconstruction is a comprehensive process that encompasses physical rebuilding, institutional reform, social healing, and economic recovery aimed at restoring normalcy and preventing the recurrence of conflict. Post-conflict reconstruction involves rebuilding war-torn societies through a combination of security, political, humanitarian, and development measures to address the root causes of conflict (Call, 2008). Reconstruction is not only about physical infrastructure but also about rebuilding institutions, governance structures, and social capital to ensure long-term peace and stability (UNDP, 2008). Reconstruction includes various reforms such as the election system, the distribution of natural resources, the employment system, and the justice system.

## 2.4 An Overview of the Mozambique Post-Armed Conflicts

Mozambique's armed conflicts began in 1964, when citizens launched a liberation struggle against Portuguese colonial rule, inspired by the wave of independence across Africa (Regalia, 2017). Prior to this, underground political movements sought to form a party to oppose colonialism. Following independence in 1975, Mozambique made early efforts to confront its colonial past. In 1978, President Samora Machel introduced a strategy aimed at addressing colonial-era injustices, targeting a group labelled *comprometidos*, those who allegedly collaborated with Portuguese authorities (Igreja & Dias-Lambranca, 2008). Machel emphasized the importance of understanding the past as essential for building a just future.

However, the country soon descended into post-independence armed conflict, led by the rebel group, RENAMO. This civil war, lasting from 1975 to 1992, was driven by both external and internal factors. Externally, RENAMO received support from South Rhodesia and apartheid South Africa (Sayaka, 2013). Internally, rural civilians cooperated with RENAMO, often out of fear (Classen, 2013). A General Peace Accord (GPA) was signed in Rome on October 4, 1992, between FRELIMO and RENAMO, seemingly ending the conflict (Pugh, 2019).

Despite the GPA, violence re-emerged in 2013 when RENAMO revoked the agreement following attacks on police and infrastructure, violating Protocol VI of the peace accord (Regalia, 2017). Sporadic violence continued until another ceasefire was reached in 2014. Nevertheless, incidents such as ambushes by RENAMO and violations by government forces further eroded the fragile peace. In 2016, RENAMO launched attacks on trains and health facilities, and one of its negotiators, Jeremiah Pondeca, was assassinated (Regalia, 2017).

Mozambique continued to face instability despite ongoing peace efforts. A new threat emerged in 2015 with the rise of Ansar al-Sunna (locally known as al-Shabaab), a militant Islamist group that began launching violent attacks in Cabo Delgado in 2017, which later spread to Niassa (Makonye, 2020). Meanwhile, negotiations to resolve the country's longstanding political conflict continued, culminating in the signing of the Maputo Accord for Peace and National Reconciliation in August 2019 by President Filipe Nyusi and RENAMO leader Ossofu Momade. This agreement aimed to bring lasting peace and marked a significant milestone in Mozambique's peace process (UN Secretary-General, 2019).

Despite decades of conflict and peace efforts, Mozambique has only minimally implemented formal Transitional Justice (TJ) mechanisms, such as the *Magamba* spirit and amnesty laws, which have yielded limited peace outcomes. The state has relied mainly on peace accords and traditional justice, without developing effective systems for prosecution, truth-seeking, or reparations. The lack of strong legal frameworks and political will in Mozambique and across Africa has delayed the TJ implementation, neglected victims' rights, and weakened accountability and sustainable peace (Pugh, 2019; Igreja & Dias-Lambranca, 2008).

## 2.5 Transitional Justice in Mozambique

Different authors have explored the reasons behind Mozambique's failure to address TJ. For instance, Regalia (2017), Matsinhe and Valoi (2019), and Mukwakwa (2020) critique the TJ process in Mozambique, highlighting its failure to reconcile and heal the society from grievances arising from the liberation struggle, the civil war, and the post-independence conflict. These failures were exacerbated by violations of the General Peace Accord and unresolved community grievances, which contributed to the resurgence of conflict in Cabo Delgado and its spread to Niassa Province. Additional reasons for the failure of TJ in Mozambique are addressed by Igreja and Dias-Lambranca (2008), who argue that due to political instability, disunity, and the lack of a legal legislative architecture for TJ, no attempts were made to confront the violent past. Furthermore, the plight of victims failed to capture the attention of the Mozambican political elites responsible for overseeing transitional processes. Instead of addressing the root causes of atrocities and ensuring justice for victims, the government opted for the enactment of amnesty laws as an alternative route to peacebuilding.

## 2.6 The Amnesty Law

Although efforts were made toward peacebuilding, they did not result in sustainable peace. As Igreja (2007) confirms, the Mozambique parliament enacted different amnesty laws, such as Act No. 15/1987 of 9th December 1987, No. 15/1992 of 14th October 1992, No. 17/2014 of 12th August 2014, and Act No. 2016. According to them, nevertheless, these Acts did not include any form of TJ mechanisms, such as truth commissions, reparative, or restorative justice. Even the traditional localised TJ mechanism adopted by Mozambique in the Gorongosa community, called *Magamba* spirits, did not articulate the grassroots justice

approach in addressing the crimes committed during the armed conflicts, rather than the perpetrators asking for forgiveness from the victims.

Supporting Igreja's position, Thompson (2016) argues that after the peace agreement, perpetrators of atrocities live alongside victims without apologies or national reconciliation, and without institutional reforms to provide them with equal opportunities in terms of social, economic, political, and cultural equality. The result was a feeling of revenge among the victims against the perpetrators. The country did not take any effort to carry out national reconciliation and institutional, as well as political and legal reforms. All this happened because of the ambiguous legislation system of Mozambique to deal with TJ after the experience of the post armed conflicts has been shaped by the poor African TJ legal system.

According to Denecke (2019), the amnesty laws passed after the peace agreement were ineffective in addressing the grievances within society. The Mozambican government was driven by a sense of solving the problem superficially without finding the inner heart of the post and on-going armed conflict, which is a major reason why Amnesty Laws seem useless in the absence of an effective legislative system to ensure a smooth TJ, and this is among the reasons for the resurgence of armed conflict in Mozambique.

## **2.7 Resurgence of Armed Conflict in Mozambique**

The resurgence of conflict in Mozambique is the result of noticeable but deep, unaddressed grievances. The state power and the wealth of the nation largely remain under the control of the same party. Regalia (2017) argues that the ineffective participation of opposition parties in the political scene and unequal benefits from economic growth add oil to the flames of inequality and centralisation of power in the hands of one dominant political player. This argument was supported by Thomas (2022), who argues that the insurgency in the Cabo Delgado and Niassa provinces is fuelled by legitimate economic, social conditions and political grievances that must be addressed to build peace.

These authors do not dwell on the weakness or ineffectiveness of the African instruments relating to TJ that gave Mozambique the legitimacy of refusing to apply the mechanisms after a long internal armed conflict. If looked at analytically, nevertheless, such instruments may indeed help and facilitate the process of transitional justice in Mozambique. Evading the institution of a truth commission for past human rights abuses is to continue infecting the wounds and concealing the truth so that the situation becomes an already fuming volcano, which can explode at any time.

## **3.0 Methodology**

This study primarily employed a doctrinal research methodology within a qualitative framework, utilizing a case study approach to analyse the implementation of TJ mechanisms in Mozambique. The choice of Mozambique is informed by its prolonged history of recurrent and ongoing armed conflicts (Makonye, 2020). To obtain primary data, the researcher conducted an in-depth review of regional TJ policies, as well as international and African legal instruments. These sources provided direct legal and policy insights essential to the study. Secondary data were obtained through the analysis of scholarly books, peer-reviewed journal articles, official reports, media publications, and unpublished materials, including dissertations.

All sources were critically assessed for accuracy, relevance, and timeliness to ensure reliability and validity of the research findings. A comprehensive literature review was also conducted to support the study's core objective: to evaluate the role and contribution of African legal instruments in the implementation of transitional justice mechanisms across the continent.

## **4.0 Findings**

### **4.1 Amnesty Law and Impunity**

This study finds that the implementation of amnesty law, as among the mechanisms of TJ, encourages impunity, whether general or conditional. The Amnesty Law, in the post conflict situation, no longer has international community support and is rather in breach of international laws as provided under Article 6(1) and (5) of Additional Protocol II, (1977) and Customary International Law Rule 159 of the International Committee of the Red Cross (Jean-Marie, H. and Louise, 2009). Additionally, in the case of *Marguš v. Croatia* (2014), the European Court of Human Rights stressed that the application of amnesty to genocide, war crimes, and crimes against humanity is not acceptable under international law.

### **4.2 African Legal Framework on TJ**

This study finds that various African legal instruments address TJ in a single provision. However, all these instruments lack a clear implementation mechanism, directing member states only to comply with the principle of TJ, without showing how retributive, reparative, and restorative justice can be achieved in practice. The existence of section 117 of the African Union TJ Policy (2019), which states compliance with the TJ Policy, depends on the political will of the member state. It undermines regional efforts to intervene in domestic affairs to address past human rights violations and seek sustainable peace.

Additionally, the African legal basis on TJ faces some challenges like absence of binding clauses and mechanisms for the implementation of TJ in areas affected by armed conflicts, the absence of procedures to be followed in the aftermath of an armed conflict to apply TJ, unclear sanctions for failure to implement TJ mechanisms, absence of specific and standalone law on TJ in African legal instruments and lack of a special African committee or other institutional architecture to regulate the implementation of the TJ process.

### **4.3 Victim-Centered Justice Experience from Sierra Leone and Colombia**

This study finds that the way the Mozambican government addressed justice for victims after a prolonged armed conflict did not yield meaningful reparations or ensure non-repetition of human rights violations, especially when compared to the approaches used in Sierra Leone and Colombia.

### **4.4 Mozambique's TJ Achievements and Failures**

This study presented both achievement and failure lessons derived from Mozambique's post-armed conflict situations. Among the achievements, the country attempted to implement TJ through the Magamba spirit, although it was not circulated nationwide (Igreja, 2007). On the side of failure, the country applied the amnesty as a mechanism of TJ. However, the amnesty law does not prevent the resumption of armed conflict. During the peace processes, some communities were excluded, except for those from Gorongosa. This did not provide sustainable solutions and there was no development of public interest litigation (Thompson, 2016; Hayner, 2011).

## 5.0 Discussion of Findings

### 5.1 The Criminal Justice and Impunity Culture in Africa through the TJ Legal Framework

This study focuses on the role of judicial mechanisms within the TJ process in combating impunity and ensuring that perpetrators of gross human rights violations are held criminally accountable. While other TJ tools, such as truth commissions, reparations, and traditional justice practices, are essential to reconciliation and the achievement of sustainable peace, this paper emphasizes the need for legal accountability through criminal justice.

In Mozambique, existing literature reveals that no meaningful judicial action was undertaken following the armed conflict, mainly due to the adoption of broad amnesty laws. These laws were explicitly designed to shield perpetrators and their collaborators from prosecution. The amnesties were primarily intended to achieve short-term political stability by ending violence. However, they failed to address the root causes of conflict, thereby increasing the risk of recurrence.

Mozambique's repeated enactment of amnesty laws has fostered a culture of impunity, directly contradicting several binding international and regional legal instruments. For instance, Article 6(1) of Additional Protocol II (1977) requires states to prosecute serious violations committed during armed conflicts. Article 4(o) of the African Union (AU) Constitutive Act (2000) underscores the rejection of impunity and the sanctity of human life. Similarly, Article 7 of the Kampala Convention (2012) holds members of armed groups criminally liable for violations committed against Internally Displaced Persons (IDPs). Despite these clear legal obligations, Mozambique has failed to enforce any of these provisions, and no perpetrator has been brought to justice. This entrenched impunity undermines institutional trust, fosters corruption, and deprives victims of access to justice and reparations (Cribari-Neto & Santos, 2024).

Mozambique signed the Rome Statute of the International Criminal Court (ICC) on December 28, 2000, but has neither ratified the Statute nor its 2010 Kampala Amendments. It has also refrained from signing the Agreement on Privileges and Immunities of the Court (APIC). Instead, in June 2003, the country entered into a Bilateral Non-Surrender Agreement with the United States, which was subsequently approved by the Council of Ministers and published in the official gazette in early 2004 (Parliamentarians for Global Action (PGA), 2020). However, these actions do not prevent Mozambique from cooperating with the ICC. Article 12(3) of the Rome Statute allows non-member states to accept the Court's jurisdiction through a formal declaration. Additionally, Article 93(10)(c) permits cooperation and mutual legal assistance between the Court and non-State Parties under specified conditions.

In 2019, the African Union adopted the Transitional Justice Policy (AUTJP) to promote peace, justice, and accountability throughout the continent. Article 11 of the Policy encourages affected states to take the lead in addressing the legacies of conflict, governance failures, and development challenges. It promotes a comprehensive approach to transitional justice, including truth commissions, traditional justice mechanisms, reparations, memorialization, and criminal accountability, as outlined in Articles 50, 56, 60, 64, and 75. Notably, the AUTJP firmly opposes the use of blanket or unconditional amnesties that obstruct investigations into serious crimes, thereby reinforcing the AU's broader stance against impunity, as outlined in Article 4(o) of its Constitutive Act.



Nevertheless, the AUTJP lacks a binding legal force. Article 117 explicitly states that implementation relies entirely on the political will of individual member states. As such, despite its progressive content, the policy remains largely symbolic, what might be called a “toothless dog” in the realm of transitional justice. Mozambique’s failure to adopt or implement the AUTJP, or other relevant treaties, highlights the disconnect between formal policy commitments and their execution in practice. This gap reflects a broader weakness in African TJ instruments, which often lack enforceability and concrete implementation mechanisms. Consequently, Mozambique’s international legal obligation to address crimes committed during its post-conflict period remains unfulfilled, perpetuating a cycle of impunity and injustice.

## **5.2 The Impacts of the African Legal Framework that Addresses TJ**

This study found that the African legal instruments relating to TJ face several shortcomings that somehow affect and hinder the implementation of TJ in states affected by armed conflicts. Mozambique, for example, implemented some of the TJ mechanisms in a way that cannot achieve sustainable peace and prevent the resurgence of armed conflicts due to the ineffectiveness of African instruments, which are founded on TJ. A review of the impugned documents below is informative in this respect. Due to the weakness of the African instruments on TJ, nothing has been done to cater for the human rights abuses committed during the liberation struggle. Mozambique was unable to avoid civil war due to the fragmented environment of the TJ on the continent. There is neither obligation nor penalties for non-compliance with the TJ imposed by the AU instruments relating to TJ. Furthermore, there is no political will within the AU to impose such penalties, other than a slap on the wrist, and this will only happen if civil society actively advocates for these issues. A further response is that even if obligations could be interpreted from the reading of some legal instruments, there are still no mechanisms for enforcement. States are locked in the classical nation-state sovereignty mode.

In Mozambique, the authorities never established a Truth and Reconciliation Commission or initiated investigations and prosecutions of perpetrators of gross human rights violations. The reason is that African legal instruments do not provide an implementation mechanism to enforce compliance among member states in post-conflict situations. The researcher sought to understand why gross human rights violations persist in Mozambique during conflicts, despite the presence of African Union legal instruments and Mozambique’s peace initiatives. It appears that the AU legal instruments are not being implemented in Mozambique, making it unclear why they are expected to have an impact. This occurred due to the absence of implementation mechanisms that bind Mozambique to comply with the TJ in accordance with the acceptable standard, which encompasses both judicial and non-judicial aspects.

The AU instruments are weak, and they cause havoc to compel parties to respect peace agreements. Such uncertainties have led parties to the conflicts to have no respect whatsoever for peace accords, and Mozambique has fallen victim to the malfunction of the AU criminal justice system. The practice of non-compliance with Transitional Justice (TJ) mechanisms is not limited to Mozambique; it is also evident in other African countries such as Sudan, Somalia, and the Central African Republic, among others. These countries have faced both past and ongoing human rights violations, yet little has been done to implement effective TJ measures.

### **5.2.1 Absence or Inadequate Procedures Followed in the Aftermath of an Armed Conflict to Apply TJ**

A close analysis of the African legal instruments relating to TJ reveals a lack of provision for adequate procedures to be followed in post-conflict situations. These are some of the consequences demonstrating the limited effectiveness of African law in addressing the aftermath of conflicts, particularly when serious human and civil rights violations occur.

It was essential to include procedures to be followed in the TJ process in the treaty relating to this matter to avoid hitting a wall when it comes to implementation and enforcement. The peace process in Mozambique appears to be dominated by combatants from both sides, with limited involvement of victims through traditional rituals, civil society, or representatives of affected communities. Victims and community needs are not presented in the peace process. Had adequate procedures been established in the African instrument regarding the TJ process, Mozambique would now be better positioned and would provide an inspiring experience for the rest of the continent (Igreja and Dias-Lambranca, 2008).

### **5.2.2 Lack or Unclear Sanctions for Failure to Implement TJ Mechanisms**

The implementation of TJ mechanisms in Africa, particularly in Mozambique, is hindered by the ineffectiveness of the available African legal and policy instruments. For instance, through various African instruments on TJ, only one instrument attempted to impose sanctions for non-compliance with the African Union's decisions and policies. The Constitutive Act of the African Union (2000) Article 23(2) states that: "Any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communication links with the other Member States, and other measures of a political and economic nature to be determined by the Assembly." The provision does not specify what amounts to "other sanctions" that are envisaged. It is also unimaginable that the Assembly, which is composed of heads of state, can have the courage to impose any sanctions on a defaulting member state in the current configuration of the AU. Some attempts have indeed been made to suspend member states in which a military coup has occurred, but these efforts have not progressed beyond that point.

However, the implementation and enforcement of other policies remain only on paper. The way the African TJ Policy is framed requires political will to implement. If the implementation depends on the political will of the nation, it is possible to impose sanctions for non-compliance with the TJ. For example, Article 117 of the African Union Transitional Justice Policy (2019) states that compliance with the policy depends on the will of the member state. This raises concerns about enforcement. How can the AU Assembly impose sanctions for non-compliance when the policy itself grants discretionary power to states? Ultimately, a state may choose a path that benefits the ruling elite rather than promoting transitional justice. These provisions, therefore, lack legal weight in the context of legal jurisprudence. As a policy, it is neither obligatory nor legally binding; it merely outlines what a state may choose to do, or not do. Therefore, due to the discretionary nature of these provisions, it is challenging to impose sanctions on African member states for failing to implement transitional justice. Mozambique illustrates this because the African Union has imposed no legal, economic, or political sanctions despite its reliance on Magamba and Amnesty mechanisms. This highlights the lack of legal consequences for the non-implementation of TJ in Africa.

### 5.2.3 Absence of Specific and Standalone Law on TJ in African Legal Instruments

Not only in the African continent, but also in international treaties, do specific or standalone treaty-based TJ instruments exist. For instance, in the European Union, there is no specific "European Transitional Justice Treaty" in the formal sense of a legally binding international agreement. However, the European Union (EU) has a strong and well-defined policy framework and engagement in promoting transitional justice around the world, particularly in countries affected by conflict or repressive regimes. This engagement is driven by the EU's commitment to human rights, democracy, and the rule of law, as well as its desire to contribute to sustainable peace and development (Laura, 2010).

In the African legal system, there is no law that is specific to transitional justice except for some sketchy provisions, for instance, Article 4(o) and 23 of the Constitutive Act (2000), Article 23 of the African Charter on Human and Peoples' Rights (1986) and Article 7 of the Kampala Convention (2012). Additionally, there are Articles 6(a) and (e) and 14 of the Protocol Relating to the Establishment of the Peace and Security Council (2002). Furthermore, Article 10 (2) (e) and 11 (3) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003) tried to touch on the issues of TJ but not in-depth by creating an obligation to African member states to comply and implement it in addressing the war legacies and cure all grievances within the community by providing criminal justice, reparative justice, building a strong nation with unity, political stability, democracy, and rule of law. Apart from the African treaties relating to TJ, the continent adopted two TJ policies, namely, the African Union TJ Policy (2019) and the African Union Policy on Post-Conflict Reconstruction and Development (2006). These policies provide essential information that, if implemented by the state affected by an armed conflict, can help achieve sustainable peace after a devastating past. However, these policies lack the necessary teeth to compel their implementation and enforcement.

### 5.2.4 Lack of Special African Committee or Other Institutional Framework to Regulate the Implementation of the TJ Process

The African instruments relating to TJ are fragmented and prove inefficient in dealing with the past gross violations of human rights. Additionally, they do not provide for any continental institutional structure or specific committee to ensure the implementation of TJ mechanisms in areas affected by armed conflicts. The main role of the committee would be to monitor the implementation process of the TJ for African nations and to report on the progress of the implementation of the TJ to the AU. It would also have the task of advising and building capacity for a country plunged into armed conflict. This committee would help encourage and oversee the process of achieving lasting peace and justice for victims. Due to the political environment, this committee might be overwhelmed by a storm that could dilute its functions. This matter can be better protected by the treaty that will be enacted to ensure that the implementation of the TJ is given priority in any political environment. Therefore, these shortcomings led Mozambique, after experiencing different periods of armed conflicts, to take its easy initiatives for peace building but it failed to apply judicial mechanisms to hold the perpetrators liable. This begs the question of the lessons to be drawn from the Mozambique experience.

## 5.3 Victim-Centered Justice

Victim-centered justice is more complex in Mozambique compared to countries like Sierra Leone and Colombia. For example, in Mozambique, victims' reparations were largely ignored, except for using traditional approaches to heal the scars of war. In contrast, Sierra

Leone's Truth and Reconciliation Commission (TRC) placed a strong emphasis on victims' stories, particularly those of women and children. Community-level engagement, including outreach and education, was also essential in building trust. Furthermore, a hybrid court, the Special Court for Sierra Leone, was established, combining international and national legal efforts to prosecute serious crimes (International Center for Transitional Justice, 2023). In Colombia, the government enacted the Victims' Law in 2011, which recognized victims' rights to truth, justice, reparation, and guarantees of non-repetition. Additionally, the Special Jurisdiction for Peace (JEP) was created, allowing victims to participate directly in legal proceedings. Both symbolic and material reparations were implemented, including land restitution and the establishment of public memorials (Brett, 2022). To ensure a truly victim-centered justice process in Mozambique, victims should not only be consulted about what happened but also actively involved in designing truth-seeking and justice mechanisms. Special attention should be given to gender, age, and regional diversity. Moreover, the government should consider establishing a special court to address crimes committed during the armed conflict.

#### **5.4 The Lessons (Both Achievements and Failures) that Mozambique Offers on TJ**

Mozambique's transitional justice (TJ) efforts have lacked effectiveness, missing key goals such as truth-seeking, accountability, and reconciliation. The process failed to establish structures like truth commissions or address victims' needs (United States Institute of Peace, 2008). However, despite these shortcomings, the experience offers valuable insights, reflecting both failures and modest achievements in the broader African and international context.

##### **5.4.1 Achievement Lessons**

The Mozambique TJ process offers a valuable lesson on how to deal with the effects of armed conflict. The Magamba traditional practice could play a significant healing role if implemented nationwide or at least in areas affected by the armed conflict. The Magamba spirits became part of the socio-cultural world of Gorongosa, which was already inhabited by a plethora of spirits and healers, particularly in the context of the Mozambican civil war, and are particularly prominent in the Gorongosa region (Igreja and Dias-Lambranca, 2008). The traditional rituals provided a channel for restorative justice, healing and reconciliation. The community in Gorongosa, Mozambique, where the spirits are said to have healing powers, believes that the traumatic or violent death of a human being is an offence that requires immediate redress and atonement rituals (Masiko-mpaka, 2020).

Magamba spirits are generally believed to be the spirits of dead soldiers (mostly males) who return to the living to fight for justice. This study makes a critical analysis of the content of Magamba spirits, revealing a gender bias. That is, the women killed during the Mozambican civil war are unable to return as spirits to the realm of the living to claim justice. Only the spirits of men can do this. In this sense, although spirits break the silence of the past, structurally, the justice they offer helps to reinforce patriarchal power in a country struggling for gender equality (Igreja and Dias-Lambranca, 2008). Within this context, there is a need to establish a political agenda that is informed by well-established socio-cultural knowledge to address the gender bias imposed by traditional rituals. Therefore, the spirits did not articulate the grassroots justice approach in addressing the crimes committed during the armed conflicts rather than the perpetrators asking for forgiveness from the victims (Igreja and Dias-Lambranca, 2008).

### 5.4.2 Failure Lessons

There have been many failures in the TJ mechanisms implemented in Mozambique. Firstly, the amnesty laws have not prevented the resumption of armed conflict or the repeated violations of human rights. Historically, the Mozambican crisis has been rooted in political tensions, particularly the long-standing dispute between RENAMO and FRELIMO. This conflict was the driving force behind the enactment of amnesty laws, which were intended to offer collective relief and appease militant groups. However, these laws reflected political self-interest rather than a genuine concern for the needs of citizens. Politicians prioritized securing power over addressing justice, accountability, and the public good. This study further sought to understand why these amnesty laws did not prevent the resumption of armed conflicts and repeated abuses of human rights. Different scholars answered this question. Those amnesties are introduced to secure short-term gains, particularly an end to violence. They do not address any of the causes of conflict and thus cannot prevent future resumption unless they are accompanied by other measures that address deeper rooted issues. They are also counter-productive and encourage future abuses if there is a pattern of impunity where perpetrators know that another amnesty will be granted when they commit abuses.

In the case of Mozambique, the amnesty laws did not prevent armed conflicts because they reinforced the status quo and protected the interests of the warring parties. Moreover, they ensured impunity and did not contribute to national reconciliation. Therefore, the continued enactment of amnesty laws for international crimes is contrary to international norms and principles (Denecke, 2019). Secondly, the ruling elite exercised discretion to decide or take the initiative to implement one mechanism or the other without legal support. The use of unilateral discretion festered the resurgence of armed conflicts and renewed human rights abuses, which is an inefficient solution to social grievances and poor handling of criminal justice. This fact proved that all the TJ initiatives taken did not bear the fruits of peace, national unity, and solidarity, and did not address the repeated violations of human rights.

For instance, Magamba appears to have assisted in addressing social grievances within local communities, which has probably ensured a semblance of peace within these communities. Whether this was widely practised is not clear. Whether it had any impact on broader political conflict is doubtful. Granting amnesty has undermined the criminal justice system by playing into the perception and expectation that politically connected criminals are above the law, which also shields highly placed politicians from many other crimes, including corruption. Amnesties may have helped de-escalate political crises and avoid more serious conflicts, but they have substantially served to postpone the conflict rather than contribute to any sustainability of peace.

Furthermore, the lack of political will to implement international and domestic human rights legislation, as well as to establish strong institutions to handle the gross violation of human rights, results in a careless demand for justice and peace. In Mozambique, for instance, due to the lack of political will to implement TJ, political rights abuses and electoral conflicts were not adequately addressed, and the perpetrators of human rights abuses were never prosecuted. Thus, impunity became the rule of the political game rather than the exception. Finally, there was a lack of alignment and harmonization between transition justice and other legal developments and jurisprudence, as well as support for the administration of justice. Transitional justice mechanisms were used only to silence the guns but not to promote positive peace and transformation of the authoritarian political culture inherited from Portuguese colonialism and FRELIMO state socialism.

Therefore, these lessons from the Mozambique TJ process, particularly failure lessons, leading to impunity practice, disrespect for the dignity of human beings, and continuation of gross violations of human rights, are contrary to Article 23 of the African Charter on Human and Peoples' Rights (1986), which provides that every person is entitled to live in peace and security. If the environment of justice is fragmented and allows perpetrators to act without legal barriers or due to the weakness of the legal system at the continental and domestic levels, achieving sustainable peace and preventing the resurgence of armed conflict becomes very difficult. Mozambique acts as an example to address the effect of criminal justice and the impunity practice in the African continent as a result of non-compliance with the implementation of TJ on the continent.

## 6.0 Conclusion and Implications

Based on the above analysis, this study reveals a pressing need for legal reforms within the TJ structure in Africa. These reforms should address the needs of victims while also providing opportunities for perpetrators to disclose the motives behind their past actions. Furthermore, it is essential to establish clear and consistent principles for implementing the TJ mechanism principles that uphold the pursuit of justice, peace, and long-term stability. The TJ process should encompass, but not be limited to, criminal justice, reparative justice, reconciliation, and healing in the aftermath of traumatic conflict. Transitional justice is gradually gaining recognition, as states increasingly face scrutiny over their compliance with legal and human rights obligations. This will gradually strengthen justice if civil society continues to exert pressure, the AU prioritizes it, and there is international support for an African-led process. There is also an increasing recognition of the feasibility of different TJ approaches beyond simply choosing between amnesty and prosecution.

This study also found that the discourse and future of TJ in Africa is fragile and uncertain due to the failure of the African Union to meet the expectations of the majority of Africans who have suffered for a long time due to endless war and other related impunity. Criminal justice on the continent is impeded by autocratic regimes, which exploit conflicts as their main political leverage and justification for staying in power. The Mozambique crisis is another example of a weak institutional system in Africa for enforcing human rights, democracy, and criminal justice. Furthermore, this study found that the TJ process in Mozambique offers important lessons that can be applied at the outset of this journey. Some of the lessons are that the amnesty laws do not prevent the resumption of armed conflict, but rather contribute to impunity. Secondly, peace processes that exclude affected communities often fail to provide sustainable solutions. Thirdly, the lack of political will to implement international and domestic human rights legislation, coupled with the failure to establish strong institutions for addressing gross human rights violations, leads to a careless pursuit of justice and peace.

Apart from that, Mozambique offers a positive lesson that traditional mechanisms can also be the most effective way to help heal various past conflicts among stakeholders and build peace within the community and the country as a whole. The mechanism should have a wide reach and not be confined to the affected areas only. Finally, in Mozambique, there is a need to move from comrades and ruling party members to citizens, and the development of the rule of law should go along with the upholding of human rights and active advocacy toward a culture of peace and justice. Seeking truth and accountability should guide the road ahead as far as TJ is concerned.

## 7.0 Recommendations

The recommendations that follow are as relevant to the African Union as they are to Mozambique itself.

Firstly, the current African Union TJ Policy (AUTJP) should be adopted as a formal treaty of the African Union (AU) to create a legally binding obligation for member states. Such a treaty would empower the AU to intervene in member states that fail to implement or enforce its provisions. Additionally, the AU should mandate its Peace and Security Council to monitor and support the implementation of the TJ treaty. The establishment of a TJ treaty would provide the necessary momentum for both judicial and non-judicial enforcement mechanisms by ensuring adherence to the standards outlined in the treaty. This momentum would place pressure on AU member states to respect, implement, and enforce TJ mechanisms serving not only criminal justice for perpetrators of international and national crimes, but also civil justice, including reparative rights for victims. Therefore, if the AU were to adopt and enforce a TJ treaty, it could effectively serve the roots of renewed armed conflict following the implementation of TJ mechanisms. Such a treaty would establish clear implementation standards and help overcome the challenges posed by political reluctance to pursue TJ.

Secondly, legal frameworks concerning TJ, both current and future, must clearly mandate the State's duty to implement and enforce TJ mechanisms. This ensures that nations affected by armed conflict will take concrete steps toward justice without excuses. These laws should emphasize the State's obligation to uphold TJ in post-conflict situations to maintain peace and ensure accountability for perpetrators, whether through domestic or international justice. Additionally, treaties must highlight the importance of restorative and reparative justice by ensuring that victims receive the compensation and recognition they deserve for their suffering and losses. Moreover, the African TJ treaty should clearly outline the consequences for non-compliance with TJ mechanisms during peace-building efforts. It must include specific sanctions and establish an independent TJ committee or institution responsible for overseeing both judicial and non-judicial mechanisms in post-conflict states.

This body should function without interference from the African Union or any of its member states. The goal of the treaty is to promote sustainable peace and address issues of post-conflict violence. Including sanctions will strengthen the treaty's effectiveness and accountability. Furthermore, the treaty must reject any political manipulation in the implementation of the TJ. Political influence can hinder truth-seeking and accountability, allowing victors to evade justice. To avoid this, TJ should ensure that all violators are held responsible, regardless of status. The process must avoid "victor's justice" and prioritize fairness, truth, and comprehensive human rights redress.

Lastly, the ongoing conflict in Mozambique, particularly in Cabo Delgado and Niassa provinces, reflects the failure to achieve national reconciliation and unity through transitional justice (TJ) efforts. However, it is not too late for the Mozambique government and policymakers to revise their approach and develop an inclusive TJ roadmap. Key steps include institutional and administrative reforms, as well as strengthening the criminal justice system to hold perpetrators accountable. Equally important is supporting victims' healing and ensuring fair compensation for past atrocities. These actions can promote sustainable peace, justice, and national unity. The government must take this issue seriously to prevent future violence rooted in unresolved grievances.

## 8.0 Limitation

This study encountered a limitation due to lack of freely accessible online materials. As this topic appears to be relatively new in legal jurisprudence, finding relevant supporting resources was challenging. Although some crucial information could not be accessed, this did not significantly impact the study's purpose. The researcher employed diverse research methodologies to obtain the necessary data and effectively achieve the study's objectives.

## 9.0 Area for Further Study

Transitional justice in Africa faces significant challenges due to the absence of strong legal frameworks to support its implementation after armed conflict. Criminal justice and sustainable peace cannot thrive in weak and uncertain legal environments. There is a critical need for robust laws that address all aspects of TJ and discourage impunity. Future research could focus on how the culture of impunity impacts criminal, restorative, and reparative justice during this process.

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