

# Framing reparations for historical injustices: the normative and strategic potential of the African Union Transitional Justice Policy

Steve Tiwa Fomekong\*

<https://orcid.org/0009-0009-6093-6779>

**ABSTRACT:** This article explores the African Union Transitional Justice Policy (AUTJP) as a continental framework for reparations for historical injustices, including slavery, colonialism, apartheid and systemic racial and gender-based exclusion. While transitional justice mechanisms have traditionally been mainly limited to post-conflict contexts, the AUTJP adopts a broader, structural and forward-looking approach that centres victims and communities historically denied redress. The article argues that the AUTJP offers both a normative framework and a strategic tool for reframing reparative justice in Africa and its diasporas. Through a close reading of the AUTJP's principles, objectives and participatory mechanisms, the article highlights its decolonial, victim-centred and pan-African vision of justice. It situates the AUTJP in relation to dominant international approaches to reparations and underscores its potential to address long-term structural harms, foster symbolic and material redress and promote transformative change. In doing so, the article illustrates how the AUTJP can be mobilised by African states, regional institutions, civil society actors and diaspora communities to pursue national and transnational claims for reparations. Part 2 examines the relevance of the AUTJP's normative content for shaping reparations for historical and structural injustices, while part 3 analyses how its principles can be strategically interpreted and applied to historical injustices beyond traditional transitional justice settings. The article concludes that the AUTJP constitutes a significant contribution to reparative justice theory and practice, offering a uniquely African lens through which historical injustices can be redressed and future harms prevented. It calls for greater institutional commitment to operationalising this framework across the continent and beyond.

## TITRE ET RÉSUMÉ EN FRANÇAIS

### Encadrer les réparations des injustices historiques: le potentiel normatif et stratégique de la Politique de justice transitionnelle de l'Union africaine

**RÉSUMÉ:** Cet article examine la Politique de justice transitionnelle de l'Union africaine (PJTUA) en tant que cadre continental pour les réparations liées aux injustices historiques, notamment l'esclavage, le colonialisme, l'apartheid ainsi que l'exclusion systémique fondée sur la race et le genre. Alors que les mécanismes de justice transitionnelle se sont traditionnellement limités aux contextes post-conflit, l'AUTJP adopte une approche plus large, structurelle et prospective, qui place au centre les victimes et les communautés historiquement privées de réparation. L'article soutient que l'AUTJP offre à la fois un cadre normatif et un outil stratégique permettant de repenser la justice réparatrice en Afrique et dans ses diasporas. À travers une analyse détaillée des principes, des objectifs et des mécanismes participatifs consacrés par la PJTUA, l'article met en lumière sa vision décoloniale, centrée sur les victimes et ancrée dans le panafricanisme. Il situe la PJTUA par rapport aux approches internationales dominantes en matière de réparations et souligne son potentiel pour

\* LLB (Buea) MA (Yaounde) PhD (Quebec) Professor, Faculty of Law, Université Laval, Canada; [Steve.Tiwa-Fomekong@fd.ulaval.ca](mailto:Steve.Tiwa-Fomekong@fd.ulaval.ca)

traiter les préjudices structurels de longue durée, favoriser des formes de réparation matérielles et symboliques et promouvoir des transformations profondes. Ce faisant, l'article montre comment la PJTUA peut être mobilisée par les États africains, les institutions régionales, les acteurs de la société civile et les communautés de la diaspora pour soutenir des revendications nationales et transnationales en matière de réparations. La section II examine la pertinence du contenu normatif de l'AUTJP pour encadrer les réparations des injustices historiques et structurelles, tandis que la section III analyse la manière dont ses principes peuvent être interprétés et appliqués stratégiquement à des injustices historiques dépassant les cadres classiques de la justice transitionnelle. L'article conclut que l'AUTJP constitue une contribution importante à la théorie et à la pratique de la justice réparatrice, en proposant une lecture résolument africaine de la manière dont les injustices historiques peuvent être réparées et les préjudices futurs prévenus. Il appelle à un engagement institutionnel renforcé pour opérationnaliser ce cadre sur le continent et au-delà.

TÍTULO E RESUMO EM PORTUGUÊS

O Quadro das Reparações por Injustiças Históricas: O Potencial Normativo e Estratégico da Política de Justiça Transicional da União Africana

**RESUMO:** Este artigo explora a Política de Justiça Transicional (AUTJP) da União Africana como um instrumento continental para reparações por injustiças históricas, incluindo a escravatura, o colonialismo, o *apartheid* e a exclusão sistémica baseada na racial e no género. Embora os mecanismos de justiça de transição tenham sido tradicionalmente desenhados para contextos pós-conflito, a AUTJP adota uma abordagem mais ampla e estrutural, que coloca as vítimas e as comunidades historicamente privadas de reparações no centro do processo. O artigo sustenta que a AUTJP oferece tanto um quadro normativo como uma ferramenta estratégica para reformular a justiça restaurativa em África e nas suas diásporas. Partindo de uma leitura profunda dos princípios, objetivos e mecanismos participativos da AUTJP, o artigo destaca a sua visão centrada na vítima, decolonial e pan-africana da justiça. Identifica a AUTJP em relação às abordagens internacionais dominantes no que tange às reparações e destaca o seu potencial para abordar danos estruturais prolongados, promovendo as reparações simbólicas e materiais, e mudanças transformadoras. O artigo ilustra como a AUTJP pode ser mobilizada por Estados africanos, instituições regionais, atores da sociedade civil e comunidades da diáspora para avançar com reivindicações nacionais e transnacionais de reparações. A parte 2 examina a relevância do conteúdo normativo da AUTJP, na definição de reparações por injustiças históricas e estruturais, enquanto a parte 3 analisa como os seus princípios podem ser estrategicamente interpretados e aplicados a injustiças históricas para além dos contextos tradicionais da justiça transicional. O artigo conclui que a AUTJP constitui uma contribuição significativa para a teoria e prática da justiça restaurativa, oferecendo uma perspetiva africana única através da qual injustiças históricas podem ser corrigidas e danos futuros evitados. Apela a um maior compromisso institucional para implementar este quadro normativo, sobretudo, mas não só, em todo o continente.

**KEY WORDS:** African Union Transitional Justice Policy (AUTJP); transitional justice; African Union; historical injustices; reparations

CONTENT:

1	Introduction.....	281
2	AUTJP as a normative framework for reparations for historical injustices .....	283
2.1	AUTJP in context: origins, objectives and continental significance .....	283
2.2	Expanding the boundaries of transition: the AUTJP and the legacies of historical injustice.....	287
2.3	A transformative and decolonial vision of reparations for historical injustices in the AUTJP.....	291
3	Strategic mobilisation of the AUTJP: challenges, opportunities, and global relevance .....	296
3.1	Actors and arenas of mobilisation: who can activate the AUTJP? .....	297
3.2	From norms to action: how the AUTJP can be mobilised at the regional level .....	301
3.3	Structural and political challenges to mobilisation .....	306
4	Conclusion .....	314

## 1 INTRODUCTION

The call for reparations for historical injustices committed against Africans and people of African descent has gained renewed momentum in recent decades, emerging as a powerful demand for justice, recognition and structural transformation. From the transatlantic slave trade and colonial subjugation to post-colonial economic exploitation and systemic racism, the legacies of historical wrongs continue to shape contemporary inequalities both within African states and across the global African diaspora.<sup>1</sup> While efforts to advance reparative justice have often been fragmented, contested or co-opted, they nonetheless reflect a growing convergence of demands to confront the enduring effects of past atrocities and to construct more equitable futures.<sup>2</sup>

In this context, the African Union Transitional Justice Policy (AUTJP),<sup>3</sup> adopted in 2019, offers a timely and underexplored normative instrument that could serve as a catalyst for a coherent, pan-African and transnational approach to reparations. Although primarily intended to guide African states in their responses to legacies of conflict and authoritarianism, the AUTJP articulates a broader vision of justice – one grounded in African values and responsive to the continent’s multifaceted historical and political realities. It explicitly recognises the centrality of victims, the necessity of truth and recognition and the imperative of non-repetition. Importantly, its dedicated reparations pillar invites reflection on the multiple forms that redress can take, including symbolic, material, institutional and collective measures.

This article contends that the AUTJP – in both its substance and its spirit – provides not only a legal and policy framework for transitional justice within states, but also a valuable normative reference for addressing long-standing transgenerational harms rooted in slavery, colonialism and racial subordination. It argues that the principles and mechanisms enshrined in the AUTJP can be interpreted and strategically mobilised to support continental and diasporic claims for

- 1 S Michalopoulos & E Papaioannou ‘Historical legacies and African development’ (2020) 58 *Journal of Economic Literature* 53-128; Y Wu ‘Colonial legacy and its impact: analysing political instability and economic underdevelopment in post-colonial Africa’ (2024) 193 *SHS Web of Conferences*; J Kunnie ‘Justice never too late: the historical background to current reparations movements among Africans and African Americans’ (2018) 103 *The Journal of African American History* 44-64.
- 2 TS Metekia ‘AU “Year of Reparations” should look to the future and the past’ Institute for Security Studies (2025), <https://futures.issafrica.org/blog/2025/AU-Year-of-Reparations-should-look-to-the-future-and-the-past> (accessed 9 June 2025); B Onditi ‘Revitalising reparations discourse through historical and contemporary praxis’ (2025) Horn International Institute for Strategic Studies, <https://horninstitute.org/revitalizing-reparations-discourse-through-historical-and-contemporary-praxis/> (accessed 9 June 2025); African Union (AU) ECOSOC ‘Reparations: justice, healing and a fair future for Africa and its diaspora’ (2025) *African Union*, <https://ecosocc.au.int/en/blog/reparations-justice-healing-and-fair-future-africa-and-its-diaspora> (accessed 9 June 2025).
- 3 AU African Union Transitional Justice Policy (2019), [au.int/sites/default/files/documents/36541-doc-au\\_tj\\_policy\\_eng\\_web.pdf](https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf) (accessed 9 June 2025) (AUTJP).

reparations. Such an approach aligns with the African Union (AU)'s declared theme for 2025, focused on advancing reparative justice for Africa and its peoples, and builds on earlier AU commitments to dignity, human rights, and collective memory.<sup>4</sup>

While it draws on some core features of mainstream transitional justice – such as those outlined by the United Nations (UN) and the European Union (EU)<sup>5</sup> – the AUTJP departs from these models by articulating a more context-sensitive, inclusive and historically aware conception of justice.<sup>6</sup> It explicitly challenges the conventional view of transitional justice as limited to post-conflict or post-authoritarian contexts. Instead, it embraces a broadened scope that could be interpreted as including the enduring legacies of slavery, colonial domination and systemic exclusion, even in the absence of formal political transitions. In doing so, the policy reimagines the foundations of transitional justice through an African lens that centres structural transformation, collective memory and sovereignty.

While the global conversation on reparations for historical injustices – such as slavery, colonialism and racial violence – has grown, few studies have examined the AUTJP as a legal and ethical foundation for these claims, particularly in transnational and diaspora contexts. This article seeks to fill that gap. It combines a close doctrinal analysis of the AUTJP with a comparative reading of international frameworks and a critical reflection on how African and diasporic actors might leverage this instrument to support reparations advocacy rooted in historical truth and transformative justice.

To explore this potential, the article proceeds in two stages. The first part offers a systematic reading of the AUTJP and, in particular, its reparations pillar, focusing on the normative architecture, values and conceptual foundations that underpin its vision of reparative justice. It seeks to demonstrate how the AUTJP elaborates a model of reparations that, while originally conceived to support transitional justice within African states, contains conceptual and operational tools that can inform a broader framework of justice for the legacies of slavery, colonisation and systemic racial harm, both within Africa and across its diasporas.

The second part shifts from analysis to strategy. It examines how the AUTJP can be mobilised as a political, legal and symbolic resource to advance reparations claims for historical injustices at multiple levels – national, continental and global. Special attention is given to the

4 African Union Commission (AUC) '2025 theme of the year: Justice for Africans and People of African Descent through Reparations' (2025), <https://au.int/en/theme/2025> (accessed 9 June 2025).

5 For details, read, eg, ST Fomekong 'Les enjeux de la mise en oeuvre de la Politique de justice transitionnelle de l'Union africaine' in C Maia & J-B Harelimana (eds) *Réenchâter la justice internationale pénale: perspectives universelles et africaines* 325-350.

6 See, eg, TS Metekia 'Beyond rhetoric: integrating African traditional justice mechanisms into transitional justice processes' Policy Paper (2025) <https://www.csvr.org.za/beyond-rhetoric-integrating-african-traditional-justice-mechanisms-into-transitional-justice-processes/> (accessed 9 June 2025).

challenges and opportunities of using this framework to support gender-sensitive, memory-based and sovereignty-affirming forms of reparative justice. This part also considers the potential role of diverse actors – from AU institutions to civil society movements and diasporal initiatives – in leveraging the AUTJP within ongoing international debates and legal discourses on reparations.

## **2 AUTJP AS A NORMATIVE FRAMEWORK FOR REPARATIONS FOR HISTORICAL INJUSTICES**

While primarily addressed to African states, the AUTJP articulates a vision of justice that transcends narrow post-conflict frameworks and offers a holistic, historically grounded model for addressing a wide spectrum of harms. This part of the article argues that the AUTJP can serve as a guiding framework for reparations for historical injustices, including slavery, colonisation and systemic exclusion. To do so, it first situates the policy in its institutional and historical context, highlighting its African authorship and normative ambitions. It then analyses the broader conception of ‘transition’ advanced in the policy – one that includes structural, historical, and epistemic harms – before turning to its specific approach to reparations. The objective is to demonstrate that the AUTJP, through both its expansive temporal scope and its pluralistic conception of justice, provides a relevant and credible framework for reparative justice claims rooted in Africa’s and its diasporas’ historical experiences.

### **2.1 AUTJP in context: origins, objectives and continental significance**

The adoption of the AUTJP in February 2019 marked a significant milestone in the development of continental normative frameworks for peace building, justice and reconciliation. Emerging from over a decade of reflection and consultations, the AUTJP builds upon earlier instruments such as the 2006 African Union Policy on Post-Conflict Reconstruction and Development (PCRD).<sup>7</sup> That document had already emphasised the importance of justice, accountability, truth seeking and institutional reform – often through community-based or traditional mechanisms – as integral components of sustainable peace.<sup>8</sup> Despite the multiplicity of transitional justice experiences across the continent, including efforts to address the legacies of

7 AUC African Union Policy on Post-Conflict Reconstruction and Development (PCRD) (2006) paras 40-42; arts 31-33, <https://www.peaceau.org/uploads/pcrd-policy-framwovork-eng.pdf> (accessed 10 June 2025).

8 AUC (n 7) paras 40-42.

apartheid, authoritarianism and violent conflict,<sup>9</sup> the AU had, until 2019, no unified policy framework to guide these processes or facilitate the sharing of experiences among its member states. This normative gap was explicitly acknowledged in the 2011 report of the Panel of the Wise of the AU Peace and Security Council, entitled 'Non-Impunity, Truth, Peace, Justice, and Reconciliation in Africa: Opportunities and Constraints',<sup>10</sup> adopted at its tenth meeting in Addis Ababa, Ethiopia. The report recommended that the AU develop a continental transitional justice policy grounded in African experiences and capable of establishing common standards and providing practical guidance to member states.<sup>11</sup> Following the endorsement of the Panel's report and its recommendations, the AU Assembly tasked the Commission with leading the policy development process in close collaboration with member states and key stakeholders, including the African Governance Architecture's Working Group on Human Rights and Transitional Justice.<sup>12</sup> This consultative process culminated in the finalisation of the AUTJP in 2018 and its adoption by the AU Assembly at its thirty-second ordinary session held in February 2019.<sup>13</sup>

As former Chairperson of the AU Commission, Moussa Faki Mahamat, emphasised, the AUTJP represents a

transitional justice toolkit that is home-grown, unique to Africa, rich in its progressive methodologies and approaches, and rooted in African shared values, traditional justice systems and experiences, constituting a significant contribution to the global discourse and practice on transitional justice.<sup>14</sup>

Recognising the diversity of transitional justice practices across the continent, the policy was not intended to impose a single model. Rather, it establishes guiding principles, reference standards and flexible parameters to assist member states in the design, implementation and evaluation of context-specific justice processes.<sup>15</sup> The policy explicitly avoids proposing a one-size-fits-all model, acknowledging that such an approach would risk emptying transitional justice of its transformative potential. Instead, it affirms that justice processes must remain dynamic, flexible and responsive to the evolving realities, needs and aspirations of each society in transition.<sup>16</sup>

9 See, eg. African Commission on Human and Peoples' Rights 'Study on transitional justice and human and peoples' rights in Africa (28 April 2019) 7-77, <https://achpr.au.int/fr/soft-law/etude-sur-la-justice-transitionnelle-et-les-droits-de-lhomme-et-des-peuples-en> (accessed 10 June 2025); LH & M Salter (eds) *Traditional justice and reconciliation after violent conflict?: learning from African experiences* (2008) 129-132.

10 The report was published in 2013 under the title 'African Union Panel of the Wise, *Peace, justice, and reconciliation in Africa: opportunities and challenges in the fight against impunity* (2013).

11 As above.

12 See the preface of the AUTJP (n 3) vi.

13 AUC 'African Union adopts Transitional Justice Policy' Press Release, Addis Ababa, 12 February 2019, <https://au.int/en/pressreleases/20190212/african-union-adopts-transitional-justice-policy> (accessed 10 June 2025).

14 AUTJP (n 3), foreword by HE Mr Moussa Faki Mahamat iv-v.

15 Sec 1, paras 3 & 44 AUTJP.

16 Sec 1, paras 9, 12, 35-37 AUTJP.

The AUTJP, therefore, pursues a broad and multidimensional purpose. It seeks to provide African states, institutions and communities with a normative and procedural framework capable of addressing the legacies of conflict, authoritarian rule and structural violence. By rooting its guidance in African values, traditions and historical contexts, the policy aims to promote inclusive peace, social cohesion, dignity and accountability. Importantly, it was not conceived as a legally binding treaty, but as a soft law instrument – meant to guide and support national and regional transitional justice efforts, without imposing rigid legal obligations. Nonetheless, the AUTJP's transformative ambition and inclusive vision are reinforced by its deep anchorage in the broader African normative architecture. Rather than standing alone, the policy draws conceptual authority and political legitimacy from key AU legal instruments,<sup>17</sup> including the Constitutive Act of the AU,<sup>18</sup> the African Charter on Human and Peoples' Rights (African Charter),<sup>19</sup> and the Protocol Relating to the Establishment of the Peace and Security Council.<sup>20</sup> These foundational texts articulate principles of dignity, equality, accountability, non-discrimination and people-centred governance – all of which are reflected in the AUTJP's emphasis on inclusive, participatory and transformative justice. In particular, the AUTJP positions itself as advancing the noble goals of the AU's Agenda 2063, particularly its declaration to 'end all wars in Africa by 2020' and its emphasis on human rights, justice, peace and security, and good governance.<sup>21</sup>

Moreover, the AUTJP is mutually reinforcing with other thematic AU instruments that form part of the continent's broader justice architecture. It complements the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol)<sup>22</sup> by emphasising gender-sensitive and transformative reparations for women affected by violence and exclusion.<sup>23</sup> It aligns with the African Charter on Democracy, Elections and Governance (African Democracy Charter)<sup>24</sup> in its focus on

17 Sec 1, paras 3-5 AUTJP; sec 2, para 99; sec 3, paras 101, 105.

18 AU Constitutive Act of the African Union adopted 11 July 2000, entered into force 26 May 2001, <https://au.int/en/treaties/constitutive-act-african-union> (accessed 10 June 2025).

19 Organisation of African Unity African Charter on Human and Peoples' Rights adopted 27 June 1981, entered into force 21 October 1986, <https://au.int/en/treaties/african-charter-human-and-peoples-rights> (accessed 10 June 2025).

20 AU Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted 9 July 2002, entered into force 26 December 2003, <https://au.int/en/treaties/protocol-relating-establishment-peace-and-security-council-african-union> (accessed 10 June 2025).

21 Sec 1, paras 2, 7, 9 AUTJP; foreword iv.

22 AU Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa adopted 11 July 2003, entered into force 25 November 2005, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa> (accessed 10 June 2025) (African Women's Protocol).

23 Sec 1, para 18 AUTJP; sec 2, paras 53, 54, 66; sec 3, para 101.

24 AU African Charter on Democracy, Elections and Governance adopted 30 January 2007, entered into force 15 February 2012, <https://au.int/en/treaties/african-charter-democracy-elections-and-governance> (accessed 10 June 2025).

accountable governance, citizen participation and institutional reform as essential components of sustainable peace.<sup>25</sup> The policy addresses the needs of internally displaced persons through a justice-oriented framework that includes consultation rights, recognition of displacement as a human rights violation, reparations for harm suffered, and measures for secure return and resettlement – approaches that complement and strengthen the protection framework established by the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.<sup>26</sup> Together, these instruments form a continental rights-based architecture that prioritises justice, prevention and reparation. In aligning itself with these instruments, the AUTJP not only strengthens the AU's internal legal coherence, but also affirms the principle of normative integration, in which peace, human rights and democratic governance are understood as mutually reinforcing and interdependent components of African-led transformation. In this sense, although the AUTJP formally is a non-binding soft law instrument, its normative weight lies in the fact that it reaffirms and operationalises legally binding commitments already undertaken by African states under existing AU treaties and charters. By giving practical expression to principles enshrined in these instruments, the AUTJP contributes to shaping the contours of state responsibility in transitional justice processes. It acts not only as a policy guide but also as a normative catalyst for implementation, reinforcing the legal and moral obligations to which African states have already committed.

The adoption of the AUTJP holds deeper conceptual and epistemological significance. Scholars – such as the former Chairperson of the AU Commission – have emphasised that the AUTJP does not merely transplant international transitional justice norms into African settings.<sup>27</sup> Rather, it reconfigures those norms by grounding them in Africa's own historical experiences, political struggles, governance traditions and emancipatory aspirations.<sup>28</sup> In this respect, the AUTJP can be read as an articulation of Third World Approaches to International Law (TWAIL) within the field of transitional justice. It challenges the universalising tendencies of dominant liberal legal paradigms – often developed in post-World War II or post-Cold War

25 Sec 2, paras 93-98 AUTJP.

26 AU African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) adopted 23 October 2009, entered into force 6 December 2012, <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa> (accessed 10 June 2025).

27 U Lühe 'Developing the African Union Transitional Justice Policy: an assemblage perspective' in BJ & U Lühe (eds) *Knowledge for peace: transitional justice and the politics of knowledge in theory and practice* (2021) 167-190; GM Wachira 'The African Union Transitional Justice Policy framework and how it fits into the African governance architecture (AGA)' in CC Jalloh, KM Clarke & VO Nmeihelle (eds) *The African Court of Justice and Human and Peoples' Rights in context: development and challenges* (2019) 147-165; SA Dersso 'The African Union Transitional Justice Policy: expanding the frontiers of transitional justice' Policy Brief, Centre for the Study of Violence and Reconciliation, May 2021 2-4.

28 Wachira (n 27); Dersso (n 27).



contexts<sup>29</sup> – by foregrounding African agency, legal pluralism and historical specificity. Instead of treating transitional justice as a sequence of imported procedures aimed at restoring order, the AUTJP envisions it as a politically generative and historically responsive process tied to questions of structural injustice, sovereignty and reparative transformation. Its emphasis on community-based mechanisms, context-specific pathways and African normative sources reflects a commitment to epistemic decolonisation, challenging Eurocentric hierarchies of legal knowledge and affirming the legitimacy of African contributions to global justice discourses. In this sense, the AUTJP does not merely complement existing international norms – it contributes to their transformation by offering an alternative jurisprudence grounded in postcolonial critique, participatory justice and pan-African values. This decolonial and transformative orientation is further reflected in the AUTJP's redefinition of 'transition' itself, which can be interpreted as moving beyond narrow post-conflict or post-authoritarian frameworks to encompass the structural legacies of historical injustice that continue to shape African societies.

## 2.2 Expanding the boundaries of transition: the AUTJP and the legacies of historical injustice

Mainstream transitional justice frameworks, notably the United Nations (UN)'s 2004 Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,<sup>30</sup> have played a central role in institutionalising the field, but they remain deeply shaped by liberal peace-building paradigms and Western conceptions of justice.<sup>31</sup> These paradigms conceptualise transitional justice as part of a broader effort to restore the rule of law and promote state stability, with a strong emphasis on judicial reform, sequencing of mechanisms, and alignment with international human rights norms.

The 2004 Report, for instance, frames transitional justice as primarily relevant for 'societies emerging from conflict or authoritarian

29 AA Kwadwo 'Ethical dimensions of Third-World Approaches to International Law (TWAIL): a critical review' (2015) 8 *African Journal of Legal Studies* 209-234; KM Clarke 'Transitional justice as repression and resistance' (2023) 21 *Journal of International Criminal Justice* 701-717; S Xavier and others 'Placing TWAIL scholarship and praxis: introduction to the special issue of the Windsor Yearbook of Access to Justice' (2016) 33 *Windsor Yearbook of Access to Justice*; M Mutua & A Anghie 'What is TWAIL?' (2000) 94 *Proceedings of the Annual Meeting of the American Society of International Law* 31-40.

30 United Nations Secretary-General 'The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General' S/2004/616, 23 August 2004, <https://digitallibrary.un.org/record/527647> (accessed 10 June 2025).

31 DN Sharp 'Transitional justice and liberal post-conflict governance: synergies and symmetries, frictions and contradictions' PhD thesis, Leiden University, 2016, <https://scholarlypublications.universiteitleiden.nl/handle/1887/37292> (accessed 26 June 2025); S Vieille 'Transitional justice: a colonizing field?' (2012) 4 *Amsterdam Law Forum* 58-68; MD Azman 'Transitional justice and peacebuilding in Africa: nexus or nemesis?' (2014) 2 *Malaysian Journal of International Relations* 23-42.

rule' (paragraph 9) and promotes 'rebuilding institutions' (paragraph 6) as a central goal.<sup>32</sup> It prioritises state building and legal continuity over structural transformation or historical justice.<sup>33</sup> Similarly, the EU's 2015 Policy Framework on Support to Transitional Justice links transitional justice explicitly to development and stabilisation agendas, viewing it as a tool for consolidating peace, governance, and human rights in fragile post-conflict contexts. Some scholars have argued that these liberal, institutionalised models of transitional justice often risk reinforcing top-down, externally imposed understandings of justice, which may be out of step with local priorities, cultural norms, and the lived realities of affected communities.<sup>34</sup> They have been critiqued for privileging institutional reform and legal accountability over more participatory, redistributive or culturally resonant approaches.<sup>35</sup> In response, critical voices have called for the deconstruction and expansion of transitional justice to make it more context-sensitive, inclusive and emancipatory, particularly by incorporating grassroots participation and addressing structural inequality.<sup>36</sup> Beyond these critiques, these models also tend to exclude long-standing structural harms – such as slavery, colonisation and systemic exclusion – which fall outside the temporal and political frame of 'transition' and, thus, are rendered invisible in dominant transitional justice practice.

The AUTJP grounds its vision of transitional justice in the diverse historical trajectories and lived realities of African societies. From the outset, the policy situates transitional justice within a broader historical continuum, acknowledging that African societies have long struggled with the aftermath of slavery, colonialism, apartheid, systematic

32 Report of the Secretary-General (n 30) paras 6, 9, 15, 16.

33 P Kastner 'Transitional justice and the challenging pursuit of social justice' (2017) 34 *Windsor Yearbook of Access to Justice* (2017) 1-19; BA Leebaw 'The irreconcilable goals of transitional justice' (2008) 30 *Human Rights Quarterly* 95-118; D Desai, D Isser & M Woolcock 'Rethinking justice reform in fragile and conflict-affected states: the capacity of development agencies and lessons from Liberia and Afghanistan' in H Cisse, DD Bradlow & B Kingsbury (eds) *International financial institutions and global legal governance* (2012) 241-262.

34 Vieille (n 31); Sharp (n 31); CL Sriram 'Justice as peace? Liberal peacebuilding and strategies of transitional justice' (2007) 21 *Global society* 579-591.

35 Vieille (n 31); Sharp (n 31); Sriram (n 34); S Robins 'Failing victims? The limits of transitional justice in addressing the needs of victims of violations' (2017) 11 *Human Rights and International Legal Discourse* 41-58.

36 R Shaw, L Waldorf & P Hazan (eds) *Localizing transitional justice: interventions and priorities after mass violence* (2010); D Simangan 'The pitfalls of local involvement: justice and reconciliation in Cambodia, Kosovo and Timor-Leste' (2017) 5 *Peacebuilding* 305-319; PL & M McGovern 'Whose justice? Rethinking transitional justice from the bottom up' (2008) 35 *Journal of Law and Society* 265-292; J Balint, J Evans & N McMillan 'Rethinking transitional justice, redressing indigenous harm: a new conceptual approach' (2014) 8 *International Journal of Transitional Justice* 194-216; Z Miller 'Embedded ambivalence: ungoverning global justice' (2020) 11 *Transnational Legal Theory* 353-381; DN Sharp 'What would satisfy us? Taking stock of critical approaches to transitional justice' (2019) 13 *International Journal of Transitional Justice* 570-589; A Kurze & C K Lamont 'Breaking the transitional justice machine: exploring spatiality, space travel, and inbetween spaces in research practice' (2021) 2 *Political Anthropological Research on International Social Sciences* 155-178.

repression and civil wars.<sup>37</sup> It explicitly states that it constitutes an African model and mechanism not only for addressing the legacies of violent conflicts and human rights violations, but also for confronting governance deficits and developmental challenges, with a view to advancing the AU's Agenda 2063, 'The Africa we want'.<sup>38</sup> This formulation departs from dominant international frameworks, such as those developed by the UN and the EU, which conceptualise transitional justice more narrowly, primarily as a response to post-conflict or post-authoritarian transitions, and seldom address historical injustices rooted in colonialism or racial domination. By contrast, the AUTJP draws inspiration from a wider historical horizon, explicitly integrating structural and intergenerational harms into its scope and African experiences drawn from African societies have been dealing with transitional processes for many decades in their quest to come to terms with the traumas of slavery, colonialism, apartheid and systematic repression.

This broader framing is reinforced by the policy's deliberate definition of the concept of 'transition'. Rather than tying transitional justice to a discrete temporal rupture, the AUTJP conceives transition as 'the journey of societies with legacies of violent conflicts, systemic or gross violations of human and peoples' rights towards a state of sustainable peace, justice and democratic order', explicitly noting that this definition avoids 'referencing a particular time period'.<sup>39</sup> By not anchoring transition to a specific historical moment – such as the formal end of a conflict, regime change, or the signing of a peace agreement – this definition significantly expands the temporal and contextual scope of transitional justice. It implicitly acknowledges that the harms of slavery, colonialism, apartheid and systemic exclusion often endure well beyond the formal cessation of violence or the collapse of oppressive regimes. These harms may persist structurally and intergenerationally, shaping socio-economic disparities, political marginalisation and identity-based discrimination.

One of the clearest manifestations of this shift is the inclusion of redistributive or socio-economic justice as a core pillar of the policy. The AUTJP defines redistributive justice as encompassing development measures aimed at correcting structural inequalities, marginalisation and exclusion in order to achieve social justice and equitable, inclusive development.<sup>40</sup> This emphasis is particularly relevant for contexts where historical injustices – such as colonial economic extraction, racialised land dispossession or apartheid-era resource allocation – have left enduring patterns of poverty and exclusion.<sup>41</sup> The persistence of these structural harms into the present further justifies the application of transitional justice tools beyond conventional post-conflict boundaries.

37 Sec 1, para 2 AUTJP; preface by HE Amb Minata Samate Cessouma vi.

38 Sec 1, para 2 AUTJP.

39 Sec 1, para 20 AUTJP.

40 Sec 2, para 67 AUTJP.

41 J Sarkin *Transitional justice in Africa: the quest for legitimacy* (2011) 78.

Further supporting this flexible and inclusive approach is the AUTJP's explicit commitment to context specificity. The policy makes clear that there is no one-size-fits-all model of transitional justice, and that the combination and sequencing of truth, justice, reparations, reconciliation and institutional reform measures must reflect each society's historical experiences and contemporary needs.<sup>42</sup> Through inclusive and participatory consultation processes, societies are encouraged to determine for themselves whether to place greater emphasis on justice, healing or reconciliation<sup>43</sup> – a formulation that provides normative space for historical reckoning in addition to conflict resolution.

Finally, the policy's attention to diversity management provides a concrete mechanism for addressing the ethnic, racial and cultural dimensions of both past and present harms. It acknowledges that in many African societies, violence and exclusion have been organised and perpetrated along lines of race, ethnicity, religion, language or regional affiliation.<sup>44</sup> By including diversity management as a core dimension of transitional justice, the AUTJP recognises the group-based nature of many historical injustices and affirms the need for transitional justice processes that actively confront the identity-based foundations of structural violence.

In this regard, while the AUTJP was developed as a policy framework for AU member states, its significance extends far beyond intra-African transitions. Its provisions can be interpreted as recognising that legacies of colonialism, slavery, apartheid and systemic exclusion fall within the scope of reparable injustice. This framing situates the policy within a broader historical justice agenda that transcends the confines of post-conflict repair. Although it is not legally binding on Western states, the AUTJP's normative strength lies in its capacity to serve as a continental standard, a mobilising tool, and a platform for coherence and legitimacy in African-led and diasporic demands for reparations. Much like the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>45</sup> or the UN Declaration on the Rights of Indigenous Peoples,<sup>46</sup> the AUTJP operates as a soft-law instrument with political and moral authority, capable of informing civil society advocacy, shaping diplomatic positions and guiding legal argumentation across jurisdictions. While the specific modalities and scope of reparations are further developed in the policy's substantive provisions, the broader vision it offers – grounded in historical

42 Sec 1, paras 33-37 AUTJP.

43 As above.

44 Sec 2, paras 75-76 AUTJP.

45 United Nations General Assembly Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147 (16 December 2005).

46 United Nations General Assembly United Nations Declaration on the Rights of Indigenous Peoples UN Doc A/RES/61/295 (13 September 2007).

consciousness and African normative values – opens up new possibilities for advancing demands rooted in structural redress, recognition and dignity. In that sense, the AUTJP does not merely reaffirm that reparative justice extends beyond post-conflict scenarios; it contributes to an evolving legal discourse in which Africa positions itself as a source of normative innovation in the global movement for reparations.

### **2.3 A transformative and decolonial vision of reparations for historical injustices in the AUTJP**

At the heart of the AUTJP's approach to reparations lies a victim-centred paradigm that redefines the relationship between the state, justice processes, and those who have suffered harm. The policy champions the active participation of victims, recognising their rights, voices and agency throughout transitional justice processes. Victims are not treated as passive recipients but as key actors in shaping the form, content and priorities of reparative measures. The AUTJP explicitly affirms that 'victims and other members of society affected by violence have as a matter of principle the right to justice and to truth in their own country, based on mechanisms and processes in whose design they take an active part'.<sup>47</sup> It further stresses that 'reparation programmes should be transformative and promote equality, non-discrimination and participation of victims and other stakeholders',<sup>48</sup> and that transitional justice commissions must 'provide a safe and supportive environment for victims to testify',<sup>49</sup> while ensuring that their participation remains central in sentencing considerations.<sup>50</sup> This approach marks a deliberate departure from technocratic and institution-centred models of transitional justice in which, as scholars have argued and demonstrated, victims often occupy symbolic or peripheral roles.<sup>51</sup> The AUTJP instead insists on reparations rooted in the voices, experiences and aspirations of those most affected – particularly those who have endured intersecting forms of oppression.

This normative and participatory framing renders the AUTJP particularly relevant for addressing historical injustices such as slavery, colonisation, apartheid and systemic racial subjugation – harms that generated structurally compounded vulnerabilities over generations. These injustices were not isolated events, but long-standing systems embedded in legal, economic and social orders that denied recognition,

47 Sec 1, para 32 AUTJP.

48 Sec 2, para 66 AUTJP.

49 Sec 2, para 52 AUTJP.

50 Sec 2, para 88 AUTJP.

51 S Robins & E Wilson 'Participatory methodologies with victims: an emancipatory approach to transitional justice research' (2015) 30 *Canadian Journal of Law and Society* 1-18; S Robins 'Failing victims? The limits of transitional justice in addressing the needs of victims of violations' (2017) 11 *Human Rights and International Legal Discourse* 41-58.

autonomy and voice.<sup>52</sup> The AUTJP's model affirms victims' epistemic authority, enabling communities to define justice on their own terms. In contexts where the oppressed were excluded from shaping law, memory, and legitimacy, this shift is not symbolic; it is constitutive. It redefines who speaks, whose suffering counts, and what justice entails. By affirming victims as active agents, the AUTJP enables historically marginalised communities to reclaim narrative and moral agency in processes of redress.

Although the AUTJP does not explicitly employ the term 'intersectionality', it fully integrates this analytical lens. It recognises that harms are experienced differently based on identity factors such as gender, age, ethnicity, disability, socio-economic status, displacement and geography. For example, it acknowledges the need for gender-sensitive approaches and highlights the unique experiences of women, girls, the elderly, persons with disabilities and the youth.<sup>53</sup> The policy affirms that transitional justice must address the 'gender, generational, ethnocultural, socio-economic and development dimensions' of peace and justice.<sup>54</sup> In doing so, it recognises that women and girls may face sexual and reproductive violations rooted in both colonial and patriarchal systems.<sup>55</sup> These forms of violence are not isolated or incidental; rather, it has been argued that they are historically situated within overlapping structures of domination that targeted women's bodies as sites of control and subjugation.<sup>56</sup> While the AUTJP does not explicitly adopt a theoretical framework, its emphasis on gender-sensitive approaches and on the differentiated experiences of marginalised groups reflects an implicit awareness that harm is shaped by intersecting systems of inequality. The policy's multidimensional lens resonates with key insights from feminist and intersectional scholarship, which emphasise that structural violence and historical injustice do not produce uniform effects, but are mediated by overlapping axes of identity and power.<sup>57</sup> Feminist and intersectional theorists have long argued that categories such as gender, race, class and coloniality operate in conjunction to shape how violence is

52 J Balint, J Evans & N McMillan 'Rethinking transitional justice, redressing indigenous harm: a new conceptual approach' (2014) 8 *International Journal of Transitional Justice* 194-216.

53 Sec 1, para 33 AUTJP; sec 2, paras 53-56; sec 3, paras 101-115.

54 Sec 1, para 19 AUTJP.

55 AW Mansour 'Exploring patriarchal dominance in the context of colonialism in *The story of Zahra and Things fall apart*' (2024) *International Journal of Multidisciplinary Research and Growth Evaluation*, <https://www.researchgate.net/publication/385018849> (accessed 10 June 2025); R Gupta 'Understanding and undoing the legacies of sexual violence in India, USA and the World' (2017) 2 *Indian Journal of Women and Social Change* 1-3.

56 PE Andrews 'Globalization, human rights and critical race feminism: voices from the margins' (2000) 3 *Journal of Gender, Race and Justice* 373-393; C Baskin 'Contemporary indigenous women's roles: traditional teachings or internalized colonialism?' (2020) 26 *Violence Against Women* 2083-2101.

57 KC Riddle 'Structural violence, intersectionality, and just peace: evaluating women's peacebuilding agency in Manipur, India' (2017) 32 *Hypatia* 574-592; K Brown & N Jones 'Gender, race, and crime: the evolution of a feminist research agenda' in BJ Risman, CM Froyum & WJ Scarborough (eds) *Handbook of the Sociology of Gender* 449-457.

experienced, remembered and repaired.<sup>58</sup> From this perspective, redress mechanisms that ignore these interconnections risk reproducing the very exclusions they aim to overcome.<sup>59</sup> For instance, gender-based harms under colonial regimes were frequently racialised and institutionalised, with legal frameworks systematically legitimising the subordination of colonised women.<sup>60</sup> As a result, responses that focus narrowly on individualised violations or isolated acts of violence often fail to address the structural and cumulative nature of injustice.<sup>61</sup> Intersectional approaches instead call for reparative frameworks that account for how harm is at once individual and collective, immediate and intergenerational, visible and invisible.<sup>62</sup> In this light, the AUTJP's call for gender-sensitive reparations – though not fully theorised – nonetheless supports a vision of justice that is attentive to the layered and enduring effects of historical harm. It offers a valuable normative foundation for designing reparations that address not only past violations but also the structural continuities that perpetuate gendered and racialised inequalities today. In so doing, it provides a basis for redress measures that are both historically grounded and responsive to the lived realities of those most affected.

At the same time, the policy acknowledges that marginalised communities may require collective, culturally grounded forms of redress.<sup>63</sup> This recognition is also significant in light of critiques from post-colonial and decolonial scholarship, which have emphasised that colonial violence targeted not only individuals, but also cultural, epistemic and communal systems.<sup>64</sup> For many communities, harm was enacted through the destruction of traditional governance, the

- 58 GR Mehrotra 'Toward a continuum of intersectionality theorizing for feminist social work scholarship' (2010) 25 *Affilia: Journal of Women and Social Work* 417-430; K Brown and N Jones 'Gender, race, and crime: the evolution of a feminist research agenda' in Risman and others (n 57) 449-457.
- 59 S Amighetti & A Nuti 'David Miller's theory of redress and the complexity of colonial injustice' (2015) 8 *Ethics & Global Politics* 1-13; A Durbach 'Keeping justice at bay: institutional harms and the damaging cycle of reparative failure – the 2018 John Barry Memorial Lecture' (2019) 25 *Australian Journal of Human Rights* 200-216; K Celis & S Childs 'Feminist democratic design and the redress of intersectional representational problematics' (2024) 20 *Politics & Gender* 734-739.
- 60 E Ruíz & N Berenstain 'Gender-based administrative violence as colonial strategy' (2018) 46 *Philosophical Topics* 209-227; T Nassiri-Ansari & E Rhule 'Missing in action: a scoping review of gender as the overlooked component in decolonial discourses' (2024) 9 *BMJ Global Health* 1-9; F Vergès 'Race, gender, colonialism, racial capitalism, and black women's wombs' in K Gurminder and others (eds) *Decolonising the University* (2018) 88-102.
- 61 As above.
- 62 S Cho, K Williams Crenshaw & L McCall 'Toward a field of intersectionality studies: theory, applications, and praxis' (2013) 38 *Journal of Women in Culture and Society* 785-810; GR Painter 'Thinking past rights: towards feminist theories of reparations' (2012) 30 *Windsor Yearbook of Access to Justice* 1-38.
- 63 Sec 1, para 18 AUTJP; sec 2, paras 56-59, 65(iv).
- 64 S Stein and others 'Who decides? In whose name? For whose benefit? Decoloniality and its discontents' (2020) 3 *On Education: Journal for Research and Debate*, [https://doi.org/10.17899/on\\_ed.2020.7.1](https://doi.org/10.17899/on_ed.2020.7.1) (accessed 10 June 2025); K Asher & P Ramamurthy 'Rethinking decolonial and postcolonial knowledges beyond regions to imagine transnational solidarity' (2020) 35 *Hypatia* 542-547.

displacement from ancestral lands and the erasure of cultural and spiritual life worlds.<sup>65</sup> Accordingly, adequate reparation cannot be limited to financial compensation or individualised remedies; it must instead encompass the restoration of collective dignity, the affirmation of cultural sovereignty, and the revitalisation of memory, language and tradition.<sup>66</sup> By validating culturally grounded and collective forms of redress, the AUTJP implicitly challenges dominant reparation models that prioritise standard legal or financial remedies. It affirms the need for reparative practices that are context-specific and locally meaningful, such as land restitution, recognition of traditional authority, return of sacred objects and communal memorialisation. These approaches allow communities to define justice in their own terms, drawing upon their own histories, values and epistemologies.

In this sense, the AUTJP transforms reparations from a narrow compensatory mechanism into a broader process of structural and narrative justice. Reparations are framed as political and ethical commitments to dignity and equality, aimed at repairing not only the material consequences of harm, but also the symbolic and epistemic ruptures caused by historical injustice. By addressing both the differentiated experiences of groups such as women and girls, and the collective dimensions of harm suffered by indigenous and marginalised communities, the AUTJP supports a multidimensional approach to justice – one that is attentive to identity, history and structural transformation. It thus contributes meaningfully to the broader pursuit of reparative justice across Africa and its diasporas.

Furthermore, the policy articulates a pluralistic and context-sensitive conception of reparations that encompasses material, symbolic, individual, collective and structural dimensions. While it draws from the UN Basic Principles on the Right to a Remedy, the AUTJP reframes these through an African lens that emphasises collective values, cultural legitimacy and transformation. Reparations may include financial compensation, land restitution, access to health, education and livelihoods<sup>67</sup> – measures essential for victims of generational dispossession and colonial exploitation. Equally significant is the policy's emphasis on symbolic and collective reparations: memorialisation, public apologies, renaming of public spaces, and preservation of memory are central to restoring dignity to silenced communities.<sup>68</sup> These measures are particularly crucial in

65 S Francis & M Francis 'Addressing harms and restoring dignity: reparative, restorative and reconciliatory justice in the Southern Kalahari' (2024) 36 *Peace Review* 403-413; J Mokhoathi 'Imperialism and its effects on the African traditional religion: towards the liberty of African spirituality' (2017) 98 *Pharos Journal of Theology* 1-15.

66 P de Greiff 'Justice and reparations' in P de Greiff (ed) *The handbook of reparations* (2006) 451-477; M Mutua 'A critique of rights in transitional justice: the African experience' in G Oré Aguilar & F Gómez Isa (eds) *Rethinking transitions: equality and social justice in societies emerging from conflict* (2011) 31-45.

67 Sec 2, paras 65(i), (iii), (iv) AUTJP.

68 Sec 2, paras 52(iv), 53(vi), 65(v), 74(iv) AUTJP.



contexts where denial and erasure are integral components of historical injustice. Gender-sensitive reparations also feature prominently.

Moreover, the AUTJP situates reparations within a broader ecosystem of justice, interlinked with truth seeking, guarantees of non-repetition, and the preservation of collective memory. Rather than viewing violations in isolation, the policy encourages an integrated approach that acknowledges the historical depth and social embeddedness of harm. While it does not explicitly theorise structures such as slavery, colonisation, systemic racism or patriarchy, the policy implicitly recognises that the legacies of these systems continue to shape present-day inequalities. Reparations, in this view, are not limited to material compensation or symbolic gestures – they entail producing knowledge, recovering silenced histories, and transforming the conditions that made such harms possible in the first place. Truth seeking, including what may be termed structural or historical truth, is central to this process. The AUTJP calls for revealing the truth about the past, providing collective narratives, and ensuring public acknowledgment and recognition of past violations and the suffering of victims.<sup>69</sup> In alignment with broader decolonial approaches, truth telling is framed not as backward-looking but as politically enabling, facilitating moral accountability, collective healing and the reconstitution of social trust.<sup>70</sup> Similarly, guarantees of non-repetition are conceived not only in terms of legal or institutional reform, but also as long-term commitments to dismantling discriminatory structures and addressing the root causes of violence and exclusion.<sup>71</sup> Collective memory, in turn, is treated as a constitutive element of justice: memorialisation, cultural reclamation, and the preservation of historical consciousness are essential for resisting denial, rehumanising victims, and fostering inclusive narratives of the past.<sup>72</sup>

These interlinked pillars – truth, non-repetition, and memory – are particularly critical when addressing historical injustices such as slavery, colonisation and systemic racial or gender-based oppression. Such injustices are not only past violations but enduring legacies that have shaped social hierarchies, institutional practices and collective imaginaries across generations. By embedding reparations within this broader justice architecture, the AUTJP offers a framework that responds not only to the harms themselves, but to the deep structural and symbolic processes that allowed them to occur and persist. In this way, the policy provides a meaningful foundation for reparations that seek not merely to compensate, but to restore dignity, reshape dominant narratives, and transform the societal conditions that have marginalised entire communities throughout history.

69 Sec 2, paras 52(iv), 53(vi), 65(v) AUTJP.

70 V Barolsky 'Truth-telling about a settler-colonial legacy: decolonizing possibilities?' (2023) 26 *Postcolonial Studies* 540-556; C Ramos-Cortez & T MacNeill 'Truth processes and decolonial transformation: a comparative view of Guatemala, Peru, Chile and Colombia' (2024) 45 *Third World Quarterly* 208-228.

71 Sec 1, para 10(ii) AUTJP; sec 2, paras 53(iii), 63(ii), 69(ii), 93.

72 Sec 2, paras 71, 73, 74(ii)-(iv) AUTJP.

Through this integrated approach, the AUTJP constructs a non-fragmented, coherent and decolonial vision of reparations as an ongoing collective project – especially suited to addressing intergenerational and structural injustices. It thus serves as a foundation for pan-African and transnational reparative claims, including those linked to the legacies of the transatlantic slave trade and racial capitalism. This vision contrasts sharply with dominant Western transitional justice models, which prioritise procedural closure, individual accountability and institutional reform. The AUTJP, rooted in African philosophies such as ubuntu, emphasises relational repair, community memory and reintegration of victims into moral communities. It recognises that justice can be delivered not only by formal institutions but through indigenous, customary and local mechanisms – truth-telling ceremonies, rites of atonement, land-based practices – which have historically fostered reconciliation and social cohesion. Such mechanisms are especially vital for communities marginalised by state institutions. By recognising their legitimacy, the AUTJP challenges colonial legal hierarchies and reclaims African knowledge systems. This community-based orientation is central to its decolonial ethos, enabling the restoration of symbolic and moral order and affirming the legitimacy of non-Western justice traditions.

Finally, the AUTJP holds transnational relevance. Its emphasis on historical truth, cultural specificity and reparative justice provides diaspora-led movements – from the Caribbean to the Americas – with a normative African reference point. In a global context where Western legal frameworks often fail to accommodate or validate historical justice claims, the AUTJP offers a solidaristic and dignified language of redress, reconnecting Africa and its diasporas through shared struggles for truth, memory and reparation.

### **3 STRATEGIC MOBILISATION OF THE AUTJP: CHALLENGES, OPPORTUNITIES, AND GLOBAL RELEVANCE**

While the AUTJP presents a normatively rich and context-sensitive framework for addressing historical injustices and shaping inclusive justice processes, its transformative potential ultimately depends on how it is taken up and mobilised by various actors across different domains. Beyond its formal status as a continental policy instrument, the AUTJP offers a platform for strategic engagement, capable of informing advocacy, legal action, policy design, education and cultural reclamation – both within Africa and across the African diaspora. This part explores the practical and political dynamics of such mobilisation. It begins by identifying the diverse actors and institutional arenas that can activate the AUTJP (paragraph 2.1), then turns to the various modalities through which its principles and provisions can be translated into concrete interventions (paragraph 2.2). It also critically assesses the structural, political, and epistemic obstacles that may impede or distort this mobilisation (paragraph 2.3). Taken together, these sections examine how the AUTJP can function not only as a

regional policy tool, but as a strategic and solidaristic resource for shaping reparative futures in the face of enduring global asymmetries.

### 3.1 Actors and arenas of mobilisation: who can activate the AUTJP?

The AUTJP outlines a deliberately inclusive and multi-level framework for activation. This framework is rooted in the understanding that transitional justice cannot succeed unless it is mobilised strategically by a range of actors – from formal state institutions to affected communities – across multiple arenas. Importantly, the AUTJP is not a self-executing instrument; its transformative potential, particularly with regard to reparations for historical injustices, depends on its activation through legal, political and civic processes. As such, understanding who can activate the AUTJP, and how, is critical to assessing the prospects and limitations of using it as a strategic lever to advance redress for harms such as slavery, colonisation and systemic exclusion.

At the national level, member states of the AU bear primary responsibility for the implementation of the AUTJP. The policy unequivocally affirms that ‘member states shall have the primary responsibility with respect to pursuing transitional justice processes’,<sup>73</sup> and further stipulates that ‘they bear the responsibility for removing political and social impediments to the effective pursuit of transitional justice processes’.<sup>74</sup> This responsibility is not limited to policy design or legal enactments; it extends to creating the political and civic conditions necessary for transitional justice to take root. Specifically, the AUTJP underscores the duty of states to ‘guarantee the space for debate and advocacy on transitional justice and [to] mobilise the support of all sections of society across political lines’.<sup>75</sup> This language affirms that transitional justice is not merely a technical endeavour, but a deeply political and participatory process that must be embedded in democratic dialogue and inclusive governance.

In the context of reparations for historical injustices – such as those stemming from slavery, colonisation, apartheid or systemic racial and gender-based exclusion – this national role is decisive. Addressing such legacies requires more than temporary measures; it demands a long-term commitment to transforming the structures, narratives and institutions that have perpetuated inequality and denied recognition to victims and affected communities.<sup>76</sup> The AUTJP thus calls upon member states to adopt strategies that facilitate national dialogue on transitional justice in an open and inclusive manner. This includes

73 Sec 4, para 116 AUTJP.

74 Sec 4, para 116 AUTJP.

75 Sec 4, para 118 AUTJP.

76 M Mamdani *When victims become killers: colonialism, nativism, and the genocide in Rwanda* (2001); E Barkan *The guilt of nations: restitution and negotiating historical injustices* (2000).

fostering broad-based conversations on historical harm, designing consultative mechanisms with victims and civil society, and creating institutional pathways for acknowledgment, accountability and redress.

Moreover, member states are encouraged to domesticate the AUTJP's provisions through national legislation and to embed its core principles within permanent national institutions.<sup>77</sup> This domestication process is crucial to ensuring that transitional justice is not episodic or externally driven, but rather integrated into national legal frameworks, policy infrastructures and democratic practice. By internalising the AUTJP's guidelines within enduring governance structures, states can ensure the sustainability and legitimacy of transitional justice initiatives over time. In effect, the AUTJP places a substantial burden of leadership and implementation on AU member states. They are not only the primary duty bearers but also the central architects of context-specific transitional justice responses. Their actions – or inaction – will ultimately determine whether the policy's transformative promise, particularly in relation to reparations for historical injustices, is realised or deferred.

Since the adoption of the AUTJP in 2019, the degree of national implementation across member states has been variable. While the policy places primary responsibility on states to pursue transitional justice processes, including reparations for historical and structural injustices, the extent to which this responsibility has translated into action has depended on diverse political, institutional and socio-historical contexts. To date, there appears to be no publicly available information indicating that states have explicitly invoked the AUTJP in the context of reparations for historical injustices. Nonetheless, some countries have taken noteworthy steps to align national policies and institutions with the AUTJP's principles.<sup>78</sup> These early efforts, though uneven, signal the potential for the AUTJP to serve as a continental framework capable of guiding both the redress of past harms and the prevention of future harms.

Yet national efforts alone are insufficient, particularly where those very states are implicated in or continue to benefit from the legacies of historical injustices. This is where continental actors play a crucial role in providing strategic leadership, coordination and institutional support. The AUTJP recognises that 'the implementation of this AUTJP will not be successful without the overall strategic political leadership of the AU at the continental level'.<sup>79</sup> Among the key continental institutions, the AU Commission is specifically tasked with following up and evaluating transitional processes, coordinating implementation, and submitting annual reports on transitional processes across

77 Sec 2, para 93 AUTJP, sec 4, paras 118, 119.

78 Metekia (n 6); T Murithi (ed) *African Union and transitional justice: healing the past and restoring human dignity* (2024). See also AUC 'Roadmap for the implementation of the African Union Transitional Justice Policy' (2020), <https://atjlf.org/roadmap-for-the-implementation-of-the-african-union-transitional-justice-policy/> (accessed 10 June 2025).

79 Sec 4, para 126 AUTJP.

Africa.<sup>80</sup> The Peace and Security Council, alongside other AU organs, provides leadership in policy implementation and has historically played a role in adopting transitional justice frameworks, as evidenced by its adoption of the AU High-Level Panel on Darfur report.<sup>81</sup> The African Court on Human and Peoples' Rights (African Court) and the African Commission on Human and Peoples' Rights (African Commission) are identified as key institutions providing leadership in implementation, working within the broader framework of African human rights instruments.<sup>82</sup> Additional continental actors include the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee); the African Peer Review Mechanism (APRM); the Economic, Social and Cultural Council; the AU Board on Corruption; and the Pan-African Parliament, all collaborating with continental bodies such as the African Development Bank and the African Capacity Building Foundation to ensure comprehensive continental support for transitional justice processes.<sup>83</sup>

At the regional level, the AUTJP identifies regional economic communities (RECs) as key actors that should encourage national transitional processes and help address regional and trans-boundary dimensions of conflicts or violent repression.<sup>84</sup> RECs are positioned to provide diplomatic and resource support to member states, promote normalisation of relationships between affected neighbouring countries, and create common understanding on transitional processes.<sup>85</sup> The policy also calls for RECs to designate mechanisms that encourage transitional justice implementation and ensure harmonisation between regional and continental policy instruments.<sup>86</sup> Their regional proximity and political familiarity can create entry points for constructive engagement, although their capacity and willingness to prioritise transitional justice remain uneven.

In parallel, the policy places strong emphasis on non-state actors – civil society organisations, victims' associations, faith-based groups, traditional leaders and the media – as central drivers of transitional justice. It calls upon these actors to 'campaign for and facilitate the emergence of the necessary public national conversation and debate'.<sup>87</sup> In the specific context of historical injustices, their role is indispensable. These actors are often the custodians of memory, the initiators of claims for redress, and the translators of abstract policy language into locally meaningful forms. Victims and affected communities are not only entitled to participate in transitional justice processes – they are, as the AUTJP affirms, entitled to shape the very

80 Sec 4, paras 136-137 AUTJP.

81 Sec 1, para 6 AUTJP.

82 Sec 4, para 126 AUTJP; sec 2, para 99.

83 Sec 4, para 126 AUTJP.

84 Sec 4, para 123 AUTJP.

85 Sec 4, paras 123-124 AUTJP.

86 Sec 4, paras 124-125 AUTJP.

87 Sec 4, para 127 AUTJP.

mechanisms through which justice is defined and pursued.<sup>88</sup> The policy specifically recognises that victims and other affected members of society have ‘the right to justice and to truth in their own country, based on mechanisms and processes in whose design they take an active part,’ while faith-based and traditional leaders should offer ‘avenues for healing, reconciliation and local justice’ as part of the transitional process.<sup>89</sup>

The policy also acknowledges the supportive role of international actors. While the AUTJP insists on African ownership and the primacy of regional frameworks,<sup>90</sup> it recognises that international organisations and development partners can contribute through technical, financial and capacity-building support.<sup>91</sup> This contribution, however, must be aligned with the principles and priorities articulated in the AUTJP and should not substitute for domestic or regional leadership.

Activation can occur across diverse arenas. The AUTJP identifies formal mechanisms such as peace negotiations (which should incorporate TJ considerations ‘from the outset’), judicial processes through national and traditional courts, and legislative frameworks through enabling legislation.<sup>92</sup> The policy also emphasises informal pathways including community participation through ‘inclusive consultative processes’, public education programmes, and traditional justice practices adapted for community-level implementation.<sup>93</sup> In the context of historical injustices, the latter are particularly important: grassroots initiatives, memory work and cultural reclamation often precede or outlast formal processes and are essential to any meaningful reparative justice.<sup>94</sup>

A few key insights emerge from the AUTJP’s activation framework. First, it envisions mobilisation as occurring simultaneously at the national, regional and continental levels, with coordinated and mutually reinforcing actions. Second, it affirms that transitional justice must combine top-down institutional strategies with bottom-up participation, particularly from those most affected. Third, it permits activation not only after conflict or repression, but also during ongoing crises or as a preventive tool in situations of governance failure. Fourth, it integrates intergenerational mechanisms – such as memorialisation

88 Sec 1, para 32 AUTJP; sec 4, paras 127-128.

89 As above.

90 Sec 1, para 24 AUTJP.

91 Sec 1, para 41 AUTJP.

92 Sec 2, paraS 44, 77-80 AUTJP; Sec 4, para 118.

93 Sec 1, paras 19, 32 AUTJP; sec 2, para 80; sec 4, para 119.

94 M Soto & JJ Savelsberg ‘Collective memories and community interventions: peace building in Northern Ireland’ (2023) 17 *Social Sciences Journal* 360-383. See also B Ibhawoh, S Bawa & J Ayelazuno (eds) *Truth commissions and state building* (2023); M Brown and others *The memories of marginalised communities need to be part of peacebuilding and transitional justice in Colombia* University of Bristol Policy report (June 2020), <https://www.bristol.ac.uk/policybristol/policy-briefings/the-memories-of-marginalised-communities-need-to-be-part-of-peace-building-and-transitional-justice-in-colombia/> (accessed 10 June 2025).

and education – ensuring that justice for historical injustices remains a living, evolving process.

In sum, the AUTJP outlines a broad and flexible framework for activation. Its mobilisation depends not only on formal authority, but also on strategic agency, political opportunity, and the ability to bridge normative commitments with lived experiences of harm. In this complex landscape, the African Commission stands out as a particularly strategic actor – one capable of interpreting, promoting and helping to operationalise the AUTJP's reparative vision in ways that are both grounded in regional human rights law and responsive to historical claims for justice.

### **3.2 From norms to action: how the AUTJP can be mobilised at the regional level**

There are several ways in which the AUTJP can be mobilised at the regional level. However, due to limitations of space and the need to maintain focus, this part does not attempt an exhaustive or systematically selected inventory. Instead, it highlights four key avenues of mobilisation that, in our view, represent some of the most strategic and impactful. These include (i) education, training and the diffusion of norms; (ii) the use of the AUTJP as a tool for advocacy and political mobilisation at both domestic and international levels; (iii) the elaboration of a Common African Position on specific transitional justice themes, grounded in the AUTJP's language and principles; and (iv) the proactive role of the African Commission.

#### **3.2.1 Education, training and the diffusion of norms**

The first and, arguably, most foundational avenue for mobilising the AUTJP at the regional level lies in the realms of education, training and norm diffusion. These are not merely technical or supportive measures, but essential strategies for building a shared understanding of justice – one that embraces the need for reparations for historical injustices. The AUTJP promotes a vision of transitional justice that moves beyond narrow post-conflict responses to encompass the legacies of slavery, colonialism, apartheid and systemic exclusion. Education and training, therefore, play a vital role in cultivating awareness of reparative justice as both a normative obligation and a political imperative rooted in African experiences and values.

This function is especially crucial in post-colonial societies where demands for reparations have often been delegitimised, depoliticised or confined to elite legal discourse. The enduring effects of historical injustices – such as land dispossession, cultural erasure and racialised inequality – are rarely addressed through formal justice mechanisms. In this context, the AUTJP provides an African-authored normative framework that reclaims reparations as a legitimate and necessary dimension of democratic transformation. Education and norm diffusion allow for this reframing by embedding the policy's principles in institutions of knowledge production and public engagement,

thereby fostering a culture in which reparation is understood not as charity or exceptionalism, but as a core element of justice and accountability.

This can be operationalised through several interlinked efforts. Law faculties and judicial training institutes can incorporate the AUTJP into courses on constitutionalism, international law and transitional justice, using its provisions to introduce students to African approaches to reparations. Professional training for judges, civil servants and human rights defenders can emphasise the structural and participatory nature of reparations, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, as framed by the AUTJP. Equally, civic education and public awareness campaigns – when rooted in the language of the AUTJP – can help popularise the idea that reparations are not just retrospective acts, but forward-looking measures to redress deep-rooted harm and foster inclusive governance.

Importantly, a diverse range of actors can carry out this work. AU bodies such as the African Commission and the African Court can embed the AUTJP's reparative logic into their promotional mandates. National human rights institutions and ministries of education and justice can integrate its principles into policies, training materials and curricula. Academic institutions can develop research programmes, teaching modules and public lectures to unpack the links between historical injustice and contemporary inequality. Civil society actors can translate the AUTJP into local idioms and facilitate community dialogues on reparation demands, memory and structural redress.

In the long term, such efforts contribute to the emergence of a reparative political culture – one that takes seriously the historical foundations of injustice and seeks to correct them through informed, participatory and institutionally grounded means. In contexts where structural violence and inequality are often normalised, the AUTJP can help repoliticise the question of reparations and reclaim it as a collective project of democratic transformation. Education, training and norm diffusion are thus indispensable not only for operationalising the AUTJP, but for embedding its transformative potential within the broader struggle for justice across Africa.

### ***3.2.2 Leveraging the AUTJP as a normative framework for advocacy and political mobilisation for reparations***

The second avenue for mobilising the AUTJP at the regional level involves leveraging the policy as a powerful instrument of advocacy and political mobilisation, particularly in relation to reparations for historical injustices. The AUTJP provides a normatively rich framework that emphasises participation, inclusion, historical justice and structural transformation – principles that are both regionally grounded and politically resonant. Its language and values offer a compelling vocabulary through which actors can frame demands for justice, not only in legal or technical terms, but as part of a broader political and ethical project. In both domestic and international arenas, the AUTJP can inform official speeches, national policy debates,



diplomatic interventions and civil society campaigns. This is especially relevant as the AU and its member states prepare for the commemorative events of 2025, where the symbolic alignment of political discourse with the AUTJP could reinforce the African authorship of reparative justice and counter prevailing narratives that portray reparations as unilateral demands from the Global South toward the North.

A key – yet often underappreciated – contribution of the AUTJP lies in its provision of a shared normative language through which African states, regional institutions and civil society actors can articulate and coordinate claims for reparations. Historically, calls for reparative justice across the continent have been fragmented, varying widely on a legal basis, political framing and strategic direction. The AUTJP responds to this challenge by offering a unified conceptual foundation built around terms such as victim centrality, non-repetition, structural transformation and intergenerational justice. These terms do not merely serve rhetorical functions; they provide conceptual clarity and coherence, transforming what might otherwise appear as disparate or moralistic claims into structured, policy-backed demands grounded in a continental legal and political framework. The AUTJP's legitimacy – derived from its adoption by the African Union Executive Council and its alignment with core AU instruments such as the African Charter, Agenda 2063 and the African Women's Protocol – allows both state and non-state actors to invoke it with authority in diplomatic negotiations, strategic litigation and multilateral fora.

Crucially, this shared vocabulary enhances the coherence and legitimacy of reparations advocacy by anchoring it in an officially sanctioned framework that carries institutional weight. It allows African actors to speak with one voice, strengthening continental solidarity and bridging political or ideological divides between states and sub-regions. In doing so, the AUTJP facilitates the emergence of a continent-wide reparations discourse that is not only unified but also transnationally resonant. For African-descendant communities in the Americas, Europe and the Caribbean, the AUTJP offers a framework through which local claims can be linked to a broader pan-African project of historical redress. It thereby enables a normative and political convergence between domestic African struggles and global movements for reparative justice. In this sense, the AUTJP serves not only as a tool for regional policy coordination, but also as a catalyst for constructing a globally visible, politically coherent African reparations discourse – one rooted in shared history, collective memory and a common vision of justice.

### **3.2.3 *Developing a common African position: strengthening continental coherence in global reparations advocacy***

Building on the previous avenues, the third strategy for mobilising the AUTJP at the regional level consists of developing a Common African Position on key transitional justice issues, particularly in relation to reparations for historical injustices. This position would draw directly

from the AUTJP's normative content and vocabulary – emphasising victim centrality, structural transformation and historical redress – thereby reinforcing the policy's authority and enabling AU member states to speak with a unified voice in international fora. Such a position would not only be relevant within the framework of the AU commemorative activities but would also serve as lasting reference documents to guide African states in their interactions with Western states, multilateral organisations and global reparations movements. By anchoring diplomatic language and negotiation strategies in an African-authored policy instrument, this Common Position could help counter fragmented or state-specific approaches to reparations, and instead advance a coordinated, pan-African agenda that carries institutional legitimacy.

This approach is consistent with prior AU practices. The AU has already adopted Common African Positions on matters of collective interest, such as the Common African Position on an Arms Trade Treaty<sup>95</sup> and, more recently, the Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace.<sup>96</sup> Although the impact of such positions remains under-explored in the literature, it has been shown in some cases that – even when they do not produce immediate legal or political change – they have allowed African states to articulate shared priorities, defend common perspectives and shape the contours of global discussions.<sup>97</sup> These instruments, therefore, are not only diplomatically useful; they are normatively significant. They constitute a form of collective agency in international law making and represent an effort to reshape global governance through African perspectives.

In this sense, Common African Positions based on the AUTJP would serve both strategic and symbolic functions. Strategically, they would enable Africa to assert its voice in global debates about reparations, historical justice, and transitional justice frameworks – issues often dominated by Global North narratives. Symbolically, they would embody the aspirations of critical legal and postcolonial theories, such as Third World Approaches to International Law (TWAIL), which call for more inclusive and pluralistic forms of international norm production. Through such coordinated positions, African states would not only defend their claims more effectively but also contribute to the reconfiguration of international legal discourse. They would signal that reparative justice is not merely a set of claims directed at former colonial powers, but a coherent normative project, rooted in a shared

95 AU Common African Position on an Arms Trade Treaty, adopted in Addis Ababa, Ethiopia, January 2006, <https://archives.au.int/handle/123456789/8536> (accessed 10 June 2025).

96 AU Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace, adopted by the Peace and Security Council at its 1196th meeting, Addis Ababa, 29 January 2024, PSC/PR/COMM.1196 (2024).

97 For a discussion of the potential impact of the African Union's Common Position on the Arms Trade Treaty, see ST Fomekong 'La contribution de l'Union africaine au droit international humanitaire' doctoral thesis, Université Laval, 2020 137-140.

continental history and driven by a commitment to justice, dignity and structural transformation. As such, a Common African Position anchored in the AUTJP would both materialise the policy's transformative ambitions and help institutionalise Africa's normative influence in global justice debates.

### **3.2.4 Mobilising the African Commission on Human and Peoples' Rights in the service of historical justice**

Among the continental institutions capable of advancing the reparative vision of the AUTJP, the African Commission holds a unique and underutilised potential. As the oldest and most authoritative human rights organ of the AU and endowed with a broad mandate under article 45 of the African Charter, the African Commission is empowered to promote, interpret and protect human and peoples' rights across the continent. While the Commission does not directly implement the AUTJP, it can play a vital role in its dissemination, interpretation and mobilisation – particularly in advancing reparations for historical injustices. Notably, the Commission had already demonstrated a normative interest in transitional justice prior to the policy's adoption, through its 2017 Study on Transitional Justice and Human Rights in Africa. This prior engagement, coupled with its quasi-judicial authority and deep ties with civil society, makes the African Commission exceptionally well positioned to serve as a catalyst for the AUTJP's operationalisation.

The African Commission's leverage is multidimensional. First, it can issue General Comments and Resolutions that explicitly reference the AUTJP, reaffirming that historical and intergenerational harms – such as slavery, colonialism, apartheid, cultural destruction and systemic exclusion – fall within the scope of the African Charter's protections and Africa's right to reparative justice. While the Commission has previously adopted policies on related issues, such as transitional justice, these instruments have not yet fully engaged with the specific theme of reparations for historical injustices. This represents an important opportunity for the African Commission to align its interpretive outputs with the AUTJP's principles, contributing to jurisprudential coherence across African human rights bodies and reinforcing the legitimacy of reparations as a legal and political imperative.

Second, the Commission can mobilise its special mechanisms – including the Working Group on Indigenous Populations/Communities, the Working Group on Economic, Social and Cultural Rights, and the Special Rapporteur on Freedom of Expression and Access to Information – to investigate historically rooted patterns of structural harm and propose reparative measures grounded in the AUTJP. Through country visits, thematic reports and public statements, these mechanisms can help give practical effect to the AUTJP's emphasis on both material and symbolic reparations, while centring the lived experiences of communities affected by legacies of dispossession, marginalisation or violence.

Third, the African Commission can play a crucial role in international and interregional advocacy. Drawing on its observer status at the UN and its previous engagement with global debates on slavery, racism and cultural rights, the Commission can support African states and regional groupings – such as the Caribbean Community (CARICOM) – in framing claims for colonial and systemic reparations as issues of international justice and human rights. In doing so, it helps to correct the persistent asymmetries that have historically marginalised African voices in global reparations discourse. The Commission's endorsement of such claims would lend institutional legitimacy and political weight to efforts that often face resistance or dismissal on the international stage.

Beyond formal diplomacy, the African Commission also provides platforms for transnational solidarity and diaspora engagement. Through its NGO Forum, public sessions and side events, the Commission can facilitate exchanges between African and diaspora actors, enabling them to build collective strategies and advance a shared reparative agenda. Special mechanisms such as the Working Group on Extractive Industries and the Special Rapporteur on Cultural Rights can further support reparative claims linked to resource exploitation, environmental harm and cultural erasure.

Finally, the African Commission can serve a bridging role in trans-regional diplomacy by engaging with global platforms such as the UN Permanent Forum on People of African Descent, regional reparations commissions and Global South coalitions. In this role, the AUTJP can be used as a continental anchor norm to articulate a cohesive African vision of reparative justice, grounded in shared history, collective dignity and structural transformation. The African Commission thus stands not only as a legal monitor, but as a continental voice demanding global recognition of Africa's right to redress, particularly in the face of Western contestation or avoidance of responsibility.

In sum, while the African Commission does not administer reparations directly, its ability to shape norms, interpret rights, legitimise claims and convene actors makes it a central institutional bridge between the AUTJP's transformative potential and the realisation of justice for historical harms. Strategically mobilising the African Commission is not an ancillary option, but a necessary condition for activating the AUTJP as a meaningful framework for reparations, with both continental impact and global resonance.

### **3.3 Structural and political challenges to mobilisation**

Despite the normative clarity and transformative ambition of AUTJP, its strategic mobilisation as a framework for reparative justice can encounter several entrenched structural and political obstacles. While the policy offers a coherent vision grounded in historical redress, participation and structural transformation, its practical impact is conditioned by the political and institutional contexts in which it must operate. Mobilising the AUTJP is not simply a matter of translating text

into action; it requires confronting a complex web of resistance, fragmentation and asymmetry that shapes the landscape of transitional and reparative justice in Africa and beyond. Although a comprehensive mapping of all possible barriers lies beyond the scope of this part, the analysis will focus on three particularly salient and interrelated challenges. These are (i) political will and elite resistance to structural redress; (ii) institutional fragmentation and implementation gaps; and (iii) narrative contestation and memory politics.

### **3.3.1 Political will and elite resistance to structural redress**

Despite the normative clarity and transformative ambition of the AUTJP, its strategic mobilisation for reparative justice faces significant structural and political obstacles – foremost among them being the lack of sustained political will among African states and the resistance of elites to structural redress. While many states supported the adoption of the AUTJP and have endorsed the AU's 2025 theme on reparations, their practical commitment to implementing concrete measures remains highly uneven, cautious or, in some cases, entirely absent.<sup>98</sup> This reluctance stems from a variety of factors: fears of political destabilisation; concerns over financial liability; reluctance to confront uncomfortable national histories (especially where state complicity is involved in colonialism, slavery or systemic discrimination); and the high political cost of challenging entrenched elites or dominant post-colonial narratives.<sup>99</sup>

The AUTJP entrusts states with the primary responsibility for initiating and implementing transitional justice processes, including reparations. Yet, this presupposes a level of political commitment that, in practice, often is missing. Reparations for historical injustices require more than technocratic measures or victim compensation; they demand a transformative reckoning with the past, an acknowledgment of long-standing structural inequalities and, often, the redistribution of land, resources or symbolic capital. These requirements frequently run counter to the interests of ruling elites and challenge the foundational myths of postcolonial statehood. In this context, political resistance is not incidental; it is structural.

Empirical examples illustrate the limits of state commitment. In Ethiopia, despite the adoption of a national transitional justice policy in

98 Institute for Security Studies 'Doing justice to the theme of 2025: Reparations for Historical Wrongs and Africa's Collective Voice' ISS PSC Insights, 12 March 2024, <https://issafrica.org/pscreport/psc-insights/doing-justice-to-the-theme-of-2025> (accessed 21 May 2025); K Eickhoff & U Staeger 'Coming to terms with the past? Reparations as a test for Africa-Europe relations' MTA Spotlight 44, Stiftung Wissenschaft und Politik, 5 February 2025, <https://www.swp-berlin.org/publikation/mta-spotlight-44-coming-to-terms-with-the-past> (accessed 21 May 2025); AU 'Concept note on the pre-summit symposium on the AU Theme of the Year 2025: Justice for Africans and People of African Descent through Reparations (Amani Africa, 2024), <https://amaniafrica-et.org/wp-content/uploads/Concept-note-on-Pre-summit-symposium.pdf> (accessed 21 May 2025).

99 Institute for Security Studies (n 98); Eickhoff & Staeger (n 98).

2024 aligned with the AUTJP, significant concerns remain about the independence of the process, particularly regarding the appointment of the Truth, Amnesty and Reparations Commission.<sup>100</sup> Political manipulation and elite interference, especially in the context of ongoing inter-ethnic tensions, have cast doubt on the state's willingness to engage in deep structural reform.<sup>101</sup> Similarly, in Lesotho, transitional justice recommendations dating back to 1995 remain unimplemented due to political instability and elite resistance to any accountability measures that might challenge entrenched power structures.<sup>102</sup> In both cases, foundational questions about land, identity and exclusion remain unaddressed, exposing the limits of state-led reparative justice in the absence of genuine political will.<sup>103</sup>

Compounding this challenge is the fragmentation of reparations movements themselves, both within and beyond national borders. Civil society initiatives are often under-resourced, politically marginalised, and divided in terms of strategic focus – whether prioritising symbolic versus material reparations, individual versus collective redress, or national versus transnational claims.<sup>104</sup> Diaspora-led movements frequently operate in isolation from continental counterparts, lacking shared political platforms or coordinated strategies.<sup>105</sup> This fragmentation weakens the possibility of a coherent pan-African reparations agenda and reduces pressure on states to act. Without unified demands or institutional pathways, many movements remain reactive – responding to political openings rather than driving sustained engagement with AU mechanisms or national policy making. These dynamics reveal a deep tension between the AUTJP's normative ambition and the structural conditions prevailing in many African states. The policy assumes that normative endorsement will lead to action but, in practice, where transitional justice threatens to unsettle dominant narratives or implicate powerful actors, states may resist or selectively implement its provisions, focusing on less contentious elements such as truth telling or legal reform, while avoiding reparations altogether.

100 MD Belay & ZB Abebe 'African Union Transitional Justice Policy implementation guidance: Ethiopia' Policy Paper, Centre for the Study of Violence and Reconciliation, December 2024 4-5.

101 As above; see also TS Metekia 'Monitoring transitional justice in Ethiopia: the crucial role of the African Union' Policy Paper, Centre for the Study of Violence and Reconciliation, December 2024 6.

102 K Matlosa 'African Union Transitional Justice Policy implementation guidance: Lesotho' Policy Paper, Centre for the Study of Violence and Reconciliation, December 2024 4.

103 Belay & Abebe (n 100); Metekia (n101); Matlosa (n 102).

104 International Centre for Transitional Justice (ICTJ) 'We must resist, persist and never desist': Colombian and African Civil Society Exchange on the Role of Memory and Reparations (ICTJ, 15 March 2024), <https://www.ictj.org/latest-news/%E2%80%98we-must-resist-persist-and-never-desist%E2%80%99%E2%80%94colombian-and-african-civil-society-exchange> (accessed 22 May 2025).

105 AU 'Concept note on the pre-summit symposium on the AU Theme of the Year 2025: Justice for Africans and People of African Descent through Reparations (Amani Africa, 2024) 4-5.

Moreover, historical injustices often implicate not only the state but its very foundations. Engaging in reparations means revisiting foundational violence and acknowledging the partial or exclusionary nature of citizenship itself. In many contexts, this would require a radical re-imagining of the social contract – an act that demands extraordinary political courage and public engagement, both of which remain elusive.

If the AUTJP is to be effectively mobilised for reparations for historical injustices, it must be accompanied by mechanisms capable of generating, sustaining and monitoring political will. These could include the establishment of periodic reporting obligations, integration with the African Peer Review Mechanism, the organisation of AU-led dialogues on historical redress, or the strengthening of the African Commission's mandate to oversee implementation. Without such institutional safeguards and accountability levers, the AUTJP risks remaining normatively rich but practically underutilised, especially in precisely those cases where its transformative vision is most urgently needed.

### **3.3.2 Institutional fragmentation and implementation gaps**

A second major challenge that may impede the use of the AUTJP as a coherent framework for reparations for historical injustices lies in the fragmentation of institutional responsibilities and the persistent gaps between design and implementation. In many African states, transitional justice efforts – when pursued – tend to be siloed across multiple ministries and institutions, with limited coordination and poor alignment with reparative goals.<sup>106</sup> This disconnection undermines the AUTJP's vision of transitional justice as a holistic process that integrates truth seeking, reparations, reform and guarantees of non-repetition.

This fragmentation is particularly detrimental when addressing historical injustices, which often require long-term, multidimensional interventions across sectors. Reparations for slavery, colonisation, systemic land dispossession or ethnically discriminatory governance are not delivered by a single agency or within a narrow timeframe. Rather, they must be supported by educational reform, land policies, memorialisation initiatives, judicial remedies and cultural inclusion measures. In the absence of institutional coherence, these dimensions remain disconnected, and reparative efforts risk being reduced to symbolic acts or short-lived programmes.

In South Sudan, implementation challenges are evident. Although foundational legislation – such as the Commission for Truth, Reconciliation and Healing Act and the Compensation and Reparations Authority Act of 2024 – has been enacted, the institutions they create

106 A Moyo-Kupeta 'Three decades of transitional justice practice in Africa: reflections on lessons learnt towards an African transformative justice' (2024) 18 *International Journal of Transitional Justice*?191-200.

remain largely non-operational.<sup>107</sup> The legal framework appears aligned with the AUTJP,<sup>108</sup> but effective coordination between mechanisms requires development, as guidelines for inter-institutional collaboration are needed.<sup>109</sup> This situation has created potential for institutional conflicts and unclear sequencing, which could hinder the effective delivery of transitional justice outcomes to victims.

Similarly, in Ethiopia, the 2024 Transitional Justice Policy envisages a suite of institutions – including a Truth, Amnesty and Reparations Commission and a Special Prosecutor’s Office – but the drafting of legislation and inter-agency linkages remain incomplete.<sup>110</sup> Some reform initiatives are being launched independently of the formal transitional justice process, which raises concerns about strategic coherence and policy drift.<sup>111</sup> Without a unifying structure to coordinate mandates, resources and timelines, the implementation of reparative measures – particularly those addressing historical exclusions – is unlikely to be sustained.

It is not a design flaw of the AUTJP that it does not prescribe detailed institutional architecture. On the contrary, the policy’s emphasis on national ownership and context specificity reflects a deliberate choice to respect state sovereignty and to accommodate the diversity of governance structures across the continent. As the AUTJP affirms, member states bear the responsibility to create and sustain the institutional frameworks best suited to their transitional needs.

However, the absence of prescriptive architecture in the AUTJP itself does not leave states without guidance. Subsequent instruments, particularly the Roadmap for the Implementation of the AUTJP<sup>112</sup> and the Resource Guide to the AUTJP,<sup>113</sup> provide more concrete support. These documents propose action plans, outline sequencing strategies, and recommend the creation of coordination mechanisms such as national focal points, inter-ministerial working groups and multi-stakeholder platforms. They also stress the importance of aligning reparations with broader development goals and institutional reforms. In doing so, they help operationalise the policy’s principles and translate them into actionable steps.

Despite these supports, many states have yet to internalise or apply this guidance effectively. Implementation gaps persist not because tools are lacking, but because the political and bureaucratic conditions necessary for coordinated action are weak. This is especially problematic for historical injustices, which require sustained and

107 C Gitari ‘African Union Transitional Justice Policy implementation guidance: South Sudan’ Policy Paper, Centre for the Study of Violence and Reconciliation, April 2025 3-4.

108 Gitari (n 107) 2.

109 Gitari (n 107) 6.

110 Belay & Abebe (n 100) 3.

111 Belay & Abebe (n 100) 8-9.

112 Roadmap for the Implementation of the African Union Transitional Justice Policy (n 78).

113 AUC Resource guide on the African Union Transitional Justice Policy (2020).



integrated engagement over time. When reparations are fragmented, commissions disconnected from reparation authorities, symbolic measures unlinked to legal reforms or memorialisation efforts excluded from education policy, the result is often disillusionment, policy fatigue and unfulfilled expectations.

Therefore, for the AUTJP to serve as an effective and coherent framework for reparations for historical injustices, states must move beyond adoption to structured implementation, using the Roadmap and Resource Guide as operational complements. The AU, in turn, should strengthen its role not by dictating institutional forms, but by monitoring progress, facilitating peer learning, and supporting capacity development for national coordination. Without such support, the risk is that well-intentioned initiatives will remain disjointed, and the structural roots of injustice will go unaddressed.

### **3.3.3 Narrative contestation and memory politics**

Another significant barrier to mobilising the AUTJP as a framework for reparations for historical injustices lies in the highly contested terrain of historical narratives and collective memory. Reparations – particularly those linked to colonialism, slavery, systemic exclusion or culturally embedded inequalities – are not only about compensating victims; they are also about recognising harm, validating historical experiences and reconfiguring dominant narratives. In deeply divided or politically volatile societies, these processes of recognition and remembrance are rarely neutral or uncontested.

The AUTJP explicitly emphasises the importance of memorialisation and truth telling, dedicating specific sections to both elements and calling for the integration of victims' narratives into transitional justice frameworks.<sup>114</sup> It affirms that '[transitional justice] processes promote the participation and address the needs of marginalised and vulnerable groups', and recognises that memorialisation should allow for 'multiple narratives' and 'different understandings of the past'.<sup>115</sup> The policy acknowledges the challenge of denial, requiring transition justice commissions to create opportunities for victims to 'speak out in the face of possible official denial'.<sup>116</sup> However, while the policy recognises the complexity of multiple narratives and denial, it provides limited detailed guidance on mechanisms for negotiating competing historical claims or managing politicised memories – issues that are particularly complex in addressing historical injustices.

In Ethiopia, for example, longstanding disputes over historical narratives – particularly relating to imperial conquest, federalism and ethnic exclusion – continue to frustrate transitional justice efforts.<sup>117</sup> These contested memories are not merely academic; they are woven

114 Sec 2, paras 50, 71-74 AUTJP.

115 Sec 1, para 33 AUTJP; sec 2, para 74.

116 Sec 2, para 53 AUTJP.

117 Belay & Abebe (n 100) 7.

into the country's identity, its administrative federalism, and the political claims of various ethnic groups. During the roll-out of the national Transitional Justice Policy, disagreements emerged over which histories should be addressed, whose suffering should be prioritised, and what form acknowledgment should take.<sup>118</sup> Tigrayan authorities, for instance, demanded parity with federal actors in designing and implementing transitional justice processes, arguing that any narrative that sidelines their experience constitutes a continuation of historical marginalisation.<sup>119</sup>

Such dynamics demonstrate how historical injustices are not only difficult to repair materially – they are often difficult to name, define and officially recognise. Reparations for historical injustices necessarily involve public truth telling, symbolic restitution and, sometimes, even re-narration of national history. In societies where national identity is built on foundational myths that exclude or distort the experiences of marginalised communities, reparative measures threaten to unravel not just political legitimacy, but collective self-conception.

Across the continent, memory politics often serve as a proxy battlefield for unresolved conflict, denial or blame shifting.<sup>120</sup> In some contexts, transitional justice is perceived as a zero-sum game: to acknowledge one group's suffering is seen as delegitimising another's historical experience. The AUTJP's emphasis on inclusion and participation is laudable, but it does not directly address this competitive politics of memory, where mutually exclusive narratives prevent consensus on the harms to be repaired.

This challenge is especially relevant for reparations tied to colonial and post-colonial injustices, where former colonial elites, current power holders and affected communities may hold vastly divergent understandings of history.<sup>121</sup> The politics of memory – what is included in official curricula, who is commemorated, which languages and rituals are recognised – deeply shape reparative outcomes.<sup>122</sup> When states are unwilling or unable to mediate these disputes constructively, reparations risk being narrowed to apolitical or anodyne forms, stripped of the transformative function they are meant to serve.

The AUTJP does not offer a normative model for resolving such narrative disputes, but it does provide entry points. Its references to symbolic reparations, memorialisation and collective memory can be interpreted as tools, not only for recognition but for contesting hegemonic histories. Yet, for these tools to be effective, they must be embedded in deliberative, participatory and dialogical processes that

118 Belay & Abebe (n 100) 5, 7.

119 Belay & Abebe (n 100) 3.

120 K Bachleitner 'Trauma in world politics: memory dynamics between different victim groups' (2024) 62 *Journal of Peace Research* 629-642; Y Gedamu 'Transitional justice and memory politics in contemporary Ethiopia' (2020) 6 *Interdisciplinary Political Studies* 139-166.

121 C Stahn 'Reckoning with colonial injustice: international law as culprit and as remedy?' (2020) 33 *Leiden Journal of International Law* 823-835.

122 As above.

give voice to previously excluded communities, not only in policy design, but in the production of historical knowledge itself.

To fulfil the AUTJP's potential as a framework for reparations for historical injustices, member states must therefore invest in inclusive memory work. This includes facilitating oral history projects, community-based truth-telling forums, pluralistic memorial spaces and public dialogues on contested pasts. Without confronting the political and epistemic dynamics of memory, reparations for historical injustices risk being reduced to compensatory measures that leave intact the discursive structures of denial. As the AUTJP reminds us, transitional justice is not just about what is done, but about whose stories are told, and how the past is remembered.

This challenge is further amplified by a broader pattern of contestation from Western states, particularly those with historical responsibility for the harms that many African and Caribbean actors seek to redress.<sup>123</sup> While the AUTJP is an African policy instrument, its articulation of reparations as both symbolic and structural necessarily implicates external actors – especially former colonial powers and international institutions that benefited from or facilitated systems of exploitation, slavery and racialised expropriation. Yet, Western responses to claims for reparations for historical injustices have generally ranged from legal denial and political evasion to symbolic gestures devoid of substantive commitment.<sup>124</sup>

A case in point is the experience of CARICOM's Reparations Commission, which has called for reparations from European nations for slavery and colonialism.<sup>125</sup> Despite compelling moral and historical arguments, European governments have largely dismissed these claims.<sup>126</sup> In Belgium, for instance, the 2022 parliamentary commission on colonial responsibility in the Congo failed to adopt key recommendations on state apology and compensation due to internal political divisions and public controversy.<sup>127</sup> Similarly, in the United Kingdom and France, official apologies for colonial era abuses remain rare, and reparations are often framed as politically or legally 'infeasible'.<sup>128</sup> These positions reflect an entrenched resistance to acknowledging systemic responsibility or accepting redistributive obligations for past crimes.

123 Barkan (n 76); OO Táíwò *Reconsidering reparations* (2022).

124 As above.

125 CARICOM Reparations Commission 'The ten-point plan for reparatory justice' CARICOM, 2014, <https://caricom.org/caricom-ten-point-plan-for-reparatory-justice/> (accessed 10 June 2025); H Beckles *Britain's black debt: reparations for Caribbean slavery and native genocide* (2013).

126 AL Araujo *Slavery in the age of memory: engaging the past* (2020).

127 Belgian Federal Parliament Final Report of the Special Parliamentary Commission on the Colonial Past (2022); G Ponselet 'Belgian colonial past commission fails to apologize to victims' *Justice Info* 4 July 2022, <https://www.justiceinfo.net/en/111372-belgian-colonial-past-commission-fails-apology-to-victims.html> (accessed 10 June 2025).

128 AL Araujo *Reparations for slavery and the slave trade: a transnational and comparative history* (2017).

This Western resistance poses a challenge to the potential external dimension of the AUTJP's reparations agenda, especially as many African states attempt to use the policy to support continental and diasporic claims for historical redress. When Western donors and institutions reject the legitimacy of reparations, frame them as 'backward-looking', or reduce their support for justice initiatives that include reparative elements, they effectively undermine the normative leverage of the AUTJP and perpetuate a global hierarchy in transitional justice. This can have ripple effects at the domestic level: African governments may be less inclined to advance reparations for colonial or structural harms if they fear losing international credibility, aid or diplomatic capital.

Moreover, the epistemic assumptions embedded in many Western approaches to transitional justice – centred on civil and political rights, time-bound violations and technocratic solutions – are often incompatible with the expansive, collective and decolonial vision of reparations advanced in the AUTJP. The AUTJP's emphasis on structural violence, intergenerational harm and cultural restoration challenges dominant Western paradigms that treat reparations as limited and exceptional rather than systemic and transformative.

If the AUTJP is to effectively guide reparations for historical injustices, it must therefore be situated not only as a regional policy tool, but as a normative challenge to global asymmetries in transitional justice discourse. This includes calling attention to the inconsistencies in Western engagement with reparations and advocating greater alignment between domestic African initiatives and global solidarity movements, such as those led by CARICOM, African-descendant communities in Europe and the Americas, and UN mechanisms recognising the legacy of slavery.

The AU could play a catalytic role here – not by waiting for consensus among former colonial powers, but by using the AUTJP as a foundation to legitimise demands for reparations at the regional and international levels, while mobilising south-south and pan-African coalitions to sustain political momentum. In doing so, the AUTJP would not merely facilitate state-led justice processes within Africa, but would also function as an instrument of reparative diplomacy and historical truth telling on the global stage.

## 4 CONCLUSION

The AUTJP provides a distinctively African framework for advancing reparations for historical injustices. By articulating a vision of justice rooted in victim participation, structural transformation and collective memory, the AUTJP transcends narrow, event-based understandings of transitional justice. It offers a conceptual and normative basis for redressing the enduring legacies of slavery, colonialism, and systemic exclusion – not only within states, but across the African continent and its diasporas.

This article has argued that the AUTJP should be understood as both a normative framework and a strategic tool. Normatively, it redefines reparative justice through a decolonial lens, centring historical accountability, intergenerational harm and African epistemologies. Strategically, it enables a range of actors – from states to regional bodies, civil society and diaspora communities – to mobilise its principles in support of national and transnational reparations claims. While implementation remains uneven, and structural obstacles persist, the AUTJP's transformative potential lies in its capacity to guide both symbolic and material forms of redress, build transnational solidarities, and restore dignity to communities historically denied it. As demands for reparative justice grow louder on the global stage, the AUTJP offers a rare example of a continental policy instrument that integrates legal, political and ethical dimensions of redress. Its further mobilisation, within Africa and beyond, will be crucial to ensuring that calls for historical justice are not only heard, but effectively acted upon.