

GREAT LAKES REGION

Victims Fighting Impunity

Transitional Justice in the African Great Lakes Region

March 2017



Cover Images: From left, Janet Arach, a co-founder and co-director of Watye Ki Gen, counsels children born in captivity in northern Uganda about the stigma they face in their communities; a local activist from Walikale, North Kivu, the Democratic Republic of the Congo, at an event on impunity in Kinshasa, July 2016 (ICTJ); an activist from the National Victims and Survivors Network at a Consultative Meeting in Nairobi aimed at strategizing on ways to promote the country's human rights agenda, February 2017 (Kenya Human Rights Commission).

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Aileen Thomson and Kasande Sarah Kihika

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About ICTJ

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims’ rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit www.ictj.org

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ACRONYMS

DRC	Democratic Republic of the Congo
ICD	International Crimes Division, Uganda
ICGLR	International Conference of the Great Lakes
JLOS	Justice Law and Order Sector [Uganda]
Kshs	Kenya Shilling
LRA	Lord's Resistance Army
NGO	nongovernmental organizations
NPSC	National Police Service Commission [Kenya]
TJRC	Truth, Justice and Reconciliation Commission [Kenya]
TRC	Truth and Reconciliation Commission [DRC]

Introduction

In many countries of the African Great Lakes region, state-led approaches to transitional justice have been created by wide-ranging agreements or policies that have been later forgotten or only partially implemented. Even when implemented, they are often subject to years of delay and/or contention. This has left civil society, including victims' groups, to try to fill the gaps in responding to victims' rights and needs, while simultaneously advocating for government to fulfill its obligations.

The International Center for Transitional Justice's experience working in Uganda, Kenya, and the Democratic Republic of Congo (DRC) in this regard has followed a pattern we have seen in other contexts, where it has been important to move beyond the "integrated approach" to transitional justice,¹ and codified frameworks, that can take years to operationalize and are backed only theoretically by government. Given this, ICTJ has worked with local organizations in Great Lakes countries to identify and support more limited, sometimes unofficial, processes that may have more realistic chances of success and gaining political support, while continuing, where appropriate, to push for the implementation of other measures that may or may not have been included in the original formal transitional justice framework. Through a more targeted approach, based on political analysis of the evolving context, the intention is to move forward on one measure in a way that not only advances acknowledgement, accountability, and reform directly, but also creates space for other objectives to be pursued in the future.

The paper begins with an overview of the transitional justice processes currently underway in Uganda, Kenya, and the DRC. Next, it identifies lessons learned from ICTJ's experience of working in the Great Lakes region, which may be applicable in other countries. These lessons include the importance of understanding the needs of victims, conducting a thorough political analysis, identifying strategic and realistic opportunities for transitional justice, investing in and supporting a domestic constituency to take ownership of the process, and creating and facilitating interactions between the state and victims/civil society. Together, these strategies can facilitate the creation of space for the design and implementation of context-specific, locally owned measures that provide or advance meaningful acknowledgement, redress, accountability, and reform. The experiences examined below are based on work that is still in progress and has not necessarily achieved all potential results yet. However, we believe that the work described here has attained some level of success in laying a foundation for meaningful and sustainable transitional justice processes in these countries in the future.

This paper offers a concrete analysis of more general critical reflections that have grown out of ICTJ practice regarding what is often referred to as an integrated (or comprehensive)

¹ See below for a brief discussion of what is meant by an "integrated approach" and some elements of a critique.

approach to transitional justice. Such an approach refers to an attempt, often through a peace agreement or legislation, to simultaneously create, define, or commit to multiple transitional justice measures—usually the so-called “four pillars” of transitional justice, namely truth seeking, reparations, prosecutions, and institutional reform. This approach may be codified officially by a peace agreement or policy that sets out the different measures. It may include a system to establish their interrelationships and/or a sequence for implementation.

The model of an integrated approach is rooted in different sources. One is the very important body of human rights activism, rulings, and resolutions of the past three decades that have led to the formal identification of the rights of victims of grave human rights violations as the right to truth, justice, reparations, and guarantees of non-recurrence as well as the standardization that grew out of international recognition of transitional justice as part of rule of law and peacebuilding efforts. A second source is more strongly conceptual and has led to theories that suggest strong positive synergies or interactions among these measures meant to advance victims’ rights (or the four pillars) when designed together and implemented as part of a coherent, preconceived plan or policy.

While conceptually compelling, on the ground such an attempt to create and or implement a comprehensive model, with little reference to the political and social context, available human and material resources, or the more specific concerns of victims, has often led to mechanical, “template-like” measures if they are implemented or to years of delay to create the multiple and complex policies required. Common consequences have included limited meaningful participation by victims or civil society, paltry responses to victims, limited impact on fighting impunity or building trust, deficits in social dynamism in support of victims’ rights, great frustration, and rapid declines in international support. Efforts in Great Lakes countries on transitional justice using such a comprehensive model provide many examples of such consequences, as will be discussed below.

The difficulties in generating successful transitional justice processes through an integrated approach does not mean “throwing the baby out with the bathwater” or giving up on the fundamental commitment to victims’ rights as an essential part of building stable, peaceful, and inclusive societies in the long term. Rather, the challenges at hand are to pay more attention to the context, to listen to victims and other stakeholders about appropriate measures of redress and about what can work, and to identify strategies and actions that may be small at any given time, but can provide some effective, albeit partial, response and build momentum and experience for further action.²

ICTJ presents here some of the lessons that can be learned from working to advance transitional justice in three countries in the Great Lakes region, in the hopes that they can frame new efforts in the region and elsewhere.

² On the importance of context to transitional justice, see the results of a recent ICTJ research project in the summary report “Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies,” New York: ICTJ, 2017; and the accompanying edited volume, Roger Duthie and Paul Seils, ed., *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (New York: ICTJ, 2017).

1. Transitional Justice in the Great Lakes Region

Nearly all of the states that make up the Great Lakes Region have in recent years experienced political strife and armed conflict, which have led to severe humanitarian consequences, including gross violations of human rights, mass displacement of populations, and unprecedented levels of sexual and gender-based crimes. The challenges in the region continue to be complex and interconnected. Each of the countries affected by conflict, including Uganda, Kenya, and the DRC, have initiated a series of institutional responses to address their legacy of gross human rights violations and put an end to impunity for mass crimes.

In addition, the international and regional element of the conflicts led to the establishment of the International Conference of the Great Lakes (ICGLR) to coordinate regional security efforts and create “conditions for security, stability, and sustainable development.”³ The ICGLR pact, signed in 2008 by the twelve ICGLR member states (among them, Uganda, Kenya, and the DRC), consists of ten protocols, including the “Protocol on the prevention and the punishment of the crime of Genocide, War Crimes, Crimes against Humanity and all forms of discrimination.”⁴ In Uganda, Kenya, and the DRC various processes led at the elite, national level, with significant international support, have developed integrated frameworks that set out commitments to implement a variety of transitional justice measures and a vision of how these measures will be sequenced and interact with each other.

However, for a variety of reasons, the adoption of the integrated frameworks and other commitments to ending impunity have not been matched by action on the part of the states to realize the goals of acknowledgment, accountability, and reform. Instead, in each of these three countries, victims, civil society, and some state allies have come together to address the challenges of implementing the integrated frameworks according to the original process envisioned at the national level. By forming often contentious and difficult relationships, these actors have succeeded in moving forward some limited measures of transitional justice while opening the door for more measures in the future.

Uganda

Uganda has never had a peaceful transfer of power since it gained independence in 1962, with different parts of the country ravaged by armed conflict.⁵ The 20-year conflict in northern Ugan-

3 International Conference on the Great Lakes Region, “The Pact on Security, Stability and Development for the Great Lakes Region” (December 2006, Amended November 2012), Article 2. The Members of ICGLR include: Republic of Angola, Republic of Burundi, Central African Republic, Republic of the Congo, Democratic Republic of the Congo, Republic of Kenya, Republic of Rwanda, Republic of South Sudan, Republic of the Sudan, United Republic of Tanzania, Republic of Uganda, and the Republic of Zambia, Article 1

4 International Conference on the Great Lakes Region, Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes Against Humanity and all forms of Discrimination, 2006.

5 Refugee Law Project, *Compendium of Conflicts in Uganda* (2014), 14.

da between the Lord's Resistance Army (LRA) and government troops is the longest-lasting and arguably the most brutal war in Ugandan history. It was characterized by the most widespread and egregious violations of human rights and humanitarian law, including murder, mutilation, rape, sexual slavery, destruction of property, forced recruitment of children, and mass abduction.⁶

In 2007, the Ugandan government and the LRA signed the Agreement on Accountability and Reconciliation (The Juba Agreement),⁷ which serves as a blueprint for the different transitional justice measures enabling Uganda to confront its past, promote reconciliation, prevent impunity for serious crimes, and deliver justice to victims of gross human rights violations. The agreement provides for an overarching framework comprising both formal and informal justice mechanisms, including truth seeking, criminal prosecutions, traditional justice mechanisms, and reparations programs. Promised reparations were intended for women and children victims in particular.⁸

However, nine years after the signing of the Juba Agreement, progress remains elusive. No reparations program has been established, and no truth-seeking mechanism has been put in place to investigate and determine the causes and consequences of the conflict, the responsibility of the parties for the crimes committed, and the appropriate remedies for victims. Commitments on accountability and reconciliation remain unfulfilled, as victims continue to demand a transparent, credible, and participatory transitional justice process that will aid their recovery and fulfill their right to truth and redress.

Although the government established the International Crimes Division (ICD) to try international crimes, including war crimes, crimes against humanity, genocide, and other transnational crimes, such as terrorism and piracy,⁹ the first trial in 2011, which involved former LRA commander Thomas Kwoyelo, stalled after the Constitutional Court held that Kwoyelo was eligible for amnesty. The Amnesty Act, which was enacted in 2000 as part of a political solution to the conflict, extends immunity from prosecution to all combatants who were engaged in rebellion against the government of Uganda and renounce their arms. In a positive development, Kwoyelo's trial was legally cleared to resume in April 2015, following the judgment of the Supreme Court that overturned the Constitutional Court's decision, finding that Kwoyelo is ineligible for amnesty. However, there have been multiple delays since then, due to the ICD's lack of funding and the delay in the approval of the ICD Rules of Procedure and the establishment of appropriate frameworks for victim participation.

In 2008, the Justice Law and Order Sector (JLOS), a coordination mechanism in the Ugandan government, established the Transitional Justice Working Group, a group of government bureaucrats tasked with overseeing implementation of the Juba Agreement. While the working group has developed a draft National Transitional Justice Policy that provides for a broad range of transitional justice measures with the objective of promoting accountability for gross human rights violations, reconciliation, social reintegration, and sustainable peace, the policy development process has been inordinately slow, lasting four years. The final draft of the proposed policy was issued in 2014, and to date it has not been approved by Cabinet. The process of developing this policy was supported by many domestic and international organizations, which provided many hours of technical assistance. However, the long delays have caused many actors to look outside this national-level process aimed at establishing a holistic transitional justice process to identify more limited opportunities to make an impact in the short- and mid-term.

6 *Prosecutor vs Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen* (ICC-CPI-20051014-110). See International Criminal Court, "Warrant of Arrest unsealed against five LRA Commanders", October 14, 2005.

7 Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement (Juba, Sudan) [hereinafter The Juba Agreement], June 29, 2007.

8 *Ibid.*, clauses 10 and 11.

9 High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 (2011), clauses 4, 5, 6, and 7.

Civil society and victims in Uganda have responded to this deadlock by implementing their own programs of truth seeking and memorialization in communities affected by conflict. They combine national-level advocacy, like petitions to Parliament to act on specific issues, with local action to provide as much relief to victims as possible without government support.

Recently, the Uganda Human Rights Commission took a step toward official truth seeking by initiating a Human Rights Documentation Project, which aims to collect and add to existing documentation of human rights violations that occurred throughout the country, starting in the north, which bore the brunt of the conflict. Due in part to many commissioners' civil-society backgrounds, the commission has actively engaged with civil society throughout the project. This engagement has led to the adoption of, among other elements, guidelines on engagement with victims and gender sensitivity. In this way, the project will use the experience that civil society has accumulated over the years of government inaction to increase the effectiveness of its own work.

Kenya

For decades Kenyan governments have been accused of committing gross violations of human rights against its own citizens, including massacres, assassinations, extrajudicial executions, torture, sexual violence, ill-treatment, and use and enhancement of the repressive policies and practices of the former colonial government. After the brutal violence following the 2007 elections, an internationally mediated dialogue process between then-President Mwai Kabaki and opposition leader Raila Odinga, the two presidential candidates and heads of the largest political parties, resulted in a National Accord, with a wide-ranging set of reform commitments, which initiated a number of other processes, such as the drafting and later approval of a new constitution in 2010 and the creation of many new transitional justice institutions.

Among the new measures was a Commission of Inquiry into Post-Election Violence. The commission made a number of findings on the causes and impacts of post-election violence and recommended the creation of a Truth, Justice and Reconciliation Commission (TJRC) and special tribunal and the reform of the police to remove perpetrators of certain human rights violations and corrupt officers. Efforts to put in place a domestic Special Tribunal to investigate and try cases related to the 2007–2008 post-election violence were defeated in Parliament,¹⁰ and domestic prosecutions of such cases have not moved forward. In March 2015, President Uhuru Kenyatta, in his State of the Nation Address, stated that he had received a report on cases related to the 2007–2008 post election violence from the Office of the Director of Public Prosecutions. In the report, the director stated that of 6,000 reported

The Proposed Frameworks

- **Uganda: The Juba Agreement** signed between the government and the LRA in 2007, provides for an overarching justice framework comprising both formal and informal justice mechanisms, including truth seeking, criminal prosecutions, traditional justice mechanisms, and reparations programs, with special regard to the rights and interests of women and children. JLOS, the agency in charge of implementing the justice provisions, has developed a draft National Transitional Justice Framework, but it has yet to be approved or implemented.
- **Kenya: The National Accord**, passed in 2008 between the political parties, established a number of transitional justice measures, including the TJRC and the police and judicial vetting processes. Further, the TJRC's Final Report, which contains a set of comprehensive recommendations, is generally seen as the framework for future measures. However, the report is still pending discussion in Parliament and has yet not been endorsed by the government.
- **DRC: The Sun City Accord**, signed in 2003 to end hostilities, established a truth commission and "an international penal court to judge war crimes, crimes against humanity, crimes of genocide and other large-scale violations of human rights." The truth commission largely failed in its mandate, and no court has been established to try international crimes.

¹⁰ This failure triggered the International Criminal Court's jurisdiction over international crimes committed in Kenya during the 2007–2008 post-election violence, as the government was found to be unable or unwilling to genuinely investigate and prosecute those suspected of bearing the most responsibility for violations. However, the cases have virtually collapsed following what the court considered to be systematic interference by the accused.

cases, 4,575 files were opened for criminal investigation. Unbelievably, the president announced that there would be no further effort to prosecute those alleged crimes due to various challenges, including lack of evidence, witnesses' fear of reprisals, inability to identify perpetrators, and general capacity limitations at the time.¹¹

Judicial and police reforms are ongoing, though facing huge challenges. Corruption continues to bedevil the judiciary, even after a vetting process that sought to weed out corrupt judges. Police reform was initiated in various ways—including passing legislation for police vetting by the National Police Service Commission (NPSC). Civil society organizations and victims have attempted to engage with the NPSC by submitting complaints of human rights violations allegedly committed by officers to be vetted and by meeting with commissioners to discuss concerns, like the protection of complainants, and pushing for public hearings, to make the process more transparent. Unfortunately, though the NPSC adopted a few procedural recommendations from civil society, there have yet to be successful cases of removing officers on the grounds of having committed human rights violations or serious crimes. Instead, the NPSC has been unable and/or unwilling to incorporate human rights complaints while vetting police officers; instead, it primarily considers cases of corruption, basing its decisions on financial records and other easily obtainable documentation.

The TJRC submitted its findings and recommendations in the form of a Final Report to the National Assembly in 2013, but the document has yet to be debated or approved. As a result, attempts to implement the TJRC's recommendations, including, primarily, to provide reparations to victims, have stalled while waiting for Parliament to approve the report, as is understood by many in government to be a necessary first step. In the face of this reluctance, victims' groups, particularly the National Victims' and Survivors' Network, has continued to pressure the government to adopt the report and implement the TJRC's recommendations. In 2015 and 2016, the network presented petitions to Parliament urging it to discuss the report. The 2015 resolution led to the report finally being tabled in the National Assembly, though at the time of writing the report had yet to be discussed.

In March 2015 President Kenyatta issued an unexpected apology on behalf of his government and prior governments for the litany of violations suffered by Kenyans in the past. He established a Kshs 10 billion (approximately \$98.7 million) restorative justice fund for purposes of reparations. Progress in operationalizing this fund has been slow. A year and a half passed before the President's Office authorized the Attorney General's Office to draft regulations to implement the fund and before it created a technical committee to advise the Attorney General and work on victim registration and verification.¹² This progress, slow as it is, has been made possible by the constant pressure exerted by victims and civil society on the Kenyan government to provide reparations and state allies devising a politically feasible plan that bypassed the initial process envisioned in the TJRC Law in the face of an uncooperative National Assembly.

The Democratic Republic of the Congo

The DRC has a history of instability and violent conflict, with widespread violations of human rights and limited effective efforts to hold perpetrators accountable, restore the rights of victims, and guarantee non-recurrence. Numerous reports published by the United Nations and international and national NGOs document significant ongoing human rights violations committed by state security forces and nonstate armed groups, often operating across borders in multiple neighboring countries. To date, peace remains elusive in the DRC. Eastern Congo, in particular, remains beset by conflict, as militias continue to wreak havoc on the population, causing one humanitarian tragedy after another in a region with an abundance of

¹¹ Government of Kenya, Speech By His Excellency Hon. Uhuru Kenyatta, C.G.H., President and Commander in Chief of the Defence Forces of the Republic of Kenya During the State of the Nation Address at Parliament Buildings, Nairobi, March 26, 2015.

¹² ICTJ is a member of the technical committee.

small arms. While security has recently improved after deteriorating dramatically in 2012 and 2013, the situation remains tense.

On December 16, 2002, a partial agreement known as the Global and Inclusive Agreement on Transition in the DRC was signed by the DRC government, various armed groups, political parties, and civil society organizations, to establish an interim framework for the cessation of hostilities. A number of resolutions were later signed in April 2003, which, together with the December 2002 Agreement, are jointly referred to as the Sun City Accord. This accord established a system of power sharing by which government positions would be allocated proportionally among the warring factions and unarmed political opposition groups and civil society. The accord also established a number of transitional justice institutions, including a Truth and Reconciliation Commission (TRC). The principles of power sharing also applied to the TRC, which meant that commissioners were appointed by the parties to the agreement without requirements as to their qualifications. The TRC, which wrapped up its work in 2007, is largely considered a failure. Its report, issued after four years of official operation, makes no findings and its main recommendation is to create another truth commission.¹³

The Sun City Accords also called for the establishment of “an international penal court to judge war crimes, crimes against humanity, crimes of genocide and other large-scale violations of human rights.” Other agreements signed before and after those accords, including the 1999 Lusaka Ceasefire, the 2002 Pretoria Accord, and the 2009 Goma Peace Agreement, also pledged to prosecute those responsible for international crimes.¹⁴ To date, no consensus has been reached on the establishment of a specialized jurisdiction—with or without international support—to prosecute and try international crimes. In 2013, the Law on the Organization, Functioning and Jurisdiction of the Courts assigned jurisdiction for international crimes to civilian courts, instead of military courts, which had enjoyed exclusive jurisdiction over such crimes.¹⁵

It was not until 2003 that Congolese military courts started using their jurisdiction to investigate and try international crimes.¹⁶ In 2015, laws implementing the Rome Statute of the International Criminal Court and criminalizing international crimes were passed;¹⁷ these new laws integrate the definitions and charges of international crimes in the civilian Criminal Code and remove them from the Military Criminal Code. Some military courts continue to directly apply provisions of the Rome Statute in cases of international crimes. A UN Mapping Report found that between 2003 and 2010 Congolese military courts had dealt with 12 cases of international crimes.¹⁸ Subsequent ICTJ research found that those courts initiated a further 39 cases between 2009 and 2014.¹⁹ The initiation of these cases has relied on referrals by a combination of international and state actors, instead of the implementation of mechanisms that were agreed on and designed at the national level during peace negotiations. The cooperation between military justice and civil society is particularly important in the DRC, as the Congolese military does not control all of areas of the country where crimes are committed, but relies on international and increasingly domestic civil society to provide documentation, on which basis it can initiate formal investigations.

13 Elena Naughton, “Democratic Republic of the Congo: Case Study,” in *Challenging the Conventional: Can Truth Commissions Strengthen Peace Processes?* (ICTJ and the Kofi Annan Foundation, 2014).

14 See Sofia Candéias, Luc Côté, Elsa Papageorgiou, and Myriam Raymond-Jetté, ICTJ, *The Accountability Landscape in Eastern DRC: Analysis of the National Legislative and Judicial Response to International Crimes (2009–2014)*, July 2015, www.ictj.org/sites/default/files/ICTJ-Report-DRC-Accountability-Landscape-2015_o.pdf

15 Ibid.

16 ICTJ web page, “A Close-up Look at the Fight Against Impunity in the DRC,” www.ictj.org/news/icc-drc-complementarity

17 Loi n. 15/022 du 31 décembre 2015 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal; Loi n.15/023 du 31 décembre 2015 modifiant la Loi n. 024-2002 du 18 novembre 2002 portant Code pénal militaire; Loi b.15/024 du 31 décembre 2015 modifiant et complétant le Décret du 06 août 1959 portant Code de procédure pénale.

18 UN Office of the High Commissioner for Human Rights, Democratic Republic of the Congo, 1993–2003 Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003, August 2010, www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf

19 ICTJ, *The Accountability Landscape in Eastern DRC*.

2. Lessons for Strategies and Opportunities for Pursuing Justice in the Great Lakes Region

Efforts in Uganda, Kenya, and the DRC to achieve acknowledgement, accountability, and reform are stalled at the national level, though there are some processes moving forward in each context. In such difficult environments, many believe that opportunities for transitional justice are few. However, in ICTJ's experience, well-focused, small-scale successes are possible, despite the general failures to date of comprehensive national-level accords, policies, or frameworks. With the aim of building on these successes, the remainder of this paper will discuss some lessons learned in promoting justice in the Great Lakes region, with the hope of informing international and local strategies in the pursuit of these goals.

1. Reconsider Whether Integrated Frameworks Are the Most Useful Tool in a Given Context

State-led promises to implement transitional justice in the Great Lakes region are often reflected in a policy or agreement that sets out the basic mechanisms and structure to form the state's approach. These policies or agreements, which could be referred to as "integrated frameworks," are often agreed to at moments of political settlement, including during peace negotiations. They are often part of a larger structure of agreements that address end-of-conflict mechanics and/or power-sharing arrangements, but they do not adequately address the root causes of the conflict nor sufficiently include the input of actors other than the parties to the conflict, such as NGOs, victims' groups, and other active social forces.

The reasons that these transitional justice frameworks have not been implemented fully vary from country to country, but the outcomes were generally predictable at the time of their design. Determining factors that impede their implementation can include a system of repressive power and structural inequality that contributed to the conflict and remains unreformed, the continuing presence of perpetrators of humanitarian and human rights violations in positions of political power, the conflation of victims' rights with general humanitarian relief and development assistance, insufficient capacity of weakened domestic institutions to handle the tasks allocated to them in the framework, insufficient resources (including financial and human), and repressive/elite-driven political environments that undermine civil society participation in and national ownership of these processes. A combination of all or most of these factors is present in Uganda, Kenya, and the DRC and explains the stagnation of their official processes.

Some proponents of an integrated framework, even in contexts where such an approach is unlikely to be implemented from the start, argue that it sets an agenda and an official commitment, offers a more holistic form of justice to victims by recognizing that no single mechanism is sufficient, and gives victims and their advocates a tool to pressure government to live up to its commitments. However, these factors have not tended to produce meaningful results in the countries under

examination here. Instead, the failure to follow-through on commitments has contributed to disengagement, fatigue, disillusionment, and frustration on the part of victims, civil society, and international donors. For instance, in Uganda, the existence of the draft Transitional Justice Policy, developed by JLOS and shared publicly in September 2014, has not been particularly useful in advocating for any of its proposed measures. Instead, civil society became frustrated and fatigued from a national-led process that restricted their participation and disengaged in favor of community-level work unconnected to the draft policy. It does not tend to base advocacy on that policy.

Further, when an entire process is designed at once at a moment of national crisis, it may be designed without a complete understanding of the demands and preferences of victims. Without the consultation and involvement of victims and the broader civil society, there is a strong likelihood that the priorities will be set by the parties to the conflict (potentially influenced by international stakeholders) and reflect their goals (political and otherwise), not the actual priorities of the affected communities and victims. In Kenya, for instance, the parties to the National Accord did not conduct public consultations on the proposed transitional justice measures. In fact, many human rights defenders opposed the TJRC due to concerns about the perpetrators remained in power.

Presenting an entire plan covering various aspects of acknowledgement, accountability, and reform in a context that may not be willing or well-equipped for it may also increase the risk that one aspect of the framework will derail the rest or increase political opposition. An integrated approach implies amounts of resources, time, and commitment that not only politicians but also the public may not be willing to dedicate to the process in a resource-short context. In the universe of priorities, political leaders and society may not be ready to make the necessary commitments to such a large undertaking.

By implying an “all-or-nothing” choice, this approach makes it less likely that any measures will be implemented. The naming of still-powerful perpetrators in the Kenyan TJRC report has, for instance, led those individuals to rally their allies and constituents against the entire report, making it politically very difficult for any member of parliament or other government official to touch the issue. Had other transitional justice measures, less focused on individual accountability, been proposed first, they may not have sparked such strong opposition that ended up effectively derailing the entire process. These are the types of concrete dilemmas that will always have to be confronted, with no perfect solution. In the Kenyan case, for example, civil society had advocated very strongly for the TJRC to identify the perpetrators.

When considering the role of an integrated framework, it is important to conduct nuanced political and contextual analysis, which can help actors seeking to promote or design transitional justice measures to identify the real capacity of those responsible for implementing such a framework, the needs and demands of victims, the key actors to engage, and the kinds of support that will be needed. Strong contextual analysis includes having a clear and subtle vision of the political dynamics that are relevant to transitional justice and detailed knowledge of the context, which includes the range of violations committed and the rights and preference of victims for redress. It also includes not seeing government, civil society, or victims as one monolithic entity—and taking steps to overcome mistrust and engage constructively, understanding the conflicting narratives, disagreements, and different priorities that can occur among members of one group or “entity.”

2. Understand the Experiences, Needs, and Demands of Victims and Promote their Agency

To ensure that transitional justice initiatives have a positive impact, it is essential to conduct research on the justice-related needs and priorities of affected communities. Through this, stakeholders will be able to determine and clarify what problems transitional justice can help

to address, whether proposed initiatives adequately respond to community needs and priorities, and the potential impact that such initiatives may have, in both positive or negative terms. A nuanced understanding of the context can help to inform the approach and priorities for transitional justice; it can be a tool for civil society and victims' groups to identify targeted advocacy strategies and clearly justify their demands. Once their objectives and needs are better understood, strong political analysis can be used to develop strategies and opportunities to pursue them, based on political and social realities, not blueprints of other processes.²⁰

Victims and their communities in conflict-affected areas do not always share elites' or civil society actors' perceptions of justice. Indeed, understandings of justice will vary across different affected communities. When justice measures are designed without consulting affected communities and victims, they may struggle to gain local ownership, legitimacy, or effectiveness. In a recent conference convened by ICTJ, participants from South Sudan and Uganda reflected on the varying definitions of justice held by different communities in their countries and how that has impacted public perception of transitional justice measures designed during peace processes that did not take the varied understandings of justice into account.

Perceptions among victims also vary. Even victims of a similar violation or a single event will have different perspectives, influenced by factors such as their beliefs, level of education, socioeconomic status, ethnicity, religion, and gender. In addition, victims' priorities and needs are not static, they change over time, depending on their individual circumstances. For instance, in the absence of the rule of law or state authorities in some areas of the DRC, victims from one area affected by international crimes may build alliances with different armed groups, which affects how victims collaborate (or not) with investigations, depending on which side is being prosecuted. In another example, in some cases divisions and inequalities between women and girls who were abducted by the LRA have meant they have different views. It has also impacted their efforts to join together to seek redress after their return.

Assessing Victims' Needs in Uganda

ICTJ's recent work in Uganda with victims of conflict-related sexual and gender-based violations illustrates the uses of needs assessments. This exercise involved conducting interviews and discussions with victims, community leaders, and civil society representatives to understand the experiences and justice needs of victims. The assessment helped to identify concrete opportunities to provide reparations and redress and identified opportunities to engage with other state institutions that have the potential within their existing mandates to offer relief and support to victims by identifying specific needs and coming up with concrete strategies to fulfill them. ICTJ partnered with two women victims' groups, WAN and Watye Ki Gen, to assess the needs of a particularly vulnerable group that would be eligible for reparations: formerly abducted young mothers and their children born in LRA captivity. The aim was to provide concrete recommendations regarding how the government could act to provide reparation and redress to them within available resources.

This needs assessment now serves as an important advocacy tool for victims' groups to engage with state actors and seek reparations. For instance, a leader of an influential cultural institution in Uganda commented: "What we have been lacking is the documentation. We have just been talking, but we didn't have anything to go by. But now that I have this report, I will be able to share it with the other clan leaders when we are in a meeting and tell them this is what is on the paper, and this is what we should be looking at when we are planning for the institution . . . so it's something that I am going to use to really fight for these women who have been affected by this war."

²⁰ On political context, see ICTJ, "Justice Mosaics," 18–24.

Promoting Victim Agency

Victims of human rights violations may become involved in civil society organizations, and/or form separate victims' groups, but often civil-society actors who are not direct victims end up advocating on behalf of victims. While these organizations play a key role and may have the best intentions, it is important for victims to be able to speak and advocate for themselves. This is particularly true for victims from distant and marginalized communities or those who suffered violations that receive less attention, as their perspectives might not be always well represented in human rights organizations based in the capital.

In Kenya and Uganda, victims have played an important role in keeping pressure on governments to act and working with allies in government to take advantage of opportunities. In Kenya, petitions by the National Victims and Survivors' Network have succeeded in getting the TRJC report on the official parliament agenda, while in Uganda a petition from a group of women victims led to a parliamentary resolution calling for reparations to address the needs of children born of war and their mothers.

In many countries in the Great Lakes region victims have responded to these challenges by organizing and ensuring their participation in debates on transitional justice. It is important for other stakeholders to seek out existing victims' groups and advocates and work to include them in the processes. When victims are not yet organized, other stakeholders will need to make an even greater effort to include victims, which may mean a coordinated strategy of reaching out to affected communities. One example of proactive inclusion of victims comes from the DRC. Typically, justice stakeholders in the DRC, including legal representatives of civil parties, lead missions in areas where crimes were committed prior to judicial investigations. These missions are meant to identify the victims and areas where they could be safely interviewed by investigators. Authorities can then work with civil society organisations based in the area to act as intermediaries and help them in identifying the victims of the crimes to be investigated. Witness and victims' protection measures are also ideally taken into consideration at this stage. Legal representatives raise awareness of victims on any investigations, safety measures, and possibility of becoming a civil party to the trial and what that would entail. Information is then shared with the judiciary on a confidential basis, before judicial investigations are planned.

3. Provide Carefully Considered Technical Assistance and Advice to All Stakeholders

While a lack of knowledge and/or skills is often a challenge to implementing transitional justice measures, providing technical assistance should be part of a carefully considered strategy if it is to have the desired impact beyond simply increasing the knowledge of participants. Providing technical assistance is not a neutral endeavor: by choosing who participates, implementers make a political decision that can affect power dynamics, whether in or among state institutions or in civil society. Additionally, the advice provided is often a very effective form of advocacy for promoting best practices adapted to concrete circumstances.

“I also had interaction with women [survivors of abduction] who did not go back to school, and they feel that those women who came back but went to school do not want to talk to them. So, even among the women [survivors] there is a big difference, for example, between junior and senior wives from the time in the bush. This creates differences now.”
– Civil Society Activist, Uganda

“The issue of sexual violence has not been properly advancing, so we asked who is going to talk about sexual violence because now we are grouped with other categories of victims. . . . If there is anyone to talk about it or advocate about it, then it is us, the survivors. If you do not speak for yourself, nobody will speak for you.”
– Survivor Advocate, Kenya

Technical Assistance to State Actors

Trainings and technical advice offered to state officials are often useful for the development of transitional justice policies and building understanding of best practices on various transitional justice issues. This is often a strategic investment, as it can create well-informed allies for the long term. However, it is important for technical assistance to be part of a larger strategy that considers how policy will be implemented. While government officials often take the lead in designing policy proposals, it is the politicians who have the final authority to approve and finance their implementation. In the absence of political support, good policies will only remain on paper. For instance, in Uganda considerable technical support was provided by many actors to JLOS in designing the transitional justice policy.

However, once the policy was completed JLOS was unable to get it approved and implemented. Therefore, a carefully designed strategy of technical assistance will often need to be accompanied by other efforts at the political level to build support for proposed measures and generate needed political will.

A Technical Approach in the DRC

In the DRC, as in many countries, the debate around transitional justice is highly politicized. One strategy ICTJ used to overcome this was to engage with key interlocutors within the executive and the judiciary who were already implementing narrow accountability measures and build relationships on the basis of an exchange of professional skills. By building strong technical relations with carefully identified individuals inside powerful institutions, ICTJ developed a sense of comradery and created an informal network of like-minded people, leading to more coordinated efforts and more significant impacts. While political support is critical to the progress of the most important endeavors, working with high-level technocrats advising the highest political authorities proved to be strategic, especially when these technocrats stay in place amid governmental reshuffles.

Technical Assistance for Civil Society

One challenge of ensuring the involvement of civil society—and particularly victims—in advocating for and designing transitional justice measures is that often policy makers have more knowledge of those measures—or at least greater legal drafting and other technical skills. Civil society are often excluded from the negotiations that inform the processes or may not have the time to organize and develop proposals, especially if measures are designed during a peace process or as a response to a recent crisis. They are left reactive, responding to government proposals, instead of helping to set the agenda. Key activists and organizations who could play an important role in future transitional justice debates can often benefit from efforts to increase their capacity in ways that increase the likelihood that civil society will be able to play a strong role in the process. Even if measures are already designed and being implemented, amplified civil society engagement can play a key role in their success. For instance, groups in civil society can cooperate by documenting and sharing information about victims’ experiences and immediate priorities, supporting victims to monitor the different processes, serving as liaisons between victims and state institutions, and serving as watchdogs. In Uganda, civil society

organizations have years of experience documenting human rights violations and working with victims. When the Ugandan Human Rights Commission started its Human Rights Documentation Project, civil society organizations were able to give input that led to a more victim-friendly work plan. This cooperation led the commission to draft victim-engagement and gender-sensitivity guidelines that reflect civil society's accumulated expertise.

Documentation

One of civil society's most common activities related to transitional justice is documentation of human rights violations. Documentation initiatives may be conducted by one organization on its own in order to raise awareness or preserve information, or it can be done in support of an existing state-sponsored measure.

Civil society organizations, particularly victims' groups, often operate in areas where crimes were committed, making them an important source of information. This is particularly true in the DRC, where state authorities cannot enter some communities where human rights violations take place, because they are under the control of armed groups; there, local civil society is often the only source of information. At the same time, policy makers are often based in the national capital, even if they were elected to represent an affected area, and some victims' distrust of state institutions means they are often reluctant to interact directly, or share information with, state representatives. Through documentation initiatives, relevant stakeholders can become more informed of violations that were committed, including patterns, linkages, and impacts on victims. This information is crucial to convincing the government of the need to provide acknowledgement, accountability, and reform. It can also inform the design and implementation of those measures. Documentation may also contribute to preserving information that could be important for future accountability processes.

However, documentation projects are best developed with specific objectives in mind or in response to an identified need or opportunity. This can help to avoid frustrations when documentation accumulates but has little impact on ongoing violations. It may also minimize the possibility of multiple interviews with the same victims over time for different purposes. Engaging in multiple, uncoordinated initiatives over many years can make victims less willing to cooperate with each new initiative, particularly if they feel that they are not benefiting from the process and if they do not get the psychosocial support they may need. Once official measures are instituted, victims may decide not to cooperate. This "victim fatigue" has been a challenge in numerous countries, including Uganda, where victims have been the subjects of many research initiatives but have seen little return.

Civil-society organizations and government actors working on documentation need to have the awareness and capacity to include a psychosocial approach in their work. This is crucial to ensuring the accurate documentation of the effects of the violation on the individual and on his or her group or community without leading to re-traumatization. Documenters who interact with victims thus need to engage victims safely, using appropriate interviewing techniques and creating a comfortable and safe environment. Furthermore, the documenters themselves would often benefit from access to appropriate psychosocial support to detect early warning signs (such as "burn out" and emotional distress), identify the effect on individuals and the whole team, and develop the skills and effective strategies to respond to identified needs.

"Some years ago, the government had difficulties integrating civil society as an important element in justice and security sector reform. Often, civil society groups were seen as agents of foreign powers who could not be listened to. But over time, some efforts were made in the sense of considering civil society, media, universities, and other NGOs as full partners in taking these reforms forward."
– Military Justice Official, DRC

4. Promote Interaction between Civil Society and State Actors

Civil society, particularly victims, should be involved throughout the process of developing and implementing measures meant to advance acknowledgement, accountability and reform for massive human rights abuses. Such involvement, as discussed at various points in this report, provides local support, greater legitimacy, and sustainability, while communicating important information about the experiences, needs, and expectations of victims, which helps ensure that the proposed interventions achieve their objectives. However, even in the most democratic and transparent political systems, policy makers may default to relying on experts and their colleagues when drafting laws and designing and implementing new programs. In transitioning contexts, there is often a severe lack of trust between government and the public. Effective mechanisms for public engagement with government are usually not established.

Interaction between civil society and state actors is often impeded by: a lack of trust on both sides, lack of responsiveness from government, civil society organization's short-term, project-based timeline, and restrictions on civil society generally. Throughout ICTJ's work with civil society and state actors in Uganda, Kenya, and the DRC, both state and civil society actors voiced frustration about the challenges that make engagement difficult. While local civil society and government actors in the Great Lakes region have employed many strategies to improve these relationships, international actors may also have a role to play, by convening diverse groups and providing a more neutral space for discussion and actively listening to, and seeking to help address various challenges identified by, interlocutors in the state and civil society. In that role, international actors can also promote the inclusion of marginalized groups, such as women, youth, and minorities.

“The transitional justice discussion must be held closely with government, sometimes as friends and sometimes as antagonists, so that you can inspire each other to action, and as encouragement at times. There must be that discussion between civil society organizations and government.”

– Civil Society Advocate, Kenya

Regardless of the challenges, engagement between victims, civil society, and state actors is crucial to an inclusive, effective transitional justice process. Two examples of the importance of this relationship, discussed in more detail below, are the need for transitional justice to be locally owned and supported and for it to include a nuanced understanding of how gender affected the violations, their impact, and how transitional justice measures should be implemented.

Setting the Agenda: Domestic Ownership

One challenge that ICTJ has encountered in its work in Great Lakes countries is that debates about transitional justice are often conducted between (and/or portrayed as primarily related to) the national government and international actors, excluding victims and other domestic actors. This emerges particularly in cases of the creation of complex, detailed policies as part of peace negotiations, but it can also happen when national governments craft what are meant to be comprehensive transitional justice policies. The details of the policy are often ne without input from victims, civil society, or the general public. When victims or others are consulted, they are often asked to react to a proposal, instead of to contribute throughout the process.

International actors, whether donors, diplomats, or NGO representatives, have a lot to contribute to transitional justice processes. They are often able to use their leverage and authority to push for accountability when otherwise it may be left off the table, and they can provide a wealth of technical expertise and suggest lessons from comparative experiences. They can also be a bridge to connect victims and policy makers and implementers, and they can monitor

Standards of Proof

In each of the three countries under discussion here, Uganda, Kenya, and the DRC, civil society organizations and state initiatives have faced challenges in providing and using civil society-collected documentation. Each state initiative has a different capacity to collect its own information and has different expectations of the quality of documentation that civil society will be able to provide.

For instance, in Uganda the Human Rights Commission views civil society documentation as pointing it in the right direction, but conducts its own verification investigations and fills the gaps in the documentation. Similarly, civil society in the DRC has much better access to communities than the military justice system, which does not have the resources to reach remote communities, so civil society documentation can provide the basis for the initiation of an investigation, which is then carried out by military justice officials. In contrast, the Kenyan National Police Service Commission expects civil society documentation to be the standard of a criminal investigation or it cannot use it in its vetting exercises. This has caused challenges for the commission, which has not often been able to use civil society information to remove police officers, and for civil society, which often cannot collect evidence seen as sufficient, particularly in cases of sexual violence.

In each context, state actors and civil society need to work together to understand each other's challenges and develop a relationship that can best promote their mutual goals of acknowledgment, accountability, and reform. The state actors also need to give feedback on the documentation they receive, so that civil society can know how and whether their information is being used, and how to be more effective. International actors can help by: building the capacity in civil society to document according to the required standard of proof, building the capacity of state actors to substantiate documentation they receive, and providing a platform for dialogue between civil society and state actors.

the process to promote the basic rights of victims, perpetrators, and others involved. However, the combination of an excess of international influence and local disenfranchisement may lead to a number of undesired consequences.

At a most basic level, transitional justice measures designed without the input of victims risk not responding adequately to the harms victims suffered and those they continue to suffer. When the agenda is dictated primarily by international actors and national elite, local civil society may decide to disengage from the process, removing a critical source of cooperation, information, victim support, legitimacy, and other elements that civil society cooperation can provide for the success of a transitional justice process.

Promoting interaction between civil society—in particular victims—and policy makers, both at the national and international levels, can help to ensure that transitional justice processes respond to the needs and preferences of victims and that it has legitimacy and domestic ownership.

Ensuring a Gender Focus

One critical contribution that civil society can make is ensuring that state actors have the knowledge and capacity to take into account gender considerations in the design of transitional justice measures. In designing and implementing such measures, it is crucial to understand the gendered dimensions of violations, including sexual violence, as well as the different impacts of violations on men and women, girls and boys. Any measures to benefit

victims must also consider the particular challenges that women may face in participating in and accessing services. While the Great Lakes region has many protocols and frameworks related to gender and sexual violence, their implementation has been undermined by insufficient resources, lack of capacity, and insufficient commitment. Civil society organizations contributed to the content and adoption of these measures, including through their expertise on gender issues.

Dialogue in Uganda

In October 2015, ICTJ convened a high-level symposium in Kampala to launch the findings of its needs assessment of children born of conflict-related sexual violation in northern Uganda and to explore strategies and consider proposals for addressing the victimization of mothers and their children born of conflict-related sexual violence within existing government programs and policies. This brought a group of women and children from the north (who are victims of conflict-related sexual violence but also powerful advocates for redress and accountability) who had participated in the assessment to Kampala for both symposiums. They spoke about their experiences, the challenges they face, and what they would like government to do to respond to their needs. For many participants, this was the most meaningful and powerful component of the roundtable: the opportunity to hear directly from the women and children themselves about the challenges they face and their demands for justice and redress. This allowed for important exchanges between government officials and the women, which led to a range of public statements of increased support.

Civil society interaction with state actors can often help to bring a gender perspective by bringing to light the ways in which the conflict and violations have affected women differently than men and by presenting lessons from their experience working with women victims. For instance, in Uganda, a group of civil society organizations initiated a sustained interaction with the Human Rights Documentation Project discussed above, which led to the project adopting guidelines on gender sensitivity informed by civil society experiences. Similarly in Kenya, civil society, including women victims' groups, lobbied the NPSC to allow anonymous complaints, which helped to enable survivors of sexual violence to submit complaints without fear of public shaming or retribution.

While there are many strong women activists and women's groups in Uganda, Kenya, and the DRC, the inclusion of a gender perspective does not always come automatically in "civil society" and in groupings that seek to represent victims. One of the roles that an international organization can play is helping to ensure that women and other marginalized groups, including youth and ethnic or religious minorities, are included and that social inequalities are not replicated in convenings, networks, and other joint efforts.

Efforts aimed at ensuring a gender focus should also be translated into advocacy for prosecuting sexual violence cases. For example, in the DRC—which has been called the "rape capital of the world"—massive international investment in prosecuting sexual violence has led to a disproportionate number of such cases, at the expense of other similarly atrocious crimes that also affect marginalized populations, including women. The focus on sexual violence in disproportion to other heinous crimes does not appear to be based on a strategy that reflects the broader priorities of victims and affected communities, rather it is often shaped by the international actors who support prosecutions and allocation of resources.

Setting Priorities in the DRC

An externally driven transitional justice agenda can mean a distorted representation or understanding of the specific violations and incidents that are addressed, depending on the interests of external actors. This dynamic has been evident in the DRC. International actors, including the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and international NGOs, directly submit documentation of crimes to military prosecutors in eastern DRC, which often becomes the basis for prioritizing cases and initiating investigations. Information shared by external partners was indeed repeatedly described by judicial authorities as the main trigger for judicial investigations. Consequently, where partners like MONUSCO are unable to gather information, little information is transmitted to relevant investigative and prosecutorial authorities and a limited number of proceedings are initiated. This dynamic may be repeated in South Sudan. According to a South Sudanese participant at a recent ICTJ conference, “In South Sudan, most human rights violations documentation is done by international organizations with very little involvement from national organizations, especially in relation to sexual violence. There is a capacity and resource challenge faced by the organizations.” However, the situation has been recently addressed in the DRC through the prioritization of cases by the military magistrates, facilitated by ICTJ and endorsed by the Congolese military judiciary hierarchy and the Ministry of Justice.

Integrating the work of civil society and the concerns of communities affected by international crimes in the selection of crimes to be investigated and prosecuted is essential to ensuring a greater sense of justice. This integration has been initiated by ICTJ, by bringing together magistrates and a selection of civil society organizations. Building on civil society’s information allows for judicial cases to better reflect the universe of crimes committed throughout DRC and better addresses victims’ concerns.

3. Enable Regional Exchange

Pursuing acknowledgement, accountability, and reform in a hostile environment is always challenging, whether pursued from within a government institution or from civil society. Many of the countries in the region are facing similar challenges, with actors pursuing similar objectives through diverse strategies and measures. As ICTJ's experience has shown, these actors have much to learn from one another, and they can provide needed mutual support. Judicial officials in many Great Lakes countries are currently facing similar obstacles to bringing to justice members of armed groups that operate across borders and commit atrocities throughout the region.

A conference on regional judicial cooperation organised by ICTJ and hosted by the DRC Ministry of Justice in 2015 brought together a selection of senior prosecutors specialized in the prosecution of international crimes from the DRC, Rwanda, Tanzania, and Uganda to discuss the legislative and procedural national frameworks and regional agreements applicable

Building Regional Alliances

When representatives from two women victims' groups and ICTJ partners in two different countries, WAN, of Uganda, and Grace Agenda, of Kenya, met during ICTJ's policy symposium in Kampala on children born of war, they found that one of the most meaningful parts of the experience was getting to hear from and strategize with their regional counterparts. They found this exchange of experiences and lessons learned to be not only inspiring but also concretely informative to their work. In order to build on this initial exchange and continue to share effective strategies and tactics, these organizations have since developed a regional network of women pursuing accountability for sexual and gender-based crimes. The network will engage in collective advocacy for preventing and responding to such crimes, create awareness about the cost of war on women's lives, and conduct exchange visits between countries for the purposes of sharing experiences and strategies for resilience and redress and conducting documentation.

to regional judicial cooperation requests from a technical perspective. For many of the high-level actors participating in the conference, it was the first time they had met their regional counterparts and were exposed to other relevant national legal and procedural frameworks and some regional protocols. To bring together these specialized prosecutors was in itself a success, as it established an initial contact that may enable more direct collaboration in the

future. This allowed for a more comprehensive understanding of the obstacles that need to be addressed and enabled misperceptions to be corrected that particular cases had not been processed out of a lack of respect for the procedure of the requested country, but due to political obstruction.

Such exchanges can improve the work of civil society. They can allow disparate groups to build solidarity with each other, identify and exchange effective experiences and strategies, and build and maintain contacts and networks, all of which can serve to amplify ad hoc efforts at pursuing similar goals.

4. Looking Ahead: Elections and the Need to Break Cycles of Violence

In all countries discussed in this paper, the space for transitional justice has been eroded by competing claims and false dichotomies. National governments prioritize development, peace, and stability over addressing legacies of mass violations, while, after a few years, donors may tire of slow-moving justice processes and focus on other dynamics, such as elections or institution building. However, ICTJ's experience in these contexts has shown that failing to deal with the past can threaten development, peace, and stability, with recurring violence around elections as one of the main results.

Many of the human rights violations that would be addressed by transitional justice measures in several Great Lakes countries were committed in the context of electoral violence or in longer-term conflict spurred by succession disputes and competitions for state leadership. In Burundi, the DRC, Kenya, South Sudan, and Uganda there has been a cycle of violence before, during, and after elections, with a direct relationship between violence and elections. Electoral contests may spark street violence, which can become entrenched armed conflict. Leaders have used repressive tactics to maintain their position, spurring armed rebellion by those who in turn repress the opposition once they are in power. Failing to ensure consequences for using violence to settle political disputes ensures that such violence will return.

The threat of violence in many countries under examination here is far from theoretical. Impunity—whether *de jure* or *de facto*—often has a direct impact on security forces' conduct in moments of tension, in particular during elections and related public demonstrations. In Kenya, with no national trials under consideration, the recent collapse of the cases at the International Criminal Court has been interpreted by many in the country as demonstrating that there will be no consequences for prior or future post-election violence. In the context of upcoming elections, unreformed security forces and a lack of trust in the judiciary could be a recipe for a repeat of the serious violence Kenya experienced in 2007–08. In the DRC, presidential elections scheduled for November 2016 were delayed until 2018, thereby extending President Joseph Kabila's last term. This has raised serious tensions.

Over the past year in Burundi, the Constitution was amended to allow the president to seek another term, some in the military failed in a coup attempt, elections results were rejected by the opposition, and violence broke out, leading to armed rebellion and the deaths of at least 400 people and the displacement of around 260,000. Recent elections in Uganda also led to violence, displacement, and increased repression of the opposition. South Sudan's conflict is also the result of political disputes within the ruling elite, and planned elections could fuel continued violence if there is no meaningful reform or accountability. As it stands, the architects of the violence remain at the helm after a power-sharing agreement was brokered;

they continue to set the agenda in the country, including for transitional justice, at times arguing that a truth commission, with the power to grant amnesties, is more important than the agreed-to hybrid court, which might see political leaders accused of war crimes.

Amid the threat of electoral violence, the focus of the international community and parts of civil society has often been redirected toward preparing for peaceful elections for a year or more before ballots are cast. While this is important work, it often implies diminished support for and activism on transitional justice or other measures that may also help to prevent the recurrence of violence.

In these contexts, which are especially subject to cycles of electoral violence, there is more than ever a need to promote acknowledgement, accountability, and reform and to do so in a way that reflects lessons learned from previous work and seeks to improve on past efforts.

“Leaders have used repressive tactics to maintain their position, spurring armed rebellion by those who in turn repress the opposition once they are in power. Failing to ensure consequences for using violence to settle political disputes ensures that such violence will return.”

Conclusions

Transitional justice practitioners have become increasingly aware of and responsive to the need to adapt interventions to each context and to invest in learning from past interventions. This process necessarily requires domestic and international actors working in transitional justice to reflect on their experiences and apply lessons learned to new interventions. ICTJ's experience working on transitional justice in Uganda, Kenya, and the DRC has led to important lessons that have informed our work in these countries and are applicable to other states in the region, and beyond. These lessons include:

- Consult and involve victims
- Invest in a strong understanding of the political, socioeconomic, and cultural context
- Support local civil society
- Work with all stakeholders and build partnerships between government and civil society
- Promote linkages throughout the region

Underlying these lessons is the understanding that transitional justice approaches necessarily differ in each context. The assumption that an integrated approach is the best policy needs to be treated with caution; it may not always be appropriate. Instead, it is necessary to have a deep understanding of the context and develop strategies that respond to the existing political, social, cultural, and economic conditions.

In the Great Lakes region, it has proven more effective to identify opportunities to advance specifically targeted measures—for instance, local prosecutions of a limited number of international crimes or acknowledgment of a particular class of victims—rather than expecting national-level integrated policies to be approved and implemented quickly. A strong civil society and empowered victims are crucial to these advances, as is cooperation between civil society and the state.

The Great Lakes region continues to face security threats from nonstate armed groups that operate across borders and create instability throughout the region. In addition, the political leadership of many countries is increasingly authoritarian, resorting to varying degrees of repression to stay in power. Electoral violence remains common, and impunity for serious crimes during past electoral and other violence encourages would-be perpetrators. Given the interconnectedness of violence in the region, each country's attempt to provide justice for past violations is necessarily linked to similar processes in others. Civil society and state actors should continue, therefore, to work together within and across countries to end the cycles of violence that destabilize the region and to materialize victim's rights to justice, truth, and reparation.

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