

ADVOCATING JUSTICE

Civil Society and Transitional Justice in Africa



Workshop Report

Advocating Justice

Civil Society and Transitional Justice in Africa

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Hosted by the
Centre for the Study of Violence and Reconciliation
on behalf of the African Transitional Justice Research Network



African Transitional Justice Research Network

The African Transitional Justice Research Network (ATJRN) seeks to promote and encourage transitional justice research in Africa through the development of research capacity, the building of transitional justice content knowledge, and the creation of spaces for practitioners and researchers in Africa to share experiences, expertise, and lessons learnt. ATJRN strives to ensure that the transitional justice agenda in Africa is locally informed and owned.

ATJRN was established in 2004 with funding from the International Development Research Centre. It is managed by representatives from four steering committee member organisations: **Centre for the Study of Violence and Reconciliation (CSVR)**, South Africa; **Refugee Law Project (RLP)**, Uganda; **Campaign for Good Governance (CGG)**, Sierra Leone; and **Centre for Democratic Development (CDD-Ghana)**. The steering committee guides the development of the network; is responsible for the implementation of all ATJRN activities in the represented regions; contributes to all products of the ATJRN; and ensures that the project has a balanced regional approach. The day-to-day functions of ATJRN are administered by a secretariat made up of a project manager and regional coordinators based at CSVR, RLP, and CGG. The current steering committee members are Chris Dolan, Valnora Edwin, Carnita Ernest, Franklin Oduro, Moses Chrispus Okello, and Hugo van der Merwe, supported by regional coordinators Nokukhanya Mncwabe, Levis Onegi, and Bernadette French.

ATJRN's activities include:

- A website (www.transitionaljustice.org.za) that provides various resources on transitional justice developments within Africa. The website includes a contact database of human rights organisations doing transitional justice-related work situated in the region; a frequently updated list of transitional justice publications (a list of French and gender transitional justice resources will be available soon, and the network intends to make Arabic resources available on the site); daily news updates; announcements of upcoming events and vacancies; and access to ATJRN workshop reports and ATJRN online briefs.
- The TJNetwork listserv, which networks individuals in the transitional justice field globally and seeks to facilitate dialogue and the sharing of research, opportunities, and knowledge. There are presently 1,200 listserv members, with the number of subscribers growing daily.
- A quarterly e-brief, which is an online newsletter that provides information and analysis on transitional justice processes, developments, and current debates within African contexts, as well as a review of network activities.
- Capacity-building workshops, which seek to address the needs of Africa-based researchers and practitioners. Past activities, which to date have been held in Southern, West, and East Africa, have focused on research and evaluation methodologies suited to transitional justice.

Centre for the Study of Violence and Reconciliation

CSVR was founded in January 1989 and has offices in Johannesburg and Cape Town, South Africa. CSVR adopts a multi-disciplinary approach to understand and prevent violence, heal its effects, and build sustainable peace locally, continentally, and globally. CSVR's work includes a focus on transitional justice, peacebuilding, criminal justice reform, trauma studies and support, victim empowerment, and violence prevention, with a specific focus on the prevention of gender-based, youth, and collective violence. The organisation is increasingly working on a pan-continental basis to share expertise, facilitate learning exchanges, and strengthen the capacity of Africa's civil society and regional organisations.

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Contents

Acknowledgements	iv
Authorship	iv
Background	1
Aims and Structure	1
Context Specificity and Transitional Justice in Africa	2
African Civil Society's Role in Transitional Justice	4
Agendas and Solutions	5
Coalition Building	6
Establishing Transitional Justice Mechanisms	7
Implementation and Follow-up	8
Advocacy Strategies: Building Political Will	9
Meetings with Government Officials	9
International Advocacy	10
Workshops and Conferences	10
Research	11
Publications	11
Grassroots Consultations	11
Litigation	11
Collaboration between NGOs and Victims' Groups	12
Demonstrations and Petitions	12
Additional Strategies	13
Policy Action and Evaluation	13
Limitations and Envisioning the Long Term	13
African Solutions to African Problems	14
Ownership and Representation	15
Traditional Justice	16
Conclusion	18
Participants	19
Presentation List	19

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Authorship

This report was written by Jasmina Brankovic, a researcher and editor with the Centre for the Study of Violence and Reconciliation and the assistant editor of the *International Journal of Transitional Justice*.

The ideas presented here were developed collectively by the workshop participants. Presenters also wrote papers in preparation for the workshop, which are available on the ATJRN website. While this report draws mainly from the input at the workshop, richer detail regarding specific advocacy efforts is contained in the papers.



First row: Hugo van der Merwe, Wachira Waheire, Levis Onegi, Stephen Oola.
Second row: Chris Dolan, John Caulker, Shirley Gunn, Ezekiel Pajibo, Njonjo Mue, Nokukhanya Mncwabe, Undine Whande, George Mukundi Wachira.
Third row: Edem Comlan, Jasmina Brankovic, Kihika Sarah Kasande, Kora Andrieu, Dieudonné Diku Mpongola, Roselyn Hanzi.

Background

Transitional justice measures are increasingly used in transitions from internal conflict or authoritarianism to peace and democracy in African countries. Civil society organisations usually play a central role in promoting and assisting in the design of these measures at the time of transition, as well as into the post-transition period.¹ A very small amount of literature is available on their contribution, however. Civil society's work has not been systematically documented or shared with other transitional justice actors, policymakers, or the public.²

Civil society organisations have made a few contributions to the literature on this topic, but these have either focused on one country context or discussed civil society's efforts globally, offering general recommendations.³ Several academics have addressed the subject, including David Backer, Naomi Roht-Arriaza, Eric Brahm, and David Crocker, but the selection is small, the authors mainly based in the global North, and the work largely done in relation to earlier developments in the field.⁴

In addition to the lack of relevant and up-to-date literature, opportunities for debate and collaboration on transitional justice among African civil society actors have been limited. Dialogue needs to be fostered among African organisations working on transitional justice so that, instead of operating in a vacuum, they can become familiar with each other's work, share effective approaches, and possibly collaborate in their

lobbying efforts at the national and regional levels. The lessons they have learnt about applying and critiquing ever-evolving international practices and standards in highly specific domestic contexts are useful to other African organisations working in the field of transitional justice, as well as international practitioners, scholars, and policymakers.

Seeking to fill these gaps, the Centre for the Study of Violence and Reconciliation (CSVr), on behalf of the African Transitional Justice Research Network (ATJRN), organised a two-day workshop on African civil society's engagement with transitional justice that demonstrated civil society's central role in shaping transitional justice agendas on the continent.

Aims and Structure

In line with ATJRN's commitment to building transitional justice content knowledge and collaboration, the "Advocating Justice" workshop was envisaged as a safe space for practitioners and researchers to share their experiences and evaluate African civil society's engagement with transitional justice measures on the continent, particularly in relation to lobbying governments and regional and international entities to undertake context-appropriate transitional processes.⁵

The workshop aimed to encourage individuals and organisations to document their advocacy efforts related to influencing government policies and interventions before, during, and/or after transition. It was also intended to provide participants with an opportunity to discuss their experiences, assess lessons about advocacy strategies, and forge personal and institutional links.

CSVr put out a call for workshop participants to present country-specific case studies of local civil society's transitional justice lobbying projects or campaigns—agendas, activities, and successes and failures. It also invited broader thematic analyses of African civil society's engagement with transitional justice issues that are especially relevant to the African context, either spanning various countries or focusing on regional and subregional institutions. Evaluation of past experience and lessons for future engagement were identified as central to both the country-specific and the thematic presentations.

1 International Center for Transitional Justice (ICTJ) and Ghana Center for Democratic Development (CDD-Ghana), *Truth Commissions and NGOs: The Essential Relationship: The "Frati Guidelines" for NGOs Engaging with Truth Commissions* (April 2004).

2 One workshop presenter, Kihika Sarah Kasande, employed a useful definition of civil society: "The collection of organized interests that nominally exist outside the political sphere, yet often mediate between the public at large and the state. It includes, among others, NGOs and civic associations. The latter are primarily voluntary and membership based, whereas the former are ordinarily professional units." Taken from, David Backer, "Civil Society and Transitional Justice: Possibilities, Patterns and Prospects," *Journal of Human Rights* 2(3) (2003): 311.

3 See, ICTJ and CDD-Ghana, *supra* n 1; Jackee Budesta Batanda, *The Role of Civil Society in Advocating for Transitional Justice in Uganda* (Wynberg: Institute for Justice and Reconciliation, 2009); Hugo van der Merwe, Polly Dewhirst, and Brandon Hamber, *Non-governmental Organisations and the Truth and Reconciliation Commission: An Impact Assessment* (Johannesburg: Centre for the Study of Violence and Reconciliation, 1999).

4 See, for example, Backer, *supra* n 2; Naomi Roht-Arriaza, "Civil Society in Processes of Accountability," in *Post-Conflict Justice*, ed. M.C. Bassiouni (Ardsley, NY: Transnational Publishers, 2002); Eric Brahm, "Transitional Justice, Civil Society, and the Development of the Rule of Law in Post-Conflict Societies," *International Journal of Not-for-Profit Law* 9(4) (2007); David A. Crocker, "Truth Commissions, Transitional Justice, and Civil Society," in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton, NJ: Princeton University Press, 2000).

5 Many of the organisations represented at the workshop are also involved in directly facilitating transitional justice processes through dialogues, restorative justice processes, counselling, healing services, and so on. An examination of these interventions was not part of the workshop agenda.

The work of the 11 participants selected to present at the workshop is broadly representative of the range and scope of the transitional justice efforts that have been or are being undertaken in Africa. The participants are from countries at various stages of transition, as well as with varying levels of democracy and citizen participation, in Southern Africa, the Great Lakes region, East Africa, and West Africa. The names and institutional affiliations of the participants are included at the end of the report.

Largely members of local nongovernmental organisations (NGOs), the participants are versed in advocating for transitional justice mechanisms in their countries, with a couple now working with international NGOs. The majority presented country case studies, focusing on developments in, and the effectiveness of, civil society's advocacy efforts at the domestic level. Two presented on lobbying African Union organs, with one focusing on the challenges of pressuring domestic government via the regional institution and the other on the potential for influencing the development of transitional justice policies within the African Union. One presenter discussed strategies used by an NGO to make transitional justice mechanisms at the domestic level more gender responsive.⁶ Two representatives of victims' groups discussed their advocacy tactics, as well as the benefits and challenges of working with NGOs.

The participants are all Africa-based practitioners with long histories of human rights activism and engagement with government. Their institutional affiliations reflect a thorough understanding of and multifaceted approach to transitional justice. The workshop consisted of presentations followed by focused discussions, as well as two loosely structured open discussions.⁷

Through the workshop, participants were invited to begin a long-term dialogue on present and future transitional justice strategies in Africa. This workshop report is an attempt to contribute to this dialogue and to begin filling the gap in the literature by providing a regional analytical perspective on transitional justice, demonstrating civil society's role in guiding transitional justice in Africa and identifying ways to improve this role.

Context Specificity and Transitional Justice in Africa

Transitional justice emerged from approaches developed to contribute to Latin American states' transitions from authoritarianism towards democracy in the 1980s.⁸ The use of transitional justice mechanisms has become so prevalent that it has been described as a global "justice cascade."⁹ Over the past decade, this has arguably been most the case in Africa, where a good number of countries have adopted transitional justice measures in the wake of conflict or a shift from authoritarianism to varying levels of democracy.

The state-sanctioned measures typically used within transitional justice are truth commissions, prosecutions of individual perpetrators of human rights violations, reparations, institutional reform, vetting and lustration, and traditional justice mechanisms. Briefly, these measures are intended to address different challenges of the transition, ranging from ensuring that perpetrators are held publically accountable and/or punished by a criminal justice system to promoting reconciliation in societies deeply divided by conflict. While these measures can be used in isolation, with a state only pursuing prosecutions, for example, they are increasingly being employed in a more "holistic" way that sees the measures as interdependent and combines elements of both retributive and restorative justice. The measures can be used simultaneously, as with the Sierra Leonean Truth and Reconciliation Commission and the Special Court for Sierra Leone. They can also be "sequenced," as has been attempted in Uganda, which some argue minimises the risk of perpetrators returning to conflict because of the threat of punishment.¹⁰

While the goals of transitional justice are many and complex, and the theory is interdisciplinary, drawing on law, sociology, anthropology, political science, psychology, forensics, and other diverse fields, in practice transitional justice has been fairly narrowly defined along legalistic lines, reflecting its roots in human rights dis-

6 To avoid the usual ghettoisation of gender, CSVJ selected two participants to present on different approaches to advocating for more gender-responsive policies. Unfortunately, one of these presenters at the last minute was unable to attend the workshop. As a result, the discussion of gender was not as integrated into the workshop as was intended.

7 To read the papers, see, African Transitional Justice Research Network, "ATJRN Workshops in 2010," http://www.transitionaljustice.org.za/index.php?option=com_content&view=article&id=406&Itemid=118 (accessed 4 November 2010).

8 See, Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31(2) (2009): 321–367.

9 Ellen Lutz and Kathryn Sikkink, "The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America," *Chicago Journal of International Law* 2(1) (2001): 1–34.

10 For more on the development of transitional justice, see, Ruti G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2002); Diane Orentlicher, "'Settling Accounts' Revisited: Reconciling Global Norms with Local Agency," *International Journal of Transitional Justice* 1(1) (2007): 10–22; Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (New York: Routledge, 2010).

course and international human rights and humanitarian law. These roots are also responsible for its primary focus on individual rights rather than structural inequalities, and on violations of civil and political rights rather than abuses of social, economic, and cultural rights. Transitional justice theorists and practitioners in recent years have begun challenging the field's narrow ambit, including its reliance on the language and parameters of human rights,¹¹ and the resulting debates have both emerged in and influenced the African context. As shown below, they were also mirrored in the workshop discussions, being central to the aims of African civil society organisations.

Although the accepted set of transitional justice measures is fairly standard, which measures are chosen and how they are applied differs significantly from country to country. The eight African states discussed at the “Advocating Justice” workshop—South Africa, Zimbabwe, Kenya, Uganda, Rwanda, the Democratic Republic of Congo, Sierra Leone and Liberia—have experienced a range of processes. Five have launched truth commissions¹² and six adopted explicit strategies for trying violators of international humanitarian and human rights law, as well as domestic law.¹³ A number of the countries have committed to providing some form of reparations to victims, although this measure tends to be the most neglected, and nearly all have undergone some degree of institutional reform and vetting.¹⁴

The variation in these countries' transitional justice experiences is in part attributable to differences in their current political situations. Some, like Zimbabwe, have not yet experienced transition but are beginning the



conversation on which measures should be adopted within a hostile political environment. Others, like the Democratic Republic of Congo (DRC) and Kenya, are facing a new but already stalled transitional justice process, with mechanisms, particularly truth commissions, undergoing crises of legitimacy. Still others, like South Africa and Sierra Leone, are past the “transition moment” and facing the challenge of ensuring that the issues identified at the beginning of transition are fully addressed and the recommendations made by truth commissions are implemented.

The countries discussed also have widely differing colonial and post-colonial histories and contemporary political structures and conditions, which has affected the transitional justice processes in each. This is particularly the case as transitional justice, despite borrowing from the legalistic, allegedly universalist international law and human rights frameworks, is intimately linked to highly contextual transitional politics and aims to ensure political and social stability.¹⁵ While South Africa emerged from apartheid in 1994 with a democratic government and a relatively open political arena, Zimbabwe, Kenya, and Uganda are ruled by long-standing repressive regimes, have entrenched political elites, and have adopted legislation that regulates and constrains civil society's activities. Sierra Leone and Liberia were so decimated by conflict that they have been described as “failed states.”¹⁶ Rwanda lost between 800,000 and

11 See, for example, Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *International Journal of Transitional Justice* 2(3) (2008): 266–291.

12 South Africa, Kenya, the Democratic Republic of Congo, Sierra Leone, and Liberia. Mandated with investigating past human rights violations and recommending ways for the affected society to move towards sustainable peace, truth commissions have been defined as “officially sanctioned, temporary, non-judicial investigative bodies ... granted a relatively short period for statement-taking, investigations, research and public hearings, before completing their work with a final public report.” Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions* (2006), 1. In order to be considered legitimate, they must include some degree of public participation. Several workshop participants noted that countries have established commissions of inquiry on various topics over the years but that these have been exclusive and often designed to protect the ruling regime.

13 For example, Sierra Leone established the Special Court for Sierra Leone; Uganda recently set up a War Crimes Division within its High Court; Rwanda has tried perpetrators through *gacaca* courts; and the situations in Kenya, Uganda, and the Democratic Republic of Congo are being investigated by the International Criminal Court.

14 For detailed descriptions and histories of the mechanisms adopted by each country, see, Justice in Perspective, <http://www.justiceinperspective.co.za>.

15 See, Orentlicher, *supra* n 10; Juan E. Méndez, “Accountability for Past Abuses,” Kellogg Institute for International Studies Working Paper 233 (September 1996).

16 International Crisis Group, *Liberia and Sierra Leone: Rebuilding Failed States* (December 2004).



a million citizens to the genocide and is now ruled by a regime highly concerned about controlling the way the country's history is narrated and perceived,¹⁷ leaving little room for civil society to question its policies. In the DRC, a young and weak civil society faces the challenges of continuing insecurity and political instability on top of a repressive government.¹⁸

Differences indicated by these country "snapshots" are further complicated by the presenters' stories about their work in each context. For example, participants noted that despite the democratic dispensation, South Africa's government has been slow to respond to victims' needs and civil society's demands for justice in the wake of the Truth and Reconciliation Commission (TRC). Others observed that, despite a politically constrained environment, parliamentarians in Zimbabwe, Kenya, and Uganda have a fair amount of independence in the policies they support as long as they toe the party line on major issues, which makes them susceptible to well-strategised lobbying. Participants also indicated that the conditions of a "failed state" can create new political spaces for civil society, and that Liberia's political elite and its NGO actors are linked by a similar background and education, which facilitates access and advocacy. These opportunities are countered by the fact that local civil society in Liberia, as well as in Sierra Leone, Rwanda, and the DRC, at times finds its work eclipsed and undermined by international NGOs.

Many of these details will be addressed below, but

here they serve to demonstrate the social and political differences among the countries discussed at the workshop, and thus among the environments in which African civil society both thinks about its approaches to transitional justice and pushes for context-appropriate measures.

African Civil Society's Role in Transitional Justice

The number and influence of civil society organisations have increased significantly over the past two decades. Post-conflict countries often witness an explosion in the number of local civil society organisations, as well as increased attention from international NGOs, given the opening of political spaces and the influx of foreign money for reconstruction.¹⁹ In addition, domestic organisations that had been operating in the pre-transition period shift their focus to addressing the issues raised by the new political and social situation. In light of transitional justice's increasing prevalence in post-conflict situations, this means that many new and established African civil society actors concentrate on transitional justice processes, deciding on which ones would be most likely to address their country's legacy of human rights violations and how the measures should be applied and later followed up.

Workshop participants spoke about being identified as transitional justice practitioners, as opposed to human rights researchers and activists, for example, and not recalling exactly when and how this shift occurred or knowing whether they are comfortable with the narrowness of the identification, given what they perceive as the broader import of their work. Most participants have been members of civil society for years, advocating for peace and human rights protection at the domestic and international levels. In fact, they were selected for the workshop because of their experience. Several are trained lawyers. The participants presenting on victims' groups are themselves victims of repressive regimes who, through engagement with their groups and advocacy for accountability and redress, have come to consider themselves both survivors and human rights activists.

Being part of civil society in a transitional society, or

17 Susan Thomson, "False and Illusive Reconciliation in Rwanda," Rwanda Rw'abanyarwanda blog (21 January 2010); Marian Hodgkin, "Reconciliation in Rwanda: Education, History and the State," *Journal of International Affairs* 60(1) (2006): 199–210.

18 International Peace Academy, *Civil Society and Democratic Transitions in the DRC, Burundi and Rwanda* (2005).

19 See, Mari Fitzduff, *Civil Society and Peacebuilding—The New Fifth Estate?* (The Hague: Global Partnership for the Prevention of Armed Conflict, 2004).

one on the brink of transition, the participants became involved in pushing states to address histories of human rights violations and impunity, which in Africa and over the past two decades, particularly since South Africa underwent its influential TRC process (1995–2002), has often meant pushing transitional justice measures.

While advocacy, which in simple terms can be defined as activities “directed at changing the policies, positions or programs of any type of institution,”²⁰ is a complex and dynamic process, it can be broken down into five basic phases: (1) identification of an issue for policy action, or agenda setting; (2) solution formulation, which follows quickly on the first phase; (3) building political will for identified solutions, which includes various tactics like coalition building, meetings with decision makers, and sensitisation of the public; (4) policy action by the advocacy target; and (5) evaluation of the advocacy approach and the policy change, if effected.²¹ Using the basic structure of the five phases, and relying almost entirely on the themes that emerged from the workshop papers and discussions, this report will begin to describe and evaluate African civil society’s strategies specifically in lobbying governments to adopt appropriate transitional justice mechanisms.

The first section discusses how the African civil society represented at the workshop began engaging with transitional justice and has formulated its advocacy agenda, as well as the solutions it has identified to the challenges elicited by transition. These organisations’ priorities have been coalition building and establishing viable legislation for transitional justice mechanisms, particularly truth commissions and special courts. The second section describes the tactics workshop participants have used to build political will in support of their agendas. The third section considers civil society’s successes in advocating for transitional justice on the continent. It also reflects on some of the challenges organisations have faced in doing so, which may range from lack of innovation in tactics to lack of momentum and long-term vision. The fourth section focuses on the concept of “African Solutions to African Problems,” and the combination of scepticism about African exceptionalism and positivity about context specificity displayed by the workshop participants. It also discusses the question of who owns transitional justice on the continent and the related question of just how representative civil society can be. Finally, the section considers the spaces opened by, and constrained

by, African traditional justice mechanisms.

As detailed in the conclusion, despite political, social, infrastructural, funding, and other challenges, and despite problems in following up on gains made early in the transition, African civil society organisations have been central to guiding transitional justice policies and practices on the continent, particularly in relation to one of the field’s most visible mechanisms, truth commissions. They have also both shaped and been influenced by the larger debates on whether the field’s parameters should be expanded beyond its legalistic frame.

Agendas and Solutions

The majority of the organisations represented in the workshop began engaging with transitional justice in earnest during or immediately after peace agreements were signed. They were largely excluded from the negotiations, usually between government officials and rebels or between the ruling regime and its political opposition, but were drawn into the debate by the inclusion of transitional justice-related provisions in the agreements.²² In most cases, these provisions were either limited and vague (Sierra Leone) or all-encompassing and vague (Kenya), and some (like Liberia’s) focused on a truth commission as opposed to prosecutions in order to allay the fears of the parties to the conflict and ensure the signing of the agreement.

Having identified a specific issue in either the transitional justice provisions or the government’s lack of political will to implement them, civil society organisations started focused campaigns. Some began with an adversarial tone, for example calling for the disbandment of a truth commission if a new selection process for commissioners was not adopted (Liberia) or demanding that the government fulfil obligations detailed in the peace accord (Kenya). Others adopted a more collaborative, “constructive” attitude, for example organising wide consultations, especially with government officials, on new legislation in service of transitional justice (Uganda), lobbying for a new transitional justice mechanism (DRC), or building partnerships with government by raising awareness in the public about the truth commission process

20 Ritu R. Sharma, *An Introduction to Advocacy: Training Guide* (Washington, DC: Support for Analysis and Research in Africa/Health and Human Resources Analysis for Africa, 1997).

21 Ibid.

22 Participants explicitly discussed only one case in which civil society had a significant influence at the negotiations. The Ugandan peace process gave a coalition of women’s organisations cause and opportunity to lobby for the inclusion of gender-sensitive provisions in the accord. The process ended in failure when the rebels pulled out but it laid the foundations for a transitional justice process in the country.

(Sierra Leone). Both the adversarial and the constructive approach were used by most, depending on the issue being addressed, but the participants, particularly those from NGOs, generally agreed that a constructive relationship with the state and regional bodies is more useful in terms of ensuring long-term access and sway.

The influence of South Africa's TRC process was particularly evident in discussions of agenda setting in the workshop papers. In deciding on which transitional justice mechanisms to lobby for and how, several participants studied the South African experience and took study trips to South Africa to learn from former commissioners and civil society there. Several coalitions were advised by South African transitional justice experts and former commissioners. On government's side, officials were influenced by South Africa's Promotion of National Unity and Reconciliation Act (1995), with the Kenyan government's proposed Truth, Justice, and Reconciliation Commission Bill (2008) described by a workshop participant as a "cut-and-paste" of the South African TRC legislation. A number of participants, within both victims' groups and NGOs, were influenced by the structure and work of South Africa's national victims' association, Khulumani Support Group. While other countries' experiences have also been influential and African civil society acknowledges the shortcomings and context specificity of the TRC,²³ there is little doubt that the South African process is the one most consulted by most stakeholders on the continent.

A discussion of African civil society's lobbying for transitional justice on the continent cannot ignore or minimise the influence of actors beyond civil society organisations and government. As demonstrated below, civil society's plans and activities are influenced at every stage of advocacy by donors and international institutions and NGOs, as well as by regional bodies, academics, transitional justice experts (such as former members of truth commissions), and other civil society actors. Some of this influence is solicited, some is unacknowledged but present, and some is imposed, and organisations manage their relationships with other actors with varying degrees of success. In this environment, initial agenda setting may prove more straightforward than continuing engagement with the mechanisms and the larger transition, as civil society faces a growing number of players and emergent issues to which it must adapt its agendas and strategies.

Coalition Building

At the agenda-setting stage, all of the organisations represented at the workshop decided to work as part of one or more civil society coalitions or networks at the domestic, regional, and international levels alike. This was a key similarity of approach among the participants.

Most literature on effective advocacy advises the use of coalitions and networks, as they provide the legitimacy and security (under repressive regimes) of multiple voices calling for change and lend members the technical and funding capacity of their partners.²⁴ Although the terms are often used interchangeably, networks are generally loose associations of individuals and organisations working towards the same goal and sharing information and strategies, while coalitions have more formal structures and explicit agreements to share resources and work together in the long term.²⁵

The alliances described in the workshop represent a range of commitments and approaches to collaboration. They vary from formal coalitions with memoranda of understanding and a clear structure working towards well-defined goals at the national and local levels, such as the Truth and Reconciliation Working Group in Sierra Leone, to loose associations working in support of a broader idea without any formal agreements and with a porous composition, such as the Coalition for Reconciliation in Uganda. Such coalitions' membership may consist of only a few NGOs (usually human rights organisations) with similar existing agendas, as with the Congolese Coalition for Transitional Justice, or of diverse groups—NGOs, legal associations, women's organisations, victims' groups, and faith-based organisations, for example—working at the community, national, and international levels with different foci and strengths, as with Kenyans for Peace with Truth and Justice.

According to participants, their coalitions are usually headed by one organisation (or a couple), which has expertise in the issue area, coordinates the group's activities, and may serve as a secretariat. Funds for coalition activities may be provided by the leading organisation(s), pooled together from the members' existing resources, or raised specifically for the coalition's work by one of the members. This funding may come from multiple donors, or from just one.

While participants did not question the usefulness

23 Centre for the Study of Violence and Reconciliation, *Seminar Report: Negotiating Transition: The Limits of the South African Model for the Rest of Africa* (2009).

24 Sharma, supra n 20; George Katito and Faten Aggad, *Strategies for Effective Policy Advocacy: Demanding Good Governance in Africa* (Johannesburg: South African Institute of International Affairs, 2009).

25 Katito and Aggad, supra n 24.

of coalitions—in fact highlighting their necessity—they noted a number of challenges involved in working in such a collaborative manner. A major one is ownership, particularly in coalitions with a diverse membership. While a coalition may be strengthened by the variety of its organisations' constituents and the large number of voices it represents, it may suffer from internal conflict and mistrust if member organisations in leadership positions or with more funding are seen as taking over the coalition's activities or furthering their own agendas with the legitimacy garnered from smaller members. For their part, organisations at the head of coalitions feel the combined pressure of fulfilling two sets of obligations (the coalition's work in addition to the organisation's) as well as being accountable to donors for coalition funds, and therefore may have different priorities than their partners. Funding constraints, donor directives, and different activity areas may result in partners having divergent ideas about which agenda to pursue and in the break-up of the coalition if each partner's agenda is not sufficiently supported. The mistrust created by issues of ownership can undermine a coalition's effectiveness. One participant suggested this was at the root of civil society's failure to secure adequate reparations for victims in South Africa.

This challenge proved particularly salient in the relationship between NGOs and victims' groups. A participant described such collaborations as “a circus,” with NGOs approaching victims' groups in order to gain information and credibility and then leaving them out of the decision-making process, withholding information, at times abandoning them when certain goals are met, and even collapsing from lack of funding or other problems. Victims' groups also tend to have different advocacy strategies than NGOs, favouring public demonstrations and litigation over research-based advocacy, for example, which can cause friction between the two. Nevertheless, workshop discussions suggested that collaboration has proved beneficial to the groupings, with both achieving more together than they had apart.

Issues raised by the NGO–victims' group tensions also pertain to another major challenge of working as part of a coalition: sustainability. A number of presenters observed that coalitions often disband after an immediate policy threat passes or their initial goal is reached. This occurs even if some members are not satisfied with the outcome. It also means that follow-up is left to individual organisations, which may have less clout than the initial coalition. Although analysts suggest that coalitions should have long-term strategies



that serve a comprehensive transitional justice project,²⁶ workshop participants agreed that coalitions tend to be reactive rather than proactive, adopting short-term tactics to cope with an emergency instead of taking the long view. A tension emerges between civil society developing a standing, durable engagement with transitional justice and yet being prepared to adapt to the many surprises and policy shifts faced by a country in transition, as well as in donor interests.

Participants' opinions on how to deal with these challenges diverged significantly. Many advocated for formal structures and agreements that clearly lay out the coalition's objectives and the responsibilities of each coalition member, allow members to check up on each other, and create space for consultation on each issue, no matter how time-consuming such consultations can be. Others argued for decentralised, loose networks with no dedicated funding that can be activated whenever the need arises. It was suggested that the form of a coalition depends on the policy issue, timing, and other factors, as coalition forming is an “organic” process, but most agreed that transparency is essential to fostering trust and minimising territorial disputes among members.

Establishing Transitional Justice Mechanisms

Having identified suitable partners, many of the NGOs and coalitions represented at the workshop saw establishing a context-appropriate domestic legal framework for transitional justice as a priority. Mainly using peace agreement provisions as a starting point, they either

26 ICTJ and CDD-Ghana, supra n 1.

worked with government to draft legislation (Kenyan for Peace with Truth and Justice, Kenya's Multi-Sectoral Taskforce on the Truth, Justice, and Reconciliation Commission, the Congolese Coalition for Transitional Justice, and FIDA-Uganda), preempted government in this by drafting legislation and presenting it to officials for input (Sierra Leone's Truth and Reconciliation Working Group and the Coalition for Reconciliation in Uganda), or took over the drafting process from other bodies (from the United Nations in the case of Liberia's Transitional Justice Working Group).

The majority of advocacy surrounding legislation was aimed at setting up a well-designed, independent, and inclusive truth commission. Some also had to do with setting up mechanisms for prosecuting human rights violators, including hybrid chambers or a special tribunal within the judiciary, or with domesticating the International Criminal Court's Rome Statute, which would allow the state to cooperate with the court in its prosecutions.

In the countries discussed at the workshop, civil society, even in contexts where it historically has not been particularly powerful, succeeded in strongly influencing domestic law relating to transitional justice. In this regard, African civil society has put transitional justice squarely on national agendas and, for the most part, managed to pressure governments into enacting

robust legislation. Its impact on this issue will be discussed further in the "Policy Action and Evaluation" section.

Implementation and Follow-up

Aside from—and often only in the wake of—pushing for legislation that would establish transitional justice mechanisms, participants tended to see ensuring that a truth commission or court functions properly and, later, that truth commission recommendations are implemented as priorities. In this work in particular, participants agreed that their organisations and coalitions become largely reactive, addressing exigencies emanating from government or other actors rather than spearheading policy change. In fact, this work seems to be done more by individual organisations with specific expertise and interests, as opposed to by coalitions. Coalitions are reconstituted or new coalitions are formed when a particular issue area opens up.

As described in the workshop papers, the solutions and tactics concerning these agenda items are far less focused than those related to legislation. The main aim is to keep transitional justice on the national agenda through community-level, national, and international awareness raising, mainly via the tactics detailed in the "Advocacy Strategies" section. This work is often research-based, involving monitoring and analysis of ongoing truth commissions, other transitional justice mechanisms (for example, the *gacaca* courts in Rwanda), and related government activities, and lobbying when the mechanisms hit an obstacle, such as the credibility issues faced by Kenyan Truth, Justice, and Reconciliation Commission or the South African government's reluctance to move ahead with the prosecutions of apartheid-era human rights violators.

NGO participants generally engaged with advocating for reparations for victims only at this stage, as opposed to at the beginning of their transitional justice campaigns. For example, Sierra Leone's Truth and Reconciliation Working Group began working with victims' groups to lobby for the establishment of a Special Fund for War Victims and a reparations programme when government had done nothing for a year to address the truth commission's recommendations on the topic. Victims' groups lobby heavily around this measure, although the Western Cape branch of Khulumani Support Group also began working with its civil society partners to push the state on reparations only once the government had failed to follow the TRC's recommendations. Adequate reparations policies have proven difficult to advocate for in the politically and fiscally constrained



environments of African states, although this measure has been thorny in many contexts beyond Africa.²⁷

Once transitional justice mechanisms are nearing their conclusion or closed, the organisations represented at the workshop have undertaken a few follow-up activities. The main one has been research-based evaluations of the process—its successes and failures—and recommendations on ways government could sustain peace and encourage societal reconciliation going forward. This has at times involved consultations with various stakeholders and the grassroots. Organisations have also (re)turned to regular human rights advocacy, focusing, for example, on legal reforms that promote rights protection—work that has repercussions for the transition but may not be directly linked to the field of transitional justice.

As will be discussed below, civil society throughout Africa seems to have more difficulty identifying a clear agenda for lobbying government in the “post-transition” context, which may be a problem more with transitional justice as a framework than with the limitations thrown up by political and social conditions in transitional countries.

Advocacy Strategies: Building Political Will

Despite the differences among the countries under discussion and their transitional justice journeys, the advocacy strategies used by civil society actors in Africa have much in common. Based on the input of the workshop participants, it seems that civil society advocating for transitional justice in Africa, and perhaps for human rights protection in developing countries generally, uses a set of “tried and tested” strategies. This appears particularly to be the case in advocacy geared at influencing government policy—the focus of the workshop—as opposed to work that does not directly target the state, such as facilitating community-level reconciliation, for example.

This section outlines the lobbying approaches described by the workshop participants in their papers, presentations, and discussions. Because the participants may not have been comprehensive in their descriptions of their organisations’ activities, some

strategies might not be represented here, but the list is nonetheless instructive. The section also includes the positive and negative attributes of each approach, as identified by the participants. Multiple strategies were used in conjunction, depending on the object of the advocacy.

Meetings with Government Officials

The strategy noted by all of the presenters is organising meetings with individual government officials, both politicians and civil servants at all levels. Through one-on-one dialogue, organisations seek to influence policy by informing and pressuring officials, mostly in a non-confrontational and constructive manner. The strategy involves developing relationships that members of an organisation or coalition have established with individuals in government and building new relationships. This often occurs in informal settings, such as social events and even in corridors outside official meetings.

While useful, the strategy relies on personal connection and often works best with officials who are already open to the policy being promoted by civil society or with junior officials who may not have the clout to push a policy through at the decision-making level. Another challenge is that government officials might commit to promoting an issue during a meeting but then not follow up on the commitment.

This tactic depends on civil society being familiar with the major players within government and their positions on transitional justice-related issues, correctly reading the political atmosphere and its shifts, and identifying opportunities for access and lobbying.²⁸ An example would be workshop participants’ awareness that parliamentarians in Uganda and Kenya, for example, have a fair amount of independence as long as they follow the party line on some major issues, which civil society has used to its advantage.

One common challenge of working with the political environment is that elections—as well as the long approach to elections—tend to distract officials, who place potentially problematic issues (such as transitional justice) on the back burner while they focus on campaigns and possible outcomes. According to participants, election concerns are a chief impediment to official follow-up. This difficulty is compounded by international NGOs’ and donor governments’ tendency to privilege elections over other goals, particularly in countries where these actors hold great sway, like the DRC.

27 See, Pablo de Greiff, “Introduction: Repairing the Past: Compensation for Victims of Human Rights Violations,” *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).

28 Katito and Aggad, *supra* n 24.

International Advocacy

A related strategy is international advocacy, which is used by most, if not all, of the organisations represented at the workshop. Because lobbying in domestic contexts in Africa is difficult, with government often unresponsive to advocacy and at times threatening, civil society resorts to meeting, often one-on-one, with representatives of governments in the global North (including former colonial powers) and the United Nations, which have the economic and political power effectively to pressure domestic governments. This strategy is particularly important in contexts where political elites are entrenched and not open to or under significant threat from dissenting voices, such as Zimbabwe (effectively a one-party state), and contexts where civil society is still relatively young and perceived as antagonistic by the ruling regime, such as the DRC.

Some participants have approached United Nations human rights treaty bodies, such as the Committee on the Elimination of Discrimination against Women (CEDAW), to encourage them to pressure governments into fulfilling their treaty obligations. This advocacy avenue has not been open to most African organisations, which do not have the funds to maintain an office dedicated to lobbying the United Nations. Some participants have also engaged with the International Criminal Court, urging it to investigate a situation or providing information and assistance to an existing investigation.

Another tactic used by African civil society is lobbying the African Union to pressure member states to meet their human rights obligations. As with domestic advocacy, this often occurs in informal settings and with individual members of African Union organs, particularly the African Commission on Human and Peoples' Rights. It entails applying for observer status, which allows an organisation to issue brief statements on member states' human rights failings at private and public sessions of the commission; to submit shadow reports to the commission providing alternative (more accurate) information to that contained in official country reports; to file communications (see the "Litigation" subsection below); and to attend NGO Forum meetings and commission side events that allow networking with regional and international civil society that might result in more (effective) pressure being applied to domestic governments. Given that the African Commission lacks the power to enforce decisions that go against governments, a key objective of this strategy is awareness raising and networking with NGOs and any international experts and rapporteurs who happen to be present.

Some organisations have approached the African

Union from a different angle, seeking to educate policy-makers on transitional justice and advocate for a more holistic approach to the field, particularly one that looks beyond prosecutions. The African Union and other African institutions, such as the subregional economic communities, are only beginning to engage with transitional justice in a constructive way, despite a long-standing interest in addressing the continent's security and human rights protection obstacles. By influencing their thinking on transitional justice, civil society seeks to create new norms, in addition to external pressure on governments to meet their human rights and other commitments. Aside from observer status, this approach requires an understanding of each body's decision-making processes and benefits from distribution of concise briefs based on robust research. The funding difficulties organisations face in sending individuals to African Union and other meetings and in maintaining a presence at the regional level may be balanced by the funding opportunities opened up through networking with regional and international civil society.

Workshops and Conferences

The presenters nearly all noted that their organisations and coalitions hold workshops and conferences in order to promote their agenda and to solicit input on their work from other civil society actors (NGOs, women's organisations, victims' groups, religious associations, etc.), government officials and policymakers (members of parliament, prominent judges, human rights commissioners, working committee members, etc.), international organisations and entities (United Nations agencies, the African Union and subregional institutions, donors, international NGOs, etc.), various academic and official experts (former truth commissioners, rapporteurs, prominent transitional justice theorists, etc.), local opinion and community leaders, and other stakeholders. These consultations can yield new ideas for the organisations and, perhaps more important, lend their advocacy work the strength of multiple perspectives and voices, making it harder to dismiss. In the case of government officials, such collaboration may remove the burden from officials of being the only actors to push for a particular approach to transitional justice, particularly during the legislation drafting phase.²⁹

29 Van der Merwe, Dewhirst, and Hamber, *supra* n 3.

Research

Another common strategy, specifically among the participants from NGOs, is research, including that on past efforts by a country to address its legacies of human rights abuses; the transitional justice processes used in other contexts that might apply to their own; the root causes of the pre-transition conflict; the type and incidence of human rights violations committed before and during transition (which could include documentation for future use); and the successes and failings of policies and activities related to transitional justice in the country. Organisations then analyse their findings and make recommendations based on their research. A few of those represented at the workshop have explicitly adopted research-based advocacy as their main strategy. Most noted the importance of undertaking research in order to have a firm knowledge base for advocacy and raising awareness of an issue among policymakers and other actors, although they also noted that locating funding for such activity can be a constraint, as it is on all strategies.

In South Africa, Khulumani Support Group has challenged standard ethical practice in research, making its members' participation in a study conditional on researchers building the organisation's capacity by including members on the research team, requiring report-back of findings, and requesting individual and organisational support when funding is available to the researchers.

Publications

Publications are a common product of research, as well as a common strategy, for the participants. The NGO representatives were accustomed to producing reports and, to a lesser extent, policy briefs to be read by policymakers and other civil society actors. Reports, at times, are also aimed at the "people on the ground" and victims, presumably the constituency served by NGOs. This audience was more frequently addressed through regular newsletters aimed at informing individuals about the developments surrounding a particular mechanism, such as a truth commission, or a particular cause, such as the struggle for reparations. The representatives of victims' organisations both noted newsletters as a strategy for keeping their members informed, for mobilising them, and for keeping a particular issue on the national agenda. All types of publications perform the function of raising awareness about an issue among policymakers and stakeholders.

Grassroots Consultations

Nearly all of the participants noted the importance of conducting grassroots consultations, either in the field or at centralised conventions,³⁰ and many noted that their organisations and coalitions had undertaken the task to some extent. Consultations with victims and, more generally, the many people affected by transitional justice policies, particularly those living in communities outside the capital, whose voices may not usually be heard, were deemed central to determining organisations' agendas, as well as the appropriateness of policies on the verge of being adopted, such as draft legislation on specific mechanisms (truth commissions or domestic, international, and hybrid courts charged with prosecuting perpetrators of human rights abuses) or the agendas of negotiators at peace talks (in those rare cases when civil society is able to participate in this stage of the transition process).

The challenges involved in consultations are many and include absence of funding, a lack of security (in some cases to the extent that civil society can only undertake consultations in areas protected by United Nations or other peacekeeping forces, particularly when working with UN partners), difficult geographies and inadequate road infrastructure, legislation or state intimidation that constrains civil society's access to the population,³¹ and, as one presenter noted, coping with the realisation that local interviewees have different opinions on what should happen than their civil society interviewers. As people's hopes for change are raised by such processes, management of expectations was noted to be an important aspect of civil society's work in this area.³²

Litigation

In the face of inadequate policies and the failure of governments to implement existing policies, a number of victims, victims' groups, and other civil society organisations working in the field of transitional justice have turned to litigation, both domestic and international. As described by workshop participants, on the domestic

30 Many transitional justice analysts agree. See, for example, Orentlicher, *supra* n 10.

31 For example, the Ugandan NGO Registration Act and Regulations require NGOs to give written notice to district authorities seven days in advance of making direct contact with rural communities. Organisations have circumvented such legislation and maintained some independence by registering as a company or a charity, depending on the context, whether domestically or internationally.

32 Although one victims' group participant argued that high expectations are necessary to (sustained) mobilisation.



level, lawsuits have been filed by victims' groups and less frequently by (or with) NGOs in pursuit of a number of goals, but mainly to compel government to share information, change a policy, pay compensation for state-sponsored human rights violations, and include citizens, particularly victims, in closed processes relating to a transition (for example, amnesty hearings).

While these court cases can result in change—bringing a form of redress to victims, raising public awareness about an issue and thus pressure on government, and creating a precedent that might foster accountability and transparency in the future—they are generally expensive, slow, and time-consuming processes. Even when a court rules in the plaintiff's favour, government can delay obeying the ruling or ignore it altogether, depending on the country context. In addition, as noted by one participant, the danger exists that the lawyers, who usually work these cases *pro bono*, might take advantage of their clients in the event the case is won.

A couple of the presenters' organisations have engaged in international litigation, either filing communications (complaints) against government with the African Union's African Commission on Human and Peoples' Rights or filing lawsuits against government or international corporations in United States courts on behalf of victims. While they raise awareness and keep issues on national and international agendas, African Commission communications are problematic because plaintiffs must first prove they have exhausted all domestic avenues and then wait a number of years for rulings. Because the commission does not have the power to enforce its rulings (as the African Court on Human and Peoples' Rights is not yet properly functional), governments are often free to ignore its decisions.

Lawsuits brought in the courts of other countries are similarly expensive and time consuming, particularly considering the lengthy appeals processes involved,

and they have a limited success rate to date. South Africa's Khulumani Support Group filed its "apartheid lawsuits" in the United States in 2002 and, after some positive developments, is still waiting to hear what will happen.³³ Litigation is another area in which most participants identified the need for expectation management, given the promise it holds of life-changing (monetary) gain.

Collaboration between NGOs and Victims' Groups

As in the case of litigation, a good number of the NGOs represented at the workshop, whether individually or as part of a coalition, have worked closely with victims and victims' groups to lobby government. Despite the potential difficulties in the relationship, outlined above, most participants noted that consulting victims is important, and those who have collaborated with victims gave the following reasons: victims are central to transitional justice, as its main focus and beneficiaries, so they should have and often demand a stake in the process; victims' groups help NGOs conduct research on the pre-transition and transition challenges communities face either as interviewees or as part of interviewing teams, particularly because of the access they have to other victims and "people on the ground"; and victims' groups, particularly those with a strong public profile (like Khulumani in South Africa), can mobilise victims to join NGOs in advocating for policy change and be effective in pressuring government to keep transitional justice issues on its agenda.

Demonstrations and Petitions

Two advocacy strategies favoured by victims' groups far more than by NGOs are public demonstrations and petitions. Marches, rallies, and other gatherings in front of parliament and other highly visible and relevant locations, in response to government (in)action and on symbolically significant dates (such as International Torture Day), generate solidarity among victims, fostering their continuing engagement with the group, and raise public awareness of victims' and transitional justice issues, thereby maintaining pressure on government. Petitions also raise awareness and put pressure on government by demonstrating public support for an issue.

33 Khulumani Support Group, "Corporate Liability," <http://www.khulumani.net/reparations/corporate.html> (accessed 4 November 2010).

Additional Strategies

Other strategies noted by participants that do not directly target government but might have an effect on transitional justice processes and state policies are: engaging with the media (newspapers, radio, television, etc.) to raise public awareness, advocate on an issue, and/or encourage the media to report on transitional justice processes in a responsible manner; memorialisation projects; information dissemination, sensitisation, and preparation of victims and communities for participation in relation to transitional justice mechanisms (particularly truth commissions); dissemination of the findings and recommendations of truth commissions in more accessible formats than the usual long, dense reports (simpler language, pictures, etc.); training of individuals within communities on conflict resolution and transitional justice measures; and books and documentary films on the work of specific civil society organisations.

Policy Action and Evaluation

Judging by the workshop papers and discussions, African civil society plays a major and positive role in one aspect of transitional justice on the continent: setting up truth commissions. Organisations have succeeded in identifying partners within civil society, as well as among other stakeholders, and ensuring that transitional justice mechanisms are first considered by the state and then reflective of each country context. In a number of states, civil society has drafted or been central to drafting legislation that establishes progressive and participatory truth commissions. This achievement must be acknowledged and lauded, and has not been given enough attention in the transitional justice literature, particularly given the obstacles organisations have overcome.

Participants were less clear about their role in ensuring the implementation of transitional justice mechanisms and, particularly, in following up on their early work and in the “post-transition” period. As regards truth commissions, organisations have shown commitment to pressuring government and commissioners to operate commissions as envisioned in the legislation. Civil society has been vocal when commissions have faced obstacles, such as commissioner legitimacy problems or budgetary shortfalls. In relation to prosecutions, despite widespread support for the measure among donors, international actors, and many government officials, civil society has a mixed track record with

ensuring accountability through prosecutions, largely because governments’ perceived interests in either maintaining stability or protecting perpetrators are often stronger than the threat of being shamed or litigated against by organisations. With reparations, African civil society in general has met with little success in pushing governments to implement adequate reparations programmes.

Limitations and Envisioning the Long Term

The possible reasons for this lack of clarity on civil society’s influence beyond the phase of initial legislation are several and diverse. One is the lack of a long-term, comprehensive strategy among civil society coalitions. As discussed above, many coalitions disband or stop making a sustained effort once an initial policy threat passes or a goal is met. Thus, civil society may lose its momentum and vision once legislation is enacted. Another possible reason is that agenda items beyond legislation enactment are more murky, meaning that the goals are less obvious, harder to rally support around, and lack clear time lines. For example, Sierra Leone’s Truth and Reconciliation Working Group chose to focus on the establishment of the Special Fund for War Victims because this was the only truth commission recommendation with a time frame and other items on its agenda would have been more difficult to advocate around.

Beyond agenda setting and solution finding, the reason might lie in the advocacy strategies used, which reflect the tactics used by human rights activists around the world. As noted above, despite the specificity of country contexts and the adaption of fairly standard transitional justice mechanisms to each situation, transitional justice practitioners may not have tailored their lobbying strategies to the field, which might not be surprising as most civil society practitioners are human rights activists. The question arises of how much room there is for innovation in advocacy in general and in transitional justice advocacy in particular, especially in a field that has not adequately acknowledged civil society’s importance and in which dialogue among organisations is limited. It is possible that the range of “accepted” strategies that lead to constructive engagement with government officials and other policymakers shapes organisations’ agendas in such a way as to constrain innovation and broader thinking.

Another reason that is certainly a factor, and one acknowledged at the workshop, is that much of civil society’s successes in transitional justice are invisible.

Organisations are hard-put to demonstrate how they have helped a society deal with its legacy of human rights abuses and created an environment for reconciliation and sustainable peace. Even their behind-the-scenes influence on government policy is difficult to prove, despite changes in policy occurring. Transitional governments, like all governments, are affected by myriad factors that are difficult to pin-point and parse, as are transitional societies.³⁴

A related issue is donors' increasing demand for monitoring and evaluation of transitional justice projects.³⁵ Because of this institutional pressure, organisations may choose activities that have concrete outcomes, such as drafting legislation. Advocating for government to focus on an agenda like reconciliation is more risky from this point of view, particularly as governments have not demonstrated that they have a clear idea of how to effect societal reconciliation, particularly not in the long term.³⁶ The workshop papers and discussions suggest that African civil society has not paid sufficient attention to what reconciliation is and when it can be considered as having been achieved. Concerted civil society conversation about reconciliation in most countries appears to have begun only after a truth commission had closed and prosecutions were underway, rather than at the beginning. This is still the case despite recognition that the South African reconciliation-based transitional justice process, while it succeeded in preventing the expected conflagration in the 1990s, has had limited results in terms of societal reconciliation over a decade down the line.³⁷

This leads to the vital point that transitions, despite being managed in part through mechanisms with limited time frames and resources, are not short-term processes. Transitions and their effects on societies are ongoing and thus require continued engagement by civil society and other actors.³⁸ While one participant,

notably a representative of a victims' group, discussed the "unfinished business" of a truth commission and this report has mentioned the "follow-up" work of civil society actors,³⁹ the South African case and the continuing struggle of African victims' groups for acknowledgment and redress after the closing of transitional justice mechanisms demonstrates that this period also should be considered part of the transition and strategised for at the beginning of the process.

In their papers, the workshop presenters attempted to evaluate their activities and identify their successes. One achievement that stands out is each organisation's growth and increased access to funding through engagement with transitional justice.⁴⁰ Institutional development has been one of the more "visible" impacts of work in this field, particularly among NGOs. While this may raise some eyebrows, this growth and attendant legitimacy is certainly behind African civil society's visible contributions to transitional justice in the form of domestic legislation, and the more invisible but noteworthy success of civil society in raising awareness of transitional justice and its issues and benefits on the continent. From the country level to the regional and international spheres, African organisations are designing mechanisms, shaping policymakers' understanding of transitional justice, and helping create the case studies that academics use in defining the field's parameters internationally.

African Solutions to African Problems

The concept of "African Solutions to African Problems" came up enough during workshop discussions that it was chosen as the primary topic during the open discussion session on the last day. This complex concept can be traced back to the establishment of the Organisation of African Unity, the body that was to become the African Union. It reflects the will of African states and people to be independent from their former colonial masters and other imperialist forces, and has since been supported by countries in the global North

34 See, "Special Issue: Transitional Justice on Trial: Evaluating Its Impact," *International Journal of Transitional Justice* 4(3) (2010).

35 This is not just a donor interest. Workshop participants noted that internal evaluation is increasingly part of their activities or plans.

36 Referring to Rwanda, one participant noted that governments and international bodies tend to limit the process of reconciliation to the transition moment. Once transitional justice mechanisms are wrapped up, government declares that reconciliation has been achieved and that it is time to "move on" to development.

37 See, François du Bois and Antje du Bois-Pedain, eds., *Justice and Reconciliation in Post-Apartheid South Africa* (Cambridge: Cambridge University Press, 2009); Nahla Valji, "Race and Reconciliation in a Post-TRC South Africa" (paper presented at the conference, "Ten Years of Democracy in Southern Africa," Queens University, Canada, May 2004).

38 See, David Backer, "Watching a Bargain Unravel? A Panel Study of Victims' Attitudes about Transitional Justice in Cape Town, South Africa," *International Journal of Transitional Justice* 4(3) (2010): 443–456.

39 The "follow-up" phase usually implies advocating for truth commission recommendations to be implemented. See, "Anticipating Follow-up Work," in ICTJ and CDD-Ghana, *supra* n 1.

40 This has been echoed elsewhere. According to one study conducted in South Africa after the bulk of the TRC's work was done, a number of NGO actors "felt that the TRC's activities had created greater possible funding for NGOs to do work in related areas in the future." Van der Merwe, Dewhirst, and Hamber, *supra* n 3.

and international bodies such as the United Nations, which suggest they would prefer not to bear the burden of providing financial, technical, and other assistance to African countries.⁴¹ As one presenter noted, the concept has become a “mantra” for the African Union.

Participants appeared ambivalent about the concept, supporting the idea that solutions to any problem, including the design and implementation of transitional justice in Africa, cannot be pulled from blanket recommendations and must be context-specific, while also displaying a fair amount of scepticism about the political will and financial capacity of African mechanisms (and “culture,” as will be discussed below) to address the continent’s needs. Because the concept is broad, participants addressed it on a number of levels and generally linked it to the question of ownership, asking who owns transitional justice processes in Africa and whether the agenda is set by international donors, politicians, NGOs, victims, or other actors.

Ownership and Representation

Some participants argued that the transitional justice agenda in Africa is donor-driven—reflecting donor interests and a general as opposed to a tailored approach to the field—and that the need and desire for money and organisational growth affect civil society’s motivations. Others suggested that the issue of funding is overplayed, as many organisations achieve plenty with limited funds and are able to maintain the integrity of their objectives and activities despite the shifting interests of donors. Participants noted that seeking funding within Africa, instead of from donors in the global North, is important (for example, from subregional economic communities or the African Union), while acknowledging that the sources of such funding are few and small. All observed that funding constraints are a major consideration for civil society on the continent and the source of much of its frustration and inability to meet long-term goals, as well as breakdowns in coalitions.

The question of who owns transitional justice on the continent extends well beyond funding. The field is still a legalistic one, often dominated by human rights discourse and international human rights and humanitarian law. International experts, academic researchers, official bodies, and NGOs have provided many of the bases for local practice and, given their access to fund-



ing, their ease of movement across borders, and their proximity to the sources of global political power, they have exercised a great deal of influence on African transitional justice processes.⁴² Here, again, participants displayed ambivalence, both critiquing the superficial and short-term engagement of such actors and showing a certain confidence in their expertise, legal instruments, and ability to provide security and assistance. While some participants have had a positive experience with United Nations officials and international NGO staff, for example in the DRC, others noted that these actors tend to draw funding and qualified staff away from local civil society, thereby reinforcing the notion (often their own) that locals lack capacity and competence.

Another arena of contestation over ownership is the space between civil society and the state. A participant urged civil society actors to coopt rhetoric regarding “African solutions” and to take over defining those solutions rather than allow politicians to control this discourse. Others went further, asking whether civil society should even engage with the state on transitional justice mechanisms, or simply undertake its own processes, particularly in terms of truth seeking and redress. One participant suggested that it might be best for civil society to allow flawed state processes

41 For a useful discussion of the phrase, see “The Concept of ‘African Solutions to African Problems,’” in, Rose Ngomba-Roth, *Multinational Companies and Conflicts in Africa* (Hamburg: Lit Verlag, 2007).

42 Interestingly, according to a presenter, international NGOs operating within Rwanda are met with scepticism from government officials, who highlight their “outsider” status and suggest that they “don’t know anything” and “don’t know our culture.” Another aspect of this dynamic is that government counters pressure from international NGOs by implying they have no say now given that foreign governments did nothing to stop the genocide.

to run their course and then to start over independent of the state, noting that “given the choice between the zombie and the dead guy, we should go for the dead guy because at least we know what we’re dealing with.” This might allow the parameters of transitional justice to be broadened beyond their current narrow, legalistic limits and beyond donors’ and governments’ focus on prosecutions towards a more holistic approach that might begin to address, in earnest, how a society can be reconciled and a sustainable peace built.

Discussions about civil society’s interest in promoting such holistic, participatory transitional justice mechanisms that have positive long-term effects for transitional societies and survivors of conflict beg the question of just how representative civil society is. Because they have the resources and capacity to do it, as well as legitimacy in the eyes of government and international policymakers, local NGOs tend to “hoot” the most about transitional justice, and therefore are heard, but other stakeholders are often (kept) voiceless. NGOs with the most visibility or clout may speak on civil society’s behalf without consulting other organisations, let alone other stakeholders, such as victims.

The workshop papers demonstrate that NGOs are concerned with consulting a large number of stakeholders, particularly people in the “grassroots” and the individuals and families most affected by conflict—victims. Because they consult these groups and work with victims’ groups, NGOs may feel at liberty to speak on behalf of victims. As the “Coalition Building” subsection above, as well as workshop discussions, indicate, however, the two often have divergent goals and NGOs can exercise their dominance in the relationship, thereby disempowering the very individuals they are claiming to “empower.”⁴³ As occurs in the relationship between international and local NGOs, local NGO actors may assume that victims lack knowledge and capacity, and thus marginalise the very people from whom they are drawing purpose, legitimacy, and information. Civil society’s role in transitional justice would be strengthened by awareness of these dynamics and conscious efforts to create space for non-NGO voices.

The tensions between NGOs and other civil society groupings, particularly victims’ groups, might be part of the explanation for why reparations are given secondary attention in initial lobbying for context-appropriate transitional justice mechanisms. A more commonplace

explanation would be that the field’s focus on individual reparations is not appropriate to transitional African countries, which face resource constraints and in some cases the responsibility of rebuilding the state. A number of participants noted that, realistically, African countries should provide collective reparations rather than individual ones, but the discussion was not an in-depth one. In any case, civil society’s approach to advocating for reparations requires reassessment.

Another major space in which civil society’s thinking might limit its advocacy approaches and thus outcomes is gender. While organisations recognise the need for gender to be addressed through transitional justice, in practice gender is often treated as a distinct topic that requires separate, and thus ghettoised, measures. As workshop participants observed, gender issues are generally viewed as women’s issues, even though gender-based violations negatively affect entire communities and societies. Participants went further to argue that gender-related advocacy should target all violations based on gender—be they sexual or of a broader nature—including those aimed at men, designed to destroy men’s sense of self by undermining their “traditional” role as protectors and providers.⁴⁴ Civil society, African and otherwise, is instrumental in formulating discourses and norms, contributing to defining the parameters of what political and social problems are addressed and how. This is why continued engagement and debate among civil society organisations must be fostered.

Traditional Justice

Debate on African solutions inevitably leads to discussion of traditional forms of justice. Indigenous justice and reconciliation mechanisms—such as *gacaca* in Rwanda and *mato oput* in Uganda—have been used both by governments and by civil society, and are touted as achievements and a way forward, particularly in resource-strapped developing countries and contexts where the number of perpetrators is too great for existing national systems to handle.⁴⁵

A participant who has worked in Rwanda noted that, despite their success in processing the many thousands of imprisoned accused, state-run *gacaca* courts do not ensure due process. The Rwandan government did

43 Tshepo Madlingozi, “On Transitional Justice Entrepreneurs and the Production of Victims,” *Journal of Human Rights Practice* 2(2) (2010): 208–228.

44 See, Refugee Law Project, *Gender against Men* (documentary film, 2009).

45 Luc Huyse and Mark Salter, eds., *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International IDEA, 2008).

not consult civil society in establishing *gacaca* and has demonstrated limited tolerance of criticism and recommendations for improvements by either local or international civil society. A result is that victims may say they forgive perpetrators because it is expected by the state rather than out of a sense of reconciliation, which could have negative long-term implications for the society. Participants discussed the tenuous links between the state-run *gacaca* courts and the indigenous practice of *gacaca*. A major difference is the formalised, ossified character of the courts and the dynamic nature of tradition and local culture, which are reactive to shifting circumstances and influences.

Within the framework of the Rwandan experience, participants showed scepticism about the need for reaching back into “ancient” times to find solutions to contemporary problems, particularly given the (more universalist) international and domestic instruments available to civil society today. Since African states belong to the international community, they should not be exempted from respecting international norms and the treaties they have ratified. One participant observed that traditional justice has “ethnic trappings” that serve as limitations, particularly in countries where many ethnicities coexist or where ethnic conflict is a risk, or in countries that, given their histories, would benefit from national reconciliation processes as opposed to only community-specific ones. Participants also agreed that traditional processes can exacerbate divisions or entrench inequality, as they include only certain members of the community, generally exclude women, and espouse practices that go against the human rights values held by many transitional justice practitioners.

As one participant remarked and many agreed, however, culture is a “double-edged sword”: while it can constrain community members, it may also be used creatively to legitimate human rights and inclusionary practices, precisely because it is a dynamic, changing force. An organisation represented at the workshop has met with success in encouraging community leaders to exclude some problematic practices from their traditional reconciliation mechanisms.⁴⁶ These leaders are motivated, at least to some degree, by a desire to have input on the transitional justice process that is occurring in their country whether they are part of it or not. It was noted that this approach requires long-term engagement from civil society.

Interestingly, much of the interest generated by tran-

sitional justice activities that function independently of government, thus avoiding the constraints of the state–civil society relationship, seemed oriented towards community initiatives that contain elements of traditional practices. One initiative discussed at the workshop eschews western ideas of individual justice and hinges on traditional “bonfire ceremonies” and inclusive meetings meant to foster community ownership of reconciliation processes, particularly as the meetings are buttressed by long-term capacity-building engagement between the leading organisation and the community.⁴⁷ While not based in any specific ritual, the initiative relies on traditional ideas, structures, and rhetoric.

Such community-level and community-oriented initiatives—where the state is left out—appear to be the one area in which civil society gets down to defining reconciliation and envisioning how it might be effected. They also seem to spur awareness of the need for long-term engagement. At the same time, their focus is not on the individual, as is usually the case with transitional justice, but on the collective, which echoes participants’ discussions about reparations in Africa. The differences in approach and outcome between state-oriented advocacy and civil society’s work on non-state initiatives provide a research question that requires more attention.

Finally, repeated references to collectives within the African context—reflected at the regional level in the African Union’s focus on “peoples’ rights”—raise the question of how “the local” is defined. Civil society prizes being informed by the grassroots and by communities, but wrestles with the fact that communities themselves are internally diverse and riddled with hierarchies. Putting this major issue aside, African civil society, as represented at the workshop, is engaging with actors at all levels—international, regional, domestic, community—in its work to promote and support context-informed transitional justice. It is simply using all available avenues for advocacy that it can identify, and trying to be creative in the process. Civil society is also using the tools provided by each level, from traditional justice mechanisms at the community level to the political and legal instruments available at the level of the state and above.

46 For details, see Kihika Sarah Kasande’s workshop paper on the ATJRN website.

47 See, Fambul Tok International, <http://www.fambultok.org>

Conclusion

For many of the workshop presenters, the “Advocating Justice” workshop was the first opportunity they have had to document and analyse the government-aimed advocacy agendas, strategies, and outcomes of their organisations across time, particularly for an audience of fellow civil society members working specifically in Africa. While this informed audience provided for open critical debate, the workshop space proved a fruitful one for discussion and support, with participants drawing a number of connections among their experiences.

This report summarises the reflections contained in the papers and the connections that were made during discussions, as well as the themes that emerged through the workshop process. It is also intended as the start of an ongoing discussion on African civil society’s significant contribution to transitional justice on the continent, not only among the workshop participants but also among other transitional justice actors and, importantly, in the literature. This discussion may lead to an even larger role for civil society through increased collaboration, more informed and innovative advocacy strategies, and thinking on longer-term approaches to the work.

Local organisations have faced a number of challenges in their advocacy efforts. These include hostile political environments, funding constraints, power struggles and usurpation by international actors, uneasy partnerships within civil society, ineffective regional and subregional mechanisms, insecurity, and infrastructural

decay. They also include the more insidious challenges of flagging momentum, conceptual blind spots, and lack of vision.

Through effective agenda setting, solution finding, and tactics, however, African organisations have been central to the establishment of transitional justice mechanisms in Africa, particularly of truth commissions. They have worked hard to ensure that these mechanisms are participatory and legitimate in the eyes of the population from the start, meaning at the legislation phase. Their efforts have set the stage for the way transitional justice has developed in each country. They have also succeeded in raising awareness of the field at the domestic and regional levels, spurred policymakers into considering more holistic approaches that go beyond limited prosecutions, and contributed to broadening the theory that underpins transitional justice.

African civil society has helped push the field beyond its narrow, legalistic roots and is now engaging in debates on whether and how transitional justice can be a vehicle of deeper social transformation. Transitional justice is itself an expanding and constantly redefined field of theory and practice. Civil society has emerged as a key player in shaping how the field is understood both locally and globally, and as the critical link in developing intervention processes among global actors, domestic governments, and local communities. African civil society actors are also increasingly aware of each other as part of a community, undertaking to share information, strategies, and thoughts on the way forward in this continually evolving field.

Participants

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Chris Dolan	Refugee Law Project, Uganda
Dieudonné Diku Mpongola	Congolese Coalition for Transitional Justice, Democratic Republic of Congo
Edem Comlan	Penal Reform International, Rwanda
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Kihika Sarah Kasande	FIDA-Uganda
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Shirley Gunn	Human Rights Media Centre/Khulumani Support Group, South Africa
Stephen Oola	Coalition for Reconciliation in Uganda
Undine Whande	Centre for the Study of Violence and Reconciliation, South Africa
Wachira Waheire	National Victims' Network/Truth, Justice, and Reconciliation Commission, Kenya

Presentation List

Sierra Leone: A Long and Difficult Journey to Reconciliation—The Role of Civil Society, John Caulker

Liberia Case Study, Ezekiel Pajibo

Centring Women's Rights in Transitional Justice Processes in Northern Uganda: FIDA-Uganda's Experience, Kihika Sarah Kasande

Coalition for Reconciliation in Uganda: Important Lessons for Proactive Civil Society Engagement in Catalysing Transitional Justice Discourse, Stephen Oola

Kenya Case Study, Njonjo Mue

Reparations Advocacy: The Case of Khulumani Support Group, Shirley Gunn

The Unfinished Business: The Case of Victims' Unrelenting Search for Justice in Kenya, Wachira Waheire

Justice and Reconciliation in Rwanda: What Role for Civil Society? Edem Comlan

Advocacy for the Adoption of Transitional Justice Mechanisms in the Democratic Republic of Congo, Dieudonné Diku Mpongola

Reparations and the African Commission: Experiences from Zimbabwe, Roselyn Hanzi

Advocating for the Adoption of a Holistic Transitional Justice Policy at the African Union, George Mukundi Wachira

All of these workshop papers are available on the ATJRN website at

http://www.transitionaljustice.org.za/index.php?option=com_content&view=article&id=4066&Itemid=118

The “Advocating Justice” workshop brought together Africa-based practitioners and scholars to share experiences and evaluate African civil society’s advocacy for transitional justice on the continent. Drawing on workshop papers and discussions on strategies used in South Africa, Zimbabwe, Kenya, Uganda, Rwanda, the Democratic Republic of Congo, Sierra Leone, and Liberia, this report examines and highlights local organisations’ central role in shaping transitional justice agendas in Africa.

The workshop was hosted by the Centre for the Study of Violence and Reconciliation on behalf of the African Transitional Justice Research Network.

AFRICAN TRANSITIONAL JUSTICE RESEARCH NETWORK

