



STRENGTHENING PARTICIPATION IN LOCAL-LEVEL AND NATIONAL TRANSITIONAL JUSTICE PROCESSES: A Guide for Practitioners

By Jennifer Tsai and Simon Robins



About The International Coalition of Sites of Conscience

The International Coalition of Sites of Conscience (ICSC) is a global network of museums, historic sites and grassroots initiatives dedicated to building a more just and peaceful future through engaging communities in remembering struggles for human rights and addressing their modern repercussions. Founded in 1999, the ICSC now includes more than 230 Sites of Conscience members in 55 countries. The ICSC supports these members through seven regional networks that encourage collaboration and international exchange of knowledge and best practices.

Learn more at www.sitesofconscience.org.

Cover photo:

A violence prevention workshop supported by the GIJTR in Conakry, Guinea in 2017.

Unless otherwise noted, all photos were taken by the International Coalition of Sites of Conscience.

Designed by Lori J. Dawson

ABOUT THIS GUIDE

Founded by the International Coalition of Sites of Conscience, the Global Initiative for Justice, Truth and Reconciliation (GIJTR) is a Consortium of nine organizations around the globe dedicated to multi-disciplinary, integrated and holistic approaches to transitional justice. Grounded in a spirit of collaboration, each GIJTR project is managed by a specific Consortium member with support from other members.

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ABOUT THE GLOBAL INITIATIVE FOR JUSTICE, TRUTH AND RECONCILIATION CONSORTIUM

Around the world, there is an increasing call for justice, truth, and reconciliation in countries where legacies of grave human rights violations cast a shadow on transitions. To meet this need, the International Coalition of Sites of Conscience (ICSC) launched the new Global Initiative for Justice, Truth and Reconciliation (GIJTR) in August 2014 with the support of the Bureau of Democracy, Human Rights, and Labor at the U.S. Department of State. The goal of the GIJTR is to address new challenges in countries in conflict or transition that are struggling with their legacies of past or ongoing grave human rights violations.

The GIJTR Consortium comprises the following nine partner organizations:

- International Coalition of Sites of Conscience, in the United States (lead partner);
- American Bar Association Rule of Law Initiative, in the United States;
- Asia Justice and Rights, in Indonesia;
- Centre for the Study of Violence and Reconciliation, in South Africa;
- Documentation Center of Cambodia, in Cambodia;
- Due Process of Law Foundation, in the United States;
- Humanitarian Law Center, in Serbia;
- Forensic Anthropology Foundation of Guatemala (Fundación de Antropología Forense de Guatemala – FAFG), in Guatemala; and
- Public International Law & Policy Group, in the United States.

In addition to leveraging the different areas of expertise of the Consortium partners, the ICSC draws on the knowledge and longstanding community connections of its 230-plus members in 55 countries in order to strengthen and broaden the Consortium’s work. The Consortium partners, along with the ICSC’s network members, develop and implement a range of rapid response and high-impact programs, utilizing both restorative and retributive approaches to criminal justice and accountability for grave human rights violations. The Consortium takes an interdisciplinary approach to justice, truth, and accountability. On the whole, the Consortium partners possess expertise in the following areas:

- Truth-telling, memorialization and other forms of historical memory, and reconciliation;
- Documenting human rights violations for transitional justice purposes;
- Forensic analysis and other efforts related to missing or disappeared persons;
- Advocating for victims, including for their right to access to justice and their need for psychosocial support, and trauma mitigation activities;



A plaque at a killing site in Bangladesh sponsored by the Liberation War Museum.

- Providing technical assistance to and building the capacity of civil society activists and organizations to promote and engage with transitional justice processes;
- Reparative justice initiatives; and
- Ensuring and integrating gender justice into these and all other transitional justice processes.

Given the diversity of experiences, knowledge, and skills within the Consortium and the ICSC’s network members, the Consortium’s programming offers post-conflict countries and countries emerging from repressive regimes a unique opportunity to address transitional justice needs in a timely manner while simultaneously promoting local participation and building the capacity of community partners.

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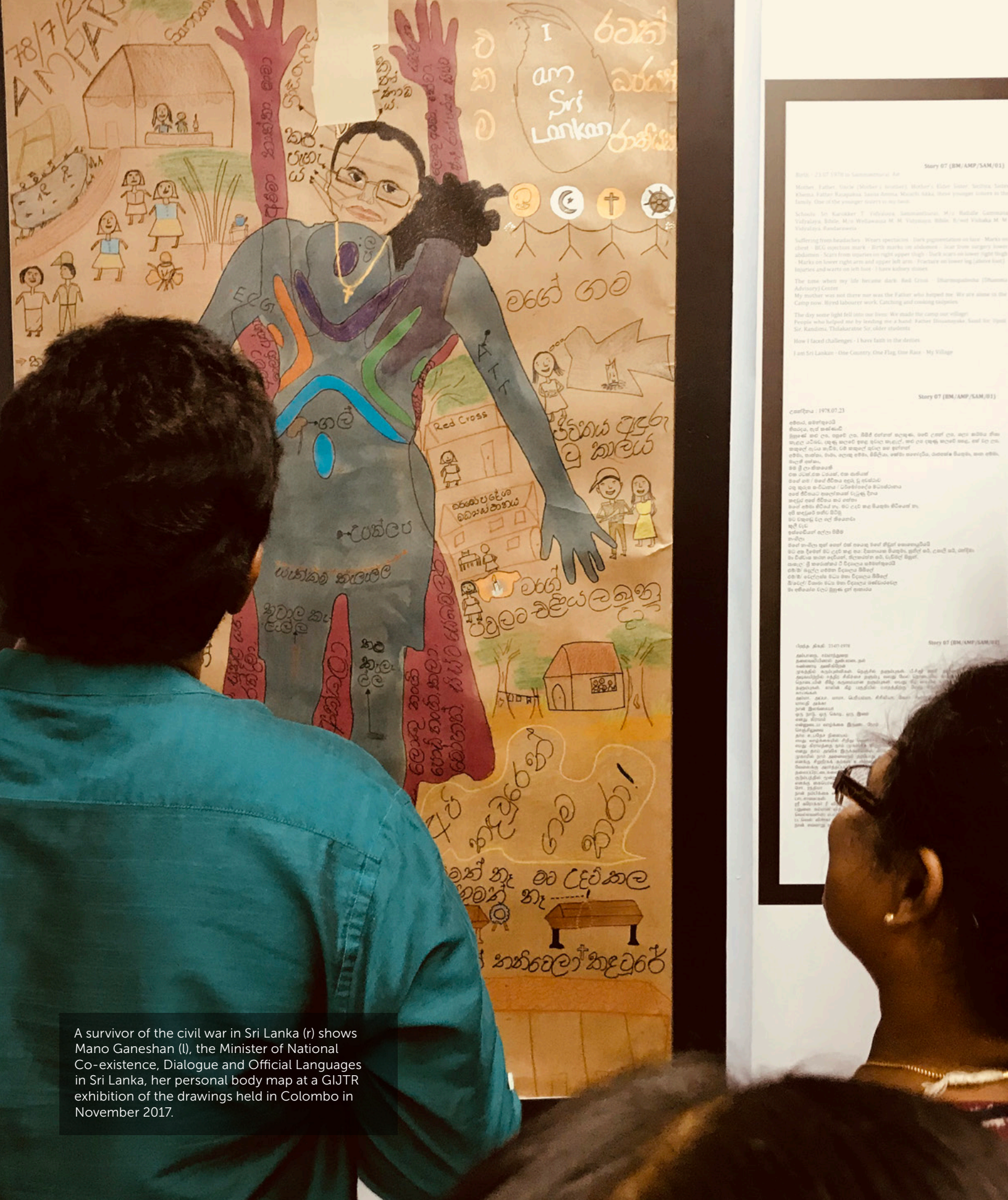
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A survivor of the civil war in Sri Lanka (r) shows Mano Ganeshan (l), the Minister of National Co-existence, Dialogue and Official Languages in Sri Lanka, her personal body map at a GIJTR exhibition of the drawings held in Colombo in November 2017.

PART 1: GETTING STARTED

Who Is The Guide For?

This Guide is designed for civil society organizations (CSOs), activists and policy practitioners who are working to engage victims more fully in transitional justice processes at the national and local levels. The Guide provides users with high-quality tools to make their work more effective, including in the design and implementation of locally led projects.

Why Is The Guide Important?

GIJTR developed this Guide in response to a dearth of resources examining the interaction between local-level and national transitional justice processes and the ability of local-level transitional justice processes, in particular, to foster victim and community participation.

Transitional justice describes a range of strategies that are intended to respond to a period of systematic or widespread human rights violations, and promote accountability, reconciliation, truth, memorialization and, ultimately, peace. Typically, transitional justice strategies have focused on national mechanisms such as criminal prosecutions of perpetrators of human rights violations; truth commissions that investigate past abuses and provide recommendations to address them; reparations to compensate material and moral damage suffered; memorials that preserve public memory of human rights violations and their victims; and institutional reforms designed to address the root causes of abuses.

In reality, many national mechanisms may tend to exclude poorer and more marginalized citizens. These challenges to victim participation may be due to a number of shortcomings, namely the influence of politics in these spaces, lack of political will, timing difficulties and institutional constraints, and attest to the complexities of designing and implementing inclusive, participatory transitional justice processes. In the absence of national mechanisms that foster meaningful participation, or when these processes are delayed, local-level processes often develop to fill the vacuum left by national or international institutions, varying in different contexts in terms of the processes involved and arising due to different concerns or issues of transitional justice. Local-level processes may create opportunities for communities to participate in their design and implementation, and also serve as a stepping-stone to community participation in national, and even international, processes. An example of this is where community truth-seeking projects result in reports or recommendations that are submitted to a national truth commission.

This Guide is intended to showcase such local-level processes, which are defined in this Guide as practices, processes or activities that CSOs and communities design and implement to address past systematic or widespread human rights violations. Local-level processes can therefore be distinguished from those that are primarily implemented by national governments and the international community. This Guide uses the term “local-level” interchangeably with other adjectives commonly used to refer to these processes, such as “informal,” “locally led,” “organic,” “customary,” and “community-level.”

This Guide is not intended to apply a cookie-cutter approach to strengthening participation but rather it should be adapted, in terms of content, methodology and sequencing of activities, to the community context.

What Will You Learn From The Guide?

This Guide provides available typologies, frameworks, and lessons learned in relation to participation in both local-level and nationwide processes. In doing so, it looks in-depth at how local-level processes may enhance victims’ participation, using available case studies, and how local-level processes interact with national, state-led initiatives. This Part introduces the purpose of the Guide and provides an overview of the concepts of participation and agency, and the value of participation in transitional justice. Part 2 provides guidelines on how to design, implement and monitor and evaluate local-level processes that are highly participatory, presenting key principles and practical tools. Part 3 shares lessons learned from comparative practice in terms of the relationship between local-level and national transitional justice processes, as well as the different types, benefits and potential challenges of both.

WHAT IS PARTICIPATION AND WHY IS IT IMPORTANT?

Participation does not have any single meaning, and its nature varies from context to context, across different sectors of development and governance, peace-building and transitional justice, as well as across countries and communities.

In the development field, participation can be linked to ideas of citizenship, in which it is a vital part of a political or social process—for example, citizens may vote, blog about a political issue, or form or join a community organization to deal with local problems and contact local officials about the problems. These are all ways that citizens may contribute to their communities and be active members of a society. The rise of a concept of participation in this field can also be traced to an understanding that marginalized populations have a right to be involved in the design and implementation of decisions or processes intended to assist them. In some countries, this right to participation is enshrined by law or may be related to other rights such as a right to know, access to information and freedom of information.

While participation is not easily defined, in the transitional justice context, as in the development field, there is a consensus that victims and affected communities should be given opportunities to participate at each stage of a transitional justice process and at all levels of decision-making, and ideally during the process of *designing and shaping* the transitional justice process. This level of participation as full empowerment of victims and affected communities is illustrated more fully in the following section.

The international community has provided some guidance as to the legal framework for participation in these national transitional justice mechanisms.¹ In a report to the Human Rights Council in 2012, the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence stated that the goals of transitional justice in providing recognition to victims, fostering trust and strengthening the democratic rule of law cannot happen without the “meaningful participation” of victims.

According to the report, this participation can happen in a number of ways in national processes, ranging from “active participation” of victims and affected communities in truth-seeking and “representation [of civil society] in the composition of a truth commission,” effective involvement of victims and their families in prosecutions, in which they are “provided with the necessary information relevant to their participation,” involvement in the design of reparations, and “active” involvement of communities in institutional reform.² The relevant sections of the report appear in the text box below.

Victim Participation in National Transitional Justice Processes

Truth-seeking: “requires the active participation of individuals who wish to express their grievances and report on the facts and underlying causes of the violations and abuses which occurred. Truth-seeking will only be regarded [as] a justice measure if civil society, in particular victims organizations, is adequately represented in the composition of a truth commission.”

Criminal prosecutions: “can only serve as actual justice measures if the victims and their families are effectively involved in the processes and provided with the necessary information relevant to their participation in proceedings. Local or traditional methods of rendering justice, when compliant with international fair trial guarantees, can reach out to the local population so they recognize them as justice.”

Reparations: “will only be successful if victims and civil society at large have been involved in the design of the schemes, so the measures are commensurate to the harm inflicted and contribute to the recognition of the victim as rights holders.”

Institutional reform: “need[] to have a firm grounding in the views of the population and specifically of the victims, who should be actively involved in the related processes so that legislation and institutions are built to prevent future violations and public officials selected in a manner in which the principle of the rule of law is given force.”

In practice, victims’ roles and participation in national transitional justice processes have varied over the years. In early transitional justice processes, victims were organized and mobilized to become major actors in the advocacy work that led to the implementation of mechanisms of truth and justice. The most notable example is that of the Mothers of the Plaza de Mayo (Madres de Plaza de Mayo of Argentina), mothers of those disappeared during the military dictatorship in Argentina between 1976 and 1983, whose demand for the truth about the disappeared led to the creation of the National Commission on the Disappearance of Persons (Comisión Nacional Cobre la Desaparición de Personas, CONADEP). CONADEP was one of the first truth commissions, tasked with recovering the truth concerning those missing. More recent national transitional justice processes acknowledge the primacy of the victim, with victim participation serving as a central component of transitional justice policymaking. As such, two processes, criminal prosecutions and truth commissions, described more fully in Section 3.3, have been at the center of transitional justice practice seeking to ensure victim participation.

Participation by victims of human rights violations and conflict-affected communities in transitional justice has two significant benefits, both for victims themselves and the quality of transitional justice processes. First, for victims and communities, participation and enabling their agency is a process of empowerment because it challenges power relations that exclude certain categories of individuals from playing particular roles. Second, involving victims and communities in the design and implementation of transitional justice strategies makes it more likely the strategies respond to local priorities and the challenges of each community, whose experiences of the past are likely to vary widely. Communities are more likely to support initiatives that they themselves are involved in, lending legitimacy to transitional justice processes. In addition, this approach means that root causes of the violence are more likely to be addressed, leading to longer-term stability and peace.

FORMS, FUNCTIONS AND SPACES OF PARTICIPATION

Form	Function for Those Steering Process	Function for Victims	Type of Spaces	Definition	Examples
Full Empowerment: Transformative Participation	Empowerment	Empowerment	Invited spaces Claimed spaces	Victims' independent organizations have an impact on the design, planning and legislation of transitional justice processes, and participation in the operation of those processes. Government and other authorities recognize victims as a key constituency for transitional justice. Victims have an impact on broader politics.	Victims' organization creates spaces for effective community-led, locally owned reconciliation processes and, in these spaces, brings together district-level government and civil society stakeholders to create community-based processes to define their district government's goals. <i>Fambol Tok, Sierra Leone.</i>
Consultation and Collaboration: Representative Participation	Sustainability	Solidarity/ Leverage	Invited spaces Claimed spaces	Victims are able to influence national processes and outcome, without decision-making power.	Victims form a local organization both to initiate local, social support to victims and to advocate for national processes that address their needs. <i>National Network of Families of the Disappeared and Missing, Nepal.</i>
Providing Information: Instrumental Participation	Means	Voice	Invited spaces	Victims provide information according to the parameters set up by government and the authorities or decision-makers, to address a need of the process, rather than a more open process.	Victims participate in a Truth Commission process, telling their stories, from which a report is published. <i>Civil society and victims inputs into the Lessons Learnt and Reconciliation Commission, Sri Lanka</i>
Incidental Expression: Nominal Participation	Legitimation	Inclusion	Invited spaces	The participatory role for victims is limited to certain moments in a procedure or process. Government and agencies benefit from the appearance of consultation and donor approval.	Government and other authorities invite victims to a meeting in the capital, seeking information from victims, and victims provide information. Victims provide impact statements to a court. <i>Article 19 of the Rome Statute, allowing victims to submit observations to the International Criminal Court.</i>

Who Participates in Which Activities, in Which Manner and Why?

FORMS, FUNCTIONS AND SPACES OF PARTICIPATION

Participation involves a wide range of possible levels of empowerment for victims and communities, ranging from full empowerment to affect a process to a limited role in which there are few benefits for victims and communities. These levels of empowerment have been well-documented in a “ladder of citizen participation” that public policy analyst and author, Sherry Arnstein, created decades ago in relation to public participation in decision-making in the United States.³

The chart above adapts Arnstein’s ladder to the transitional justice context, including four forms of participation, with definitions and examples of transitional justice processes, from empowerment (transformative participation), consultation and collaboration (representative participation), providing information (instrumental participation) and incidental expression (nominal participation). It also describes the “function”—the different interests at stake—of the various forms of participation for both those steering the process and victims. The forms of participation are meant to be dynamic. A single intervention can include more than one form of participation or strategies falling within multiple categories. For example, mobilization will often be a precondition for a successful advocacy campaign, or will be necessary to begin a local-level transitional justice strategy.

At the highest level, “Full Empowerment: Transformative Participation,” victims and affected communities participate at “each stage of a [transitional justice] mechanism—from conception to design to implementation—as [equal] decision-makers, with real decision-making power.”⁴ Participation at this level essentially concerns victims and affected communities expressing their agency. This includes both a willingness to act and actual empowerment: they understand and want to exercise their right to participate, and feel confident and know where and how to participate in a transitional justice process. National transitional justice actors are prepared to facilitate victim participation by providing legitimate transitional justice processes and mechanisms for a peaceful transition. As a result, the structures and institutions that led victims to be marginalized and excluded are changed.

At the second highest level, “Consultation and Collaboration: Representative Participation,” those steering the process consult with victims and affected communities, but victims and communities are under no obligation themselves to participate, and decision-making power continues to rest in the hands of those steering the process. Examples include traditional notions of civil parties in criminal proceedings in which victims have wide scope in exercising their rights to participate in the way they want or victims as part of an advocacy campaigns seeking process of a particular type and form. For those steering the process, the function of this form of participation is that it increases the chances of the transitional justice mechanism being sustainable; for victims, it may offer a chance for solidarity and leverage.



Members of the Truth and Reconciliation Forum in Sri Lanka, whose members include civil society leaders from all the major religious and ethnic groups in the country.

Below this is “Providing Information: Instrumental Participation,” in which those steering the transitional justice process set the

parameters by which victims and affected communities provide information. Examples include a witness in a criminal trial and participation in a transitional justice commission of inquiry, in which victims and affected communities act as sources of information only, rather than as the primary group with an interest in shaping that information. Such participation may give voice to victims in the process, but tends to arise after those steering the process have already made major decisions. Those steering the process use victim participation as a means to achieve an end.

“Incidental Expression: Nominal Participation” exists at the lowest level in which victims and affected communities participate only during certain moments in a procedure or process. Examples include providing victim impact statements. Victims typically are motivated to participate through a desire for inclusion, but nominal participation does not incur any real agency for them. Those steering the process often use nominal participation to give legitimacy to a transitional justice process. This level of victim influence and participation is more limited than instrumental participation in that, under this level, victims may merely express a grievance, such as at a truth commission, with no follow-up or consequence. The level of impact of the victim expression on the institution is the weakest of all the participatory forms.

The chart also connects the “spaces of participation” to the forms and functions of participation. Transitional justice is fundamentally about the spaces in which politics occur: how varying degrees of power and influence are distributed among multiple groups and individuals and the role that political will has on enabling or undermining reform and progress. The dynamics of national decision-making shaped by these groups and individuals may include a number of conflicting views and a complicated mix of incentives and interests. Victim participation takes place in these complex environments, and it is important that CSOs understand, in order for their work to be successful, not only *how* things happen in transitional justice, but *why* things happen and the ways in which participation relates to existing political and power structures and systems, as well as the causes and dynamics of national decision-making, which is particularly important in a new regime after conflict may bring new rules and leaders to power.

SPACES OF PARTICIPATION

Invited Spaces	Claimed Spaces
People are invited to participate in decisions as citizens, beneficiaries or users	People come together to create their own space and set their own agenda
Example: public consultations, truth commissions	Example: neighborhood meetings, square assemblies, victims’ group meetings, public demonstrations

In many of the contexts listed in the above chart, the opportunities for involvement by and consultation of victims and affected communities in national transitional justice processes usually occur through “invitation” from various authorities. These “invited spaces”⁵ may be both institutionalized and ongoing, such as courts or truth commission hearings, or more transient,



Children exit a mobile exhibition sponsored by the Liberation War Museum in Bangladesh.

such as time-limited consultation processes. These spaces predominate at the national level, mainly in capitals, but are also seen at other levels, through regional consultations or provincial courts. Victims and affected communities can strengthen their participation by gaining knowledge and expertise on key issues and learning how to negotiate and compromise in these spaces, all of which can support access to, and engagement with, state-led mechanisms. Civil society can play a key role in building such capacities, and this is discussed below in Section 3.1. However, for many victims and communities, such spaces continue to be typically remote, inaccessible and often invisible.

What these invited spaces demonstrate is that the levels of empowerment described in the chart depend on “politics of location”⁶—the power anyone is able to exercise depends on the space in which a process unfolds and an individual’s relationship to that space. For example, victims often live in communities that are far from institutions in the capital where transitional justice processes happen, and even when they can access such spaces, they are often disempowered in their relationship with them. Victim participation in transitional processes, in which victims participate fully and are empowered by the process, may demand a move from the invited spaces of institutions, created by authorities, to “claimed spaces”⁷ which emerge “out of sets of common concerns or identifications” and “may come into being as a result of popular mobilization, such as around identity or issue-based concerns, or may consist of spaces in which like-minded people join together in common pursuits.”⁸

Claimed spaces are ones that victims and communities create for themselves. A claimed space can range from something as simple as a meeting of victims in a community hall or one of their homes, created with no view to impacting transitional justice, to ones created by mobilization and social movements in which victims and affected communities organize to create a political voice. The challenge for those who wish to facilitate participation is then to find ways to allow such spontaneous and natural spaces to be able to contribute to a process, whether nationwide or at the local level. One advantage of local-level processes is that they can be created to operate entirely within one or more such claimed spaces.

References

¹ See UN General Assembly, *Human Rights Council : resolution / adopted by the General Assembly*, 13 October 2011, A/HRC/RES/18/7 (Human Rights Council resolution 18/7) available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/166/33/PDF/G1116633.pdf?OpenElement> [accessed 15 January 2018]. Human Rights Council resolution 18/7 establishes a mandate of a special rapporteur to “deal with situations in which there have been gross violations of human rights and serious violations of international humanitarian law” and references applicable international instruments regarding the mandate.

² UN Human Rights Council, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, 9 August 2012, A/HRC/21/46, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46_en.pdf [accessed 15 January 2018].

³ This ladder is derived from Sherry Arnstein’s ladder of citizen participation and Sarah White’s typology of participation. Sherry Arnstein, *A Ladder of Citizen Participation*, 35 JOURNAL OF AMERICAN PLANNING 216 (1969); and Sarah White, *Depoliticising Development: the Uses and Abuses of Participation*, 6 DEVELOPMENT IN PRACTICE 6 (1996).

⁴ David Taylor, *Victim Participation in Transitional Justice Mechanisms: Real Power or Empty Ritual?* (Impunity Watch, Discussion Paper, April 2014) [hereinafter IW, *Real Power or Empty Ritual?*], at 24–25.

⁵ Andrea Cornwall and Celestine Nyamu-Musembi, *Putting the ‘Rights-Based Approach’ to Development into Perspective*, 25 THIRD WORLD QUARTERLY 1415 (2004).

⁶ *Id.*

⁷ *Id.*



Visitors to Memorial Paine in Chile, which is dedicated to those lost during the Pinochet dictatorship.

PART 2: GUIDELINES FOR DESIGNING AND IMPLEMENTING LOCAL-LEVEL PROCESSES

Transitional justice aims to drive social change. As discussed earlier, local-level transitional justice processes that promote victim participation can serve as a complement to national processes, and can educate, inform and empower communities to participate in national processes. In contexts where this is no national process, or it is delayed, local-level approaches can help partly fill in the gaps in response to human rights violations. These approaches can both involve advocating for a state-led process and supporting one, if and when it is created. In creating a local-level transitional justice process, CSOs can start by thinking about the nature of the social change that is sought and how such change can be achieved. CSOs must make strategic decisions about the what, where, when, to whom, from whom, why and how of their work. Thus, it is important for CSOs to ask themselves these strategic questions and think critically and reflectively about the answers. These strategic questions are referenced throughout Part 2.

Overview of Guidelines

Based on extensive research and learning drawn from the case studies throughout the Guide, GITJR assembled a list of 11 guidelines to apply to the design and implementation of local-level transitional justice processes, while recognizing that, similar to the political and social world in which they occur, these processes do not occur in a strictly linear manner. In order for the guidelines to be as useful as possible, the guidelines are further categorized into three phases that correspond with a project cycle: design, implementation and monitoring and evaluation. They are intended to highlight methods and approaches, rooted in ensuring the widest possible participation in the development and implementation of transitional justice processes, in light of the capacities and resources that exist and cross-cutting challenges that may occur. Thus, while the guidelines would likely be applicable to most participation-oriented processes, they are geared for CSOs interested in operating at the first- and second-highest levels of empowerment outlined in Part 1 of the Guide.

They are as follows:

- Conduct a contextual analysis and a needs assessment
- Determine capacities and resources
- Articulate a theory of change
- Ensure an inclusive and participatory design
- Design a purposeful and responsive project
- Engage the strategic “who?” and decide “how many?”
- Strengthen the capacity to participate
- Do no harm
- Use mixed-methods approaches
- Select thoughtful indicators
- Disseminate, feedback and engage in a learning process

CONDUCT CONTEXTUAL ANALYSIS AND A NEEDS ASSESSMENT

Transitional justice is a complex phenomenon. Good practices necessitate that the design of local-level processes are based on a thorough analysis of the social, political, demographic, economic and legal factors of a country and a needs assessment.

A contextual analysis will help CSOs gain a broad overview of the transitional justice setting, trends and capacities in a country. Some core contents of a contextual analysis are set forth in the chart below.

Core Contents of a Contextual Analysis

Social and Political context	Overview of the current transitional justice setting history of the country, from founding until present, with a focus on current events that are relevant to transitional justice, such as prior violent conflict, political upheaval or periods in its history that continue to shape attitudes, ongoing grievances
Demographics	Introduction to demographics of the country and trends over time, in terms of religious and ethnic breakdowns, urbanization, geography, age, sex, migration
Economic	Overview of recent history of economic performance and growth, country's economic and poverty statistics, distribution of poverty by region and population
Legal	Overview of government and legal structures of the country, including information on the structure of non-state institutions Collection of relevant laws affecting transitional justice, where relevant

A needs assessment is a systematic process for investigating and determining the needs of a community—or “gaps” between current conditions and desired conditions, or “what should be.” It is basically a way of asking community members what they see as the most important needs of the community, which needs are being met by both national and local-level transitional justice processes and which needs are not being addressed and why. The results of the needs assessment will ensure that the local-level process designed is in line with needs that are expressed by the community. Depending on your resources, a needs assessment can take many different forms. It can be as informal as asking around with people you know in the community. Or it could take the form of a professional survey that is administered to hundreds of people. Steps to conduct a needs assessment, as well as general areas of inquiry, are suggested below. CSOs should also consult the additional resources listed at the end of Part 2, if they want to do further research.



A violence prevention workshop with journalists and CSOs held by GIJTR in May 2017 in Conakry, Guinea.

Suggested Steps for a Needs Assessment

Step 1: *Identify the target community whose needs are to be addressed.* After conducting a contextual analysis, the first step of the needs assessment is to identify the target community whose needs are to be addressed. A target community is a group of people who may live within a defined geographic area, such as a village, town or city, and may have common demographic, social or cultural characteristics or be defined by an identity of relevance to the violations being considered. The most obvious such community is that of victims. This can be defined in terms of a particular violation, or on the basis of an ethnic or cultural identity, or by gender, for example. In many cases, the target community to be addressed will emerge naturally, through the interests of the concerned organization, or through the obvious priorities in a context where a particular population is visibly in greatest need.

Seeking to address a particular target community’s needs does not necessarily mean that an intervention will not engage others. It will be important to engage with the broader community, because usually some elements of the target community’s experiences—of disempowerment and stigma, for example—are an active result of its relationship with other members of their community.

CSOs may want to consider the following criteria for selection in identifying the target community to be addressed. CSOs do not need to limit the criteria to these particular ones: 1) Readiness for dialogue: the degree to which target community members, including both victims and ex-combatants, can openly discuss past human rights violations and how to respond to them; 2) Capacity for action: The extent to which the target community is likely to be motivated and able to implement a local-level transitional justice process; and 3) Commitment to equal participation: The degree to which a target community is committed to providing all social groups within its community an equal opportunity to participate. This list is not exhaustive.

Step 2: *Identify the needs to be addressed.* A good needs assessment will look at what the target community sees as problems that a local-level transitional justice process seeks to address, in light of gaps in or the absence of state-led processes, what the target community is currently doing to address those problems, how the target community sees solutions and what its attitudes are to change.

You may consider the following the general areas of inquiry but do not need to limit the assessment to these particular questions.

- Are there currently, or have there been, national transitional justice processes in the country?
- If there are or have been national transitional justice processes, how have community members responded to them? Are there still local-level grievances? Do community members think national processes have been technically competent and publicly legitimate to achieve their goals?
- Are there currently, or have there been, local-level transitional justice processes in the community?
- If there are or have been local-level transitional justice processes in the community, how have community members responded to them? Are there still local-level grievances?

- What has been the impact of both national and local-level transitional justice processes?
- Are there grievances or crimes that have not been addressed by transitional justice processes?
- Are there government attempts or pressure from civil society to address unaddressed grievances?
- Is there popular and political will for dealing with the past?
- Are there gaps in the transitional justice processes?
- Is the transitional justice approach holistic, including accountability, truth-telling, memory and reparations? Is the choice of one approach leaving open options for another approach in the future?

DETERMINE CAPACITIES AND RESOURCES

In planning a local-level process with community members, CSOs should be aware of the capacities and resources that exist within the community. Some processes can be implemented with no external support, using existing structures such as traditional hierarchies, for example, and spaces within the community. In such cases, CSOs can build upon the potential resources that may be available, including the community's commitment to a local-level process, the technical understanding of the needs and experiences of the community, and (often) the presence of those to be engaged in a single location.

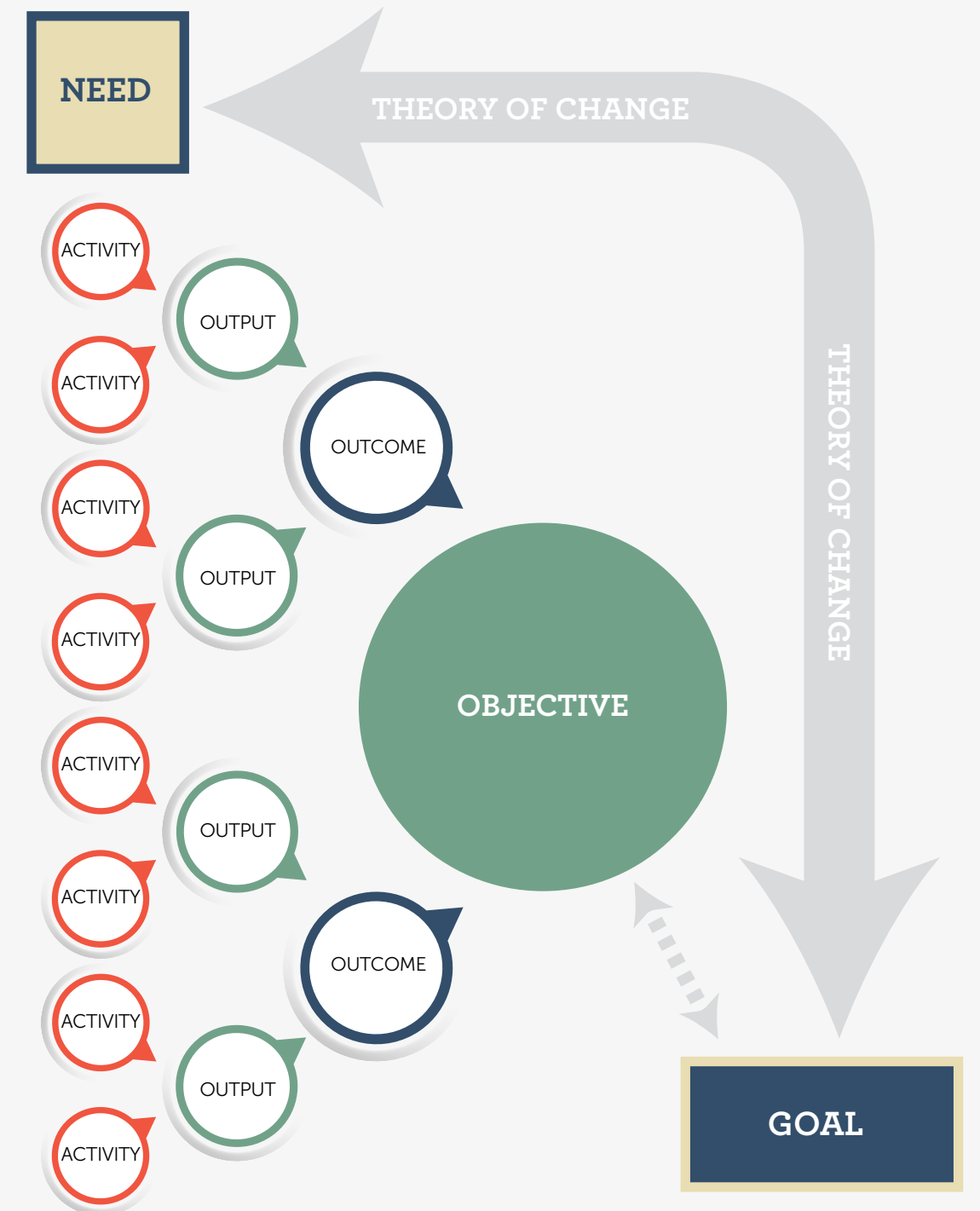
Often technical expertise may be absent, in terms of a vision of the value and form that a local-level process can take, even where local examples may be present. In such cases, a catalyst—typically an external intervention, such as training or an individual in the community being exposed to relevant ideas—is required to initiate discussion of a process. Local community-based organizations can often fill this role. However, where there are insufficient resources present, for example, if people must travel to meet, or material support is needed to create a process, external support must be sought.

In other cases, government authorities may be able to provide support, even in the simplest ways such as the provision of a meeting room. (Although, in many contexts visible independence of the authorities may be important.) Local-level processes that require significant external support may require a relationship with a donor or an agency that can fund it. CSOs should strive to understand and balance the goals of a community and those of a donor, which may threaten the participatory nature of such a process.

The form that a local-level process takes should build on what community members are already doing to respond to a violent past. Examples of this include where local leaders are already engaged at communities' request in resolving disputes, or a group of people have chosen to meet to discuss the past and its impact on them. In such cases, developing a process could mean formalizing and extending these processes by engaging with the entire community to reproduce them on a larger scale. This creates a truly participatory approach, which comes from the community, and develops processes from and in claimed spaces created by local people.

ARTICULATE A THEORY OF CHANGE

At the center of the design of the local-level process is the theory of change. A theory of change articulates a hypothesis of how and why change will occur, based on the contextual analysis done in the first step. A theory of change needs to be logical and strategic, and may not easily be expressed in a sentence or a paragraph, requiring extensive mapping and analysis to be developed. A theory of change connects the needs assessment to the goal, and activities to specific outcomes. There is not any one way to develop a theory of change. The text box below suggests several steps you may want to consider.



Suggested Steps for Articulating a Theory of Change

Step 1:
Bring together community members for the purpose of developing a theory of change. It is critical to develop a theory of change in a participatory way because no theory will be as good if it is developed without those directly, or even indirectly, affected by the social change being planned. This will usually involve inviting community members to a planning session to develop ideas further and agree on a way forward.

Step 2:
Make sure that all community members understand the purposes of illustrating their theory of change. You may want to explain that it can help you and community members:

- Have a shared vision of what they want to achieve, and how.
- Enable you to leverage the experiences of community members with different roles in the community, perspectives and areas of expertise.
- Make sure that the reasoning underlying a program is clear and sound.
- Identify and address potential risks to the local-level process before they occur.
- Better understand the type of information they need to collect to make decisions, determine successes and report on progress results.

Step 3:
Begin a discussion to determine the long-term goal, once you and community members are together. A goal is really about the final impact or outcome that you wish to bring about. Make sure that the goal is linked to the needs expressed by the community in the needs assessment. Encourage the group to consider:

- What are the main needs we want to address? Write down the main needs identified in your needs assessment.
- What evidence or data show that addressing this need is important?
- What is the ultimate, systemic change we want to achieve for our community?
- Which community members are most affected by the problem or least served?

Step 4:
Begin the process of backwards mapping. Rather than thinking first about what activities you will do, determine the objectives. An objective is specific, measurable, achievable, relevant and time-bound (S.M.A.R.T). Think about what outcomes or results need to be seen in order for those objectives to be achieved. Consider the following questions:

- In working towards the long-term goal, what is the most that we can realistically achieve and for whom? [What are our program objectives?]
- What evidence or data exists that shows that achieving these objectives for the community should be a priority?
- What results do we need to see in order to achieve our objective?
- What local-level processes will enable us to achieve these results? Is there evidence to support this?
- How will all of this contribute to reaching the long-term goal?

Step 5:
Continue backwards mapping, identifying outputs and activities. Once your outcomes/ results have been defined, consider what immediate, measurable results (outputs) you need in order to achieve your outcomes. Once you have defined your outputs, consider what activities would enable you to achieve these outputs. Where possible, look for evidence-based interventions.

Step 6:
Test your theory of change and make revisions as needed. If we read our theory of change using “if” “then” statements, does the logic make sense? Are we making any assumptions that, if not met, would make the local-level process fail? If so, are there any activities that we can do to prevent this from happening? Is everything in our theory of change, from outputs to objectives, specific, measurable and achievable?

Step 7:
Write a brief theory of change narrative. Use the theory of change diagram you have developed to guide you writing a brief summary of what you will work to achieve and how you will achieve it.

ENSURE AN INCLUSIVE AND PARTICIPATORY DESIGN

Local-level processes should aim for a structure that promotes the highest quality of community participation—that is, full empowerment, or participation as agency—that resources allow. Together with CSO partners, community members should define objective and approaches, be given a central role and determine the manner in which the transitional justice process should be undertaken. Their inclusion and active participation during the



Women in Nepal help create a mural in honor of their missing loved ones. Photo credit: Martin Travers / National Network of Families of the Disappeared and Missing in Nepal.

design phase helps foster a sense of ownership in the local-level transitional justice process and establishes a vested interest in the outcomes.

CSOs should ensure that all community members have equal opportunities to participate, regardless of their gender, age, ethnicity, religion, disability, literacy, socio-economic status, political affiliation or experience of conflict. CSOs should be mindful that traditional power holders may dominate local-level approaches and communities may be ordered hierarchically. Marginalized groups are also not homogenous and will include further subgroups that face their own obstacles to participation.

Ideally, CSOs should seek efforts to work with communities from both sides of the conflict. It is important to determine whether including people from opposing sides or across community lines is likely to have a positive effect on the local-level process. The exclusion or marginalization of such groups from the design process can lead to their attempts to undermine the local-level process. In some cases, a community, with goals of reconciliation and the restoration of communal harmony, will need to reach across the divides of conflict. In other situations, it may be necessary to engage with perpetrators to address victims’ needs. There may be significant hostility in a post-conflict community towards perceived perpetrators, and their involvement may affect the willingness of other community members to participate. CSOs should be aware of balancing community members’ concerns over the participation of perpetrators with an understanding that all parties will probably need to participate for a community to respond to the root causes of human rights violations.

CSOs should be aware of reasons certain communities might be suspicious of a local-level transitional justice process and build trust in, and familiarity with, such process in any way possible. By designing a local-level process in close consultation with community members, trust and familiarity are established during the design stage. Both are vital in the implementation of the local-level process.

Community members can improve the design of the local-level process by helping to identify elements such as the following:

- Different ethnic, religious or political groups, and their status
- Key actors and spoilers
- Areas of grievances
- Opportunities for a local-level process
- Relevant laws or institutions, such as approvals needed for a local-level process to take place.

DESIGN A PURPOSEFUL AND RESPONSIVE LOCAL-LEVEL PROCESS

Transitional justice processes often unfold in delicate political contexts in which those linked to past violations may retain power or influence, including at local levels. What may be an appropriate response at one point in the process may not necessarily be appropriate at another time. As such, even a local-level process may need to consider when it is appropriate to conduct what activities, given the potential obstacles of security challenges, or the refusal of authorities to cooperate with a process. This implies a need for strategies that begin with those activities that are less sensitive and postponing those that may generate resistance to later in the process when conditions may be easier. CSOs’ challenge is to connect the appropriate local-level process to the corresponding windows of opportunity. While a theory of change provides the overarching framework for the local-level process, CSOs should remain flexible in order to seize opportunities and mitigate challenges as they arise.

Implementation

ENGAGE THE STRATEGIC “WHO?” AND DECIDE “HOW MANY?”

Build necessary relationships with outside transitional justice actors or authorities, such as a national transitional justice institution, in which a proposed local-level transitional justice process requires their support or consent. CSOs should seek to align the transitional justice needs and desires of victims and affected communities with areas where there is political will from the state.



A survivor of the Khmer Rouge in Cambodia discusses his experiences with South Sudanese survivors at a GIJTR exchange in December 2016.

CSOs will need to identify and involve those who can most directly and positively contribute to the local-level transitional justice process. Some local-level processes will engage a broad cross-section of the community. Other local-level processes will be designed for specific groups, such as youth, women or persons with disabilities. How many beneficiaries or participants to involve is a related strategic question.

Careful consideration must be given to intra-group dynamics. Attention should be paid to the power dynamics among the participants.

The selection of who to involve is also necessarily a decision of who will not participate. CSOs must make this conscious choice. Participation in a local-level process may legitimize those selected and the interests they represent. The unselected community members may feel further marginalized.

STRENGTHEN THE CAPACITY TO PARTICIPATE

In engaging with individuals from the identified community, CSOs should privilege victims’ agency. Genuine empowerment must ideally go beyond representation, in terms of speaking on behalf of the community, to let the community members speak for themselves. In many cases ensuring such participation is highly challenging. Participatory local-level processes can strengthen capacities for participation through a combination of activities that leverage existing capacities and build additional and complementary skills.

DO NO HARM

The Do No Harm principle dictates that participatory local-level processes must not put victims and communities at greater risk than they would otherwise face without the local-level process. Given the nature of participation in local-level processes, it is important that CSOs adhere to this principle throughout the design and implementation of the local-level process. CSOs must maintain an awareness of exposing community members to risk of mental or physical harm. In particular, CSOs need to understand whether communities are ready for a transitional justice process and whether anyone’s security is potentially compromised. CSOs should assess the risk that revisiting human rights violations will cause re-traumatization or stigma. Through the design and implementation of the process, CSOs should therefore take active steps to ensure that victims and community members benefit from, and are not harmed by, the local-level process.

Monitoring and Evaluation

The theory of change is the starting point for the design of the local-level process and, consequently, also for its monitoring and evaluation.

Monitoring provides an ongoing picture that allows CSOs and community members to determine whether activities are progressing as planned. It may also show when activities are not leading to objectives, so that early adjustments can be made. Participatory evaluation is an opportunity for CSOs and the community to stop and reflect on the past in order to make decisions about the future. In both cases, community members are encouraged and supported by CSOs to take responsibility and control of planning what is to be monitored and evaluated; how monitoring and evaluation will be done; carrying out the monitoring and evaluation; and analyzing information and presenting results.

Much of the information gathered from the participatory needs assessment and theory of change can inform the monitoring and evaluation. For example, information from them can be used to identify the original overall and immediate objectives and reacquaint the community with their original analysis of the problem.

Monitor and evaluate the quality of participation, and any changes it has effected, at the end of a local-level process. Benchmarks and matrices can help you conduct more effective monitoring and evaluation of participation.

USE MIXED-METHODS APPROACHES

The use of a “mixed-methods” approach, including quantitative and qualitative methods, to monitoring and evaluating a local-level process is recommended due to the complexity and multi-faceted nature of the context in which the local-level process is implemented.

It is not always possible to anticipate where and when change will occur in a local-level process. CSOs should consider applying methodologies that lend themselves to participatory forms of evaluation and learning. These include, but are not limited to, the Most Significant Change methodology and Outcome Mapping.



A participant in the Herstories Archive, an auto-ethnographic project that has collected 285 personal narratives of mothers from the North, South and East of Sri Lanka.
Photo credit: Sharni Jayawardena, The Herstories Project

Suggested Steps for Monitoring and Evaluation

- Step 1:**
Discuss reasons for monitoring and evaluation. Review the benefits and purpose of monitoring and evaluation, so that community members can decide for themselves whether monitoring and evaluation will help them.
- Step 2:**
Review objectives and activities. The objectives and activities will have been established during the participatory needs assessment and developing a theory of change. If community members have not been involved in these steps, the objectives and activities established by external actors can be reviewed and discussed by community members. A participatory needs assessment and development of a theory of change (described above) may be necessary if community members’ objectives are very different from ones established by external actors.
- Step 3:**
Develop monitoring and evaluation questions. After objectives and activities are reviewed, discuss the information needed. For monitoring, it will be helpful to know if activities are going well. Focus on the questions “What do we want to know?” and “What do we monitor that will tell us this?” For evaluation, discussion can focus on the questions: “Why are we doing an evaluation?” and “What do we want to know?”
- Community members can write or draw on large sheets of paper or a blackboard monitoring and evaluation questions generated around each objective and activity. There should be agreement by the group on each monitoring and evaluation question. If many questions are generated, they can be ranked in order of importance.
- Step 4:**
Establish direct and indirect indicators. For each monitoring and evaluation question, determine direct and/or indirect indicators that will answer the questions.
- Step 5:**
Decide which information gathering tools are needed. For each indicator or question, the most appropriate information-gathering tools, such as case studies or popular dramas, must be chosen. Remember one tool can gather information that answers many monitoring and evaluation questions.
- Step 6:**
Decide who will do the monitoring and evaluation. Monitoring and evaluation may require people with specific skills such as bookkeeping or mathematics. It will also require a certain amount of labor and time from people. Those with the skills and the time can be identified. There may have to be compensation for the task of monitoring and evaluation.
- Step 7:**
Analyze and present results. It will be necessary to analyze and synthesize information for presentation. For monitoring, it is important that information monitored be analyzed at specific times throughout the activities. The analysis can be discussed among community members. The community will then know whether or not activities are progressing as planned or if changes or modifications are required. Community members can decide what will be the best way to present results, given the community for whom the results are intended, the resources and time available.

SELECT THOUGHTFUL INDICATORS

The design and implementation stages have corresponding output and impact indicators, along with methodologies for monitoring and evaluation. In participatory local-level processes, these indicators typically will measure the form, quality and outcomes of participation by victims and community members. The form of participation may involve looking at 1) when do community members begin to participate (the point of engagement) and what form does the engagement take, such as participation as full agency and participation through representation, described in Section 1.2, and 2) which victims and community members are involved, and how many. If a local-level process was designed to engage a broad cross-section of the community, then CSOs will need to think about whether a local-level process has been successful in reaching all the groups of community members who should have been involved. If the local-level process is designed for a specific group, then CSOs will need to think about whether the local-level process has made as much effort as necessary to involve as many members as possible from those groups.

CSOs will also need to measure the quality of participation and the outcomes of participation, considering the achievements of the local-level process in terms of behavior change and attitudes among victims and community members most involved, but also the wider impact of participation in the local community or at the national level.

It is good practice to review the indicators developed at the beginning of the design of the local-level process as implementation progresses and revise them as necessary.

DISSEMINATE, FEEDBACK AND ENGAGE IN A LEARNING PROCESS

Once monitoring and evaluation have been completed, the results should be used to reflect on ways to improve current and future activities. They should also be disseminated widely to contribute to more effective design and implementation of local-level processes.

Additional Resources on Design, Implementation and Monitoring and Evaluation

The following tools and resources are available for reference.

- Janice Cox, Participatory Advocacy: A Toolkit for VSO Staff, Volunteers and Partners (2009).
- Rick Davies and Jess Dart, The Most Significant Change Technique: A Guide to Its Use (April 2005) available at <http://www.mande.co.uk/docs/MSCGuide.pdf>.
- International Center for Transitional Justice, Engaging Children and Youth in Transitional Justice Processes: Guidance for Outreach Programs (2012).
- Outcome Mapping Learning Community at <http://outcomemapping.ca/>.
- Neela Mukherjee, Participatory Learning and Action: With 100 Field Methods (Concept Publishing Company 2002).
- Jules N. Pretty et al., Participatory Learning and Action, A Trainer’s Guide (International Institute for Environmental and Development 1995).
- Saferworld and Conciliation Resources, Advocacy Capacity Building: A Training Toolkit (2011).
- U.S. Agency for International Development and ABA ROLI, Community Participation in Transitional Justice: A Role for Participatory Research (2014).

POTENTIAL CHALLENGES

There are various challenges that can constrain participation in local-level processes to be developed, particularly in contexts emerging from conflict. Many of these challenges can gradually be overcome as described in the case studies throughout the Guide. However, the list of challenges below indicates that, for determining the form and degree of participation, the political, economic, demographic, social and legal context of a local-level process must be fully taken into account.

Political Conditions/Power Structures.

After conflict, those close to perpetrators are likely to remain powerful at both central and local levels, and this may suppress certain transitional justice initiatives. Victim participation is necessarily visible and, as such, can provoke resistance from those politically opposed to discussion of past violations. Of course, seeking to challenge such power structures is an essential element of the goals of transitional justice, and so a balance must be found between local approaches that create political claimed space and those that provoke a reaction that restricts these spaces or even poses security threats. As stated in the guiding principles, CSOs must assess the risk of harm to community members and should take active steps to ensure that participants benefit from, and are not harmed by, the local-level process.

Legacies of Conflict.

When working in communities divided by the affiliations of the conflict era, the target community may well not consider itself a single community but several communities. The antagonisms that drive and are broadened by conflict can be a significant barrier to true and equal participation. This can threaten engagement across differences of caste, tribal and religion, as well as political affiliation. Participation can, however, also help to bridge such divisions, serving to create new solidarities and shared interests.

Marginality as a Challenge.

While marginalized groups are most in need of the type of transitional justice processes that can be built at the local level, they are often the most difficult to engage, as a result of their social exclusion and poverty. Practically, they may need to work to feed their families, and so not be able to devote time and energy to a local process. They may be less well educated, and thus not as aware of the discourse of rights. They may well be suspicious of outsiders who are likely to lead such efforts in a marginalized community. CSOs should consider their capacity to engage marginalized groups, including whether they have the staff, skills (for example, language competencies), or links to community-based organizations.

There are also challenges that CSOs may face in seeking to fund, support or lead local-level transitional justice processes that are highly participatory.

Short-term Approach.

Many CSOs are under pressure from donors to turn around programs quickly, with funding rarely guaranteed for more than a couple of years. Effective participatory work is slow, and early outputs, in terms of capacities and changes in attitude and awareness, are often intangible and hard to measure.

Lack of Donor Flexibility.

Participatory approaches cannot be prescribed. The precise process a community will choose to create may only emerge later in a funded program, or community needs and priorities may evolve in the midst of a funded program and deviate slightly from ones indicated in the initial proposal. Particularly when participatory approaches are implemented during an ongoing conflict, it is not always possible for CSOs to specify in a proposal exactly what will be delivered or what the communities’ transitional justice needs and priorities will be. Such vagueness in participatory approaches may be challenging for many donors.



An image from a GIJTR education workshop in Cambodia in January 2018.
Photo credit: DC-CAM

PART 3: LEARNING FROM COMPARATIVE PRACTICE

Relationship Between Local-Level and National Transitional Justice Processes

HOW DO LOCAL-LEVEL AND NATIONAL PROCESSES INTERACT WITH EACH OTHER?

The definition of a national process is typically made in terms of the involvement of the state. As such, it is not the nature of a process, its form or relationship to a community, but rather its relationship to the state that determines its degree of formality. Local-level, as it concerns transitional justice, is typically understood as not being linked to the state. But in practice, the relationship of local-level processes to the state is often more ambiguous. Except where a process is covert in some sense, and hidden from the state, all processes will have at least the implicit consent of the state. Some may be entirely community-driven, or steered by civil society, but others will have the engagement of elements of governance, often at a local level.

Local-level processes can also have a relationship with national mechanisms of transitional justice. Local-level truth-telling can be a local complement to a national process that can feed into and enrich a national truth-telling process, just as documentation created locally can serve to support a national judicial process. Most of all, local-level processes can educate, inform, and empower constituencies to play a larger role in a national process. In contexts where there is no national process, local-level approaches can help ensure that the memory of violations is kept alive, and testimony concerning them collected before recollection fades, both to continue advocating for a national process and to support one, if and when it is created.

In many contexts there are local-level transitional justice actors that are also part of the state, such as tribal or religious courts that are overseen by traditional clan elders. These authorities may also be incorporated as the lowest level of the formal judicial system. Such authorities blur the distinction between the national and local-level. This hybridity has been legislated in some contexts as community-based processes with an accountability mandate sanctioned by the state. As such, any local-level process can be formalized through the stewardship of the state in some respect.

Perhaps the best known of these processes in which traditional courts are supported in a transitional justice context by the state are the local courts in Rwanda, known as *gacaca*, and the Community Reconciliation Processes (CRPs) in Timor-Leste, both described in the text box below.

Gacaca Courts, Rwanda

Perhaps the most famous example of a state-led community process comes from Rwanda, where the post-genocide government chose to modify customary *gacaca* courts to adjudicate as many as one million cases relating to the country's genocide in 1994. Although legislation detailed the types of cases that *gacaca* could try and provided a framework for how hearings were to be organized, communities retained sufficient flexibility to integrate locally defined objectives and approaches and were given a central role as judges and witnesses. As a result, although *gacaca* were designed as primarily a prosecution-oriented device, they also created opportunities for community truth-seeking, healing and reconciliation. The open, participatory nature of *gacaca* gave

victims and their communities the chance to contribute and listen to narratives that helped them deal emotionally and psychologically with the past, and to seek some form of acknowledgement or catharsis. By building on existing local structures, *gacaca* also strengthened communities’ resilience by training a cadre of respected local judges able to mediate conflict.

Criticism of *gacaca* has centered on the fairness and quality of the justice they produced, with human rights organizations reporting that the process compromised the accused’s fair trial rights (for example, by failing to respect the accused’s right to a lawyer) and resulted in outcomes influenced by corruption or the judges’ previous ties to the parties. *Gacaca* has also been criticized for being largely a local retributive process, with little link to genuine tradition⁹ and no restorative component beyond the public truth-telling in what is essentially a village-based trial.

Community Reconciliation Program, *Timor-Leste*

A second example of a state institution facilitating a community-level process is East Timor’s Commission for Reception, Truth and Reconciliation (known by its Portuguese initials CAVR).

In Timor-Leste’s transitional justice process, accountability for serious crimes was challenged by the lack of access to suspects who had fled to Indonesia. The principal avenue for the CAVR to promote reconciliation was through the CRPs, non-judicial mechanisms that aimed to address less serious crimes through a grassroots process that adapted restorative indigenous practice. A panel of community leaders led community hearings in which victims and perpetrators spoke about the events, and the panel brokered an agreement that would lead to reconciliation.¹⁰ This could involve community service, apologies or reparations. The CRP dealt only with non-serious crimes, emphasizing those from the time of greatest recent violence, and offers a model for a restorative transitional justice that is rooted in the communities it aims to serve. Through the CRPs, more than 1,500 perpetrators of non-serious offences came forward to ask for acceptance from the victims and communities that they had wronged.

Although the CAVR prescribed the key elements of the CRP, the process provided communities with considerable leeway to determine the manner in which reconciliation would be undertaken. The community-centric nature of CRP, which provided an open forum to discuss the events of the conflict, was vital to their success and brought a measure of closure to conflicts that had occurred in the local setting. This was a significant contribution in a context in which victims and perpetrators continued to live side-by-side, and without any real prospect of the court system taking on relatively minor cases.

As with *gacaca*, however, criticism of the CRP centered on their failure to respect the rights of the individuals involved, particularly victims of human rights violations, who sometimes felt that the reparations imposed by the CRP panel prioritized the community’s collective interests above the victim’s individual rights. The CAVR sought to address these concerns by integrating safeguards into the CRP process, for example by giving courts the right to refuse to register a CRP agreement if it violated human rights principles. But it was inherent to the process that the notion of victims’ rights gives way, at least in part, to a much wider process of community re-understanding, reintegration and redress.

Both *gacaca* and the CRP have also been criticized as being contemporary creations that have a political agenda as instruments of government policy, even though they reference tradition. In Timor-Leste, the CAVR was largely an instrument of international rather than Timorese will, reflecting the dominant focus on accountability that global transitional justice practice reflects. Given the scale of violence in the country, the number of CRP hearings was small, and so it has served as a eulogized example of good practice, but actually had rather little impact.¹¹ *Gacaca* has even more been perceived as an instrumentalization of tradition, serving to advance an ethnicized agenda that ignores crimes committed by the now ruling Tutsis and to scapegoat the Hutus at the local level.

WHAT ROLE DOES CIVIL SOCIETY PLAY IN LINKING LOCAL-LEVEL AND NATIONAL PROCESSES?

CSOs are deeply implicated in almost all transitional justice processes. CSOs can range from large, national non-government organizations (NGOs) that run programs to enhance the engagement of communities in national mechanisms with international support, unions, associations of women, youth or villages, faith-based organizations and local-level community-level groups seeking to work independently around issues of truth or justice to even more spontaneous forms of organization.

In national transitional justice processes, the typical role of civil society has been to engage with the state as a duty-bearer, and with the formal mechanisms that the state supports. Modes of action include conducting advocacy to support, influence or resist a process; providing technical, logistical, financial or other support to national processes, such as supporting a truth commission to access victims; and working with concerned constituencies so that they can engage with national processes. Civil society can also take on a substitutive role, where a formal process is absent or inadequate, such as promoting grassroots truth-telling or documentation, or providing assistance to victims. While the outputs of such local-level processes can feed into a formal process at some point, they may not. Civil society can also act as a space for modeling alternative approaches to justice, which can include generating their own understandings of rights and justice, and potentially supplementing rights with local understandings.

It is important to appreciate that “civil society” does not constitute a single perspective but represents a variety of diverse positions. In some contexts, civil society organizations will have ethnic or political outlooks linked to identities that fueled and were sustained by the conflict. Civil society will also contain layers with various normative and other perspectives. National human rights organizations will often see themselves as part of a transnational rights movement with links to donors and foreign partners, and with a strong commitment to a narrative that understands justice primarily as ending impunity. Community-based organizations may share this orientation or, in contrast, may be more committed to locally rooted approaches, which could be derived from a religious perspective, or to an acknowledgement of poverty and social exclusion as much as human rights norms. As such, the nature and normative framework of any local-level process will emerge from the position and the perspective of the civil society group that drives it.

A key role of civil society organizations is to work to make national mechanisms more effective. Because of their links to communities and to victims, a particular route to doing this is by seeking to improve the quality of participation—to achieve full empowerment of victims

and affected communities as set out in the chart in Part 1—in state-led transitional justice mechanisms. Some of the principal forms of such engagement are set out in the table below.

Modes of Civil Society Interaction with National Transitional Justice Mechanisms

Persuasion/ advocacy	Work to influence a national transitional justice process, either directly or indirectly. This includes calling for or resisting a process, and a range of different repertoires of action such as documentation, lobbying and protest.
Support	Offer technical, logistical, financial or other support to national processes, such as supporting a truth commission in accessing victims by using networks in the community. Support can include follow-up and extending the work of institutions, such as advocating for the implementation of truth commission recommendations.
Mobilization/ capacity- building/ education	Work with concerned constituencies so that they can engage with national processes and/or to empower them to represent themselves in independent initiatives, such as victims’ groups. This can include classic rights-based approaches of educating stakeholders about their rights, but extends to empowerment through the creation of organizational forms that permit self-representation.

Five typologies of such approaches are discussed below, underpinned by the argument that the existence and success of national, state-led transitional justice mechanisms is dependent on the strength of civil society, and on positive interactions between civil society and state institutions:¹²

Civil society has played an important role in every country that has experienced a successful transitional justice endeavor. National NGOs have helped to initiate, advocate for, and shape some of the strongest and most interesting transitional justice initiatives that have been implemented around the world. In Ghana, Sierra Leone, East Timor, and Peru, for example, national or local organizations played central roles in giving shape to the justice mechanisms put in place to confront past crimes.¹³

The first typology, *comparative advantage*, understands that CSOs are better at performing certain roles than the state, particularly where the state is weak. They can, for example, fill gaps resulting from a lack of capacity and inequity of provision, respond more flexibly and efficiently than bureaucratic structures, and facilitate legitimacy, participation and sustainability in local contexts.¹⁴

The second typology, *task allocation*, maps the comparative advantage of CSOs onto the specific modalities of transitional justice. Under this typology, civil society has six primary roles: data collection and monitoring; representation and advocacy; collaboration, facilitation and consultation; service delivery and intervention; acknowledgement and compensation; parallel or substitute authority; and research and education.¹⁵ So, for example, civil society may feed archives of data into official truth projects or prosecutions, lead advocacy for reparations, or provide psychosocial and other support services to victims. Civil society may also facilitate inclusive dialogue,¹⁶ and contest decisions driven by political or partisan interest, such as politically motivated amnesty provisions, as part of a watchdog or monitoring function.

The third typology looks at *mechanism-specific roles* for civil society. While these have the advantage of focusing on specific mechanisms, they tend to focus narrowly on NGOs and demand consultation and participation—especially engagement with victims—as a route to legitimacy and local ownership, but without analyzing and challenging the power relations

that drive such approaches in practice.¹⁷ CSOs, for example, are routinely engaged to support national processes, and often thought as both representing and being accessible to victims, whereas in many contexts they also embody hierarchies that exclude certain groups, by gender, social class and region, for example. Guides for interaction with truth commissions, for example, contain detailed advice for civil society, including around modalities of interaction such as consultation, advocacy, technical assistance, outreach and training, and more specific tasks where a contribution can be made, including drafting legislation, selecting commissioners, taking statement, supporting victims and championing recommendations.¹⁸

A fourth typology is *evidence-based*, starting not from a predetermined or normatively driven assumption of civil society’s role in transitional justice, but from evidence of what actually occurs. An impact assessment of NGOs and the Truth and Reconciliation Commission (TRC) in South Africa, for example, argued that different NGO sectors had different levels of input at different stages of the process.¹⁹ Input into the draft legislation and conceptualizing of the TRC excluded community-based organizations due to the “urgency, technical complexity and resource requirements” of the tasks.²⁰ During the tenure of the TRC, activity was often driven by independent NGO initiatives rather than joint NGO-TRC projects, and some tension arose due to the multiple roles of NGOs as critic, supporter, watchdog and partner. While there were NGO successes—such as contesting the initial decision to hold amnesty hearings behind closed doors and lobbying for a change in the TRC’s approach to gender—most NGOs found it easier to engage with the lobbying process to set up the TRC than with the TRC as an active institution. Further, looking to the health of civil society in the post-transitional justice era, the TRC did not engage “sufficiently or bolster directly the organs of civil society which are to carry on the more long-term work of rebuilding society.”²¹

The fifth typology, *transnational advocacy*, looks at civil society in a transnational setting. This typology emphasizes advocacy work and “norm diffusion”—the articulation and dissemination of human rights norms globally. This is understood to be underpinned by coalitions between national and external actors, and the understanding that local actors, normally NGOs, when faced with a hostile or unresponsive state, look outwards to supportive NGOs, states, inter-governmental agencies and other actors for support and to put pressure on the state. Among the criticisms of transnational advocacy are that it focuses mainly on civil-political rights—rather than socio-economic rights—and privileges elite advocacy, external allies and norms, reflecting a top-down theory of change.

Local-Level Transitional Justice Processes

HOW CAN LOCAL-LEVEL PROCESSES BE CONCEPTUALIZED?

Effective participation in formal transitional justice processes is closely related to and dependent on robust local-level processes, such as the ones led by grassroots civil society and social movement initiatives. Additionally, local-level processes play a crucial role in broadening the transformative impact of transitional justice processes. Individuals and society must intentionally engage in a process through which they come to terms with, emotionally respond to and actively remember and discuss the events of the past. This acknowledgement is a necessary component of forgiveness, social trust, civic engagement, social cohesion and larger outcomes such as reconciliation and the rule of law. The process of acknowledgement is crucial,²² and local-level processes are able to promote this kind of acknowledgement among a broader cross-section of society than state-led mechanisms.

It has always been the case that individuals and communities are likely to be impacted far more by processes with which they interact locally and more directly. This acknowledges

that post-conflict approaches and indeed understandings of justice are defined in terms of people’s everyday lives and the processes that can impact them. Even at the societal level, national transitional justice processes make up only a small part of a complex eco-system of social, economic and political change that affect people’s lives in war-to-peace transitions. While many of these, such as responses to the new environment of peace, for example, are spontaneous or “natural,” there is also space for deliberate interventions that seek to address legacies of violence, but in ways that do not involve the state, and are typically at the level of the community.

In conceptualizing such local-level transitional justice processes, it is necessary to understand justice differently from that assumed in national, state-led institutional approaches. The state is in a unique position to try perpetrators of human rights abuses and to facilitate truth-telling, since both benefit from the role the state has as a rights-bearer. However, as discussed in the chapter below, these national processes often have limited reach—requiring citizens to travel long distances to access them—focus on the law and structures of formal governance, and lack an ability to address the breadth of needs articulated by individuals and communities emerging from conflict that are necessarily local and particular, the product of culture and context. They may also be limited in terms of resources, scale and scope, having narrow definitions of victims, types of violations and timeframe to be considered, thereby excluding many victims. In contrast, local-level processes benefit from a proximity to populations characterized by the scale on which such processes unfold—often within communities—and by their capacity to represent a flexible and relevant response to the impacts of histories of violence, which can be tailored to address local needs and demands.

Through social interventions that are—or can be—driven by communities and individual victims, local-level processes are a reaction to national approaches that may represent an elite-led, global prescription for societies emerging from conflict, or to an absence of national approaches that foster meaningful participation. As such, local-level processes have the potential to deliver a form of justice “from below” that resonates with the impacts on people’s everyday lives of the violence they seek to address. While national processes will typically be legally situated, driven by violations of rights and by individual and state responsibility, local-level processes will often be socially situated, and explicitly aim to renegotiate understandings and relationships between people and communities in order to achieve the goals of justice, truth and reconciliation. Local-level processes are also able to address issues that national processes may struggle to, through their scale and through the social structures with which they engage, having the capacity to impact communities, individuals, and the relationships between them.

WHAT ARE TYPES OF LOCAL-LEVEL PROCESSES?

Local-level transitional justice mechanisms often resemble conventional strategies, such as judicial processes and dispute resolution, truth-telling and memorials, and reparations, but may also combine elements of each, and can also involve mobilization and traditional ritual and healing.

Because of the responsibility of the state to enforce the law and to punish perpetrators, local-level mechanisms have tended not to be involved in establishing guilt. This also resonates with a community-based approach that can prioritize restoration of relationships, in terms of individuals within a community and between communities. While formal reparation is typically beyond the remit of local-level processes, repair of victims—through truth-telling, acknowledgement, memorialization and various forms of support—are often, though not always, at the heart of their goals, as well as repair of communities, through conflict resolution

and reconciliation. This approach also resonates with local-level transitional justice processes that are derived from traditional, indigenous traditions, which can situate themselves in cultures of restoration and forgiveness rather than a rights-based frame of retribution. That said, there are examples of accountability processes that are local-level. One of these is the palava hut used in Liberia, in which those guilty of offenses, up to and including murder, can be fined by a party of elders from the community and banished for a period of several years from the community following an apology.

Local-level Judicial Processes and Dispute Resolution

Non-state judicial mechanisms are not merely an alternative to formal state courts, but in most of the world are the dominant legal system accessed by populations.²³ This fact reflects some of the challenges shared by both criminal justice systems and national transitional justice mechanisms in terms of access challenges, cost to a plaintiff, capacity, and their unsuitability for addressing conflicts that are embedded in local social relationships. Traditional courts are bodies composed of local worthies, typically elders—most often male—who emerge or, less often, are elected, as community leaders and representatives. They will typically not be trained in law, but gain their authority from their experience and position in the community. Such non-state judicial mechanisms typically reflect customary understandings and norms, rather than interpreting a written body of law, and are not simply courts, but governance bodies that are a part of traditional social structures that emerge from and are a part of how those communities manage themselves. In addressing disputes between members of a community, such processes utilize the fact that both parties are a part of well-understood hierarchies, with shared understandings and constrained by membership of the community to respect the findings of the court.

In a transitional justice context, such mechanisms can have a role to play, but traditionally are seen as addressing intra-community disputes, typically involving land or property, and addressing minor offenses. As such, the idea that they can address serious crimes committed during armed conflict can be difficult, since the sanctions they can impose are very different from that of a state court. They may also be constrained to addressing issues where both parties to a dispute come from the same community, and so cannot address inter-community issues, such as might arise from ethnic conflict. In some countries, such as Kenya and South Sudan, such local-level mechanisms have been given authority to settle inter-community disputes.

Challenges with such courts emerge from their link to traditional power structures and lack of accountability, both of which may emerge as tools of ruling elites. In particular, women will often struggle to be treated equally, given that tradition often embodies discriminatory understandings of women’s roles, particularly in terms



Participants in GIJTR’s MENA TJ Academy, which supports activists, practitioners, academics and non-traditional actors participants by providing training, financial support and opportunities to develop and launch truth, justice and reconciliation projects in their home communities with a focus on local needs.

of property ownership. This reflects the intrinsic challenges of working outside a human rights-based approach, since a defining element of such traditional courts is that they operate within norms other than state law. These norms can be religious, coming from Islam, Christianity or traditional pagan beliefs, and/or tribal law that emerge from tradition. This is an advantage when seeking to see a restorative approach develop from dispute resolution, since retribution is not mandated and so a reparative or compensation-based solution is likely to be sought. This reflects a holistic understanding that underlies such customary processes, rooted in the idea that a dispute is a breach of community harmony that must be restored, thus encouraging reconciliation and repair rather than punishment. However, the absence of a human rights approach can be problematic when accountability is not prioritized, and emphasizes the challenges in using such bodies to address serious crimes.



An GIJTR education workshop in Cambodia held in January 2018.
Photo credit: DC-CAM

In many contexts, such courts are actually linked to and regulated by the state or even to the formal judicial system in some way. In some jurisdictions, for example, such traditional courts are considered the lowest tier of the formal judicial system, and appeals can be made from the traditional court to the local magistrate.²⁴ In others, where the state has sought to regulate such courts, the question of women’s exclusion has been addressed, both in terms of participation as adjudicators and in being disadvantaged in their decision-making, through local elections to the court.

Non-state judicial mechanisms are a form of dispute resolution, but a relatively formalized one, often with highly defined modalities. Less-structured processes have been developed by civil society and community organizations, both to bring together people from different sides of a conflict, or to address divisions created by histories of violence. These can be as simple as a group of people choosing to discuss the past at a local level, with no goals beyond advancing their own understanding, or as structured processes in which community representatives seek to negotiate concrete issues, such as the division of shared resources, to community-based paralegals.

Alternative Justice System Councils, Kenya

Post-election violence in 2007-2008 resulted in more than 1,100 people killed and about 600,000 displaced in Kenya. Since then, few have been held accountable. Domestic courts have failed to prosecute, and the national truth-telling mechanism does not include accountability mechanisms. The focus on accountability for victims of the post-election violence has been on the International Criminal Court (ICC), which in 2010 indicted, and later dismissed, cases against six high-profile government officials. Despite the public’s and the Kenyan government’s focus on the ICC, the ICC does not have the capacity or authority to address many of the crimes committed by lower-level perpetrators. This lack of accountability at the international and domestic level has contributed to ongoing tension within communities and between ethnic groups.

Kituo Cha Sheria (Kituo), a Kenyan non-governmental organization, established pilot alternative justice systems (AJS) councils to address post-election violence accountability needs. The AJS councils build on traditional dispute resolution mechanisms of councils of elders. These AJS councils are forms of alternative forms of dispute resolution recognized under Article 159 of the constitution.

As a result of the framework discussions, the AJS council established in Kisumu, the Western Chapter Commission, focuses on property disputes arising from the 2007-2008 post-election violence. The Western Chapter Commission is divided into adjudicators and commissioners. Adjudicators are respected community members, such as elders or religious leaders, who hear disputes stemming from post-election violence and assist the parties in arriving at a solution or decision. Commissioners are community members, including victims and perpetrators, who create awareness within the community, educate parties on the AJS process, and prepare parties to the case for the AJS hearing. Community outreach in Kisumu includes education on how the AJS works and how to access it. Outreach goes beyond victim representatives, elders, and elected officials to the entire community, including perpetrators.

One main goal of the AJS councils is to bring different ethnic groups together to encourage dialogue and reconciliation. Kenya is very ethnically divided, and people identify with their tribe first. The program has been successful thus far in engaging different ethnic groups and enabling representation of different ethnic groups in the AJS. For example, the Kisumu first case report says, “[i]t did not escape the keen listener that a Kalenjin, Luhya and Kisii sat together to try and bring justice, reconciliation and forgiveness between a Luo and a Kikuyu.”²⁵ Part of this success is the timing and community-driven desire for discussion, because the ethnic tensions and the effects of the post-election violence still affect community members’ daily lives even eight to nine years later.

Community-driven processes, rather than formal national mechanisms, are common ways to resolve disputes in Kenya. Ninety-five percent of disputes are resolved outside of the formal court system.²⁶ People bring disputes to the chief or a council of elders and the entire community participates in the dispute process. The AJS program’s success to date is due to its reliance on this common practice, already widely used and accepted at the community level. This common practice is endorsed under article 159 of the constitutions, which endorses alternative or traditional dispute resolution mechanisms. Although still developing, the AJS councils have been successful, in part because community consultations are already ingrained.

Local-level Truth-telling and Memorialization

Truth-telling—in its many forms—has a range of roles. Most famously it seeks to narrow the space in which lies can be told, to challenge efforts to misrepresent the past and deny that violations occurred, as well as to address the silences about violations that often exist in the aftermath of violence or oppression. It also serves victims in many ways, providing recognition and acknowledgement, and where national processes cannot occur, it keeps the memory of violations alive.

Truth is also an essential element of all national transitional justice processes—accountability and reparations, for example, are built upon truth-telling, and a truth commission is an official process to deliver such truth, as both a means to achieve these other goals and as an end in itself. However, where truth is seen as an instrument that can serve and support both victims and communities and as a tool of reconciliation and healing, local-level mechanisms are often far more appropriate ways to generate it. Truth-telling can have an impact at the community level by changing understandings of the past, and at the individual level by revealing the truth about the fate of the disappeared, while also feeding into ongoing or future national processes. In most cases, the impact of truth-telling can both be local and global, personal and institutional, immediate and longer-term.

Ardoyne Commemoration Project, *Northern Ireland*

Northern Ireland is a context where extreme polarization between communities remains and there is no comprehensive truth-telling process, nineteen years after an agreement that ended the conflict. In this absence, local organizations have engaged communities in diverse truth-telling and reconciliation activities, which have promoted the exchange of perspectives as well as healing, but have also highlighted the gaps in such an ad-hoc approach and the potential benefits of an integrated, national framework for transitional justice.

One such initiative, the Ardoyne Commemoration Project, recorded 300 oral interviews about people from the Ardoyne area (a republican, i.e. Catholic, community) who were killed during the conflict. The project utilized the local community as committee members, interviewers and transcribers, and ensured a community consensus around stories published in the final book. Participants in the project commonly cited it as the first time they had ever spoken about the death of their loved ones, and therefore the project was considered valuable for personal healing. The project’s oral histories – of republicans whose family members were killed – were presented in book form to neighboring, unionist community members, and “there was a great deal of sympathy, goodwill and mutual recognition of loss expressed by [unionist] interviewees in terms of individual [republican] families and their stories.”²⁷ However, as in other post-conflict contexts, there is potential for any truth-telling process, whether formal or informal, to be perceived as a vehicle through which only one community benefits by promoting one version of truth and, with it, one definition of victimhood. Some people may therefore consider it risky to participate in a truth-telling or reconciliation initiative because the act will be seen as a betrayal to their own community. In this way, the project was criticized by some as “partial” and therefore “biased and unfair” in its narration of the conflict, and even by extension a potential instigator of further grievances among loyalists,²⁸ demonstrating the challenges for community truth-telling and reconciliation initiatives in Northern Ireland to have ample cross-community participation. Cultural acceptance of participation in projects that promote cross-community understanding and the exchange of narratives is thus important both for individuals’ participation and for the success of projects themselves.

Such localized collection of stories and oral histories related to the conflict can, due to their existing community ties, reach the most marginalized victims and record experiences not typically heard in mainstream discourse, and they can be a means for reconciliation in themselves by recognizing victims and exchanging stories of shared suffering. But broad trust in the process is a central tenet for participation and project success.

Moreover, for victims it is memory that determines how the past is remembered and represented, and that can significantly impact both how those most affected will live and what history will be written about those who died. Collective memory is about social recognition, of what has happened and who it has happened to: the recognition of who has suffered and how, and ultimately, who is a victim. This is the value of memorial and commemoration activities conducted at a local level, giving meaning and value to the experience of victims and others, and being restorative and reparative. In repressive environments, such activities are often stopped, monitored or surveilled because of the truth-telling and victim recognition that they promote; thus, the presence of new memorialization activities could signal the opening of claimed spaces.

Transitional justice has increasingly acknowledged the importance of restorative approaches and repair: a focus on memorialization is a collective and reparative approach to the past. While truth—and the history it becomes—is based on presumed objectivity and rigorous methodological criteria, memory honors the subjectivity of lived experience of an individual, family, group or community. Affirming such shared memory demands that violations and their victims be publicly acknowledged and, as such, commemorations, memorials and museums are means to ensure acknowledgment of the human cost of violence. For all these processes to have an impact, they should be relevant to the communities they serve, accessible and linked to their own histories and experience. This privileges local-level approaches.

Sites of memory—physical places that have a particular resonance—have always been an important part of mediating relationships with the past, and this drives the construction of memorials whose location is a specific element of their impact, becoming a part of the landscapes with which people live. The idea of “lived” memory reinforces the understanding of memory as performative, as the product of a particular activity. Memory is therefore something you do, not something you have,²⁹ articulating an understanding that the most powerful “memory work” is that which demands an engagement with other truths or with those who have a different memory of the same past. While engagement with a national process can give acknowledgment the additional power of having been sanctioned by the state, a local-level approach maximizes the relevance and power of such memory-based work and the extent to which it can be truly participatory. This also, however, means that memorialization work has the potential to be identity-based and divisive; it is almost always contested, but, as illustrated in the Cambodia case study, below, a thoughtfully facilitated process can in itself serve to foster constructive public engagement and debate around issues of the past and a community’s vision for the future.

For truth-telling and memory work to resonate, it can use cultural forms that are most appropriate, including leveraging religious beliefs, for example, through Church memorial services. All physical memorials are a cultural representation and so can use artistic approaches that increase accessibility, such as art, theatre or participatory photography.

Youth for Peace Community Memorialization Projects, Cambodia

Where formal process is absent, or so remote that it cannot impact the lives of many of those most affected by violations, local memorialization can play a role in acknowledgment and reconciliation. The extreme violence of the Khmer Rouge regime in Cambodia in 1970s left a huge legacy on many communities, and a project of the Cambodian NGO Youth for Peace (YFP) seeks to increase the limited opportunities for collective mourning and open discussion of the Khmer Rouge past. YFP established community memorial committees that allowed a range of different community members to discuss the past, including through inter-generational dialogue between genocide survivors and youth. Throughout these activities, YFP sought to remember the past in a “living and dynamic” way and to empower communities to develop peace learning centers to be “symbol[s] of recognition, [symbols] or place[s] to worship, [venues] for healing, truth-seeking and telling, learning, preserving and moving forward.”³⁰ During this process, community members had discrete and active roles to play, ranging from providing financial support and donating objects, such as lamps, to the physical parts of the learning centers, to sharing ideas in community forums and representing their memories of the Khmer Rouge era through paintings and other artwork to be included in the center. Committee members organized events to introduce the memorialization activities to the community, mobilized people in building infrastructure and gathering resources, fundraised, and collected historical information from other community members. There was a high level of participation in contributing to and directing implementation of communities’ shared visions, which included building libraries, documenting local narratives of the Khmer Rouge regime, organizing Buddhist ceremonies, and painting murals of the community’s experiences during the genocide. According to an external evaluation of the project, the process of creating these community peace learning centers promoted empowerment, healing, and reconciliation among participants,³¹ demonstrating that ‘memory work’ - that is the process of bringing divergent memories together to create memorials - has far greater impact than the physical memorial that results.

Other examples include **artists in Cairo using graffiti** on walls to document the crimes of the regime during revolution—the graffiti became a self-perpetuating movement and vast social network³²—the **Greensboro Truth and Reconciliation Commission**, the first local, non-state-led truth and reconciliation commission in the United States, created to investigate the events of November 3, 1979, in which a group of white supremacists opened fire on a racially mixed gathering of political activists.³³

Local-level Documentation of Human Rights Violations and Forensic Investigations for the Missing

Civil society and community-led documentation of human rights violations can support and facilitate national processes and advance transitional justice, even in pre- and non-transition settings. In many cases, where a conflict is still ongoing, the task of collecting and reporting information can be dangerous. However, ensuring that human rights violations are documented and reported is an important element of transitional justice in that it helps combat a sense of impunity by perpetrators and can deliver justice and a renewed sense of social inclusion for victims.

The documentation process—the act of telling their narrative, deciding the issues to document and the ways the information will be used—can be empowering for victims and affected

communities. In East Timor, the CAVR, discussed above, used timeline and community mapping as two participatory documentation tools. With the assistance of the CAVR, community members created a map of their community and marked locations of human rights violations, explaining why certain events were included and others were not. The timeline and community mapping tools generated information on violations that communities experienced together, such as a famine found to be a war crime that killed 80,000-100,000 community members. The CAVR used these maps when conducting profiles of communities affected by conflict.³⁴ In Colombia, an organized group of feminists documented more than 1,000 testimonies of women who suffered violence during the armed conflict and generated a report, “Memory for Life: a Truth Commission from Women to Colombia,”³⁵ containing the stories of what women decided was relevant to tell.

Local civil society plays a vital role in these efforts, both in providing training and support to victims and communities to conduct participatory documentation and in identifying, investigating and documenting human rights violations. Civil society’s independence from government often gives them credibility with, and access to, communities, while their national profile and connections can assist the community to leverage their documentation efforts in advocating before national- and even international-level policymakers.

Forensic investigations have traditionally been driven by a desire to prosecute perpetrators, and as such have been the preserve of states collecting evidence for domestic trials, or of international courts, such as the ICC and the International Criminal Tribunal for the Former Yugoslavia. In the case of the missing and the disappeared, however, truth itself is of huge value to family members since it can confirm the fate of a loved one and—where he or she is dead—allow the return of human remains and the creation of the possibility of mourning. The truth about the fate of a missing person is thus unique in that, in addition to advancing accountability and reparation, it is itself highly reparative, serving as a very personal truth that restores a family’s relationship to someone whose loss is ambiguous. Indeed, there has been a tension in the past, when dealing with the unidentified dead of conflict between the needs of prosecution—where the identity of the dead is not necessarily required—and a family’s desperate need to know the fate of their relatives.

The exhumation and forensic examination of the dead has developed as a science in parallel with transitional justice: the earliest truth commissions in Latin America, for example, were dedicated to those disappeared at the hands of authoritarian regimes. During the Balkan wars, many thousands were extra-judicially killed, and then great efforts made by perpetrators to conceal remains and hide their identity. Some two decades after the conflict, the effort to find gravesites, exhume remains and identify the dead continues, but has, as a legacy, formalized a new paradigm of post-conflict justice through the identification of the victims of violations on a mass scale using DNA profiling. Such work is traditionally led by the state but has led to the creation of a number of national CSOs dedicated to the exhumation and identification of victims of rights violations, who work to support state efforts and in some cases work largely independently of the state, as described below. The involvement of civil society in the exhumation process has also permitted CSOs to provide psychosocial support (often called “accompaniment”) to families and communities during the process.³⁶

Civil society exhumation and identification of the dead, *Peru*

Peru’s 20-year-long civil war that concluded in 2003 led to over 70,000 deaths, according to the report of a Truth Commission. There has, however, been resistance to a comprehensive process to identify the dead, including from the military, who are estimated to have been responsible for a third of all killings. There are also legal obstacles, since prosecutors must order all exhumations, and they rarely do, and technical constraints, due to the lack of official forensic capacity. There have even been claims that official forensic teams have been destroying evidence through inexperience or negligence. The Peruvian Forensic Anthropology Team (Equipo Peruano de Antropología Forense, EPAF) is a CSO that conducts exhumations and makes identification, itself inspired by regional examples, notably that of Argentina. EPAF estimated that 15,000 Peruvians were missing from the conflict, cases that could be resolved through exhumation, and created the expertise to do so in civil society. While the state reserves sole authority to conduct exhumations, independent exhumation teams have been allowed at the request of local courts. The presence of independent forensic teams can generate trust among relatives, guarantee an independent investigation—especially when the state is involved as a perpetrator—and enable the accumulation of information regarding various exhumation processes in the country, a collective truth about the missing and the dead. In most of Peru, there has not been strong families’ organizations active in demanding exhumations, but in places where families’ organizations have been effective, their presence has been crucial, demonstrating the importance of victim participation. In Guatemala, the organization Fundación de Antropología Forense de Guatemala (FAFG) has developed a unique multidisciplinary approach to the search for missing victims and identification of unidentified remains from the country’s internal armed conflict. FAFG employs scientific disciplines, such as forensic anthropology, forensic archaeology, forensic genetics and victim investigation, in an interdisciplinary fashion, with the primary goal of recovering, analyzing, identifying and returning individuals to their families so they may be buried with dignity according to cultural traditions, all the while documenting, analyzing, and safeguarding physical forensic evidence for the use in legal prosecutions for the human rights violations committed.

Missing persons and the spirits of the dead, *Timor-Leste*

Following the Indonesian invasion of Timor-Leste in 1975 and decades of oppression and resistance, a third of the population was believed to have died and a large number of Timorese were missing, either arrested by the authorities and never seen again, or separated from families in the forest and never found. For most Timorese, the spirit world is very present, with many seeing their lives as not just influenced but determined in many ways by spirits. It is understood that the spirits of those who died “bad deaths” during the conflict and who have not been assuaged will seek vengeance on their families and communities with real consequences, including sick children and animals and failing crops. A result of this approach is that exhumation and identification are not always a priority. Rather, a local healer can call the spirit of a dead (or missing) person, and, if successful, can not only confirm death but can conduct the appropriate ritual that allows the spirits to rest and join the ancestors. The burial of a substitute body is often a part of this, permitting ritual that allows families and communities to mourn. This both addresses the ambiguity the family has about the fate of the missing and restores harmony to the family and community. In contrast to the understanding of human rights that changes in law and behavior impact people in certain ways, this view emerges from a religious or spiritual outlook in which ritual practice drives change.

Local-level Processes of Support to Victims

Reparations for victims of human rights violations seek to recognize and atone for the wrongs victims have suffered. They can be distinguished from efforts to reconstruct communities after conflict, or from the efforts of humanitarian or development organizations to provide assistance to victims, because they are provided in a way that acknowledges the violations and demonstrates respect for the survivors, giving them a moral and political force beyond the simple fulfillment of needs. Reparations are typically understood as an obligation of the state as a duty bearer, and as such a local-level or non-state approach to reparation is problematic. Indeed, the symbolic element of reparation depends to a great extent on the state delivering it, as both restitution and a commitment to non-repetition and accompanied by an acknowledgement of state responsibility for violations or a failure to protect. As such, when delivered as an element of a local-level process, support to victims is typically labeled as assistance, relief or rehabilitation.

International NGOs or UN agencies often provide support to victims, and this can be done in a way that involves the community to a greater or lesser extent. Such assistance can resemble the type of community-driven process that this Guide discusses, if the approach is highly participatory and seeks to address community- or victim-defined needs through the provision of external resources, whether financial, material or technical. In any case, where a victims’ organization or NGO is seeking to offer such support, they will typically need external support, and this will ultimately play a role in defining the form such support takes.

Nepal’s National Network of Families of the Disappeared and Missing (NEFAD), for example, has planned to assist family associations to provide individual assistance for families of the disappeared to participate in livelihood and micro-credit projects, while the Khulumani Support Group has implemented community reparations programs by securing community investment grants for sustainable livelihood activities in South Africa. Both of these are described in further detail below.

Mobilization

One of the greatest advantages of local-level processes over national processes is in terms of participation, including the ability for victims and others to both engage with those processes and drive the form they take. A more explicit form of participation is through mobilization, the coming together of a group of people to support each other and advocate to advance their needs.

In transitional justice the most relevant example is that of victims’ groups, which are one of the very few mechanisms through which victims can influence policy and national mechanisms and provide support for victims in their



A Mayan ceremony in October 2016 at Comalapa, a former military installation in Guatemala, where GIJTR partner FAFG recovered the remains of 220 victims.

communities. Such groups can reasonably be credited as integral to the creation of the contemporary discourse of transitional justice, most notably through victims’ movements such as the Madres de Plaza de Mayo in Argentina. While such a mobilization may seem more a route to impact other processes, rather than a process in itself, examples demonstrate that such movements can themselves both change national processes and change the victims involved in highly positive ways.

A local support group is a group of community members that serves as the focal point for community action to respond to the impacts of human rights violations. Support groups can be as informal as a periodic gathering of interested community members, or as formal as a legally constituted organization with its own constitution and regulations. For example, the Western Cape branch of South Africa’s Khulumani Support Group began as a local-level meeting of victims of apartheid at Cape Town’s Trauma Centre for Survivors of Violence and Torture. At the group’s second meeting, participants decided that a committee should be elected to conduct advocacy on their behalf. Fifteen years later, the group is part of a national-level victims’ association that conducts a wide range of activities to assist victims.

The Khulumani Survivor Support Group, *South Africa*

The Khulumani Support Group in South Africa represents an effort that started as a way to empower victims around the Truth and Reconciliation Commission (TRC) process and turned into a social movement demanding social transformation. Khulumani (isiZulu for “Speak Out!”) was formed in 1995, largely by survivors and families of victims of political violence, and supports victims in their struggle for personal and community reconciliation, helping victims restore their dignity and integrating them into society. As a victims’ lobbying group, Khulumani evolved out of civil society engagement with the Act that created the TRC, with the goal of representing victim-specific issues at the TRC. In contrast to their lack of priority in the TRC process, reparations have become one of the central issues for Khulumani, and in particular a focus on individual reparation, including payments and services to address disability, trauma and poverty. This demonstrates that when victims of conflict represent themselves, the agenda that emerges is qualitatively different from what has become the national “transitional justice agenda.” Khulumani understands “justice” in terms that are far broader than the TRC did, including the many social, economic and political legacies of apartheid that have failed to be addressed even 20 years after the process. This has driven its work to move beyond a narrow focus on violations of the conflict to broader issues of social justice, with an emphasis on empowerment and “active citizenship,” and much of its work has been advocacy driven alongside direct support to victims. The philosophy of Khulumani is that of “refusing representation,” rejecting how experts and others see victims and their needs, and how they ultimately produce victims, in favor of victim agency. As such, this represents a particular politics around the empowerment of victims as actors, not only in the transitional justice process but more broadly. Khulumani continues to remind the South African government of its as-yet unfulfilled commitments to dealing with the consequences of the collective trauma of the violent past to ensure that harmed individuals and communities can be restored to a dignified existence.

Support groups can serve a number of different functions. First, they serve as a source of support and solidarity for victims. Families of the disappeared in Nepal have formed district-level associations that provide emotional and psychological support services to families by bringing people with similar experiences together.³⁷ Support groups can also advocate for better responses to the impact of human rights violations by local government and can form links with national-level CSOs, or with victims’ networks, to conduct advocacy at a national level. A support group formed in Nepal’s Bardiya district in 2006 by a local schoolteacher, for example, organized protests in support of victims’ rights and has engaged with civil society in Kathmandu. Finally, support groups can form links with local development organizations, such as livelihood or microcredit groups, to link them to community members in need of support, and can also assist people to overcome the legal and administrative issues that can prevent them from claiming entitlements or accessing vital services. Nepal’s family associations, discussed below, are assisting families of the disappeared to address the inheritance and property ownership issues that result from ambiguity over the fate of their loved ones.

National Network of Families of Disappeared and Missing Nepal and participatory action research, *Nepal*

A decade after Nepal’s civil war, a Truth and Reconciliation Commission and a Disappearance Commission have both been created, but a lack of political will has prevented any significant official engagement with the violations of the conflict. In particular, the families of the more than 1,400 disappeared are still waiting for truth, justice and reparation. Families of the missing and disappeared have struggled to make their needs and interests heard in the transitional justice discussion, which has been dominated by Kathmandu-based actors, while most victims live in rural areas far from the capital. As a result, victim mobilization through family associations has grown to be an increasingly important way for families of the disappeared to advocate for their transitional justice needs, seek livelihood assistance, and gain solidarity with other victims. The National Network of Families of Disappeared and Missing Nepal (NEFAD) is a politically independent network of such associations in seventeen districts that aims to provide support, advocacy, and relief for the over 1,300 families and victims groups that it represents. While NEFAD and its members are strong advocates of accountability, they want to challenge a narrow agenda of much civil society and ensure that victims’ rights to truth and reparation - crucial where most of the disappeared came from poor communities - are given equal priority. Research conducted by NEFAD and its members indicates that network members perceive victim mobilization both as a means of channeling their needs into national-level advocacy demands as well as a structure for providing community-level solidarity and psychosocial support. Participation in family associations was also found to advance reconciliation and victim empowerment and alleviate the stigma that many victims, especially women, are subject to in their communities. For some women in particular, participation in NEFAD has empowered them to demand their rights for truth, justice, and reparations, effectively abolishing the isolation they once experienced and replacing it with activism, demonstrating the socially transformative potential of mobilization.

”In the very beginning every one of us was alone. Before meeting friends who were facing the same sort of problem, I was in despair and nobody would listen to my problem. Other people did not like to talk about our problems since they were scared that they could also be arrested if we talked with them. But it was only when we met other families of those disappeared, we felt that we had common problems; we knew that we had the same pain. For this reason, we could share our sorrows. We wept and cried together and that helped us ventilate our sorrows. Then we formed this association. It helped us to meet friends having similar problems. Then we organized the sit-ins. As many friends gathered we felt greatly relieved. From that time onward, we felt courageous to fight for our cause. “

— Wife of disappeared man, Kathmandu

Social Movements

A collective identify frames social movements, giving them the potential to create as well as mobilize constituencies. The alternative social and normative spaces that social movements create can serve to address legacies of conflict.³⁸

Social movements can range from the creation of “zones of civility”³⁹ in which reconciliation between previously antagonistic parties can begin, to building solidarities between survivors that overcome and replace potentially antagonistic identities of the conflict.⁴⁰ Social movements, including those rooted in religious or other non-human rights frameworks, can use alternative grammars of transition that challenge the dominant discourse of accountability with agendas of forgiveness and reconciliation, or even revenge.⁴¹ Collective action targeting presumed perpetrators is an “active” coping strategy that also creates networks of social and psychological support that can transform experiences of victimhood.⁴² Similarly, collective actions around the social practice of memory, often beginning with local initiatives to remember and memorialize violations, have become national social movements to counter official amnesia in both Latin America and Spain.⁴³

One important role of victims’ groups is to construct memory, and thus meaning and value, at a local level and on victims’ terms, which is especially relevant where national efforts in the capital are remote and inaccessible. A very particular contemporary example of this is the *escrache* of Argentina and elsewhere in Latin America, described below, where movements of victims and their descendants draw attention to the presence of perpetrators in communities and highlight histories of violations in ways that seek to transform both memory and politics.

Daughters and Sons for Identity and Justice and Against Silence and Forgetting and the *Escrache*, Argentina

While Argentina helped to shape the global form that transitional justice ultimately took, it remains a context characterized by impunity for many of those implicated in the violations of the military regime. Daughters and Sons for Identity and Justice and Against Silence and Forgetting (*Hijas y HIJOS por Identidad y Justicia y contra el Olvido y Silencio*, HIJOS) is an organization of children of the disappeared from the era of military dictatorship, formed in 1995, that seeks to both organize in unique ways and to develop novel forms of action, including *escraches*. *Escraches* are street-based actions usually targeting a person’s home, and serve as a process of “outing”—a tactic for social awareness using direct action, theatre and education against silence and forgetting. In such actions, HIJOS is not directly making demands of the state, but rather addressing society, neighborhoods and communities, breaking the social silence around, and acceptance of, the fact that killers and torturers live normal lives in society. After informing the community that a genocida lives in their neighborhood, maps may be made to be posted showing where the target lives, and street theater will take place there, sometimes acting out what the person did, or a more informational approach will outline the horrors that risk being forgotten. While legal justice is one goal, they conceive of justice as grounded in society and social change—something that must occur to create a new climate of justice—in this case, the ending of social silence. As such, the *escrache* is a combination of public protest and shaming, and truth-telling about a particular individual in a neighborhood. It represents a repertoire of action more common to a social movement than to the human rights NGOs that typically engage in transitional justice action, and sees public spaces as arenas for action and advancing justice, not just the institutional spaces of formal mechanisms.

The identities forged in such movements can be progressive, regressive or both—for example, the victim identity in transitional justice often supports a narrow ethnic, religious or ideological politics, reflecting the basis on which victimhood occurred, as well as a politics of marginality, driven by the poverty that victimhood accentuates. A potential threat from the forms of organization of social movements is that they will serve not to dilute conflict-era identities, but reinforce polarized and exclusive understandings of guilt and innocence and the idea of the “other.” The enhancing of victim agency potentially holds the transition hostage to the least flexible agendas.

Traditional Ritual and Healing

An advantage of the potential independence of local-level approaches from a human rights framework is the use of other normative traditions that can provide culturally relevant and particular routes to address the legacies of violence. These are most obvious in the traditional spiritual traditions of Africa and Asia that allow the healing of individuals to be linked with the healing of communities through the use of ritual to acknowledge violence and the status of victims, as well as to reintegrate perpetrators and reconciliation. Examples are often quoted from northern Uganda, where ex-fighters who had been abducted into rebel ranks use community ritual to rejoin their communities, discussed below. Other examples include traditions of Islamic justice, where a victim or their relatives can seek retribution or abandon prosecution on receiving compensation. Christianity also privileges forgiveness in ways that can appear to contradict legal constraints on impunity, and can thus be mobilized in local-

level process. In many cases, such ritual is linked to spiritual beliefs that can have relevance for families of the dead or missing and serve to provide deep and culturally resonant forms of recognition. Spiritual and religious practice can not only be hugely reparative, but can form a part of psychosocially therapeutic approaches to the trauma experienced by victims of violence that resonate with peoples for whom individualized therapy has little relevance.

Mato Oput, Northern Uganda

The conflict in Uganda that devastated the north for almost two decades pitted the rebels of the Lord’s Resistance Army (LRA), drawn from the Acholi ethnic group, against a government dominated by southerners. As the conflict dragged on however, the LRA increasingly targeted the Acholi people that they claimed to represent, abducting young men and women who were brutalized into joining the rebel forces. An Amnesty Act passed in 2002 became effective in persuading LRA fighters to give themselves up and return to their communities. Many had, however, committed gross violations during their time in the bush, blurring their identity as both perpetrators and victims. Acholi tradition was mobilized—led by traditional chiefs—to welcome them back in a traditional clan-based ritual that prioritized reconciliation over retribution. Mato oput means to drink the bitter herb, and was traditionally used to acknowledge wrong-doing, offer compensation and culminate in the sharing of a symbolic drink. Many Acholi believe that such an approach is far more useful in bring in healing than the retributive process of a trial and has been used to welcome back and reconcile a number of ex-fighters with their communities. One impact of this was that the then-ongoing ICC effort to prosecute LRA leaders, widely believed by the Acholi to risk prolonging the conflict, was seen by many as an inappropriate and externally driven initiative. This also reveals one challenge of traditional reconciliation approaches, in that they often fail to be rights-based and can challenge international standards of accountability.

WHAT ARE BENEFITS AND POTENTIAL CHALLENGES OF PARTICIPATION IN LOCAL-LEVEL PROCESSES?

In practice, local-level processes have a number of forms and drivers. Civil society can initiate them, often as an effort to support a national transitional justice process, by engaging with victims or linking communities at the grassroots with a state mechanism in the capital. Civil society can also create initiatives aimed at peacebuilding or other activities, independent of a national process. Where a national process is considered flawed, civil society can drive efforts to substitute for it, such as through local-level truth-telling.

In many cases, local-level processes operate at a geographical scale that a centralized national transitional justice process cannot hope to, and as such they can be complementary to such national process. Local governance, both the formal and local-level—such as those emerging from tribal structures—can be engaged in local-level processes, in terms of customary justice and dispute resolution. An engagement with custom can also support reconciliation, through healing processes that seek to address the divides of conflict. At the least formal level, the coming together of community members, typically at a local level, with various degrees of organization and



Tea-plantation workers in Sri Lanka.

structure, can serve to tell truth, acknowledge violations, support victims, and to seek to repair division. Such processes have been termed “home-grown transitional justice,”⁴⁴ suggesting that such approaches emerge in a way that is particular and unique to their time and place. While the focus of many local-level mechanisms is the community level, there are also local-level processes that can use art, culture, mass mobilization or electronic media to disseminate their outputs and generate large, and even national level, impacts.

While we choose to define local-level transitional justice processes in contrast to formal ones, we should understand that state mechanisms occupy rather a small space for action, operating through law and governance. Local-level processes—on the contrary—operate in a huge range of social and political claimed spaces, and at a wide range of scales, from the national to the lowest level of community, and as such have a huge potential to impact people’s lives in positive ways.

This is not to say that there are not potential limits associated with local-level mechanisms. If local-level initiatives are not coordinated with national or international processes, there is a risk that they will duplicate, or even undermine, existing efforts, or miss the opportunity to be part of a broader, societal-wide movement to respond to the impact of human rights violations. Further, local-level processes will not be able to mobilize the level of resources of national or international mechanisms and have been criticized for lacking the rigor of national or international processes.

National Transitional Justice Processes

WHAT ARE TYPES OF NATIONAL PROCESSES?

National transitional justice mechanisms are understood by many to be mechanisms that are state-mandated, are usually themselves state institutions, such as tribunals or truth commissions, and may be overseen by either the state or international organizations such as the United Nations-supervised international tribunals for Rwanda and the Former Yugoslavia. Other “mechanisms”—such as reparation programs or processes of institutional reform—are actually state policies that may or may not have a government department overseeing them, rather than institutions.

The “four pillars” approach—criminal prosecutions, truth commissions, reparations processes and institutional reform—has come to characterize global discourses of transitional justice that see the state leading all elements of a process.

Criminal Prosecutions

The state has a duty to ensure that perpetrators of human rights abuses are held accountable for their crimes. Criminal prosecutions are one method of ensuring that perpetrators are taken off the streets and out of the political system. Importantly, criminal prosecutions can be a strong indication that the state is breaking with the past while also acknowledging the human rights abuses that took place. Even though it is unlikely all perpetrators will be held criminally responsible for their crimes, state-led prosecutions can foster greater public confidence and trust in the state, and also have a deterrent effect on future crimes while also creating support for state institutions. Criminal prosecutions, in the context of transition, are often difficult, given that those responsible for human rights abuses may still wield influence and threaten a transition if prosecuted; evidence may have been destroyed by state agents prior to a transition, which diminishes the likelihood of a successful prosecution; and the number of potential cases to pursue overwhelms the capacity of a domestic criminal justice system.

There is a widespread presumption that criminal prosecutions may help victims who participate

in them to heal psychologically. If prosecutions symbolize society’s acknowledgement and condemnation of what victims suffered, victims who participate in them may feel acknowledged and validated, and may regain a sense of agency and capacity to act that the original abuse had destroyed. This participation typically takes the form of victims as plaintiffs, witnesses or deponents. Documented victim narratives may also feed into criminal prosecutions. In some jurisdictions victims can participate in tribunals as civil parties, and victim participation has been incorporated into the rules of the International Criminal Court (ICC), as well as courts such as the Extraordinary Chambers in the Courts of Cambodia (ECCC).

However, notwithstanding demand for criminal prosecutions, often by victims and affected communities, in many contexts they have not been considered a therapeutic experience for victims or resonated with victims’ expressed needs.⁴⁵ For example, many victims are potentially damaged by giving testimony in an adversarial process, as one researcher found with victims in Argentina and Chile.⁴⁶ Judicial action should not necessarily be considered a “healing” experience in itself for victims, and attention should be paid to non-judicial alternatives to address victims’ psychological needs.

For many victims, access to such institutions is challenging, both physically and otherwise. Such courts—even at the national level—sit typically in the capital, often far from victims who lack the resources, or cannot take the time because of work or obligations at home, to travel to them. For international processes, such as the ICC, this is even more the case. At the ECCC and elsewhere, CSOs have worked to ensure that relevant populations can have physical access through supporting them to travel.

It has also been suggested that the language of “victim-centrism” and the participation of victims in courts such as the ICC is in direct contradiction with the goal of a trial to be impartial, and free of emotion, and thus harmful for their effective implementation.⁴⁷

Truth Commissions

Truth commissions are central to transitional justice; the state has a duty to uncover and expose the truth about the committed crimes, which empowers victims to tell their stories, exposes structural violence, and counters denial and revisionism about the situation surrounding mass human rights violations.

The linking of truth commissions to concepts of restorative justice and the emergence of a narrative of “truth as healing” has become a dominant narrative of transitional justice. This linkage suggests narrative claims that the public telling of truth leads to healing for victims individually, and through the broader truths that emerge, healing and reconciliation for the nation as a whole: what has been called a “therapeutic ethic.”⁴⁸ This understanding emerged during the South African Truth and Reconciliation Commission (TRC), which claimed to be “victim-centered.” As a result of this process, the claims of victims became institutionalized as truth through public truth-telling, achieving the social goal of reconnecting victims and society.⁴⁹ In addition to the product, i.e. its final report, the TRC emphasized the importance of the process of truth recovery.

As a result, truth commissions have been



An GIJTR education workshop in Cambodia held in January 2018.
Photo credit: DC-CAM

presented as intrinsically participatory and “healing” for those giving testimony, and are said to benefit the individual victim by providing space to tell one’s personal story, to hear the truth being told, and, in some instances, to encounter the perpetrator. But in practice, victims testify—sometimes in public—in ways that may serve the creation of a larger narrative, rather than to address their own needs. Indeed, truth commissions may operate through the objectification of the victim to support the broader aims of the state. It is not clear that the victim, who is the central performer, benefits.

Studies have collected evidence that shows that public truth-telling may be actively harmful. A study in Rwanda among witnesses in the gacaca process, described above, provides evidence that public truth-telling can cause retraumatization for victims.⁵⁰ Similar evidence from the South African TRC demonstrated the serious consequences that victims experienced when returning to their communities, citing fear of retaliation, conflict within the community, loss of employment, and feelings of exploitation.⁵¹ The fact that in both cases such impacts occur locally also has implications for any local-level truth-telling process.

Reparations

While reparations can never make up for the violations that occurred, they can be an important form of official acknowledgment, help victims rebuild their lives, and create faith in state institutions by demonstrating a serious commitment to addressing past crimes. Reparations can be individual, recognizing the specific harm endured by an individual, or collective, addressing the harm suffered by a group or community, and a balanced program will include both. Reparations can take the form of restitution, such as return of property, compensation such as financial payments for quantifiable loss, rehabilitation such as medical and psychological care, satisfaction such as public apologies or commemorations, and guarantees of non-repetition.

Reparations processes are, or should be, intrinsically victim-centered, since they seek to address the harms of violations. In many transitional contexts, particularly where accountability is absent or incomplete, reparations may be the most tangible manifestation of the state addressing harms suffered by victims or their families of conflict.⁵² Yet, very often, reparation schemes fail to consider victims’ wishes in their design and implementation.⁵³ As such, these schemes are effective only where the needs of victims are well known. Consultations to identify victim needs are one participatory method that can result in greater awareness of how to design and implement victim-centered reparations processes, and this requires participation in the form of consultation and collaboration. However, reparations programs often fall short of victims’ expectations, for the reparations provided are typically not as comprehensive, timely, or significant in compensation as victims and their families may need them to be.

Reparation, however, also demands repairing the relationship between the victim and the state. This can best be done by changing the power relations between them, which is precisely the goal of an empowering approach to participation that can be achieved by seeing victims not only as recipients of compensation but as actors in the development and delivery of reparations. Reparation, while potentially providing material compensation to victims, is primarily about acknowledgment of what has happened and the responsibility for it. Participation in and engagement with transitional justice processes can be one way of providing this. Indeed, there may be dangers in excluding victims from a role: a review of reparations processes⁵⁴ suggests that reparation that prioritizes action by perpetrators’ action rather than the recovery of victims’ recovery replicates the role of victims as passive objects. Many processes place emphasize on an apology, recompense or restitution required to be made by former wrongdoers, neglecting the critical role that victims and affected communities suffering from past abuses should play in order to reestablish their personal well-being and societal standing: “programs that enable victims to play a part in critical societal institutions

offer a more thorough remedy to past harms by fostering victims’ moral agency.”⁵⁵

Institutional Reform

Institutions that have a legacy of violating human rights must be reformed so that citizens can reestablish trust in the state as the guarantor of their rights. Transitional justice efforts frequently work in concert with and are supported by security sector reform, disarmament, demobilization and reintegration, and rule of law reform initiatives, including drafting new constitutions, reforming the judiciary and educational institutions.

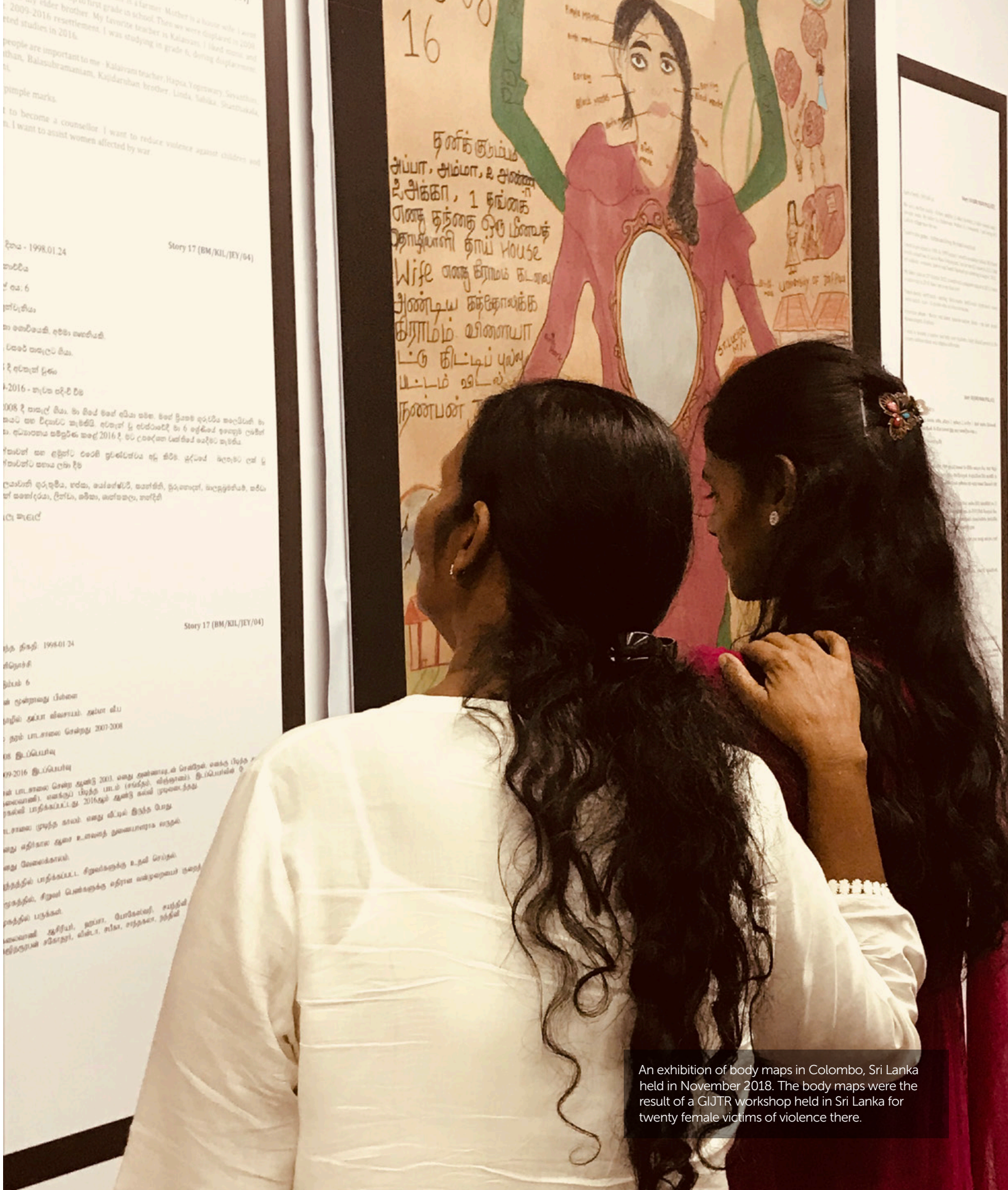
A number of arguments have been made that the broader goals of transitional justice, in terms of strengthening governance and institutions, are advanced by effective participation, which in turn aids non-repetition. One lens on this is legitimacy, which is the idea that the governed have more trust and confidence in institutions that are transparent and accessible—both of which are aims that participation seeks to achieve—and that a transitional justice process that is perceived as legitimate aids broader legitimacy of governance. Participation can also be highly symbolic for communities that have both been traditionally excluded and been victims of acts of violence, in that it demonstrates that they now have full civic membership. This also echoes the understanding of *performance legitimacy*,⁵⁶ which is that trust in the authorities emerges from perceptions of their responsiveness and capacity to address needs and deliver services.

WHAT ARE THE BENEFITS AND POTENTIAL CHALLENGES OF PARTICIPATION IN NATIONAL PROCESSES?

The participation of victims in national transitional justice mechanisms can actively help victims in overcoming the impacts of violations, make a process more transparent and accessible to victims, and symbolically demonstrate an end to the passivity of victimhood and restore agency. Although there have been few empirical evidence-based studies or concrete discussions about the benefits of participation in national transitional justice mechanisms,⁵⁷ the benefits are widely presumed. Including victims in the design of policies may help restore their full civic membership, when once they were denied the protection of the law, and participation may itself contribute to a process in which victims reclaim control over their lives.⁵⁸ There are also supposed benefits for a process itself, in terms of understanding victims’ needs and perspectives and tailoring mechanisms to these. For institutional mechanisms of transitional justice—and the governments steering them—victims and communities, and even a society at large, can have their confidence in processes of institution-building and norm-setting renewed through participation, ultimately contributing to the non-recurrence of violence.⁵⁹

This leads to one potential challenge of some forms of participation currently employed. One major challenge regarding victim and community participation in national mechanisms is ensuring that they are adequately involved during multiple stages of the transitional justice process. While victims often engage at the implementation phase, and participation may be characterized as collaboration and consultation, as described in Part 1, it is also important that they are involved in the design of formal mechanisms and have opportunities to participate in both pre-implementation decision-making processes and in the management of implemented mechanisms. Historically, victims and affected communities have not been adequately engaged in the conception, the design, the decision-making, or the management of mechanisms. This demonstrates that the quality of participation in formal mechanisms is typically highly constrained.

An additional challenge is managing victim and community expectations in the impact and scope of national mechanisms. Participation in formal mechanisms may also raise expectations that can be unrealistic. As long as such processes are remote and unclear to victims—as they are in many cases—victims are likely to have little confidence in the impact they could have. While it is clearly positive for victims and communities to know more about such processes, a limited exposure to the global discourse around transitional justice can also give rise to



An exhibition of body maps in Colombo, Sri Lanka held in November 2018. The body maps were the result of a GIJTR workshop held in Sri Lanka for twenty female victims of violence there.

expectations that truth, justice, and reparations will be delivered quickly and comprehensively. Ironically, partial and low- quality participation can create disappointment that the neglect and exclusion of victims do not.⁶⁰ This supports why educational outreach is vital—in effective national mechanisms, outreach often precedes or accompanies community consultation, with CSOs playing a role in both educating and consulting victims and communities as part of the design and implementation of national processes.

Transitional justice practice has become formalized, however, making it more difficult for victims to influence such processes. In many contexts where transitional justice processes are unfolding, state authorities, and even civil society, adopt participation as rhetoric, inviting victims to meetings and listening respectfully as they give their testimony. However, victims are rarely afforded significant control over agendas or funding.

In the least effective scenarios, outlined in the chart in Part 1, a conversation between government and elite civil society in the capital regarding transitional justice mechanisms can effectively exclude victims’ voices. Consultation and outreach have become conventional indicators of inclusive process, with the opinions of victims and others being sought. However, in many transitional justice processes, such efforts are often perfunctory. However, national transitional justice processes are rarely permitted to impact on processes that still unfold according to a global paradigm.⁶¹ While consultations with victims have become a staple of the rhetoric of transitional justice, in practice a global one-size-fits all model is often ill- adjusted to victims’ priorities.

National transitional justice mechanisms can serve to distance victims, particularly marginalized rural communities. There remains a need for both victim engagement and transitional justice processes to be empowering for affected communities, and this is likely to require the greater participation of victims in the design and development of such transitional processes. In the prosecutions that have most defined transitional justice, the victim is a limited actor in a process that is often both alien and alienating, particularly for marginalized rural people with little engagement with officialdom. Where disempowerment of individuals and communities is a major impact of victimhood, state-centered mechanisms in which victims have no agency risk perpetuating such disempowerment.⁶² One route to empowerment is through victim mobilization, in which victims’ representatives are able to provide a connection between victims and those steering transitional justice processes.

A prerequisite to participation is knowledge that a mechanism exists and that there is a possibility to engage with it. Information and sensitization is thus a crucial part of the infrastructure of participation, with a role to be played by mechanisms, authorities, civil society and the media. In practice, only a minority of victims can participate directly in institutions of transitional justice, and most will engage with national processes through the submission of information, or through representatives, such as lawyers. An alternative to representation in institutions is mobilization and representation by peers, as has been demonstrated by victim movements globally. Victims themselves select their representatives from among their peers through their coming together to advance their agenda. This represents a non-institutional approach to participation that can both strongly influence a transitional justice process through advocacy, and serve as a route for information to flow between victims and transitional justice mechanisms.

References

⁹ Lars Waldorf, Mass Justice for Mass Atrocity: Rethinking Local Justice as Traditional Justice, 79 TEMPLE LAW REVIEW 1 (2006).

¹⁰ Dionísio Babo-Soares, Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor, 5 THE ASIA PACIFIC JOURNAL OF ANTHROPOLOGY 15 (2004).

¹¹ Simon Robins, Challenging the Therapeutic Ethic: A Victim-Centred Evaluation of Transitional Justice Process in Timor-Leste, 6 INT. JOURNAL OF TRANSITIONAL JUSTICE 83 (2012).

¹² Table 1 and this typology are both derived from Paul Gready and Simon Robins, Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and ‘New’ Civil Society, 21 INT’L JOURNAL FOR HUMAN RIGHTS 956 (2017).

¹³ Priscilla Hayner, Responding to a Painful Past: The Role of Civil Society and the International Community in Dealing with the Past: Critical Issues, Lessons Learned, and Challenges for Future Swiss Policy (Mo Bleeker and Jonathon Sisson eds., KOFF Series Working Paper, Bern: Swiss Peace 2005).

¹⁴ Roger Duthie, Building Trust and Capacity: Civil Society and Transitional Justice from a Development Perspective (New York: International Center for Transitional Justice 2009).

¹⁵ David Backer, Civil Society and Transitional Justice: Possibilities, Patterns and Prospects, 2 JOURNAL OF HUMAN RIGHTS 297 (2003).

¹⁶ Kora Andrieu, Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm, 41 SECURITY DIALOGUE 537 (2010) [hereinafter Andrieu, Civilizing Peacebuilding].

¹⁷ With regard to consultation and participation, see UN Security Council, The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General, 23 August 2004, S/2004/616, at ¶¶15-18, available at <https://www.un.org/ruleoflaw/files/2004%20report.pdf> [accessed January 15, 2018].

¹⁸ OHCHR, OHCHR’s Rule-of-Law Tools for Post-Conflict States: National Consultations on Transitional Justice, (United Nations: New York and Geneva 2009), available at https://www.un.org/ruleoflaw/files/Tool_National_Consultations_final_web.pdf [accessed January 15, 2018]; International Center for Transitional Justice, Truth Commissions and NGOs: The Essential Relationship, The ‘Fratr Guidelines’ for NGOs Engaging with Truth Commissions (New York: ICTJ, 2004). For a summary of civil society’s potential contribution to a range of transitional justice mechanisms, see Roger Duthie, Building Trust and Capacity: Civil Society and Transitional Justice from a Development Perspective (International Center for Transitional Justice 2009).

¹⁹ Hugo Van der Merwe, Polly Dewhirst and Brandon Hamber, Non-governmental Organisations and the Truth and Reconciliation Commission: An Impact Assessment, 26 POLITIKON 55 (1999) [hereinafter Van der Merwe et al., NGOs and the TRC].

²⁰ Van der Merwe et al., NGOs and the TRC, at 62.

²¹ Van der Merwe et al., NGOs and the TRC, at 77.

²² Joanna Quinn, The Role of Informal Mechanisms in Transitional Justice, Canadian Political Science Association Annual Meeting, 2 June 2005.

²³ UK Department for International Development (DFID), DFID POLICY STATEMENT ON SAFETY, SECURITY AND ACCESSIBLE JUSTICE (London: DFID 2000).

²⁴ Simon Robins, Restorative Approaches to Criminal Justice in Africa: The Case of Uganda in The Theory and Practice of Criminal Justice in Africa (African Human Security Initiative) ISS Monograph series no. 161, June 2009.

²⁵ Public International Law and Policy Group (PILPG) Internal Reports (2015-2016) (on file with PILPG).

²⁶ Skype interview with PILPG representative (Jan. 26, 2017) (on file with PILPG).

²⁷ Patricia Lundy and Mark McGovern, A Trojan Horse? Unionism, Trust and Truth-Telling in Northern Ireland, 2 INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE, at 48 (2008).

²⁸ Id. at 54.

²⁹ Nancy Wood, Vectors of Memory: Legacies of Trauma in Postwar Europe (Oxford: Berg 1999).

³⁰ Khet Long, Initiating A Way to Address Legacy of Memory in Cambodia: Action Research Paper, at 52 (2009).

³¹ Chona R. Echavez, Leah Wilfreda R.E. Pilongo, Michael Lou Montejo, Samrong Khnong Community Peace Learning Center Project: Final Evaluation Report, at 14 (2015).

³² Waleed Rashed, Egypt’s Murals are More than Just Art, They Are a Form of Revolution, SMITHSONIAN MAGAZINE (May 2013), available at <https://www.smithsonianmag.com/arts-culture/egypts-murals-are-more-than-just-art-they-are-a-form-of-revolution-36377865/> [accessed January 15, 2018]; see also Don Karl and Basma Hamdy, Walls of Freedom: Street Art of the Egyptian Revolution (March 2014).

³³ Lisa Magarrell and Joya Wesley, Learning from Greensboro Truth and Reconciliation in the United States (University of Pennsylvania Press 2010).

³⁴ German Society for International Cooperation, Conflict Analysis for Project Planning and Management (2001), at 58.

- ³⁵ Ruta Pacífica de las Mujeres, Carla Afonso, and Carlos Martin Beristain, *Memoria Para La Vida: Una Comision de la Verdad Desde Las Mujeres Para Colombia* (2013), available at <http://www.rutapacifica.org.co/descargas/comisionverdad/memoriaparavida.pdf> [accessed January 15, 2018].
- ³⁶ Susana Navarro et al. (2011) Global Consensus principles and minimum standards for psychosocial search processes and forensic investigations in cases of forced disappearances. Colombia, 2011. http://mhpsps.net/?get=32/1363191281-Minimumstandars_forensicinvestigations_2011.pdf
- ³⁷ Simon Robins and Ram Kumar Bhandari, *From Victims to actors: Mobilising Victims to Drvie Transitional Justice Processes* at 39 (2012).
- ³⁹ Andrieu, *Civilizing Peacebuilding*.
- ⁴⁰ An example is the local history-writing project in a divided community in Northern Ireland. See Patricia Lundy and Mark McGovern, *Participation, Truth and Partiality*, 40 *SOCIOLOGY* 71 (2006).
- ⁴¹ Aaron P. Boesenecker and Leslie Vinjamuri, *Lost in Translation? Civil Society, Faith-based Organizations and the Negotiation of International Norms*, 5 *INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE* 345 (2011).
- ⁴² Val Colic-Peisker and Farida Tilbury, *'Active' and 'Passive' Resettlement: The Influence of Support Services and Refugees' Own Resources on Resettlement Style*, 411 *INTERNATIONAL MIGRATION* 61 (2003).
- ⁴³ Madelaine Davis, *Is Spain Recovering its Memory? Breaking the Pacto del Olvido*, 27 *HUMAN RIGHTS QUARTERLY* 858, (2005).
- ⁴⁴ Lundy, 2009:329.
- ⁴⁵ Jamie O'Connell, *Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?*, 46 *HARVARD INTERNATIONAL LAW JOURNAL* 295 (2005).
- ⁴⁶ Id.
- ⁴⁷ Brianne McGonigle Leyh, *Victim-Oriented Measures at International Criminal Institutions: Participation and its Pitfalls*, 12 *INTERNATIONAL CRIMINAL LAW REVIEW* 375 (2012).
- ⁴⁸ Christopher J. Colvin, *'Brothers and Sisters, Do Not be Afraid of Me': Trauma, History and the Therapeutic Imagination in the New South Africa in Memory, History, Nation: Contested Pasts* (Katharine and Susannah Radstone eds. London: Routledge 2005).
- ⁴⁹ Michael Humphrey, *From Victim to Victimhood: Truth Commissions and Trials as Rituals of Political Transition and Individual Healing*, 14 *THE AUSTRALIAN JOURNAL OF ANTHROPOLOGY* 171 (2003).
- ⁵⁰ Karen Brounéus, *Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts*, 39 *Security and Dialogue* 55 (2008); Karen Brounéus, *The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health*, 54 *JOURNAL OF CONFLICT RESOLUTION* 408 (2010).
- ⁵¹ Ruth Picker, *Victims' Perspectives about the Human Rights Violations Hearings* (CSV Research Report 2005) [hereinafter Picker, *Victims' Perspectives about the Human Rights Violations Hearings*].
- ⁵² Pablo de Grieff, *Repairing the Past: Compensation for Victims of Human Rights Violations in The Handbook of Reparations* (Pablo de Grieff ed., Oxford: Oxford University Press 2008).
- ⁵³ Carlton Waterhouse, *The Good, the Bad and the Ugly: Moral Agency And The Role of Victims in Reparations Programs*, 31 *UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL ECONOMIC LAW* 257 (2009).
- ⁵⁴ Id.
- ⁵⁵ Id., at 2.
- ⁵⁶ Monika Francois and Inder Sud, *Promoting Stability and Development in Fragile and Failed States*, 24 *DEVELOPMENT POLICY REVIEW* 141 (2006).
- ⁵⁷ For an excellent review however, see: IW, *Real Power or Empty Ritual?*.
- ⁵⁸ Diane Orentlicher, *Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening Their Domestic Capacity to Combat All Aspects of Impunity*, U.N. Doc. E/CN.4/2004/88, 27 February 2004.
- ⁵⁹ IW, *Real Power or Empty Ritual?*, at 16.
- ⁶⁰ This has been documented in South Africa around the TRC, and around the work of the ICC. See Picker, *Victims' Perspectives about the Human Rights Violations Hearings*, at ; Susana SáCouto, *Victim Participation at the International Criminal Court the Extraordinary Chambers in the Courts of Cambodia: A Feminist Project?*, 18 *MICHIGAN JOURNAL OF GENDER & LAW* 297-359 (2012); Christine H. Chung, *Victims' Participation at the International Criminal Court: Are Concessions of the Court Clouding the Promise?*, 6 *NORTHWESTERN JOURNAL OF INTERNATIONAL HUMAN RIGHTS* 459-545 (2012).
- ⁶¹ Tshepo Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, 2 *JOURNAL OF HUMAN RIGHTS PRACTICE* (2010), at 208-28; Simon Robins, *Transitional Justice as an Elite Discourse: Human Rights Practice between the Global and the Local in Post-Conflict Nepal*, 44 *CRITICAL ASIAN STUDIES* (2012).
- ⁶² Simon Robins, *From Victims to Actors: Participation in Transitional Justice Processes* (paper presented at The International Studies Association Annual Convention, San Francisco, April 3-6, 2013).



Women speak during a panel on body mapping in Colombo, Sri Lanka in November 2017.



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