

FUNDING TRANSITIONAL JUSTICE



A Guide for Supporting
Civil Society Engagement

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ABOUT THE REPORT

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ABOUT PUBLIC ACTION RESEARCH

Public Action Research (PAR) is a consulting firm, founded in 2011, whose aim is to bring rigorous, evidence-based approaches to strategy development and program implementation for nongovernmental organizations and funders.

Cover photo: The “March of Silence” takes place in Uruguay on May 20 every year to demand justice for victims of the dictatorship (1973 to 1985). Montevideo, Uruguay, 2015. Credit: Sofía González.

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FUNDING TRANSITIONAL JUSTICE: A Guide for Supporting Civil Society Engagement

PURPOSE

Donors face specific challenges in funding transitional justice (TJ): from the fact that TJ is often a long-term, multigenerational issue, to the fact that the term “transitional justice” does not usually figure in donor governments’ policies or internal guidance. This report is designed primarily for donors—at embassy level and in ministries and development agencies—who are interested in supporting TJ initiatives.

It is based on an extensive review of the academic and practitioner literature on TJ, as well as five country case studies conducted in 2014: Bosnia and Herzegovina (BiH), Cambodia, Guatemala, Morocco, and Uganda. The case studies were chosen with a view both to capturing patterns and to comparing differences in donor approaches to TJ. More than one hundred donor and civil society actors were interviewed, and quotes from those interviews are highlighted in this report. Data on funding for international assistance was drawn primarily from grant-level data reported by OECD member states from 2000 to 2012. While not all of this guidance will be relevant to every donor, the hope is that there is applicable wisdom.

WHAT IS TJ?

TJ includes a range of initiatives that states and societies take in order to address past systematic or massive human rights violations and violations of international humanitarian law. It is not just criminal justice, although it is often conflated with prosecutions. These initiatives have been enshrined in international legal frameworks, and they include:

- › **The right to justice**, meaning access to equal and effective justice, and including prosecutions of those most responsible for human rights abuse
- › **The right to reparation**, often through state-run programs that recognize victims of human rights abuse and offer a range of remedies, e.g., cash payments, medical or psychological care, official apologies, memorials, etc.
- › **The right to truth**, including state-led truth commissions, work with government archives, and finding missing persons; shedding light on facts that responsible state and nonstate actors may try to hide; offering victims a platform to be recognized, share their experiences, and engage as citizens
- › **Guarantees of nonrecurrence**, which often include specific reforms to the institutions that perpetrated the abuse, usually including vetting of the security forces for human rights abusers, among other actions and reforms

It is worth noting that there are other ways to refer to TJ, such as “dealing with the past.” TJ may not always be the preferred term in every context.

WHY FUND TJ?

TJ is a key part of democratization, development, and peacebuilding processes, during which core relationships between the state and society are strengthened or rebuilt; indeed, the World Bank’s 2011 World Development Report recognizes these links.¹

“I haven’t come across any TJ label in our own strategies or experience. TJ has not been a guiding concept for us generally—maybe in some local contexts, but in the policies of our ministries it has not been a leading concept. We have done a lot of work that is related to TJ, but we haven’t conceptualized it that way.”
—Donor in Bosnia and Herzegovina

KEY GUIDANCE ON TJ

UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*

Updated Set of principles for the protection and promotion of human rights through action to combat impunity

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of IHL and Serious Violations of IHL

Donors have supported TJ initiatives in an effort to:

- › Promote accountability for past human rights abuse
- › Foster trust in state institutions
- › Enhance long-term reconciliation and support peace processes
- › Recognize victims, especially as bearers of rights

FOCUS ON CIVIL SOCIETY ACTORS

This guidance focuses on support to civil society engagement with TJ. It is well known that donors and multilateral institutions have expanded their focus (and funding) to civil society actors over the past twenty to thirty years.² Yet this shift does not appear to be reflected in funding to TJ. Although building (or rebuilding) a fragmented and mistrustful civil society in the wake of repression or conflict is important to democratization, development, and peacebuilding efforts, funding for TJ often is directed to institutions and state actors—not civil society. This is in spite of the fact that civil society actors play essential roles in any TJ process, which we describe below. Our guidance is therefore designed to offer advice on how donors may better integrate civil society actors into their TJ funding strategies.

WHICH DONORS ARE ENGAGING IN THE TJ FIELD?

TJ is supported globally by a wide range of bilateral and multilateral donors (as well as private foundations). Among bilaterals, key donors are the United States (principally through its support for hybrid and international tribunals), the Netherlands, Sweden, Norway, Germany, Canada, and Switzerland. Others who have funded some TJ work include Spain, Belgium, the United Kingdom, Austria, France, and Japan.

On the multilateral side, since 2004, the United Nations has been developing an approach to TJ, culminating in a *Guidance Note of the Secretary-General* (2010), and the creation of a Special Rapporteur position (2012). The European Union (EU) and the African Union (AU) are also drafting TJ policies, and the EU is a major donor. Within the UN system, the Office of the High Commissioner for Human Rights (OHCHR), the UN Development Program (UNDP), the UN Peacebuilding Fund (PBF), and UN Women are all key actors. Many of these agencies work directly on TJ-related issues—to give one example for each, OHCHR in Tunisia, UNDP in Guatemala, the PBF in Sierra Leone, and UN Women in Colombia.

WHEN TO USE THIS GUIDANCE?

This guidance should be useful at any stage of a TJ process—including (and especially) before it begins. It is designed so that staff in embassies, ministries of foreign affairs, and development agencies can draw on it to shape decision-making processes and to develop documents like country background reports, requests for funding proposals (RFPs), or policy guidance. There are a range of scenarios in which this report might prove immediately useful:

- › There is ongoing conflict in a country, with widespread human rights abuse
- › A country is experiencing a transition away from repressive rule
- › A country is in a peacebuilding phase or is in the process of concluding and/or implementing a peace agreement
- › A country has been punctuated by periods of state-led violence/repression
- › Stakeholders within a country are reopening issues related to a period of past repression, including colonial repression

“One challenge is that there is a limited understanding of these TJ issues among donors; also, understanding varies greatly within donor communities, and rule of law is different than TJ, peacebuilding, or conflict work. It is very murky programming, and this affects how RFPs are written.”—Donor in Cambodia

Synopsis

We have organized this guidance into two major sections: the first discusses initial steps that international actors would do well to think about when engaging in any TJ process; the second offers guidance for decision-making on TJ funding.

You will also find at the end of the report suggestions for practical language to include in TJ-related RFPs, tailored to different moments of a TJ process, as well as references to key resources on TJ that are linked to each section.

INITIAL STEPS

| | |
|---|--|
| Support actions that include civil society actors from the beginning | Most funding for TJ goes to state or UN bodies; in many countries, civil society actors are woefully underfunded and excluded from initial strategy setting, which may have negative effects on the local ownership and legitimacy of a TJ process and its potential for fostering social change |
| Focus on gender: clear impact for donors | International actors, including donors, have had significant positive impacts on supporting civil society and state actors to improve the sensitivity of TJ measures to gender, but this dimension needs to be incorporated early |
| Develop internal communication on TJ within governments | People working at embassies and within government agencies may not know what TJ is or which initiatives their colleagues or other organizations are funding or have funded in the past, which may result in internal confusion or even competition |
| Plan for a long-term engagement | The strongest engagements with a TJ process have been those that foresee a long-term commitment and respond appropriately to evolving civil society needs |
| Invest in data for evidence and indicators | There are few instances of donors using baseline studies or indicators to assess how well states are meeting their obligations on TJ, to judge whether civil society actors are playing positive social roles, or to understand how well TJ is meeting the needs of victim groups |

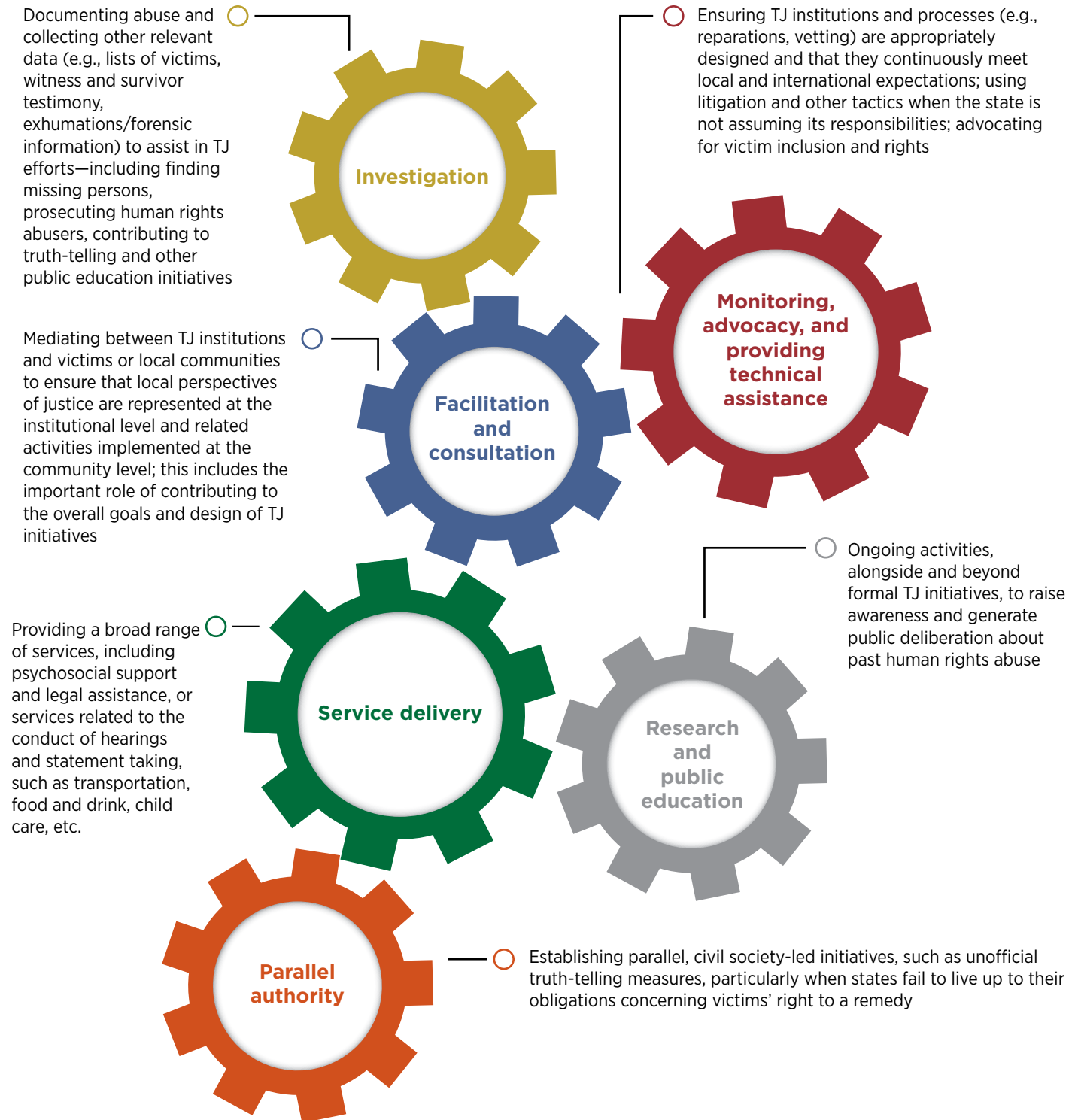
FUNDING STRATEGIES

| | |
|--|--|
| Support a strategy, not a project | Donors have a tendency to support individual projects that may not always feed into broader strategies for development, peace, or justice; this behavior can incentivize competition and fragmentation rather than cooperation and solidarity among civil society actors |
| Put victims and vulnerable groups at the center | The needs of victims—usually among the most vulnerable and marginalized people in a country—may remain invisible or may fit uneasily into donor paradigms; indeed, donor approaches to TJ often focus on measures like prosecutions that primarily focus on perpetrators rather than victims |
| Encourage cooperation among diverse civil society actors | Strong civil society actors create and leverage their national and international networks to achieve change. Yet human rights actors may lack robust networks with social actors outside the human rights NGO sphere, including youth actors, which limits their ability to have a broader social impact |
| Donor solidarity with grantees can be as important as funding | Civil society actors often value the political pressure that other governments put on their own government to implement TJ measures, perhaps as much as or more than they value funding; such solidarity often gives a powerful boost to civil society strategies advocating for institutional change |

AN INTERRELATED SET OF ACTORS: TJ, CIVIL SOCIETY, AND THE STATE

TJ is not simply a court, a truth commission, or other official institution. Instead, it is a complex social process in which both the state and civil society (including victims of human rights abuse) participate. Indeed, it is doubtful that any formal TJ institution has ever been successful without engaging with civil society actors, which play a wide variety of roles in TJ processes.

Thus, any time that a donor is considering supporting a formal TJ institution, like a court, it should also consider supporting civil society engagement. This chart visualizes the kinds of roles that civil society actors play in various stages of a TJ process and is intended to offer donors a holistic picture of the kinds of civil society actions they could support:³



“Democracy is not like development work—you don’t build a road and then see it. It takes time—civic education, etc., takes time.”—Donor in headquarters

SECTION 1: INITIAL STEPS

1. Support actions that include civil society actors from the beginning
2. Focus on gender: clear impact for donors
3. Develop internal communication on TJ within governments
4. Plan for a long-term engagement
5. Invest in data for evidence and indicators

1. Support actions that include civil society actors from the beginning

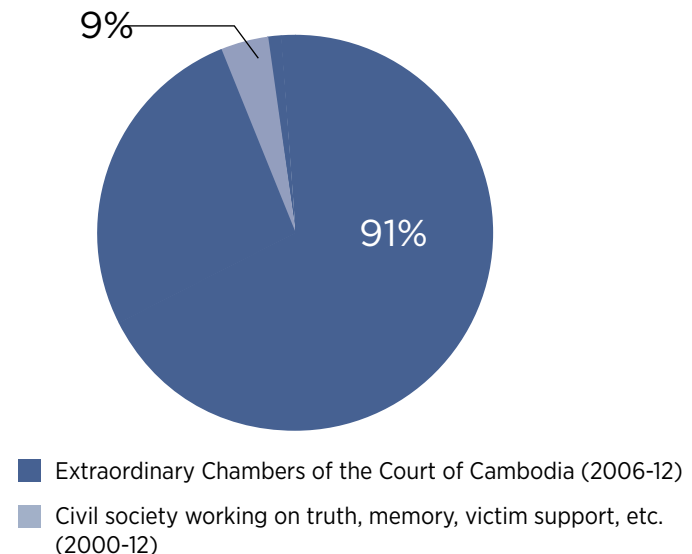
KEY FINDING: Most funding for TJ goes to state or UN bodies; in many countries, civil society actors are woefully underfunded and excluded from initial strategy setting, which may have negative effects on the local ownership and legitimacy of a TJ process and its potential for fostering social change

LEARNING EXAMPLE

The **Guatemalan** armed conflict caused civil society to turn inward and against itself, leaving behind a significant legacy to be confronted. However, the peace process gave civil society space to participate, and over time, human rights and victim rights associations transformed the processes that followed into a vehicle through which they could deepen and broaden democracy. First, the 1996 peace agreement reframed both the war's corrosive legacy and civil society relationships. The establishment of the **Grand National Dialogue** subsequently convinced the conflict's stakeholders of the need for a comprehensive peace process, not just a cease-fire. This body then developed into the Assembly for Civil Society (ASC). Contributing to the peace process required consultation and collaboration, and forced member groups to begin to listen to one another, to recognize each other's expertise, and to learn how to seek compromise. In the opinion of several participants, the ASC engendered solidarity and trust that, though hard to sustain, continues to inspire them, reminding them of the possibility and value of collective action. Representatives of victims and refugees described the additional ripple effects of being recognized as spokespersons for communities of victims and the displaced. In recent years, civil society groups have played a key role in a variety of TJ processes, including the **2013 trial of former General Ríos Montt for crimes of genocide and crimes against humanity**. Victim groups, forensic anthropologists, legal organizations, and others banded together to assist the state's prosecution efforts significantly.

One of the primary goals of TJ is to promote trust between state institutions and society (and, more specifically, victims), as well as between citizens. Civil society actors in transitioning contexts play a key trust-building role, through their functions as investigators of abuse, monitors of state action, advocates for victims and communities, etc. But in many cases, only a small proportion of all funds for TJ go to civil society actors. This means that they are usually drastically under-resourced and unable to foster meaningful change.

TJ FUNDING IN CAMBODIA, 2000 TO 2012



Sources: ECCC Financial Outlook, Oct. 31, 2012; TJ International Assistance Database and GIZ data⁴

Neglecting to engage a wide and diverse swath of civil society from the outset can undermine the very goals TJ initiatives seek to achieve. One example of this is the initial failure of the International Criminal Tribunal for the former Yugoslavia (ICTY) to engage effectively with local communities, resulting in the public's lack of awareness of basic facts about the crimes, as well as local media manipulation of the tribunal's image. When BiH established its national-international hybrid tribunal, the War Crimes Chamber (WCC), in 2005, it initially sought to correct this failing. It helped establish a civil society-led Court Support Network that would mediate directly with affected communities

“We found it very difficult to mobilize funds [for CSO activity] ... even \$10,000, which would have made a huge difference to an NGO.”—Donor in Cambodia

and victim groups, with the objective of enhancing local ownership of the criminal justice process. Internal battles and a lack of dedicated funding, however, led almost immediately to a weakening of this network. The court decided instead to engage in a more narrow strategy passively to provide public information rather than actively to engage communities and victims. Several years later, in response to what was recognized as a general public relations disaster for the court, which was perceived as biased (especially against Serbs), the WCC again shifted course and realized that establishing local ownership was critical to its mission.

Rethinking funding ratios among different TJ initiatives, and also including civil society actors in donor and government priority- and strategy-setting from the beginning, are important ways to ensure that the needs of stakeholders and relevant communities are reflected in key national policies and TJ or donor-country strategies. These actions help build relationships early, enhancing connections between TJ initiatives and the people they are intended to serve.

International best practice emphasizes the need for broad consultations with civil society before a TJ process begins, as has happened recently in Tunisia. Interviewees from both civil society and the donor community stressed that when civil society perspectives were included in initial decision-making processes, it often improved long-term collaboration both among civil society actors and between civil society and the state; it may also set civil society actors up as legitimate partners with (or counterweights to) the state. Attention should be paid to working with a diverse set of civil society actors, so that TJ is not “captured” by a small group of capital-based elites, but rather enjoys wider legitimacy.

“We didn’t properly fund outreach [at the ECCC]; we left it for civil society groups to fund piecemeal and hand to mouth...but by not even giving a budget line for donors to contribute, even if subcontracted to civil society (which would have been the right thing to do), [we] made it harder and resulted in less rigorous coverage of information around the country.” —Donor in Cambodia



LEARNING EXAMPLE

In 2012, the **Tunisian** government created a **Technical Committee for Transitional Justice** to initiate national consultations and deliver a draft law on TJ to the National Constituent Assembly. The committee was chaired by an advisor of the Minister of Human Rights and TJ (a newly created body) and comprised mainly of civil society leaders. It created subcommissions, which each covered parts of Tunisia’s regional governorates. Among other activities, the subcommissions held public dialogues to gather victims’ and other stakeholders’ input on Tunisia’s TJ needs. Each dialogue began with an introduction to TJ, followed by sessions for stakeholders to share their experiences and comments, and working groups on various TJ measures. The draft TJ law was passed in December 2013, creating a truth commission whose work began in June 2014 and in which civil society actors are represented heavily. At the same time, civil society actors are already talking about lessons learned: while the national consultation approach aimed at comprehensiveness, its structure tended to lend a voice to those who were literate, who were already empowered enough within their communities to join the discussions, and who were able to attend the meetings, therefore limiting deeper community representation.



PRACTICAL STEPS

- › **Support national and subnational consultation processes to create TJ “road maps.”** Such initiatives are critical for decision-making both for national actors and donors, especially before the start of any TJ processes; sometimes such consultations will be more useful at the local or regional level
- › **Consult with civil society actors when crafting your approach.** Conduct extensive, good-faith consultations and stakeholder analyses with civil society actors when developing a donor strategy for funding TJ initiatives
- › **Set a target percentage for funding to CSOs.** Use target percentages for civil society support as a proportion of total TJ funding (especially when supporting formal institutions like courts or truth commissions), as some development agencies already do for other funding; support locally led civil society initiatives
- › **Learn the CSO landscape.** Map stakeholders and CSOs—and particularly note vulnerable groups—to understand who may be (further) marginalized by the process; build their capacity and ability to network *before* these processes begin

2. Focus on gender: Clear impact for donors

KEY FINDING: International actors, including donors, have had significant positive impacts on supporting civil society and state actors to improve the sensitivity of TJ measures to gender, but this dimension needs to be incorporated early



LEARNING EXAMPLE

In **Cambodia**, partly as a response to the ECCC's lack of prosecution of sexual violence under the Khmer Rouge, there was a coordinated strategy by several key international advisors on gender issues in Cambodia to instigate the **"Women's Hearings"**—a nonjudicial, public accounting of survivors and witnesses of sexual violence. The Women's Hearings were held in 2011, 2012, and 2013, with support from Germany's Institute for Foreign Cultural Relations and the Civil Peace Service of the German Corporation for International Cooperation (GIZ). Initiated by a local NGO that also has conducted research on SGBV, they were modeled on the hearings for women that were conducted as part of Timor-Leste's Truth and Reception Commission. These hearings have been widely praised as breaking the silence about SGBV in Cambodia—during the Khmer Rouge period as well as in society today. Attended by more than 1,000 participants, the three hearings have enabled individuals who testified to have their suffering and courage acknowledged, and to express their demands. The hearings were used also as a platform to advocate for the inclusion of SGBV as crimes in the ECCC, in addition to other advocacy and awareness-raising campaigns. UN Women has also helped to promote gender sensitivity on TJ in Cambodia, recently funding a project to improve access to justice for victims of sexual violence under the Khmer Rouge, which is being run jointly by the ECCC's Victim Support Section and two local NGOs. This international support has been critical in a context where sexual violence continues to be a taboo subject.

Ensuring that TJ is sensitive to gender is a critical issue for victims and survivors. TJ initiatives—which are intended to promote an idea and practice of citizenship—should not reproduce and reinforce gender-based marginalization. It is particularly important that gender-sensitive aspects of TJ initiatives are built into programming at the early stages, because this helps to build comprehensive programs. Initiatives that are "tacked on" to TJ measures risk being poorly funded and dislocated from broader efforts, negatively affecting their impact.

The role of gender in TJ processes is complex; it relates not just to recognition of sexual and gender-based violence (SGBV), but also to broader patterns of gender-based marginalization. Lamentably, some national TJ processes have not included SGBV in the mandates for their investigations. When SGBV is included, it is important to acknowledge that both women and men may be victims—especially as there

have been instances of TJ when SGBV has been defined in terms of violence only against women. Further, women and men may experience human rights violations differently, or suffer different consequences when they happen. For example, when a male head of household is disappeared or imprisoned, women must bear responsibility for feeding the family, sometimes falling into deep poverty. Finally, in many countries, women as well as lesbian, gay, bisexual, transgender, and intersex (LGBTI) communities are deeply marginalized and not engaged in public processes.

One positive example of TJ efforts modeling an inclusive approach to citizenship took place in Uganda, where a partnership between a women's network comprised of Lord's Republican Army (LRA) abductees and national and international CSOs led to a petition in parliament requesting reparations for women victims of sexual violence from Acholiland, which was unanimously adopted in 2014. Significantly, representatives of the women's network, rather than the national CSOs, personally presented the petition to Uganda's parliament—a step that signals recognition of the women (and their network) as legitimate political actors, and that suggests acknowledgment of these women as citizens whose rights had been violated.

Gender sensitivity for TJ has gained traction in recent years—in places like Tunisia and Kenya—usually through a combination of local leadership (often, but not always, a woman leader) and international technical and financial support. Yet there are many challenges. Perhaps the most significant is the "invisibility" and silence

"Women's organizations did not represent women victims... The women's movement was not knowledgeable about how women were integral to TJ... They did not have a gender lens on TJ."—Civil society actor in Morocco

around SGBV in many cultures, and the fact that victims of SGBV may be severely stigmatized in their own communities. Another factor is a lack of technical expertise in knowing how TJ can and should deal with integrating gender. Even local women's organizations may not be well equipped to bring a "gender lens" to TJ.

In this sense, international expertise can be helpful, including cross-national, peer-to-peer learning. International experience has stressed the importance of linking TJ to actions that can be transformative for women; they stress that guarantees of nonrecurrence should consider including:

- › **Reforms of justice processes** that make it easier for women to file criminal complaints, serve as witnesses, and claim compensation for SGBV from compensation funds (among other things)
- › **Reforms of family and inheritance laws**—and especially ensuring that reparations programs do not reproduce the unfairness of local systems
- › **Enactment and enforcement of laws against SGBV**, where they are weak or nonexistent
- › **Constitutional reforms** to guarantee women's right to participate, including steps to reduce gender gaps in the political system
- › **Official apologies** to women victims and public acknowledgement of the contributions and specific needs of women



LEARNING EXAMPLE

When **Moroccan** human rights and victim organizations started mobilizing around a national TJ platform in the early 2000s, they invited women's organizations to participate in conferences and decision-making forums. By all accounts, however, participation of women's groups was insufficient to bring a "gender lens" to the process. When the **Equity and Reconciliation Commission (IER)** was established in 2004, it initially lacked a gender perspective, despite the fact that many direct victims of state violence—as well as indirect victims—were women. It was mainly through the leadership of the lone female commissioner, herself a victim, that gender was placed on the IER's agenda. Technical assistance from gender experts on TJ from an INGO was also critical to showing how violence may have different effects for women and men, which has implications for the design of reparations. After the IER, international support helped ensure that a gender perspective was integrated into the community reparations program: the EU (the main donor) insisted on it, and UNIFEM piloted community reparations projects focusing on women's needs. While participants agreed that more training would have been necessary to ensure that gender cut across all of the reparations projects supported, they emphasized that the EU and UNIFEM's support had a positive impact.



PRACTICAL STEPS

- › **Use the RFP strategically.** Donors can make a significant impact simply by signaling their commitment to gender sensitivity in their calls for proposals—integrating it fully into programs, rather than leaving it as an afterthought. Consider including gender as a crosscutting theme in **every** call for proposals (or general funding strategy) on TJ
- › **Support initiatives with a strong understanding of SGBV.** In funding gender-sensitive civil society actions, it is not enough to fund women's organizations—these may not always bring a "gender lens" to TJ. Rather, grantees should demonstrate a clear grasp of the issues, which might be addressed through two tests: 1) being able to articulate the harms experienced by women who are *indirect* victims of political violence and 2) articulating a truly gender-based approach that recognizes both male and female victims of sexual violence
- › **Incorporate capacity building and networking.** Since organizations dealing with sexual violence may be new in many countries (where sexual violence may be a taboo subject), it is important to ensure that capacity building and networking activities are built into grants
- › **Think holistically.** A combination of direct services, empowerment, and structural change may be necessary to change women's lives; on a smaller scale, keep in mind that to ensure women's participation, there may be a need for special provisions for child care and travel away from the family

3. Develop internal communication on TJ within governments

KEY FINDING: People working at embassies and within government agencies may not know what TJ is or which initiatives their colleagues or other organizations are funding or have funded in the past, which may result in internal confusion or even competition



LEARNING EXAMPLE

Most donor governments do not have policies on TJ, and a number of interviewees suggested that the existence of such a policy—a document, strategy, or unit that they could refer to—would have made their jobs a little bit easier. The most important exception to this state of affairs is the **Dealing with the Past Task Force in Switzerland's** Federal Department of Foreign Affairs. One Swiss embassy staffer in BiH described how the task force was a useful resource for models that might be adapted to the country context: “Since 2009, we have had an explicit TJ strategy, and since 2003 we have had programs focused exclusively on ‘dealing with the past.’ ...The fact of having a regional ‘dealing with the past’ advisor—not really because he knows the context here, but because he can suggest some mechanisms or approaches—facilitates the work of diplomats working on this portfolio.”

Funding for TJ initiatives cuts across donor categories (peacebuilding, rule of law, democracy, human rights, development), and it comes from embassies as well as multiple agencies, often with little internal coordination.

There is thus a need for a whole-of-government approach, with a clearly defined lead, to head off the potential for tension, confusion, and even possible competition between the branches of government providing funding—foreign ministries and headquarters, UN missions, legal services, and development cooperation agencies.

“Embassies struggle with institutional memory; people come and go.”—Donor in BiH

SUPPORT TO GENERAL TJ ACTIVITIES GLOBALLY, 2000 TO 2012



Source: TJ International Assistance Database, from OECD QWIDS data; excludes data on international tribunals (ICTY/ICTR)⁵

Decisions related to high-level TJ institutions like hybrid tribunals are often made in home offices, while civil society-related funding is done along separate tracks, sometimes through embassies or development agencies. Decision-making in each of these cases may be fundamentally different in timing, priorities, planning, frameworks, and length of support. At the same time, general funding reductions have decreased the pool of existing funds, making internal coordination on TJ even more important to avoid one-off projects that are unlikely to foster social change.



PRACTICAL STEPS

- › **Create a TJ focal point.** At a minimum, each donor government should have a TJ focal point—one person or unit with a global view of TJ-related funding by development agencies, embassies, and ministries of foreign affairs. Consider whether it would be useful to have a TJ focal point in each country or region with heavy TJ investment. Think about what kind of technical expertise this position might need (including nonlegal expertise), and where such a position would best fit organizationally in order to have an impact at various levels (embassy, foreign ministry, development agency, etc.)
- › **Maintain regular internal contact.** TJ focal points should consider scheduling periodic briefings or phone calls with relevant embassy, development, and foreign affairs personnel related to countries of intensive TJ activity
- › **Develop a TJ policy note and/or include it in development strategies.** If possible, governments should develop a policy note on TJ, similar to the note that the EU and AU are developing; moreover, consider including TJ as a part of the developmental goals for specific countries
- › **Give staff workload relief time to write handover notes before leaving post.** Embassy staff in particular should leave detailed handover notes on TJ funding choices for their successors

4. Plan for a long-term engagement

KEY FINDING: The strongest engagements with a TJ process have been those that foresee a long-term commitment and respond appropriately to evolving civil society needs

Overcoming cycles of conflict and atrocity, or building rights-respecting state institutions, takes time and may suffer political setbacks. TJ processes require long-term commitments: documentation of mass crimes needs to be gathered or reconstructed; trials for massive human rights violations take years to complete complex investigations; support for victims, especially those with lingering health and psychological effects, spans decades; reparations are sometimes multigenerational; victims take a long time to come forward; and judicial and social services often have to be (re)built.

In spite of these long-term needs, donor agendas, sometimes set in capitals, may shift and leave civil society actors without support at crucial moments, or the wrong type of support/funds at the wrong times. One-year funding cycles in particular are enemies of the sustainability and predictability that is needed to support long-term change. TJ road maps developed during national consultation processes should give at least a preliminary sense for how donors can offer relevant multiyear support. Moreover, TJ should be included in long-term development strategies.

Because TJ processes are multigenerational and progress can slow or face reversals, “donor fatigue” frequently sets in. There are cases when donors have withdrawn all TJ funding—to both state and civil society actors—when the state shows a lack of commitment. This, however, is precisely the moment when civil society action is often most critical to keep pressure on the state to fulfill its responsibilities.

“No one is interested in this anymore. Not the donors, not the international community, and definitely not the government here. It’s been twenty years since the war, they think, ‘How long can trauma last for?’ They don’t realize that the legacy of violence lasts a long time, and it leaves its impact everywhere in people’s lives.”—Civil society actor in BiH



LEARNING EXAMPLE

The GIZ network’s Civil Peace Service (CPS) was seen by civil society actors in **Cambodia** as leading best practice: a full-time CPS coordinator with a dedicated ten-year position provided support to several CPS advisors, who were themselves placed in major NGOs conducting TJ activities for periods of up to several years each. The advisors ranged from psychologists to lawyers to organizational development specialists, and they were chosen through a participatory process between GIZ and the NGO. CPS’s TJ strategy, which includes a wide range of TJ initiatives and engagement both with state and civil society actors, was developed together with its local partners; one of the CPS coordinator’s tasks was to coordinate their work. The infusion of the CPS advisors, together with a small adaptable grant that allowed for flexible programming, enabled the CSOs to build local capacity in management and organizational development, proposal writing, and fundraising. In the case of a developing country such as Cambodia, this intensive approach was needed to help build the capacity of CSOs and to increase their sustainability.



PRACTICAL STEPS

- › **Make funds ODA compliant.** Long-term support may require large budgets, so engaging the relevant development agency and ensuring that funds are ODA compliant may help unlock funds from countries trying to meet their ODA targets
- › **Focus on core support.** Consider providing core support that spans several years rather than yearly project support
- › **Slow and steady is preferable to funding peaks and crashes.** Lower levels of continuous funding are preferable generally to large short-term spikes followed by troughs
- › **Maintain support in low periods.** Continue support to civil society actors even when—perhaps especially when—frustrations are high with the state’s commitment to TJ; in those moments, civil society mobilization on TJ is critical
- › **Build CSO capacity.** Make organizational capacity building a part of funding priorities

5. Invest in data for evidence and indicators

KEY FINDING: There are few instances of donors using baseline studies or indicators to assess how well states are meeting their obligations on TJ, to judge whether civil society actors are playing positive social roles, or to understand how well TJ is meeting the needs of victim groups

LEARNING EXAMPLE

In 2013, **UN Women** began to develop two TJ indicators related to the implementation of Security Council Resolution 1325, to understand how truth commissions and reparations programs in particular were meeting the needs of women victims. For the truth commission indicator—“Extent to which Truth and Reconciliation Commissions include provisions to address the rights and participation of women and girls”—a scorecard was developed to assess how well a truth commission’s norms and guidance, institutional structure, activities, and outputs were designed to take women victims into account. For the reparations indicator—“Percentage of benefits from reparations programmes received by women and girls”—a basket of indicators was developed to assess the degree to which reparations were designed to address the specific harms to women and challenges faced in accessing reparations. While a general lack of administrative data on TJ presents significant challenges for measuring progress against this indicator, the methodologies developed provide a basis for dialogue on how to populate these types of measures.

TJ actors lack data—or easy access to what little data exists. It would be useful, for example, to understand victims’ (and others’) perceptions of the state and of justice *before* a TJ process begins, to track changes in perceptions as a TJ process unfolds.

One reason for this gap, however, is that data sets are expensive to produce: they require teams of researchers in the field to interview hundreds of people. They can also present risks to the researchers conducting the survey, especially in conflict and post-conflict contexts. Civil society groups may be populated by lawyers and activists, who may lack the social scientific skills to do them well.

“[Our] donor roundtable...really articulated donors’ dilemmas when it comes to funding... transitional justice processes... The biggest is demonstrating impact—but also the fact that they are short-term project cycles which funders are tied to, which makes it difficult especially to show [that] impact.”—Civil society actor in Uganda

There are instances of surveys to assess victim perspectives on justice in Uganda, Democratic Republic of Congo, Cambodia, Iraq, and elsewhere. It is not clear that the results have been used effectively by donors or other TJ actors, despite the surveys being conducted by credible social scientists. Follow-up surveys to assess changes over time are rare. A rare exception is Cambodia, where GIZ and other donors funded a baseline survey in 2008 and a follow-up survey in 2010 (to assess change after the first trial at the ECCC).

Generating data and evidence requires commitment specifically from donors, and developing standardized assessment tools can be a difficult collective process. If donors invest sufficient resources in producing data—and develop a culture of *using* it—the result would likely be more responsive and relevant programming.

PRACTICAL STEPS

- › **Invest in population surveys throughout a process.** On the country level, invest in population surveys before the start of a TJ process, and then follow through with periodic surveys as a process unfolds; ensure that these surveys are developed through partnerships between local actors, social scientists, and TJ specialists
- › **Invest in baseline data.** On the project level, invest money in meaningful baseline studies for longer-term civil society projects; ensure that these studies are conducted in partnership with people who have relevant social scientific skills and that adequate funding exists
- › **Use TJ road maps as guidelines.** On the country level, track the progress of a TJ process against the road maps set out through national dialogues, policies, or strategies on TJ: Are states making good on their promises to support specific TJ initiatives? Are they progressing in a timely way?

“I would have found it very helpful if there had been some kind of guidance document on our TJ framework when I came to this country.”—Donor in BiH

SECTION 2: FUNDING STRATEGIES

1. Support a strategy, not a project
2. Put victims and vulnerable groups at the center
3. Encourage cooperation among diverse civil society actors
4. Donor solidarity with grantees can be as important as funding

1. Support a strategy, not a project

KEY FINDING: Donors have a tendency to support individual projects that may not always feed into broader strategies for development, peace, or justice; this behavior can incentivize competition and fragmentation rather than cooperation and solidarity among civil society actors



LEARNING EXAMPLE

The **community reparations program in Morocco** is unique for several reasons: it was one of the most comprehensive programs to address reparations not to individual victims, but to affected communities; it integrated a development angle into its work by supporting income-generating projects for these communities; and a significant proportion of its funding came from a single donor, the EU. However, one way in which it was much like a lot of TJ funding was in its focus on one-off projects that may have lacked means for sustainability. Indeed, like many donor programs, it was run through an individualized RFP process, in which local organizations competed against one another for access to reparation funds. The program has much to offer other countries considering community reparations. However, the individualized project and cumbersome management approaches should be reconsidered. Why? More than one civil society participant in the program said that, ironically, the most significant result of their projects was not their social impact, but that they learned how to manage an EU grant.

TJ is not just about state responsibility; it is also about civic engagement. TJ is a social and political process involving a wide variety of actors, whose roles may change over time. International guidance on TJ always emphasizes the key role of civil society actors—and for good reason: it is civil society that must work both to assist the state in its TJ process and also to keep the pressure on when there are political setbacks.

In this regard, a lack of core support is detrimental to civil society's independence. When donors support projects rather than a strategy (or strategies), they incentivize civil society actors to focus on one-off actions and deliverables: completing tasks and spending down funds, rather than mobilizing for social change. They also incentivize competition between civil society actors, which may have the unintended consequence of reinforcing fragmentation and mistrust that is a remnant of the conflict or authoritarian period. RFP processes may unintentionally feed this dynamic, as they are naturally competitive processes that pit organizations against one another in a limited funding “marketplace.”

“This goes back to the issue of core funding. Because if you give them core funding, it gives them to flexibility to pursue the issues that are important to them, rather than having to deliver project results related to our agendas.”
—Donor in BiH

The focus on projects over strategy is a key challenge for donors—one they recognize themselves, as they struggle to work within short-term funding cycles, and often have no idea what their budgets may be from year to year. Since most governments do not have policies or guidance on TJ, it usually gets rolled into funding baskets on development, human rights, rule of law, or peacebuilding. While this is not necessarily a bad thing, since TJ is related to these broader issues, TJ also needs special attention as a distinct social process.

Finally, pooling funds may be one way for donors to contribute to more strategic support to TJ—although pools created specifically for TJ may be better placed to achieve positive results than larger pools covering a range of donor priorities (which may shift, even over the short-term). An illustration of these differences concerns pooled funds in Guatemala and Uganda.

In 2010, a UNDP-administered fund called PAJUST (Transitional Justice Accompaniment Program) was created in Guatemala. PAJUST represents a five-year commitment, with financing provided by USAID, Sweden, and the Netherlands totaling nearly \$21.5 million. Representatives of donor governments explained the

emergence of PAJUST to channel TJ funding as the result of three main factors. First, decreases in funding for international missions and the contraction of in-country staff in the late 2000s meant that embassies no longer had the human resources to administer their own aid programs. Second, international mission officials realized that, in some cases, they were duplicating efforts because of a lack of communication. Finally, channeling funds through the UNDP and PAJUST has allowed donor governments to create some distance between themselves and TJ efforts, which have become more politically charged over the past several years, while still supporting important TJ work.

In Uganda, donors also created a pooled fund called the Democratic Governance Facility (DGF) in 2012. The fund is not dedicated to TJ, although TJ was included under one of DGF's three pillars, and its funding supported ongoing efforts to assist the government and civil society actors in developing a draft national TJ policy, among other things. In mid-2014, however, the DGF identified new areas of donor engagement, and TJ was not among them, owing to lack of progress on TJ by the Ugandan government. Although this decision only impacted on new partnerships, not existing ones, the decision was an unexpected one for some civil society organizations. As of January 2015, following some headway in the pursuit of LRA perpetrators, the DGF has signaled the continuing importance of TJ by identifying two new implementing partners. DGF is an important model for other complex environments, and there are advantages to including TJ as part of a wider funding strategy on governance. In deciding on how to best pool funds for TJ, donors should consider the advantages and disadvantages of these two models—PAJUST (dedicated pooled fund for TJ) and DGF (TJ as part of larger pooled fund)—for the particular country context.

“I don’t think many donors have priorities or a strategy about TJ.”—Civil society actor in Uganda.



LEARNING EXAMPLE

UNDP's **PAJUST** has a specific strategy to support state institutions in **Guatemala** as they comply with their obligations to armed conflict victims under international law and civil society organizations that advocate on victims' behalf. This multifaceted and strategic approach to TJ funding recognizes the important roles that civil society actors play and ensures that money flows to their most critical activities. PAJUST programming is oriented around TJ's key measures: truth, reparations, criminal justice, and guarantees of nonrecurrence. A fifth measure, "articulation," refers to efforts to promote greater cooperation and networks between state and civil society actors. The civil society project that has garnered the most PAJUST support is an NGO that exhumes bodies from mass graves to identify and return the remains to their families (an ongoing issue even decades after the conflict). In this case, the NGO is conducting an important TJ effort that is parallel to the state—unearthing remains after a conflict is a task that the state is usually responsible for undertaking.



PRACTICAL STEPS

- › **Develop a brief (2- to 3-page) concept note or country strategy on TJ, and revise it periodically.** While there may be little time for such exercises, there can be a clear benefit in terms of “value for money” if donors have some sense of their own goals and strategy for TJ. Donors ask their grantees to articulate goals and strategies—why not do the same? Depending on the context, the task could be led by embassies or by a TJ focal point, for example
- › **Participate in pooled funds dedicated to TJ.** Rather than “going it alone” with a concept note or country strategy, consider supporting a common strategy developed by a trusted multilateral partner
- › **Support shared platforms for civil society actions.** Support joint actions, such as developing a common civil society strategy or platform; use the strategy as a road map for guiding funding
- › **Support process over products.** Ensure that proposals and budgets focus sufficient attention on creative social engagement processes for project deliverables like books, pamphlets, and films; products without an audience are not very strategic investments
- › **Reconsider the design of RFP processes.** When RFP processes are used, take care to ensure that the design is more inclusive than it is exclusive. For example: take steps to circulate RFPs widely in the appropriate languages and media; require CSOs to submit proposals as partners; and support networking and peer-to-peer learning activities

2. Put victims and vulnerable groups at the center

KEY FINDING: The needs of victims—usually among the most vulnerable and marginalized people in a country—may remain invisible or may fit uneasily into donor paradigms; indeed, donor approaches to TJ often focus on measures like prosecutions that primarily focus on perpetrators rather than victims

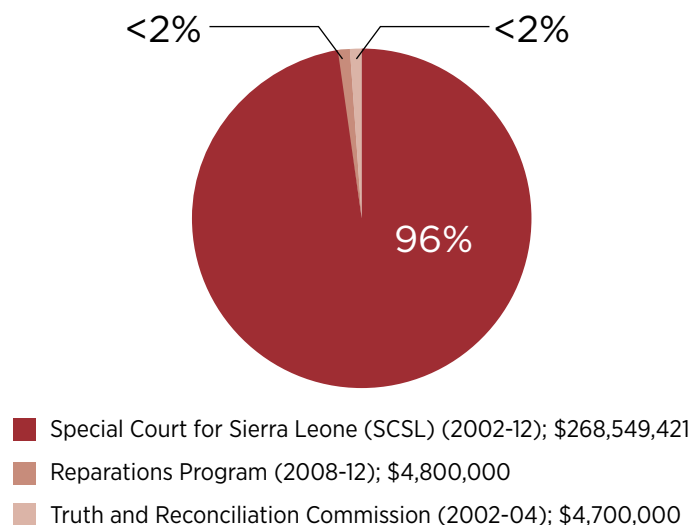


LEARNING EXAMPLE

In the shadow of the ICTY and the general focus on perpetrators in the **former Yugoslavia, the International Commission on Missing Persons (ICMP)** began a concerted effort in the late 1990s to support collaboration between the family associations that exist across the many identity and geographic divides of the war. This has grown over a decade's work into the Regional Coordination of Family Associations of Missing Persons from the Former Yugoslavia, representing twenty-six family associations from across the region. This network has undergone considerable evolution and internal trust building to become a shared platform (though an extremely fragile one) that seems to be successfully pushing regional governments to adopt a common platform regarding the missing, and it has contributed to cooperation between state institutions working on the issue. The ICMP played a key role as a facilitator bringing the various actors to the table and helping them develop their common strategy, as well as functioning as an intermediary when things went awry. While the Regional Coordination has the potential to be a significant moral actor on the issue of the missing in the region, to date its potential remains largely underexploited partly because there is very limited funding to support its development and much-needed capacity building.

Supporting the agency of people whose fundamental rights have been violated and need to be reaffirmed is a critical need in a transition and a core principle of TJ. Yet an overwhelming proportion of TJ funding goes to support criminal prosecutions, which focus mainly on perpetrators. While prosecutions are important to many victims, they are not the only things that matter. Lopsided resourcing especially affects the support available to victims, survivors, and vulnerable groups, who are almost never the interlocutors for donors. Instead, donors may rely on professional NGOs that can speak donor “language” and are usually based in the capitals. By engaging with vulnerable groups, including minorities and indigenous peoples, donors can contribute to their participation in political processes by recognizing them as legitimate actors (in countries where they may be very marginalized). Donors can also help them build capacity to successfully raise funds for their work.

TJ FUNDING IN SIERRA LEONE, 2002 TO 2012



Sources: Wierda and Triolo, 125; TJ International Assistance Database; Hayner, 270.⁶

NGOs providing direct legal, psychosocial, or medical services to victims and survivors fill a critical gap in contexts where governments are usually unable or unwilling to offer such support. Despite the urgency of meeting the most basic needs of victims, survivors, and vulnerable groups, in most cases these organizations are few in number and woefully underfunded. Their funding may taper off when donor fatigue sets in—even though medical and psychological needs are life-long for some victims.

There is a perception that many professional NGOs conducting advocacy, research, or technical assistance use victim groups for “extractive” purposes, without building the capacity of or real relationships with those groups. But this is a complicated, context-sensitive set of relationships. For example, sometimes victims’ interests are more likely to be pushed with state actors if victims

actually populate and lead professional, national human rights organizations—as they do in Morocco—rather than simply being “represented” by these organizations. For this to happen, however, long-term support ought to be given to developing victims and vulnerable groups as legitimate actors in their own right.

Attention also needs to be given to whether or not civil society networks link to actors in positions of power: for example, women’s or youth organizations may have connections to one another, but not to political decision-makers. They will therefore lack recognition and the ability to influence. Well-targeted capacity- and relationship-building and lobbying training is likely to be very useful.

\$100,000 in donor money in Sierra Leone =

Reparations for **1,250** war victims

Yearly salary for **1** prosecuting attorney at SCSL

Sources: IOM, “Sierra Leone Victims Receive Compensation”; Cassese, “Report on the SCSL,” 58.⁷

In the end, what is important is to strike a balance and to ensure that victims are not left by the wayside in donor funding or engagement.

“Last year we had a meeting with a UN human rights organization in New York. They showed us a list of NGOs receiving their funding. Many NGOs on that list were ‘assisting us,’ but that was the first I had heard of them.”—Victim and survivor representative in BiH



LEARNING EXAMPLE

UNDP in Guatemala holds regional meetings with state and civil society partners in the rural, largely indigenous departments of Huehuetenango, Quiché, Alta Verapaz, and Baja Verapaz to discuss activities, receive feedback, and better understand the climate for TJ through the local organizations it supports. Even though UNDP has a rather extensive consultation process with its existing civil society and state partners, it still faces the same challenge that many donors face: its funding standards and practices may make it more difficult to include less experienced organizations that are seeking support. As one international official explained with respect to the funding climate in general, “Unfortunately, local indigenous organizations that don’t meet the criteria probably don’t have a chance. There needs to be a capacity to administer the funds.” Donor representatives again pointed to micro-grant programs as well as local legal associations and psychosocial care organizations as avenues through which support reaches the most rural zones where organizational capacities may be weak. UNDP’s PAJUST, for its part, maintains a mix of direct funding to local indigenous groups as well funding to larger organizations that work with those that may not qualify.

⇒ PRACTICAL STEPS

- › **Engage with victim, survivor, and vulnerable groups.** Embassy staff should develop relationships with victim and vulnerable groups: meet with them, ask them what they need, and offer feedback on their proposals, even if the proposals are rejected—but take care not to put people at additional risk
- › **Ensure balanced support that does not focus solely on perpetrators.** Consider supporting reparations programs for victims alongside other TJ measures, and plan for these resources at the earliest discussion of a TJ process
- › **Build capacity and broaden networks.** Integrate organizational capacity building and networking activities into grants to victim organizations; support networking events that bring these groups into contact with other types of actors and also helps to build organizational capacity; ensure that funding and networks include groups outside of the capital
- › **Strengthen collaboration between support NGOs.** Support for victims usually requires multiple channels: legal assistance, medical assistance, psychosocial assistance, witness support, fostering victim organizations/representation, etc. Therefore, donors should consider ways to support collaboration across these types of organizations, or at least coordinate with other donors to ensure that victims’ needs are being met through a variety of donor measures. One idea is to sponsor periodic national meetings that bring these groups together for networking
- › **In a tough TJ context, support psychosocial and medical NGOs.** If the political context is too sensitive for TJ, then at a minimum channel support to NGOs that provide long-term medical and psychosocial support to victims

3. Encourage cooperation among diverse civil society actors

KEY FINDING: Strong civil society actors create and leverage their national and international networks to achieve change. Yet human rights actors may lack robust networks with social actors outside the human rights NGO sphere, including youth actors, which limits their ability to have a broader social impact



LEARNING EXAMPLE

The community reparations program in Morocco funded a number of interesting projects run by unlikely TJ actors. In Casablanca, it supported a local organization devoted to preserving the city's architectural heritage—with no connection to TJ. The organization used its position as a cultural actor to create innovative initiatives to catalyze public memory in Hay Mohammadi, a neighborhood that was a center of repression and the site of one of Morocco's most notorious prisons, *Derb Moulay Chérif*. It developed a process for creating a map of important sites of memory in the neighborhood that sought to promote debate among people who otherwise may not have been involved in the issue of TJ: "We organized four meetings with different groups: young people, women, etc., and said, 'It's up to you to designate twenty buildings.' All of a sudden they started to create a logic and a debate." It also produced a documentary film, *'An al Hay* [About the Hay Mohammadi], that took an inclusive approach—interviewing victims of the regime in addition to others—to contextualize repression in the longer social and political history of the neighborhood.

TJ is a social process that requires more than the state and a small group of human rights NGOs to be successful; a wide range of social actors need to be engaged for sustainable results. Yet international assistance to TJ tends to fund a standard list of "professional" NGO activities like workshops, trainings, facilitation, and report-writing or service provision that encourage human rights actors to build relationships primarily with other like-minded NGOs. This comes at the expense of investing in (perhaps political) activities to build a social movement, like community-based outreach and mobilization, which requires building bridges with other social actors, such as religious leaders or those working in the media.

Building sustainable networks and social capital **across** borders and social sectors (not just NGOs) is critical. On the international level, successful civil society actors on TJ often have links with international solidarity networks—whether these are human rights INGOs, transnational activist/political movements, religious actors like the Catholic or Anglican church, and so forth. These networks are highly important in countries where civil society is repressed and under threat, as national and international actors can work together to keep international pressure on the local government. They remain important in a transitional period, too, connecting national actors to peers in other countries with experience with TJ to share lessons learned.

On the national level, in many cases human rights and victim organizations seem to be rather isolated. Many human rights organizations have networks mainly with other human rights NGOs. In some cases, these organizations and their professionalized staff might have tenuous links with victims or victim groups. Without creative coalitions that cut across social and professional boundaries, sustained social change is difficult to achieve. In Uganda, one donor expressed dissatisfaction with the fact that they did not see people "in the streets" advocating for TJ—although doing so in Uganda might be dangerous, given the climate for NGOs.

"This year's public outcry [in February 2014] was really interesting because it was not driven by the NGOs we work with. They weren't there. That does not imply that the NGOs we work with are bad...it seems like two different worlds...the protests have been an interesting indication of their limitations."
—Donor in BiH

In recent years, countries like BiH and Morocco have seen significant social movements, including youth-led movements, that are relatively (or completely) disconnected from TJ and TJ actors. Indeed, in general, relationships between human rights NGOs and youth actors remain strikingly weak, creating gaps in sustainability and legitimacy over time.

Donors can encourage this cross-sectoral collaboration in their funding, but should keep in mind the limits of international influence. In particular, our research found no evidence of sustainable networks that were pure creations of donor funding. Instead of trying to create networks on TJ from scratch, a more sound approach is to support existing and emerging networks already working on TJ-related issues, which are more likely to have deep roots (and legitimacy) in communities.

“We are all competing, in a way. We have networks, but struggle in making those networks effective. It is hard to get timely cooperation.”—Civil society actor in BiH



LEARNING EXAMPLE

The benefits of engaged and **collaborative relationships between donors and grantees** are clear. In this regard, foundations like Mott Foundation, Open Society Foundation (OSF), Swedish International Development Cooperation Agency (Sida), and the National Endowment for Democracy (NED) model best practice, and are considered by grantees to have collaborative, engaging and trusting relationships with their grantees. The importance of this approach was highlighted by one grantee organization in BiH. In 2012, OSF held a large meeting with its grantees working on sexual violence to talk about strategy and cooperation. This was considered important and valuable because it prevented duplication of work, and enhanced networks and collaboration, which ultimately strengthened their shared goal and their capacity to push for change in a climate where the state is not fulfilling its functions.



PRACTICAL STEPS

- › **Develop incentives for cooperation.** Use funding models that incentivize or even require cooperation between local civil society actors (such as joint proposals), rather individualized models that foster competition for scarce funds
- › **Look beyond the usual grantees.** Seek out new and unlikely local civil society actors on TJ; set aside a proportion of TJ funding for other organizations, rather than the usual suspects
- › **Invest in existing and issue-based networks.** Support actions that foster existing or emerging networks around issues relevant to local communities (missing persons, for example), rather than trying to “invent” TJ networks for which there may not be a clear constituency
- › **Focus on international networks and peer-to-peer links.** Support programs that enhance local civil society links with relevant regional/international networks; this may include supporting programs for transnational, peer-to-peer exchange on TJ, where people from other countries advise local civil society actors on TJ processes
- › **Support neutral brokers.** In divided contexts, support neutral brokers (often international actors) to foster networks among NGOs, victim organizations, etc.

4. Donor solidarity with grantees can be as important as funding

KEY FINDING: Civil society actors often value the political pressure that other governments put on their own government to implement TJ measures, perhaps as much as or more than they value funding; such solidarity often gives a powerful boost to civil society strategies advocating for institutional change



LEARNING EXAMPLE

When the **state court in Bosnia and Herzegovina** adopted a procedure to make anonymous the names of people convicted of war crimes as well as the locations of those crimes, this act made it very difficult for the media to report meaningfully on court judgments to the public. A regional network of investigative journalists launched a petition and a social media campaign against the censorship decision. At the same time, they asked for the political support of their donors. The group of donors was part of a structured dialogue process with the country's judiciary, and through this mechanism was able to repeatedly present the issue to key national decision-makers as a blight on the country's broader reform process. The combination of the public campaign and pressure from donors likely contributed to the partial reversal of the court's approach to censorship.

Donors have a level and quality of access to national and regional policy-makers that civil society actors often do not have. They sometimes also have the power to offer or withhold incentives to a country's policymakers if they are out of step with human rights norms. During the recent human rights trials in Guatemala, for example, civil society representatives emphasized the symbolic political importance of having ambassadors from the U.S. and other embassies, along with the Commissioner of the International Commission against Impunity in Guatemala (CICIG), attend the hearings.

“Political support is critical even among those that don’t give us a penny. They make pronouncements, they offer accompaniment...and they help mediate with the Guatemalan government.”—Civil society actor in Guatemala.

In cases when donors are supporting civil society actors aiming to create policy- or national-level change, civil society actors would welcome donors galvanizing their own political and strategic resources to help change along. This could range from hosting events where civil society actors can network with policy-makers, teaching them how to lobby, using political leverage to create incentives for policy-makers to support civil society strategies, to expressing solidarity through appearances at criminal trials (for example) and therefore reinforcing civil society demands before the state. At the same time, donors should actively take the lead from civil society actors on the kind of political support needed, as well as the timing and visibility of such support.



PRACTICAL STEPS

- › **Commit to actions that show solidarity.** Consider specific actions—including symbolic ones, like observing a TJ process or celebrating the UN’s International Day for the Right to Truth—that embassy staff and other donor government actors can take to demonstrate support for TJ
- › **Build bridges between the state and civil society actors, when appropriate.** Consider taking specific actions that will build bridges between civil society and state actors; this may be as simple as organizing meetings and making introductions among actors working in similar issue areas
- › **Support integrated oversight bodies.** Support institutional decision-making and oversight structures for TJ—such as joint steering committees and structured dialogues—that integrate state and civil society actors; ensure that civil society has a meaningful “seat at the table”

“I don’t understand why there are not greater efforts to engage a different set of stakeholders using different and more creative approaches. ...This [TJ] information should be taken to schools, churches, and markets.”—Donor in Uganda

SECTION 3: ADDITIONAL RESOURCES

1. Ideas for RFPs
2. Useful Resources on TJ

1. Ideas for RFPs

Because many people making funding decisions related to TJ may not be TJ “experts” (or may not even be comfortable with the term “TJ”), the suggestions below are intended to offer some guidance on the types of civil society strategies and activities on TJ that might be useful to fund. These suggestions can be used directly in RFPs or invited proposals, or as a resource to “check” proposals against once they have been received.

Please keep in mind that these suggestions are by no means exhaustive and also that they should be taken in conjunction with the practical steps described above. Critical among those practical steps are:

- › Understanding that TJ is a long-term, political process
- › Promoting a balanced TJ strategy that includes both perpetrator- and victim-centered approaches
- › Ensuring inclusion of victims, survivors, and other marginalized groups
- › Making gender a crosscutting issue
- › Taking steps to make RFP processes more inclusive of all civil society actors, not just professional CSOs



Before a TJ process starts, donors might seek proposals that...

Foster collective civil society participation in the development of a TJ policy or a national dialogue on TJ. Could require a joint application from a number of civil society partners

- ▶ Look for cooperation with social movements (youth, labor, etc.), as well as religious, media, and other cultural actors—not just human rights NGOs
- ▶ Try to enhance “linking” capital between national civil society actors and local communities, as well as groups that may be more marginal (women, indigenous peoples, minorities, victims, etc.)

Promote peer-to-peer learning with other countries that have experienced TJ by supporting study visits or the organization of an international workshop on TJ. Again, consideration should be made for ensuring that not only the “usual” national CSOs are represented, and the RFP could require a joint application among a diverse set of partners

- ▶ Consider the need for intensive capacity building on TJ, especially in contexts where civil society has been severely repressed and there may not as yet be clear leaders (or the capacity to take leadership roles) on TJ
- ▶ Ensure that resources are in place for vulnerable/marginalized groups to participate effectively. This may include child care (or reimbursement for it), per diems, and small funds for travel between regions and the capital

Support documentation efforts (usually undertaken by local NGOs) related to oral history, land deeds, statements that may be used for future criminal accountability processes, etc. Also, link existing documentation efforts with regional or international NGOs that can advise on international best practices, so that documentation can be readily used by a subsequent TJ measure initiative

Collect data, using social scientific techniques, that can be used to monitor a TJ process, including the degree to which a state is fulfilling its obligations as well as the perceptions of victim populations



While a TJ process is **ongoing**, donors might seek proposals that...

Monitor TJ processes, through joint action by a group of CSOs

Support community-based efforts as well as national-level efforts, sometimes in innovative fields like the arts, psychology, etc.

Communicate about TJ processes, through various types of media: radio, TV, social media, community forums, etc.—whatever may be most relevant to the context

Put in place public data, archives, and records-keeping systems that may be accessed by civil society actors later on, and build local capacity to administer and manage these systems

Link TJ initiatives to activism on other social issues, for example, poverty reduction, religious freedom, women’s rights, LGBTI rights, youth, etc.



When a TJ process is **finishing**, or is already finished, donors might seek proposals that focus on **nonrecurrence, including...**

Support collective civil society monitoring of the state’s progress on implementing recommendations from a truth commission, implementation of a reparations program, or similar

Support civil society initiatives to create both public and academic history, to “narrow the range of permissible lies” about past human rights violations

Engage schools, churches, media, and other social institutions to disseminate information and foster dialogue about the past

Promote programs that link historical memory and coming to terms with legacies of gross human rights abuses to citizen education efforts, from school age on up

2. Useful Resources on TJ

Guidance and norms on TJ

- › UN Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of nonrecurrence Web page, www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx
- › UN Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies* www.un.org/en/ga/search/view_doc.asp?symbol=S/2011/634
- › OHCHR, Rule of Law - Transitional Justice Web page, www2.ohchr.org/english/issues/rule_of_law/transjustice.htm
- › UN Rule of Law Web page, Transitional justice www.unrol.org/article.aspx?article_id=29
- › *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, www.un.org/Docs/asp/ws.asp?m=E/CN.4/2005/102/Add.1
- › *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of IHL and Serious Violations of IHL*, www.un.org/Docs/asp/ws.asp?m=A/RES/60/147

Donor approaches to TJ

- › DGF-Uganda Web page, www.dgf.ug/
- › GIZ Civil Peace Service-Cambodia Web page, giz-cambodia.com/civil-peace-service/
- › PAJUST Web page, www.gt.undp.org/content/guatemala/es/home/operations/projects/crisis_prevention_and_recovery/Pajust.html
- › Swiss Dealing with the Past Task Force Web page, www.eda.admin.ch/eda/en/home/foreign-policy/human-rights/peace/dealing-with-past.html

Gender and TJ

- › OHCHR, *Analytical study focusing on gender-based and sexual violence in relation to transitional justice*, ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/21
- › REDRESS, *Participation in TJ Processes by Survivors of Sexual- and Gender-Based Violence*, www.redress.org/downloads/publications/REDRESS%20Submission%2018%20March%202014.pdf
- › UN Women, *A Window of Opportunity: Making Transitional Justice Work for Women*, www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/10/06B-Making-Transitional-Justice-Work-for-Women.pdf
- › UN Women, *Reparations, Development, and Gender*, www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/10/06A-Development-Gender.pdf

Civil society and TJ

- › American Bar Association, *Community Participation in Transitional Justice: A Role for Participatory Research*, www.americanbar.org/content/dam/aba/directories/roli/misc/community_participation_in_transitional_justice_2014.authcheckdam.pdf
- › OHCHR, *Rule of Law Tools for Post-Conflict Societies: National Consultations on Transitional Justice*, www.unrol.org/article.aspx?article_id=74
- › Phuong Pham et al., *After the First Trial: A Population-Based Survey on Knowledge and Perception of Justice and the ECCC*, www.law.berkeley.edu/files/HRC/Publications_After-the-First-Trial_06-2011.pdf
- › UNDP, *Donors' Civil Society Strategies and Partnership Modalities*, www.undp.org/content/undp/en/home/librarypage/civil_society/donor-strategies-for-civil-societies/

Development and TJ

- › ICTJ, *Human Rights and Transitional Justice in the World Bank's 2011 World Development Report*, www.ictj.org/sites/default/files/ICTJ-Global-World-Development-Report-2011.pdf
- › Pablo de Greiff and Roger Duthie, *Transitional Justice and Development: Making Connections*, www.ssrc.org/workspace/images/crm/new_publication_3/%7B1ed88247-585f-de11-bd80-001cc477ec70%7D.pdf
- › Helena Sancho, *Using Transitional Justice to Promote Development: Sida Development Trends 2014*, www.sida.se/contentassets/3e28b323f8374010a577bdad7cb47593/using-transitional-justice-to-promote-development_3753.pdf

Endnotes

1 See UN Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*, S/2011/634* (October 12, 2011). For scholarly approaches, see (among others) Pablo de Greiff, "The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted," in Mark Gibney, ed., *The Age of Apology: Facing Up to the Past* (University of Pennsylvania Press, 2008); and David Crocker, "Civil Society and Transitional Justice" in Robert K. Fullinwider, ed., *Civil Society, Democracy, and Civic Renewal* (Rowman & Littlefield, 1999).

2 UNDP, "Donors' Civil Society Strategies and Partnership Modalities: A Resource Guide" (March 2012); available at www.undp.org/content/undp/en/home/librarypage/civil_society/donor-strategies-for-civil-societies.html.

3 This typology is drawn from David Crocker, "Civil Society and Transitional Justice" in Robert K. Fullinwider, ed., *Civil Society, Democracy, and Civic Renewal* (Rowman & Littlefield, 1999): 375–401; and David Backer, "Civil Society and Transitional Justice: Possibilities, Patterns and Prospects," *Journal of Human Rights* 2, no. 3 (2003): 297–313.

4 Data for the ECCC is from "ECCC Financial Outlook," June 30, 2012, available at www.eccc.gov.kh/sites/default/files/5-Financial%20Outlook%20-%2030%20June%202012.pdf. Data for civil society actors is from the TJ International Assistance Database, which is drawn from the OECD's Creditor Reporting System (CRS) data from 2000 to 2012, available at stats.oecd.org/qwids. Note that funds for international and hybrid tribunals often follow separate funding tracks to other development assistance, and thus are not always included in data reported to the OECD (this face has been taken to account in the data). Owing to gaps in the data, figures are indicative rather than exact.

5 Data is from the TJ International Assistance Database.

6 Data on the SCSL is from Marieke Wierda and Anthony Triolo, "Resources" in Luc Reyndams, Jan Wouters, and Cedric Ryngaert, *International Prosecutors* (Oxford University Press, 2012), 113–70. Data on the TRC is from Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity*, 2nd ed. (Routledge, 2010), Appendix 2, Chart 4. Data on the reparations program is from the TJ International Assistance Database.

7 Data on reparations per victim from IOM Web site, "Sierra Leone Victims Receive Compensation," available at www.iom.int/news/sierra-leone-victims-receive-compensation. Data on average salary for international prosecuting attorney from Antonio Cassese, "Report on the Special Court of Sierra Leone" (December 12, 2006), 58, available at www.rscsl.org/Documents/Cassese%20Report.pdf; and from UN salary band tables for professional staff at P4/P5 level.

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Center for Nonviolent Action
Center for Torture Victims
Civil Society Promotion Center
EU Delegation
Helsinki Committee for Human Rights in Republika Srpska
International Commission for Missing Persons (ICMP)
Missing Persons Institute (MPI)
Mothers of Srebrenica and Zepa Enclaves (Pokret Majke enklava Srebrenice i Zepe)
NED
Netherlands Embassy
Network for Peace Building (Mreža Mira)
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Cambodian Human Rights Action Committee (CHRAC)
Documentation Center-Cambodia (DC-Cam)
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European Union/CEC/EDF
French Embassy
French Ministry of Foreign Affairs
German Federal Ministry for Economic Cooperation and Development (BMZ)
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Human Rights Resource Center (former AIJI/EWC)
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Kdei Karuna
Netherlands MFA
New Zealand Embassy, Bangkok
OHCHR

Open Society Justice Initiative (OSJI)
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GUATEMALA

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Bufete Jurídico de Derechos Humanos
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Casamemoire
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EU Delegation
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Forum Marocain pour la Justice et la Vérité (FMVJ)
Human Rights Watch (HRW)
ICTJ (former staff)
Local Coordinating Committee of the Community Reparations Program for Hay Mohammadi (former staff)
Mediterranean Youth Council for Development
National Endowment for Democracy (NED)
Netherlands Embassy
Network of Development Associations of the Al Hoceima Region (RADRA)
Search for Common Ground
US Embassy

UGANDA

African Network for the Prevention and Protection of Child Abuse and Neglect (ANPPCAN)
African Youth Initiative Network (AYINET)
Aid Africa
Alliance for Peacebuilding (AfP)
Avocats Sans Frontières (ASF)
CARE
Center for Global Health and Peacebuilding
Center for Governance, Peace, and Security
Center for Reparations and Rehabilitation (CRR)
Child Voice International (CVI)
Community Action Project/Uganda Youth Coalition
Democratic Governance Facility (DGF)
Diakonia
Gideon Foundation
Human Rights Network Uganda (HURINET)
ICC in Uganda
ICC Trust Fund for Victims
ICTJ
Irish Embassy
Justice and Reconciliation Project (JRP)
Justice Law and Order Section (JLOS)
Ker Kai Acholi
MacArthur Foundation
Netherlands Development Cooperation
Northern Uganda Transitional Justice Working Group (NUTJWG)
OHCHR
Refugee Law Project (RLP)
Trust Africa
Uganda Fund
Uganda Victims Foundation (UVF)
Uganda Women's Action Program
UNDP
UN Women
Unam
US State Department



U.S. Department of State,
Bureau of Democracy,
Human Rights and Labor



public action research