

SECURITY IN TRANSITION:
AN INTERDISCIPLINARY
INVESTIGATION INTO THE
SECURITY GAP



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Civil Society Dialogue on Transitional Justice in East Africa and the Balkans

Report on a conference convened by LSE Security in Transition at the British
Institute in East Africa, Nairobi, funded by MacArthur Foundation and the
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Civil Society Dialogue on Transitional Justice in East Africa and the Balkans: Conference Report

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1. Introduction

Novel instruments of international justice and transitional justice have proliferated over the past two decades. In conflict-affected states, addressing serious human rights violations is seen as a precondition for promoting legitimate governance and human security. And yet, transitional justice is often discussed and pursued in a top-down manner at a significant distance from affected individuals and communities. In debates about the goals and modalities of transitional justice, there is a tendency to focus on the state and to neglect civil society.

An alternative approach starts from the insight that the impact of transitional justice depends to a large extent on the engagement of civil society with these processes and mechanisms. How civil society actors use, adapt, develop, and contest justice norms and structures is an important factor for the success or failure of such instruments in advancing their immediate objectives and broader social and political goals. These questions are particularly important in the Balkans and East Africa, two regions that have been marked by persistent

conflict and insecurity but also an array of justice interventions in recent decades.

In response to these challenges, LSE Security in Transition convened a Civil Society Dialogue on Transitional Justice in East Africa and the Balkans in May 2014 in Nairobi, hosted by the British Institute in East Africa and funded by MacArthur Foundation and the European Research Council.*

The conference brought together twenty activists working on accountability and justice for atrocity crimes from Kenya, Uganda and the former Yugoslavia. It provided an opportunity for civil society actors from the two global regions to engage in self-reflection and exchange of experiences and lessons, and for Kenyan and Ugandan activists to initiate a regional conversation on civil society strategies for transitional justice in East Africa.

* The conference was convened by Dr Iavor Rangelov, LSE, who runs the justice research stream of Security in Transition and leads the work on the Balkans for this project, jointly with Professor Chandra Sriram, UEL, and Dr Phil Clark, SOAS, who lead the project work on Kenya and Uganda, respectively. More information about the research aspect of this project is available [here](#).

This report summarizes some of the key issues and ideas that emerged from the civil society dialogue. It discusses the role of civil society actors in responding to ongoing human rights violations, triggering debates over justice in the public sphere, engaging with transitional justice processes and mechanisms, and creating autonomous spaces for debate and activism outside formal justice processes. The Kenya/Uganda dialogue conducted at the conference is also highlighted in the report.

2. Responding to ongoing human rights violations

Among a range of responses to ongoing human rights abuses, most participants identified documentation activities as a key contribution of civil society. Civil society is rarely well-prepared to document atrocities when they start to occur and it is not immune to the divisive effects of mass violence. Nevertheless, the efforts of civil society to document human rights violations are indispensable at such times because of their distinctive character and purposes.

There is inherent value in pursuing documentation activities independently from the state. Civil society fills gaps in documentation by focusing on groups neglected by the state and violations that may implicate the state. The Balkan participants discussed the importance of taking statements from victims and witnesses from different ethnic communities and regions as well as from women. Some of the East African

activists argued that civil society documentation may provide the basis for a more nuanced and objective analysis of the violence at a time of intense ethnic polarization and may help reduce contestation and denial.

A number of challenges were also identified in the course of the discussion. It was noted that in crisis situations, civil society actors often prioritize meeting immediate humanitarian needs, which means that they risk missing valuable opportunities for documentation work.

Regarding methodology, it was noted that the documentation produced by civil society groups does not always meet the evidentiary standards that are required in criminal prosecutions. Human rights organizations use diverse methodologies but the focus is usually on establishing the facts of specific abuses and violations. As a result, what is documented is the violence that people have experienced rather than their interpretations of the violence, even though the latter may be important for illuminating the causes and character of the conflict in which these violations were committed.

A set of concerns were also raised about the ability of civil society organizations to protect victims and witnesses, on the one hand, and to ensure the security of their own researchers and data, on the other. One of the lessons from past experience is the need for organizations to consider and mitigate such risks as early as possible.

Another lesson concerns the question what sort of documentation should be pursued when the violations are still ongoing. At such times it is difficult to anticipate the needs of future transitional justice processes; therefore, documenting as much and as widely as feasible may be the best approach.

The participants identified missed opportunities for collaboration with humanitarian agencies to conduct documentation activities at an early stage, for instance in Uganda's IDP camps. At the same time, they emphasized the important role that civil society documentation and involvement has played in a number of transitional justice mechanisms in both regions. Examples include the catalyzing effect of civil society documentation for prosecutions at the Yugoslav Tribunal, such as the *Foča* case for sexual violence, and the extensive contribution of Kenyan civil society actors to the work of the Waki Commission.

Reporting and publicizing ongoing human rights violations is also difficult for civil society groups, especially when the mainstream media are close to those responsible for the crimes. Engaging with small, independent media domestically and translating the collected material for the international media were identified by some of the participants as strategies that have worked in the past.

3. Civil society and public debate

Civil society plays a critical role in debates over justice in the public sphere but it doesn't speak with one voice. In fact, the conference participants emphasized division and contestation in relating the nature of the civil society debate.

The justice and accountability agenda promoted by human rights groups is often bitterly contested by other segments of civil society. In the case of the former Yugoslavia, for example, nationalist and religious actors have traditionally dominated the public conversation about war crimes. At the current juncture, however, participants noted that other groups in civil society may be offering an alternative approach. The initiative for a regional truth commission, RECOM, is attracting the support of many prominent artists from the post-Yugoslav states. They see RECOM as a continuation of the fight against indifference and the struggle to create a culture of remembrance, which have already informed much of their work in literature, film, theatre, and other arts.

The ability of civil society to shape public discussions of transitional justice depends to a large extent on the dynamic response and character of the state. Participants from both Kenya and Uganda related the shrinking space for their voices in the public sphere. Initially, groups such as Kenyans for Peace with Truth and Justice actively engaged with peace and justice processes and sought

to shape the public conversation. Since the electoral success of the Jubilee Coalition, whose leaders Uhuru Kenyatta and William Ruto face charges at the International Criminal Court (ICC), the machinery of the Kenyan state has been mobilized to attack such actors in the media and local communities as part of a broader campaign against accountability.

Ugandan participants conveyed a similar story. The priorities for civil society emerging from the Juba peace talks were to encourage inclusive debate about transitional justice, monitor justice processes and amplify the voices of victims. To do that, civil society has to be able to offer a free space for debate. And yet, the perception is that the space is shrinking by the day and the state is hijacking the process from civil society and the victims.

Different strategies for reclaiming public discourse were considered. Some participants argued that civil society should use social media more extensively and effectively. Others emphasized talking to outsiders and putting pressure on the state. An important theme emerging from that discussion is the need to engage multiple spheres – local, national and international. It was noted that civil society groups should strive to shape the international discourse and, at the same time, reach out locally to ensure that ordinary people understand and relate to transitional justice.

4. Interactions with justice processes and mechanisms

Participants explored the variety of ways in which civil society interacts with justice processes and mechanisms. International justice has been important in both regions. Civil society efforts in the Balkans have often been geared to support the work of the Yugoslav Tribunal (e.g., with documentation and witnesses) and to bring it closer to local constituencies (information and outreach). Civil society actors in Kenya and Uganda have played similar roles in relation to the ICC.

Such activities carry significant risks for local groups. Some of the Kenyan participants explained how in the current state-led backlash against the ICC, all civil society actors tend to be lumped together and become a target. The ICC has been less controversial for the Ugandan authorities as long as the focus is on prosecuting non-state actors. The situation is changing, however, as the Ugandan government has extended support to the ongoing campaign of Kenya and the Africa Union against the ICC. Moreover, when international justice fails to deliver, the frustration of victims and communities is often directed at the local groups and may inhibit other aspects of their work.

The polarizing effects of international justice, participants noted, should not be allowed to stifle the broader civil society struggle for justice. Civil society actors in both regions have been heavily involved with a range of other mechanisms: from

domestic criminal prosecutions and state responsibility cases to truth commissions and traditional justice. Some participants argued that what often drives victims and affected communities is the question of reparations: civil society must retain its ability for meaningful engagement with government and other actors on such issues in order to remain relevant for local communities.

Several participants drew attention to the globalized character of transitional justice, which shapes both the opportunities and constraints for civil society action. In particular, they highlighted the complex interactions between international and local processes and mechanisms in the justice arena. Navigating this complex terrain requires civil society groups to engage with multiple and, frequently, competing actors and agendas.

In fact, civil society is often the medium through which the international and local spheres interact and negotiate with each other. Ugandan participants, for instance, discussed their role in promoting compliance of traditional justice processes with international human rights standards. Balkan activists highlighted how civil society has helped associations of the families of the missing to engage with the International Commission for Missing Persons and campaign for the adoption of legislation on missing persons.

And yet, the ability of civil society to serve as a medium of interaction and negotiation in such ways is increasingly

called into question, especially in East Africa. There is a crackdown on civil society that takes different forms: from labelling it ‘evil society’ and denouncing human rights groups in the media as local agents of a neo-colonial agenda to pursuing legislative initiatives aimed at restricting the funding and operations of NGOs.

5. Bottom-up transitional justice

Discussions of transitional justice often start with the ‘toolbox’ of justice instruments and mechanisms. A great deal of civil society mobilization, however, occurs outside formal justice processes. Participants from both regions gave examples of such initiatives and explored the potential of civil society to provide autonomous space for debate and activism in the justice arena.

Several characteristics of ‘bottom-up’ transitional justice were identified in the discussion. The diversity of civil society really comes into focus when it is approached in this way. Beyond the advocacy and service provision NGOs, participants highlighted the important work of a broad range of civil society actors including social movements, transnational networks, cultural and religious institutions, journalists, artists and public intellectuals.

Another key feature concerns agency: the ability of those who are affected by the violence and abuse to appropriate the initiative and become actors in the process of addressing them. As one

activist put it, civil society enables people to be subjects rather than objects of transitional justice. Storytelling has been important in Uganda and it was noted how a women's agenda for redress was emerging organically from such processes. Participants also pointed out that in Kenya the effort to facilitate the self-organization of survivors and local groups across the country has been at the heart of the civil society approach.

What is striking about most bottom-up initiatives discussed by participants is their consultative character. The emphasis on consultation shows how deep is the preoccupation of civil society actors with the question of *process*, especially when they take control of the agenda and pursue activities outside formal justice structures. Participants from the Balkans underscored these dynamics in two ongoing regional civil society initiatives. The Women's Court for the Former Yugoslavia, which draws on a long tradition of people's tribunals, involves a consultative process that places women at the center and enables them to discuss and decide all aspects of the proceedings. The RECOM initiative has involved extensive consultations with civil society, victims and communities across the region, bringing into the conversation both supporters and critics of the idea.

Are bottom-up initiatives an alternative to conventional transitional justice? The participants expressed divergent views. For some, civil society offers a real alternative and the question becomes how to unlock its productive potential

and creativity. Others argued that bottom-up and top-down efforts should be seen as equally important and complementary, and that civil society actors need to work with formal structures and institutions.

Nevertheless, there was a shared understanding that civil society must provide a free and open space for debate and activism. Participants reiterated their concerns about the narrowing of that space in the current political environment, particularly in East Africa, but they also drew attention to internal challenges stemming from uneven power relations within civil society.

6. Kenya/Uganda dialogue

The conference provided an opportunity for activists from Kenya and Uganda to initiate a conversation about the role of civil society in transitional justice in the region. While acknowledging differences in the character of the conflict and legacies of abuse in their countries, they highlighted a number of shared challenges for civil society actors.

The repressive character of the state is a central concern. As one participant put it, political repression is the context of civil society work in the justice arena. Accountability is a particularly dangerous issue for activists and journalists, given the complicity of state actors in the commission of crimes. State repression takes different forms that include demonizing civil society groups in the media and accusing them of serving a

neo-colonial Western agenda; adopting legislation that limits media freedom and restricts NGO funding and operations; as well as monitoring and harassing individual activists at the local level. In fact, the need to think about the personal security of human rights defenders was a recurrent theme in the discussions.

Another issue concerns the role of international interventions in subverting transitional justice and creating a hostile environment for local civil society groups. Powerful international and domestic actors are converging around an agenda that prioritizes security and stability at the expense of human rights and democracy. Participants described how Kenya's incorporation in the War on Terror is enabling the government to challenge the ICC cases and evade scrutiny of ongoing abuses committed in counterterrorism operations. The US-backed campaign to hunt down Kony and the ensuing militarization appear to have similar effects in Uganda, squeezing out other approaches and issues related to justice.

Funding is another serious problem for civil society in the region. Some participants noted that service provision has always been more popular with donors and easier to fund than advocacy work. Others, however, suggested that funding for civil society groups is drying up because donors are less and less interested in transitional justice. As a result, civil society is becoming more internally competitive and donor-driven and there is a risk that important local priorities and initiatives may be left out.

Such developments are particularly worrying at a time when the state is trying to cut NGO funding from another direction.

Addressing these challenges is a daunting task. Nevertheless, participants explored a number of strategies for moving forward. Some emphasized online media and activism, suggesting that their potential is not fully harnessed by civil society. Others pointed out that there is currently an excessive preoccupation with perpetrators in the transitional justice arena, whereas victims and survivors are often neglected. Going forward, civil society actors should continue to engage with such groups and strive to amplify their voices; as one participant put it, to make the invisible visible.

Regionalism was another strategy explored in the discussion. Several participants pointed out that the problems facing civil society are increasingly regionalized. In its current form, regionalism is strengthening the power of domestic regimes. Citizens in one country are more likely to accept repression, participants noted, when citizens across the border are doing the same. Moreover, governments in the region are collaborating effectively in resisting accountability, as evident from Kenya's ability to mobilize the African Union against the ICC. One participant put it this way: States are using regionalization to oppress people but citizens are not using it to strengthen their own struggles.

Is regional cooperation a useful strategy for civil society in East Africa? Different forms and purposes of such cooperation were considered in the discussion. Some participants emphasized the benefits of cross-border solidarity, for example creating a regional Working Group to help activists think about strategies for survival and mutual support in the current environment. Others explored the potential of regional bottom-up initiatives to tackle substantive problems in transitional justice, such as the ongoing campaign of regional governments against accountability, or to enable civil society actors to engage more effectively with regional bodies in Africa.

7. Concluding remarks

By way of conclusion, participants offered reflections addressed at civil society, donors and other transitional justice actors.

Civil society actors need to think more deeply about their own distinctive approach and contribution to transitional justice. This may involve creating specific civil society mechanisms, such as documentation, but also developing broader civil society strategies for transitional justice. Among the range of actors engaged in the justice arena, civil society is best placed to engage with victims and amplify their voices, as well as to promote and mainstream a gender perspective across justice processes.

The message for donors was an appeal for patience and understanding. At a time when donor priorities are shifting away from transitional justice and focusing on quick results, it is easy to neglect the long-term benefits of pursuing justice initiatives. Moreover, few donors seem to appreciate the difficult environment in which civil society actors currently operate. Despite all these challenges civil society is doing a lot, especially at the grassroots, that should be supported.

Finally, participants from both regions emphasized the role of communication and dialogue. They argued for initiating an honest conversation between international and local actors involved in transitional justice and for pursuing sustained engagement and exchange within civil society.