

PREVENTING ATROCITIES: FIVE KEY PRIMERS



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COVER PHOTO: RUSSELL RAYMOND;
REMINDERS OF CIVIL WAR IN SOUTHERN
LEBANON.

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DISCLAIMER

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Introduction

Atrocity crimes – including genocide, war crimes, and crimes against humanity – which are marked by the large-scale and deliberate targeting of civilians, are violations that particularly offend the collective consciousness and are acts that countries around the globe have agreed to prevent and punish. Unfortunately, notwithstanding international treaty commitments, or the 2005 affirmations by heads of state of their “responsibility to protect” against these offenses, these crimes continue to happen all too often, both during and outside armed conflict.

The diverse circumstances that lead to atrocities are often rooted in grievances that escalate to drivers and immediate triggers of atrocity. Core grievances vary across societies and may include ethnic and religious divisions, resources and border disputes, income inequality, lack of access to justice, legacies of past conflicts, impunity, systematic inadequacy of government response, authoritarian or dictatorial government and the oppression or neglect of vulnerable communities. Unaddressed grievances that fester may escalate to become “drivers of atrocity” such as hate speech or particularly conspicuous cases of impunity.

Preventing atrocities is a complex and dynamic challenge particularly in societies marked by conflict, grievance, and distrust. Efforts by international actors, such as the United States Agency for International Development (USAID), to prevent atrocities can take many forms – ranging from long-term upstream prevention, to immediate crisis responses, to post-atrocity response. The five chapters presented in this toolkit (1) introduce foundational topics such as hate speech, early warning, documentation, transitional justice, justice sector interventions, and the role of national human rights institutions and paralegals; (2) provide valuable case studies and lessons learned for USAID missions; (3) and outline opportunities for future USAID atrocity prevention programming. Together, the topics discussed in this toolkit are intended to help raise awareness among USAID staff of these disciplines and their vital linkages to atrocity prevention.

This toolkit was prepared by Freedom House, ABA ROLI, Global Rights, and Internews drawing upon their unique technical expertise to outline tools and approaches to support atrocity prevention. Each chapter presents a different critical aspect of atrocity prevention designed to inform the development of an Atrocity Prevention Toolkit for USAID field missions.

I. Hate Speech as Early Warning Monitoring, Intervention, and Mitigation

Hate speech – speech that incites or advocates hatred against an individual or group – has been used throughout history to mobilize people towards violence for political ends. The Nazi party used its tabloid and government radio to demonize Jews, preparing an environment in which six million people could be killed simply based on their identity. Sixty years later, Serbian president Slobodan Milosevic used radio and television to systematically spread fear among Serbs about the theoretical threat posed by neighboring Croats and Bosnian Muslims, “mobilizing the nation for what became a pre-emptive genocide. ¹” Croat and Bosnian Muslim ultranationalists similarly spread hate propaganda to mobilize their sides, creating a vicious three-way civil war. Around the same time in ethnically-polarized Rwanda, certain government and private radio, TV, and tabloids called minority Tutsis traitorous ‘cockroaches,’ branding Tutsis as part of a plot to overthrow the radical Hutu government. Mass killings began, with some media outlets serving as tools for recruiting and coordinating operations.²

In the current decade, hate speech also has led to violence in countries with different political systems and levels of development. When the 2007 Kenyan elections were disputed, partisan militias attacked rivals who themselves launched counter-attacks. Local FM radio and personal text messages inflamed the conflict by spreading

¹ Kemal Krspahic, *Prime Time Crime: Balkan Media in War and Peace* (Washington, DC: USIP Press Books, 2003), accessed July 31, 2014, and Kemal Kurspahic, “Bosnia: Words Translated Into Genocide,” accessed July 31, 2014.

² See, generally, Allan Thomson, ed., *The Media and the Rwanda Genocide*, accessed July 31, 2014.

rumors, such that 1,100 people died and nearly 500,000 people were displaced. During Kyrgyzstan’s 2010 political crisis, minority Uzbeks temporarily allied with northern Kyrgyz elites. Southern Kyrgyz rivals targeted Uzbeks with hate speech in print periodicals, unleashing violence that killed several hundred Uzbeks and displaced 400,000. In Burma, following its 2011 political liberalization, Buddhist chauvinists have demonized the Muslim minority through vitriolic anti-Muslim sermons distributed via DVDs. Facebook and other social media also spread misinformation about Muslims, such as false claims of a Muslim rape of a Buddhist woman, which has led to violence.³

I. HOW DO WE DEFINE HATE SPEECH?

As we look at how speech can lead to violence and what to do about it, we will use several terms. These include *hate speech*, *incitement*, and *dangerous speech* -- terms grounded in international law as well as widely discussed in academia and civil society.

Because there is a legal basis for these terms, there are corresponding legal obligations. The State has a fundamental obligation to prevent incitement to violence. However, this comes into tension with State obligations also to protect freedom of expression. One way to handle this tension has been to create specific definitions of different types of speech. **Hate speech**, as defined by the Council of Europe, covers all forms of expression which “spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.” **Incitement**, according to

³ Mizzima. July 21, 2014. “Rape claim that sparked Mandalay unrest was fabricated, says state media” accessed July 31, 2014.

Article 19 of the International Covenant on Civil and Political Rights, is “advocacy of hatred on prohibited grounds that constitute incitement to discrimination, hostility or violence.” A related term is **dangerous speech**. According to hate speech specialist Susan Benesch, this is an act of speech⁴ that has a reasonable chance of catalyzing or amplifying violence by one group against another, given the circumstances in which it was made or disseminated.

II. HOW CAN HATE SPEECH LEAD TO VIOLENCE?

These definitions help us identify what kind of speech to be concerned about and what to do about it. Hate speech by itself cannot cause violence. Other contextual factors are always in play. One determinant factor is the presence of political conflict, whether latent as in a transition situation or active during rebellion or civil war. The United Nations Special Advisers on the Prevention of Genocide and the Responsibility to Protect cite eight factors relevant to conditions where hate speech can lead to mass violence:⁵

- History of discrimination or human rights violations against a group.
- Lack of legislative protections, responsive judiciary, and independent media, or lack of access to them by groups.
- Presence of illegal arms or illegal armed elements.
- Motivation of leading actors; actions towards division on basis of ethnic, racial, religious, gender or national identity.
- Precipitating actions or factors, such as distribution of arms or decrees on language.

⁴ Speech includes any form of expression, including images such as cartoons, drawings, photographs, video, film, etc.

⁵ Office of the UN Special Adviser on the Prevention of Genocide, “Analysis Framework,” accessed July 31, 2014.

- Existence of genocidal acts, even if isolated, based on identity, such as killing, ethnic cleansing, pogroms, or denial of basic human needs.
- Evidence of intent “to destroy in whole or in part,” including gross violations of human rights, brutality, destruction of symbols, or targeted elimination.
- Triggering factors, such as elections, change of government, onset of armed hostilities, or natural disasters.

These factors need not all be present nor should this framework serve as a checklist. The National Intelligence Council has produced an internal US Government framework on atrocities. Other frameworks, such as USAID’s Conflict Assessment Framework and the NGO Fund for Peace’s Fragile States Index, provide additional insights on conditions enabling hate speech to lead to violence.

More specifically, the enabling environment for hate speech in media might include:

- Centralized control by political authorities.
- Punishment or limitation of existence or capacity of independent media through licensing, taxation, and control of availability of newsprint or broadcast spectrum.
- Direct or indirect ownership of media by political factions.
- Lack of public access to credible information, including government documentation.
- Lack of public access to a variety of views, including views produced external to the country.

III. WHAT CAN BE DONE TO ADDRESS HATE SPEECH WHILE PRESERVING FREE EXPRESSION?

Much can be done to address hate speech,

particularly when it is tracked and analyzed. This enables early warning and action in the face of potential violence, and creation of dossiers of evidence for post-violence prosecution of people who incited violence.

Below are some actions that seek to counter hate speech by increasing available information and fostering freedom of expression in polarized or restricted environments:

1. **Increase the number of independent media voices available.** This usually requires funding by external donors. It will be politically sensitive and likely resisted by the government.
2. **Raise awareness about what constitutes hate speech/dangerous speech, its impact on society, and the precedence for perpetrators to be indicted and prosecuted.** The International Criminal Tribunal for Rwanda and International Criminal Court cases on Kenya are two examples.
3. **Educate media workers** with programs such as those of media development NGO [Internews](#). This may include training for journalists to foster sensitivity for context and inclusivity of voices, as well as programs on data journalism that provide ground-truth accuracy to counter rumor.
4. **Support civil society organizations that fact-check media stories**, like [StopFake.org](#), a vital antidote to misinformation in Ukrainian media.
5. **Produce and disseminate information or messaging to counter hate speech.** Search for Common Ground has pioneered the use of video story-telling for peace and reconciliation. In Kenya's 2013 elections, [Sisi ni Amani Kenya](#) produced peace messaging and disseminated it as text messages via local, credible leaders—

including informal leaders, such as market women and taxi drivers.

6. **Use technology to create alternate platforms** when avenues are prohibited or threatened. When Slobodan Milosevic prevented traditional media from broadcasting information about pro-democracy protests in Serbia in 1996, independent Radio B92 went around the ban by going online with their news. Tech entrepreneurs are testing and deploying new circumvention tools constantly.

There are also more extreme options that governments – both of the country in which the conflict is occurring as well as external stakeholders – can take immediately to try to defuse an imminent crisis. However, these actions run the risk of setting adverse precedents. If used, they should be grounded in the rule of law or have the approval of national, regional or international mechanisms.

1. **Establish an inter-agency steering committee to mobilize governmental resources and foster awareness about hate speech.** Prior to its 2013 election, Kenya brought together officials from the Ministry of Communications, public prosecutor, and National Cohesion and Integration Commission. At weekly press conferences it identified and shamed those it felt were propagating hate speech, and reportedly developed dossiers for potential prosecution of individuals. (Unfortunately, the Steering Committee operated opaquely, without foundation in law, appeared to go after individual voices rather than officials, and appeared to have forced hate speech offline rather than end it.)
2. **Halt broadcasts temporarily.** Kenya did this in December 2007 when the winner of the presidential vote was still

undecided. Rather than ratchet down tensions, many observers have argued this further polarized parties and led to the conflict. This action should be a last resort, should be done in a non-arbitrary and non-partisan fashion, and should operate with transparency.

3. **Consider external broadcasts into the territory**, particularly when the sovereign government is unwilling or has lost ability to address hate speech. When independent news was shut down inside Serbia, the U.S. deployed FM transmitters to neighboring countries to broadcast Western news to Serbians.
4. **Block transmissions or destroy broadcast capacity.** To be credible, such action should have a legal basis and international support. The 1999 U.S. bombing of Radio Television Serbia was criticized internationally for its lack of proportionality as well as the precedent it set. By contrast, the lack of action – and legal justifications for avoiding doing so – by the U.S. and French in taking out Radio-Télévision Libre des Milles Collines (RTLM) transmitters in Rwanda in 1994 is seen as a grave failure.

IV. HOW CAN IT BE MONITORED?

A key component of addressing hate speech is to monitor its use, reach, effects, and the ways it is spread. This is where monitoring of media comes in, as it provides the early warning data to understand if and how hate speech is turning into dangerous speech.

USAID officers should be aware of the decisions that must be made when designing a media monitoring system. Both online and manual components usually are needed, as well as skilled staff to input data as well as analyze results.

Media monitoring is complex, requires sophisticated analysis, and therefore requires extensive training. All of these components require significant funding and time.

It is important to remember that the medium and platforms used for hate speech are not static. Where the Nazis used party and official newspapers, the Serbs used television, the Rwandans and Kenyans used popular talk shows and music programs, and radical Buddhists in Burma distribute DVDs or share videos on YouTube. In many cases, particularly when groups are preparing the social environment for violence, the language and topics may appear fairly innocuous or say what everyone is already feeling, and are thus unremarkable to many including governing authorities. Also, the spread of technology has contributed to the production of hate beyond borders; indeed, Kenyans in the Diaspora spread rumors on social media surrounding the 2007 violence, and radical Buddhists in Sri Lanka have been alleged to have produced content for their radical brethren in Burma.

1. **Identify the actors and/or events that should be tracked.** When monitoring actors, track not only what the key actors say themselves (primary data), but also what is said about them (secondary data) as a measure of their support.

	What to monitor?	When to monitor?	Why?	Possible actions
Actor-based monitoring	Identify and track key people: politicians, military leaders, journalists, bloggers	Ongoing	Know who is using speech or mentions of speech to incite violence	<ul style="list-style-type: none"> • Peaceful counter-messaging • Document for prosecution
Event-based monitoring	Track streams of information around key events such as elections	Weeks and months before and after key events	Understand correlations between events and violence	<ul style="list-style-type: none"> • Implement possible interventions depending on the threat level of the speech

2. **Decide which media to monitor.** Many types of media can be monitored: radio, print, TV, social media and Internet sources. The media landscape is changing, particularly in developing countries, so media monitoring systems must be able to adapt to shifts. For example, in Cote d'Ivoire and Zimbabwe, social and online media popularity is increasing rapidly, so these media must be built into any monitoring effort. On the other hand, while radio has great influence in the dissemination of messages of both violence and peace, many radio stations have no online presence. Monitoring systems therefore must include manual input components to capture that data. Importantly, the media most frequently used to disseminate hate speech may not be the most impactful. For example, Freedom House found in Cote d'Ivoire that print was most commonly used for hate speech, but the communication forms with most audience impact were radio, community infiltration by the army and militia gangs, and political bases/ meetings.

3. **Identify the language or languages to be tracked,** including local dialects.

4. **Identify the key words or phrases** that

are particularly relevant, including potentially “coded” messages. Be aware that some actors call for peace publicly, but use inciting language in private. Consider tracking efforts at reconciliation and tolerance as well.

5. **Create a country-specific analytical framework** to determine the type of speech (neutral, hate speech, or dangerous speech) as well as the level of threat it poses.

6. **Identify and prepare for conflict prevention activities** based on analysis of data.

V. Case studies

In 2013-2014, USAID funded a Dangerous Speech Project to create an early warning methodology using Internet and social media data on hate and dangerous speech in countries vulnerable to mass-scale violence. It was based on the premise that tracking speech will enable both early warning of potential violence and ways to limit violence by restricting the dangerousness of speech – all without curbing freedom of expression. Freedom House and Internews were two of the implementing partners on this project.

Freedom House

In 2013, Freedom House started its project by

bringing in Mediabadger, a small analytical firm, to do a scoping study using its own online search engine to identify incidents of violence and attempt trace the violence back to speech itself. A scoping study is a collection and review of preliminary data in order to identify trends and gaps. An event-based scoping study initially was done in Kenya, using key words to try to connect the event to the speech that preceded it. Freedom House and Mediabadger developed a set of words to search for, such as “vermin” or other words degrading groups of people, which the search engine captured and an analyst assessed for level of threat. While Freedom House and Mediabadger were not able to connect events to causal speech, they did identify many trends regarding speech in Kenya – including a surprising amount of peaceful counter-messaging.

Freedom House and Mediabadger then conducted two more scoping studies of Zimbabwe and Cote D’Ivoire, this time focusing on political actors, heads of military, and others. In these actor-based studies, key personalities were selected in each country and their online profiles mapped: their visible networks, what they posted and what others posted about them, a qualitative analysis of the kinds of content they generated or the responses they received, and an analysis of possible connections between their online activities and the broader political and security climate in each country. Data sets were generated based on a list of keywords and phrases compiled collaboratively by Freedom House and Mediabadger.

The initial scoping studies did not show direct causality between dangerous speech and instances of violence, most likely because other data points would be needed to do so. However, they did reveal the complexity of the issues involved in tracking dangerous speech as well as the resulting need for much greater funding to create a robust early warning system. Actor-based speech monitoring appeared to show the greatest promise.

Aspect of Speech	Sample Analytical Questions
Speaker and his/her influence over an audience	Does the speaker have power or influence over the audience? Is the speaker charismatic?
Susceptibility of the audience (listeners of hate speech statement)	Are they in fear of the speaker, or excessively deferential? Are they uneducated and misinformed and thus easily manipulated? Are they marginalized, poor or desperate?
Content of the speech	Is the content inflammatory, with hints or direct calls to violence against another group? Is the content offensive, for example describing the victims-to-be as other than human (e.g. as vermin, pests, insects or animals)?
Social and historical context of the speech	Are there underlying tensions between the groups? Are there prior examples of hate speech-driven violence against a group?
The means of spreading the speech	Was the message communicated via a convincing medium – especially one with no competing/contrasting views? Was the message repeated frequently, adding to its power?

Freedom House also undertook to create a dangerous speech monitoring methodology, using the format of its **Freedom of the Press** reports. They created a set of questions, each with guidance on how to score on a 1-100 scale. The methodology was fed by Susan Benesch’s work on different aspects of speech that can make it dangerous.

To finalize the methodology, Freedom House conducted meetings in Zimbabwe and Cote

d'Ivoire to get participants' views on what to track. In Cote d'Ivoire, Freedom House held a workshop with a group of CSOs, journalists, and members of the media regulatory authority. Through an interactive session using a sample blog to test the analytical process, participants provided feedback on both the clarity and relevance of the questions as well as the objectivity of the scoring. *Best practices in setting up a media monitoring methodology are found at the end of this chapter.*

Internews

In 2013, Internews sponsored media monitoring for hate speech in Kenya, Kyrgyzstan and Burma over several months. Given the unique historical situations presented by each country, it was decided not to use one methodology across the three countries. While this might have potential comparative value, it would also miss important local context. Further, in Kenya both entities implementing the monitoring had established methodologies, as had the organization in Kyrgyzstan. However, in Burma, given the limited number of CSOs focused on media, Internews not only had to develop a methodology, but essentially had to create a media monitoring unit from the ground up.

In Kenya, the groups monitored for the existence of hate speech surrounding two potential flashpoints: the International Criminal Court cases against the current Kenyan president and vice president and FM presenter, as well as the process of devolution of power established in the 2010 Constitution. One entity, the Citizen Watchdogs, monitored news and political talk shows on local radio in five communities which had been sites of violence in 2007. They did so using an innovative application for mobiles phones using software by OpenDataKit. Monitors in various locations would listen to a late-night talk show, key in basic data about the program and terms used, and transmit the data to a central

server at Internews offices in Nairobi. The second Kenya monitor, Umati, a project of Ushahidi, monitored for hate speech in the online space for months prior to the election—social media, blogs, and online comment sections of news sites – with a methodology incorporating Susan Benesch's Dangerous Speech framework. Umati developed an automated tool to screen for key terms. This reduced the intense physical and emotional demand on human monitors, as well as their expense. Umati released their results in a public event and set up a social media site to continue the discussion of findings online.

The Kyrgyzstan monitor, Network of Social Mediators Media Monitoring Group, had previously used a methodology to monitor media in southern Kyrgyzstan for inter-communal conflict for the National Endowment for Democracy. While the monitoring results were not publicly released due to local sensitivities, the substantive and procedural findings were incorporated into curricula for journalists at the School of Peacemaking and Media Technology in Central Asia.

In Burma, where media-related CSO capacity is low, Internews contracted a small, Yangon-based political and policy communications organization with significant training in democracy and governance. The Internews coordinator interviewed local cultural, religious and political leaders to inform the context and terms for the monitoring, then devised media monitoring forms and trained the team. Given the relative inexperience of the Yangon staff and the ongoing tensions in the country, the project created an 'audit' group based in Mandalay to check the primary team's work for bias. The results of the findings were released in briefings for select groups of media journalists and editors; diplomats, NGOs and donors; and community and government leaders.

VI. Lessons learned/best practices

Key findings related to the overall concept and dynamics of media monitoring include:

- Given its potential for tracking all manner of issues, media monitoring is **beneficial for a broad range of societies, but particularly conflict or post-conflict countries.**
- Media monitoring can track instances of incitement to violence; however, there is **not always a causal relationship between instances of incitement and acts of violence.**
- **Incitement in the media often follows rather than precedes instances of violence,** serving to ‘fan the flames.’ In Burma, people posted hate-filled comments on Facebook pages about various incidents that further inflamed the situation.
- Monitors have a sensitive role in alerting authorities when they find instances of incitement that could lead to violence. **Ethical guidelines are needed to ensure the proper balance between rights, particularly freedom of expression, and security.**
- **Benefits and challenges of local and external actors need to be carefully weighed.** Local actors know the context and language, which aids speed and accuracy of monitoring. Their involvement increases their ownership of the process and assuages sensitivity caused by outside monitoring. However, involvement of outsiders can be another tool for local activists (such as appeals to the Commission on Human Rights) and can also add credibility to the claim (such as engaging with local embassies and NGOs). International actors can help when the situation is too sensitive for local organizations safely to monitor.

- **Publicity has pros and cons.** While publicity about the monitoring and its findings can have social and governance benefits, in particularly sensitive conflict situations it might be advisable to avoid publicity.

Key findings related to specific needs, programming, and operationalizing include:

- **Addressing significant definitional challenges** in the field. There is not a universal definition of hate speech; it is highly context specific. Moreover, as indicated above, scholars such as Susan Benesch have differentiated speech based on intent and capacity. Codifying hate speech is a challenging undertaking and can be seen as a partisan act. Unlike the U.S., many states around the world prohibit such speech in whole or in part, while employing different definitions or thresholds. Kenya’s definition is codified in its 2008 National Cohesion and Integration Act. Yet despite significant public debate around hate speech in advance of the 2013 elections, questions about what qualified as hate speech and how to enforce it prevailed, with some political actors labeling partisan speech as hate.
- **Monitoring of media for incitement to violence can itself be seen as a provocative endeavor in countries in conflict.** While potentially useful to prevent violence, identifying entities that engage in incitement might lead to threats or attacks on the monitors. Therefore, consideration should be given to local sensitivities.
- **Media monitoring is complex, requires sophisticated analysis and therefore extensive training.** In societies in or emerging from conflict, there is often little indigenous capacity to undertake such complex work.

- **Media monitoring programs face the same challenges of other media development programs** including
 - Media literacy on the part of audiences, as well as journalists, i.e., ability to distinguish fact, opinion, sources
 - General organizational development including issues ranging from training to payroll and grants management
 - Limited number of local staff with the skills to undertake this work
 - Limited ability in English or other donor languages
 - Infrastructure limitations including availability and cost of connectivity and technology as well as a limited or intermittent power grid

Key findings related to overall media monitoring program and policy responses include:

- For most extreme cases, **develop standards for when government might intervene in situations of media incitement to violence.**
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- Given the effectiveness of regional examples in prompting change in countries, **develop norms on responses to hate speech that foster freedom of expression regionally and support exchange on media accountability and professionalism.**
- **Support research by civil society to identify who pays for bloggers, online commenters, and others who incite.** Internews Kenya produced a report on political ownership of media in advance of the 2013 elections that highlighted the links between owners of traditional media and political actors.
- Engage journalists, editors, publishers, their trade unions and associations to **establish codes of conduct on speech and incitement:** on professional and personal

responsibilities of journalists; reporting, editing and publicizing of stories; online comment sections.

- **Train journalists on news-gathering and professional standards to avoid sensationalism and counter spread of hate and intolerance in media.**
 - Using ‘data journalism’ approach to ground stories in facts and data, including documentation obtained under access to information laws
 - Using ‘conflict sensitive journalism’ approach to understand origins of conflict and broaden the views and sources in articles
- **Enhance capacity of investigative journalism** as prevention tool by fostering partnerships between non-traditional partners such as media, civil society organizations, and even libraries. This will help deepen the complexity of reporting and analysis as well as reduce the vulnerability of journalists and their organizations.

Best Practices: Creating a Functioning Media Monitoring System

Monitoring the media can be a helpful tool in efforts to prevent violence. Be aware that there are several components to a media monitoring system, all of which together require significant time and resources. Both online and offline components usually are needed, as well as skilled staff to both input data as well as analyze results. **Media monitoring is complex and requires sophisticated analysis and therefore requires extensive training**—and re-training—on definitions of hate speech and methodologies. In societies in conflict or emerging from conflict, there is often very little indigenous capacity to undertake such complex and sophisticated work.

In using media monitoring for early warning purposes, it is important to track patterns. One is an increase in hate speech over neutral speech, and an increase in dangerous speech over hate speech. Others are changes of positions of previously neutral actors, changes in the choice of language or medium, and increases in use of coded language that could be used to incite violence. Analysis of comments of visitors to key actors' sites can be a useful barometer of how widely accepted the key actor's message is, what networks they reach, and what the potential for violence is. Increasing frustration and hostility found in such comments can be early warning indicators.

Often the most dangerous speech is used at events such as political rallies or funerals, rather than via coverage in new or traditional media. Be alert to recordings made at these events. Also be alert to the fact that hate speech and dangerous speech may be communicated through subordinates, as top officials may be wary of being on record. Be alert to the fact that there is a trend from old media to new media, so the system should take this into account.

Following are best practices in setting up the monitoring system:

Monitoring system data parameters best practices:

- **Adapt the system to the national or regional context**
 - Identify what sociological, political, and historical relationships exist between speech and violence; this includes stigmatizing or dehumanizing language (such as when Hutu leaders referred to Tutsis as “cockroaches”), coded language (such as the “go to work” directives that unleashed killings during the Rwandan genocide), and language that stokes fears of another group and creates a justification for pre-emptive violence.
 - Understand what words as well as languages are used for what types of speech (sometimes dangerous speech is most often given in local dialect)
 - Understand trends in Internet usage (who, using what, with what message).
 - Understand spill-over from one medium to next.
 - Think about rhythms of conflict, when and how different groups will start to weigh in more heavily with messages of either violence or peace, and be prepared to track accordingly.
 - Determine who has access to different types of speech, and how receptive they are likely to be.
- **Track key actors, as these offer a more effective avenue to relevant data** than tracking events
 - Those who link constituencies, both in role of inciter (for monitoring) and as peacemaker (for involvement in solutions)
 - Those most likely to speak dangerously and carry out implied threats

- Those who are able to report most accurately on growing tensions

• **Track implementing as well as strategic actors.** Higher level strategic actors tend to use less hate and dangerous speech, but set the context; implementing level actors provide clues for potential specific instances of violence

• **Integrate the system into a broader analytical and response mechanism, using online but also offline sources of information.**

- Calls for action towards planned mass violence usually take place along internal, hierarchical communication lines rather than through public media. Understand these communication lines and determine how to monitor them.
- Understand other sources of information to monitor such as opinion polls, hate crime rates, and other.

• **Ensure the system can adapt to changing language and emerging actors.**

• **Monitor positive messaging fully as well,** for its potential use to reduce tensions and avoid conflict.

• **Create at least four gradations of threat levels** so as to be able to point to elevated threat levels without causing undue alarm

Numbers of hits, likes, and retweets indicate the resonance of a particular message or event. They can also indicate if someone is trying to expand their audience to reach more people, a trend important to track in a potential incitement case. Others' accounts of key actors indicate the intensity of regard of their followers and detractors, and can paint a picture of emerging leaders and networks of supporters/ deputies. Deletions of accounts or content indicate attempts to control messaging, either by the actor him- or herself, a website administrator, government, or opponents. Analysis of the time allocated by broadcast media indicates partiality

or bias in coverage, as well as potentially how much people will be shaped by often-repeated messages.

Monitoring system application possibilities:

• **Identify and monitor emerging trends** of new terms, expressions, actors or geographical references; how best/earliest to detect these changes in tone or actors – bloggers v traditional news likely

• **Conduct comparative research of current trends against past patterns** of keyword frequency, mentions or discussions related to strategic and operational actors, known thematic or geographic flashpoints; emerging actors as well as ones becoming discredited and therefore no longer as relevant, tones changing from violent to peaceful and back, and other

• **Analyze media or public's reactions** to events, speeches, posts and comments

• **Create body of evidence** for follow-on hate/dangerous speech investigations by national or international authorities;

• **Analyze influencers and their networks** in-situ and among the diaspora

• **Monitor and analyze positive or counter-messaging** to gauge its effectiveness and potential for direct or indirect intervention on the part of the monitoring organization, its partners or others

• **Illustrate data in a meaningful and impactful way**

• **Design and implement conflict prevention interventions** at local, national and regional levels (calls by leaders for calm and/or protection of innocents, blocking or creating consequences for those disseminating hate speech)

- **Create a hate/dangerous speech awareness campaign**

- **Create counter messaging or discredit speakers**
- **Create an alarm network that allows civil society to share incidences of dangerous speech and develop creative and non-violent solutions.** Involve local civil society, government, law enforcement actors, as well as international actors such as embassies.

Monitoring system configuration best practices:

- **User-friendly dashboard** that allows for easy entry of search terms and parameters and displays results through easy-to-understand visualizations.
- **Browser-based platform** accessible to end-users with Internet access.
- **Data streams which include all publicly available Internet data**, such as online news media and reader commentary; social media (social networks, blogs, micro-blogs, forums, chat groups, video and photo sharing sites); publicly available statistical databases from public sources such as international organizations, national or local governments, NGOs, **as well as internal/private data**, such as locally collected and analyzed data, such as field or situations reports; and, institutional data from central databases or partner organizations
- **Operational in stand-alone mode** (i.e. not dependent on other specialized software platforms);
- **Able to collect and process data in different languages**
- **Bandwidth requirements kept to a minimum**

Additional Resources on Hate Speech

United States Holocaust Memorial Museum: Speech, Power, Violence (2009 seminar on cases of hate speech and violence)

Voices That Poison (website of scholar Susan Benesch focusing on ‘dangerous speech’)

Genocide Prevention Task Force (sponsored by US Institute of Peace, US Holocaust Memorial Museum, and American Academy for Diplomacy; report released 2008)

US Institute of Peace Media Conflict and Peacebuilding

II. The Role of Secure Human Rights Documentation in Atrocity Prevention

Mass atrocities are highly dynamic events often marked by uncertainty in their true scope until days, months, or sometimes even years later. Local doctors, emergency workers, journalists, and human rights defenders are a vital resource for documenting crimes and ensuring that what happened will not be lost to time or obfuscated by the perpetrators.

In July 2014, a former Syrian military police forensic photographer, known publically as Caesar, testified before the U.S House Foreign Affairs Committee. His identity hidden from cameras by dark sunglasses, a baseball cap, and hooded jacket – he spoke about the overwhelming photographic evidence of war crimes he smuggled out of Syria. By providing over 50,000 photographs documenting an estimated 11,000 individuals killed and tortured by the Bashar al Assad regime to international investigators the suffering of those killed is made known and justice has a greater chance to be delivered. Since the Nuremberg trials of 1945, the international community has made great efforts to dissuade and prevent future atrocities around the world by seeking prosecution and punishment for grievous acts, and attempting to eliminate a confidence in impunity by those who might instigate, lead, or participate in such crimes.

While Caesar is unique in that he documented crimes while employed by the regime perpetrating them, unlike the scores of human rights organizations around the world which take great risks to conduct independent documentation, Caesar is a high profile example of the critical need to document crimes which can be hidden by perpetrators, as well as an example of the great personal risk undertaken by those who engage in such work.



Entrance to the documentation office of a local human rights organization in Bamako, Mali.

Local civil society and human rights defenders, in particular, play a vital role in identifying, investigating, and documenting violations of international human rights and humanitarian law, as well as in early warning and urging early response. They also play an important function in pressing their governments and societies to better respect, protect, and promote human rights, helping to reduce the threat of future conflict and mass atrocities.

In many cases, where a conflict is still ongoing, or where perpetrators still walk the streets with impunity, the task of collecting and reporting information can be dangerous. However, ensuring that human rights violations are documented and reported is an important element of an atrocity prevention strategy in that it helps combat a sense of impunity by perpetrators, can deliver justice and a renewed

sense of social inclusion for victims, and serve as an early warning network of renewed instability.

Atrocities rarely occur in states where the rule of law is robust and both police and courts are seen as capable and impartial. Whether atrocities are carried out by a government or by non-state actors, perpetrators often rely on confusion over the facts of their actions to evade accountability. The desire to take away that impunity in order to make high or low-level perpetrators reconsider their participation in violence is an element of both ending an atrocity and preventing acts in the future. Local human right defenders, equipped with mobile communications technologies, can serve as a vital dispersed network throughout a country to document atrocity crimes and report that information to both national and international actors. Additionally, these established networks can act as an early warning network to relay immediate reports of violence to third parties who may be able to act to raise a warning, or work with the host government or international parties to address the situation before an atrocity occurs.

CONSIDERATIONS OF SECURE DOCUMENTATION

Frontline human rights organizations and lawyers are often the first to collect detailed accounts of crimes and testimonies of victims. USAID Mission personnel and others can utilize the work of local human rights defenders and their analysis to feed into early warning and response. The documentation produced also supports accountability and truth telling goals for the future. As described later in this chapter, USAID can play a vital role supporting the work of human rights defenders in every region of the world through funding and technical assistance support. Two recent case studies of human rights documentation work underway in Mali and an

East African country⁶ highlight on-the-ground considerations of secure human rights documentation work:

1. *Human rights documentation, during or after an atrocity, is best conducted by local investigators.*

In interviews, both Malian and East African human rights defenders (HRDs) emphasized the importance and value of having monitors from the local community or region where abuses occurred. Being local brings numerous benefits both in terms of information gathering and security. Local HRDs are generally well-networked in their region, allowing them to know where crimes have been committed and gather reports of new violations as they happen. Their local knowledge also helps them evaluate information. In many cases they know the reliability or reputation of sources. In some cases they may have witnessed the crimes themselves or already heard reports of the violation from multiple other sources before they interview victims, allowing them to immediately corroborate the information. Additionally, local investigators have the ability to blend in and work “under the radar,” speak the local dialect, and can travel to areas which might be off limits to international observers, such as the United Nations or African Union.

Security precautions are paramount so that the local monitor is not exposed and that perpetrators, who may still live in the community, do not learn of their documentation work. In one case in Mali, a local monitor was deliberately targeted and attacked by a local militia group for his documentation work, underscoring the need for well-developed security protocols both for the monitors, and the information they collect. Fortunately, in this example, because a security plan was in place, the extended documentation network quickly learned about the attack and was able to respond immediately to provide medical assistance.

⁶ Country name withheld due to security concerns.

2. *Establish a clear research methodology and documentation standard*

A critical element of human rights documentation is for the human rights organization and its monitors to agree on and establish a consistent research method for the collection of information and on the intended use of that information.

Questions to answer include: Will the information be used for national or international advocacy and raising awareness of the level and types of crimes which occurred? Or is it intended that the information will be used in possible criminal prosecutions?

The evidentiary burden and documentation standard of the later will be much higher, and the documentation, analysis, and storage of information must be much more rigorous. If the information is gathered as a part of an early warning mechanism, it is important to plan what type of information serves as proof, how will it be verified and to what degree of certainty, and a plan for timely dissemination.

The Malian human rights network sought to collect information for both advocacy and potential future prosecution requiring their monitors to learn new investigation skills and evidentiary standards, offered in USG-funded training programs.

In the Malian case, one well-established organization conducting documentation work followed a rigorous documentation and evidentiary standard, which closely hewed to UN Office of the High Commission on Human Rights' 18 principles of human rights documentation. Additionally, because the monitors were allowed them to verify facts and information reported by other local human rights organizations, and encouraged others to share their own detailed information.

In East Africa, the monitors – a newly established network of local human rights organizations – acknowledged their limited resources at the beginning of the initiative and established a data collection and reporting strategy appropriate to local logistical constraints. Their documentation

Documentation and Reporting: East Africa Scenario

Monitors of the human rights organization learn of the possible presence of a mass grave that could be connected to recent disappearances of area residents. The site is within visible range of a checkpoint maintained by a local militia. Creating the appearance of simply passing through on the way to another farm, the monitor nonchalantly walks by the site with a farmer. The brief visit is sufficient to confirm the site to be a recently dug mass grave large enough to hold 6 or more bodies. The monitor covertly snaps several photos of key indicators that the site is a mass grave. The monitor is also able to reliably record the site's location based on landmarks with a margin of error of only a few yards, and the time when the mass grave first appeared to within days. Due to the presence of the checkpoint, it is highly inadvisable for the monitor to attempt to collect forensic evidence from the mass grave. Upon confirming with reasonable confidence that the site is a mass grave and that the location and time of appearance corresponds with recent disappearances, the monitor's work is done. The organizations then reports that information to external human rights organizations as well as appropriate international or government officials, particularly an official with an appropriate mandate to further investigate. The documenting organizations should not be expected or encouraged to do anything more than that, thereby safeguarding its role in detecting and documenting atrocities.

methodology and verification plan supported the credible reporting of human rights violations collected through interviews with victims – including the types and number of violations – aimed at raising awareness among the population about their rights, and compelling the government to support justice and compensation for victims.

In both cases, regardless of the level of supporting evidence collected, accuracy and verification were essential to ensure the credibility of the work, as inaccurate reports could undermine their credibility and call into question their reliability. In both case studies, potential false reports or exaggeration were checked by the local monitors, who employed various techniques to test suspicious claims. Data was also analyzed by a reporting hub office, where information was entered into reporting software.

3. *Ensure security of information and analysis*

In addition to the methodology and intended use, a security protocol for the documentation process and security of the information collected must be established before work begins. As described earlier, local monitors can provide extra security over monitors from outside the region or country, because of their local knowledge and relationships, and ability to blend in. At the same time, local monitors are exposed to ongoing risks because they may live in the community and still engage in work which may upset violent actors. To enhance security and response to monitors at risk, Malian monitors across the country established an SMS communication network with each other, shared their planned daily itinerary with at least one other person before beginning work, and checked-in with the network every two hours while working.

Securing the information also poses a challenge. In Mali, monitors recorded information on paper forms and later delivered these forms to reporting hubs to be logged into the secure digital reporting system Martus. Monitors reported

frequent concerns about information on the forms being lost before delivery to the hub due to rain or other weather elements, or seizure by local militias or security forces, potentially endangering not just themselves, but the victims who reported the information as well. A separate network of HRDs in Mali reported that their information forms were secured in a locked room or desk drawer at the local headquarters of the collecting organization. The desire to input data directly into a secure electronic database, such as Martus, at the end of each day or during the interview itself, rather than physically delivering forms weeks later, is a priority for information security. However, the lack of electricity and unreliable internet connections in many parts of Mali made this difficult without additional resources, such as laptops for each monitor, and USB sticks enabling internet connections through mobile phone networks.⁷

4. *Develop a communication and advocacy plan*

A communication and advocacy plan is also necessary to achieve the desired aims of the documentation collection, enabling the documentation to play a role in early warning and public advocacy communicating that atrocity crimes cannot be committed with impunity. Both the Malian and East African case studies highlighted the need to separate the analysis and reporting of information from those doing the documenting. Separating these functions provided the documenting organization an official stance of impartiality which is critical to help protect their personal and organizational security by not appearing to take sides – particularly if engaged in documenting crimes committed by state authorities with the power to harass, fine, or imprison their staff or close the organization.

⁷ Overtime ICT technology and infrastructure will naturally improve, ideally offering new and more efficient methods for information collection and dissemination.

Additionally, the importance of describing their work as “documentation” rather than “investigation” was also emphasized, as documentation can be defended as simple information collection, while investigation carries a stronger connotation with the use of that information for prosecution. Collecting evidence of an actual crime can represent a direct threat to the guilty person(s) because it can lead to an indictment and possible conviction. In contrast, documenting and reporting a human rights violation represents a less threatening activity. While it can generate unwelcome attention and pressure on a government to address or stop a violation, it does not involve courts – a distinction is not lost on authorities and non-state actors. In the East African case study country, an individual caught collecting evidence for prosecution can be sentenced at a special court.

A documentation organization examined in the East African case only reported the facts they collected and left the analysis and use and interpretation of that information for others. In the Malian study, a communications and advocacy team was assembled, separate from those doing the documentation, to develop a strategy for disseminating the information, which involved both public advocacy and targeted meetings with the national government and international organizations.

ACTIONS USAID MISSIONS CAN TAKE TO SUPPORT SECURE DOCUMENTATION AND CONTRIBUTE TO ATROCITY PREVENTION

Provide Long-Term Targeted Aid to Support Documentation and Reporting

Missions should recognize the importance and value of local organizations and human rights defenders in providing local information and documenting crimes committed in a conflict or atrocity. Organizations in both Mali and East Africa specifically highlighted the need for long-

term support to properly sustain and develop their networks and organizations, as well as to enable them to purchase ICT equipment to more securely and efficiently conduct their work. Long-term programmatic assistance to support these organizations during and after atrocities is necessary to fully capture and document crimes committed. Support for, and frequent engagement with, organizations with local documentation networks is important when outbreaks of violence occur as a resource for early warning information. Early warning reports (discussed further in Chapter IV) are useful to track potential precipitous increases in retaliatory violence, or to bring the attention of national and international actors to the situation while opportunities still exist to prevent an atrocity.

Support Organizational Capacity and Technical Development

Frequently, local human rights organizations, particularly those which have recently formed due to new political openings or, conversely, deepening crises, lack adequate capacity and technical knowledge to operate at international standards. Through programmatic support and training, USAID can support the organizational development of local organizations for complex project and financial management. Capacity development also includes additional resources, including financial support and logistical resources such as secure communications equipment, mobile internet access, computers, rented vehicles for transportation, and possibly even portable generators or solar panels if context appropriate. The case studies in Mali and Eastern Africa emphasize the role that organizational management and financial and logistical support plays in improving the capacity of local organizations to securely document crimes. However, Missions should also be cautious not to expect or encourage groups to take on obligations beyond the scope of their documentation work if it might undermine their local impartiality or security.

Missions can likewise play a vital role by supporting local organizations to obtain technical expertise. Organizations interviewed in Mali expressed a strong desire to learn international best practices and continue to develop their professional expertise and competence in secure documentation techniques. Missions can engage international organizations and human rights NGOs with relevant technical expertise to work closely with local groups to transfer knowledge and support organizational development.

Finally, when local human rights defenders are under threat or harmed, USAID should provide financial support for costs for added protection and defense, and offer solidarity in their dialogues with host governments.

Raise Issues of Violations and Impunity at National and International Levels

The US government is in a unique position to raise concerns of potentially escalating situations with national governments, and international bodies. USAID should view networks of human rights defenders not only as valuable sources to be supported for the documentation of crimes, but also as potential early warning networks which can alert Missions, and the wider US government, to potentially escalating crises. Missions can utilize documentation or early warning information to inform rapid response to deescalate situations or longer-term programmatic responses to mitigate underlying factors which may lead to an outbreak of violence. Longer-term responses can include organizational support, as described above, as well as justice sector reform programming, including local and national good governance development to support the elimination of impunity and rebuilding the confidence of citizens in their governments as guarantors of their rights. Missions can also share information with State Department and other US government peers to raise the issue of violations publically in high-level statements or through venues such as the Universal Periodic Review process. Information

can also be used privately in bilateral meetings with the national government to press for criminal justice or transitional justice processes, as well as compensation to victims.

ADDITIONAL RESOURCES ON HUMAN RIGHTS DOCUMENTATION

Bickford, et al. 2008. *Documenting Truth*. International Center for Transitional Justice.

Hargreaves, Caroline and Sanjana Hattotuwa. October 2010. "[ICTs for the prevention of mass atrocity crimes](#)." ICT for Peace Foundation.

Thompson, Kate and Camille Giffard. 2002. *Reporting Killings as Human Rights Violations*. Human Rights Centre, University of Essex.

UN Office of the High Commissioner for Human Rights. 2011. *Manual on Human Rights Monitoring*. Available on the OHCHR website's [Policy and Methodological Materials](#) page.

III. The Role of Transitional Justice in Atrocity Prevention

Transitional justice is now utilized by countries in every region of the world to address legacies of mass human rights abuses and dictatorship. Transitional justice is an important tool for reducing the likelihood of renewed conflict and potential future mass atrocities by providing official recognition and redress to victims, establishing historical truth, achieving accountability for human rights abuses, and rebuilding civic trust.

Through mitigating the political and socio-economic grievances which can fuel violent conflict, and establishing new systems of accountability, transitional justice processes should be viewed as critical tools in upstream conflict and atrocity prevention. Additionally, transitional justice process, where they already exist, can potentially be utilized in a crisis situation to deescalate tensions or provide informational inputs to early warning systems.

Transitional justice processes represent opportunities for countries to break deadly cycles of violence (see Diagram 1). In countries which did not implement transitional justice processes at key junctures, such as Rwanda immediately following the Arusha Accords or in the Democratic Republic of Congo following the Second Civil War, grievances have festered and grown and have even led to an outbreak of renewed violence and atrocities. Where used, many countries have witnessed positive democratic transformations, notably South Africa and countries of former Yugoslavia.

This chapter will briefly outline how to evaluate the needs of a country, as well as the opportunities which exist to support both locally-driven and internationally-supported transitional justice initiatives.

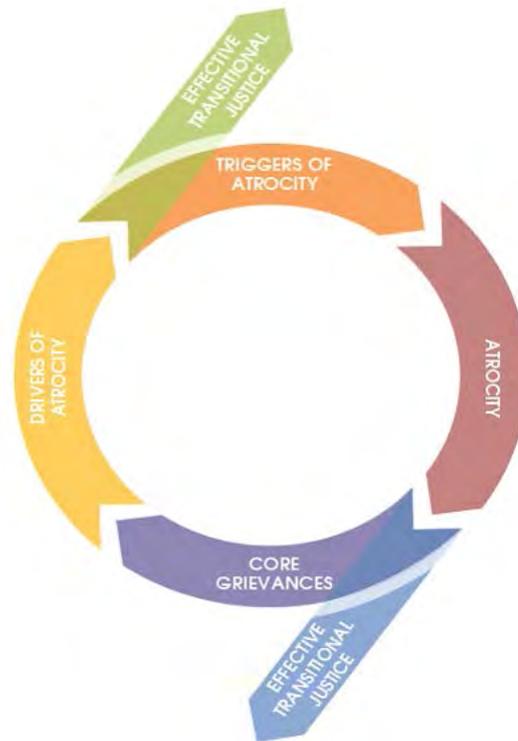


Diagram 1

WHAT IS TRANSITIONAL JUSTICE?

The UN Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence characterizes transitional justice as “a set of measures that can be implemented to redress the legacies of massive human rights abuses, where ‘redressing the legacies’ means, primarily, giving force to human rights norms that were systematically violated. A non-exhaustive list of these measures includes criminal prosecutions, truth-telling, reparations, and institutional reform. Far from being elements of a random list, these measures are part of transitional justice in virtue of sharing two mediate goals (providing recognition to victims and fostering civic trust) and two final goals (contributing to reconciliation and to democratization).”⁸

⁸ Pablo de Greiff’s “Theorizing Transitional Justice” in *Transitional Justice. Nomos Li*, (eds.) Melissa S. Williams, Rosemary Nagy, and Jon Elster, NYU Press (2012): 40.

Transitional justice measures including prosecutions, truth-telling, reparations and institutional reform are contingent parts of a comprehensive transitional justice process whose goals are:

1. **Truth:** Truth is central to transitional justice; the state has a duty to uncover and expose the truth about the committed crimes, which empowers victims to tell their stories, exposes structural violence, and counters denial and revisionism about the situation surrounding mass human rights violations.
2. **Accountability:** The state has a duty to ensure that perpetrators of human rights abuses are held accountable for their crimes. Accountability ensures that perpetrators are taken off the streets and out of the political system. Importantly, accountability can also have a deterrent effect on future crimes while also creating support for state institutions.
3. **Reparations:** While reparations can never make up for the violations that occurred, they can be an important form of official acknowledgment, help victims rebuild their lives, and create faith in state institutions by demonstrating a serious commitment to addressing past crimes.
4. **Institutional reform:** Institutions that have a legacy of violating human rights must be reformed so that citizens can reestablish trust in the state as the guarantor of their rights. Transitional justice efforts frequently work in concert with and are supported by security sector reform (SSR), disarmament, demobilization and reintegration (DDR), and rule of law reform initiatives including drafting new constitutions, reforming the judiciary and educational institutions.
5. **Acknowledgment and memory:** Public and official acknowledgment is a crucial element of victims' rights and a victim-centered approach to transitional justice.

Acknowledgment validates victims' experiences and is important for reconciliation and healing; it can include public apologies, commemorations and memorial centers, among many other measures.

Transitional justice is “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation.”

– *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*

While transitional justice efforts originally focused solely on international crimes, such as crimes against humanity, genocide, and war crimes, more recently the field has been effectively applied to address histories of long-term human rights violations, including violations of economic, social, and cultural rights.

Transitional justice comprises a range of mechanisms to achieve these goals. Many of these mechanisms have the potential to remove human rights abusers from power, deter individuals from participating in future violence or corruption, and create community buy-in to legitimate state institutions. States which implement both retributive (criminal) justice and restorative (healing) mechanisms together in a holistic and complimentary manner will create an even stronger platform for creating a new inclusive, peaceful democratic society. The chart on the next page summarizes the mechanisms most frequently utilized to achieve the goals of transitional justice:

	Mechanism	Description	Considerations
Criminal Accountability	Domestic Trials (Examples: Argentina, Peru, Burundi)	Prosecutions in the national court system or a special court	Can be hard to have a fair trial, domestic legal systems may be weak, can be slow and expensive, high number of perpetrators can overwhelm the system, judges can be corrupt or have little or no support from the police to pursue investigations.
	Hybrid Tribunals (Examples: Cambodia, East Timor)	Ad hoc judicial bodies composed of both international and local judges and prosecutors	Adds international expertise and perception of neutrality to domestic courts that are weak or lack public trust.
	International Trials (Examples: Yugoslavia, Rwanda)	International Criminal Court, international tribunals	Can act where domestic courts lack will or ability to prosecute, though they are often expensive, slow, and only prosecute top level individuals.
Truth Commissions	Truth Commissions (Examples: South Africa, Chile)	Represents an official acknowledgment of abuses, publically recognizes the suffering of the victims and the crimes committed, some identify perpetrators and recommend prosecutions, may recommend reparations and institutional and legislative reforms	May be limited by mandate to a certain time period or certain types of crimes, also may be limited by amnesty laws. No prosecutorial powers. In exchange for information from perpetrators, some truth commissions (e.g. South Africa) have issued individual amnesties, thereby establishing a more complete truth about the atrocities committed.
Reparations and Memorialization	Memorialization (Examples: Numerous)	Days of remembrance, memorials, public apologies, museums, concerts, films, art, etc.	Public, official, state-sanctioned. These measures serve to recognize the dignity and equal worth of victims.
	Reparations (Examples: Ghana, Morocco, Colombia)	Reparations include: individual or collective, financial or symbolic compensation measures, restitution, rehabilitation, and guarantees of non-recurrence.	Allows victims to rebuild their lives and their status in the community, demonstrates government acknowledgment of past abuses and commitment to repair. However, victims and families may feel that it is an attempt to buy their silence if not combined with other mechanisms such as trials, truth-commissions, or institutional reforms. Can be difficult to determine who is eligible and state resources may be scarce.
Institutional Reform	Lustration, Vetting (Examples: Germany, Iraq, Bosnia & Herzegovina)	Removal or disqualification of public officials affiliated with the prior regime (lustration) or with a history of human rights violations (vetting)	Reforms institutions and helps restore public trust in the government, may address gaps in accountability left by prosecutions. Can create expertise gap in new government. Danger of outright purges of personnel with no due process.
Amnesty	Amnesty (Examples: Argentina, Chile, Algeria)	Legal pardon for crimes, sometimes offered in exchange for truth-telling	Individualized amnesties can incentivize perpetrators to provide information about crimes which may not come to light otherwise. Blanket amnesty laws, however, can strengthen impunity. National amnesty laws for international crimes such as genocide, war crimes, and crimes against humanity are considered illegal (Belfast Guidelines on Amnesty and Accountability, 2013)

Official transitional justice processes at the national-level do not occur in a vacuum. It's equally important to keep in mind the critical person-to-person role played by community-level reconciliation processes. Community-led efforts guided by traditional community practices such as *gachaca* courts in Rwanda and *Fumbol Tok* in Sierra Leone are notable examples of the vital role locally-owned justice and reconciliation processes play in advancing broader national transitional justice efforts. Local reconciliation efforts within communities should be considered a necessary, complimentary process to national transitional justice processes.

While national transitional justice mechanisms are generally government-supported, official processes, a broader range of activities by international organizations and domestic civil society groups can support and facilitate these processes and advance transitional justice even in pre- and non-transition settings. These include:

- Civil society-led documentation of crimes (Cambodia, former Yugoslavia in the early 1990s).
- Independent truth commissions and tribunals where governments are unwilling (Iran Tribunal and Truth Commission in London in 2012)
- Monitoring, information dissemination, and public education on transitional justice processes by media and civil society groups (Myanmar).
- Collection and sharing of victim's narratives, and public outreach and education campaigns to empower victims/survivors and amplify local and marginalized voices (Indonesia).
- Increasing local access to justice through legal advice to victims by paralegals, legal clinics, and civil society groups (Zimbabwe).
- Capacity building programs for government employees, and training and assistance for local civil society to support transitional justice efforts and serve as a watchdog of

official processes (Myanmar, Sri Lanka, Indonesia).

Transitional Justice as Urgent Intervention

Though transitional justice processes are generally long-term initiatives which will have their greatest impact as a critical element of upstream conflict prevention, creative opportunities may exist to utilize existing transitional justice processes to head-off a developing crisis situation when the risk of atrocity crimes are high. These opportunities can include:

- Information of past conflict and atrocities collected through criminal justice proceedings or truth commissions can contribute to early warning systems by identifying trends, patterns, as well as dangerous speech, which preceded previous atrocities and may augur the outbreak of renewed violence (as outlined in Chapter I).
- In cases such as Kenya following the post-election violence in 2008, transitional justice processes were initiated, however, they were poorly communicated to the public and few Kenyans knew of the process, let alone the findings or changes which came as a result. Implementing a rapid communication plan in a tense situation to inform the public, or the particularly aggrieved communities, of the findings and impact (particularly benefits) of past or ongoing transitional justice efforts may play a role in defusing some immediate grievances or demonstrating the government's commitment to positive change.

As most atrocity crimes happen during conflict, transitional justice responses can be used to resolve underlying grievances following a conflict to promote healing within a society. By resolving these grievances, rather than allowing them to fester, grow, and spark renewed conflict, transitional justice can help break ongoing cycles of violence and contribute to a more stable and prosperous future.

The following sections outline steps to assess opportunities to support transitional justice processes which will contribute to long-term conflict and atrocity reduction and prevention.

ASSESSMENT AND DEVELOPING TRANSITIONAL JUSTICE PROGRAMMING

Transitional justice processes are a vital tool for reducing the causes of conflict, which contribute to making future violence, and atrocity crimes, less likely. However, transitional justice processes themselves may be contentious and lead to heated public debates as they seek to address sensitive issues of the past, particularly in a divided society. For this reason, both the timing and mechanism of transitional justice responses are context specific and must be informed by the local situation. The steps below can serve as a guide in assessing a situation and identifying areas in which intervention can best support transitional justice.

1. Understand the Current Situation

Begin by conducting an in-depth and inclusive assessment of the current transitional setting as outlined in USAID's *Conflict Assessment Framework*. It is critical to speak directly with various stakeholders including victims, civil society organizations, and traditionally marginalized groups. Local human rights groups can also provide links to victims, as well as marginalized voices outside elite or political circles. Key questions to consider in relation to transitional justice include:

- What ongoing grievances (unresolved issues or claims) do each of the actors have against the other parties?
- How does the current government view the issue/the past? Do they feel it relates to long-term stability?
- How do local civil society groups view the issue/the past?
- Are there sincere government-led efforts at political and social reconciliation, or is there political and social domination by one party and/or victor's justice?

2. Map Transitional Justice Responses

Informed by the analysis of the current transitional situation, the next step is to map current, or concluded, transitional justice efforts. Use the attached worksheet (Page 28) to help guide and structure your assessment. Questions to consider include:

- Are there currently, or have there been, government-led transitional justice responses in the country? Why or why not?
- What period of history, or crimes, did those responses cover?
- What responses occurred?
- Have there been unofficial responses – community-level efforts – in place of, or in addition to official, state-supported responses? Is civil society supporting the state-led initiatives, is the state reaching out to the civil society?
- If these responses have concluded or been ongoing for some time, what has been the impact?
- Did justice – such as prosecutions or recognition of crimes – vary by social group, gender, or political affiliation? Has any group been left out of the scope of justice?
- If responses have been, or will be, undertaken by the state, are state institutions technically competent and

- publicly legitimate enough to achieve their goals?
- What, if any, internationally-supported efforts are ongoing to support the transition? Consider both government initiatives and projects by international non-governmental organizations.

3. Compare the Map of Transitional Justice Responses with the Current Situation to Identify Needs and Strategic Opportunities

The assessment of the current situation coupled with the map of transitional justice responses create a framework for identifying opportunities to support effective, locally-owned transitional justice processes, whether it is filling in gaps, supporting ongoing transitional justice efforts, or encouraging and supporting the establishment of that effort.

Questions to guide the identification of opportunities and needs that USAID can address include:

- Are there official attempts or pressure from citizens to deal with unaddressed grievances and crimes?
- Is there popular and political will for dealing with the past?
- Are there grievance or crimes which have not been addressed by transitional justice responses?
- Are there gaps in the transitional justice response (prosecution of crimes but no public recognition of victims suffering or memorialization; documentation of crimes but no prosecution; lop-sided prosecution only targeting one side in a conflict)?
- Is the transitional justice approach holistic, including both retributive (justice and accountability) and reparative (truth, memory, reparations) processes? Is the

choice of one approach leaving open the options for another approach in the future?

- How have communities responded to national transitional justice processes? Have there been community-level transitional justice or reconciliation efforts? Do community-level grievances remain?

To implement potential solutions consider what stakeholders have the potential to create the greatest change to support transitional justice. Who would be the most effective local partners for addressing the needs identified? Think outside the box and consider partners such as: anti-corruption activists, investigative journalists, artists and musicians, reform judges, trade union leaders, women’s groups, victim’s associations and associations of the missing, school teachers, university students, environmental groups, etc.

PROGRAMMATIC POSSIBILITIES

Given that each situation is unique, the manner or form of transitional justice efforts must be informed by the context specific to the country, though all efforts should follow universally-recognized norms, principles and best practices.⁹

It is important to listen to, understand, and support the victims/survivors, without compromising universal principles, such as accountability for atrocity crimes. The role of international actors in supporting local transitional justice processes has taken a wide array of forms. The following is an illustrative sample of past transitional justice projects supported by implementers which have promoted truth-telling and accountability, reformed laws and institutions, and advocated for political transformation without resorting to violence:

⁹ See “Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice,” March 2010.

Documentation: Syria's civil war began from peaceful street demonstrations in 2011 calling for a more democratic state and soon spiraled into a bloody conflict with widespread systematic human rights abuses and likely war crimes. Freedom House, working closely with local partners, implemented a program to support the collection and documentation of mass human rights violations. As a result of these pre-transition efforts, local activists were trained in effective documentation techniques, capturing the widespread abuses of the Bashir regime. Additional international-supported efforts, such as the Syrian Justice and Accountability Center, have worked inside the country to collect, verify, and securely store information and evidence for potential use in future transitional justice criminal processes.

Investigation and Public Awareness: 1999 marked the end of Indonesia's deadly 25 year occupation of East Timor. Following East Timor's independence in 2002, the State Department engaged the Freedom House-led RIGHTS Consortium to support the reconstruction process, with a particular focus on redressing past atrocities and advancing the public's understanding of the justice system. RIGHTS partners deployed an expert pool of investigators and prosecutors to support investigations and build cases against individuals accused of serious violations of international humanitarian law. International partners also assisted the East Timor Commission for Reception, Truth and Reconciliation to increase public awareness of transitional justice mechanisms through a widely distributed, localized three-part video documentary series "The Road to Justice" which captured footage of the reconciliation hearings. Perpetrators saw the hearings as an effective mechanism to be welcomed back into communities, while victims saw them as a culturally relevant, legitimate process for dealing with past violence.

Institutional Reform: In the wake of the Tunisian Revolution, which ousted long-serving dictator Ben Ali in 2011, Tunisians found themselves with state institutions marked by the former regime and in need of reform to rebuild public confidence. Addressing this need, Freedom House developed a rule of law reform project to support the establishment of an independent judiciary. Two white papers with policy recommendations for key topics such as prison reform and the relationship between the independent public prosecutor and Department of Justice were prepared with input from a range of stakeholders. Public outreach campaigns and petitions were organized to receive public input and raise awareness of the initiatives, and a series of national conferences were held to discuss the path forward for justice sector reform. As a result of these activists, members of parliament took on the cause of judicial reform and high ranking officials changed their attitude and agreed to start working with civil society to incorporate their recommendations for reform.

Enhancing Victims Voices: After a decade marked by conflict and serious human rights violations which split the country in half, Côte d'Ivoire is now looking to address the past and reduce the likelihood of future violence. Freedom House has been working intensively in Cote d'Ivoire with a committee composed of eight civil society organizations to produce a compiled victims' narrative report. By identifying serious human rights abuses committed by all sides of the political spectrum – such as violations to the right to life, torture and other inhumane treatments, and sexual violence – the compiled report provides unique testimony and a compelling basis from which to advocate for an effective and equitable transitional justice process.

ADDITIONAL RESOURCES ON TRANSITIONAL JUSTICE

ABA Rule of Law Initiative. 2014. *Community Participation in Transitional Justice: A Role for Participatory Research.*

Freedom House. 2013. *Delivering Justice Before and After Transitions.*

Governance and Social Development Resource Centre. Transitional Justice resources page with links to further references on numerous transitional justice topics.

Institute for Democracy and Conflict Resolution. July 2011. "Briefing Paper: Transitional Justice: Key Concepts, Processes, and Challenges"

International Center for Transitional Justice. January 2011. "Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice"

International Center for Transitional Justice. November 2012. "Engaging Children and Youth in Transitional Justice Processes: Guidance for Outreach Programs"

International Center for Transitional Justice. June 2014. "Challenging the Conventional: Can Truth Commissions Strengthen Peace Processes?"

United Nations. March 2010. "Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice"

United Nations. August 2004. "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies"

Worksheet: Map of Transitional Justice Responses

Type of TJ Mechanism Utilized (list all on separate rows)	Mechanism Ongoing or Ended	Time Period Covered/ Crimes Addressed	Lead Actor	Internal Legitimacy	Impact	If Impact was Limited, Why?	Crimes/ Grievances Unaddressed
<i>Commission/ Trials/ Vetting/lustration Reparation/etc Memorialization efforts</i>	<i>Ongoing/ Ended</i>	<i>e.g. 2002-2010/ Crimes during the civil war, but not abuses before the war</i>	<i>Nat'l govt, Int'l community, civil society, etc.</i>	<i>Your assessment of the mechanisms' legitimacy among the general local population; public awareness of the process may be one factor to consider</i>	<i>Your assessment of the impact of transitional justice responses</i>	<i>What else was/is needed?</i>	<i>Geographic and temporal categories, as well as specific segments of population</i>

IV. Justice Sector Interventions in Atrocity Prevention

Preventing atrocities is a vital and difficult challenge particularly in societies marked by conflict, grievance, and distrust. Many interrelated initiatives will be needed. Part of the mix will include well-conceived and conflict-sensitive measures to maximize the useful role that the justice sector can potentially play in helping to prevent atrocities in particular societies. USAID field workers seeking to do so should consider a number of key supporting objectives, as well as practical tools to accomplish them. These key supporting objectives include:

1. Understand the role, and limits, of the justice sector in conflict-affected countries
2. Build effective early warning systems
3. Expand local knowledge of the law and legal remedies
4. Improve justice and accountability mechanisms that can respond effectively to atrocities

Many different tools can assist in accomplishing these challenging objectives. These tools include:

- A nuanced conflict assessment that examines the strengths and limitations of existing conflict resolution mechanisms, including justice institutions;
- Community-based early warning systems and associated training;
- Paralegal programs that provide education about rights and remedies, mediation services, and linkages to existing dispute settlement mechanisms;
- Mobile courts that can reach remote areas to prosecute atrocities, and special courts that provide an integrated range of services to victims and witnesses;
- Synergistic approaches that seek “positive complementarity” between international and domestic efforts, while working to advance “justice on the ground” through

meaningful public outreach and engagement and targeted domestic capacity-building

I. WHAT IS THE JUSTICE SECTOR?

While the rule of law relies on all facets of governance to function, it is the justice sector that is responsible for operationalizing the rule of law. The justice sector has traditionally been interpreted to focus on the legal framework, the judiciary and other state institutions. Justice sector interventions under this top-down view emphasize legal reform and institutional strengthening, mostly through the judiciary. This chapter’s approach follows an emerging trend to broaden the definition of the justice sector beyond a traditional focus, and includes non-state, or informal, justice and security systems, as well as other public and private institutions.

Justice sector institutions and actors

- Ministries of justice
- Legislatures
- Police, including non-state mechanisms (security guards, neighborhood watches)
- Prisons
- Prosecutors’ offices
- Legal profession, including public defenders
- Judiciary and the courts, including magistrates and higher state courts for civilians and military courts
- Council of Chiefs and other traditional leaders, as well as customary or traditional dispute resolution institutions
- Oversight organizations, including Human Rights commissions, ombudsmen’s offices
- Civil society organizations involved with the justice sector, including legal assistance organizations, legal advocacy organizations, law schools, bar associations and human rights groups

In many conflict-affected countries, justice sector institutions and actors are destroyed as a result of violence or civil war, or even lack the capacity to assume basic functions for maintaining order and security. In these situations, in understanding the role and limits of the justice sector, discussed below, USAID field workers should map out who or what entity is in a position to provide a justice sector response to a conflict.

**Central African Republic:
Peacekeepers as Justice Sector Actors**

In the Central African Republic, where violence against civilians has been pervasive since the overthrow of former President Francois Bozizé in late March 2013 by a rebel alliance, there has been a lack of basic order and security and legitimacy—the country’s standing army, Central African Armed Forces, has been disbanded, and there is no police force or justice system—the regional peacekeeping operation, the African-led International Support Mission to the CAR (MISCA), has been acting as the legal authority, conducting minimal judicial proceedings.

II. ELEMENTS OF AN ATROCITY PREVENTION STRATEGY: JUSTICE SECTOR INTERVENTIONS

Interventions should take formal and non-state justice and security systems into account as part of a sector-wide strategy. They should aim to strengthen links across the whole justice sector through multi-layered approaches to justice sector reform that engage the public and listen to the voices of the vulnerable.

In practice, the tools that the justice sector provides in preventing atrocities have focused on upstream prevention, or long-term approaches, such as the promotion of the rule

of law and human rights, which seek to understand and respond to the underlying causes of conflict. The justice sector has not usually been thought to have a role in providing a “real-time” response to immediate crises. This work is left to other measures such as high-level diplomatic missions to mediate between parties or more forceful ones, including deploying peacekeepers to a region. There is, however, an important role that the justice sector can play. Section 2.1, below, provides an illustrative sample of justice sector responses to atrocities, both in terms of time-sensitive action and real-time prevention and response, and in longer-term structural contributions over time. Serious and recurring human rights violations, particularly if they are egregious, may lead to atrocity crimes such as crimes against humanity, and many of the approaches discussed can be useful in addressing serious human rights violations as well as atrocity crimes.

2.1 UNDERSTAND THE ROLE, AND LIMITS, OF THE JUSTICE SECTOR

The first step in any effective justice sector intervention is to understand the role, and limits, of the justice sector in conflict-affected countries by incorporating a governance analysis into needs assessment and conflict analysis as outlined in USAID’s Conflict Assessment Framework. USAID has developed an extensive governance assessment framework: *A Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework*. While USAID workers should not limit themselves to the particular questions below, general areas of inquiry regarding governance should consider:

- Who holds power and how accountable and transparent are they?
- Who or what is capable of providing justice and accountability?
- What role does the justice sector play in resolving disputes?

- Is the justice sector part of the solution or part of the problem?
- To what extent do people trust justice sector institutions or do they believe these institutions lack legitimacy?
- Are there traditional dispute resolution mechanisms that enjoy greater legitimacy and, if so, with whom, and can they be built upon in constructive directions?

Interveners inevitably will empower some local actors at the expense of others when they act; who one works with – and who one excludes – is a political choice, and this and the associated risks need to be understood. One way to make sure interventions are objectively designed is to bring together people with different political perspectives and social backgrounds. Indeed, the very process of conducting a governance analysis will involve reaching out to particular segments of the local population to hear what they have to say. In engaging the local population, special effort should be made to listen not only to officials and community leaders but also to vulnerable and marginalized populations. Ultimately, informed by a nuanced governance analysis, “conflict-sensitive” justice sector programs will need to be designed that first seek to “do no harm,” while also aiming to take effective steps to prevent atrocities.

2.2 BUILD EFFECTIVE EARLY WARNING SYSTEMS

Crucial to preventing atrocities is building effective community-based early warning systems (EWSs). Effective early warning capabilities can help communities and justice sector actors, both formal and traditional, identify warning signs, or indicators, of atrocities and take timely measures themselves to prevent atrocities. While some warning signs or indicators may be common across different conflict situations, others may be unique and context-specific. Frequently recurring warning signs include: increases in hate speech (as described in Chapter I); episodes of gender-based violence (GBV) by armed forces or militias; and efforts to drive people from their homes.

USAID field workers can work with local officials and civil society members to identify context-specific warning signs and to develop effective monitoring systems. Engaging civil society leaders is one component of effective monitoring. Religious and civic leaders may have a good sense of potential tensions among the population. Not only civic leaders but also vulnerable members of society, including minorities, women, and youth, should be engaged in community early warning efforts. Vulnerable populations may have particular awareness of risks and atrocity warning signs. For example, youth, many of whom may be

Building Constructively on What’s There

One very important, but often overlooked imperative in dispute resolution is, to the extent possible, to build constructively and progressively on what’s already there. Every society has a range of informal and formal, traditional and more modern dispute resolution mechanisms. Often, particularly in rural areas of conflict-affected countries, traditional dispute settlement mechanisms are all that is realistically available to the population. Some of these methods may enjoy considerable longevity and local legitimacy. At the same time, they may also involve practices that run counter to fundamental international human rights principles, particularly concerning the role and protection of women. The challenge for international interveners is to work as best as possible to build on what’s there while trying to nurture domestic support for constructive, progressive, and meaningful reforms.

unemployed, may be aware of growing frustration among young people vulnerable to pressure and recruitment into armed bands. Women and girls may be especially aware of threats and warning signs of GBV. Monitoring systems should thus include civil society leaders and vulnerable members as contributors to identifying warning signs.

Involving justice sector actors in EWSs is also important in preventing atrocities. Justice sector actors such as the police or military may be capable of providing a “hard security” response. Of course, whether police and courts enjoy any degree of trust and legitimacy among the local population will vary across and within countries. In situations where police are part of the problem, longer-term reforms aimed at improving training, transparency and accountability will be crucial. Assuming police are capable of legitimate action, training them in early warning signs of atrocities can be helpful elements of an early prevention strategy. For example, episodes of GBV may be a sign that more such crimes are to come. Training police in the law governing these crimes and in sensitive procedures for investigating them and preserving evidence can be an important measure in demonstrating that such offenses will not enjoy impunity.

2.2.1 CASE STUDY: EWS IN EASTERN DRC

Conflict Context

Eastern DRC is home to one of the world’s deadliest conflicts in recent history, with an estimated death toll of more than six million. For almost twenty years, the region has been plagued by recurrent waves of atrocities and serious human rights violations committed by armed rebel groups, national security forces, *Forces Armées de la République Démocratique du Congo* (FARDC), and in some cases civilians. These groups have been responsible for increasing levels of violence against civilians, including GBV, looting, abductions, mutilations and murder. Such attacks have been most prevalent and severe in remote areas of North and South Kivu provinces, where military operations are being conducted.

FARDC and/or rebel groups are able to carry out these multi-day attacks by taking control of main roads and cutting off access to central locations where telephones are located. Citizens are unable to alert authorities immediately to these attacks, and assistance providers face significant challenges in delivering a timely and effective response, including the ability to effectively investigate such crimes.

Nigeria: Participatory Early Warning for More Effective Response

Over the last decade, Nigeria’s “Middle Belt,” including Jos, Plateau State, has fallen into a vicious cycle of religious and ethnic violence between Muslims and Christians. This has been made worse by the growth of radical Islam and the recruitment of Muslim youth by terrorist organizations, including Boko Haram, who have abducted young students, burned down schools, bombed police stations, looted homes and killed thousands. Since 2012, Search for Common Ground has been implementing a community-driven EWS to protect civilians in Nigeria. Because state security mechanisms to respond to potential threats are inadequate, communities often have to find their own way to protect themselves through a combination of local government and citizen-led groups. Through the EWS, community representatives equipped with cell phones use a Frontline Short Message Service (SMS)-based system to send rumors of tensions and potential violence to a central data hub. SFCG then works to mitigate the risk of conflict, such as by broadcasting local radio programs that seek to ease tensions or by asking a local community or civil society leader to intervene as a mediator. SFCG’s EWS was initially introduced in the Jos region, and is being expanded to cover all of Nigeria.

Democratic Republic of Congo: GBV Trainings for Police and Other Justice Sector Actors

To ensure more effective investigation, prosecution, and adjudication of GBV cases in the Democratic Republic of Congo (DRC), ABA ROLI has conducted training sessions for police officers in charge of investigating these cases in the provinces of North Kivu and South Kivu. The multiple series of trainings have addressed the issue of GBV, the important role of local police in addressing and reducing these crimes and DRC's 2006 law against sexual violence. The trainings have focused on investigative techniques in GBV cases, including forensics trainings on post mortem data collection, sketching, forensic photography, evidence recovery and leading a forensic investigation. ABA ROLI has also distributed sexual assault evidence collection kits to health centers to enable GBV survivors in remote areas to collect and preserve evidence of rape to provide to police. In addition, ABA ROLI has held trainings for community leaders on aiding authorities in their investigations; provided legal and psychological counseling for GBV victims and relatives of victims of mass violence; conducted media and outreach campaigns on the need to preserve evidence in rape cases and mass grave sites; helped to design and implement a central database on cases of mass graves and GBV; and created a working group consisting of Congolese NGOs, international NGOs, the UN's mission in DRC, *la Mission de l'Organisation des Nations Unies pour la Stabilisation au Congo (MONUSCO)*, and Congolese community representatives and justice sector officials to support the justice sector.

An EWS program in eastern DRC is working to strengthen early warning capacities through the distribution of communications technology to civil society members. That program illustrates a number of best practices and guiding principles for addressing emergency communication gaps within the justice and security sectors and linking communities, police, MONUSCO, FARDC and local and international non-governmental organizations (NGOs) together to work to protect the most at-risk communities.

How the EWS Works

The EWS is based on a SMS and voice platform through which reports are received through a cell phone linked to a computer. The computer operates Frontline SMS software, which organizes and files all incoming data and prepares and transmits messages through the cell phone to responders. For messages sent as text by community and police observers, a central operator manually reviews and uploads the data. In addition to SMS reporting, the EWS operates a toll-free telephone hotline if community observers prefer direct voice-based reporting. After a message is received, verified

and confirmed with community members, the central operator coordinates a response with FARDC, MONUSCO, NGOs and key government offices. The central operator also uploads the information onto a digital map that uses Ushahidi's open-source mapping platform. This map collects all received and confirmed reports and groups them by location and category. It provides visual information that helps to identify prevalence and location of incidents of violence in remote areas. The map is available online and is password-protected. All key partners are provided with the password.

The EWS became operational in July 2012. Within the first few months of operations, the EWS delivered its first significant success case. In August 2012, a community observer reported that the Nyatura rebel group was preparing to attack the village of Buabo in Masisi. The EWS operator disseminated this information to local government partners, MONUSCO, and the FARDC, which deployed forces to protect the village. Within a few hours, because of this timely security response, the armed group cancelled its attack on the village and withdrew its forces from the region.

In April 2013, a community observer reported that another rebel group, the Mai Mai Raiya Mutoboki, was preparing to raid the village of Borobo, causing the displacement of local villagers into surrounding forests. Within 24 hours of the alert, a protection team from the FARDC was deployed to secure the village and was able to prevent the rebel group from carrying out its offensive. Since its inception in July 2012, the system has received 872 reports from 60 remote villages in Walikale, Masisi and Fizi territories and has coordinated 204 responses with MONUSCO and FARDC — 38 of which have thwarted rebel attacks on villages that are home to approximately 150,000 people.

When outbreaks of sexual violence and other human rights abuses occur, ABA ROLI works with local and international NGOs to run legal clinics that deliver comprehensive legal, psychological and medical assistance to victims, and provide long-term assistance in securing justice against perpetrators. These efforts in particular benefit from other initiatives in DRC that facilitate remote case filing, mobile investigation teams, and mobile courts to investigate and prosecute perpetrators of GBV and other major crimes. Once a community observer reports a relevant case, the central operator, trained in basic counseling on victims' rights, available services and legal procedures, contacts a lawyer working at the nearest legal clinic. The lawyers give legal advice and assist a client throughout the legal process from the initial filing of the complaint until trial. In addition to legal services, lawyers organize awareness sessions to educate the public. Psychologists at the clinics provide critical psychological services to GBV victims and their families, such as counseling and social reintegration therapy. To ensure the provision of holistic legal aid services, psychologists also refer GBV victims to local hospitals when a need for follow-up medical care is identified. Police and prosecutors investigate cases

referred by the EWS, with an internationally-supported working group, including international NGOs, the UN Development Program and Avocats Sans Frontiere, providing logistical support and sharing technical skills and best practices from previous crimes investigations and prosecutions. If security allows, a mobile court session to try alleged perpetrators is organized. A media and outreach campaign typically precedes the court trial to increase awareness of legal protections and the means of seeking redress. The mobile court sessions are an important fight against impunity. Measures like this directed at changing an environment that facilitates perpetrators' ability to commit atrocities send a powerful message to those contemplating the commission of future crimes. Likewise, community members see that investigations, prosecutions and trials are being carried out, creating confidence in the justice system.

Conflict-sensitive use of technology

Conflict sensitivity, using a do no harm framework, was integrated into the program startup phase, and throughout implementation, to build precautions against directly or indirectly creating greater risks for the communities involved. First, it was determined that any need to test the viability of communications technology would come second to community well-being and that no efforts would be taken that would jeopardize safety. During the selection of community observers, potential participants were fully informed of the risks involved in the program, particularly retribution attacks that could be carried out by rebel and state security forces as well as civilian perpetrators. Given this risk, it was made clear that participation would always be voluntary. It was also determined that the identity of community observers would be kept confidential from the network of community and police observers and responders to limit

risks of compromising the identity, location and safety of each participant. While maintaining confidentiality has provided an incentive to community observers to participate in EWS, the trade-off is that it has significantly added to the costs of training community observers.

Sustainability

The EWS continues to be operational in eastern Congo, under the full control of the Congolese government. Through the EWS, support has been extended to the police and FARDC for civilian protection through investments in training as a path to sustainable use of new technologies. For police, ABA ROLI has provided training to police observers on human rights, surveillance, and SMS information transfer, coding and management and cell phone, satellite phone and solar battery charger equipment. For FARDC, coordination meetings have been held for security deployments with MONUSCO and points of contact determined for civilian protection at the outset of the program. Over the course of the program both police and FARDC officers have shown active engagement in promoting community security, regularly reporting and responding to cases in a timely, coordinated and professional manner. Within FARDC, officers have been actively engaged in communicating with communities on safety, security patrols have become more regular, and more active leadership has been exhibited in coordinating responses with MONUSCO. Community observers have noted that seeing such changes in behavior has helped to enhance their perception and trust in FARDC overall.

For civil society, EWS has been an effective tool in increasing existing local capacities and resiliencies for atrocity prevention. Although the number of female recruits as EWS participants has been low, efforts continue to be made to actively engage women in EWS, from provisions of equipment, SMS and human rights

training, reporting cases and serving as community points of contact, and interacting with MONUSCO, FARDC and NGOs. Community observers are volunteers who receive no compensation. A main challenge, common to the nature of volunteerism, has been a lack of motivation on the part of some to report or verify the accuracy of second-hand information. To encourage reporting, ABA ROLI holds follow-up in-person visits and individual bi-weekly calls with community observers to address any problems that arise or to check in generally. Continuing to encourage a culture of “volunteerism” will contribute to sustainability by increasing the number of community members willing to work with EWS. While community observers are reimbursed for small expenses, future EWS initiatives based on volunteers should also consider providing volunteers with transportation equipment such as bicycles or other types of support to acknowledge the benefit they bring to the community.

Lessons Learned

Interventions should foster partnerships for better results.

From the outset of the program, North Kivu and South Kivu justice sector actors were involved in extensive consultations on the proposed technologies and program design. They included the Presidents of the Tribunal de Grande Instance (TGI) in Goma and Bukavu, who served as the Chief Judges, the Prosecutor’s offices in Goma and Bukavu, the President of the Military Tribunal of North Kivu, MONUSCO, the Chiefs of Police of the Special Unit in charge of Protecting Women and Children in North and South Kivu, the Walikale, Masisi, and Fizi police commanders, and local and international non-governmental organizations. Through these consultations, partners agreed to support incorporation of technology, as well as provide significant local input in various components of the program,

including preliminary target locations, phases in programming, roles of potential partners, potential dangers and challenges, the overall impact to be achieved and sustainability plans. Such collaboration was critical in streamlining operations with government partners, particularly at the field operational level as program ideas and approaches were vetted. Follow-up meetings were also organized with the police, MONUSCO and FARDC to increase their understanding of their roles as responders. From these meetings, a response team directory of key stakeholders was developed.

Initiatives that draw on the complementary strengths of international donors, governments, and civil society have proven to be extremely effective. The strong commitment of high-level government authorities to ensure local authorities' participation in EWS, the cooperation of police who are often the only available authority on the ground and the existence of partners who are able and willing to provide immediate and effective assistance to community members have been essential to the success of this EWS program. Initiatives should also be well connected locally and seek the support of formal or informal local structures of authority. USAID field workers are well-placed to foster such partnerships.

Interventions should link early warning systems to justice and accountability mechanisms.

The prevention of atrocities is not possible if there are no other mechanisms facilitating access to justice to vulnerable people living in remote areas. The creation of legal clinics with regular mobile courts in the operating zone of EWS has been a great asset to the success of the EWS. An EWS without effective justice and accountability mechanisms would probably have failed because, without a functioning criminal justice system, security and police functionality and legitimacy suffer. The support from different mechanisms facilitating access to

justice, including legal clinics, prosecutorial field investigations, and mobile courts, has also allowed people to see that justice exists in their communities.

Interventions should focus on familiar and locally-used technologies, such as mobile phones.

By relying on locally available and regularly used cell phones, similarly-sized satellite phones, and solar battery chargers, ABA ROLI was able to facilitate quick pick up by community and police observers. The local nature of the equipment also helped protect against public attention regarding community observers' participation in the program. The central hub of the early warning, consisting of a desktop computer, SMS information exchange and management software, and cell phone, and also consisted of familiar technologies, easing transfer to government partners. An added benefit of using such equipment was the low cost of replacing lost or broken pieces, as they could all be procured locally.

2.3 EXPAND LOCAL KNOWLEDGE OF THE LAW AND LEGAL REMEDIES

Local knowledge is a crucial element of a larger strategy. Knowledge of early warning signs should be combined with increasing people's knowledge of the fundamental human rights and humanitarian law obligations that states have undertaken. Both in treaties, customary international law, and in the 2005 World Summit Outcome document adopted by heads of state at the UN General Assembly, states have agreed that they have a responsibility not to commit genocide, crimes against humanity, war crimes, or to engage in ethnic cleansing. Educating government leaders, including executive, legislative, and judicial actors, can make them better aware of their legal responsibilities, just as educating civil society organizations and ordinary people alike about these fundamental obligations can help

Radio Programming on Human Rights

In the DRC, the NGO Interactive Radio for Justice (IRFJ) has helped to educate people about the protections they are entitled to under the law. Since 2005, IRFJ has encouraged discourse between people in regions where the ICC is investigating atrocities and high-level authorities responsible for rendering justice, such as the Chief Prosecutor for the ICC, MONUSCO, local military judges, and the chief of police of the local village. Discourse is created through a series of radio programming, each addressing justice issues, produced in local languages and aired on local radio stations. The project has been effective in increasing people's knowledge and beliefs related to the roles of the ICC, governmental and judicial authorities.

empower people to demand compliance by their government. Using radio, music, and other culturally-resonant forms of communication can be helpful in this regard.

Knowledge at a general level must also be supplemented by more specific and concrete capacity building to assist governments and justice system actors, such as police, judges, and prison guards, in specific measures to genuinely protect people's fundamental rights. Training in basic rights and procedures for police and for prison guards, for example, is badly needed in many conflict-affected countries; it is necessary both as a near-term step to counter abuse and as an essential part of longer-term reforms. Such training may need to be expanded to security forces in cases where they operate constabulary units to enforce public order.

Also important is educating people about dispute resolution options available to them. Here well-trained paralegals can be an

important tool in advancing public knowledge about options for resolving disputes – situations that may otherwise fester, exacerbate grievances, and even lead to violent confrontation. Paralegals serve a number of valuable functions: they increase human rights awareness of communities and officials, resolve inter-personal disputes through mediation, and mitigate impunity by intervening with relevant authorities to encourage resolution of particular cases and to address more structural problems.

Paralegal mediation efforts (described further in Chapter V) can help diffuse local tensions through efforts to mediate between ethnic communities embroiled in conflict. Moreover, by educating local residents about the range of available dispute resolution options, including customary mechanisms as well as formal courts, paralegals can help keep pressure on local mechanisms to deliver a better quality of justice. More broadly, by offering dispute resolution assistance in situations where few formal mechanisms exist or are difficult to access, paralegals can “provide a ‘safety valve’ to remedy individual and communal grievances and serve to equalize power imbalances that left unchecked can lead to violence and conflict. Engagement with women, young people, and other marginalized groups should be an important part of the work of paralegals, helping not only to educate and empower these groups regarding their rights and options but also as a means to recognize patterns of escalating tensions that may be potential warning signs of atrocities. Paralegals can be deployed relatively quickly in areas of acute need, and they can be particularly valuable in conflict-affected societies where access to formal justice mechanisms is limited.

2.4 IMPROVE DOMESTIC JUSTICE AND ACCOUNTABILITY MECHANISMS

Conspicuous and pervasive impunity for past atrocity crimes will likely fail to build effective barriers against future atrocities. Many factors

may contribute to the commission of atrocities, but situations of pervasive impunity, in which people presume they can get away with horrible acts without any accountability for genocide, war crimes and crimes against humanity – and in which norms against these crimes are rarely if ever enforced – surely makes the situation worse. If there is no accountability for egregious crimes, individuals inclined to commit these offenses are unlikely to be deterred. Moreover, if citizens lack confidence that state institutions will protect them – indeed predatory state actors may be part of the problem, or may be unable to protect against predatory private actors — and if the public lacks confidence in peaceful methods of dispute settlement more generally, they may live in a perpetual state of fear, grievances may fester and people may feel compelled to take matters into their own hands and engage in retributive violence. The challenge is to break cycles of violence by taking steps during windows of opportunity to reduce tension and mitigate drivers of atrocity, so they do not escalate to more immediate triggers of atrocity.

In seeking to encourage innovative domestic justice and accountability mechanisms to respond to atrocities, USAID field workers should keep in mind several key aspects of the justice landscape. One is the potential role of international justice actors, including the ICC, in prodding and potentially catalyzing domestic action. The ICC has jurisdiction to investigate and prosecute genocide, crimes against humanity and war crimes, if the state on whose territory these crimes occurred, or the state whose nationals are accused, is a party to the ICC or has otherwise given its consent. The ICC operates on the principle of complementarity, which means cases fall under the ICC's jurisdiction only where the state with original jurisdiction is “unwilling or unable to genuinely carry out the investigation or prosecution.” Complementarity can create incentives for states to strengthen their own

legal capacities to avoid an ICC prosecution. It can lead to development of national laws and capacity building in domestic justice systems for atrocity trials. Complementarity has, for example, led to British prosecution of one of its own soldiers for a war crime under the U.K.'s domestic implementing legislation for the Rome Statute. Further, Uganda recently empowered its High Court to prosecute international crimes.

In practice, the dynamic of complementarity has often involved a complex interplay between the ICC and other international and domestic actors. Indeed, a number of international NGOs advocate for greater resources for positive complementarity in which international actors assist domestic efforts to investigate and prosecute atrocity crimes. USAID field workers should thus consider possibilities for “positive complementarity” in their programs to encourage domestic accountability proceedings.

That said, a second factor that USAID field workers should keep in mind is the need to make sure that judicial mechanisms to try perpetrators of atrocities contribute in a meaningful way to “justice on the ground.” Courts prosecuting atrocity crimes should engage in outreach to affected populations explaining the purpose and the processes of their work if they are to reassure the public that justice can be fair. In Sierra Leone, for example, the Special Court for Sierra Leone engaged in extensive outreach and engagement with the population, engaging in town hall discussions about the court's work, responding to questions and critiques, helping to build “Accountability Now” clubs at universities, and engaging in on-going consultations with justice-focused civil society organizations. Another key element of “justice on the ground” is capacity-building: many opportunities exist for synergies between criminal trials for atrocities and capacity-building in domestic justice systems. In Sierra Leone, for instance, domestic

investigators working with the Special Court were trained in witness-protection and other investigatory skills, and they have continued to use those skills in the country's domestic justice system. Initiatives like these can help to leave a more enduring legacy when atrocity trials complete their work.

Mobile Courts

Deploying mobile courts to areas marked by such atrocities, including remote areas that may be difficult to access, can be an important part of an atrocity prevention strategy. A mobile court is a formal court that conducts proceedings in locations other than its home office, usually in remote areas where no justice services are available. Mobile court systems are effective in strengthening domestic capacities to try and prosecute international crimes in conflict settings.

Specialized Assistance to GBV Victims

Improving justice and accountability mechanisms not only for atrocity crimes but for all forms of criminality is a critical need in many conflict-affected societies. In many countries, an

overburdened criminal justice system, with no specialized services for women victims, prevent women from seeking help or accessing the legal system. Interventions should take an integrated and comprehensive approach to preventing atrocities, bringing the formal justice sector together with community-based organizations to ensure provision of judicial, medical, psychosocial and other assistance.

2.4.1 CASE STUDY: CRIMINAL JUSTICE REFORM AND PROSECUTIONS IN GUATEMALA

Criminal justice reforms

Since ending a civil war in 1996, Guatemala remains a country with two realities. It is a country with one of the best constitutions and laws in the world, including a new Criminal Procedure Code (CPP), while at the same time its judicial system has been allowed to decay, becoming afflicted with incompetence, inefficiency and corruption.

Over the last fifteen years, Congress has enacted significant criminal justice reforms.

Democratic Republic of Congo: Mobile Courts

Mobile courts were introduced in the Congolese justice system in 1979. While the Congolese government has fallen short in its obligation to facilitate mobile courts, the international community has been organizing the majority of mobile courts since 2004. Because women and children have been disproportionately affected by the armed conflict, international efforts have focused on improving access to justice for women and children and prosecuting GBV crimes. Witness protection is an important part of these efforts. Major challenges of the mobile court program are similar to the barriers that affect the broader Congolese justice system, including poor legal awareness, a lack of reparations for victims, and a lack of enforcement of court decisions.

Mobile courts are playing a key role in trying international crimes in complementarity with the ICC. They have resulted in over a thousand convictions for rape since 2008. Of these convictions, the highest commanding officer, Lieutenant Colonel Kibibi, was tried and convicted for rape in February 2011, in connection with New Year's Day attacks in Fizi, alongside eight of his subordinates, resulting in 10 to 20 year prison sentences. As a result of international support, military courts are gradually consolidating a body of case law in the field of international criminal justice that has been mainly developed during mobile court trials. A large corps of judges and lawyers are becoming national experts on application of the Rome Statute and national legal standards.

Among the reforms, the CPP called for the gradual implementation of oral and, equally important, public trials, and delineated clearly separate roles for the prosecution, defense and judges. A witness protection program, plea-bargaining, limitations on judicial powers and the constitutional right to defense counsel were also introduced. Between 2006 and 2007 another important change took place, as courts began to record all trial proceedings. This has made a major impact on proceedings, as now judges routinely use these recordings when considering matters on appeal. Further reforms were undertaken in 2009 with the creation of the High-Impact Courts for cases that pose a high-risk for anyone involved in the case, or that implicate people in past or current positions of power, organized crime and related murder, rape, conspiracy and drug trafficking, as well as historic crimes like massacres and genocide.

Due to a legacy of the internal armed conflict, persistent impunity has made it possible for individuals to bribe a court official to “lose” their case file. A 2012 report accused 18 judges of “creating spaces of impunity” for organized crime and corrupt officials, including shielding suspected criminals from prosecution and making questionable rulings in their favor. Corruption is also prevalent through influence peddling by military and ex-military personnel and the economic elite in both the courts and the MP. This involves exchanging or buying favors and the use of political influence to gain favors. Overcoming corruption is a serious step needed in the fight against impunity. In 2006, the United Nations created The International Commission against Impunity in Guatemala (CICIG) to dismantle criminal parallel power structures in Guatemala, especially organized crime, as well as to support the successful prosecution of historic crimes,

both with an aim to end impunity in Guatemala. Since CICIG began its mandate that currently lasts through 2015, numerous public prosecutors and judges have been accused of illegal conduct, amounting to collusion or direct participation with criminal entities.

Domestic prosecutions and the Rios Montt genocide trial

The reforms mentioned above have formed the backbone of efforts to investigate, prosecute and try difficult and complex cases that would have otherwise languished. Among these emblematic cases are trials resulting in convictions against senior Guatemalan military actors for the murder of Myrna Mack; senior Guatemalan military actors for the murder of Roman Catholic Archbishop Juan José Gerardi Conedera; Guatemalan military and paramilitary officers for the 1982 massacres in Rio Negro, Baja Verpaz, Dos Erres, Peten, and Plan de Sanchez, Baja Verapaz; and trials against senior and lower-level Guatemalan military and police officers for the forced disappearances of Fernando Garcia, Edgar Saenz and Edgar Fernando Garcia.

The handful of domestic trials that have taken place in Guatemala have each been important steps in pushing the justice system forward and setting the stage for the historic domestic atrocity trial and guilty verdict against ex-President Efraín Ríos Montt in 2014. Equally important is the perseverance of a network of civil society groups spread throughout Spain, the United States and Guatemala, coupled with the brave victims and their families, who worked tirelessly over a 13-year period to bring the most senior officials from Guatemala’s bloodiest period of the internal armed conflict to justice.

Guatemala: 24-Hour Femicide Courts

Guatemala provides an example of an innovative effort to create justice mechanisms to assist victims of GBV in real-time. This followed critical changes to the law and the legal system, including passage of the Law against Femicide and Other Forms of Violence Against Women (LAF) in 2008, which have helped to address violence against women and GBV. Guatemala's former Attorney General Claudia Paz y Paz led the creation of USAID-funded one-stop courts, called Justice Centers, to which GBV victims can turn for medical care and counseling as well as begin the process of evidence-gathering for prosecution of perpetrators. Justice Centers also provide early warning of patterns that require systematic response from legal authorities. In late 2012, one chamber of Guatemala's judiciary was set aside to hear all VAW and femicide cases with dedicated and specially trained judges. The primary tribunal is in Guatemala City and is attached to the Attention to the Victim Centers, also known as a Justice Center. There are a few Justice Centers in the countryside; all have specialized Trial and Appeals court judges. The Guatemala City Justice Center is attached to the MP building, and was designed to be the only location a victim need go to for protective, legal, and psychological services. Victims file their complaint with a dedicated team of prosecutors, speak with an investigator and psychologist, and have a medical exam, all in the same building. According to a Justice Center official, "the victim may spend eight hours there, but it's better than three months of coming and going and retelling their story over and over." The trial court, forensic investigators office and public defenders' office are all also in the same part of the MP building. In the same year, the National Police created a specialized Unit on Sexual Crimes, and the MP added a Unit on Sexual Crimes to the existing Women's Prosecution Unit. The MP and police also began to work in teams for the first time, building trust and capacity between them. As a result of specialized judges, police, and prosecutors, more cases are reaching sentencing.

A few key changes could strengthen Justice Centers and help change the culture of impunity and violence in Guatemala. Specifically, medical and psychological victim services are an important advancement of the Justice Centers, but their effect is limited as they are only available in the capital. Additionally, Justice Centers do not include accompaniment services – these come from civil society, and with funding reliant on donors, the reach of the services is limited. Long-term therapy and accompaniment are critical for the victim to heal, not fall victim to the same or another abuser, and for the wellbeing of their family. Legal services to the victims are also not provided through Justice Centers, though under Article 19 of the LAF the government is obliged to provide resources for legal representation. Civil society has stepped in to fill the gap, but their resources are limited and many victims are left alone to navigate the system.

The Justice Centers have been an important innovation of the LAF, requiring special training and sensitization of its staff. Not all employees have embraced these trainings, suggesting that more continuous training is needed to counteract generations of impunity, misogyny, and violence. Training for judges and dedicated police units on these laws has also been an important component to combating VAW and GBV. The danger of training only a small portion of judges and police officers is that the culture for both in general terms stays the same and the effectiveness of the laws is limited to those individuals. Instead, these laws, their application and impact should be a key part of the training regimen at both the Judges' Training School and police academy.

In December 1999, after concluding that a trial was impossible in Guatemala, Rigoberta Menchú Tum and a coalition of Spanish and Guatemala civil society groups filed suit with the Spanish National Court (“SNC”), under that country’s universal jurisdiction law, against eight senior Guatemalan officials, including Ríos Montt. Their complaint charged them with terrorism, genocide, and systematic torture during various events that led to the death of Menchú’s family members, including the 1980 burning of the Spanish Embassy in Guatemala that resulted in the death of her father and 36 other people.

At the same time, in 2000, the Center for Legal Action in Human Rights (CALDH) filed a complaint with the MP as a private complainant against former president Romeo Lucas Garcia. In 2001, CALDH also filed a case against a number of high-ranking officials of the Ríos Montt government. Just within the 20 year statute of limitations for genocide, CALDH brought charges of genocide, as well as war crimes, disappearances, and murder. Upon being filed and accepted by the MP, the prosecutor assigned to the case called for declarations from the parties.

The Spanish case yielded important witness and expert testimonies and military documents, some of which were used in the Guatemalan trial. In 2005, per Spanish criminal procedure, SNC Judge Santiago Pedraz went to Guatemala to take statements from the accused. Once there, the defendants refused to talk with him and filed a writ of *amparo* (a legal procedure that aims to protect the individual rights of the claimant by providing an equitable remedy – discussed more below). Pedraz issued international arrest warrants and extradition requests for the eight defendants in the Spanish case, including Ríos Montt. Though the Guatemalan Constitutional Court held that the arrest warrants and extradition requests were invalid, Judge Pedraz invited witnesses to testify before the SNC. In a brave and unprecedented

move, Guatemalan Court of First Instance Judge José Eduardo Cojulun Sánchez independently decided that it was his obligation, under principles of judicial cooperation, to take depositions from anyone who wanted to testify and could not travel to Spain. He took testimony over a 30-day period and national television and print news outlets covered the hearings. However, without recognition of the extradition requests and as criminal defendants cannot be tried *in absentia* in Spain, as a result, the Spanish genocide trial stalled.

In 2011, shortly after her appointment as Guatemalan Attorney General by then-president Álvaro Colom, Claudia Paz y Paz Bailey, who brought to the office a background in international criminal law, refocused attention on the 2000 and 2001 complaints filed by CALDH. Uniquely to this case, the private complainants were instrumental in the MP’s investigation, providing them with access to the same evidence and testimony they had prepared for the Spanish trial and connecting the MP with the victims, witnesses, and experts needed for trial. Despite the defense counsel’s repeated attempts to derail the proceedings, including successfully arguing for the recusal of Pre-Trial Judge Carol Patricia Flores on grounds that she lacked impartiality, the pretrial phase progressed.

In March 2012, formal indictments against Ríos Montt and Rodríguez Sánchez were filed. This included a genocide charge involving 15 separate massacres of the Maya Ixil population in the northern Quiché region between March 1982 and 1983. The charges against the two former military leaders were based on existing domestic laws, specifically the genocide and crimes against obligations to humanity provisions of the Guatemalan penal code.

As momentum built around the domestic genocide trial, a network of over 50 Guatemalan organizations worked together

with the same objective, building testimonial evidence and providing key support to the MP. On January 28, 2013, new Pre-Trial Judge Miguel Angel Galvez ruled that there was enough evidence to proceed. Importantly, he overruled a defense objection as to the inclusion of military plans, concluding that material evidence could not be withheld from human rights prosecution on the grounds of state secrets. On March 19, 2013 the trial began in the First Criminal Tribunal Chamber “A” of the High-Impact Court.

Over a two-month period, 98 Maya Ixil witnesses and survivors and over two dozen experts testified. The trial was plagued by appeals of procedural decisions and changes in representation. However, on May 10, the Trial Court rendered its verdict, finding Ríos Montt guilty of genocide and “inhumane acts against a civilian population” (also known as war crimes) and acquitting Rodriguez Sanchez. On May 17 the Trial Court issued its 718-page written judgment. Ríos Montt was found culpable as a direct participant on the theory that he designed and oversaw the military strategy and that he had command responsibility.

On May 20, in a 2-3 ruling, the Constitutional Court “set aside” the verdict and annulled the last days of the trial, holding that the events after April 19 were invalid. The Constitutional Court decision left many people confused, and the status of the genocide trial in question. Some argue that the Constitutional Court did not have jurisdiction to hear the appeal, as the defense needed to file a “special appeal” instead with an appellate court before the Constitutional Court could hear the appeal. Others point out that a trial cannot be annulled once a final sentence is rendered. Still, with no higher court in the land, the Constitutional Court decision stands and the genocide trial has been remanded for retrial with a new panel of judges. Numerous issues were left unresolved, including how a retrial will comport with the

Appeals Court decision protecting witnesses from “re-victimization.” Many victims have been left very disillusioned and deceived by the justice system, though many are also resigned that if the need arises, they will testify again. A re-trial is tentatively scheduled for 2015 in the First Criminal Tribunal Chamber “B” of the High-Impact Court.

Outcomes of the genocide trial

The genocide trial is an historic milestone for Guatemala and the fight against impunity. The symbolism of the trial cannot be overstated, as the first and only domestic trial against a former head of state, finding him personally culpable for widespread violent crimes committed during Guatemala’s 36-year war. This is the first time acts of genocide were recognized by a court and the first opportunity victims have had to publically recount their painful experiences of genocide in a Guatemalan courthouse, exposing to the nation what they went through while under oath. This case also provided the first time the genocide committed against the Maya Ixil was recorded in official state records. Historical memory is a major challenge in Guatemala, and this trial afforded an opportunity to have a major part of Guatemala’s history – generally ignored or denied – center stage. Truth telling and official recognition of wrongs play an important role in reparations and reconciliation and have the potential to impact the national conscience.

The verdict also has important implications jurisprudentially, having placed an emphasis on the mass rape of women as an indicator of genocide rather than as simply casualties of war. It makes specific references to the testimony of rape victims and the inter-generational and psychological effects of rape. This is an important precedent in Guatemala, where violence against women continues to be a major problem and an indicator of tensions and attitudes about violence.

The very fact that there was a final sentence at the trial phase may have a long-lasting impact in Guatemala as well, given that a sentence in this trial seemed impossible to so many during the entire proceeding. Yet, despite the Constitutional Court's partial annulment, there is a final sentence and the obstructionist tactics failed in the trial phase. For many victims and advocates the impact of having a final sentence cannot be taken away: a court recognized that there was genocide in Guatemala and direct culpability went to the top. It is important that the partial annulment was based on procedural grounds, not the merits. What is more, the issuance of a sentence demonstrates that there are judges who will not tolerate obstructionist schemes, and are not paralyzed by Guatemala's legacy of impunity.

Unfortunately, the trial also heightened the polarization in the population, and increased efforts to criminalize human rights defenders. The trial put the military on edge, as in many ways the trial of Ríos Montt was a trial of the acts of all those below him during one of the bloodiest parts of Guatemala's history. Additionally, the national and international press' daily coverage of the case made many in the armed forces nervous. Could they be the next to stand trial? The attention placed on the trial did lead to an unprecedented national discourse, focusing especially on the events of the early 1980s. Sadly, this discourse was quickly co-opted by the parallel power structures in Guatemala, fueling anger and nervousness at the trial participants rather than reflection and empathy with the victims. This nervousness resulted in an unofficial campaign through the press and politicians to vilify the trial, its participants, and advocates as "communists," "guerillas," and even "terrorists."

What is more, the way the Constitutional Court's partial annulment gave a face to impunity, with the three judges that ruled to

partially annul the verdict choosing to protect the status quo. The trial also forced the economic elite to show its role in impunity and how its interests are directly linked to halting accountability for historic crimes. During the trial a full-page ad was taken out in the most popular newspaper in the country, *Prensa Libre*, where business leaders and high profile politicians, including the former Vice President Eduardo Stein, urged the judges to acquit the defendants, claiming that a guilty verdict would jeopardize the fragile peace. Shortly after the verdict, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations published a letter with veiled threats to the Constitutional Court, claiming that the country would come to a stand-still if the verdict was not overturned. Shortly thereafter the Court ordered the partial annulment.

ADDITIONAL RESOURCES ON JUSTICE SECTOR INTERVENTIONS

Hague Institute for Global Justice. 2013. "Fostering a Rule of Law Culture," in The Hague Approach: Six Principles for Achieving Sustainable Peace in Post-Conflict Situations.

Cao Lan. 2015. Culture in Law and Development: Nurturing Positive Change. Oxford University Press.

Ellis, Mark. 2009. "International Justice and the Rule of Law: Strengthening the ICC through Domestic Prosecutions." | Hague Journal on the Rule of Law: 79.

Stromseth, Jane, David Wippman, and Rosa Brooks,. 2006. Can Might Make Rights? Building the Rule of Law After Military Interventions .Cambridge University Press.

Stromseth, Jane. 2008. "Post-Conflict Rule of Law Building: The Need for a Multi-Layered, Synergistic Approach," 49 William & Mary Law Review 1443.

V. The Role of National Human Rights Institutions and Paralegals in Atrocity Prevention

With their human rights protection mandate, national human rights institutions (NHRIs) present a unique opportunity for atrocity prevention via conflict early warning and response systems, especially when coupled with community-based institutions serving as frontline human rights problem solvers. NHRIs are typically located at an intersection of government and civil society organizations. In this position they provide the opportunity for enhancing communication and response mechanisms between government, civil society, and communities. In the early warning context, this translates to the ability to gather information from local-level actors and notify relevant authorities. Community-based institutions, especially paralegal networks, are a natural and necessary complement to a NHRI's effective functioning both in human rights protection and particularly in the early warning context. Paralegals work within communities to increase human rights awareness, resolve interpersonal and communal disputes through mediation, and mitigate conflicts by intervening with relevant authorities. This gives them both local knowledge and frequent contact with a broad cross-section of community members, making them well-situated to proactively identify and potentially mitigate grievances that could lead to conflicts or atrocities. With paralegals linked to NHRIs, NHRIs could potentially draw in both the government and civil society organizations in response to the information they are given by community-level actors.

In recent years the number of NHRIs has increased, and many also increasingly recognize that their activities complement atrocity

prevention in the early warning context. Complementing this, in the international arena there is a rising focus on preventative strategies and the subsequent necessity of strong NHRIs.¹ Given this, there is the opportunity to increasingly involve NHRIs in early warning activities. Community-based paralegals then offer NHRIs a ready connection to the community level, enhancing NHRIs' potential to take a role in conflict early warning and response mechanisms within a country.

With USAID support and building on ongoing in-country programming, Global Rights conducted a one-year pilot in Nigeria and Uganda to test our hypotheses that NHRIs linked to community-based paralegals provide a credible model for early warning in under-served and marginalized communities. This memorandum describes that pilot and initial lessons learned.

I. KEY ISSUES

A. Actors

I. What are National Human Rights Institutions (NHRIs)?

National human rights institutions are state bodies with a constitutional and/or legislative mandate to protect and promote human rights.² While NHRIs are part of the state apparatus, they are not under the direct authority of any branch of government and are intended to operate independently of the government. NHRIs are not NGOs. As such, NHRIs are neutral fact finders and arbiters, not advocates for one side or the other. In this role, NHRIs "bridge" civil society and government, linking

¹ Mary Robinson. October 1, 1998. "Human Rights: Challenges for the 21st Century." Delivered at the First Annual Dag Hammarskjöld Lecture.

² Office of the United Nations High Commissioner for Human Rights. 2010. National Human Rights Institutions: History, Principles, Roles and Responsibilities, 13.

the responsibilities of the State to the rights of individuals. As a “bridge” with no defined constituency, NHRIs are ideally placed to provide balanced messages and a neutral meeting point.

NHRIs exist in a variety of forms, the most common being human rights commissions and ombudsmen.³ The internationally agreed “Paris Principles”⁴ require NHRIs to protect human rights, including by receiving, investigating, and resolving complaints of violations of rights, conducting public inquiries, mediating conflicts, and monitoring and promote human rights including through education, outreach, training, capacity building and advising governments. In addition, many NHRIs serve a coordinating function, receiving reports and complaints relating to human rights and utilizing this information in order to analyze trends regarding conflict and tension within the state. A number also have field offices in order to enhance communities’ ability to contact and report human rights violations to the national institution.

The Paris Principles also establish six main criteria essential to a NHRI’s legitimacy and credibility.⁵ NHRIs are accredited by the International Coordinating Committee of National Institutions for the promotion and protection of human rights (ICC) using a ranking scale of A to C on their compliance with the principles.

³ Human rights commissions typically constitute about one-half of NHRIs worldwide while Ombudsmen account for about one-third, especially in Latin America. Hybrid institutions make up the remaining portion of NHRIs. *Id.*

⁴ See G.A. Res. 38/134, Annex ¶ 3, U.N. Doc. A/RES/48/134 (4 Mar. 1994).

⁵ The Paris Principles identify the following criteria for successful NHRIs: broad human rights mandate, autonomy from government, independence guaranteed by law or constitution, pluralism of membership and cooperation, adequate resources, and adequate powers of investigation.

2. The NHRIs of Nigeria and Uganda

The NHRIs in Nigeria and Uganda are human rights commissions. Both are independent bodies with strong mandates and with authority to conduct all activities that work to promote and protect human rights such as powers to identify and report, issue binding judgments, call for reforms, and otherwise intervene to address ongoing human rights violations within the state. They both play an important role in flagging trends that raise the danger of violence accompanied by human rights violations. Neither currently has an extensive early warning and response system in place. They both have regional offices designed to enhance accessibility by communities outside of the national capitals. Both have an “A” ranking from the ICC.

The powers⁶ of **Nigeria’s National Human Rights Commission (NHRC)** include the authority to conduct public education, receive complaints, conduct investigations/public inquiries, award damages and other forms of relief, issue decisions enforceable by a court,⁷

⁶ Nigerian National Human Rights Commission (Amendment) Act (2010); National Human Rights Commission (Amendment) Act (2010), Explanatory Memorandum; *Mandate*, National Human Rights Commission.

⁷ The NHRC exercised this authority for the first time in April 2014. See Federal Republic of Nigeria, NHRC, Complaint No. C/2013/7908/HQ, April 7, 2014. Based on a complaint by Global Rights, the NHRC found the Federal Government responsible for killing 8 persons, seriously injuring 11, and banishing 4 during a raid in September 2013 by security forces in a downtown Abuja building occupied by over 100 men. The NHRC rejected the Government’s argument that those killed, injured, and banished were members of Boko Haram and that its actions were justified due to the non-international armed conflict (NIAC), finding the victims were civilian non-combatants and the Government’s use of force disproportionate. The NHRC also clarified the legal standards applicable to the Government’s use of lethal force in the context of the “ongoing,

advise the government, publish reports, engage in mediation and conciliation, conflict resolution, peace building, training, and cooperate with local organizations. The NHRC's mandate is intended to create "an enabling environment for the promotion, protection, and enforcement of human rights."⁸ It has six zonal offices that enhance accessibility by local communities⁹ and has a Communal Conflict Unit. The NHRC already explicitly works to include local partners and it makes efforts to serve in transmission roles and works to build systems of communication.

Among the NHRC's strategic goals for conflict prevention and peacebuilding is the establishment of an early warning system "that monitors and intervenes in conflicts before it [sic] escalates into crisis."¹⁰ The NHRC further describes this strategic objective as "monitor[ing] situations that may lead to violent conflicts with a view to providing early warning signals to relevant Government Agencies."¹¹ For purposes of moving forward on this objective, the NHRC established a new department on Conflict Prevention, Ethics, and Good Governance and an "early warning Desk

escalating, and violent insurgency" that constitutes a NIAC extending to Abuja. The NHRC ordered the Government to bring its Rules of Engagement for security forces in internal security operations in support of civil authorities into compliance with the norms applicable to NIACs as codified in the Geneva Conventions Act.

⁸ Nigerian National Human Rights Commission. *The Commission* website.

⁹ The zonal offices represent the six geo-political zones of Nigeria; North West Zone (Kano), North East Zone (Maiduguri), North Central (Jos), South West (Lagos), South East (Enugu) and South South (Port Harcourt). *The Commission*, National Human Rights Commission,

¹⁰ Nigerian National Human Rights Commission. August 2012. *Strategic Work Plan for Conflict Prevention, and Peace Building Mechanism, 2012-2015* August 2012 at page 7.

¹¹ Ibid.

... to study and respond to potential conflict situations across the country."¹²

The Uganda Human Rights Commission's (UHRC) mandate includes investigating human rights violations, spreading awareness of human rights among the population, and monitoring government compliance with human rights principles.¹³ It also has powers similar to a court. The UHRC has ten regional offices that enhance its accessibility for communities outside the national capital.¹⁴

3. What are community-based paralegals?

In many countries and particularly rural regions where communities have difficulty accessing justice due to the limited numbers of judges and lawyers, community-based paralegals¹⁵ serve a key role in using law to empower poor and vulnerable communities. Similar to the emergence of rural public health workers in response to the organized medical profession's inability to meet community health needs, community-based paralegals (hereinafter paralegals) democratize access to legal and justice services. While paralegals provide services to individuals, they are also well placed to address justice needs of communities. Paralegal programs are organized in a variety of organizational and institutional models. The

¹² Ibid. at pages 8 and 9.

¹³ Constitution of the Republic of Uganda, arts. 52-54, (1995); Uganda Human Rights Commission Act (1997).

¹⁴ The regional offices are located in: Gulu, Fort Portal, Masaka, Jinja, Moroto, Mbarara, Central Regional, Soroti, Hoima, and Arua.

¹⁵ A working definition of community-based paralegal is a person "who has formal training, uses an array of tools – both legal and non-legal – to provide justice services, either lives in or has a deep knowledge of the community in which s/he works, and receives technical support and general supervision from a lawyer." Open Societies Foundation. 2010. *Community-Based Paralegals: A Practitioner's Guide*, Open Society Foundations, 11.

extent to which paralegals are formally credentialed or recognized by the state varies from country to country and program to program. Formalization of training, supervision, and accreditation are current issues being addressed by this community of practitioners.¹⁶

Beyond typical legal-oriented activities such as legal advice and counseling, paralegals frequently work to educate people about human rights as well as receive complaints about human rights violations,¹⁷ tensions within communities, discrimination or unfair treatment, and problems with governance. This means that paralegals have a close connection to the local community. Rather than going to national institutions or legal systems, individuals increasingly instead reach out to paralegals when they have grievances, and paralegals are frequently sought out for their knowledge.

As summarized in the Kampala Declaration on Community Paralegals,¹⁸ community-based paralegals bridge gaps within communities as well as those between communities and national institutions, particularly where formal institutions are absent from communities. Paralegals are known and sought out for their knowledge of law and government as well as their skills in areas such as mediation, education and advocacy in order to seek solutions to grievances or injustices. Given their local knowledge and frequent contact with a broad cross-section of community members, paralegals are well situated to proactively identify and act to mitigate grievances that can fuel conflict and atrocities. If frontline mediation or dispute resolution fails, paralegals are linked

to institutions, including NHRIs, which can provide guidance and employ other conflict mitigation tools.

4. Global Rights' community-based paralegal programs in Nigeria and Uganda

Since 2010, Global Rights, with USAID support, has worked with community-based groups in under-served regions in Northern Nigeria¹⁹ and Western Uganda²⁰ to develop paralegal programs through which these community-based organizations can help members of their communities to understand and assert their legal rights in legally pluralistic environments with weak or unresponsive institutions. Our interventions were designed to help our partners grapple with deeply rooted systemic gaps that deprive individuals and communities of resources and rights as well as the means by which to demand access to resources and rights. Given the weaknesses of formal institutions, mediation was an important tool paralegals used to resolve disputes between individuals as well as within the community.

B. Processes

I. Early Warning, Responsibility to Protect, and Atrocity Prevention

Given the acknowledgement that mass atrocities have frequently shown warning signs that were ignored,²¹ early warning and assessment has been recognized as a necessary aspect of the protection prong of the international norm known as the responsibility

¹⁶ Open Society Foundations. 2010. *Community-Based Paralegals: A Practitioner's Guide*, 5-6

¹⁷ Global Rights. 2011. *Community-Based Paralegal Training Manual*, 12-13.

¹⁸ The Kampala Declaration was an output of a July 2012 USAID-funded African Regional Workshop on Community-Based Paralegals co-organized by Global Rights, Namati, and Open Society Initiative.

¹⁹ Isa Wali (Kano State) and Bauchi Human Rights Network (BAHRN) (Bauchi State)

²⁰ Child Concern Initiative Organization (CCIO), Bundibugyo NGO-CBO Forum, and Bundibugyo Women Federation (BUWOF) (Bundibugyo District)

²¹ See, e.g., U.N. Secretary-General. July 14, 2010. *Early-Warning Assessment and the Responsibility to Protect: Rep. of the Secretary-General*, ¶ 9-10, U.N. Doc. A/64/864.

to protect, or R2P.²² R2P is first and foremost a state responsibility, so the state has the primary responsibility for early warning and assessment to prevent atrocities and thus protect its citizens.

Effective early warning and response systems (EW-ER) focusing on atrocity prevention have several attributes that enable them to timely detect and analyze the indicators of potential atrocities and timely act on that information when there is an upsurge in indicators to generate warnings that result in concrete preventative action (As described further in Chapters I and IV). First, many typically perform systematic data collection and analysis including documentation of trends that enables them to conduct risk assessments and take action in response to data.²³ Second, effective EW-ER systems need strong connections to community actors in order to adequately fulfill their information-gathering function. Finally, the system will have a response mechanism. This means when data analysis and communication with local actors indicates a high likelihood of conflict or atrocities, the EW-ER mechanism can notify relevant responders, such as the police who can help mitigate the possibility of conflict and atrocities. A strong EW-ER system should clearly articulate who is going to be warned and who will act on these warnings.

²² A UN initiative established in 2005, R2P has three foundational pillars: the state's responsibility to protect its population from war, genocide, and other crimes against humanity; the international community's responsibility to assist the state; and if the state fails to protect its citizens the international community has the responsibility to intervene. U.N. Secretary-General. January 12, 2009. *Implementing the Responsibility to Protect: Rep. of the Secretary-General*, ¶ 11, U.N. Doc. A/63/677

²³ Herbert Wulf & Tobias Deibel. 2009. "Conflict Early Warning and Response Mechanisms: Tools for Enhancing the Effectiveness of Regional Organisations? A Comparative Study of the AU, ECOWAS, IGAD, ASEAN/ARF and PIF 3"

2. NHRIs, Paralegals, and Early Warning

The UN has recognized that NHRIs play a critical role in atrocity prevention including their centrality in creating a human rights culture and that some NHRIs already serve in an early warning capacity.²⁴ While few NHRIs particularly in Africa currently play a strong role in early warning, NHRIs around the world have begun to include early warning functions within their mandates, one example being Colombia.²⁵

²⁴ UN General Assembly. July 9, 2013. Responsibility to Protect: State Responsibility and Prevention, ¶50-51, A/67/929 (July 9, 2013); UN General Assembly. July 11, 2014. Fulfilling our collective responsibility: international assistance and the Responsibility to Protect, ¶49, A/68/947 (July 11, 2014).

²⁵ The NHRI of Colombia is an Ombudsman (*Defensoría del Pueblo*) with an explicit conflict early warning function in the part of its mandate that speaks to protecting and defending human rights by preventing violations. Defensoría del Pueblo Colombia. *Misión de la Defensoría del Pueblo*. The Early Warning System (*Sistema de Alertas Tempranas - SAT*), which has 22 regional offices, collects, verifies, and analyzes information relating to risk and vulnerability of civilians due to armed conflict. Utilizing this information, the SAT warns authorities in order to coordinate and provide timely and comprehensive care to affected communities. Defensoría del Pueblo Colombia. *¿Qué es SAT?*. More specifically, SAT monitors armed conflict by looking at violence level, armed civilian presence, regional characteristics, and other factors. It uses this information to create risk reports as a regular part of its monitoring process. For a more comprehensive list of the factors which SAT examines and subsequently uses in its risk reports, see Defensoría del Pueblo Colombia *Información para análisis de riesgo*. SAT alerts the competent authorities on possible outbreaks of violence. Overall, it seeks to promote and coordinate communication in order to improve the effectiveness of EW-ER. This includes coordinating with public agencies, international organizations, and civil society. While *Defensoría del Pueblo* seeks to carry out its early warning function, it is frequently limited in accomplishing this due to perpetual underfunding, lack of sufficient political will on the government's part necessary to create

Elsewhere NHRIs and EW-ER systems frequently exist as separate entities as in Kenya²⁶ and Liberia.²⁷

A comparison of the attributes of an effective early warning system with the mandate, function, and “bridge” role of typical NHRIs, including the NHRC and UHRC, suggests that early warning can be seen to either complement or serve as a natural extension of a NHRI’s mandate, particularly its role in preventing human rights abuses. Similarly, the frontline and liaison roles of community-based paralegals make them well suited for serving as local early warners.

NHRIs are often already performing an early warning function, even if they do not recognize it as such. They receive individual complaints and can conduct investigations on their own initiative, analyze trends across communities,

risk reports on a frequent basis, and members of the office face threats from armed groups.

²⁶ Kenya’s Conflict Early Warning and Response Unit (CEWERU) is modeled after and connected to the Africa –wide Conflict Early Warning and Response Mechanism (CEWARN). This strong connection to continental institutions such as CEWARN rather than the national rights institution is typical of African EW-ER systems. CEWERU’s main role within the state remains as an information-gathering and coordination mechanism as it receives and analyzes information from “local peace actors” and “local peace structures” that operate across the state and media. *Kenya Launches a National Early Warning and Response Mechanism*, CEWARN: Conflict Early Warning and Response Mechanism.

²⁷ The Liberia Early Response-Warning Network (LERN) consists of civil society organizations, government agencies, and international partners coordinated by the Liberia Peacebuilding Office. LERN has a network of reporters that gather data and plot it onto a reporting map. A working group meets twice per month to analyze data, produce a monthly early warning bulletin, and distribute it to response actors, such as the National Police. *Liberia Early Response-Warning Network (LERN)*, Early Warning Early Response (EWER) Working Group (May 2013).

and issue reports, observations, conclusions, and recommendations to government bodies to address human rights concerns including those that can lead to conflict and/or atrocities. All of these NHRI duties that naturally complement EW-ER work depend on strong connections to local actors. NHRIs are typically already connected to local communities and have mechanisms for both receiving and transmitting information. Many NHRIs also provide advice to governments on human rights issues, so they are well positioned to warn governments regarding the potential for violent conflict. These activities by NHRIs already help to mitigate conflict and atrocity by addressing grievances or ensuring there is a wider understanding of patterns of conflict. Adding an explicit EW-ER mechanism can work to deepen and expand these existing processes in order to prevent atrocities and protect the citizenry.

A NHRI serving in a conflict early warning capacity would have a variety of new tasks that nevertheless relate to those it already performs. A NHRI functioning in the early warning context would be able to connect with local-level organizations or individuals, receive complaints from this local level through a procedure they establish, investigate those complaints, and then in turn take action to facilitate a response to these conflict early warning signals.

As a natural extension of their role and given their familiarity with compiling and analyzing information, and seeking action from government actors, paralegals can educate local communities regarding conflict warning signals and communicate signs of conflict to responding institutions. Their constant communication with community members and trusted position within communities permits paralegals to gain access to a wide range of information, including that indicative of emerging conflict or the possibility of atrocities.

Community-based paralegals need strong connections to the NHRI. With strong linkages, well informed local actors like paralegals are able to notify the EW-ER mechanism of emerging threat indicators, allowing it to analyze factors such as the nature of the threats and the magnitude and timing of relative risks of emerging threat. This analysis can then be communicated to decision-makers and responders.

II. CASE STUDY: NHRIS LINKED WITH COMMUNITY-BASED PARALEGALS AS A MODEL FOR EARLY WARNING – NIGERIA AND UGANDA PILOTS

In 2013, Global Rights implemented a one-year USAID funded pilot testing NHRIs linked with community-based paralegals as a model for early warning. Throughout the year, Global Rights worked with the NHRC, the UHRC, and community-based paralegal partners to develop a conflict and atrocity prevention early warning and early response mechanism. Global Rights trained both NHRIs and paralegals on conflict early warning and response mechanisms. In addition, Global Rights worked to connect the NHRIs and paralegals in order to facilitate the information sharing that is the basis of conflict early warning and response systems.

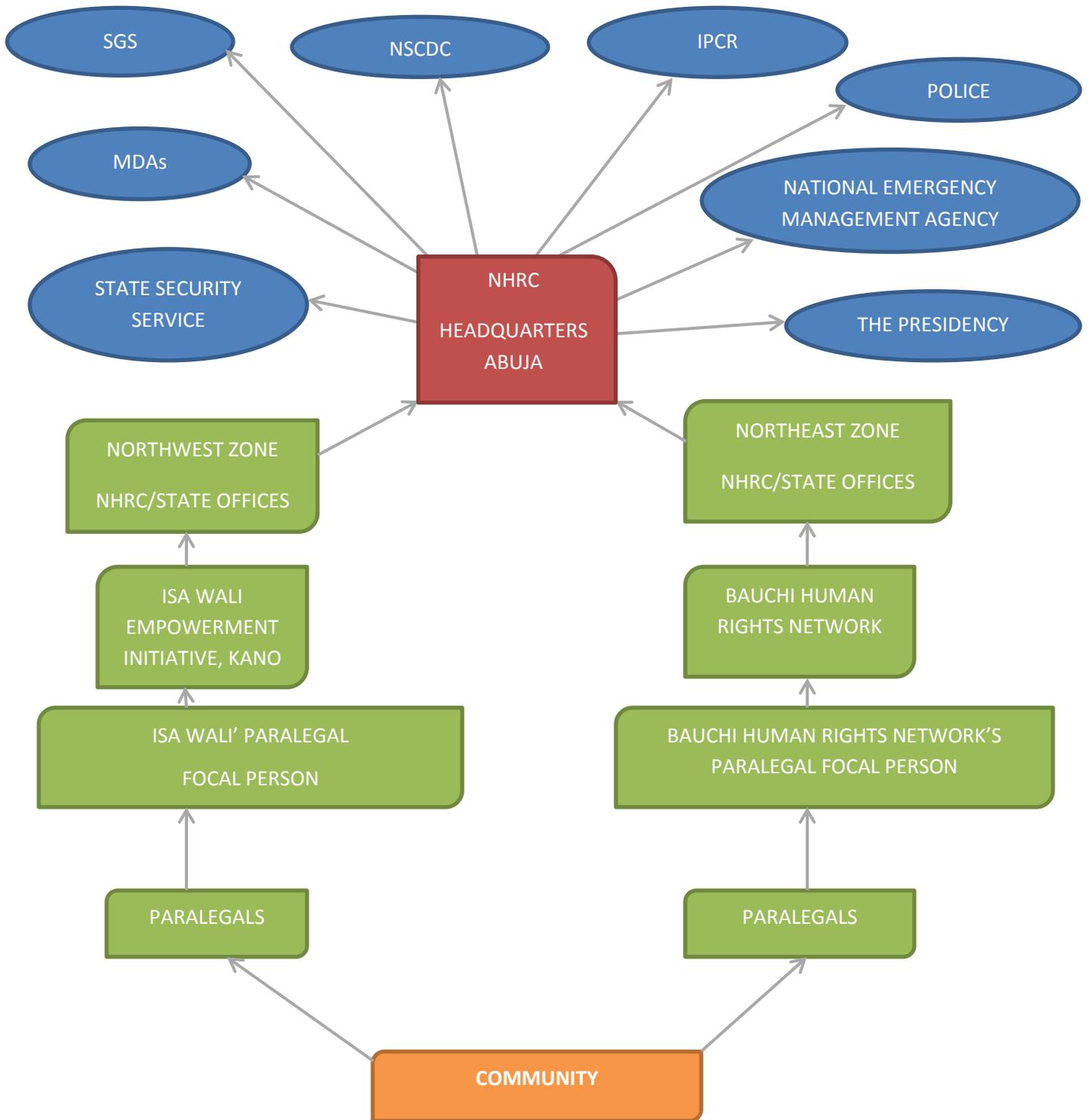
In **Nigeria**, Global Rights first focused on providing training for NHRC staff on the fundamentals of early warning and response related to conflict and atrocity prevention. Several NHRC staff later stated that they learned that they had already been doing EW-ER work; they just did not recognize it as such. Global Rights also discussed with the NHRC the concept of developing linkages and mechanisms for receiving and channeling early warning information from the community level, especially from paralegals.

In parallel, Global Rights also provided training for our two paralegal partner organizations, which included information on the role and

mandate of the NHRC, fundamentals of early warning including indicators as well as data collection, and reporting.

Global Rights then facilitated a meeting between paralegal partners and NHRC staff to discuss the core components of a mechanism for receiving and channeling early warning information from community level to the NHRC and beyond. The following model was proposed (Illustration I).

Illustration 1: Model of Early Warning System Piloted in Two States in Nigeria



The NHRC assigned an officer to staff an early warning – early response desk, but indicated that its ability to act would be limited until funds are released from its governing council.

As the mechanism incorporates national level response agencies, Global Rights together with the NHRC convened a meeting of response agencies to sensitize them to their anticipated roles in EW-ER and to map out protocols for the dissemination of information to and from response agencies.

Subsequent to the dialogue and with sub-grant support, Global Rights' paralegal partners sent 20 early warning reports to the NHRC. The NHRC confirmed that these reports were instrumental to mitigating conflict. For instance, an urgent report from the Bauchi Human Rights Network (BAHRN) led to the interception by security forces of a large cache of weapons being imported into Bauchi state. BAHRN also drew the attention of the State Emergency Management Authorities through the NHRC to the diversion of relief materials intended for flood victims, which were subsequently recovered thereby averting a brewing conflict among internally displaced persons.

As the pilot drew to an end, each partner met with the NHRC office in their respective state to strengthen their communication channels and refine a protocol that would guarantee immediate verification and action on all data received. In Bauchi State, Global Rights' partner also met with security agencies, recognizing the need to develop a direct relationship, especially as they have had to report sensitive data directly to them in urgent instances that could not wait for information to pass through the NHRC hub.

The NHRC reported that drawing from lessons learned and skills it had acquired through the pilot, it replicated the EW-ER system in Niger State where communal conflicts had threatened citizen's rights and state security. The NHRC

reported that it intends to replicate the EW-ER system in other crisis prone states in Nigeria subject to the availability of funds. The NHRC still needs stronger connections to local actors in order to better gather information on threat indicators.

In **Uganda**, Global Rights together with the Center for Dispute Resolution (CECORE) convened a meeting with the UHRC – both the central office in Kampala and the western regional office in Ft. Portal – to review conflict early warning concepts and existing conflict early warning systems as well as to discuss suggestions for an early warning mechanism for the UHRC, including for use with community-based groups such as paralegal partners in Bundibugyo.

Together with CECORE and the UHRC- Fort Portal, Global Rights conducted a training of trainers for our paralegal partners in Bundibugyo. Topics included an introduction to the role and mandate of the UHRC, definitions, causes, and types of conflict, how to conduct a simple conflict analysis, and introduction to early warning and early response. Global Rights' local partners reported that in addition to working for tolerance and non-discrimination in their communities, they had come to better appreciate that accepting diversity is part of their role as a human rights defenders and as part of a larger civil society movement. An innovative aspect of the Uganda pilot was the involvement of the faculty and students of a legal clinic of Makerere University Law Faculty in a field-based summer internship program focused on early warning in under-served communities.

Subsequently, Global Rights together with CECORE, UHRC-Fort Portal, and partners convened a community dialogue, in which local residents including elders, religious and cultural leaders, women and youth, and military and police officials identified issues leading to community conflict. These included cultural,

ethnic, and tribal disputes, land grabbing including disputes between members of different tribes, political interference, and provocative speech including between members of different tribes. Participants identified signs that ethnic conflict was on the rise, including burning of houses in Bankonzo villages, students taking weapons to school, parents keeping their children from attending schools due to the tribal affiliation of the operator, and displacement due to inter-tribal threats. One tribal leader was particularly identified as a driver of conflict. Recommendations from the first dialogue re-surfaced in a second community dialogue that brought together a cross section of the community, UHRC officials, and Makerere University law student interns. Participants identified potential causes of conflict that had arisen since the first dialogue including 1) poisoning of water, 2) perceived discrimination in access to health care that resulted in loss of life, 3) water pipes in one area were cut off, 4) threats resulted in shop closings, and 5) the Bamba ethnic group had a list of members of the Bankonzo ethnic group whom they planned to kill. Some participants had received threatening phone calls or had been physically attacked. Participants especially women highlighted the impact of this inter-ethnic conflict on women including 1) increased separation and abuse in inter-ethnic marriages and 2) inability to farm due to fear of violence left women unable to earn income to repay loans.

Efforts taken as a result of the dialogue to mitigate conflict included government cancellation of the visit of the Bankonzo king to Bundibugyo and the Bamba king preached peace messages on the radio. Participants identified ways they could prevent conflicts from turning violent such as 1) setting up district working groups composed of the two major ethnic groups - Bamba and Bankonzo - to ensure continuity of the peace process, 2) joint radio talk shows by representatives of both ethnic

groups, 3) additional community dialogues, 4) peace talks between the two kings and the government, and 5) quarterly review meetings to track the progress of the peace process.

Through sub-grants Global Rights' three paralegal partners carried out community-based activities to mitigate conflict, understand the root causes of local conflict, and to collect and analyze potential indicators of conflicts. The partners conducted some activities together convening staff and volunteers from different ethnic groups to model tolerance and cooperation as well as to communicate messages in a range of local languages. NGO-CBO Forum and BUWOFE paralegals participated in radio discussions, ran radio jingles conveying peace messages in several local languages, and gave community-based drama presentations in two communities acting out scenarios about conflict drivers, tolerance, non-discrimination, and conflict mitigation. Building on issues surfaced in the community dialogues, the role play dramas included attention to inter-ethnic marriages as a stress point in the community with particular impact on women. Notably participants made the link between conflict, displacement, and poverty, as summarized by one partner "where there's peace is where development sleeps."

To deepen understanding of the Bamba-Bakonzo conflict highlighted in the community dialogues, our partner CCIO undertook an in-depth assessment of the root causes of the conflict and its impacts with specific attention to the impact on women. Partners noted the impact of conflict potential from the refugee spillover from the Democratic Republic of Congo as well as from land conflicts, observing that an increased number of residents were seeking ownership certificates to ease conflict. CCIO also organized a peace walk and a Children's Parliament. Working through the local department of education, two students were selected from thirteen schools covering

both the Bakonzo and Bamba communities to participate in the model Parliament discussion on drivers of conflict in Bundibugyo. The discussion was conducted before an audience of adults and children and broadcast live on local radio.

In July 2014, after the conclusion of the pilot, inter-ethnic tensions between the Bakonzo and Bamba tribes erupted into large scale violence with the Ugandan security forces resulting in the loss of over 50 lives.²⁸ The UHRC's report on the incident flagged many of the issues highlighted in the pilot community dialogues as the triggers for the violence.²⁹

III. LESSONS LEARNED

A. Strengthen NHRI Institutional Capacity

The vision of the NHRI as a potential opportunity for an early warning and early response mechanism requires significant action in order to strengthen the NHRI. In many states NHRIs may be weak, making them unsuitable for a role in EW-ER without significant changes. In others, NHRIs may already be performing some early warning functions without realizing it. For example, one NHRC participant stated that "I had actually been doing the EW-ER work for a while but had not an understanding of how it functioned until now."

As this demonstrates, in order to perform EW-ER functions most NHRIs need institutional strengthening and capacity-building. This entails activities such as training NHRI staff in the fundamentals of conflict early warning and response, including defining EW-ER and what it entails. This also includes strengthening NHRI's

connections to the community level as well as other national institutions, for example security forces, that could serve as responder institutions in an EW-ER mechanism.

B. Develop Linkages with Local Actors

For NHRIs to function well as part of an early warning and early response system, there needs to be communication and coordination with local actors. Frequently, NHRIs are national institutions with local offices. They also may accept individual complaints, but may not have an active, widespread presence at the community level. Unless the NHRI has engaged in extensive confidence building, public outreach, and has a proven record of action, individuals and civil society may be reluctant to report problems, complicating its ability to gather the information needed in order to perform trend analysis or to respond to complaints.

In contrast, individuals are more likely to come to community-level leaders and actors, such as community-based paralegals, with their concerns and problems regarding indicators of rising conflict or likely future atrocities. To capture this information requires greater coordination and communication between NHRIs and local actors. With training, community-level paralegals and other actors are able to collect data and information on problems and issues within the community. They can then analyze this information and communicate it to a receptive NHRI.

Through this communication, the NHRI then has ready access to more information that is predictive of emerging conflict trends. This enables them to take action on this information, notifying responder organizations or taking action themselves. For example, a report from a paralegal organization in Bauchi State in Nigeria to the NHRC led to security forces intercepting a large weapons cache that was being imported into the state. Similarly, a report from this same

²⁸ New York Times. July 6, 2014. "[50 Die in Uganda Militia Attacks with Guns and Spears](#)"

²⁹ Uganda Human Rights Commission. July 24, 2014. "[Statement on Human Rights Concerns arising from the recent clashes in Bundibugyo, Ntoroko and Kasese Districts](#)"

organization enabled the NHRC to draw the attention of the State Emergency Management Authorities to the diversion of relief materials.

Beyond this, it is important the NHRIs and local actors discuss the components of an EW-ER mechanism. This allows both actors to have a vested interest in the EW-ER system in which they participate given that they assist in designing and running it. For example, in Nigeria Global Rights brought together the NHRC and community-based paralegals to discuss the components of a mechanism for receiving and channeling EW information from the community to the NHRC and beyond.

C. Training Community-Based Actors

Community leaders, including paralegals, perform a wide range of services within the community. They may mediate disputes, dispense legal advice, or intercede with local or national institutions.. However, they are not necessarily familiar with NHRIs or EW-ER activities. Because of this, their ability to play a role in an EW-ER mechanism and develop linkages with NHRIs requires improving their knowledge base in these areas.

Local community actors need exposure to the role and mandate of their nation's NHRI along with the fundamentals of an EW-ER mechanism. This includes clarifying key concepts, such as that of mass atrocities, defining conflict and its causes, discussing the principles and elements of early warning, and developing early warning indicators. Even more importantly, local actors may need to improve their understanding of data collection and reporting and how such data can be important information to assist in EW-ER endeavors. Additionally, community-based actor training optimally should include meetings with the NHRI regarding EW-ER. This helps to deepen the connections between the two, laying the foundation for the necessary paths of communication necessary to an EW-ER system utilizing both parties.

CONCLUSION

With the emergence of stronger NHRIs and acknowledgement of the role of NHRIs in R2P, there is an opportunity to strengthen the connection between NHRIs and early warning functions. NHRIs offer the potential for a mechanism that is both able to step in to mitigate conflict directly as well as communicate conflict warning signs to other government actors while remaining more independent than institutions like the police force, a not infrequent early warning hub.

Working with limited time and resources, the pilot in Nigeria and Uganda began to test the effectiveness of an early warning model linking the respective NHRIs and community-based paralegals. In this model paralegals trained to recognize conflict indicators and to monitor, document, and report to NHRIs began initial efforts to work with the NHRIs, which in turn exercised their competence in order to evaluate information received and notify the relevant authorities. While further consolidation of both the NHRIs and paralegals role would be required, this model provides promise that merits replication and scaling up and out in appropriate settings.

NHRI CHECKLIST

1. The NHRI in the state has a strong human rights protection and promotion mandate including a mandate to prevent human rights abuses.
2. The NHRI has a degree of independence from the state.
3. The NHRI has an established information gathering and trend forecasting function.
4. The NHRI either already has connections with local communities, or it is willing and able to work to establish such connections.
5. There are local community actors that perform functions complimentary to an EW-ER mechanism. This may be paralegals who take complaints from citizens regarding human rights violations, local leaders to which citizens come with complaints, or some other type of local actor.
6. These local actors are open to working with the NHRI.
7. Functioning channels of communication either are or can be established between the local actors and the NHRI.
8. Local actors regularly interact with members of the community, specifically hearing of human rights violations, grievances, and information indicative of brewing conflict.
9. There is an understanding of what constitutes warning signs of conflicts and atrocities that the early warning and response mechanism seeks to prevent.
10. There is an established response mechanism that works in response to the information gathered and interpreted by the NHRI and associated local community actors.

