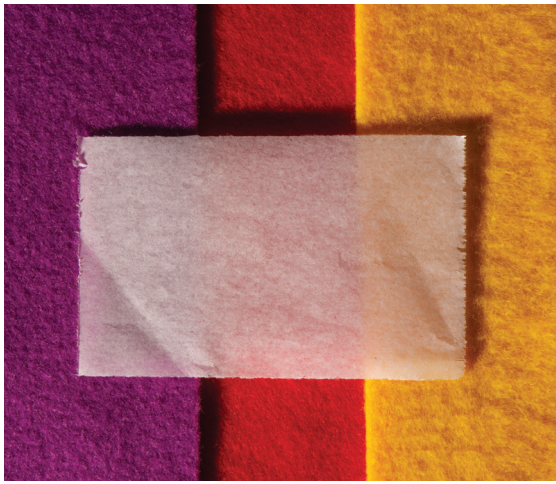
PA-X REPORT: TRANSITIONAL JUSTICE SERIES



Victims' Inclusion and Transitional Justice

Attending to the Exclusivity of Inclusion Politics

Astrid Jamar

This research draws on the PA-X Peace Agreement Database (www.peaceagreements.org), a database of all peace agreements at any stage of the peace process from 1990 to 2016. The database is fully searchable and supports both qualitative and quantitative examination of peace agreements.

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Executive Summary

This report reviews efforts to include victims in transitional justice programmes, and the difficulties of managing the politics of inclusion in the transitional justice setting. It draws on empirical data from peace agreements and fieldwork in Burundi to scrutinize how inclusion is provided for in peace agreements on paper, and in post-agreement practice. The report argues that 'victimhood' and 'inclusion' are concepts that lack conceptual clarity. In practice, inclusion efforts are often pursued without consideration for the political and socio-cultural dynamics that emerge with any attempt to design an inclusive transitional justice process. Intervening to ensure inclusivity involves entering webs of power dynamics between individuals who have fluid political and social identities.

Efforts to include victims are often based on 'status equality' identifiers such as gender, age, ethnicity or membership of another group. However, in practice these identities overlap and connect with political positions, and providing for group inclusion without awareness of the political complexity of allegiance and alliances can crystallize or reinforce existing power imbalances that inclusion efforts seek to address. This report sets out when and how peace agreements have provided for 'inclusive' approaches to the participation of victims in transitional justice efforts, and draws attention to a number of strategies to better enable the political dynamics of inclusion to be managed.

This report addresses:

1. What is at stake when including victims in peace processes?

2. How have victims been included in peace processes and agreements?

3. A case study example of the complexity of inclusion dynamics from Burundi.

Key Findings

A policy consensus exists that victims should be included in transitional justice processes. However, legal definitions of victims are extremely broad (see box), leaving space for political interpretations. The concept of 'inclusion' can create political tensions about how it should be achieved and in the contexts in which inclusion efforts are actually undertaken. Inclusion efforts encounter political and social dilemmas when providing for who should be included in transitional justice processes.

United Nations, General Assembly Resolution 60/147, 16 December 2005.

The UN Declaration on the Right to Restitution for Victims of Gross Human Rights Violations defines "victims" as persons whom, "as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms [...], individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of the person's fundamental legal rights. A "victim" may also be a dependent or a member of the immediate family or household of the direct victims as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental or economic harm."

This report finds:

- Inclusion of victims is often framed and implemented without consideration for the political and socio-cultural tensions which surround attempts to define and include victims, in particular:
    - efforts to include victims are often based on status equality categories, such as gender, age, ethnicity or group belonging, which do not account for the fluid social and political identities of the victims and the individuals that represent them, yet these identities will often constrain or empower the participation of particular groups of victims;
    - intervening on inclusivity inevitably affects power dynamics between groups and individuals representing the different constituencies and these contextual conflict dynamics need to be understood by external agencies and actors;
    - a lack of political awareness of the fluid socio-political identities of those whom are included can crystallize or reinforce the very power imbalances that inclusion efforts claim to address.
- Peace agreements present an image of hapless vulnerable victims that have been killed or have suffered physical violence and require assistance. When the gender of victims is specified, it is to identify women and children who have lost male family members. The approach to victimhood runs contrary to policy commitments for victim empowerment and active participation.

Recommendations

Engaging in efforts to ensure that transitional justice programmes include victims involve political decisions as to how to set-up programmes and wider transitional political processes, in ways that have socio-political consequences for engaged civil society organizations and the wider domestic political constellations. This report suggests the following improvements to policy design and monitoring of inclusion at an implementation stage of a peace process.

What can be improved when designing inclusion policy?

- Encouraging approaches that challenge the image of hapless vulnerable victims that require assistance.
- Accepting the political identity of individual victims and the groups representing them, and work to enhance their empowerment and emphasize their agency (rather than to expect victims' organizations to be apolitical in nature).
- Encouraging a definition of victims that includes efforts to address structural oppression and not just physical abuses.
- Encouraging intersectional approaches to victim identities that understand how gender and socio-economic background, as well as the political positions of individuals, affect inclusion efforts.
- Thinking creatively as regards how both victim and perpetrator definitions are provided for, including leaving the door open for different forms of participation and a range of narratives to emerge.

For example, if victims are considered to be people who have suffered physical violence, this can exclude people affected by structural oppression; if victims are required to provide paperwork (for example, ID cards or death certificates of lost relatives) to be registered in the official process, people who do not have such paperwork cannot be included as victims; if procedures to engage with the transitional justice process are time-consuming, this excludes people who cannot escape other work or family obligations; and public exposure of the experiences of sexual violence might exclude victims who do not want to be exposed, and so forth.

Definitions of victims and rules for their participation inevitably exclude certain groups of individuals who are affected by violence. Acknowledgement, anticipation and readiness to deal with the observed side-effects of these rules and processes can limit their distorting effects.

Introduction

International actors involved in peacebuilding increasingly seek to promote inclusive political settlements. Moral and normative commitments towards inclusive peace processes have become politically imperative, as evidenced by the UN/World Bank report promoting inclusive approaches to prevent conflicts (see further, de Waal 2017). Today there is policy consensus that inclusive processes lead to legitimate political settlements; and that inclusive and sustainable development is the most efficient way to prevent violent conflict (e.g. United Nations and World Bank 2018; Paffenholz et al. 2016). This report interrogates to what extent inclusion efforts can tackle the questions of legitimacy and improve the efficiency of peacebuilding, looking at the specific case of victims within transitional justice processes.

Transitional justice refers to the range of mechanisms used to address legacies of human rights violations and violence in countries recovering from conflict or transitioning from repressive regimes. The transitional justice field frequently debates how to bring victims into the institutional spaces in which transitional justice efforts are negotiated and implemented. The report first presents a brief literature review in relation to the inclusion of victims in transitional justice processes. Second, it offers a global scoping of how victims have been included in peace processes by systematically examining provisions related to the inclusion of victims in the 1518 peace agreements signed between 1990 and 2015 (https://peaceagreements.org/). This analysis is followed by the case study of transitional justice in Burundi, and attempts to include victims. The analysis draws attention to the gaps between policy commitments, actual provisions for victims, and the ethical issues and political consequences at stake.

Part I: Existing Research

Peacebuilding research has reached a gradual consensus about the long-term positive effects of being inclusive. For instance, Nilsson (2012) argues that peace agreements are more likely to prevail when more political parties and civil society groups are included in peace processes. Paffenholz (2015, 88–89) stresses 'the mere presence of more actors is not sufficient', and what is needed is meaningful inclusion 'by expanding the variety of actors eligible for support and inclusion, helping to identify the right mix of inclusion modalities and by expanding the conception of inclusion to encompass not only political institutions'.

More critical voices are slowly emerging and reassessing the alleged benefits of inclusion. De Waal underlines how the norm of inclusion has 'been utilized selectively and opportunistically by political protagonists' (2017, 4). He further argues the inclusivity norm ignores 'the tensions between efficacy and legitimacy that have so preoccupied practitioners of mediation' (2017, 19). Critical feminist perspectives underline the limitations and potential disempowerment of women who are often simplistically included in peacebuilding efforts, as a simple 'add women and stir' approach (e.g. Datzberger and Le Mat 2018; Martin de Almagro 2017).

Discussions surrounding victim-centred approaches in transitional justice provide insightful contributions relating to inclusion challenges. The academic debate provides a broad spectrum of positions in relation to victims' inclusion. Some legal scholars perceive inclusivity as a window of opportunity to address past violence, promote the rule of law, and rehabilitate victims. Over the past ten years, these legal scholars and activists have contributed to the consolidation of victims' rights to truth, justice, reparations and non-repetition (Orentlicher 1994; United Nations Security Council 1997), ultimately reaching a consensus that institutional transitional justice processes should be 'victim-centred' (Méndez 2016).

Based on empirical research in South Africa, Guatemala, Sierra Leone, and Rwanda, other scholars argue that the inclusion of victims does not equate to empowerment. They find that victims have been exploited in policy discourse and implementation processes for moral, pragmatic and political reasons. Survivors' testimonies have been reformatted and censored to fit the policy discourse and legitimize political transitions (French 2009; Verdoolaege 2006; Wilson 2001). Re-telling experiences of suffering can revive trauma with negative effects for victims (e.g. Ross 2003). In other words, the participation of victims may be useful in contributing to public accountability, or underlying a particular narrative of the conflict, but it requires immense efforts from victims - too often met without the promised cathartic effects and expected material reparations (e.g. Shaw 2015).

Postcolonial scholars are even more critical of the 'victim-centred' endeavours because of issues of ownership, appropriation, forced historical closure and disempowerment of victims in transitional justice (e.g. Mutua 2001; Nesiah 2014).

> The '[p]ractice of speaking for and about victims further perpetuates their disempowerment and marginality. To be sure, as transitional justice experts, both from the First World and Third World, we appropriate the right to speak for victims by dint of our geopolitical and institutional privilege'. Madlingozi (2010, 210)

Similarly, Sajjad underlines how hierarchies have been reproduced between international elites, national elites and selected victims as the 'marginalized local' in Nepalese experiences of victims' inclusion (Sajjad 2016, 21). Both Madlingozi and Sajjad argue expert-driven institutional efforts to include, empower and speak on behalf of victims does not only create the image of marginal and hapless victims; it also reinforces the unequal relationship between the international and national professional experts speaking for victims.

Overall, transitional justice debates demonstrate important ethical and political issues when translating commitments to victim inclusion into practice. Building on these critical contributions, the report examines how victim inclusion is provided for in peace agreements, and how inclusion is approached in practice.

Part II:
Global Approaches to Including Victims: The Agenda on Paper

Key international organizations working in transitional justice, such as the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the NGO International Centre for Transitional Justice, promote the centrality of victims in all efforts dealing with legacies of past violence. How does this compare to provision that emerges from peace negotiations? This section maps commitments towards victims in peace processes and their agreements. Who are we talking about when we talk about the victims? What provision is made for victims, when they are addressed? Doing so provides information relating to the conceptual construction of inclusion and of the victim, how it engages with empowerment and how it relates to political and ethical issues.

The PA-X Peace Agreement Database database that codes and maps all peace agreements (1518 documents across nearly 120 countries) from 1990 to 2016 provides a basis for examining the global trends in relation to victims' inclusion in peace processes. Out of the 1518 peace agreements signed over the past twenty-five years, 760 agreements (50%) address transitional justice matters. This includes 195 provisions that are directly related to victims (84 of which are weak or rhetorical, 97 contain substantive commitments to deal with victims, and 14 have strong provisions that include detailed modalities).

Here are three examples of strong provisions providing for victims:

Bosnia/Serbia-FRY/Former Yugoslavia, Agreement, 6 April 1995

Page 1, 1.
The prisoner exchange commission will hold a meeting on 9 April 1995, at the Podveležje division line to agree on the process for retrieving the unburied bodies of dead soldiers from sites.

Page 1, 2.
On 11 April 1995 at 1000hrs, the bodies from Item 1 will be retrieved with the support from SABAT, so they can be handed over to the relevant side.

Page 1, 3.
Both sides agree that they will exchange the following available information, no later than 11 April 1995, on dead soldiers:

a) Bosniak side:
1) for the Mostar municipality area (city and surrounding area) from 1992.
2) for the Konjic municipality area (Bradina, 1992, and Ljuta, 1994)

b) Serb side:
1) for the Nevesinje municipality area from 1994.
2) for the mountains Trebevic, Jahorina, Bjelašnica, Treskavica and Igman from December 1992, winter 1994, and summer 1993.
3) for the Konjic municipality area (Borci, Glavaticevo, Bijelo and Treskavica) for the period between 1992 and 1994.

Page 1, 4.
On 17 April 1995, the Serb side will hand over one half of the bodies of soldiers from the 4th BH Army Corps from the Nevesinje war front, while the Bosniak side will hand over the bodies of Serb soldiers killed within the Mostar area.

Page 2, 5.
On 26 April 1995, the Serb side will hand over all remaining bodies of soldiers from the 4th BH Army Corps from the Nevesinje war front, as well as the bodies of soldiers killed in December 1992 on Trebevica, Jahorina, Bjelašnica, those killed during the summer of 1993 on Igman, and in 1994 within the Konjic municipality. The Bosniak side will hand over the bodies of Serb soldiers killed within the Konjic area during the period between 1992 and 1994.

Djibouti, Accord de Réforme et de Concorde Civile, 12 May 2001

Page 1-2, CHAPTER I - GENERAL PROVISIONS

Article 1:
b) The annexes include:
ii) Minutes of committees.
iii) Lists:
1. List of civilian victims;
2. List of FRUD victims;
6. List of civilians who have lost their property during the conflict.

Page 2, Article 3: Solutions and remedies.

The two parties shall respect the principles and implement the general measures set out below.
b) In order to make good the consequences of the conflict, an extensive programme of rehabilitation and reconstruction of the zones most affected by the conflict, of compensation of civilian victims, and of restoration of public infrastructure shall be implemented (CHAPTER III).

Page 4, CHAPTER II - CIVIL PEACE AND SECURITY

Article 7: Dependent persons
The dependents of FRUD victims shall be assisted.
External financial aid shall be requested to implement this programme, within the framework of strengthening the peace process and conflict prevention.

Page 5, CHAPTER III - REHABILITATION AND RECONSTRUCTION

Article 9:
Consequences for the civilian population.
a) The two parties shall work to ensure that all civilian victims of the effects of the war shall have their property restored, and be able to return to their former way of life.
b) Compensation shall be awarded to civilian victims whose belongings have been destroyed or damaged by the war.

Ireland/United Kingdom/Northern Ireland, Stormont House Agreement, 23 December 2014

Page 5, The Past, 21.
The participants agree: As part of the transition to long-term peace and stability the participants agree that an approach to dealing with the past is necessary which respects the following principles:
... - acknowledging and addressing the suffering of victims and survivors;

Page 6, The Past, 26.
The Executive will take steps to ensure that Victims and Survivors have access to high quality services, respecting the principles of choice and need. The needs of victims who do not live in Northern Ireland should also be recognised.

Page 6, The Past, 27.
The Commission for Victims and Survivors' recommendation for a comprehensive Mental Trauma Service will be implemented. This will operate within the NHS but will work closely with the Victims and Survivors Service (VSS), and other organisations and groups who work directly with victims and survivors.

Page 6, The Past, 28.
Further work will be undertaken to seek an acceptable way forward on the proposal for a pension for severely physically injured victims in Northern Ireland.

Page 6, The Past, 29.
Victims and survivors will be given access to advocate-counsellor assistance if they wish.

Page 6, Historical Investigations Unit, 31.
Processes dealing with the past should be victim-centred...

Page 8, The Past, Independent Commission on Information Retrieval (ICIR), 41.
A new body, which will respect the sovereign integrity of each jurisdiction, will be established by the UK and Irish Governments, called the Independent Commission on Information Retrieval (ICIR), building on the precedent provided by the Independent Commission on the Location of Victims' Remains. The objective of the ICIR will be to enable victims and survivors to seek and privately receive information about the (Troubles- related) deaths of their next of kin.

Figure 1: Number of victims provisions in peace agreements by region

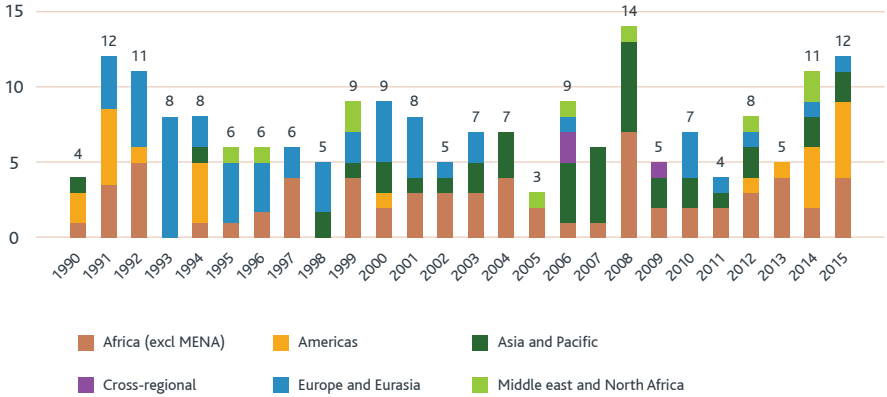


Figure 1 illustrates that there is no noticeable increase of peace processes that addresses victims over time. The evolution curve is moderate, with a peak to 15 provisions in 2008. The numbers of agreements providing for victims is the same in 1991 and 2015. The Colombia case adopted a strong victim-sensitive approach from 1991 onwards, leading to the most comprehensive agreement dedicated to the inclusion of victims in 2015 (an agreement that was incorporated in the final peace agreement in 2016). However, as detailed below, conceptual blurriness of whom we are talking about when including victims remains a consistent theme across all the agreements.

The Political Constitution of Colombia adopted in 1991 in Colombia provides for a victim-centred transitional justice approach:

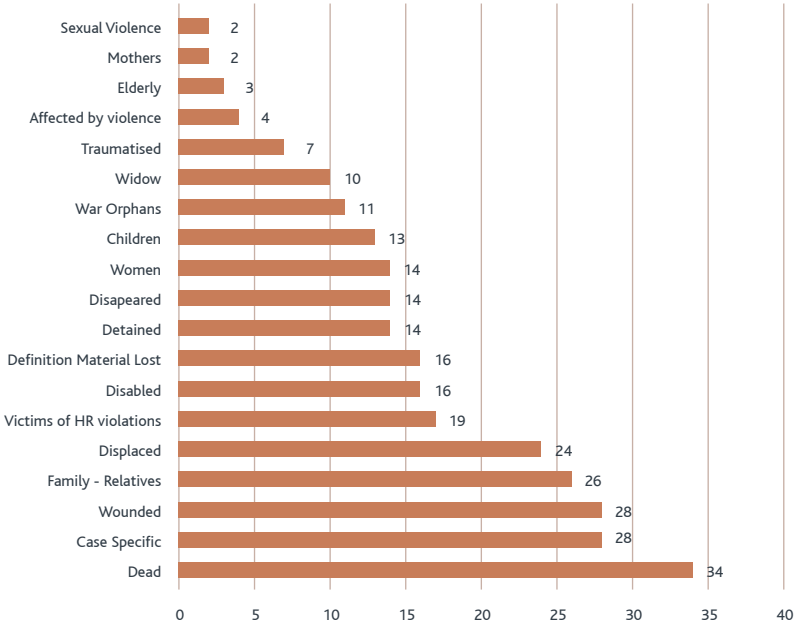
"Transitional justice instruments shall be exceptional. Their principal objective will be the end of the internal armed conflict facilitation and the achievement of a stable and lasting peace, with the guarantees of non-repetition and security for all Colombians. Such instruments shall ensure at the highest possible level, victims' rights to truth, justice and reparation. A statute may authorize, within the framework of a peace agreement, a different treatment for illegal armed groups who have participated in the armed conflict and for related state agents[...]" (Art. 66)

This culminated in the most comprehensive agreement for victims in 2015 (Colombia, Agreement on the Victims of Conflict...,15 December 2015. This was incorporated in the final peace agreement in 2016). The 63-page long agreement provides in its entirety for mechanisms dealing with the past. It primarily explains the setup of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition (CSTJRNR). The CSTJRNR shall be based on the principle of acknowledgement of the victims' rights and that there should exist full truth on what happened during the armed conflict. The CSTJRNR shall combine judicial mechanisms in form of the Special Jurisdiction for Peace and extra-judicial mechanisms, contributing to clarifying the truth. In addition to the Special Jurisdiction for Peace, judicial mechanisms will be created, such as a unit for the investigation and dismantling of criminal organizations. The Comprehensive System will adopt an approach that acknowledges territorial, gender and other differences and will respond in particular to the victimization of women and children.

Who are we talking about when we talk about the victims?

Out of these 195 peace agreements, there are 282 references to how victims have been defined in terms of the nature of their victimhood.[2] The most common references to victims are discussing the cases of people killed during the conflict (12%); this is followed by the wounded (10%), case specific (any case where they named the group of people or the individuals who are considered as victims) (10%), family members of victims (9%), displaced (8%), victims of human rights violations (7%) – see details in the graph below.

Figure 2: Overview of Victim Definition



[2] Some peace agreements include more than one characteristics to define victims, while others do not specify who is understood to be a victim.

Figure 3: Percentage by aggregated categories

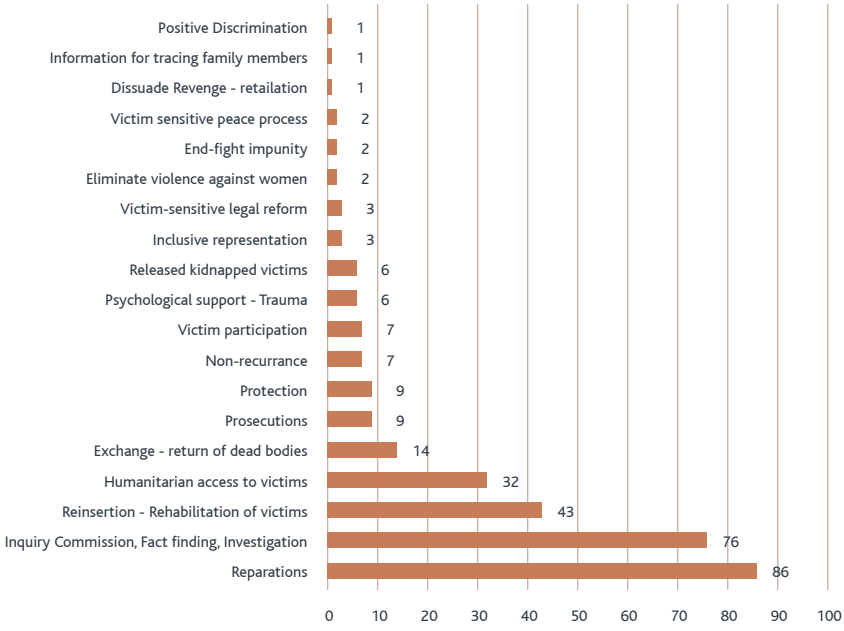
Grouped Victims types	Number of References	Overall Percentage
Physical injuries and conditions - material destruction	168	57%
Family Tie	60	20%
Gender Related	28	9%
Case Specific	28	9%
Traumatized / Vulnerable	12	4%

What type of measures are provided for when we talk about victims?

There are 170 references of specific actions to be taken with reference to victims in peace processes. There are peace agreements that include more than one action to undertaken for the sake of victims, while other do not specify what would (or should) be specifically done for the sake of victims. The most common references are calling for:

- efforts to provide reparations for victims (28%);
- investigation and fact-finding activities (25%);
- support the rehabilitation of victims (14%);
- this is followed by humanitarian assistance (10%), and the exchange and return of dead bodies (5%).

Figure 4: Overview of efforts provided in relations to victims



Analysis: How does the conceptual construction of inclusion and victims engage with empowerment and related political and ethical issues?

When defining victims and whom is to be included as a victim, peace agreements are often conceptually unclear. The notions of victimhood in these peace agreements provisions refer to a variety of ways in which people are understood to be victims. Most peace agreement texts refer to people who suffered physical injuries, conditions and material destruction (59%). Another vastly used identifier of victims is related to a family tie (such as being orphan, widow, mother, or any other family member of dead victims). Two-thirds of gender identifiers (9%) are referring to female identifiers singling out women, mothers and widows for their vulnerability; while the 7 references to male identifiers that aim to be inclusive (three references adopting gender balanced wording – i.e. boys and girls, men and women, one reference to ex-servicemen, one reference to Turkmen referring to all Turk population, and one case calling for support of 'mothers waiting for their sons'. Only 9% of agreements attempt to narrow down particular beneficiary groups. This implies that most references to victims in peace agreements do not engage with the inevitable political choice in defining who are (or should be) the 'victims', but leave that to later, often unspecified, processes. A small number of agreements also refer to less visible forms of victimhood (such as people affected by emotional/psychological suffering and victims of sexual violence). The analysis below breaks down the implications of these definitions in terms of agency, gender and relationship of victimhood to political choices.

Vulnerability versus Agency: Emphasis on the Vulnerable Group of Victims

Despite existing policy concerns with issues of victim's empowerment, victims are predominantly defined on paper as people who have suffered physical injury or material destruction - i.e. the dead, the wounded, the ill, the disappeared, the disabled, and the detained. In so doing, the legacies of conflicts are reduced to the legacies of physical violence which gives limited attention to wider structural causes and consequences of conflicts. The construction of victimhood is centred on vulnerabilities with a hierarchy of vulnerabilities from the dead, to the wounded, to the displaced and the disabled. These provisions mostly identify people and signal limited agency and restricted capacity to participate in the suggested institutional efforts.

With the most common efforts for victims frequently coming in the form of reparations, investigation and fact-finding activities, rehabilitation and humanitarian assistance, peace agreements present a construction of vulnerable victims as needing to be repaired, accounted for, rehabilitated and assisted. Merging these categories together, it becomes clear that there are very few attempts to adopt a participatory approach to defining and addressing victims, and enhancing their agency in peace processes. There are only a few very exceptional cases, such as the Colombian and Ugandan cases, which call for the active participation of victims and inclusive representation.

Gender Qualifiers: Reproduction of Patriarchal Views

Transitional justice efforts can be perceived as an opportunity to address patriarchal structures and masculine identities that have led to the subordination of women prior to the conflict, or to underline the continuity with gender-based violence after the conflict. However, the gender identifiers found in peace agreements are predominantly related to women as mothers, widows, victims of sexual violence. The most frequent word used in conjunction with that of women is children. The gendered references to victims in peace agreements continues to reproduce patriarchal perspectives where women are depicted as equally vulnerable as children and in need of protection or assistance. Victimhood is based on the damaged family tie – often understood in terms of a connection to men: a mother who lost her son in combat, a wife or a daughter who lost her protector and breadwinner. Displaced, wounded, and raped women are also acknowledged for their physical and psychological suffering. There are limited efforts to address the gendered structures that lead to the legitimation of sexual violence during periods of conflict. While feminists call for the perception of women as legitimate actors in policy-making and policy-implementation, the conceptualization of female victims is still mostly presented in terms of traditional roles such as carers or as a vulnerable group.

With the exception of agreements from the Colombian and Nepalese contexts, gendered conceptions of victims reproduce strong binaries (vulnerable women versus injured or dead men), while silencing racialized and class experiences of violence. As the counter-example of Colombia shows, transitional justice can usefully scrutinize not just how gender has affected who has suffered during conflict and how, but also how race and class have impacted on suffering.

Colombia, Agreement on the Victims of Conflict, 'Comprehensive System for Truth, Justice, Reparation and Non-repetition', including the Special Jurisdiction for Peace; and Commitment on Human Rights, 15 December 2015

The most recent and most comprehensive Colombian peace agreement dedicated to victims calls for a Commission for the Clarification of Truth, Coexistence and Non-repetition, which adopts the most intersectional definition of victims so far. For example, that adopted by the Commission for the Clarification of Truth, Coexistence and Non-repetition.

Article 5.1.1.1.

"The Commission will develop an appropriate differential and gender approach that allows evidencing the differential forms in which the conflict affected women, children, adolescents, young people and older adults, to persons in situations of disability, to indigenous peoples, to peasant communities, to Afro-Colombian, black, palenquero and raizal populations, to the population LGBTI, to displaced persons and exiled, [women and men] defenders of human rights, trade unionists, journalists, and women and men farmers, traders and businessmen/women, among others. This should also contribute to the Colombian society's understanding of the specific ways in which the conflict reproduced historical mechanisms of discrimination and gender stereotypes, as a critical first step to having a more just and inclusive society."

As much as the most recent Colombia peace agreements constitute good practice in terms of conceptual construction of victims, critiques underline challenges of implementing such an ambitious societal project that accounts for more than 8.7 million of registered victims so far. Concerns have been expressed in relation to the exclusion of certain groups of victims, continuing violence targeting human rights defenders, insufficient emphasis on structural violence, a lack of adequate socio-economic reforms; with some victims feeling that they have been used as statistics (e.g. Krystalli 2018, Broody, 2018).

Depoliticized Inclusion?

Among the 195 peace agreements providing for victims, only a few cases specify the group of people who qualify as victims. Only 28 cases include specific details that narrow down which groups qualify as victims often in terms of a specific event, date, lapse of time, or regime or explicitly provide for the naming of victims. Other agreements identify specific social/ethnic/political groups or people from defined geographical locations. Two agreements provide the actual names of victims who should be acknowledged as martyrs and whose family should receive reparations. These 28 cases vary in terms how precise and partial the specifications of 'who is a victim' are. The rest of the agreements (91% of them) are not specific. This implies that further efforts will be required to identify who will be covered when victims are mentioned.

Mali/Azawad, Accord cadre de mise en œuvre de l'engagement solennel du 1er Avril 2012, 6 April 2012

Page 3, Chapter III: Adoption of accompanying legislation, Article 7:
Given the exceptional circumstances in the country due to the war and in order to enable elections in proper conditions throughout the national territory, to reinforce social cohesion and national unity, a certain number of legislative texts accompanying the process of transition shall be voted in the National Assembly:
[...]
b – A law on compensation of war victims, and of the insurrectional movement of March 22, 2012;
[...]

Mali/Azawad, Algiers Preliminary Platform for the Inclusive Inter-Malian Dialogue, 14 June 2014

Page 1-2, Untitled preamble: [...] Expressing the desire to unify their forces and their activities and to promote inter-community harmony within all components of the regions of northern Mali, referred to by some as the Azawad; Deploring the tragic events which occurred in Kidal on 17 and 21 May 2014 and addressing their deep condolences to the families of all the victims; [...]

Nepal, Agreement between the GoN and Chure Bhawar Pradesh Ekta Samaj, Nepal, 13 September 2007

Page 1, 3: The Government's decision to provide Rs 1 million to the family of Mangal Bahadur Gurmachhan, who received martyrdom after being killed by the police during the movement of Chure Bhawar Pradesh Ekta Samaj, shall be implemented immediately. Suitable arrangements shall be made to provide medical treatment to those who were injured during the movement and still have not received treatment, including the Vice Chairperson of Chure Bhawar Pradesh Ekta Samaj.
Page 1, 4: The process of providing relief to the families of those killed in the attacks of various armed groups in the Terai shall be continued.

Nepal, Agreement between the GoN and Nepal Adivasi Janajati Mahasangha and Adivasi Janajati Samyukta Sangharsha Samiti, 07 August 2007

Page 2, 17: Provision shall be made to provide a compensation of Rs. 1 million as relief to the families of each of the Nepalese who died in the helicopter crash at Ghunsa, Taplejung.

Georgia/Russia/Abkhazia, Protocol of the Gali Meeting between the Georgian and Abkhaz Sides, 16 April 2001

To hand over the dead bodies of those members of armed groups that were killed in the conflict zone on 7 April 2001.

Philippines/Mindanao, Declaration of Continuity for Peace Negotiation between the Government of the Republic of the Philippines and the Moro Islamic Front, 03 June 2010

Page 1: The Parties considered the following: -The ultimate goals of the talks is to consider new modalities to end the armed hostilities with responsibility to protect and for human security, in addition to resolve the legitimate grievances and claims for the people of Moro ancestry and origin.

While there are benefits to maintaining flexibility through the peace process as to who qualifies as a victim, the trend to refer to undefined vulnerable groups indicates a disregard for the political identity of victims – from which they may draw their agency. By not defining who the 'victims' are, it relegates the decision to the implementing bodies. However, the implementation of transitional justice programmes has often also been criticized, requiring victims to present themselves as depoliticized. While a politically neutral position is often understood by practitioners to legitimize institutions, requiring victims to be apolitical can also be argued to have "undermined the critical role of transitional justice as a challenge to denial, as a basis for exposing the systemic dimension of past wrongs, and as a basis for advancing an ongoing process of change" (Leebaw 2011, 4). Depoliticization of victims and transitional justice processes in general does not transcend the politics of transitional justice, but rather can function to obscure and normalize how politics operates in the process of judging the past.

With a policy discourse centred around the needs and the participation of apolitical and vulnerable victims, transitional justice processes are promoted as beyond dispute, when in practice dealing with the past is highly contentious. Approaching the concept of victims in a depoliticized way does not render processes apolitical. On the contrary, it simply silences or hides the political matters in play. By projecting victims as a homogenous group without political identity, the political commitments and affiliations of victims are left unaddressed. The next section unpacks how leaving questions of whom is to be included to the implementation stage leaves various levels of politics to play out through the implementation of the inclusion processes, using the case study of Burundi.

Part III: Inclusion in Practice: Burundi Case Study

This case study illustrates how international actors encountered the politics of inclusion in unpredictable ways through their involvement in the transitional justice process in Burundi. It demonstrates how efforts to build the legitimacy of transitional justice institutions by promoting inclusion do not operate in a vacuum, but take place in a context of multi-layered power dynamics between the different actors involved in transitional justice programmes and in the wider political contexts of transition. As demonstrated in the case of Burundi, international efforts for inclusion can contribute to new and often unequal power dynamics, by giving insufficient attention to the domestic micro-politics within civil society, victims' networks and the wider society.

General Political Context of Inclusion

Burundi has been heavily affected by four decades of violence. Issues of exclusion are perceived as central to the conflict: the exclusion of ethnic, social or political groups from political spaces was a key factor in the use of violence in order to challenge, acquire or maintain political power and positions. In response, the peace agreements provided for important ethnically-based institutional engineering to promote inclusion (Jamar 2017). Further efforts to provide for forms of inclusion entailed the participation of civil society and women's organizations in peace talks or the national consultations of the population on transitional justice matters (financed by the UN Peacebuilding Fund); and the creation of a steering committee involving civil society groups prior to the implementation of UN Security Council Resolution 1325 on Women, Peace and Security in 2009.

Map of Burundi

Historical Contextualization of the Conflict:

For two decades since its independence in 1961, dictatorships led by three Tutsi military regimes associated with UPRONA (Union pour le Progrès National – Union for National Progress) ruled the country. The prominently Hutu party created in 1992, FRODEBU (Front pour la Démocratie au Burundi – Front for Democracy in Burundi) won the first democratic elections in 1993. The newly appointed President, Melchior Ndadaye, was assassinated three months after taking his post by the most extreme Tutsi elements in the military who feared the inclusion of Hutu in political affairs. As a result, a civil war broke out. The peace process culminated in the signature of 20 peace agreements between different belligerents and terminated when the prominently Hutu rebel group FNL was transformed into a political party and put down their weapons in 2009. The CNDD-FDD (Conseil National pour la Défense de la Démocratie – Forces de Défense de la Démocratie – National Council for the Defense of Democracy – Forces for the Defense of Democracy), the major prominently Hutu-led rebel group, transformed into a political party and has been in power since 2005. In 2015, the CNDD-FDD President, Pierre Nkurunziza, won a contested third term. The current political landscape clearly excludes political actors who opposed the President's third term.

What was provided in terms of transitional justice and victims in the peace process?

The Arusha Peace and Reconciliation Agreement was signed in 2000 under strong international pressure to put an end to the civil war that started after the first democratically elected president was assassinated in 1993. Two armed groups, including the current ruling party, did not sign the Arusha agreements and as a result it did not lead to a ceasefire; although further agreements were then signed with these groups from 2002 to 2009, terminating that phase of the conflict.[2]

Still, the Arusha agreement remained the key framework, and established a transitional justice pathway in Burundi. It provided for three mechanisms: an international inquiry; a National Truth and Reconciliation Commission (later renamed Truth and Reconciliation Commission, TRC); and a judicial mechanism (Arusha Peace and Reconciliation Agreement, Protocol I, Chapter II, Articles 6 and 8).[3] It also established a Commission for the Rehabilitation of Victims. As the excerpts of the peace agreements demonstrate below, the provisions for victims are not integrated in the institutional mechanisms for transitional justice but were set up in parallel. At the beginning of discussions over how to implement these mechanisms, the UN and Burundian authorities disagreed about the relationship between the Special Tribunal, the TRC and amnesty dispositions (Vandeginste 2011). These disagreements meant that the actual implementation of these mechanisms was not possible until 2014, by which point new political dynamics further threatened peace and stability. It is against this backdrop of (in-essence) blocked transitional justice process that efforts to include the wider population and victims were initiated.

[2] These two rebel groups were the current ruling party, the CNDD-FDD and the Party for the Liberation of the Hutu People – National Forces of Liberation (PALIPEHUTU-FNL from its French acronym – which turned into the FNL due to interdiction to strict ethnic affiliation for political parties.

[3] The Arusha peace agreement provided for an International Criminal Tribunal for Burundi (such as the ones established for Rwanda and Former-Yugoslavia) to undertake prosecutions against the main perpetrators. Due to high critique towards the ICTR and ICTY, it was alternatively consider establishing a special chamber dealing with judicial accountability at a national level. The International Judicial Commission of Inquiry was also dropped as perceived as a duplication of the TRC for truth-seeking purpose. In 2010, it was implicitly agreed that the judicial mechanism will be put in place after and based on the conclusion of the TRC.

Key provisions providing for Victims in the Arusha Peace and Reconciliation Agreement, 28 August 2000 are provided in the box below.

Burundi, Arusha Peace and Reconciliation Agreement for Burundi, 28 August 2000

- "Institution of a national day of remembrance for victims of genocide, war crimes and other crimes against humanity, and taking of measures that would facilitate the identification of mass graves and ensure a dignified burial for the victims" (Protocol I, Article 6, Point 8)

- "Return to the rightful successors of the victims of the various crises of property confiscated by certain bodies or by the State or stolen by third parties: movable and immovable property, bank and Savings Bank (CADBU) assets, contributions to the Social Security Fund (INSS); (e) Establishment of a National Commission for the Rehabilitation of Victims to benefit the victims of the various crises" (Protocol I, Article 7, Point 25)

- "Victims of the insecurity and violence: The main victims of the insecurity and violence are: (a) The nation, some political officials, and individuals forced to flee from their original places of residence into exile, settlements and camps; (b) Individuals, groups, and categories of the population, both Hutu and Tutsi, targeted on account of their beliefs or political affiliation and on the basis of their ethnic origin" (Protocol III, Chapter 1, Article 7)

- Chapter 1 of the Protocol IV provides in its entirety for Resettlement of Refugees and Victims. It addresses specifically its definitions; principles governing return, resettlement and reintegration; preparatory activities - including setting up a National Commission for the Rehabilitation of Victims (CNRS); guidelines governing resettlement and integration; actions with regard to returnees in their country of asylum; other actions; access and safety of international personnel; issues relating to land and other property.

Commitments to these provisions are restated in the Transitional Constitution adopted on 28 October 2001:

Burundi, Constitution de transition du 28 octobre 2001, 28 October 2001

- "The period of transitional regime is dedicated to achieving the following aims: [...] 4° Ensure resettlement, reintegration and rehabilitation of the victims" (Article 4).

- "The National Commission for the Rehabilitation of Victims is tasked with preparing and organising the repatriation of refugees as well as the reinstallation and reinsertion of victims. It must ensure the equity, transparency and common sense of all its decisions" (Article 234).

- "The Commission has the most extensive powers to deal with land and other rights issues in the rehabilitation of victims, returnees and exiles. The Commission's decisions are guided by the need to reconcile the objectives of respect of the law, equity, reconciliation and social peace" (Article 238).

The progress and implementation of these victims' provisions have been mostly tackled from the perspectives of humanitarian and land issues with refugees, IDPS and returnees as targeted beneficiaries – out of transitional justice discussions. As further discussed below, victims were gradually brought into the institutional transitional justice process to increase the legitimacy of the blocked process. Ethnographic fieldwork in Burundi reveals how key international organizations brought victims into the transitional justice process, by inviting a new set of actors, organizations and their networks into the space where transitional justice matters were discussed.[4] International efforts to include victims in transitional justice processes are presented in three chronological sections:

1) Initial efforts to improve inclusion within peacebuilding civil society.

2) The invitation of victims' groups to transitional justice discussions.

3) The creation of a national transitional justice network to reach out rural areas.

Inclusion efforts in Burundi affected all dimensions of the peacebuilding agenda – particularly efforts to render civil society itself more inclusive.

[4] The author, Astrid Jamar, undertook participant observations by attending transitional justice-related meetings, training activities, and commemorative events for 18 months from 2008 to 2018 (mostly from 2011 to 2013). She interviewed 80 practitioners from national authorities, embassies, donors, NGOs, and UN agencies. She met regurlarly with key research informants and had innumerable informal discussions about their work and personal involvement with transitional justice implementation. She also worked as a practitioner with two international NGOs while undertaking field research on transitional justice in Burundi in 2011.

Initiating Inclusivity within Civil Society: Bigger Constituencies with Ethnic Balance

Since the early 2000s, civil society in Burundi has been criticized for not having sufficient legitimacy: most national representatives of civil society organizations and local NGOs were at that time from privileged backgrounds, particularly from the Tutsi elite in Bujumbura. As transitional justice efforts have sought to be more inclusive, victims, particularly women, have been promoted as an unthreatening and unproblematic group to include. Inclusion efforts were motivated by incentives to increase the size of constituencies of civil society groups with ethnic and gender balance, while the socio-political dynamics were not addressed. The various organizations working for, or representing victims, created spaces that commemorated deceased victims and listened to survivor experiences. When asked to describe their organizations, representatives of these networks often referred to the number of constituents and the geographic reach of their network.[5] Their key concerns were to maintain connections to as many areas as possible and to incorporate gender and ethnic balance in order to appear as an efficient and representative network. These networks treated rural populations as a beneficiary audience of their peacebuilding and empowerment activities and efforts. However, pressures to increase the size of networks meant they were faced with many challenges: reduced efficiency; the need to accommodate different visions and priorities; increased membership (which meant many people were neglected by the network); and ultimately a loss of any core purpose or ideology.

[5] The wording of network is used to capture the fluid nature of organizations working with victims – as demonstrated through this section. This refers to local NGOs, civil society groups, victims' associations, international NGOs, donors' initiatives, etc.

The issue of ethnic balance in civil society was noted and addressed through inclusion efforts by an American peacebuilding INGO in the late 1990s. When they started to work in Burundi, they employed 120 peace journalists – intended to promote peaceful dialogue - and put an emphasis on recruitment of the under-represented Hutu and individuals with mixed ethnic backgrounds in the hiring process. Even today, many Burundian transitional justice practitioners have been trained by this INGO or work within this organization, creating a somewhat 'transitional justice industry' (see e.g. Madlingozi, 2010, Jamar 2016). The fluid career trajectory of transitional justice professionals implies many of them were simultaneously or consequently working for national civil society groups, NGOs, UN offices, national institutions or donors' agencies representing victims' associations. Many of these Burundian professionals had important family ties or close friendships with CNDD-FDD figures, or other political parties, which would have positive or negative impact for their work efficiency and career progression (depending on power alignment).

Inclusive efforts mostly focused on ethnic and gender balance to address Hutu underrepresentation. This approach, however, reduces individuals to just one identity without acknowledging what may also be other important attributes, such as political affiliation, regional origin and family ties. Whilst these networks proliferated by apparently being successful in realizing the inclusion agenda, they were however increasingly negatively impacted by distrust between group members and conflicting interests.

Adding Victims and Women: Co-optation and Silenced Politics

As the official transitional justice process stalled, international efforts were continued to increase different forms of victim mobilization. This involved addressing not just whom was attending meetings, but how they were participating. Responding to invitations from the transitional justice unit of the UN mission in Burundi in 2011, a small number of representatives of victims' groups were timidly attending the meetings of the reflexion group on transitional justice (GRJT – the French acronym). This group was the key platform where about 30 national and international organizations met to discuss the transitional justice process. The representatives of these victims' groups would not sit around the main table, but on side chairs, and would only respond to questions and inform core group members about their forthcoming commemoration activities. At a certain point, an expatriate staff member took note of this and worked to enhance their participation. She invited the president of a widow group to chair the next meeting. Not having much experience in attending these meetings, she chaired it with some difficulty.

The next week, the participation of victims' groups in the GRJT was contested and questioned by older members, and discussions included fears about the group partiality. The issue was presented by naming numerous places where notorious massacres took place: each of which contains substantial and unique political meanings. Burundians would know which ethnic group was targeted and which (alleged) group were the perpetrators. These places also directly indicated an alleged group of victims and an alleged group of perpetrators, thereby implying particular ethnicities and political affiliations. The social status, the ethnic identity and the political affiliation of the chairing representative was directly targeted by these comments without openly addressing any of these elements.

These details indicate important observations for understanding everyday politics when inclusion and effective participation of victims are translated into practice. The challenge was quickly solved after one prominent Burundian practitioner emailed all the members of GRJT, restating the importance of victims for the legitimacy of the process itself. However, the tensions resulting from this specific meeting illustrates how an inclusion attempt focused on the participation of women fell foul of the other identity and political dynamics at play:

1) Gender and class dynamics, because the female assigned chair was not part of the professional elite usually taking the lead in these meetings.

2) Questions of who deserved to attend and chair the meeting, influence the agenda, and take part in the discussions, and how the socio-professional status of participants influence how their participations is perceived by others.

3) The political positioning of all the participants: there were divides based on the assumed political positioning of some civil society groups (based on assumed and known family ties, ethnicity, and connection to a specific atrocity or event).

Representatives of victims' groups often have actual and assumed political and ethnic identities relating to these issues. The assumed socio-political identity has an impact on every aspect of the inclusion agenda and the everyday relationships between individuals in the groups, and these are not necessarily obvious to an outsider.

Having gradually included more groups (particularly victims' groups) into the key transitional justice platform, instead of increasing the efficacy and legitimacy of the platform, the increasing mistrust amongst civil society representatives was exacerbated. As a result, the invisible politics between groups and networks affected what was addressed or silenced in these meetings. On the one hand, the pressure from international organizations was successful in bringing new actors to the table, despite challenges and resistance: most organizations working on transitional justice gradually continued to embrace the victim-centred policy discourse. On the other hand, the inclusion of these new victims' groups contributed to the lethargy of the platform. By ignoring the inherent and fluid political identity of victims' networks (as well as other members), their inclusion in an established environment affected their interactions, trust between them, and the efficiency of the platform.

Adding the Rural Victims: Avoiding and Reshaping Politics

In 2012, the transitional justice unit of the UN mission sought to ensure further participation of victims from rural communities in the official transitional justice process. With this purpose in mind, the unit created the National Forum for the Community Representatives of Transitional Justice (Forum National des Relais Communautaires en Justice Transitionnelle - FONAREC/JT). This structure also aimed to overcome the political and ethnic divisions existing in earlier civil society organizations. The Forum aimed to provide a new impartial network of victims with an ethnic and gender balance that also represent rural population. The UN transitional justice unit first organized elections of representatives at each administrative entity across the country, and arranged to have focal points in every commune of the country. Training was later facilitated at a provincial level for all the newly elected representatives to encourage local ownership and communication between the participants and the official transitional justice process.

At the same time as this internationally-led initiative to include victims, other influential Burundian NGO workers created their own networks of victims, including one network which acted as an umbrella for all victims' organizations. These two new platforms for victim organizations quickly became the main recipients of UN transitional justice attention and funding. These attempts to include victims in the Burundian process aimed to avoid the politics of pre-existing victims' networks; however, political dynamics inevitably permeated these newly-established networks as well. This extract from a training workshop illustrates the underlying political tensions:

> How do we commemorate in Burundi? There are several dates 62-65, 69, 71, 72, 88, 91, 93-2008. Each person commemorates these dates in his own way by having photos in his wallet, by organizing Masses. For a long time, there had been prohibitions to remember. The Arusha Peace Agreement gives victims the right to commemorate. The politicization of memory and its questioning [is not new]. The president of [Anonymized Victim Group] proved it [being notorious for supporting the current regime]. Besides, those commemorating 21 October can go to the memorial site of Kibimba. But [other anonymized Victim Group] cannot go to Kibimba. Someone wrote "More of Less this" [Plus ou Moins Ca] on the commemoration site sign "Never Again" [Plus Jamais Ca]. There is a politicization and an ethnisation of memory. Remember to accuse, not to remember their lost relatives but to take revenge.
>
> *(Author's translation from French, Participant observation fieldnotes, Commemoration Workshop, Gitega, Burundi, 2013).*

While most conversations during the workshop were focused on theoretical functions of transitional justice mechanisms for commemoration, as the quotation illustrates, the dates mentioned have substantial political meaning and consequences. In line with the workshop objectives, the presentation aimed to promote the organization of commemorative events to move forward the transitional justice agenda, despite the lack of progress in implementing the truth-seeking and judicial mechanisms.

This text above is only a short excerpt of a conversation that addressed the politicization and conflicting interests of commemoration activities. Behind this apparently open articulation of the political dynamics, the political identity of one of the trainers was a more invisible 'elephant in the room'. He had a lot of experience working in both INGOs and local civil society; he had personal relations with key members of the CNDD-FDD. In meetings of the transitional justice wider platform based in the capital, he was part of the few Burundian practitioners who frequently updated on the latest information with reference to transitional justice progress. Thanks to such institutional relationships, information about the government was communicated to civil society actors, but the trainer's connections also meant that he was not seen as a neutral facilitator – particularly by Burundians.

While his fluid political identity and professional trajectory was not publicly acknowledged, the atmosphere of the training room was certainly constrained by it. He was certainly not the only Burundian among transitional justice practitioners who had connections to the regime (this included people with a spectrum of relationships: from not being openly against the regime to being a fervent supporter). There were also supporters of the political opposition among transitional justice practitioners. Altogether, these different political positions inevitably created a tense environment where the core political and societal issues were not addressed because of mistrust, defiance and fear in meetings that were allegedly seeking social transformation. Participants were concerned about the potential risks of speaking openly, that opinions might be communicated back to the government through other participants, particularly the man discussed above.

The irony of this example is that through the creation of the FONAREC/JT as a neutral and apolitical network, the identity, political positions and experiences of violence of those training the civil society groups was ignored despite the important backstage constraints they brought. Such internationally-driven co-option of new actors, and creation of groups focused on greater inclusion, had substantial political consequences as the wider political settlements landscape was also shifting towards authoritarianism and threat of violence, increasingly repressing critical voices, gradually silencing and pushing the representatives of leading critical networks into exile. Today, the disintegration of the political context means that the UN OHCHR is not involved in any work related to the Truth and Reconciliation Commission (which was established in 2014 and continues to function with great challenges). Consequently, their logistical and financial support to this most recent network has stopped, and this network has dissolved.

Burundi's Lessons for the Practice of Inclusion

With the aim of underlining how inclusion works in practice, the Burundi example illustrates the unintended political consequences of inclusion experiments. The proliferation and formalization of victim's associations; 1) provided easy access to victims so that they could be integrated into institutional transitional justice efforts; and 2) it responded to international expectations that victims should be included and enabled to participate. However, these efforts could not be achieved without engaging in the repressive politics of the current regime. It is not always obvious for international practitioners how to identify overlapping networks and the internal conflicts within these networks. With limited attention to the political consequences of past events (e.g. politically lauded dates and places) from international transitional justice professionals, their efforts can reshuffle the power dynamics in civil society in unexpected ways. Despite issues of political distortion, inclusive efforts have been efficient in certain ways: the representatives of the new networks increased their capacity to formulate demands in relation to the transitional justice process, gaining visibility in the media, and access to the formal transitional justice process and the wider political space.

In the current political context, in which the ruling party governs in a repressive way, the experience of violence of some victim groups does not threaten the current regime – if anything it is useful (particularly these perceived as Hutu victims of previous Tutsi military regimes) in reinforcing a self-serving narrative of victimization. While some victims' groups that are perceived as Tutsi victims of Hutu rebel groups are still active in the country, other groups face difficulties in getting their organization registered with Burundian authorities and several representatives of such organizations are in exile today.[6] Whatever one's political position, each person and network will be assumed to be associated with a peculiar ethnic, social and political identity. Given the current political authoritarian context, the organizations perceived close to the CNDD-FDD can operate more freely than those openly opposed to the regime. Since 2015, many transitional justice professionals have been critical of the current regime, standing against the president's attempt to gain a third term. They also became critical of the TRC and stopped engaging with the transitional justice process taking place in Burundi. Some of them are working in documenting crimes committed by the regime since 2015 and seeking justice at the International Criminal Court, excluding themselves even more from the official transitional justice process.

The Burundi case study illustrates how international interventions to include new actors played into internal power dynamics between actors involved in transitional justice discussions, in ways that were not helpful to the wider domestic political context. International organizations succeeded in strengthening the under-represented ethnic Hutu group within civil society in Burundi, in a political context initially dominated by the Tutsi-dominated UPRONA. However, these new organizations gradually became potential allies, or at least useful actors, for the now consolidated Hutu authoritarian regime, while pushing out the representatives of previously over-represented Tutsi organizations in exile. More importantly, reshuffled power dynamics within political settlements both at the national political level and civil society bring attention to contentious relationships between legitimacy and inclusion within this rising authoritarian context. Inclusivity is not a sufficient condition to render a political settlement nor transitional justice processes legitimate.

[6] Beyond this main dividing line, collaboration and tensions in between victims' associations are framed by many other factors related not only to ethnicity but also to geographic locations, political affiliations, family and personal connections as well as dynamics specific to each group – as argued throughout the report. For example, one international transitional justice professional explained one victims' group was contesting the legitimacy of another group associated to the exact same event in the same location during their own commemoration activities (Interview, June 2018).

Conclusion

This report has reviewed the inclusion agenda through the dissemination of taking a victim-centred approach across the globe, and an in-depth review of Burundi as a case study. The inclusion of victims has been framed as a global transitional justice priority to further legitimize institutional efforts. Unsurprisingly, there are important gaps between what is being promoted at a high policy level, what is provided for in peace processes, and how both policy provisions and peace agreement commitments get translated into practice. Overall, the report underlines important risks of the instrumentalization of victimhood by some of the same groups and forces responsible for the conflict, when inclusion is adopted with an apolitical approach.

The review of global commitments to include victims in peace processes over the past 25 years denounces the conceptual construction of victims as vulnerable apolitical individuals in need of repair whilst reproducing patriarchal binaries. Most gender language refers to women as vulnerable victims, associated with children, whose victimhood is caused by having lost a male family member. By projecting victims as an apolitical homogenous group, transitional justice is promoted as an undisputable 'good'. This approach to inclusion contradicts the empowering emphasis on victims in policy discourse. As Bouris (2007) stresses, the political identity of victims enables the victims' appropriation of experiences of victimization, which is a crucial ingredient for agency and empowerment. However, the blindness towards the political identity of victims contributes to de-politicization of the process, and so further distorts the political dynamics allegedly being scrutinized by the transitional justice efforts.

As illustrated with the Burundi case, the search for legitimacy through the inclusion of victims contributed to the reshuffling of power dynamics within civil society and crystallized power imbalances between victims' networks (allegedly or actually) associated with the authoritarian regime and those opposed to it. By framing inclusion around false binaries and fixed identifiers, international actors initiated a politics of inclusion which played out in unpredictable ways and ultimately instrumentalized and co-opted some groups of victims and contributed to the exclusion of other groups. The desire to gain legitimacy with a reluctance to engage and confront politics, leads to the instrumentalization of victims. In sum, inclusion is an impossible conundrum that entails inevitable exclusion through active decisions to include representatives of specific victims' groups and specific definitions and processes which define groups of beneficiaries. By adopting conceptually broad definitions of victims, the political nature of their selection is silenced – as are its effects. The recommendations set out at the start of the report point to alternative approaches to mitigate these effects.

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Burundi, Constitution de transition du 28 octobre 2001, 28 October 2001 (https://www.peaceagreements.org/masterdocument/1425).

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Colombia, Agreement on the Victims of Conflict, 'Comprehensive System for Truth, Justice, Reparation and Non-repetition, including the Special Jurisdiction for Peace; and Commitment on Human Rights, 15 December 2015 (https://www.peaceagreements.org/masterdocument/1547).

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Djibouti, Accord de Réforme et de Concorde Civile, 15 May 2001 (https://www.peaceagreements.org/masterdocument/624).

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Philippines/Mindanao, Declaration of Continuity for Peace Negotiation between the Government of the Republic of the Philippines and the Moro Islamic Front, 03 June 2010 (https://www.peaceagreements.org/masterdocument/1006).

Key Resources

Peace Agreements

For full text of peace agreements cited from which data in this report is drawn, and searchable provision on economic power-sharing see: PA-X Peace Agreements Database, University of Edinburgh (www.peaceagreements.org). This database is a repository of peace agreements from 1990 to date, current until 1 January 2016. It contains over 1500 agreements from over 140 processes with coding provisions for 225 substantive categories.

For peace agreement texts with search functions see further:

Language of Peace, University of Cambridge

- (https://www.languageofpeace.org/#/)

This tool provides access to over 1000 agreements for mediators and drafters to be able to compare and collate language on key issues.

Peace Agreements Digital Collection, United States Institute for Peace

- (https://www.usip.org/publications/2009/04/peace-agreements-digital-collection)

This collection strives to contain the full-text agreements signed by the major contending parties ending inter and intra-state conflicts worldwide since 1989. It was last updated in 2009.

Peacemaker, United Nations

- (http://peacemaker.un.org/)

Peacemaker maintains a comprehensive database of agreement texts, and it serves as an online mediation support tool.

Victims Resources

The following are core useful resources in relation to the issues of inclusion of victims in transitional justice processes in general and for the case of Burundi. For wider literature see further references:

Brett, R., 2018. The Role of the Victims' Delegations in the Santos-FARC Peace Talks. In: Druliolle, V., ed., and Brett, R., ed., The Politics of Victimhood in Post-conflict Societies, 1sted.

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The Political Settlements Research Programme (PSRP) is centrally concerned with how political settlements can be made both more stable, and more inclusive of those affected by them beyond political elites. In particular, the programme examines the relationship between stability and inclusion, sometimes understood as a relationship between peace-making and justice.

The programme is addressing three broad research questions relating to political settlements:

1. How do different types of political settlements emerge, and what are the actors, institutions, resources, and practices that shape them?

2. How can political settlements be improved by internally-driven initiatives, including the impact of gender-inclusive processes and the rule of law institutions?

3. How, and with what interventions, can external actors change political settlements?

The Global Justice Academy at The University of Edinburgh is the lead organisation. PSRP partners include: Conciliation Resources (CR), The Institute for Security Studies (ISS), The Rift Valley Institute (RVI), and the Transitional Justice Institute (TJI, Ulster University).

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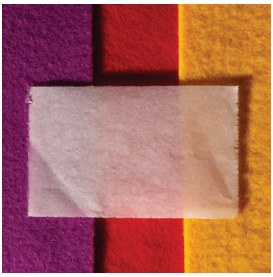

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