

Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC

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Abstract¹

Sustainable human development principles underlie many of the objectives of transitional justice mechanisms. At the same time, the form, implementation and outcome of such mechanisms are influenced primarily by the political will, capacity and resources available to local, national and international institutions. Missing in the equation is the active involvement of the affected population in the planning and implementation phases. Building on the concepts of participation and ownership core to the philosophy and practice of sustainable human development, we use the results of a survey of 2,620 adult residents in eastern Democratic Republic of Congo to illustrate how transitional justice policies could and should be grounded in empirical evidence to best achieve sustainable human development objectives. Our results suggest that basic survival needs and security must come before mechanisms that deal with justice issues and reparations. Respondents expressed fear of reprisal if they were to talk openly about their experience in the conflict, which poses an obstacle to any truth-seeking process and, more generally, social change. In addition, the population's expectations for punishment and prosecution of numerous defendants must be addressed. Transitional justice mechanisms must be part of a broader set of policies for socioeconomic development and reconciliation.

Introduction

Transitioning from oppressive regimes and conflicts is a daunting challenge. A legitimate government must be established and strengthened in order for it to

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rule effectively; reforms to build institutions and establish security must be implemented; economic and social revitalization must be undertaken; and societal reconciliation must be promoted.² These foundational elements of new political, economic, social, human and environmental orders are at the core of the sustainable human development process aimed at improving the quality of life and developing the ability of the population to shape its own future.³ Transitional justice mechanisms have emerged as a popular set of policies in such contexts. Trials, truth commissions, vetting processes, reparations and institutional reforms are assumed to contribute to healing for victims and their families, peaceful coexistence, rule of law and social justice. All of these are not only desirable but also necessary objectives for the sustainable development of affected countries. It is unclear, however, whether transitional justice mechanisms indeed contribute to any of these objectives or bring about any changes in the lives of ordinary citizens.⁴

The lack of empirical evidence limits our ability to examine systematically the contribution of transitional justice mechanisms to sustainable development.⁵ Rather, in this article, we use empirical data from eastern Democratic Republic of Congo (DRC) to examine how the will of local actors and affected populations can inform the design of transitional justice mechanisms. We argue that such a consultation process (formative evaluation) increases the impact of transitional justice mechanisms on sustainable human development. The process can influence the political agenda and foster a sense of ownership and participation, reflecting the sustainable human development philosophy that

those who are the beneficiaries, along with a broader range of stakeholders who have an interest in the development process, should be centrally and actively involved in planning and implementing development programs.⁶

The mobilization of civil society, and, more broadly, the population, contributes to a democratization of the transition process, securing legitimacy and public accountability for the policies set forth.⁷ The knowledge acquired through

² Nicole Ball identified these four objectives for the transition phase of peace building after a negotiated settlement. We extend these objectives to the transition that follows any conflict or dictatorial regime. See, Nicole Ball, 'The Challenge of Rebuilding War-Torn Societies,' in *Turbulent Peace: The Challenges of Managing International Conflicts*, ed. Chester A. Crocker, Fen Osler Hampson and Pamela R. Aall (Washington, DC: United States Institute of Peace Press, 2001).

³ World Bank, *The Quality of Growth* (Oxford: Oxford University Press, 2000).

⁴ See, for example, Laurel E. Fletcher and Harvey M. Weinstein, 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation,' *Human Rights Quarterly* 24(3) (2002): 573–639; Laura Arriaza and Naomi Roht-Arriaza, 'Social Reconstruction as a Local Process,' *International Journal of Transitional Justice* 2(2) (2008): 152–172.

⁵ Methodological difficulties of collecting such evidence include the latent period required to observe any long-term impact and the problems with isolating the effect of transitional justice mechanisms from other policies, especially in rapidly changing settings. See, Pierre Hazan, 'Measuring the Impact of Punishment and Forgiveness: A Framework for Evaluating Transitional Justice,' *International Review of the Red Cross* 88(861) (2006): 19–47; Phuong Pham and Patrick Vinck, 'Empirical Research and the Development and Assessment of Transitional Justice Mechanisms,' *International Journal of Transitional Justice* 1(2) (2007): 231–248.

⁶ UN Development Programme (UNDP) Office of Evaluation and Strategic Planning, *Global, Interregional and Regional Programmes: An Evaluation of Impact* (New York: UNDP, 1996), <http://www.undp.org/eo/documents/global.htm>

⁷ Larry J. Diamond, 'Toward Democratic Consolidation,' *Journal of Democracy* 5(3) (1994): 4–17.

consultation also directly informs policy design, revealing, for example, the nature and importance of local practices and where people stand on the path toward social reconstruction (for example, whether they are ready to 'reconcile').⁸

Few places illustrate better than eastern DRC the challenges of transitioning from a period of human rights abuses and conflicts or oppression toward one of peace, rule of law and respect for human rights. Six years after the 'official' end of the conflict marked by the Sun City Agreement (2002), armed conflicts, insecurity and economic and political instability continue to pose serious challenges to achieving social reconstruction, justice and peace in the area.

In 1997, Laurent Désiré Kabila, then leader of the Alliance of Democratic Forces for the Liberation of Congo-Zaire (ADFL), took advantage of the weakening Mobutu Sese Seko autocratic regime to wage a liberation war, quickly toppling the regime. He was supported largely by Rwandan soldiers in DRC who were pursuing 'genocidaires' responsible for the 1994 genocide in Rwanda.⁹ Once in power, Kabila quickly sought to diminish the influence of his Rwandan and Ugandan allies. In response, Rwanda threw its support behind the rebel Congolese Rally for Democracy (RCD). Unlike the first war, the new rebellion was not welcomed by the population and quickly resulted in a stalemate and a 'war of occupation' that lasted four years and created millions of victims.¹⁰ The war, fought through local rebel groups, was fueled by complex and interlinked long-standing disputes over land, natural resources and political power.¹¹

Prospects for peace improved after the assassination of Laurent Kabila and the accession to power of his son, Joseph. Ultimately, the Sun City Agreement was signed, resulting in a transitional government with one president, Joseph Kabila, and four vice presidents, each representing the main parties at war. In 2005, a new constitution was drafted, and presidential and legislative elections were held a year later. The victory of Joseph Kabila meant that the RCD–Goma, which is closely tied to Rwanda, began losing political power in the east and ultimately losing economic interests. The resultant tension was compounded by increased anti-Tutsi rhetoric, which prompted Laurent Nkunda, a rebel leader whose forces refused to integrate into the army as set out in the peace agreement, to step up his attacks on the government. Conflict resumed in eastern DRC. Several attempts have been made to end the violent campaign, including a failed military integration initiative (mixage) and, more recently, the signing of the Goma Agreement (on the disarmament and integration into the army under the 'brassage' process of all armed groups active in the Kivu provinces, including that of Nkunda) and the Nairobi Agreement (on the disarmament and repatriation of Rwandan Hutu combatants).

⁸ Arriaza and Roht-Arriaza, *supra* n 4.

⁹ See, Human Rights Watch, *Democratic Republic of the Congo: What Kabila Is Hiding: Civilian Killings and Impunity in Congo* (October 1997).

¹⁰ For a detailed discussion of the Congo wars, see, Thomas Turner, *The Congo Wars: Conflict, Myth and Reality* (London: Zed Books, 2007).

¹¹ *Ibid.*

Despite calls for justice and accountability for war crimes, little has been done to address impunity or to reform the justice sector. Although DRC is a signatory to the Rome Statute, the Statute has not yet been adopted into domestic law. Some cases have been brought before military courts, but higher-ranking officials generally have been immune to prosecution. The referral of the situation in eastern DRC and subsequent transfer of three warlords, including Thomas Lubanga Dyilo, to the International Criminal Court (ICC) have been welcome developments. So far, however, the cases remain limited to Ituri District and the ICC's jurisdiction is limited to crimes committed after 2002. At the same time, the Truth and Reconciliation Commission (TRC) established by the Sun City Agreement has largely failed to achieve any of its objectives, as not only did the commissioners include representatives of the belligerent parties but the Commission did not hear a single case.

The Study

We conducted a cross-sectional survey of 2,620 adult residents of eastern DRC from September to December 2007 to capture views and attitudes about peace, justice and social reconstruction.¹² The sample was drawn from the area most affected by the conflicts: the provinces of North Kivu and South Kivu and the district of Ituri in Eastern Province. For the sampling procedure, 30 percent of the *collectivités* (counties) and 25 percent of the *groupements* (village groupings) within each sampled *collectivité* were randomly selected using a systematic random sampling procedure proportionate to the population size.¹³ Up to 10 villages were randomly selected within each *groupement* from a list of all villages ('avenues' were selected in urban centers). At the village level (or avenue level in urban centers), interviewers selected every other household in a randomly selected direction. Within each household, one adult was randomly selected using the first letter of the name of each household member.

A semistructured survey instrument was used for the interviews. Unless otherwise specified, answer options were never provided to the respondents. One-on-one interviews were conducted anonymously in a confidential setting. The survey instrument was translated and administered in the local languages (Swahili and Lingala). Back translation and expert discussion were used to ensure that translations accurately reflected the concepts under study. Because of the sensitivity of some of the questions, the interviewers were assigned to same-sex respondents and were selected to be representative of the ethnic group in their area of assignment. A five-day training session was organized to familiarize interviewers with the instrument and ensure that interviews were conducted in a consistent manner. Oral rather than written consent was obtained because of the high illiteracy rate in

¹² See, Patrick Vinck, Phuong Pham, Suliman Baldo and Rachel Shigekane, 'Living with Fear: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Eastern Democratic Republic of Congo,' Report by the HRC the Payson Center at Tulane University and ICTJ (August 2008).

¹³ Urban centers were considered *collectivités* and included in the sampling procedure.

the area. The consent form stressed confidentiality and respondents' names were never recorded. Respondents did not receive compensation for participating in the study. Interviewers identified themselves as being university researchers working to better understand what people have experienced and their views on the future of eastern DRC.¹⁴ Permissions from local authorities to conduct work in the selected areas were obtained at the provincial, *groupement* and village levels.

The study was designed to be representative of eastern DRC only and is not meant to represent the opinions of all Congolese. In addition, the survey took place at a time of renewed fighting between government forces and the troops of Nkunda. Hence, it is important to note that the data may reflect strong local sentiments and reactions to the escalation of violence and displacement. Two *groupements* had to be replaced by other randomly selected *groupements* as a result of insecurity. A total of 334 households, or 11.3 percent of all sampled households, and 270 individuals, or 9.3 percent of all selected individuals, had to be replaced because of refusal to participate or because the selected respondent was absent. Three attempts were made to contact selected respondents. It is unknown whether the opinions of replaced individuals significantly differed from those of selected respondents. Responses may have been affected by inaccurate recall, the sensitivity of some of the questions and the level of understanding and knowledge of respondents. Respondents were free to interpret the concepts and terms used, and no definitions were provided to them to avoid leading the responses.

In the sample of 2,620 adult residents from eastern DRC, 49.7 percent of respondents were women. Over 80 ethnic groups were represented, with six groups accounting for 56.2 percent of the respondents, namely Nande (18.9 percent), Shi (10.1 percent), Hunde (7.9 percent), Lega (7.7 percent), Alur (6.5 percent) and Hutu (5.1 percent). The mean age of respondents was 36.6 years. Most respondents described themselves as married or in a marital relationship (71.8 percent, including 9.1 percent in a polygamous relationship), and the average household size of respondents was 6.8 persons. Most respondents (78.2 percent) had children. Finally, most respondents described themselves as Catholic (48.9 percent), Protestant (34 percent) or Muslim (5.1 percent).

Priorities

To provide context to the discussion on the way forward in eastern DRC, we asked respondents about their priorities, and what they believed should be the priorities of the government and the international community. Consistent with findings from our research in Uganda,¹⁵ justice, reintegration and reconciliation issues were not frequent priorities among respondents when peace, security

¹⁴ The study protocol was reviewed and approved by the Human Subject Committees of the University of California, Berkeley, Tulane University and the University of Kinshasa.

¹⁵ Phuong Pham, Patrick Vinck, Eric Stover, Andrew Moss, Marieke Wierda and Ruchard Bailey, 'When the War Ends: A Population-based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda,' Report by the HRC, the Payson Center and ICTJ (December 2007).

Table 1. Priorities

			What should the priorities be for	
			the government	the international community
What are your current priorities?				
Peace	Peace (%)	50.5	44.8	23.5
	Security (%)	34.1	41.9	18.5
Livelihood	Financial assistance/money (%)	26.8	18.7	28.4
	Education (%)	26.4	32.4	14.9
	Food/water (%)	25.8	12.1	22.6
	Health (%)	22.9	19.2	18.5
	Economy/employment (%)	14.8	12.7	12.7
	Seeds/farming tools (%)	13.2	6.0	14.5
	Development (%)	10.6	21.4	36.0
	Land (%)	9.7	4.2	1.9
	Return home (%)	5.7	3.3	1.9
	Livestock (%)	4.0	2.6	4.6
	Housing (%)	3.7	1.2	1.9
	Transport (%)	3.1	3.5	5.2
Justice	Provide justice (%)	2.3	10.1	5.2
	Arrest those responsible for violence (%)	1.6	6.3	4.3
	Punish those responsible (%)	1.3	5.4	4.5
	Compensate victims (%)	1.1	2.2	6.7
	Reform the laws (%)	0.8	2.6	1.5
Unity	Reconciliation among Congolese (%)	1.3	4.5	2.4
	Reconciliation with neighbor countries (%)	0.5	2.2	6.2
	Demobilize/reintegrate combatants (%)	0.1	0.9	1.6
Other	Other (%)	6.0	4.0	10.9

and basic needs were not yet met (Table 1). Peace (50.5 percent) and security (34.1 percent) were the most frequently stated priorities, followed by livelihood concerns, including financial assistance (26.8 percent), education (26.4 percent) and food and water (25.8 percent). Few respondents identified providing justice (2.3 percent) or arresting those responsible for violence (1.6 percent), punishing those responsible (1.3 percent) and encouraging reconciliation (1.3 percent) as being among their immediate priorities. Only 13.1 percent of respondents ranked their quality of life as good or very good, and most respondents found their lives, in general, the same (41.5 percent) or worse (39.4 percent) as compared with before the Sun City Agreement, and the same (50.5 percent) or worse (30.5 percent) as compared with before the presidential elections in 2006.

When respondents were asked what the priorities of the government should be, peace (44.8 percent) and security (41.9 percent) were their most frequent

responses. Respondents also frequently talked about education (32.4 percent) and development (21.4 percent). While justice was not frequently listed among their own priorities, respondents often indicated that promoting justice should be a priority of the government, citing justice (10.1 percent) and arrests (6.3 percent) or punishment (5.4 percent) of those responsible. Finally, while peace and security were respondents' most frequent priority, they said less frequently that peace (23.5 percent) and security (18.5 percent) should be a priority for the international community, despite the presence and mandate of the UN mission in DRC (MONUC).¹⁶ Respondents said that development (36 percent), financial assistance (28.4 percent), food and water (22.6 percent) and healthcare (18.5 percent) should be the priorities of the international community.

Respondents' priorities reflect Abraham Maslow's hierarchy of needs, identifying means for survival and safety as the basic priorities.¹⁷ They also reflect the high level of fear respondents reported in daily life situations such as going to their fields, walking in their villages or meeting strangers. In eastern DRC, an effective political, social and economic transition is still to be seen. As long as basic survival needs are not met and safety is not guaranteed, social reconstruction programs, including transitional justice mechanisms, will not be perceived as a priority and will lack the level of support needed for their success. In addition, the government needs to be strengthened and legitimized if it is to bring peace and security. This, in turn, will require, at a minimum, reform of the security sector, rapid implementation of the Goma and Nairobi Agreements, effective payment of salaries to soldiers and mechanisms that ensure the military hierarchy is free from corruption. The findings further suggest that how MONUC is perceived may affect its operation. Only 4.2 percent of the population reported that MONUC provided them with protection. MONUC must effectively engage with the population and reaffirm its mandate of protecting civilians in accordance with their desires.

Accountability and Justice

One of the objectives of the survey was to assess the role and importance of transitional justice mechanisms in the social reconstruction process. Several questions were asked to gauge views and attitudes toward accountability, justice and truth seeking. Although justice, truth seeking and prosecutions were not frequently listed among respondents' priorities, most respondents said that those who committed war crimes should be held accountable (84.6 percent) and that holding them accountable was necessary for peace (81.7 percent). This means that any process that would hinder future public accountability for the crimes that were committed, such as amnesty, is not the preferred option. In fact, although two-thirds (68.3 percent) of respondents were willing to forgive war criminals if this were the only way to

¹⁶ MONUC is authorized 'to use all means deemed necessary, within the limits of its capacities and in the areas of deployment of its armed units, to protect civilians under imminent threat of physical violence; and to contribute to the improvement of the security conditions.' UN Security Council Resolution 1565, *adopted* 1 October 2004.

¹⁷ Abraham H. Maslow, 'A Theory of Human Motivation,' *Psychological Review* 50 (1943): 370–396.

Table 2. Attitudes toward War Criminals

What would you like to see happen to those who committed war crimes? (%)	North Kivu	South Kivu	Ituri	Total
Punish them	71.0	68.5	66.5	68.9
Put them in jail	33.2	32.9	35.8	33.8
See them in trials/court	24.4	19.3	33.8	25.3
Kill them	19.4	20.0	19.5	19.6
Have them compensate victims	16.6	17.3	18.4	17.3
They should ask for forgiveness	7.9	9.7	10.8	9.3
They should confess their crimes	8.8	9.0	5.5	7.9
Demobilize them	8.8	7.4	7.1	7.9
They should be forgiven	6.1	7.0	8.7	7.1
Give them amnesty	3.9	5.0	9.0	5.7
Reintegrate them in the community	2.7	4.0	8.2	4.6
They should go back to their country	3.3	3.1	0.7	2.5
Other	2.8	2.8	1.4	2.4

have peace, most respondents favored peace with trials (61.9 percent) over peace with forgiveness (38.1 percent).

We also asked respondents what they wanted to see happen to those who committed war crimes in eastern DRC (Table 2).¹⁸ The most common response involved retribution in the form of punishment (68.9 percent) and imprisonment (33.8 percent). One-quarter (25.3 percent) of respondents said accused perpetrators should face trial, 19.6 percent said they should be killed and 17.3 percent said they should compensate the victims. Few respondents talked about forgiveness and reintegration, including having war criminals ask for forgiveness (9.3 percent), confess their wrongdoing (7.9 percent), be demobilized (7.9 percent), be forgiven (7.1 percent) or be given amnesty (5.7 percent). Overall, 88.3 percent of respondents used retributive concepts while 22.7 percent expressed interest in forgiveness and reintegration.

In addition to expressing support for retributive measures, respondents indicated that many actors should be held accountable for a wide range of crimes. When asked who should be held accountable, respondents identified militia leaders (56.0 percent), followed by the militia as a whole (43.9 percent).¹⁹

¹⁸ The concept of a war crime was not defined to respondents but left to their own interpretation.

¹⁹ In a few cases, respondents specified which groups should be held accountable, citing Laurent Nkunda, the Democratic Liberation Forces of Rwanda (FDLR), the Mai Mai, the Allied Democratic Forces—National Army for the Liberation of Uganda (ADF-NALU), the National Liberation Forces (FNL) and RCD.

Respondents also mentioned the government (17.4 percent) and the government armed forces (FARDC) (12.7 percent). Respondents further recognized the role of external actors and frequently mentioned Rwanda (36.4 percent) and Uganda (22.9 percent). The crimes mentioned include murder/killing (92 percent), sexual violence (69.9 percent), theft of cattle/livestock (41.9 percent), displacement of people (24.1 percent) and the destruction/looting of properties (22.8 percent). Forced recruitment of children was mentioned by 21.6 percent of respondents.²⁰

Respondents defined justice in terms of establishing the truth (50.8 percent), applying the law (48.5 percent), being fair (47.6 percent) and punishment (21.4 percent). When asked how justice could be achieved, over half the respondents mentioned the national court system (50.6 percent), a quarter referred to the ICC (25.6 percent) and a fifth suggested military courts (20.3 percent). When respondents were provided with four trial options, 44.7 percent chose national trials, 39.9 percent chose international trials held in DRC, 7.3 percent chose international trials held abroad and 8.1 percent chose no trials at all. In other words, 47.2 percent wanted international trials (in DRC or abroad) and 84.6 percent wanted trials in DRC (national or international).

Few respondents had heard about the ICC (26.6 percent) and slightly more were aware of the proceedings against Thomas Lubanga (28.1 percent). In comparison, 54.1 percent said that they were familiar with the national court system. Among those who had heard of the ICC, 27.8 percent believed that it is not neutral. They said that the ICC is biased because they believe that it does nothing to help (27.1 percent), works with the government (24.0 percent), is only after one ethnic group (13.5 percent) or does not arrest criminals (11.8 percent).

These findings have important implications when examining the contribution of transitional justice mechanisms to the social reconstruction of eastern DRC. First, respondents expect punishment, and they expect more individuals than just local militia leaders to be tried in court, including those in Rwanda and Uganda responsible for war crimes. Most frequently, the respondents noted that defendants should be charged with a wide variety of crimes, emphasizing killing and/or sexual crimes. Courts face a challenge in meeting such high expectations, as they can only prosecute a limited number of perpetrators, often on narrow charges, and cannot guarantee punishment. Prosecution at the ICC is illustrative. The Court has been criticized for the limited number of DRC-related cases it has brought so far and the narrow charges in the case against Lubanga. More important, the Trial Chamber recently imposed a stay on court proceedings in the case against Lubanga over prosecutorial misconduct.²¹ The Court certainly should uphold procedural standards. At the same time, for many survivors, it neither meets their expectations for punishment nor addresses the injustice they suffered. Certainly, this negatively

²⁰ Forced recruitment of children is the basis for the first arrest warrant in the case of DRC, issued by the International Criminal Court (ICC) against Thomas Lubanga.

²¹ ICC, 'Chamber Imposes a Stay on the Proceedings of the Case against Thomas Lubanga Dyilo,' press statement (16 June 2008).

affects how the Court is perceived, which could hinder any social effects attached to the prosecution of war criminals, or even reignite conflict in Ituri.²² Management of the expectations of the population should be an integral part of the management and outreach activities of not only the ICC but also national courts.

Second, in postconflict situations, national courts are the primary force for prosecution given the sheer number of potential defendants.²³ Respondents marked a preference for trials to be held in DRC. This means that the ICC must increase its visibility in DRC to become fully integrated in the transition process. Options for *in situ* trials, as well as the creation of an *ad hoc* tribunal to rule on crimes committed before 2002, must be considered.²⁴ Furthermore, the survey results reinforce the finding that international courts must collaborate with national judicial systems to spur the emergence of rule of law.²⁵ The findings call for investment in the national justice sector to ensure that national trials are legitimized, that more defendants go through national trials and that those trials are conducted in accordance with acceptable legal standards. This is critical to shaping individual perceptions of trials and spurring the broader social goals of prosecution.

Truth Seeking

Although most considered establishing the truth important (88 percent), fewer than two out of three respondents (62.5 percent) said they would agree to talk openly about what happened to them or their families.²⁶ When assessing the sense of security in a range of situations, we found that only 30.3 percent of the respondents felt comfortable talking openly about what happened to them.²⁷ Respondents felt least safe meeting soldiers or armed groups (22 percent safe or very safe), talking openly about their experience during the conflict (30.3 percent), meeting strangers (39.4 percent) and walking at night (38.4 percent). Insecurity directly affected respondents' willingness to talk openly about their experience in the conflict. Fear of revenge was the reason most frequently stated for refusing to talk openly about conflict experiences (50.1 percent). This poses an obstacle to

²² According to Carine Bapita Buyanganda, a lawyer who represents victims, the halt of the proceedings against Lubanga could reignite conflicts in Ituri. See, Emma Thomasson, 'Prosecutors Seek to Salvage ICC's First Trial,' *Reuters*, 24 June 2008.

²³ Laurel E. Fletcher and Harvey M. Weinstein, 'A Word unto Itself? The Application of International Justice in the Former Yugoslavia,' in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004).

²⁴ The ICC does not have retroactive jurisdiction and therefore cannot investigate crimes committed before 1 July 2002, when its statute entered into force.

²⁵ Fletcher and Weinstein, *supra* n 23.

²⁶ In comparison, when asked the same question, 89 percent of respondents in northern Uganda were willing to talk openly about their experience during the conflict. Pham et al., *supra* n 15.

²⁷ Respondents in North Kivu were least frequently comfortable with talking openly about their experience (14.1 percent). This is likely a result of the ongoing fighting in the province between the FDLR, the troops of Nkunda and governmental troops at the time of the survey.

Table 3. Sense of Safety

Sense of safety (% very safe/safe)	North Kivu	South Kivu	Ituri	Total
Go to nearest market	38.0	73.7	73.2	58.9
Go to the field/fetch wood or water	29.7	73.0	64.4	52.7
Go to nearest town/village	28.7	69.1	60.8	50.1
Sleep at night	20.5	67.7	72.1	49.5
Meet policemen	27.8	54.0	62.0	45.4
Meet people from another ethnic group	27.2	55.7	60.6	45.3
Meet strangers	18.1	53.3	55.7	39.4
Walk at night in village	17.4	58.0	47.8	38.4
Talk openly about your experience during the conflict	14.1	44.0	39.1	30.3
Meet soldiers/armed groups	6.8	34.5	30.8	22.0

any truth-seeking process and highlights the finding that without security, truth is unlikely to be fully disclosed.²⁸

We asked respondents how truth could be established. A majority of respondents (56.1 percent) said it would require an inquiry by the judicial system, 31.6 percent said it would require people to speak freely, 24.3 percent mentioned a truth commission and 24.2 percent said it would require a free and independent media in DRC. The preference for trials may reflect a strong demand for accountability and punishment. The lack of knowledge about truth commissions may have undermined that option. Over half the respondents said, however, that they were familiar with truth commissions (53.6 percent). The responses may therefore reflect the failure of the TRC established by the Sun City Agreement.

Vetting and Reintegration

Vetting and lustration programs are initiated to remove past offenders from the public sector. As part of this survey, we asked respondents to rank their level of agreement, from ‘strongly agree’ to ‘strongly disagree,’ to a series of propositions regarding vetting. One-quarter of respondents agreed or strongly agreed with the propositions that military leaders have the same rights as everyone else (24.8 percent) and that they have the right to participate in politics and, if elected, to govern (26.9 percent). Over one-third of respondents (37.6 percent) agreed or strongly agreed that militia leaders could be integrated into the national army. Fewer (25.9 percent) agreed that those who committed war crimes could be part of the national army.

Attitudes toward former combatants were also explored. We asked respondents whether they would be comfortable or uncomfortable in a range of situations in the presence of former combatants (no armed groups or army affiliations were

²⁸ Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenges of Truth Commissions* (New York: Routledge, 2002).

Table 4. Attitudes toward Former Combatants

Please rank your level of comfort in the following situations in the presence of former combatants? (% comfortable)	North Kivu	South Kivu	Ituri	Total
Live in same community/village	26.8	44.1	63.8	42.4
Live as close neighbors	28.1	44.1	66.7	43.8
Live as household members	22.1	40.3	56.2	37.2
Share a meal	29.7	56.0	62.9	47.1
Work with them	33.5	54.5	68.6	49.8
Go to the market	41.4	59.2	75.5	56.4
Share a drink	21.6	42.3	48.1	35.4
Go to the same church	51.4	65.8	81.6	64.3
That they marry with family member	23.7	36.7	48.4	34.6
Go to same school as you/your children	44.3	61.5	78.0	59.0

specified). The results are provided in Table 4. Respondents were, on average, least comfortable with having a former combatant marry a family member (34.6 percent comfortable), share a drink with them (35.4 percent) or live in the same household (37.2 percent). Respondents in North Kivu were least comfortable with the prospect of these experiences. Again, this is likely due to the ongoing fighting at the time of the survey. Nearly two-thirds of respondents (63.3 percent) answered positively when asked if they had feelings of hatred toward former combatants, and 22.2 percent said that they wished they could take revenge on former combatants who committed war crimes. Attitudes toward members of ethnic groups other than those of the respondents were, in comparison, less negative.

These findings suggest that urgent attention must be paid to the demobilization and reintegration of former combatants, as well as to the role and place in society of former militia leaders. This is important because during the transition period from the 2002 peace agreement to the 2006 presidential elections, militia leaders retained high levels of power. To some extent, they still do. The Sun City Agreement calls for the integration of the military forces under a 'brassage' process that requires the recruits to be redeployed in areas where they previously had not fought. An evaluation of this process remains to be done, certainly from the population's standpoint. The potential contribution of transitional justice mechanisms to reintegration also remains to be explored. What is clear is that any progress toward sustainable development must include measures to defuse social antagonism in general and toward former combatants in particular.

Conclusions

Basic survival needs have not been met and remain a priority in eastern DRC. The social project of transitional justice must be integrated within a broader social, political and economic transition to provide for basic needs and protection. Security is necessary for any transitional justice mechanism to be effective.

Without some level of security, witnesses cannot, for example, tell their stories publicly.²⁹ Security also is a requirement for development. Insecurity translates, among other things, into the looting and destruction of necessary infrastructure and the loss of human resources, and it creates major barriers to trade and the transportation of goods. The strengthening of government and reform of the security sector are essential to bringing about security and should be part of transitional justice.³⁰ At the same time, respondents were negative about the reintegration of combatants into their communities. Bringing unity will require specific outreach and social reconstruction projects that may include but cannot be limited to transitional justice mechanisms.

Respondents attached high expectations to the notion that those who committed war crimes would be punished and that a large array of defendants would be held accountable. Such expectations set survivors up for disappointment. Only a limited number of perpetrators of war crimes are likely to be prosecuted, and the complex and lengthy trial procedures are unlikely to garner much support. People's opinion of the courts will be shaped by how the courts manage expectations and reach out to the population. Trials are unlikely to bring about social changes if the courts are seen as distant, partial or unfair. In order for courts to meet basic expectations, such as the prosecution of a large number of perpetrators of war crimes, national courts must be involved in and trusted by the population. This will require investment in the judicial sector, including infrastructure and human resources, and the ICC to work closely with the national judicial system and possibly hold *in situ* trials. Respondents associated establishing the truth with judicial proceedings. Outreach programs therefore should ensure that court proceedings are publicized as a means of establishing the truth.

Ultimately, political will, capacity and availability of resources will be critical for the DRC government to undertake an effective transitional justice program and a broader transition toward sustainable human development. Equally important is how those programs will be designed, implemented and perceived by the affected communities. The findings outlined here can inform directly the political agenda and priority setting (security, reintegration), as well as provide insight into what may or may not make a difference in the lives of people affected by the conflicts.

It is important to reiterate that the findings from eastern DRC do not apply to other situations. In fact, our research in northern Uganda showed very different views and attitudes.³¹ In addition, while consulting the population is an important step in designing and implementing programs, other stakeholders must be consulted and lessons learned from other countries must be integrated. Finally, more analyses are needed to examine differences across districts and factors that

²⁹ This was highlighted by respondents' reluctance to speak publicly about their experience during the conflict.

³⁰ Rama Mani, 'Looking Back and Moving Forward – The Nexus between Development and Transitional Justice' (paper presented at the conference, 'Building a Future on Peace and Justice,' Nuremberg, Germany, 25–27 June 2007).

³¹ Pham et al., *supra* n 15.

influence views and attitudes about peace, justice and social reconstruction, such as exposure to violence, psychological trauma or socioeconomic characteristics. Nonetheless, the findings of this study indicate that promoting the participation and ownership of the affected population in eastern DRC is crucial if transitional justice mechanisms are to be part of a larger approach to socioeconomic development and, eventually, social reconstruction.