

Ensuring the success of the Central African Republic's Truth, Justice, Reparations and Reconciliation Commission

By Amanda Lucey and Peter Knoope

Summary

The Central African Republic has a dire need for transitional justice, as expressed in the outcomes of high-level meetings, such as the Bangui Forum. In 2020, a law was passed establishing a Truth, Justice, Reparations and Reconciliation Commission. Commissioners have been appointed, and the enormous task of establishing how they will fulfil their duties lies ahead. This policy brief considers the Commission's mandate and makes recommendations for how its work can be most effective, based on lessons from past commissions and the application of the African Union's Transitional Justice Policy. Among these, a victim-centred approach and broad outreach strategy will be paramount, while building on past efforts to document and analyse cycles of violence.

Introduction

The Central African Republic (CAR) remains beset by cycles of violence that span ethnic, religious and communal divides. The United Nations (UN) now estimates that 2.8 million people (over half the population), require humanitarian assistance.¹

At a political level, the December 2020 presidential and legislative elections were marred by controversy over the electoral process. This included the invalidation of former president François Bozizé's application. Bozizé came to power in 2003 and was ousted in 2013, but continues to have a significant following. The rejection of his candidacy resulted in offensives and obstruction by armed groups. Faustin-Archange Touadéra was re-appointed in January 2021, but ongoing conflict and a lack of inclusive dialogue remain a severe threat to the long-term resolution of conflict.



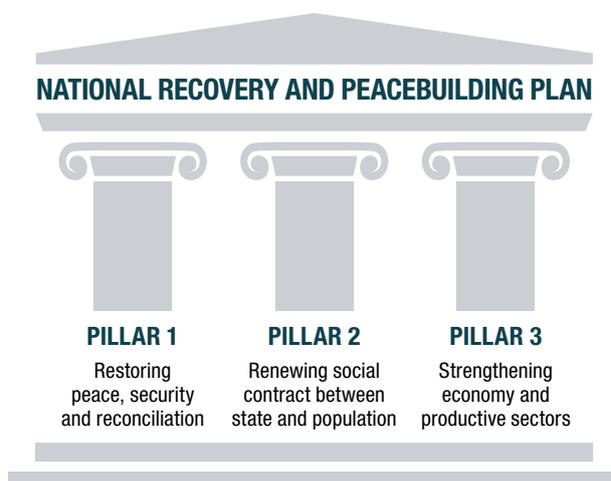
The Political Agreement for Peace and Reconciliation in CAR (APPR-RCA) was signed by the government and 14 rebel groups in the country in February 2019, but has already been criticised for lacking inclusivity and has been stalled. Security remains a major concern – especially along the north-west and south-east borders, and the trust deficit in the state is growing. Meanwhile, a multiplicity of actors continue to manipulate ethnic and religious identities to ensure their access to power. Sectarian violence has promoted recent waves of violence, although addressing these issues is complex and often neglected.²

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CAR is now at a critical juncture in determining its path to peace. For peace to be sustained, it will be vital to ensure accountability for the perpetrators of political violence, to promote reconciliation and justice rather than revenge, and to ensure the creation of a national inclusive identity.

Calls for transitional justice are not new. The UN extensively mapped human-rights violations in multiple conflicts between 2003 and 2013, with clear recommendations on a sequenced and comprehensive approach to transitional justice. This includes the need to establish a truth commission and a prosecutions strategy for the Special Criminal Court (SCC).³

The Bangui Forum, held in 2015, also cited the need to balance accountability with truth and reconciliation.⁴ This was a national conference that brought together over 600 participants from government, civil society,



TIMELINE OF THE CVJRR



political parties, the media, the diaspora, and faith-based organisations. It is considered one of the most inclusive efforts to build a roadmap to peace, but many of its recommendations have fallen by the wayside.⁵ A monitoring committee was established to ensure the implementation of recommendations that arose from the forum, but it suffers from a lack of resources and political buy-in.⁶

Another mechanism is the National Recovery and Peacebuilding Plan (2017–2021), which prioritises different pillars of peace. Pillar one speaks to restoring peace, security and reconciliation; pillar two refers to renewing the social contract between the state and the population; and pillar three outlines how to strengthen the economy and the productive sectors. Currently, the return of security in some parts of the country has created some normalcy, but much more can be done to promote a narrative of social cohesion.

In early 2020, a law was passed that established the Truth, Justice, Reparations and Reconciliation Commission (Commission Vérité, Justice, Réconciliation et Réparation, or CVJRR). By the end of the year, President Touadéra had confirmed the nomination for the 11 commissioners – five of whom are women. The commissioners were sworn in on 2 July 2021, and their appointment presents an opportunity to consider the factors critical to their success.

This policy brief first examines the mandate of the CVJRR as stipulated in the law promulgating its establishment. It then goes on to examine the African Union’s Transitional Justice Policy (AUTJP), its general principles and indicative elements, as well lessons learnt from past truth commissions. It concludes by highlighting key recommendations for consideration in setting up the CVJRR.

The mandate of the CVJRR

As detailed in the law on its establishment, organisation and functioning, the CVJRR is tasked with analysing the circumstances, factors and motivations for the conflict, reaching back as early as 29 March 1959 and ending on 31 December 2019. It is intended to provide a space for listening, honouring the memory of victims, and generating collective healing. The CVJRR is non-judicial in nature, but instructed to carry out activities that complement those of the ordinary justice system and the SCC, which was set up in 2015 and became operational in 2018.⁷

The Commission has a four-year period in which to carry out its activities. This can be extended for an additional 12 months at its request.⁸

The four objectives of the CVJRR

- Determining the truth
- Researching options for justice
- Restoring the dignity of victims
- National reconciliation

The CVJRR can make recommendations on the way forward and to establish both individual and collective non-judicial responsibilities. The law sets out its ability to establish a reparations fund and to propose a system of reparations, while also developing a programme of action to promote reconciliation using traditional and non-traditional mechanisms. It also looks more broadly at issues of injustice, inequality, corruption,

tribalism, nepotism, and exclusion. The law also deals with memorialisation.⁹

The CVJRR is to have a plenary assembly, a bureau, and sub-commissions. The four sub-commissions are: truth, justice, reparations and reconciliation. Anyone can lay a complaint before the Commission, and the Commission itself can also raise pertinent issues. It is also tasked with organising thematic audiences.¹⁰

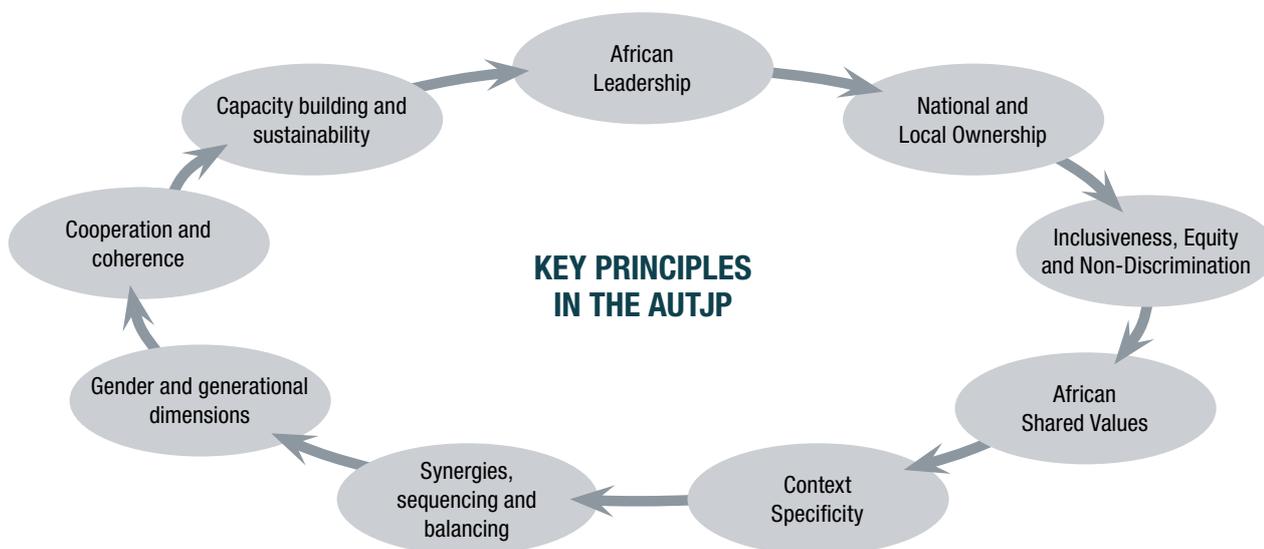
Given the broad nature of its mandate, it will be critical for the Commission to develop an overarching strategy and to consider what factors will ensure its success.

Given the broad nature of this mandate, it will be critical for the Commission to develop an overarching strategy and to consider what factors will ensure its success. In this regard, lessons from past truth commissions, such as those that were instituted in South Africa, Rwanda and Sierra Leone, are critical.

Applying the AU's Transitional Justice Policy

The African Union adopted a Transitional Justice Policy (AUTJP) in 2019, which provides a continental framework that can be applied national contexts. It is based on extensive consultations and lessons learnt from past experiences with truth commissions. The AUTJP identifies nine key principles, as shown in Figure 1.

Figure 1 Key principles in the AUTJP



Source: African Union Transitional Justice Policy

On the first principle, namely 'African leadership', the policy insists that transitional justice (TJ) remains the responsibility of African governments, while the AU can provide strategic leadership and leverage its position to involve multiple actors.¹¹ It is worth noting that commissioners from truth commissions in South Africa, Sierra Leone, Liberia and Kenya have also previously emphasised the importance of political will in ensuring the success of a commission. Since the CVJRR is mandated to make recommendations, it is important that these recommendations are implemented.¹²

The second principle, 'national and local ownership', is critical to promote a common understanding. National ownership can also contribute to the rebuilding of legitimate state authority.¹³ Partnerships are critical; including those with non-state actors. Indeed, past experiences with truth commissions have stressed the importance involving citizens at all stages of the process, and engaging civil society in the design and implementation of all projects and activities to ensure popular and informed participation.

The AUTJP stresses the importance of considering the gendered dimensions of violence and in paying attention to patterns of inequality.

It is also imperative that the process be decentralised and localised to reach victims across the country, and to ensure the greatest level of participation and representation.¹⁴ In a similar vein, since exclusion and discrimination are often among the root causes of conflict, a key principle refers to promoting inclusiveness, equity, and non-discrimination.¹⁵

'African shared values' are important in promoting TJ and there is no one-size-fits-all approach. This means that transitional processes should be context-specific, drawing on the nature of the conflict as well as broader systemic issues.¹⁶ Moreover, past experience has demonstrated the importance of focusing on patterns of abuse rather than isolated incidents to develop a holistic and cohesive analysis of the past, with tailored recommendations that consider the systemic nature of the abuses.¹⁷

In terms of synergies, it is critical that a balance be found between peace and reconciliation on the one hand, and responsibility and accountability on the other. This means that TJ measures should be comprehensively planned, in collaboration with the SCC and the ordinary justice

system, while programmes to impact on socio-economic development should also complement such measures. This also relates to the principle of cooperation and coherence between the various stakeholders at local, national, and international levels.¹⁸

The AUTJP stresses the importance of considering the gendered dimensions of violence and in paying attention to patterns of inequality, while adopting measures for women and youth. The final principle of the policy refers to building the capacity of society to support national and local processes that can prevent a return to violence.

The AUTJP also contains several indicative elements, which cover the following:

- Peace processes (involving TJ in all peace agreements and negotiations).
- TJ commissions (the establishment of independent, legal bodies with a fact-finding mandate).
- AU TJ mechanisms (incorporating community accountability and resolution mechanisms).
- Reconciliation and social healing (building trust and ensuring full redress/ reparation).
- Reparations (consisting of financial and non-financial redress).
- Retributive (socio-economic) justice (forward-looking measures to address structural inequalities, marginalisation and exclusion, including opportunities for youth).
- Memorialisation (public acknowledgement of victims and institutionalising societal dialogue, including commemorative activities).
- Diversity management (race, ethnicity, colour, sex, language, religion, political or any other opinion).
- Justice and accountability (formal and traditional legal measures for addressing crime, including African traditional justice mechanisms).
- Mitigation of sentences (no limitation to the investigation and prosecution of serious violations, especially sexual and gender-based violence, but consideration of other cases if for the purposes of truth-telling, investigation and prosecution).
- Amnesties (only for the purpose of preventing further violence and truth-telling, and with the consent of communities).
- Political and institutional reforms (institutions of the state, accompanied by democratic practices).
- Human and people's rights (restoring human dignity).

Cross-cutting issues include women and girls, children and youth, persons with disabilities, internally displaced people (IDPs), refugees and stateless persons, and older persons.

It should also be noted that the AUTJP has benchmarks for all of these indicative elements. Some of these benchmarks are considered in the next section in terms of their relevance to the CVJRR in CAR, with recommendations for the way forward.

A few other points are noteworthy from past experiences. Firstly, ensuring security for all victims while testifying is paramount, and as such, clear strategies should promote the participation and protection of witnesses and victims. This includes considerations to avoid revealing their identities, the protection of testimonies and options for private testimonies, and the accompaniment of psycho-social support. Commissions should also be able to subpoena any person to testify and have the power to seize evidence.¹⁹

Perhaps most importantly of all is the fact that transitional justice should be victim-centred, and all victims should be considered throughout the design and implementation of all transitional justice processes and mechanisms.²⁰

This approach is particularly necessary considering their experience of subordination – not only by the act itself – but also in terms of other factors that may have prompted their marginalisation, such as poverty, gender or ethnicity.²¹ Ensuring that victims have agency and a voice in the TJ process is therefore critical to ensure that victims' perspectives are not further undermined, and to prevent a feeling of powerlessness from being reinforced.

In this regard, mental health and psycho-social support is critical to prevent the perpetuation of trauma and underlying attitudes, and to restore a social fabric.²² Some practical guides exist, notably emphasising the need for a contextualised approach, the importance of investing in a thorough needs assessment, tailoring activities to an evolving situation, developing strategies for secondment, and building sustainability.²³ The following section outlines some key considerations for the set-up of the CVJRR.

Key considerations in the set-up of the CVJRR

Victim-centred needs

As noted, above, a victim-centred approach is essential for the CVJRR. The International Centre for Transitional Justice and Cordaid has already conducted some research on the needs of victims in CAR. Based on 68 qualitative interviews,²⁴ this provides guidance on the way forward.

The research suggests that victims' needs have evolved over time and are linked to the provision of justice systems

and the socio-economic situation. The report notes that criminal accountability is paramount, especially for victims in Bangui, but that reparations are also a key concern – especially for those outside of the capital. The notion of social justice was also raised, with many citing hunger as a vital concern. In addition, most interviewees expressed the need for meaningful participation and for a unifying outreach and communication strategy.

As described in the law establishing the CVJRR, the focus is broad and ambitious – covering a period of 60 years. How can this be narrowed, while still incorporating all voices?

The research found two major preliminary challenges to the implementation of transitional justice – ongoing conflict that impacts on the ability to provide justice, and deep polarisation along religious lines. Those interviewed expressed concerns that the Commission may not sufficiently acknowledge issues of identity and ethnicity. Sexual and gender-based violence (SGBV), as well as more structural gender challenges also came to the fore, as well as the interests of children and youth. The report emphasises key hindrances to implementation as being a lack of coordination between the SCC and the Bangui Court of Appeal, a reliance of informal justice, and the fact that the CVJRR is a non-judicial mechanism.²⁵

If the Commission is to promote a victim-centred approach, it will have to ensure that it begins its outreach with citizens immediately to define the types of narratives on ethnicity and identity it will investigate, as well as discussions on gender. Beyond this, it will need to consider how it will address the structural challenges of injustice, inequality, and exclusion.

As described in the law establishing the CVJRR, the focus is broad and ambitious – covering a period of 60 years. How can this be narrowed, while still incorporating all voices? How will the Commission ensure that the focus is not perceived as discrediting certain groups? For example, it may need to consider dialogues between different religious, political and community leaders. Further, policies and regulatory measures can be considered to promote national cohesion and combat hate speech. It will also need to address thematic topics important to the general population. Importantly, it will also need to devise strategies to engage pastoral communities who may operate across borders.

The CVJRR will also need to take into account how best to work with the broader justice system to ensure a balance between criminal accountability and reconciliation (further detailed below), and will need to place a premium on reparations. It should be noted that the SCC has been tasked with focusing on the most horrendous human-rights violations; so how will the CVJRR address issues such as rape?

Possible thematic areas to consider:

- Root causes of conflict
- Human rights
- Rule of law
- Security sector reform
- Small arms and light weapons
- Mineral resources and concessions
- Women and children
- Youth
- The role of the state or private armies
- The financial sector
- The media
- Political parties
- Religious sectors
- Institutional reform
- Injustice, inequality, and exclusion
- Corruption, tribalism, and nepotism

Ensuring the promotion and participation of witnesses and victims is key. The CVJRR will need to consider how to protect and preserve identities, as well as testimonies.

Organisation/operation of the CVJRR

As noted in the AUTJP, synergising, sequencing and balancing, as well as cooperation and coherence are key principles. As such, the CVJRR will have to consider issues such as the structuring of the sub-commissions. (For example, will each have a research officer? Where will the communications team be placed?) It will also have to detail the role of the sub-commissions and how these sub-commissions engage with one another, particularly in terms of cross-cutting issues. Beyond this, it will need to ensure that its work can be decentralised to ensure widespread consultation, and localised to include the work of local peace committees. It will also need to hold hearings in a politically neutral space.

To achieve maximum impact, the CVJRR will need to consider its overarching goals and objectives and indicators for success, along with measures for monitoring its progress. It will also need to better understand how to weave together different narratives to promote an overarching, cohesive national identity.

The CVJRR will need to plan for its volumes of information to be stored in a way that ensures the protection of testimony. Critically, it will also have to consider how it works with other national institutions – such as the SCC, the regular justice system and human-rights commission – to promote truth-telling, such as through subpoenas. Will amnesties be allowed, and how can unwilling perpetrators be forced to cooperate? Will there be vetting and lustration for those who are held accountable in public office? Another aspect will include examining how policing will be integrated into the approach.

Beyond this, the mandate of the CVJRR allows for specific experts to be engaged, but its commissioners will need to outline how they intend to do this, and in what areas. One important area concerns that of psycho-social experts and mental-health professionals. Strategies will have to be developed across different thematic areas, such as for resourcing the reparations fund, communications, and for the dissemination of reports.

Strategies for the promotion and participation of witnesses and victims

As noted earlier, ensuring the promotion and participation of witnesses and victims is key. The CVJRR will need to consider how to protect and preserve identities, as well as testimonies. In this regard, it will also need to consider how testimonies can be given privately. It may, for example, be necessary to classify participants as “witnesses” until testimony is given to preserve the presumption of innocence. As noted earlier, psycho-social support will be needed, not only to prevent the re-traumatising of victims, but also to promote healing. Moreover, as truth-telling in itself is considered a form of recognition and justice for victims,²⁶ the CVJRR will need to decide how to address different types of denial.²⁷

Definitions

To ensure its success, the CVJRR will also have to define key concepts, such as truth, justice, reparations and reconciliation. In terms of the truth, the CVJRR will need to bear in mind that it should focus on patterns of abuses and a shared understanding of the root causes and history. In this way, it should also consider indirect or systemic abuses targeted at certain identity groups, as well as how to determine individual and collective responses.

Justice can also take several forms, such as prosecutions, lustration (or a ban from holding public office), reparations, and institutional and constitutional reforms. Within this, the Commission will need to consider if victims and communities will be able to engage in appropriate sentencing or alternative forms of punishment (such as community service, public redemption, or local and historically rooted systems). Moreover, it will be important to consider land reform/property rights, and whether affirmative action packages need to be considered.

In terms of reparations, these can be moral or symbolic. Examples of reparations can include cash payments, official public apologies, pensions, free health care, free psychological care, educational support, return of property, compensation for lost relatives, museums and memorials, and days of commemoration. Thus, a comprehensive strategy will need to be developed for reparations that takes resourcing into consideration (with oversight mechanisms in place), examines the limits of what is achievable and sets clear coordination guidelines. Reparations should also take into account the needs of victims and ensure that they are transformative, non-discriminatory and participatory.

Regarding reconciliation, the CVJRR will need to consider if forgiveness is a pre-requisite, examine localised models of forgiveness, and link this to national-level initiatives. To promote longer-lasting reconciliation, programmes should be set up to institute social cohesion, coexistence and reconciliation, as well as address structural marginalisation, exclusion and other forms of inequalities, such as education.

Furthermore, as noted in the AUTJP, memorialisation is an important aspect of TJ – but critically needs to promote inclusion. This requires a common understanding of underlying dynamics. This common understanding can promote intergenerational dialogue and education.

Including those who are disproportionately affected

As previously noted, a key element of the Commission's work will be to consider SGBV and more systematic gender issues. To ensure that this occurs as effectively as possible, strategies will need to be developed to address under-reporting, cultural suppression and gender-specific material obstacles to participation (e.g. finances, responsibilities, or mobility). Similarly, impediments to putting sexual violence on the agenda of truth commissions should be assessed. Forensic experts should be culturally sensitive, and psycho-social support is key.

Reparations should also take into account the needs of victims and ensure that they are transformative, non-discriminatory and participatory.

Children and youths are also target groups for the work of the Commission. Therefore, special provision should be made for children, in accordance with the African Charter on the Rights and Welfare of the Child. Family retracing and unification programmes are crucial, while youth programmes can play an important role. Older persons also need to be considered.

Beyond this, the CVJRR will need to develop strategies for the inclusion of those with disabilities and specific measures of redress. Finally, the Commission will need to take into account the views of IDPs, refugees and stateless persons, and consider measures to ensure their return.

Recommendations

This policy brief has outlined the highly challenging context of the environment in which the CVJRR will need to operate, as well as its broad and ambitious mandate.

For the Commission to be successful, it will need to draw on the experiences and lessons learnt from truth commissions around the world. It will also need to apply the AUTJP, which is based on extensive and inclusive consultations with experts. Most importantly, given the wide-ranging nature of its work, it will have to prioritise certain activities.

One way of achieving this is by building on past efforts to develop narratives on peace – including the recommendations of the Bangui Forum and the UN mapping of human-rights violations. It will also need to consider mechanisms and institutions to ensure that the work conducted has longevity and sustainability.

As such, this policy brief makes the following recommendations:

To the commissioners of CVJRR:

- Immediately develop an outreach and communications strategy to ensure the broadest level of participation across society, and to promote forward-looking narratives on social coherence.
- Build on past efforts to best address issues of marginalisation and key elements of truth, justice, reparations and reconciliation.
- Determine means of coordination and cooperation, not only across different parts of the Commission, but also with the broader justice system, such as the SCC.
- Develop a comprehensive workplan, with overarching goals and indicators for success that can be monitored and evaluated.
- Ensure the work of the Commission is decentralised and localised, with a strategy for engaging local peace committees.

- Develop strategies for the promotion and participation of witnesses and victims.
- Develop a holistic and comprehensive reparations strategy that is appropriately financed and in line with victims' needs.
- Consider specific strategies for those disproportionately affected by the conflict, such as women, youth, children, older persons, people with disabilities, IDPs, refugees and stateless persons.

To the AU:

- Provide technical support to the CVJRR in applying the AUTJP, including emphasising the importance of a victim-centred approach and traditional African approaches to justice, reparations and reconciliation.
- Strengthen the national capacities on the Commission and the government to address conflict.
- Support knowledge sharing with transitional justice experts from around the continent.
- Use the AU's convening power to support the coordination of multiple actors engaging on transitional justice.
- Promote resource mobilisation at regional and international levels.

To the international community:

- Ensure that the strategies of all stakeholders are coordinated and build on comparative advantages.
- Support the implementation of the Commission's work by providing flexible and adaptive funding based on national priorities.
- Provide technical support and experts as requested.
- Support the provision of psycho-social health practitioners.
- Raise international awareness on transitional justice in CAR to generate further financial and technical support.
- Support longer-term efforts to strengthen socio-economic justice.

Endnotes

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ABOUT THE INSTITUTE FOR JUSTICE AND RECONCILIATION

The Institute for Justice and Reconciliation (IJR), established in 2000, is a pan-African organisation that works collaboratively with governments as well as inter-governmental and civil society actors to contribute towards building fair, democratic and inclusive societies across the continent, through transitional justice and peacebuilding interventions. The IJR's work is informed by the insights gained from working with governmental stakeholders and grassroots communities in countries such as Burundi, Central African Republic (CAR), Ethiopia, Eastern Democratic Republic of the Congo (DRC), South Sudan, South Africa and Zimbabwe. Historically, IJR has worked on interventions in Ghana, Kenya, Nigeria, Rwanda, and Uganda. Internationally, IJR has provided strategic and technical advice to stakeholders in Colombia, South Korea, Sri Lanka, Thailand, UK, and USA.

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The Institute for Justice and Reconciliation would like to express its appreciation for the support that it receives from the Royal Norwegian Embassy and Ministry of Foreign Affairs, as well as the Swedish International Development Agency (SIDA).



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