

# Pursuing an integrated approach to TJ and DDR in the Democratic Republic of the Congo

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# Executive Summary

Since the emergence of both fields of practice in the 1990s, transitional justice (TJ) and disarmament, demobilization and reintegration (DDR) policies, projects and programmes have operated contemporaneously in many (post-conflict) settings. However, most often TJ and DDR have been developed and implemented in complete separation from one another. This is despite the recognition that both share common goals for building sustainable peace and that their operations may have reciprocal effects. Moreover, the failure to address the impact and legacies of human rights violations alongside DDR efforts, can contribute to perpetuating cycles of violence and negatively impact the willingness of recipient communities to accept the return and social reintegration of ex-combatants. The DR Congo has a long history of engagement in both DDR and TJ processes in an effort to resolve the armed conflicts and combat impunity for human rights violations but, until recently, little effort was made to build bridges between both. The latest DDR programme instituted in the country in 2021 – the Disarmament, Demobilization, Community Recovery and Stabilization Program (P-DDRCS) – for the first time expressly provides that the DDR programme needs to adopt an approach that takes into account transitional justice. At the same time, since 2019 there has been a renewed commitment on the part of the Congolese authorities to initiate TJ measures. There is thus a window of opportunity to strengthen the DDR-TJ nexus in the DR Congo in a way that can benefit victims-survivors, recipient communities, and ex-combatants, and ultimately strengthen efforts of promoting peace in the country.

This report seeks to provide concrete suggestions of how such a TJ-DDR nexus could be operationalized in the DR Congo. It examines how in a context of multilayered conflict dynamics and ongoing instability, DDR and TJ can be made to complement each other. To this end, it looks at the specific political, security, social and operational dynamics in the DR Congo that frame the interlinkages between DDR and TJ. Drawing on an analysis of current DDR and TJ endeavors, interviews with key national and international stakeholders, and victims' focus groups in North Kivu and Ituri, the report discusses how various TJ approaches can be supportive of DDR - in particular human rights screening, reparations, truth-telling and local/informal justice mechanisms – and how TJ objectives can be integrated into DDR programmes.

Which of these approaches or combination of approaches should be pursued in the DR Congo will have to be guided in part by operational and resource considerations. Most important, however, the approach taken should be flexible and context sensitive. Indeed, which types of TJ practices to link to DDR will need to vary according to local conflict dynamics, the nature of the relationship between the armed group and communities, and the nature and depth of social divisions and mistrust within or between communities. It should thus not be expected that a single, unique approach to TJ-DDR can be implemented across the entire DDR programme in the country. It is also essential that the DDR programme consult directly with victims-survivors and recipient communities to identify the types of TJ interventions that are most likely to be meaningful to them.

# Introduction

The conflicts in the Democratic Republic of the Congo (DR Congo) have been marked by widespread human rights abuses and the commission of international crimes, committed both by state and non-state actors. The need to combat impunity for these crimes has been an oft declared objective of both the Congolese authorities and international actors. But progress on this front has been slow, inconsistent and hampered by a lack of genuine political commitment. While the drivers of violence in the DR Congo are diverse and complex, the prevalence of impunity for human rights violations has been a contributing factor. The failure to prevent, acknowledge and redress human rights violations has contributed to undermining citizen trust in the state; fuelling cycles of resentment between communities as well as between non-state armed groups and the state; signalling that violence is a legitimate and effective means to gain political advantages.

Several disarmament, demobilization and reintegration (DDR) programmes have been set up in the DR Congo since 2002. However, their impact on reducing conflict dynamics has been limited, and sometimes even counter-productive. One particularly problematic aspect of DDR programmes has been the failure of their reintegration components – which have focused too narrowly on economic incentives, not sufficiently involved the communities, and not been accompanied by broader initiatives to address community divides, restore social trust and have a coherent approach to victims', communities' and ex-combatants needs. In the past, DDR and transitional justice (TJ) processes in the DR Congo have been designed and implemented by national and international actors in complete isolation from one another. However, the latest DDR programme instituted in the country in 2021 – the

Disarmament, Demobilization, Community Recovery and Stabilization Program (P-DDRCS) – for the first time expressly provides that the DDR programme needs to adopt an approach that takes into account transitional justice. At the same time, since 2019 there has been a renewed commitment on the part of the Congolese authorities to initiate TJ measures. There is thus a window of opportunity to strengthen the DDR-TJ nexus in the DR Congo in a way that can benefit victims-survivors, recipient communities, and ex-combatants, and ultimately strengthen efforts of promoting peace in the country.

The present report seeks to provide concrete suggestions of how such a nexus could be operationalized. The questions that guided the research were:

- In a context of multilayered conflict dynamics and ongoing instability, how can DDR and TJ complement each other and align their objectives?
- What lessons can be learned from past failures to integrate DDR and TJ in the DR Congo?
- What are the political, security, social and operational dynamics that frame the interlinkages between DDR and TJ in the DR Congo?
- What are the perceptions amongst affected communities about the interlinkages between DDR and TJ?
- How can a coherent approach to DDR and TJ be pursued in the context of the P-DDRCS and the emerging TJ framework in the DR Congo?

The research involved (i) a review of the literature on the DDR-TJ interlinkages, (ii) the collection of documentation on the ongoing DDR and TJ processes in the DR Congo and (iii) semi-structured interviews and focus groups with key stakeholders in Kinshasa, Ituri and North Kivu. Thirty-three semi-structured interviews were conducted with national and international officials and with local civil society actors working on DDR and/or TJ (carried out in Kinshasa,



Goma and Bunia). In addition, seven focus groups were organized with victims-survivors in five localities in North Kivu and Ituri in December 2023, involving a total of 84 individuals.<sup>1</sup> Discussions in the focus groups focused on three elements: (i) victims-survivors past experiences with DDR, (ii) what conditioned their acceptance or rejection of demobilized combatants in their communities, (iii) their expectations with regards to TJ in the perspective of current or future DDR programmes.

The report will start by discussing why it is important to build links between DDR and TJ and how the adoption of an integrated approach can be envisaged. It will then look at past experiences of DDR and TJ in the DR Congo, with a particular focus on explaining failures in building a nexus between both. The remainder of the report will present the various ways in which an integrated approach to TJ and the P-DDRCS can be achieved concretely.

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<sup>1</sup> The limited number of focus groups and victims that could be consulted, compared to the total universe of victims and the diversity amongst victim populations in the DR Congo, imposes limits on how much can be generalized from the findings. However, care was taken to integrate the element of diversity within the selection of focus groups on the basis of the criteria of ethnicity, gender and displacement status. Once published, the results of the consultations on TJ carried out by the Congolese Ministry of Human Rights and the UN Human Rights Office in the DRC in various provinces of the country might offer additional insights concerning victim communities demands and expectations regarding TJ, but not all of these consultations may have integrated specific questions regarding the TJ-DDR nexus.

# Understanding the TJ-DDR nexus

Since the emergence of both fields of practice in the 1990s, TJ and DDR policies, projects and programmes have operated contemporaneously in many (post-conflict) settings. However, most often TJ and DDR have been developed and implemented in complete separation from one another. Even at the level of the United Nations, which has been at the conceptual and operational forefront in both fields, institutional linkages between TJ and DDR are rarely made within peacebuilding missions. Part of the reason for this is the reliance of each field on different kinds of expertise (conflict mediation, peacebuilding and security sector experts in DDR and human rights and legal experts in TJ) which have been slow in building bridges and knowledge exchanges (McAuliffe 2017). The suspicion has also dominated amongst DDR practitioners that TJ, with its emphasis on accountability and offering acknowledgment and redress for human rights abuses committed by state and non-state armed forces, can pose obstacles to combatants' willingness to join DDR processes. Consequently, in the early years of DDR and TJ coexistence the prevailing view was that, at most, a sequenced approach should be taken: DDR should be implemented first, followed by TJ once DDR has been completed and the security situation stabilized (Waldorf 2013). However, operationalization of sequencing has proved challenging, especially in contexts of unstable peace processes and ongoing conflicts where there never is a fully right moment to do DDR or TJ and where multiple iterations of DDR or TJ processes and programmes are often put into place leading to inevitable temporal cross-cutting of these interventions. Sequencing also ignores the fact that TJ can contribute to creating an enabling environment for DDR.

More recently, there has been a shift towards the recognition of the need for greater nexus building between TJ and DDR processes. The DDR frameworks of the United Nations (UN) and the European Union (EU) now recognize that DDR programming should be linked with other post-conflict programmatic areas, including TJ, and that TJ and DDR are mutually reinforcing processes (DPKO 2010; DPKO 2023; European Commission 2021). Similarly, the TJ policy frameworks of the UN, EU and African Union call for greater coordination or the building of connections between TJ processes and DDR programmes (OHCHR 2023; AU 2019; EEAS 2015). This convergence is a reflection of the progressive expansion of the remit of both policy areas.

In the TJ field, guarantees of non-recurrence (GNR) have received growing attention as a key component of TJ, drawing on concerns that TJ processes should be both forward- and backward-looking and that they should aim to have a transformative, and not just remedial, effect. The focus of GNR is on measures aimed at preventing the recurrence of human rights violations through a focus on the structural causes of human rights violations and on reforming and/or disabling abusive capacities of those institutions and individuals which have been involved in human rights abuses (UN Special Rapporteur 2015; Mayer-Rieckh 2017).<sup>2</sup> Through GNR, clear connecting points have been made between TJ and DDR (as well as security sector reform), since the latter offer an obvious means and venue through which such preventative reforms can be pursued. At the same time, within the field of DDR, programmatic approaches have shifted from a narrow focus on combatants and short-term security gains to the promotion of an integrated and community-based approach to DDR. This expanded DDR approach takes into consideration the broader societal context within which DDR happens, the need to work with receiving communities, the inclusion of community violence reduction programmes, and the interlinkages between DDR and other peacebuilding and development interventions, including TJ (IDDRS 2023).

The nexus between TJ and DDR is situated at various levels. Firstly, it has become clear with practice that even when DDR and TJ are kept separate from

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<sup>2</sup> While at its origins, GNR has in various legal frameworks on human rights protection and state responsibility been tied to reparations measures, the concept of GNR has evolved within the TJ field to refer to structural, institutional and sociocultural reform measures with a preventative function.

each other, they have reciprocal impacts which can have unintended negative consequences on their respective effectiveness. Lack of clarity amongst combatants about the scope and nature of TJ processes may impact their willingness to partake in DDR processes, while DDR programmes that embed impunity and enable human rights perpetrators to remain within positions of (social or political) influence can lead to the scuppering of TJ efforts (Moody 2020; Davis 2013). Secondly, while the purposes of TJ and DDR cannot be fully assimilated with each other, there is a degree of commonality in goals and beneficiaries. Both share the long-term goals of building sustainable peace and (re)building social trust and cohesion, while communities are seen as both key beneficiaries and direct participants in TJ and DDR processes. The fact that complex victimhood is prevalent in many (post-)conflict environments further underlines that there is no neat dividing line in how one should deal with victims relative to perpetrators.<sup>3</sup> Thirdly, in contexts where needs are high but available resources are limited, actively planning towards building complementarities between TJ and DDR can serve to ensure a more effective allocation of resources and avoidance of competition, and thereby build greater legitimacy and policy buy-in for both processes.

The final, and most common, argument that has been put forward to advocate for the nexus between TJ and DDR is that TJ can support the reintegration component of DDR processes. Empirical research has pointed to the limited success of DDR programmes in realizing the reintegration of former combatants (Jennings 2008; Blatman & Annan 2009; Gilligan, Mvukiyehe & Samii 2013; Sharif 2018). The reasons for this are multifaceted and include lack of security guarantees around DDR processes, the short-term nature of reintegration support packages and projects, lack of economic opportunities for demobilized combatants, the social capacity of receptor communities, the failure to address underlying economic and political grievances, and politicization in the implementation of DDR programmes (Thill 2021; Musamba, Vogel & Vlassenroot 2022). An often overlooked aspect, however, is the impact that unaddressed legacies of human rights violations can have on the success of ex-combatant reintegration.

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<sup>3</sup> Complex victimhood refers to the fact that victims are not always entirely innocent and that perpetrators may have themselves experienced victimization.

Most research undertaken on the factors that impact the outcome of re-integration processes have focused on the experiences of demobilized combatants and much less on the experiences of recipient communities, which might explain why the impact of unaddressed human rights violations has been underestimated. Yet those studies that have focused on recipient communities offer strong indications that the legacies of human rights violations and victims-survivors' feelings of justice have an impact on the attitudes of recipient communities towards ex-combatant reintegration (Kiyala 2015; Humphreys & Weinstein 2009; Tarela 2022; OHCHR 2007; Prieto 2012). In the focus groups we conducted in North Kivu and Ituri, victims-survivors identified a number of factors affecting their willingness to accept demobilized combatants in their communities. Principal amongst these is the need for DDR processes to address the needs of communities, which they defined as encompassing both economic opportunities (for both the ex-combatants and the broader community) and the specific needs of victims-survivors and the reconstruction of what has been destroyed by armed actors. Improved security conditions, both in terms of the general security contexts in their territories as securitization measures around cantonment areas, were also mentioned as important.<sup>4</sup> The third most mentioned factor was the need to address the human rights violations committed by ex-combatants and armed groups, as well as the need to “re-educate” ex-combatants to change their mentalities (which were variously labelled by participants as “cocky”, “aggressive”, and “not accepting the conditions they find in the community”).<sup>5</sup>

DDR programmes that do not integrate or are not accompanied by measures that also address individual and community victimization can lack legitimacy in the eyes of recipient communities as they perceive DDR as rewarding violence. It can also hamper DDR-related projects that aim to rebuild trust and reduce community tensions. A common way in which the ongoing distrust and resentment felt by victims-survivors who feel ignored

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<sup>4</sup> Community needs were mentioned in six of the seven focus groups, better and more long-term reintegration support was mentioned in all seven focus groups, and securitization needs were mentioned in five of the seven focus groups.

<sup>5</sup> Taken together these three issues were mentioned in five of the seven focus groups; the specific mention of the need to address human rights violations was made in four of the seven focus groups.

by DDR processes manifests itself is through stigmatization of demobilized combatants and acts of retribution against ex-combatants, which can span from name calling and social and economic exclusion to physical, and sometimes even deadly, attacks (Akello 2019; Tonheim 2014; Derluyn, Vindevogel & De Haene 2013).<sup>6</sup> Such rejection of ex-combatants by recipient communities can scupper the success of DDR programmes and contribute to ex-combatant remobilization (Kaplan & Nussio 2018; Lorenzo et al. 2021). One inference from these observations is that economic incentives, social cohesion projects and sensitization of recipient communities may not be sufficient to obtain community acceptance of demobilized combatants but also require taking seriously the justice demands of victims-survivors.<sup>7</sup> This is precisely where TJ can play a role.

But what does building a nexus between TJ and DDR mean exactly? There is a lack of clarity on whether DDR in and of itself should be considered a measure of guarantees of non-recurrence, and therefore constitutes a TJ measure, or whether the DDR process should be viewed as a means through which guarantees of non-recurrence can be realized when a human rights approach is integrated into the DDR programme. Thus building the TJ-DDR nexus means including a TJ lens for viewing how DDR programmes are designed and implemented (OHCHR 2023). This entails that the needs and rights of victims-survivors and society at large to truth, justice, reparation and non-recurrence should be taken into consideration in DDR programmes, and not only the needs of ex-combatants and the short-term security needs of a peace process. It also means that integrating a community-based approach in DDR does not amount to doing TJ – though community-level programmes can be useful entry points from which a TJ approach can be integrated. Indeed, dealing with communities at the aggregate level can lead to the specific needs of victims-survivors – particularly of those who are most vulnerable or have traditionally been marginalized – being overlooked. Often such an approach also

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<sup>6</sup> This is to deny neither that other factors alongside unaddressed human rights abuses also contribute to ex-combatant stigmatization nor that recipient communities and families often hold erroneous views on ex-combatants. The argument made here is merely that resentment over unaddressed victimization can fuel and help sustain such erroneous views.

<sup>7</sup> “Justice demands” is used here in the broader sociological sense of demands that victims-survivors have for the acknowledgement and redress of human rights violations and not in the narrow sense of demands for criminal prosecutions.

leads to an almost exclusive focus on addressing socio-economic and security needs to the detriment of justice and psychosocial and rehabilitation needs.

At an operational level, there are different ways in which the link between TJ and DDR can be envisaged. It is, firstly, important to underline that it does not necessarily require full programmatic coordination between TJ and DDR. This is often not a realistic prospect because TJ and DDR endeavours often do not advance at a same pace and programmatic coordination requires that the political commitment to TJ and DDR is equally strong, which is very rarely the case (Moody 2021). Moreover, in the practice of TJ, a single, unified “TJ programme” that can act as the equivalent of a DDR programme does not exist. At most, a national policy framework on TJ may be in place but even in such instances, the implementation of TJ tends to occur through a variety of institutions, processes or mechanisms which are not subject to a common operational planning and operate independently of one another.<sup>8</sup> Since TJ practice is most often characterized by a loose ecosystem of mechanisms and initiatives rather than a set of related measures brought together within a programme, as is often the case for DDR (at least in peacebuilding contexts like the DR Congo), aiming for programmatic coordination is unrealistic and may unduly weigh down the implementation of both DDR and TJ. Pursuing a greater integration of TJ and DDR also does not mean that a DDR programme should become the body responsible for overseeing and implementing TJ; TJ mechanisms and initiatives should remain independent of DDR programmes. What is pursued is not the coordination of TJ by a DDR programme but making connections between TJ and DDR processes to promote complementarity.

What can be envisaged instead is a collaboration between a formal TJ mechanism and a DDR programme. For instance, where a truth commission, a reparations programme or specialized tribunal/chamber has been created, it can be important for representatives from these institutions to sit together with

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<sup>8</sup> One key reason for this is that independence of TJ mechanisms is considered a central precondition to their legitimacy and success. Even when a national TJ policy is adopted, the prevailing view is that an institutional body may be created to oversee the implementation of the policy (in the sense of mobilizing political engagement on and resource mobilization in support of TJ) but that such an institutional body should not have the authority to intervene in the operation of the TJ mechanism.

the DDR programme to examine where complementarities might exist or how potential negative impacts of the DDR process on TJ (or vice versa) might be managed. This might take the form of regular informal exchanges, the setting up of a coordination structure, or the signing of an MoU, for instance to organize information or database exchanges between the TJ mechanism and the DDR programme (though security and data protection considerations may limit the possibilities of doing so). Where relevant, it might also involve planning for joint activities or the participation of TJ/DDR staff in sensitization and training activities organized by the respective institutions. There is no set form for such a collaboration since what is appropriate will depend on the context and the available resources; however, whether and what form of communication between TJ and DDR institutions should be established must be examined at the earliest possible time.

Another way in which the TJ-DDR nexus can be operationalized is by integrating TJ practices within some specific components of the DDR programme, particularly community-based reintegration support and community violence reduction projects. This can be an especially fruitful approach in contexts where no formal TJ mechanisms have been created, but it can also complement what is being done by formal TJ mechanisms. This can involve the integration of truth-telling components in community dialogue processes or social cohesion projects that are set up to facilitate or create an enabling environment for the social reintegration of ex-combatants. Another example would be to design DDR-related socio-economic support projects in such a way that they also integrate elements of collective reparations. Where culturally and socially relevant, it could also involve local healing and cleansing rituals as part of the process ex-combatants need to go through as part of DDR. Lastly, in contexts where the appetite for the inclusion of TJ practices in DDR efforts is absent, a DDR programme can also opt to make available micro-funding for community-level TJ initiatives (led by local civil society actors or communities and victim-survivors directly) which can operate alongside the DDR programme but without being run by, coordinated with or included in the DDR programme itself. Such an approach can also be particularly useful in contexts where rates of self-demobilization by combatants is high, as those might be harder to reach through TJ-related initiatives that are part of the P-DDRCS.



# 3 |

## Past approaches to the TJ-DDR nexus in the DR Congo

The DR Congo has a long history of engagement in both DDR and TJ but with limited success in delivering on their respective peace and justice goals. Until the adoption of the latest DDR iteration in 2022, the Disarmament, Demobilization, Community Recovery and Stabilization Program (P-DDRCS), the nexus between TJ and DDR has also been largely absent from both processes. The landscape of DDR that has developed in the DR Congo since the early 2000s is complex due to the variety of DDR programmes, implementation mechanisms, and peace processes that have taken place. But broadly speaking, it is possible to identify three DDR phases (Thill 2021), with the P-DDRCS representing the start of a fourth DDR phase. In this section, we will present how TJ has interacted or conflicted with DDR in those phases where both TJ and DDR processes coexisted and look at how the most recent TJ and DDR developments in the country present opportunities for greater nexus building.

The first DDR phase roughly spans the period following the signing of the Global and Inclusive Peace Agreement in 2002 until the end of the transitional power-sharing government in 2007 put in place as part of the peace agreement. Following the peace accord, a national DDR programme was adopted and a national DDR commission (CONADER) was created to coordinate its implementation. At the peace talks, the Inter-Congolese Dialogue, which led to the adoption of the Global and Inclusive Agreement, TJ had been included in the agenda. At the end of the Inter-Congolese Dialogue, two resolutions were adopted relating directly to TJ. One set out that the transitional government would submit a request to the UN Security Council

for the establishment of a special international tribunal with jurisdiction to try war crimes, crimes against humanity and genocide committed in the DR Congo during the wars of 1996 and 1998. This project never came to fruition, however, as the UN and other international actors accompanying the peace process sent clear signals to the Congolese authorities that they had little appetite for the creation of such an international tribunal. Over time, as political power dynamics shifted with the installation of the power-sharing government and the renewed outbreak of violence in eastern DR Congo, the political will on the part of the Congolese authorities to keep pushing for such a tribunal also dissipated. However, the Congolese authorities did opt in 2004 to refer the situation in the country to the International Criminal Court, leading the court to launch investigations into crimes committed in Ituri and North Kivu.

A second resolution adopted at the Inter-Congolese Dialogue provided for the institution of a truth and reconciliation commission. This provision was later also included in the Global and Inclusive Agreement and in the Transitional Constitution, and the *Commission Vérité et Réconciliation* (CVR, Truth and Reconciliation Commission) was effectively established in 2004, remaining in operation until 2006. The CVR thus operated contemporaneously with the CONADER programme, but no thought was given during either the design or implementation stage of the CVR to how it might usefully interact with the CONADER programme. Both processes ended up working in complete isolation of each other. In addition to this, in the drafting of the national DDR plan, limited attention was also paid to TJ. Paragraph 90 of the plan did provide that individuals who were suspected, on reasonable grounds, of having committed war crimes, crimes against humanity or genocide would be excluded from the army integration component of the DDR process. However, in practice no such vetting process was established because it was considered that the conditions for setting up one was not in place. As a result, rebel forces were indiscriminately integrated into the army.

The Global and Inclusive Agreement also provided for the promulgation of an amnesty law, as a means to induce combatants to adhere to the peace process and participate in the DDR process. Although this law expressly excluded perpetrators of war crimes, crimes against humanity or genocide

from the scope of the amnesty, the absence of clear and effective implementation processes rendered these exclusions moot and allowed for de facto unconditional amnesty to prevail. Combatants were not required to apply for amnesty. Instead, the Ministry of Justice had full discretionary power to decide who would be granted amnesty. Usually, it would send a letter to courts ordering a suspension of investigations into combatants who had agreed to join a disarmament and army integration process (the terms of these letters were sometimes not in line with the terms of the amnesty laws, as they ordered a suspension of all investigations, irrespective of the nature of the crime) or publish a list of names of all the detained individuals who would benefit from the amnesty.

The absence of operational linkages between DDR and TJ in this period reflects the centrality that power-sharing took in the overall peacebuilding approach, including in how TJ and DDR processes were designed. Following the logic that all transition institutions needed to integrate representation of all the belligerents, the commissioners appointed to head the CVR were representatives of the various signatories of the Global and Inclusive Agreement, without any scrutiny of their possible (direct or indirect) involvement in human rights abuses. This significantly undermined the independence of the Commission and played a significant role in its ultimate failure. At the same time, alongside the DDR programme a process of *brassage* was set up allowing ex-combatants to integrate the national army rather than to demobilize.<sup>9</sup> In the absence of the implementation of a vetting process, this contributed to instilling a culture of impunity for grave human rights violations which was ill-aligned with the accountability and redress objectives of TJ. Generally, throughout the transition period, international actors supporting the peace process were reluctant to push for any measures which, in their view, could endanger the stability of the power-sharing arrangements, further contributing to a political environment that downgraded TJ to a tertiary issue compared to DDR.

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<sup>9</sup> *Brassage* was predicated on the idea that combatants would be integrated on an individual basis and placed within mixed integrated military units and deployed outside of their region of origin, with the purpose of breaking down former command structures.

The perception that TJ endeavours risked undermining DDR programmes, as well as broader peace-making efforts, carried over into subsequent DDR phases. A politics of co-optation dominated the approach to dealing with armed groups in Ituri and the Kivus, resulting in a continued reliance on disarmament agreements with armed groups, flawed rebel-military integration deals and amnesties. The issue of justice, acknowledgment and redress for human rights violations was kept on the sidelines of the various disarmament and peace talks that took place after 2007. There was significant donor support for rule of law programmes, including support for strengthening the ability of domestic courts to prosecute armed group and military perpetrators of human rights abuses. This has resulted in a progressive increase in the number of trials and the quality of judgments, and the successful conviction of members of the conflicting parties, including some higher ranking officers.<sup>10</sup> However, the reliance on rebel-military integration has continued to create perverse incentive structures in favour of violence and a dysfunctional army that is unable to protect civilians from human rights violations (and is often itself a perpetrator of such acts), and embedded impunity in peace deals (Baaz & Verweijen 2013; Perera 2017) – all of which has created a challenging environment for military courts to pursue accountability.

Perceived incompatibility between TJ and disarmament efforts also impacted support for ICC investigations. For instance, discreet pressures were exerted by international actors, including the United Nations, to postpone the handover of Ituri rebel leaders Germain Katanga and Matthieu Ngudjolo in application of the arrest warrants issued by the court, over concerns it would scupper ongoing peace talks and disarmament processes. The UN also dithered on the execution of the arrest warrant against rebel leader Bosco Ntaganda, even though the Congolese authorities requested UN assistance to carry out his arrest in a June 2007 letter, as the UN considered there were too many security risks associated with such an arrest. Overall, international actors also supported the Congolese government's rebel-military integration policy; concerns about

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<sup>10</sup> In a preliminary compilation exercise undertaken in early 2024 by *Avocats Sans Frontières* and *TRIAL*, we found that since 2004, 147 trials have taken place before domestic courts for international crimes. On the realizations made in terms of jurisprudential developments, see the jurisprudence studies carried out by *Avocats Sans Frontières* in 2009, 2010, 2013 and 2014, as well as Mbokani (2018) and Perissi & Naimer (2020).

the presence of certain known war criminals in army command positions were sometimes raised during private meetings with army and government officials, but for the most part the issue was glossed over (Arnould 2016: 333).

More recently, however, opportunities for pursuing a more linked approach to TJ and DDR have emerged in the DR Congo. Firstly, following the mitigated success of previous DDR programmes a modified approach to DDR has been adopted for the P-DDRCS, which makes it more amenable to integration with TJ: (i) no military integration is offered alongside the DDR programme<sup>11</sup>; (ii) a non-linear approach is adopted to implementation of the different components of DDR, which can align better with an approach that sees TJ as having a potential role to play at various stages of the DDR process and not just post-DDR; (iii) a community-centred rather than combatant-centred approach, with a particular emphasis placed on community recovery as a central means to create an enabling environment for the social reintegration of ex-combatants. As a reflection of the latter two points, the development of Community Violence Reduction programmes within the UN's approach to DDR offers connecting points with TJ, since such programmes can integrate activities aimed at addressing community grievances and building trust and social cohesion (Rusch 2023; DPKO 2023). Most important, for the first time in the history of DDR programmes in the DR Congo, the law establishing the P-DDRCS expressly affirms the need for the adoption of a DDR approach which integrates TJ.<sup>12</sup> This is reiterated in the National DDR Plan, which states that the DDR programme needs to be “respectful of the right of victims and communities to truth, justice and guarantees of non-repetition”.<sup>13</sup>

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<sup>11</sup> However, this approach has not (yet) garnered the support of all involved stakeholders, especially amongst security sector actors. Moreover, a law was adopted in April 2023 creating a reserve military force. Officially, this process is detached from the P-DDRCS and the law states that individuals who have a criminal conviction for war crimes, crimes against humanity or genocide are not eligible to join the force. Nonetheless, there is a risk that the reserve force will create a backdoor through which rebel-military integration could happen, a concern that was also raised in a UN technical note (UNJHRO, *Analyse du Projet de Loi instituant la Réserve Armée de la défense en RDC*, 2023). According to several persons interviewed as part of this research, this is certainly the view that prevails amongst armed groups and such promises have reportedly been already made informally to some of them.

<sup>12</sup> Art. 7 of the Ordonnance N° 21/038 portant création, organisation et fonctionnement d'un programme de désarmement, démobilisation, relèvement communautaire et stabilisation, 4 juillet 2021.

<sup>13</sup> Plan Stratégique National du P-DDRCS, March 2022, pp. 18, 23 and 34.

Secondly, since he came to power in 2019, President Etienne Tshisekedi has put JT on his government's agenda. This has resulted in the initiation of a number of initiatives that give a renewed impetus to TJ in the DR Congo. Following the organization of popular consultations on TJ by the UN Joint Human Rights Office in Kasai Central in 2019, the provincial authorities took the initiative to set up a Provincial Truth, Justice and Reconciliation Commission, which became operational in 2022 but has struggled to make substantive progress on its mandate due to a lack of resources. The commission is mandated to establish the truth about the grave human rights violations committed between 1 April 2016 and 31 December 2018 in the context of the Kamuina Nsapu conflict, identify those responsible for the crimes and rehabilitate the victims of these crimes, as well as promote prevention, reconciliation and community trust-building in Kasai Central.<sup>14</sup> This constitutes a first attempt at implementing a more decentralized approach to TJ in the DR Congo. Such a decentralized approach to TJ would not only resonate with the P-DDRCS's own ambition for a more decentralized approach, but also enable the setting up of TJ mechanisms and initiatives which are diversified and tailored to the particular needs of the varied conflict dynamics and victim-survivor needs in the country (Arnould 2020).

Since 2021, further popular consultations have been undertaken by the UN Joint Human Rights Office and Congolese Ministry of Human Rights in various provinces. These were meant to help inform the drafting of a national policy on TJ (PNJT), which would establish a general vision and strategy on TJ for the country. A group of experts was also set up by the Congolese authorities in late 2022 to draft a proposal for the PNJT and draft proposals for implementing TJ in the country (Comité scientifique 2022). However, since then the draft policy has remained stuck in the drawer over disagreements about its compliance with international standards on TJ and competition between various governmental instances over who should be in control of the TJ agenda. In various interviews with stakeholders working on the P-DDRCS, the non-adoption of the PNJT was invoked as a blockage point for operationalizing the integration

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<sup>14</sup> Art. 8 of the Edit N°006/KC/2021 portant création, organisation et fonctionnement de la commission provinciale vérité, justice et réconciliation dans la province du Kasai Central, 15 July 2021.

of TJ in the DDR process. This need not necessarily be the case, however, because TJ initiatives can be initiated in the absence of a national TJ policy,<sup>15</sup> especially more community-based and decentralized initiatives, which would fit particularly well in the P-DDRCS process.

While the adoption of the PNJT has stalled, one component of TJ on which the Congolese authorities have advanced is the establishment of administrative reparations programmes. In 2019, a reparations fund (FRIVAO) was established to distribute the reparations paid by Uganda in application of the International Court of Justice's ruling in the case concerning Uganda's illicit activities in the DR Congo, which saw the court order Uganda to pay \$325 million in reparations to the DR Congo.<sup>16</sup> A second reparations fund was established in 2022, with a broader mandate to provide reparations to victims of conflict-related sexual and gender-based violence and victims of war crimes, crimes against humanity, genocide and the crime of aggression (the FONAREV).<sup>17</sup> Both of these institutions have a mandate to design and implement individual and collective reparations for victims-survivors through measures of restitution, rehabilitation, compensation, satisfaction, and guarantees of non-recurrence. Since the reparation funds will likely work with victims-survivors living in recipient communities of the P-DDRCS process, there is a clear connection between these two mechanisms, which creates a space for closer integration between TJ and DDR. This will be discussed in greater detail in the following sections, which will present some concrete means through which the TJ-DDR nexus can be operationalized in the DR Congo.

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<sup>15</sup> Contrary to what seems to be the prevailing view amongst policy stakeholders in the DRC, international standards on TJ do not provide that a national TJ policy is a necessary precondition for engagement in TJ. While a national policy can be useful in anchoring policy engagement in TJ and building coherence amongst TJ initiatives, it is important to note that the majority of countries who have set up successful TJ processes have done so without the adoption of a national TJ policy.

<sup>16</sup> Décret N° 19/20 portant création, organisation et fonctionnement du Fonds spécial de répartition de l'indemnisation aux victimes des activités illicites de l'Ouganda en RDC ou à leurs ayants droit, en sigle "FRIVAO", 13 December 2019. FRIVAO effectively started the work of registering victims and identifying modalities for collective reparations in 2023, but it has been beset by accusations of mismanagement and its leadership was deposed by the Minister of Justice in July 2024.

<sup>17</sup> Loi N°22 fixant les principes fondamentaux relatifs à la protection et à la réparation des victimes de violences sexuelles liées aux conflits et des victimes des crimes contre la paix et la sécurité de l'humanité, 26 December 2022.

## 4 |

# Current approach to the TJ and P-DDRCS nexus: Human Rights Screening<sup>18</sup>

The principal way in which the TJ-DDR nexus is currently being envisaged by DDR actors, especially at the level of the UN, is through the proposal to implement a human rights screening process (Rush 2023: 18–19). As will be detailed below, this focus on human rights screening is problematic, because it is insufficient to address victims’ justice, acknowledgment and redress needs and misunderstands the purpose of vetting. Moreover, there are significant operational challenges in the context of the DR Congo to implement a proper human rights screening, posing risks of inequality in treatment.

This involves, at the time of demobilization, an individual screening of each combatant’s human rights record. If a combatant is found to have been involved in serious human rights violations, that person is, in principle, excluded from the DDR programme. The focus in the DR Congo context on screening is in large part informed by the UN’s human rights due diligence policy (HRDDP), which provides that no UN support, whether through training, material support or joint operations, can be provided to non-UN security forces if they are known to have committed human rights abuses or if there is a high likelihood that the forces will commit grave human rights violations. However, it represents an extended application of this policy, since the HRDDP only applies to UN support to state security forces, and not to UN support to non-military programmes or institutions. DDR programmes

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<sup>18</sup> In this report, the words “vetting” and “screening” are used interchangeably even though they might have slightly different meanings. We choose to use both because the word “screening” is more familiar to DDR practitioners while “vetting” is more familiar to TJ practitioners.



in the DR Congo sit somewhat in a grey zone, since they have fallen under the authority of both the Ministry of Defence and civilian authorities, such as the Ministry of Planning or the Presidency.

From a TJ perspective, implementing a human rights vetting process as part of a DDR can be desirable when the DDR process is tied to a military integration component, since the integration of human rights perpetrators in the national security forces can negatively impact the population's trust in the security forces, as well as the army's human rights performance. In fact, the inclusion of a human rights vetting process in the recruitment process of the new defence reserve force should be advocated for, especially since the law establishing the reserve force only provides for a narrow exclusion criterion (a criminal conviction for grave human rights violations), which does not offer enough guarantees that human rights perpetrators will not be recruited in the reserve force.<sup>19</sup> However, applying a human rights screening process to a DDR process like the P-DDRCS, which only provides for civilian reintegration of ex-combatants, requires some caution.

The central purpose of vetting in TJ is to remove human rights perpetrators from public institutions or prevent them from gaining access to positions in public institutions, particularly those institutions that underpin the rule of law such as the security forces and justice sector. It is thus a measure which is aimed at supporting the reform of state institutions, in order to make them more effective and accountable, fostering civic trust in public institutions, dismantling criminal networks, and strengthening the rule of law (de Greiff 2007). Clearly, using a human rights screening process to condition access to a DDR programme does not align with this objective and thus represents an expanded (over-)interpretation of the purpose of vetting. A human rights screening can help to build civic trust in the DDR programme, thereby creating an environment more conducive to its implementation (particularly

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<sup>19</sup> In 2023, a bill (Law N°23/014 of 22 May 2023) was adopted creating an army reserve force that will act in support of the national army and will be made up of retired military personnel, those demobilized from military service, and “volunteer civilians” who must have received military training and military supervision. This bill has raised concerns that it could serve as a backdoor through which members of armed groups could be integrated in the army. In late 2022, the National Assembly had adopted a non-binding resolution calling on the government to refrain from concluding rebel-military integration/*brassage/mixage* agreements with armed groups.

the social reintegration component). But it may also deter ex-combatants from joining the DDR programme, and in contexts where there is a close imbrication between armed groups and communities and high levels of intercommunity mistrust, screening may be seen negatively when it is perceived as resulting in unequal treatment of ex-combatants from different groups or communities.

The way in which screening is currently envisaged in the context of the P-DDRCS presents real risks of such inequality in treatment. The screening process is UN-led and not implemented by the P-DDRCS itself: the P-DDRCS submits the lists of names of combatants wishing to join the DDR programme to the UN, whose Human Rights Office then checks these names against its documentation to verify if they are known or suspected to have been involved in human rights abuses. If such an individual is identified, the UN makes a recommendation to the government that this person is to be excluded from the P-DDRCS and it is the government which has the final decision on whether to implement the recommendation. There are no guarantees that the P-DDRCS will act on the UN's recommendations or that politico-military considerations will not come to influence their decisions about which combatants are to be excluded. Moreover, because of the incompleteness of the databases held by the UN and its lack of resources to undertake full enquiries into the human rights record of each DDR applicant (which is in any case unrealistic due to the large number of individuals likely to pass through the P-DDRCS), it is likely that many human rights perpetrators will slip through the cracks of the screening process.<sup>20</sup> This could lead to perceptions amongst victims-survivors and recipient communities of a biased application and politicization of the screening process, and therefore undermine their trust in the P-DDRCS as well as stoke intercommunity tensions if bias is perceived to be skewed towards one or more communities.

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<sup>20</sup> At the time the research was conducted, there were no indications that the proposed screening process had produced tangible results. Interviewees from the P-DDRCS and UN indicated that a few individuals had been excluded from the P-DDRCS but because they did not fulfil the criteria of being a combatant, not because they were found to have been involved in human rights abuses. That being said, it is early days both in the implementation of the P-DDRCS and the proposed human rights screening process.

In order to mitigate this risk, ways should be explored to enhance the capacity of the UN Human Rights Office to gather more documentation to carry out the human rights background screening; screening may be conducted at various stages of the DDR process and not just at the moment of intake (IDDRS 2023); and it could be envisaged to prioritize the screening of the higher-level commanders of armed groups in order to reduce the number of individuals that need to be screened. While transferring the responsibility for implementing the screening from the UN to the P-DDRCS would be important for the sustainability of the screening process in light of the MONUSCO withdrawal process underway, this is unlikely to be a realistic option due to a lack of capacities and willingness. In interviews with P-DDRCS representatives, all were adamant in stressing that they did not wish the P-DDRCS to be made responsible for undertaking the human rights screening and some expressed disagreement with the principle of including a human rights screening in the DDR process.

A second concern relates to the outcome of the proposed screening process. The current suggestion is that those individuals who are found through the screening process to have committed human rights abuses would not only be excluded from the P-DDRCS but their cases also reported to the relevant authorities for investigation and prosecution. While in principle this is a welcome approach to combat impunity, the operational realities of the judicial system in the DR Congo are such that military and civilian courts are unlikely to have the capacity to deal with all the cases that would be reported to them through the screening process. Despite the considerable improvements made in the ability of domestic courts to investigate and prosecute international crimes, they continue to face resource constraints which limits the number of trials they can undertake.<sup>21</sup> Adding numerous cases flowing from the P-DDRCS screening process would risk overburdening the courts and cause significant delays in the treatment of these cases. Also, since the documentation contained in the cases handed over to them from the P-DDRCS screening process would likely be insufficient for building

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<sup>21</sup> The imposition of the state of emergency since 2021 in Ituri and North Kivu has further aggravated this situation and created significant backlogs in the treatment of international crime cases, see *Avocats Sans Frontières* (2024).

a criminal case, courts would require additional time and resources to conduct more in-depth investigations. Moreover, the domestic courts continue to be subject to political and military interference which hampers their ability to prosecute well-protected or influential armed actors.

A mitigating measure could be to set up a specific unit within various courts in the Kivus and Ituri with a specific mandate to investigate those cases referred through the P-DDRCS screening process. However, this would require making available additional resources and obtaining the buy-in from the Congolese judicial authorities. While linking a DDR screening process to a system of referral to criminal courts can positively contribute to combatting impunity, there is also a risk involved in tying a DDR screening process to unfulfillable promises of prosecution of those individuals that are screened out as this might negatively impact the legitimacy and trust in the DDR process and, once again, contribute to a perception of bias in the screening process. Also, in the absence of trials, those combatants who will have been screened out of the P-DDRCS will ultimately still have to reintegrate into society (at least those who do not choose to remobilize). Thus, in the end, the human rights screening will have insufficiently tackled the fundamental problem of how to address victims-survivors' needs and enable coexistence amongst victims-survivors and perpetrators in the context of the DDR process.

A final question is whether implementing a human rights screening as part of the DDR process is seen by victims-survivors in the DR Congo as a useful accountability and redress measure. Participants in the focus groups we conducted in North Kivu and Ituri held mixed views on the desirability of excluding human rights perpetrators from the P-DDRCS and referring their cases to the courts. In four of the seven focus groups, participants supported the idea of excluding human rights perpetrators from the P-DDRCS, although in some instances participants seemed to conflate exclusion from the P-DDRCS with exclusion from public institutions. Those who supported exclusion, in general, also supported the prosecution of individuals by the domestic courts. In one focus group, the additional suggestion was made to also exclude those ex-combatants who had benefitted from previous DDR programmes but had remobilized. In the three other focus groups

participants were either opposed (because they viewed exclusion as hampering efforts at peace), said it should be up to the P-DDRCS and not them to decide on this, or held no view on this issue.

Preliminary results of the popular consultations in TJ also suggest mixed views on exclusion of human rights perpetrators. While the specific question of pursuing a screening process within the DDR process was not included in their survey and focus groups, the survey found that only 44percent of participants supported the proposal that human rights abusers should be removed from the national security forces, as they would rather see human rights training and adequate remuneration of soldiers as a means to prevent further human rights violations (Khasa 2023).<sup>22</sup> These findings, combined with the above-mentioned risks involved in the P-DDRCS screening process, thus suggest that while a human rights screening as part of the P-DDRCS might positively contribute to building public trust in the DDR process and responding to victim-survivors' justice demands, this should not be the only means through which the integration of TJ in the P-DDRCS is conducted.

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<sup>22</sup> These preliminary results are from consultations carried out in eight provinces only and do not include the Kivus and Ituri. Hence, it is not possible to deduce from these findings whether regions with more intensive and prolonged war experience may be more or less favourable to the principle of exclusion of human rights perpetrators than those in non-conflict affected regions.

## Further means of linking TJ and DDR in the DR Congo

As presented in the first section, there are different ways in which the integration of TJ and DDR can be approached. Which is most appropriate and how exactly to implement it will depend on the context, the available resources and the degree of political will that exists in favour of either DDR or TJ. Currently, the policy environment presents real opportunities for pursuing an integrated approach to TJ and DDR in the country. But there are certain characteristics of the DR Congo context that need to guide reflection on how to build the TJ-DDR nexus in practice. These factors do not constitute obstacles per se but should be taken into consideration when deciding which TJ measures to pursue and how to design them. There are four factors in particular: (i) the number of both perpetrators and victims-survivors which TJ will need to deal with is extremely high; (ii) conflict-related human rights abuses have been taking place for several decades, leaving in their wake high levels of trauma and social disruption; (iii) the landscape of responsibility for human rights abuses is complex due to the multiplicity of actors involved, the presence of complex victims, and the close imbrication that sometimes exists between armed groups and local communities; (iv) the occurrence of self-demobilization by combatants alongside formal DDR processes is common. Designing TJ initiatives within or alongside the P-DDRCS that consider these social realities will be important in ensuring their success and legitimacy. In the remainder of this section, we explore various ways, beyond screening/vetting, in which justice issues can be integrated in the DDR process in the DR Congo.

## 5.1. Reparations

Reparations to redress the harms and ongoing impacts victims-survivors suffer from human rights violations has been a key demand of victims-survivors in the DR Congo. Amongst our focus group participants in Ituri and South Kivu, there was widespread support for implementing reparations alongside the DDR processes.<sup>23</sup> A focus group study carried out in South Kivu in 2018 similarly found that reparations were a key demand of victims-perpetrators (Impunity Watch 2018). The state was commonly viewed as the one bearing the primary responsibility for carrying out reparations, even if it was not the direct perpetrator of the crime, because it has a greater capacity do so and because the state is viewed as having failed in its protection of civilians. But in our focus groups participants also expressed support for individual ex-combatants making acts of reparation. These findings align with the preliminary results from the popular consultations on TJ, where 78.8percent of participants identified the state as the main duty bearer for reparations,<sup>24</sup> while 34.5 percent said the direct authors of the crimes should be responsible for reparations (Khasa 2023).

While international law has traditionally focused on the state as the bearer of the duty to provide reparations for human rights violations, there has been a growing recognition that non-state armed groups (NSAG) should also contribute to reparations. Reparations made by non-state armed groups (or their individual combatants going through a DDR process) can make important contributions because they allow non-state armed groups to acknowledge their responsibility for abuses, which can have important symbolic value for victims-survivors but also for society as it can signal a commitment to non-recurrence. The engagement in reparations by ex-combatants can also contribute to transforming their relationship with communities by promoting greater empathy on both sides and contributing to destigmatization and rehumanization (Moffett 2022; United Nations 2022).

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<sup>23</sup> The demand for reparations was expressed in all seven focus groups.

<sup>24</sup> 24.3 percent also mentioned provincial authorities as having responsibility for carrying out reparations.

The forms of such reparations can span across the five recognized categories of reparations: restitution, compensation, rehabilitation, measures of satisfaction and guarantees of non-recurrence. For instance, reparations by non-state armed groups can take the form of apologies; the restitution of or compensation for stolen or destroyed property, land or cattle; involvement of ex-combatants in reparative works such as demining or infrastructure works; identifying the location of mass graves or the remains of disappeared persons; contributing to a trust fund for victims; participating in community projects that provide services to victims-survivors; or, amongst others, participating in commemorative events. Which forms of reparations should be included as part of a DDR programme should be defined in close consultation with victims-survivors and recipient communities since not all victims-survivors might welcome reparations by ex-combatants or might see certain forms of reparations as insufficient or inadequate. Moreover, reparations needs may vary between communities or between victim groups within a community depending on the type of violation and harm they have suffered. Where possible, it is therefore desirable to allow flexibility for different forms of reparations to be considered as part of the DDR programmes rather than fix a single modality for reparations.

The tendency within DDR programmes is to focus on collective reparations through ex-combatant participation in public infrastructure works. This was the approach taken in the UNDP-IOM-OHCHR project launched in the Kasai region in 2019, which provided that ex-combatants participating in the DDR programme would provide collective reparations by engaging in infrastructure rehabilitation works, such as houses that had been destroyed by local armed groups. However, the type of infrastructure projects that were identified by the DDR programme did not fully align with what victims-survivors viewed as priorities for infrastructure rehabilitation (Rush 2023: 29–30). For some victims-survivors, collective reparations focused on infrastructure rehabilitation may also be too narrow an approach and an inappropriate way to provide redress for some types of human rights violations, such as sexual violence and killings. Furthermore, ex-combatant participation in public infrastructure works can only qualify as reparations if it involves an element of recognition of the victims and the harm inflicted on them.



In the DR Congo, demands for individual reparations and for financial reparations are high amongst victim-survivors (Impunity Watch 2018; Khasa 2023; Global Survivors Fund 2024). In our focus groups in Ituri and North Kivu, participants held ambiguous views on infrastructure rehabilitation works as a form of collective reparation. While many mentioned that ex-combatants should “repair the destructions they have caused and help rebuild schools, hospitals and roads”, when asked specifically whether such projects counted, in their view, as reparations, many answered in the negative.<sup>25</sup> One participant, for instance, said: “No, but they have to do it, we need infrastructure in our community, the construction of roads, hospitals and schools; beyond that, the state must make an effort to help the population by creating work for our youth”.<sup>26</sup> One way of understanding this apparent contradiction is that victims-survivors make a distinction between reparations for victims and the need to create economic opportunities for ex-combatants, and that they view both as necessary and complementary (but not similar) measures for the success of the reintegration of ex-combatants.

The above-mentioned findings suggest two lessons for building complementarities between reparations and DDR in the DR Congo. Firstly, the P-DDRCS can plan for ex-combatants to participate in infrastructure or economic rehabilitation projects that respond to victims-survivors’ identified needs. The popular consultations on TJ suggest that victims-survivors in the DR Congo prioritize the rehabilitation of (specialized) health facilities and the creation of social centres where victims can learn professional skills. However, it would be advisable for the P-DDRCS to directly engage with communities where reintegration of ex-combatants will take place and identify with them the form of collective reparation that these ex-combatants should be involved in. This might be through infrastructure rehabilitation projects, but it should also be explored whether other forms of reparations such as the identification

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<sup>25</sup> This view was expressed by participants in the focus groups in Miriki (North Kivu), Rwampara (Ituri), IPS/Bunia (Ituri) and Ezekere (Ituri).

<sup>26</sup> Interview with focus group participant, Ezekere, Ituri, 1 December 2023. Original quote: “Non, mais ils doivent le faire , nous avons besoin d’infrastructure dans notre communauté, la construction des routes, les hôpitaux et écoles; pour le reste l’Etat doit faire un effort pour aider la population en créant du travail à nos jeunes”.

of mass graves or remains, the issuing of apologies,<sup>27</sup> or the restitution of property or land would be feasible and responsive to their needs.

Secondly, the P-DDRCS should engage in a constructive working relationship with the recently established reparations fund, FONAREV. FONAREV's constitutive documents make no reference to the P-DDRCS,<sup>28</sup> and at the time the research conducted for this report revealed that contacts between both programmes had been very limited. This is unfortunate since both programmes will come to work within and with the same communities. It is therefore important that the P-DDRCS consult with FONAREV to avoid incoherence in the approaches taken by both programmes to reparations and to avoid duplication of reparations initiatives. Both programmes could also plan joint consultations with DDR-recipient communities to identify their reparations demands and priorities. At a minimum, the P-DDRCS should inform FONAREV of what types of reparations activities it has undertaken with ex-combatants and communities. And in turn, FONAREV should share information with the P-DDRCS about its approach to reparations, the victim-survivors' reparations needs it has identified, and the reparations actions it has initiated. Working closely with FONAREV would also allow the P-DDRCS to plan a complementary approach to the collective reparations it can provide and the individual, financial reparations which FONAREV can provide.<sup>29</sup> This would ensure a comprehensive approach to reparations that is able to respond to the diverse

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<sup>27</sup> Apologies issued prior to the reintegration of ex-combatants were mentioned as a means of reparation in four of the seven focus groups we conducted. In contrast, the preliminary results of the popular consultations indicate that only 10 percent of respondents mentioned apologies as an adequate form of reparation and the majority of those demanded apologies from the state and not from individual perpetrators. Apologies can be a tricky reparations measure. They can have positive effects by offering recognition to victims, putting perpetrators in a position where they are held to account (in a non-retributive manner) by the community, and signalling a willingness on the part of the individual or armed group to change behaviour. But for apologies to have a truly reparative effect, they need to be felt by the victims-survivors as being expressed sincerely and should not be tied to moral or social pressures on them to pardon the person or group who issued an apology.

<sup>28</sup> The 2022 reparations law does state, in its Art. 6, that ex-combatants participating in the P-DDRCS cannot be considered victims and are therefore not eligible for reparations under FONAREV. The law thus does not provide any space for dealing with the issue of complex victimhood in the reparations process.

<sup>29</sup> FONAREV has the mandate to provide individual and collective reparations, as well as material and symbolic reparations. But it is better placed to provide individual reparations than the P-DDRCS, which can realistically only work on the plane of collective reparations.

reparations needs of victims-survivors. Even if the P-DDRCS would opt to not include a reparations component, it could be beneficial for the programme's reintegration process to try to align the timing of both programmes' activities. For instance, starting FONAREV-led consultations to identify communities' reparations demands or the implementation of a reparations activity just before or at the same time as P-DDRCS ex-combatant reintegration projects are undertaken could contribute to increasing receptivity of communities to the return of ex-combatants.

## **5.2.Truth-telling**

Engaging in or supporting truth-telling initiatives can benefit the DDR process by working towards building trust and promoting empathy among both ex-combatants and civilians. By offering spaces where victims and perpetrators can share their experiences of war and violence and are led to listen to the lived experience of the other can help to break down rigid perceptions on perpetrator and victim identities (DPKO 2023) and counter polarization between communities about who is a “real victim”. While in TJ the focus for truth-telling has traditionally been on the victims, there is a growing recognition that perpetrator participation in truth-telling initiatives is important for contributing to the objectives of building trust, facilitating reconciliation, and deconstructing conflict narratives and rigid victim versus perpetrator identities, as well as better understanding the drivers of (re) mobilization (Lawther 2018; Zvobgo 2019). It can also benefit the DDR programme by giving an insight into the drivers of combatant remobilization (Waldorf 2009), which might help inform its Community Violence Reduction projects. And it can also be directly beneficial to ex-combatants by providing a space where they can start making sense of their involvement in conflict and their negative feelings and trauma associated with this.

Where a truth and reconciliation commission (TRC) has been set up, as in the Kasai Central region, linkages can be made with the DDR programme. For instance, information collected by the DDR programme at the intake phase can be shared to support the TRC's investigations (though with due consideration of personal data protection concerns) while, in turn, information collected by a TRC can be useful for the human rights screening component

of a DDR programme. Participation by ex-combatants in the TRC process could also be set as a condition for accessing the DDR programming (or accessing certain of its benefits if too strong a conditionality would overly risk deterring combatants from joining the DDR programme). A less constraining model would be to organize sensitizations about the TRC aimed at ex-combatants participating in the DDR, in order to encourage them to participate in the TRC.

The degree of support for truth-telling in the context of DDR is not clear cut. While local civil society representatives we interviewed in Goma and Bunia were strong advocates for the creation of a truth commission, only one of our seven focus groups with victims-survivors mentioned the need for truth-telling. In contrast, the 2018 focus groups with victims-survivors in South Kivu reported high levels of support for truth-telling (Impunity Watch 2018: 16–17). On the part of the public authorities, there are no concrete steps that have been taken for the creation of a new national TRC or a provincial-level TRC in one of the eastern provinces of the DR Congo. Considering the persistence of armed conflict and large-scale abuses in Ituri and North Kivu, it can also be questioned whether it would be advisable to set up a TRC. This is especially the case for a TRC that would be oriented towards public hearings, confessions and community reconciliation rather than a historical clarification TRC model.

The absence of a formal TRC, however, does not mean that truth-telling cannot be integrated in the P-DDRCS. In communities where active conflict has sufficiently subsided, community-level truth-telling initiatives can be included in the Community Violence Reduction and/or community-based reintegration components of the DDR process. This could be done through community dialogue structures or mechanisms, such as the Barza Intercommunautaire or local peace committees.<sup>30</sup> While such community dialogue structures have primarily served as venues for conflict resolution and mediation, they can potentially also offer a space for engaging in truth-telling (Tunamsifu 2022).

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<sup>30</sup> In six of our seven focus groups, participants expressed support for the organization of community dialogues involving ex-combatants, though they remained unspecific about the nature of such dialogues.

The emphasis would be placed not on mediating disputes but on organizing listening circles involving victims-survivors and ex-combatants (on the model of restorative justice circles), which would be facilitated and accompanied by trusted local leaders (including religious leaders or respected civil society leaders), trained mediators and psychosocial support providers. Such dialogues could also involve, as a concrete output, the common definition of a reparation/restitution agreement (Al-Hassani 2021: 518–519). Where placing victims-survivors and ex-combatants around the same table is not feasible due to fear, lack of trust and risk of stigmatization or would not lead to constructive exchanges, it could also be envisaged to hold closed door sessions with victims-survivors and perpetrators separately, present the outcome of the exchanges in each session to the other group, and have the group talk about what was said in the other group.

Other ways to engage in community-level truth-telling would be to support local memorialization, oral history projects or arts projects that would be created jointly by victims-survivors and ex-combatants. Deploying narrative facilitation tools could also contribute to truth-telling and help to deconstruct harmful or hegemonic conflict narratives which sustain armed conflict and human rights abuses (IFIT 2021). Compared to a formal TRC, such community-level truth-telling initiatives present the advantage that they might be better able to address collective responsibility (that is, the complicity of communities with armed groups), complex victimhood and the tensions between group versus individual victimhood. However, such projects can only gain traction if participation does not put the security of victims-survivors at risk and the latter are willing to speak about their traumatizing experiences in front of other community members.

### **5.3. Local/informal justice mechanisms**

Alongside more formal, state-led approaches to TJ, there has been a growing emphasis on the role that informal justice mechanisms might be able to play in responding to victims' justice needs. This is particularly so in contexts where legal pluralism dominates and the vast majority of the population relies on informal justice mechanisms to resolve disputes. Amongst our interviewees attached to the P-DDRCS, informal justice mechanisms were

frequently referred to as a level at which the nexus between TJ and DDR could be realized. There are two important caveats, however. First, while informal justice mechanisms present the advantage of being more accessible to citizens and potentially of enjoying greater legitimacy because they are culturally grounded and better understood by victims-survivors than formal justice mechanisms, they can also suffer from problems of legitimacy (for instance, if those who lead the informal justice processes are seen as having been involved in conflict dynamics), exclusion, gender bias and politicization.

Secondly, recourse to informal justice mechanisms for grave human rights violations might not be the preferred option of victims-survivors. It is notable in the DR Congo that although the population commonly expresses a low degree of trust in formal courts, lack of trust in customary justice is also relatively high (Vinck, Pham and Zibika 2019), and demands that perpetrators for grave human rights abuses be brought to justice through formal courts remains high (Jacobs 2008). In the preliminary findings of the popular consultations on TJ, 42 percent of the respondents believed grave human rights perpetrators should be judged by the courts and 48 percent of respondents identified the formal domestic courts as the most appropriate venue for this compared to 11.5 percent for informal justice mechanisms (Khasa 2023). Informal justice actors themselves view certain grave crimes such as sexual violence and rape as falling outside of their remit (Avocats Sans Frontières 2023: 41). Focus groups with victims-survivors and communities further indicate that the prosecution of ex-combatants responsible for grave human rights violations is seen as important and that this should be done primarily by the formal courts (Impunity Watch 2018: 14–16; Khayala 2015: 107–108). In turn, our focus groups in Ituri and North Kivu suggested support for prosecutions by the formal courts for grave human rights perpetrators (it was mentioned in four of the seven focus groups), though some participants also expressed concern that tying the DDR process to criminal prosecutions could negatively impact peace. Most notable, when talking about informal justice, participants primarily mentioned them as mechanisms which could be useful in resolving disputes that could emerge between ex-combatants and communities (disputes which may date from the time of the conflict or which may emerge during the reintegration phase of the DDR). More broadly, they also emphasized the importance of including local and customary

leaders as stakeholders in the P-DDRCS but also, for instance, in the implementation of the human rights screening process because of the locally grounded knowledge they hold.

Another approach to informal justice is the inclusion of cleansing and healing ceremonies or rituals to accompany the social reintegration component of ex-combatants. This has been used in countries such as Uganda (Mato Oput), Mozambique (Curandeiros), Sierra Leone (Fambul Tok),<sup>31</sup> and East Timor (Lisan). However, such culturally grounded healing rituals might not be available in all conflict-affected communities in the DR Congo. Including such practices in or alongside the DDR process would thus first require identifying where such practices exist and whether they still have local resonance (war experience can significantly undermine the perceived relevance of traditional practices or lead to their alteration). Moreover, because of the great heterogeneity of such practices and their high degree of cultural embeddedness, they are sometimes difficult to mobilize beyond a particular community and thus not always relevant in dealing with intercommunity tensions. When such spiritual practices are strongly rooted in animistic traditions they may also be rejected by certain religious communities who are opposed to such beliefs. Such practices can also be exclusionary (particularly of women combatants, abducted girls who served as porters or bush wives, or child combatants) and coercive towards individual victims-survivors. Finally, there is much debate over whether external actors should provide support for such processes and link them to institutional processes (because it entails the risk of politicization and fundamentally changing the nature of these processes) or whether it should be left to communities to resort to such processes alongside formal justice or DDR processes when they see fit to do so.<sup>32</sup>

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<sup>31</sup> Fambul Tok was mobilized more broadly, however, going beyond the social reintegration of combatants, as it also included the objectives of truth-telling and community reconstruction.

<sup>32</sup> For a general review of local/informal justice practices in TJ, see Kochanski (2018) and Allen & MacDonald (2013).

## TJ objectives: rehabilitation and prevention

Beyond the integration or linking of specific TJ *approaches* or mechanisms to DDR processes, as detailed above, building the DDR-TJ nexus can also be done by integrating TJ *objectives* into DDR programming. Two such TJ objectives are particularly relevant.

The first objective is to support the social reintegration of victims. Human rights violations leave a lasting impact on victims-survivors, which may negatively affect their socio-economic status, physical and mental health, place in society, community and families, as well as their sense of self and ability to engage in stable and healthy interpersonal relations. Providing targeted assistance to victims is therefore essential, especially for the most vulnerable victims-survivors (women, children born out of war, displaced persons, disabled persons, and indigenous or historically marginalized populations). Thus, under the community recovery pillar of the P-DDRCS, projects could be put in place which are not only aimed at the community's general socio-economic recovery but also socio-economic support projects which are specifically designed for certain categories of victims-survivors. Social reintegration also requires the empowerment of victims-survivors, especially those who suffer from stigmatization and exclusion as result of the human rights violations they suffered. This could take the form of supporting existing victims-survivors associations in running support groups or small-scale economic projects or in gaining the skills needed to engage in community mobilization and policy advocacy (to enable them to claim their rights).



Establishing long-term mental health and psychosocial interventions for victims-survivors is another central component for their social reintegration. This can include support for the establishment of specialized health centres to which are attached trained MHPSS staff who can provide group-based or individual therapeutic interventions. But since the availability of psycho-medical expertise and human resources in conflict-affected countries like the DR Congo are often limited and victims-survivors may be reluctant to resort to them because of lack of familiarity, cultural mismatches and fear of stigmatization, it is also important to work with those local support structures that already exist, for instance by providing MHPSS training to medical staff, social service/community actors, religious leaders, youth workers, child protection officers, and women's associations, who are often the first points of contacts for victim-survivors and can set up local support systems (Hamber 2021; Impunity Watch 2023). This can be integrated in Community Violence Reduction programmes, which generally already include social welfare projects.

The second TJ objective to integrate in DDR is tackling the drivers of human rights perpetration. As previously mentioned, guarantees of non-recurrence is not just about enabling institutional reform but also about disabling abusive structures, behaviours and perceptions. In the context of DDR processes, there is often a focus on needing to understand and address the drivers of ex-combatants' mobilization and remobilization. Through a TJ lens, it is equally important to use the opportunity of the DDR process to set up projects which aim to tackle the factors which lead (and have led) ex-combatants to commit human rights violations. This is particularly important since these factors, if left unaddressed, can contribute to increased levels of domestic and intersociety violence even after combatants have demobilized and the conflict has ended. Such interventions need to go beyond mere training or sensitization on human rights principles. It could include the provision of MHPSS support for ex-combatants, who often suffer from high levels of trauma and PTSD. In addition, it should also include projects which directly address identified drivers of human rights perpetration such as appetitive aggression (that is, the intrinsic enjoyment of violence), violent masculinities, and combatants' skewed perceptions of civilians as enemies (Elbert et al. 2013; Kobach, Schaal & Elbert 2015; Weber 2023).

In contrast to previous DDR programmes implemented in the DR Congo, the adoption by the P-DDRCS of an approach which places the emphasis on decentralization, non-linearity and a community-centred approach to DDR offers promising potential for greater linkages between TJ and DDR. This would be beneficial for victims-survivors of human rights violations but also has the potential to facilitate the social reintegration of ex-combatants and contribute more broadly to peacebuilding efforts by rebuilding trust and social cohesion and tackling conflict drivers. All too often in the past, in the DR Congo and beyond, the focus has been on economic incentives as a means to induce both combatants to participate in DDR and communities to accept the return and reintegration of ex-combatants. While addressing socio-economic needs is undeniably important as part of DDR, it is reductive to approach recipient communities' engagement with DDR from this angle only. What has all too often been overlooked is the impact that unaddressed legacies of grave human rights violations can have on the attitudes of recipient communities towards ex-combatant reintegration. Indeed, asking victims-survivors to accept the reintegration of ex-combatants without any accompanying provision of measures for redress and recognition of victims-survivors can undermine the legitimacy of the DDR programme, contribute to the stigmatization and rejection of demobilized combatants, and drive continued inter/intracommunity tensions.

At an operational level, building linkages between TJ and DDR need not necessarily require programmatic coordination, which is often unrealistic and overly burdensome for both processes. Instead, the linkages can be built by providing for a collaborative framework (formal or informal) between an established TJ mechanism and a DDR programme or by connecting TJ practices with some specific components of DDR programmes, particularly community-based reintegration support and community violence reduction.

In the report, we discussed what both of these approaches could look like concretely in the DR Congo, drawing also on the views shared by the participants in our victims-survivors' focus groups in Ituri and North Kivu on their expectations with regards to TJ in the context of DDR programmes. It is important to underline that a greater integration of TJ and DDR does not mean that a DDR programme should become the main implementing body of TJ; this would infringe on the independence of TJ processes and go beyond the remit of DDR programmes' mandate.

At present, the principal way in which the TJ-DDR nexus is being envisaged by DDR actors in the country is through the inclusion of a human rights screening process in the P-DDRCS. While this can contribute to combating impunity in the DR Congo, the process needs to be designed in such a way that it limits perceptions of unequal treatment of ex-combatants and avoids that the screening process ends up being an empty shell due to limited capacities to both carry out the screening and bring cases to court. Importantly, human rights screening should not be the only way in which the TJ-DDR nexus is implemented, since it is unlikely to, in and of itself, be a sufficient measure to address victims-survivors' diverse justice needs.

Since reparations are a key demand of victims-survivors in the DR Congo, it will be important to also envisage how non-state armed groups and ex-combatants could engage in reparations acts – such as apologies, restitution or compensation for stolen or destroyed property, land or cattle, participation in community projects that provide services to victims-survivors, or the identification of the location of mass graves or the remains of disappeared persons – and participate in local/informal justice initiatives and/or community-based truth-telling initiatives. Since an administrative reparations programme has been set up by the Congolese government (FONAREV), the P-DDRCS should engage in creating and maintaining a constructive working relationship with this programme, which can take the form of information sharing, aligned planning or the joint implementation of reparations projects.

In addition, DDR programmes can examine how community-based truth-telling initiatives may be integrated in community violence reduction or community-based reintegration programming. This could involve practices such as

restorative justice circles, storytelling, local memorialization or oral history projects involving both victims-survivors and ex-combatants, or narrative facilitation. The contribution of informal justice mechanisms and cleansing and healing ceremonies can also be examined, but there are some caveats regarding their perceived relevance, as well as their acceptance by all categories of victims-survivors for addressing grave human rights violations. Finally, beyond the integration or linking of specific TJ approaches or mechanisms to DDR processes, building the DDR-TJ nexus can also be done by integrating TJ objectives into DDR programming, particularly the objectives of supporting the social reintegration of victims and addressing the drivers of human rights perpetration.

Which of these approaches or combination of approaches should be pursued by a DDR programme will be guided in part by operational and resource considerations. Most important, however, it should be flexible in the approaches that it adopts and make sure they are context relevant. Indeed, which types of TJ practices to include in DDR projects will have to vary according to local conflict dynamics, the nature of the relationship between the armed group and communities, and the nature and depth of social divisions and mistrust within or between communities. It should thus not be expected that a single, unique approach to TJ-DDR can be implemented across the entire DDR programme. In some instances, the sequencing of different TJ interventions may also be considered; for instance, one could start first with reparations initiatives and then follow with truth-telling initiatives (or vice versa). Most important, the DDR programme should consult directly with victims-survivors and recipient communities to identify the types of TJ interventions that are most likely to be meaningful to them. As a final point, while integrating a TJ approach in a DDR programme can contribute to a more successful DDR process, it is not a guarantee of success. Equally important for the successful reintegration of ex-combatants will be devising socio-economic support which aligns with the realities of ex-combatants' lives after demobilization and incorporating sustainability in community recovery and reintegration support projects. It is thus not a question of choosing whether the focus should be on ex-combatants or victims-survivors but of devising policies and projects which consider the holistic way in which the needs and relationships between these two groups ultimately conditions the impact and success of DDR processes.

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