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Transitional justice and peacebuilding on the ground: Victims and excombatants

Chandra Lekha Sriram and Jemima García-Godos



Sin título, 2003, by Roberto Aizenberg.
Photo taken in Parque de la Memoria, Buenos Aires, Argentina, May 2007, by Par Engstrom.

Executive summary

In the wake of violent conflict and mass atrocity, there are many contending demands, including those for peace and stability, and those for accountability and punishment. Much ink has been spilled in debating “justice versus peace”. Two key trends in peacebuilding and transitional justice may clash with one another in particular: the prevalence of disarmament, demobilization, and reintegration (DDR) programs and the increased emphasis on victim-centred approaches to peacebuilding.

Funded by the United States Institute of Peace, this project and a forthcoming book,

Transitional justice and peacebuilding on the ground: Victims and ex-combatants sought to identify lessons of utility for policymakers engaged in peacebuilding and transitional justice activities along three related topics:

- First, the opportunities for closer linkages between transitional justice measures and development activities in a peacebuilding context.
- Second, the opportunities and risks of developing DDR and victim-centred justice activities in tandem, either in broad cooperation or in a more tightly integrated fashion.
- And finally, it considered options for timing and sequencing of DDR and victim-oriented transitional justice processes, recognizing that the timing of DDR processes may be relatively inflexible and dictated by the demands of peace agreements and need to stabilize a situation.

We identify the risks and, where possible, opportunities, of choices in all three areas, offering not prescriptions, but guidance, regarding key challenges for practitioners to

map and examine before pursuing these activities.

Development and transitional justice in peacebuilding contexts

Although transitional justice and development activities have not historically been formally linked, they inevitably affect one another, not least because transitional justice activities, like the conflicts they often follow or accompany, frequently occur in countries with significant development needs and external development involvement. In many countries emerging from conflict, poverty levels are extremely high. How can transitional justice and peacebuilding objectives and programs take into account the complex challenges of poverty and inequality in these situations?

Opportunities

Low and middle income countries use national development plans and poverty reduction strategies as central policymaking tools. Such plans and strategies may, and in some cases do, include transitional justice and peacebuilding activities. These activities, which include accountability for past human rights violations and the reintegration of former combatants, are expected by some programmers and analysts to promote the consolidation of the rule of law, the (re)establishment of civic trust and the reinforcement of public security. Linking development policies to transitional justice and peacebuilding activities may allow for more efficient use of scarce resources. In post-conflict societies, limited pools of trained staff, infrastructure and funds may be strained by the creation of new and often parallel institutions specifically designed for transitional justice and/or peacebuilding activities. Using existing institutions to

pursue transitional justice activities could alleviate the pressure on resources, and might also contribute to the sensitization of officials in state bureaucracies regarding accountability and victims' rights. In Colombia, the national development agency Acción Social was tasked with providing assistance to internally displaced people. The organization was then well-placed, based on this experience, to support the establishment of the national victim reparations program authorized in legislation in 2011.

Risks

While national development strategies might be designed to promote mechanisms that facilitate access to justice, reform of security policies, or coordination between public services and victim reparations programs, good practices in this area are still scarce. In Uganda, inclusion of transitional justice and peacebuilding measures in development policies was counterproductive. Uganda's attempt to combine a range of activities through comprehensive development policies seems to be more a response to pressures from international donors than a serious attempt to consider the implications and requirements of each area: transitional justice, peacebuilding, poverty, development. Uganda's incorporation of transitional justice and peacebuilding in national development plans watered down both transitional justice and peacebuilding activities, due to the combined effect of limited state capacity with limited political commitment.

Accountability for past atrocities can strain development activities, including the

promotion of the ordinary rule of law, particularly where the national judicial system is tasked with prosecution of mass human rights violations or war crimes. In Bosnia, significant resources have been provided to the state level War Crimes Chamber. However, local courts (at entity level) also have jurisdiction over war crimes and some argue that police, prosecutorial resources, and court time have been diverted from the investigation and adjudication of ordinary crimes.

Possibly the most serious risk is presented by the gap between what governments and donors promise and victims expect and what is delivered. Practitioners create expectations for, and victims often demand, a range of outcomes, from truth to criminal accountability, to memorials to reparations to reconciliation. In practice, however, practitioners must make pragmatic decisions regarding resources, including allocation of and provision of other nonmonetary forms of reparation.

Transitional justice is not a panacea for all of the social problems which societies in transition might experience. While transitional justice practitioners must be aware of wider demands for distributive justice, particularly given that uneven distribution of wealth and land may have been the cause and/or the consequence of earlier conflict and abuse, the tools of transitional justice are not necessarily suited to address structural inequalities.

What should transitional justice and peacebuilding practitioners consider when addressing development-related issues?

Victims may not prioritize criminal accountability or a truth commission report, and be more focused on finding a job, securing food and healthcare, or taking care

of a disabled relative. Any reparations program must be attentive to who victims are and what they need. The situation of reparations provided to victims, including amputees, in Sierra Leone, illustrates this clearly. One-off lump-sum cash payments are ill-suited for individuals with long-term needs, not only amputees but also victims of debilitating trauma. Such victims are likely to require longer-term, sustained support. There is also the risk of falsely raising hopes among victims that they will receive regular payments. The sense of abandonment that victim communities often experience might be increased by unfounded expectations.

While certain groups of victims may need monetary compensation, many transitional societies facing poverty and development challenges will only be able to provide limited reparations. A combination of individual reparations and collective reparations in the form of services might provide a variety of measures that may at least partly fulfill the needs and interests of victims and might be compatible with development-oriented policies and programs.

Coordination and integration

Is it possible to coordinate between or amongst the various activities of peacebuilding and transitional justice, linking measures which seek to address needs and demands of victims, and measures which seek immediate DDR and longer-term reintegration of former combatants?

There are evident tensions between victim-centred justice and DDR. Nonetheless, such processes often operate in close proximity to one another—often in the same territory, at the same time, involving some of the same programmers and/or beneficiaries. They may also involve overlapping sets of service providers—state, international, or

local. Thus it is worth asking: could these activities be coordinated with one another, or even integrated?

In many postconflict countries, justice processes and DDR have clearly not been coordinated, and have often either been in tension with one another or have not occurred contemporaneously. Even in those cases where both types of processes were developed, they seemed not to be designed to communicate with one another.

However, the United Nations Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS) illustrate a trend at the United Nations towards integrating DDR programming with wider peacebuilding measures, which increasingly include transitional justice processes. The subsequent inclusion of a transitional justice module in the IDDRS reinforces this trend. There appears to be an expectation that transitional justice and DDR have shared linked goals, of building trust between excombatants and society and between victims and society. While there is scant evidence of such coordination, much less integration, as a matter of deliberate programming in-country to date, it is worth considering the opportunities and risks of a more coordinated or even integrated approach.

Opportunities

Coordinating victim-centred justice and DDR processes could allow for mutual reinforcement, provided appropriate incentive structures could be put in place. This might perhaps mitigate the seemingly zero-sum nature of each activity. How might this work in practice? One incentive, amnesties, is arguably off of the table; the IDDRS rule out amnesties based on their presumed inconsistency with international

legal standards. In Colombia, combatants who had not committed crimes and had no criminal charges against them were granted amnesty, and those who were facing criminal charges were offered reduced sentences as incentives for demobilization. While blanket amnesties are inconsistent with international standards, the use of conditional amnesties might in some instances help to promote demobilization.

At the same time, prosecutions are likely to undermine demobilization, but is this always the case? Certainly, some members of armed groups may choose not to disarm out of fear of prosecution, as appears to have initially been the case in Sierra Leone. However, punitive, reintegrative, and reparative processes could be linked, to a degree. Where excombatants have engaged in serious abuses, it might be possible to promote acceptance of their return by victims and communities by linking reintegration to traditional justice activities. Truth commissions may provide an opportunity for excombatants who were perpetrators of serious abuses to apologize and seek forgiveness. Traditional or local justice might also enable perpetrators to engage victims and communities. In northern Uganda and to a degree in Sierra Leone, communities have utilized ritual cleansing and other traditional ceremonies to promote reintegration by former child combatants in particular.

If former combatants provide a material compensation, this might also enable their reintegration into communities. The process in Colombia has linked demobilisation of illegal armed groups to accountability processes, including truth-seeking, administrative reparations, and judicial processes in which victims can also seek reparations from relevant perpetrators.

Risks

Of course, former combatants and entire armed groups may not accept the linkage of processes. This may be the case because they reject individually, or collectively, the stain of accusations of human rights violations, or because they simply reject the prospect of punishment. This has also been the case in Colombia; some paramilitaries withdrew from the DDR process as amendments to the Law of Justice and Peace progressively altered its content, creating tighter linkages between transitional justice and DDR but also imposing greater obligations upon armed groups.

Victims and victims' groups might also reject the linkages. Again in Colombia, many victims view the Law of Justice and Peace as one of impunity, designed to assist pro-government forces, and neither contributing to the end of conflict nor addressing victims' rights. While this approach linking return and engagement with victims may involve formal state processes, in some countries traditional justice processes are used to link return and victims, with problematic results, and either state-based or traditional processes may be criticized for instrumentalizing victims. In Sierra Leone, the use of traditional cleansing mechanisms to promote the return of former child soldiers has met with some skepticism.

DDR programmes tend to focus on short-term activities and are often less successful at long-term reintegration. Some argue that reintegration might be better left to communities or to longer-term development work. Development actors, working with governments and a range of peacebuilders, are likely to be engaged in supporting transitional justice activities and wider rule of law reform, support to affected communities, and reconstruction. They

might be better placed to promote longer-term reintegration, and enable greater integration between those peacebuilding and transitional justice activities. However, there is also a risk that such an approach would generate the perception that there is a zero-sum competition amongst beneficiaries, or create incentives to promote reintegration over concerns of communities and victims.

What should transitional justice and peacebuilding practitioners take into account when considering coordination and integration?

Practitioners engaged in DDR and justice processes need to understand one another's goals, tools, and constituents, prior to considering any degree of coordination, much less integration. Experience to date suggests that coordination has been relatively rare, and not necessarily strategic. Given the potential opportunities and risks noted above, those seeking to program these activities might want to assess the situation through a number of queries.

First, they should consider the likely responses of victims, excombatants, and affected communities alike to any linked processes. Excombatants, particularly those who have not perpetrated atrocities, may well resent and resist the linkage of DDR, and particularly reintegration, to formal and informal processes which conflate them with perpetrators of serious crimes. Victims and communities as well, may resent that their forgiveness is expected to facilitate return, i.e. that linking the two instrumentalizes those most harmed by past abuses.

Second, practitioners considering using traditional or local mechanisms of justice or conflict resolution should carefully scope the appropriateness of these in the eyes of those expected to be involved. If such

mechanisms are not appropriate because they and their practitioners have lost respect or legitimacy through the course of the conflict, or because they do not function well across communities, their effects will be limited.

Third, they should consider existing institutional capacity in the postconflict state. This includes the financial capacity to engage in DDR processes, particular reintegration, or in transitional justice processes including trials, truth commissions, and/or reparations, as well as to manage the proliferation of institutions which may result.

Timing and sequencing

Clearly no rigid ordering or timetable can be prescribed for a diverse set of situations. Further, any recommendations are necessarily limited by the fact that DDR will, for pragmatic reasons, generally have temporal and financial priority, even if justice processes are also being undertaken alongside conflict resolution efforts in some countries. At least the disarmament and demobilization (or DD) elements of DDR will usually be undertaken first, given the need to stabilize a country and implement a peace agreement. DDR processes have not been successful at promoting longer-term social reintegration, it may be that this is best left to transitional justice processes. That said, there are serious temporal considerations that need to be addressed as DDR goes forward and justice processes are initiated. In reviewing the findings of our project concerning timing and sequencing, we could identify clear risks, but no clear opportunities. Below we only discuss risks and provide some guidance for practitioners.

Risks

Long delays between DDR and victim-centred justice can have deleterious effects. Clearly, even if DD must have temporal priority, the resentment felt by victims and communities as a result of long delays to reparations programs or truth-telling and justice processes can be limited if such processes are initiated relatively early. While in Sierra Leone, the TRC and the Special Court began operation within a few years of the end of conflict, there remains skepticism about their effects on, or reception by, victims. The reparations process, by contrast, took place some nine years after the end of conflict. The apparent disparity between the rapid provision of DDR training and packages and delayed reparations can create resentment amongst victims. Further, victims who have suffered serious material harm may suffer further in the meantime, particularly where the harms they have suffered impede gainful employment or basic daily personal tasks.

However these risks may be unavoidable. Many victim-centred approaches to justice simply cannot be set up as quickly as DDR programs in the wake of conflict. It takes time to develop a mandate for a commission of inquiry, to appoint commissioners and other staff, and develop operating procedures, even if sufficient funds are available, which may not be the case. Those seeking to create reparations programs must raise a budget, create a new institution or adapt and empower an existing one, create a victims' registry, and develop procedures for distribution of funds and benefits. Programmers and analysts need realistic timeframes for the implementation of transitional justice mechanisms in general and victim-centred justice in particular; these are long-term processes. Processes of implementation may take longer than the

usual three-to-five year programming cycles of donors and international organizations.

What should transitional justice and peacebuilding practitioners take into account when considering timing and sequencing?

Victim-centred justice processes, particularly reparations programs, take significant amounts of time to implement, yet something needs to be done in the meantime. This is a moral and practical dilemma. Humanitarian, peacebuilding, and development actors may well have to fill the gap with direct assistance. Their activities are unlikely to have a specific justice and/or reparations aspect, but nonetheless may be more timely than oft-delayed victim-centred processes. However, it is worth noting that it does not appear to be the case that, as the saying goes, “justice delayed is justice denied”. Rather, demands for justice in a range of forms—truth-telling, trials, reparations—clearly remain active, even growing, long after the original atrocities occurred.

About this project

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Forthcoming book:

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