Beyond justice versus peace: transitional justice and peacebuilding strategies

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1. Introduction

This chapter examines one of the dilemmas in building a just and durable peace laid out in the introduction to this volume: the challenging and complex relationship between transitional justice and peacebuilding in countries emerging from conflict, where demands for order, retribution, and restoration are juggled simultaneously. Some scholarly analysts, and indeed some policymakers, continue to view “peace” and “justice” as simply in conflict with each other, while their relationship in practice is far more complex (For discussion on the striking of balances, see Sriram 2004). We examine the nuances of the relationship through considering the interaction between tools and mechanisms for addressing past human rights violations seeking to promote justice and tools and mechanisms designed to promote durable peace. We seek to do so by examining contemporary practice rather than arguing abstractly; we seek to analyze and identify the limitations in practice undertaken by the European Union, United Nations, bilateral donors, states themselves, and nongovernmental organizations.

While there is a great deal of academic research as well as policy-oriented work on both transitional justice and peacebuilding, as yet there is relatively little scholarly work which seeks to speak to policymakers as well, identifying the strengths and limitations of justice approaches in peacebuilding processes. Further, what scholarship there is seeking to bridge this divide reaches somewhat contradictory findings (Thoms, Ron, and Paris 2008; Vinjamuri and Boesenecker 2007) and often does not examine the programming and processes in detail on the ground, but rather in an aggregate, quantitative, fashion. This chapter provides a foundation for further research on how programming and practitioners of each might engage more constructively in practice with one another in pursuit of more just and durable peace.

We use a comparative methodology in order to understand the interplay between transitional justice and peacebuilding processes. Both fields have diverse tools and mechanisms that can be used and adapted to specific contexts depending on the country situation. For this reason cross-country comparison provides a better understanding of the dynamic relationship between the two in practice and a basis for analysis of how they could complement each other. This chapter therefore differs from the rest of the volume by using examples from a number of countries, including but not limited to countries in the Middle East and Western Balkans.

Aggestam and Björkdahl eloquently address the theoretical and philosophical arguments about what constitutes justice or peace generally in the introduction to this volume, so we do not revisit those debates here. There is a rich literature on how demands for justice and peace interact more generally in the context of conflict-affected countries, to which other chapters in this volume contribute (See generally Rotberg and Thompson 2000; Mani 2002). Rather, we seek to develop an operational approach to justice in peacebuilding, considering not whether justice and peace contribute to one another, but rather how they might be better designed to do so (See, e.g., Human Rights Watch 2009a; Hayner 2010; and Mendez 2010).

There is a danger that any account of how transitional justice can or should be part of peacebuilding strategies could be perceived as naïve, unrealistic or failing to recognize the necessities of peacemaking and peacebuilding following contemporary armed conflicts, and particularly security challenges. However, this chapter seeks to initiate
dialogue for greater mutual understanding between the two fields. Despite the obvious intersection between the two, work on this subject has only developed recently (Van Zyl 2005:212; see also Stromseth, Wippman et al. 2006:249-253; United Nations General Assembly 2008; Lambourne 2009:28-48).

We identify a starting point for the formulation of strategies for peacebuilding and transitional justice that might help to elide the supposed peace-justice divide, however acknowledging that new tensions may emerge. Strategies would involve refinement of transitional justice practice (including and beyond accountability mechanisms), with peacebuilding tools such as rule of law promotion and with the tools designed to promote security and stability: disarmament, demobilization, and reintegration of ex-combatants (DDR), and security sector reform (SSR). Before we consider the interaction of these mechanisms we turn briefly to the scholarly and policy debate that has traditionally framed understandings of the relationship between transitional justice and peacebuilding.

**The so-called “justice vs. peace” divide**

There has been a long-standing debate in the fields of transitional justice over whether justice or peace should be prioritized in addressing the myriad needs of conflict-affected countries (Aukerman 2002; Sriram 2004). In particular, there is active debate, as noted in the introduction to this volume, about the sequencing of justice activities and peacemaking and peacebuilding activities. We do not wish to re-open the peace versus justice debate or address the question of sequencing in detail theoretically here, but do first quickly survey the two primary sets of arguments and advocates for justice and peace, often characterized as diametrically opposed, before turning to the ways in which they actually engage in practice.

Advocates of promoting justice and accountability have emphasized its importance, first, for normative, retributive justice reasons: those who do wrong ought to be punished (Aukerman 2002:40-41). Others have further argued for the ability of punishment to deter future abuses (Huyse 2001). Beyond prosecutions focusing on perpetrators, proponents may advocate transitional justice mechanisms such as truth commissions or reparations provide a victim-centred approach allowing victims a public voice, as potentially cathartic or healing (Hayner 2001:28). They may also argue that accountability processes of some sort are essential for longer-term peacemaking and peacebuilding (United Nations Secretary General 2004: para 2). Advocates argue that failure to prosecute could undermine the legitimacy of the successor government (Huyse 2001:325). Impunity for certain key perpetrators will undermine people’s belief in the rule of law and the possibilities for building a culture of respect for rule of law (Huyse 2001:325).

On the other hand, many engaged in conflict resolution and post-conflict peacebuilding will be concerned that the promotion of accountability can disrupt those activities. The concern is that because accountability initiatives may directly target those who are most needed to achieve a lasting peace agreement, they may prevent agreement and prolong the conflict. Those likely to be targeted by accountability mechanisms may therefore resist peace deals which do not shield them from prosecution (Sriram and Mahmoud...
Peace negotiators have thus often relied on amnesties to secure a peace agreement (Lutz 2006:330). Peacemakers may also be concerned that transitional justice mechanisms may hinder short and medium term security and the endurance of a peace agreement and efficacy of peacebuilding measures.

In practice, analysts and policymakers do not in fact operate in these simplistic dyads (Lutz 2006:327). Rather, they seek to strike a balance between different demands and policies, or to consider creative sequencing. Peacebuilding is a multifaceted process, and transitional justice can also address multiple goals and there are many ways in which they potentially intersect. We seek here to begin identifying means by which transitional justice and peacebuilding activities may be made more complementary, where possible. Just as we should recognize that the choice is not simply between justice or peace, we should recognize that there is no strict formula for timing and sequencing of peacebuilding or transitional justice activities. Both sets of activities are dynamic and context-specific. Comparative study of past and current programming allows us to examine ways in which specific measures may be developed simultaneously, and indeed in tandem, and to identify where specific measures should take precedence.

Finally, it is important to find commonalities between the transitional justice and peacebuilding processes, particularly since activities in the field often overlap. A number of peace operations have been mandated to address transitional justice as well as activities in rule of law, security sector reform (SSR) and disarmament, demobilization, and reintegration of excombatants (DDR). For example, as international territorial administrations, the UN Mission in Kosovo (UNMIK) and the UN Transitional Authority in East Timor (UNTAET) had responsibility for judiciaries, police and prison services (United Nations Secretary General 2004: para 11). UNMIK and UNTAET also established hybrid trial processes in each country.

2. Peacebuilding and transitional justice

*The expanding mandate of peacebuilding operations*

Since the end of the Cold War, activities by the international community in peacemaking, peacekeeping, and peacebuilding have grown rapidly in number, complexity, and sophistication. UN peace operations have developed from first generation peacekeeping authorised under Chapter VI to the multi-dimensional peacebuilding operations with the broad mandates that we are familiar with today (Doyle and Sambanis 2006:11). The involvement of external actors in the internal or quasi-internal conflicts of states has not only become more frequent, but has also entailed increased levels of coercion, and statebuilding activities that are at odds with traditional concepts of sovereignty. In order to lay the foundations for long-lasting peace, post-conflict peacebuilding is far more invasive than previous peacekeeping mandates with direct engagement in the internal governance of the state. In An Agenda for Peace, the UN Secretary-General argued that the purpose of peacebuilding activities is to prevent the recurrence of conflict through the provision of technical assistance to transform national structures and capabilities and strengthen new democratic institutions (United Nations Secretary General 1992: para 55). Key activities of peacebuilding include: disarming
previously warring parties, restoring security and the rule of law, taking custody of and destroying weapons, repatriating refugees, offering advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening government institutions and promotion of formal and informal process of political participation (United Nations Secretary General 1992: para 59). As peacebuilding has evolved, so too has the range of institutions and activities engaged in it. The creation of the United Nations Peacebuilding Commission and Peacebuilding Fund are but two examples of recent institutional innovations (United Nations Secretary General 2009).5

For the purposes of this article, because each of these constitute central elements of peacebuilding and also elements which often interface with transitional justice and demands for accountability, we focus upon three aspects or tools common to peacebuilding: rule of law promotion, DDR, and SSR. We will define each tool when analysing its interaction with transitional justice in the section below.

The evolution of transitional justice

Over the last two decades, the field of transitional justice has become a cottage industry, with a vast academic literature, a range of NGOs and research centres, and UN and donor-supported programming on the ground (See for example, Kritz 1995; Minow 1998; Rotberg and Thompson 2000; Teitel 2000; Mani 2002; Hughes, Schabas et al. 2007; and see also generally the International Journal of Transitional Justice 2008).6 Transitional justice approaches emerged and developed from the transitions following military dictatorships in Latin America, South Africa after apartheid, in a number of African states emerging from conflict, and post-Cold War transitions in Eastern and Central European states. There was an increasing international consensus that transitional justice measures were needed to deal with past human rights abuses, which coincided with goals of some donors, banks and aid agencies, all of whom prioritized stronger rule of law to enable economic development (Roht-Arriaza 2006:8-9).

As transitional justice has evolved, there is growing reflection by academics and practitioners about the purposes and goals of transitional justice and its coherence as a field (Bell 2009:6). The explosion of interest in transitional justice came from the interdisciplinary nature of the field, but this also meant that it started to become “all things to all people” leading to growing critique of the field itself (Bell 2009: 13). Thus a field that began primarily as a legal one now engages in active debates about how to measure the impact of transitional justice (Van der Merwe, Baxter et al. 2007), the gender dynamics of transitional justice (see for example Bell and O’Rourke 2007: 23-45), and the relationship between transitional justice and development (De Greiff and Duthie 2009). The scholarship now seriously questions even the goals of transitional justice (Bell 2009: 10-13). Bell argues that transitional justice is used as a “cloak” to hide ambiguities and allows the field to be presented as a coherent whole (Bell 2009: 25).

While we acknowledge that the term transitional justice can be used in order to justify a number of ends that may have little to do with its central concerns of justice and transition, we are interested in how transitional justice is used in practice and the effect of this implementation in terms of its relationship to peacebuilding. Since the UN and
donors have led the way in funding transitional justice activities, we use the UN Secretary General’s definition of transitional justice to examine contemporary practice. While acknowledging that this definition is not without its conceptual problems we draw on it here as it is descriptive of the common understanding by programmers on the ground. The UN definition describes a range of processes and mechanisms that are used to help a society come to terms with a legacy of human rights abuses arising from conflict or authoritarian rule; it is by no means comprehensive and is contested, but guides a significant portion of work in the field (United Nations Secretary General 2004: para 8). These human rights violations could include torture, extrajudicial execution, disappearances, war crimes, crimes against humanity, forced labour or enslavement, and may have been committed by state security forces, rebel groups, militias, corporations, and private persons. Transitional justice may utilize judicial and non-judicial mechanisms to ensure accountability, serve justice and achieve reconciliation. The actual combination depends on the context, but usually includes prosecutions, reparations, truth-seeking, institutional reform, vetting or lustration (ibid). These mechanisms can be used within a multi-faceted process in one country, in some cases resulting in complex relationships between different transitional justice institutions (Roht-Arriaza 2006: 9). For example, Sierra Leone had both a Truth and Reconciliation Commission and Special Court and Timor-Leste had a Commission for Truth, Reception and Reconciliation and Special Panel for Serious Crimes. Transitional justice can involve wholly domestic processes, completely international ones, or hybrid ones (ibid: 10).

**Key transitional justice policies and practices**

For the purposes of this chapter we focus on a limited set of transitional justice mechanisms which are most likely to have an impact on peacebuilding activities or vice versa.

**Prosecutions**

Prosecutions can take place in a wide range of fora, namely national courts, *ad hoc* criminal tribunals, mixed or hybrid tribunals and the International Criminal Court (ICC). *Ad hoc* tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda, established in 2003 and 2004, respectively, were designed to address serious violations of international humanitarian law committed on each territory, but were constrained to address only crimes in each territory for a prescribed period of time. Domestic prosecutions in conflict-affected countries have been carried out by national courts to deal with war crimes in a number of countries. Examples include processes in Colombia, where trials of demobilised members of paramilitary groups are underway; while in Bosnia and Herzegovina war crimes are been dealt with by national courts, at entity level in cantonal and district courts, with many more guarantees than previously (OSCE-Mission to Bosnia and Herzegovina 2005; Kerr and Mobekk 2007: 126-7; Isa 2008). However, domestic prosecutions may not always be a possibility where the national court system has been devastated by conflict or corruption or bias is widespread. In these circumstances, hybrid or mixed tribunals are possible alternatives (Sriram 2005: 79-81). They use elements of both domestic and international justice, with a mix of standards and personnel from both systems and have been used in a number of countries, including Sierra Leone, Bosnia and Herzegovina, Kosovo, Cambodia and Lebanon.
contrast, the ICC is permanent and entirely international in nature. The ICC has jurisdiction over the crimes of genocide, war crimes and crimes against humanity committed after 1 July 2002 where the state in which they occurred is unable or unwilling to genuinely investigate or prosecute.  

**Commissions of inquiry**

Commissions of inquiry are usually established at the end of conflict or authoritarian rule, and are often created to establish a public record of the conflict, or particular period in a country’s past. Although mandates may vary, there will usually be a mixture of domestic and international commissioners who will carry out investigations and hearings, write a report and make recommendations. The goals of a commission will often include: to discover, clarify, and formally acknowledge past abuses; to respond to specific needs of victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; to promote reconciliation and reduce conflict over the past (Hayner 2001: 24; see generally Leebaw 2010) Early examples include the Chilean National Commission for Truth and Reconciliation, which issued its report in 1991, as well as more recent commissions in Peru, Timor-Leste, and Sierra Leone, and perhaps the most famous commission in South Africa.

**Vetting**

During conflict, many perpetrators may be public employees or hold public office. It may therefore be necessary to carry out a vetting process to exclude employees from public institutions in the post-conflict period. Vetting signals that the new government or regime is willing to combat impunity and that no one is above the law (Davis 2009:12-13). Vetting can in some cases contribute to rebuilding public trust in institutions. In Liberia, there was both vetting and retraining of the military, as there was in El Salvador, where new military doctrines including subordination to civilian authority were introduced.

**Restorative justice**

There has been growing recognition of the role that restorative justice methods can play in supporting the needs of victims and the building of community relations in addition to the emphasis on punishment of the perpetrator, or retributive justice. Reparations are important instruments of restorative justice. There is a growing body of jurisprudence from regional human rights courts and international courts that affirms the rights of victims to seek reparation (Hayner 2001:170-171). This can involve financial compensation, but could also be symbolic or collective. Supporters of reparation argue that by demonstrating the acknowledgement of past abuses and committing resources to restorative means, it provides recognition to victims, builds community trust and public trust in the state (United Nations Office of the Special Adviser on Africa and Government of the Democratic Republic of Congo 2007). The Comisión Nacional de Reparación y Reconciliación en Colombia is designed to coordinate reparations to victims as well as the disarmament, demobilization, and reintegration of members of the paramilitaries; the ICC has a standing trust fund for victims.
Amnesties
Although amnesties have often been used by state perpetrators to avoid accountability, they can be used as part of larger transitional justice processes. For example in South Africa amnesty was given to perpetrators who gave testimony in front of the Truth and Reconciliation Commission (TRC) (Hayner 2001: 98-99). While blanket amnesties for the most serious crimes in international law are generally considered impermissible and UN mediators may not allow them to be included in peace agreements, there is a robust debate about the acceptability of narrower forms of amnesty (United Nations ECOSOC 2005; Freeman 2009).

3. Contradictions and complementarities: transitional justice and tools of peacebuilding

So, how might transitional justice be complementary to, rather than purely in competition with some of the key elements of post-conflict peacebuilding? We now examine the complex dynamics between and amongst the three tools of peacebuilding that we have identified as important and the transitional justice mechanisms discussed above, recognizing first the contradictions but taking seriously existing and potential complementarities.

Rule of law promotion

The promotion of the rule of law has only relatively recently begun to be prioritized as a peacebuilding activity by the UN and other actors such as the EU, World Bank and bilateral donors (See for example United Nations Secretary General 1997 and 2000; see generally Sriram, Martin-Ortega et al. 2010). The promotion of rule of law emerged as a key element in peacebuilding strategies as it became apparent that corruption, collapse, or distortion of rule of law, are central factors in the promotion of conflict. In 2004, following a Security Council open debate on the matter (United Nations Secretary General 2003), the UN Secretary-General issued a landmark report establishing the centrality of rule of law promotion in the UN peacebuilding strategy (United Nations Secretary General 2004). In it, the Secretary-General referred to the rule of law as “a concept at the very heart of the Organization’s mission” and as a principle of governance in which all are accountable to laws that are fairly made, consistent with human rights and requires adherence to principles such as the supremacy of the law, equality before the law and separation of powers (ibid: paras. 6).

A number of activities are central to developing the rule of law in post-conflict societies, both for the purposes of developing functional legal systems and to address and limit some underlying causes of conflict in order to prevent its re-emergence (ibid: paras. 14-18 and 27-37). These include support to judicial, legislative, and police reform, reform of the closely-related security and corrections sectors, and the support of transitional justice and criminal prosecutions, truth-telling mechanisms such as truth commissions, vetting, and reparations (for example, Aucoin 2007: 33-49).
Contradictions

In the 2004 UN report the two concepts, rule of law and transitional justice, are considered together, and they have developed hand in hand (See for example, United Nations Development Programme 2008:10). While this may (Alvarez 1999; Drumbl 2001) have had some positive effects, it may also have created some confusion over the distinctions between the two. It may therefore seem counterintuitive to suggest that peacebuilding activities to support rule of law promotion are, in any sense, in contradiction to transitional justice and accountability; however in some cases it may well be. Specifically, processes of transitional justice may divert resources, both capital and human, that might otherwise be dedicated to supporting the rule of law. In Rwanda, for example, some have argued that the resources invested in the development and assistance to national courts should have been equivalent to those committed to the International Criminal Tribunal for Rwanda (ICTR), and the extent to which trials at the ICTR have had an impact domestically remains subject to dispute (Alvarez 1999: 466; Drumbl 2001:119-141). However, other commentators argue that it is not so clear that investing in the national judiciary to the same extent as the ICTR would have made a greater contribution to promoting the rule of law and encouraging reconciliation (Akhavan 2001:25).

There are other ways in which transitional justice processes can present challenges to early rule of law building. Transitional justice processes might further destabilize severely damaged justice sectors in the short-term, making it more difficult to promote longer-term rule of law in several ways. They can provoke responses from perpetrators or elements of the old regime which could destabilise fragile peace of nascent democracies, as they might question its legitimacy or actively seek to undermine the authority of public institutions (Sriram 2005:54). Judging former perpetrators is made more difficult given numerous demands on judiciary in a post-conflict context, which will lack personnel and resources and often be subject to allegations of corruption (Huyse 2001:325).

Secondly, the attempt by national courts to prosecute perpetrators could put excessive pressure over the judicial system which is on most occasions severely damaged after a conflict. Processes to try those accused of genocide in Rwanda, where the national judicial system was completely destroyed, have put great stress on the judicial system (Brown 2010:184-85). The lack of capacity has meant that many accused remained in custody for years without having been convicted or even having had their cases heard, in the majority of the cases, generally in appalling prison conditions.9

However, governments may also seek to manipulate or create localized courts for their own ends, as the Sudanese government did with its creation of the “Special Criminal Court on Events in Darfur,” in 2005 purportedly to try individuals guilty of abuses, but which has heard few abuse-related cases and none relating to high-level actors in the government or government-supported janjaweed militia. Such supposed accountability initiatives may actually have a counterproductive effect, contributing to a sense of impunity and distrust in justice processes. Indeed, in Kenya the government has sought to forestall involvement by the ICC through promises of a mixed tribunal, domestic prosecutions, and even tried to assert at one point that the Truth, Justice, and
Reconciliation Commission it had set up might have judicial powers, which were clearly not in its mandate (Sriram and Brown 2010).

Complementarities

Despite the tensions that we have outlined, transitional justice and rule of law promotion are also potentially complementary and can work towards the same ends. A key goal of transitional justice is to contribute to the rebuilding of a society based on the rule of law and respect for human rights, essential for durable peace. The promotion after a conflict of a strong judiciary and a system based in transparency and equal treatment under the law is closely intertwined with the capacity of a country to address past human rights violations. Both are potentially mutually reinforcing in practice if complementarities can be exploited.

Rule of law promotion and transitional justice tools may interact in several ways. Firstly, the creation of processes to address past violations committed during the conflict, both external and domestic driven processes, can help to restore confidence in the justice sector, in particular, and in new democratic institutions in general (Sriram 2005:54; Kerr and Mobekk 2007:120). The use of domestic courts for accountability processes helps to place the judiciary at the centre of the promotion and protection of human rights of the local population, which contributes to the enhancement of trust not only in the judicial system but also in general in public institutions and the government. Government initiation of an accountability process may signal a commitment to justice and the rule of law previously lacking (Kerr and Mobekk 2007:120-121). Internal accountability processes may thus serve to support rule of law, and to a wider extent democracy and respect of human rights, by making it clear that the new regime is based in the respect of the law (Sriram 2005:54), and demonstrate that certain actions are not only proscribed by law but subject to punishment. Domestically-rooted judicial processes, as well as other transitional justice tools, such as commissions of inquiry, may also support the development of mechanisms and rules for democratic and fair institutions by a) establishing regularized procedures and rules and b) promoting discussions rather than violence as a means of resolving differences and reassuring population that their demands will be met in independent, fair and unbiased fora, be this a regular court or an ad hoc judicial or non-judicial mechanism. This is not to imply that internationally-driven transitional justice mechanisms do not have a role to play in the development of the rule of law in the countries for which they have been established. The experiences of the ICTR and the ICTY have shown that distant processes can only address the needs of a post-conflict society to a limited extent, whether those needs be the promotion of rule of law or wider transitional justice objectives such as reconciliation. The debate over the impact of external tribunals, and demands that they leave legacies for affected countries is now ongoing as they complete their mandates. The completion strategy of the ICTY highlights the objectives of enabling stronger rule of law and the capacity to address past crimes in the countries emerging from the former Yugoslavia, and particularly in Bosnia and Herzegovina (Raab 2005:82-102; Donlon 2008:257-285; Pocar 2008:655-666). This debate is framed in a wider analysis of the capacity of trials in general, and trials in international tribunals in particular, to support capacity-building or promote wider reconciliation, as Martin-Ortega discusses more
deeply in her chapter in this volume (see generally, Drumbl 2001; Stover and Weinstein 2004).

Secondly, the (re)building of infrastructure and capacity of the judicial system may be a critical step in the promotion of a culture of respect for rule of law and peaceful conflict resolution (but compare Sannerholm 2007:79-85). The emphasis on rebuilding the rule of law may support longer-term transitional justice goals, particularly through embedding rules and institutions that may help to ensure the non-repetition of atrocities and make return to conflict more difficult (Uvin and Mironko 2003:228). Peacebuilding and transitional justice practitioners alike often consider rebuilding national institutions and rejection of the culture of impunity to be essential to transitional justice (United Nations Secretary General 2004; Aucoin 2007:44).

Beyond the strengthening of the judiciary, other reform processes can promote rule of law and accountability. Advocates argue that institutions that counterbalance the power of certain groups, including the government, such as national human rights commissions or anti-corruption commissions, may contribute to the establishment of a strong institutional and social structure more capable of withstanding social tensions and therefore avoid the recurrence to conflict (Ndulo 2010).

**Security and stability**

Promoting short and longer-term security and stability in conflict-prone and post-conflict countries often requires the reduction and reform or fundamental transformation of groups with the capacity to engage – legally and legitimately or otherwise – in the use of force. These groups may include armies, militias, rebel groups, and in rare instances even criminal gangs. In such situations, two processes are of particular utility in reducing the risk of violence and violent conflict: DDR of ex-combatants; and SSR. DDR and SSR are terms of art regularly used by international actors such as the United Nations and NGOs engaged in conflict resolution and peacebuilding (See generally Bryden, Donais et al. 2005; OECD DAC 2005, 2007; United Nations Development Programme 2005; Ball and van de Goor 2006; United Nations DDR Resource Centre 2006; United Nations Secretary General 2006, 2008). It is worth noting that while we treat them separately here, these processes can overlap and can have mutually positive or negative effects.

**Disarmament, demobilization and reintegration of ex-combatants**

DDR entails a series of policies and programmes, supporting the return of ex-combatants to civilian life, either in their former communities or in new ones. Not all excombatants are returned to civilian life, however DDR programmes may lead to the transfer, following vetting and training, of former members of state and non-state armed groups to new military and security/police forces. Such programmes, and the shape of future security forces, may be mandated in part by peace agreements. They may also be shaped by subsequent legislative and constitutional reform, internal reform to mandates of institutions, and may be affected by more localized local initiatives such as “weapons for development” programmes, which may provide communities with development
assistance in exchange for the relinquishing of weapons. The substance of DDR programming, and the guarantees it seeks to provide, are essential to ensuring peacebuilding, and in particular functional rule of law and the possibility of effective, transparent and legitimate governance.

**Contradictions**

Most obviously, combatants from one or more parties are likely to be highly resistant to any accountability processes enshrined in peace agreements. Leaders and their cadres are less likely to cede arms and canton fighters if they fear arrest, whether by an international or domestic court. This compounds their general security fears attendant to disarming. In Sierra Leone, there is some evidence that the Special Court may have affected not only DDR in Sierra Leone, but also in neighboring Liberia (Sriram 2005:110). And not only have negotiations with the Lords Resistance Army (LRA) in Northern Uganda stalled repeatedly over ICC arrest warrants for the top leaders of that rebel group, but cantonment of fighters at assembly points in Southern Sudan has also been affected by disputes over accountability at the ICC and elsewhere. Indeed, comments attributed to Joseph Kony, head of the LRA, indicate that he has been particularly concerned about what some have called the “Taylor effect”, referring to Charles Taylor, former president of Liberia, who was allowed to go into exile in Nigeria on leaving office, but who was subsequently arrested and surrendered to the Special Court for Sierra Leone.

In many instances, excombatants are embedded in state security forces, which makes broader reform, including promotion of the rule of law, difficult, because the very groups charged with enforcing new laws may have the most to lose through reforms (Sriram 2008; Sriram forthcoming 2011; Vandeginste and Sriram forthcoming 2011). It is also likely to lessen citizen confidence in the security forces and government generally, and may provoke outcry from victims, as discussed below. Where rebel or state fighting forces are comprised of one ethnic, religious, or other group, new structures which incorporate them may face accusations of bias. Nonetheless, inclusion of former fighters not only in new military but also new civilian security structures is common: for example in El Salvador’s peace agreement the former rebel FMLN was allocated a percentage of the new civilian police; on the other hand in Rwanda the victorious (and nearly mono-ethnic) RPF dominated the post-genocide security forces; in Kosovo the Kosovo Protection Corps was set up to replace the disbanded rebel Kosovo Liberation Front/Ushtria Çlirimtare e Kosovës (KLA/UCK).

In Lebanon, there has been no systematic DDR process, and this combined with a general amnesty has meant that reintegration has remained incomplete, with no link to accountability. This has led to a “territorialization of security,” with factions controlling different sectors of the country, and providing or undermining security. Such factionalized control effectively prevents the possibility of judicial accountability, and thus far appears to have hampered even significant truth-telling efforts. In this context, the limited accountability mechanism that is the Special Tribunal for Lebanon is unlikely to contribute to broader peacebuilding or accountability.
Complementarities

We turn now to the possibility that some DDR and transitional justice processes may share similar goals and even utilize similar tools. DDR programs increasingly include measures that seek to promote return and reintegration and possibly reconciliation between individuals, and between individuals and communities, which relies heavily on the willingness of specific victims and broader communities to engage and forgive. This willingness, and longer-term coexistence of victims and perpetrators, could in theory be promoted through incentives to communities as well as a range of reconciliation processes of the sort often promoted for transitional justice purposes. Without a naïve presumption that the utilization of overlapping processes for both DDR and transitional justice purposes is an unqualified good (see discussion below), it is worth considering the possibilities for such an approach. Tools such as truth commissions could facilitate a discussion of the past which allow communities to move forward, and to acknowledge and accept the return of combatants who were also perpetrators. Alternatively, a range of traditional processes of accountability and conflict resolution often also seek to promote reconciliation, at the level of the community, or of individual (or groups, or families) of victims and perpetrators. Cleansing ceremonies and other traditional processes may be used by communities or supported by local NGOs to facilitate reintegration while seeking reconciliation. For example in Sierra Leone, there have been efforts to use traditional processes to return former child combatants to communities (Sriram forthcoming 2011). While the spectre of prosecutions most obviously may be an impediment to DDR processes, as discussed above, there is a somewhat lesser possibility that it might provide incentives for DDR. This might be the case where amnesty or reduced sentences can be offered as inducements for combatants to take part in DDR processes. Reportedly, the threat of extradition of some members of the paramilitaries in Colombia to the US helped convince some that a deal involving demobilization and lesser sentences at home was preferable (Sriram 2008, chapter 5). In Colombia compromises related to prosecution were also linked to non-penal measures of transitional justice, including truth-telling and reparations. Similarly the threat of ICC prosecutions in Uganda may have contributed to the LRA’s willingness to conduct peace negotiations between the Government of Sudan and the LRA in Juba, which included the signing of a DDR agreement, although the Juba talks ultimately collapsed (Agreement between the Government of Sudan and the Lord’s Resistance Army on Disarmament 29th February 2008). According to some, concerns that the ICC might prosecute members of the Ugandan army convinced the Ugandan government to pursue negotiations with the LRA over the use of domestic trials and traditional justice mechanisms (Glassborow 2008). However, despite the drafting of this agreement, Joseph Kony has failed to sign any agreement, raising concerns about the nature of possible domestic prosecutions (International Crisis Group 2008). For such inducements to be effective, the credibility of both the threat of prosecution and the durability of any amnesty or other protection is essential, and such protections are only valid before national, not international, courts.

DDR processes could also be tied more explicitly to institutional reforms which are friendly to human rights. Often peace agreements and DDR processes mean that former combatants will take part in new security structures, as already discussed. However, this incentive might be linked more explicitly to the acceptance by leaders of militaries or armed groups (in peace agreements or through acquiescence to mandate reform) of
wide-ranging changes in institutional mandate and oversight and training, which in tandem with judicial and other institutional reform might promote more human rights-friendly security forces. While this would not explicitly promote transitional justice processes, it could have the forward-looking effect of promoting future protection of human rights. DDR processes also may shape future SSR activities. In El Salvador, for example, former members of the FMLN and state security forces were included in a new civilian police, but that force was also subject to significant changes in mandate and oversight, and human rights training (Sriram 2004:78-106). In Kosovo, UNMIK created the Kosovo Protection Corps and Kosovo Police Force, replacing but also incorporating in part the KLA/UCK; the European Union Rule of Law Mission in Kosovo (EULEX) mission is engaged in promoting reforms to the justice and security sector with an eye to promoting rule of law.

Developing links between reparations for victims and programmes for ex-combatants could also be explored further. Packages for excombatants received as part of reinsertion and reintegration may cause resentment in the broader community (Sriram and Herman 2009:10-11). One option is to require excombatants to contribute to reparations schemes, as in Colombia. It is also worth considering the relative value of packages granted to ex-combatants and reparations to victims. In Rwanda, ex-combatants received $700 while victims received nothing and in South Africa victims waited 6 years after the Truth and Reconciliation Commission Report for reparations, which were much smaller than the demobilization grants and special pensions awarded to ex-combatants (Sriram and Herman 2009:11; Van der Merwe and Lamb 2009:22). Reintegration processes can be designed so as to minimise community resentment; for example the IDDRS recommend that reintegration assistance be designed to move quickly from assistance to individual ex-combatants to community-based assistance programmes (United Nations DDR Resource Centre 2006).

**Security sector reform**

SSR entails a range of policies and programmes that support institutions and individuals responsible for the security of the populace and oversight of security institutions, including not only the police but also judges, prosecutors, corrections personnel and ombudspersons (OECD DAC 2005, 2007; United Nations Secretary General 2008). These policies and programmes may involve direct reform of security forces and changes in their composition, including via restructuring and/or merging existing armed forces, or creating new unified forces. SSR may also provide technical assistance and training for the reform of security forces themselves. In general, SSR seeks to reform security forces, and support institutions to govern and maintain civilian control over these forces. Where non-state providers of security and justice have been dominant, and state provision virtually nonexistent, as is the case in many conflict-affected states, it may be critical to engage such non-state actors, perhaps providing their activities with greater official status, perhaps encouraging reform, and perhaps seeking to reduce their influence (UK Department for International Development 2002; Baker 2005, 2007:215-236).
Contradictions

Tensions between SSR and transitional justice are fairly obvious and straightforward, and in many ways mirror tensions between DDR processes and transitional justice. Reform processes present a challenge to the often previously unfettered powers of security forces. They often involve a reduction in their size and the change in their mandate, restricting police and other domestic security forces to purely domestic matters, and promoting civilian oversight over police and military bodies. As a challenge to the traditional authority of these organizations, they may in themselves be destabilizing. Reform efforts which also involve the inclusion of former rebel groups in new or reformed military or police structures may be strongly resisted by existing state security structures. Thus, for example, members of the Nepali military objected to the planned inclusion of former Maoist fighters into the army on the grounds that they are politicized and lack professional discipline; the police in El Salvador similarly objected to former rebel fighters whom they viewed as ideological being included (Sriram forthcoming 2011).

Transitional justice processes, whether vetting, which may compel the exclusion of members of one or more fighting forces from new security structures, or accountability, by which they may risk imprisonment, may make such challenging reform processes even more difficult.

Demands from transitional justice processes for the exclusion of specific violators of serious human rights violations, and for the protection of human rights to be included in new mandates, may make reform efforts yet more challenging. Thus, for example, in El Salvador, a military that had begun to accommodate significant efforts at reform and civilian oversight protested strongly when a report of a truth commission threatened to name members as perpetrators. Police officials were less vocal but did express concern (Sriram 2004:78-106). Yet security sector reform is essential for medium and longer-term accountability or transitional justice processes.

Complementarities

Provision of security is linked to broader provision of access to justice, although the two are not therefore identical and both may be addressed separately in peace agreements and peacebuilding processes. Without an effective and legitimate force which can guarantee a climate of security and transparency, accountability processes would be difficult to develop and their outcomes difficult to implement. In the absence of security forces committed to the support of rule of law and transparent authority, both rule of law and accountability efforts are jeopardized. SSR processes might further benefit transitional justice processes where a justice-sensitive approach includes provision for oversight, vetting, and human rights training, and where accountability for past abuses is not excluded or even treated as an element of SSR, although the last approach has yet to be seriously attempted (Davis 2009:12).

Transitional justice processes which pursue accountability for past abuses, including through the exclusion of abusers from security forces or their prosecution, might help to bolster new security forces, providing them greater legitimacy, and demonstrating a
break with the past. This might assist with internal legitimacy and morale of the forces themselves, as well as legitimacy with the populace at large. It is for this reason that vetting of existing members of state security forces and any former rebel or militia groups joining state security forces is essential (Sriram 2004, chapter 4). Such vetting should be done on a case-by-case basis, rather than excluding entire groups, which may be destabilizing (Mobekk 2006:78). Mandate reform and the creation of ombuds or oversight bodies can also bolster both accountability and security sector reform.

While there is a growing body of work promoting a justice-sensitive approach to SSR, more research is needed to identify key lessons and translate them into new policies. There are in any event a range of definitions of SSR, some of which include key elements of transitional justice, some of which do not, and there remains variance even within the United Nations system (Hanggi and Scherrer 2008:4). The Bureau of Crisis Prevention and Recovery in UNDP has programmes in Justice and Security Sector Reform (JSSR), which includes transitional justice, while elsewhere in the UN transitional justice is not treated as an element of SSR (ibid:5). Options for both transitional justice and SSR are context-dependent, as therefore are policies to balance or strike compromises between them. However, this does not mean that it cannot be done, for example, while the tensions identified above regarding El Salvador were very real, the combination of activities of vetting, human rights training, and mandate changes were critical both to the reform of the security sector and to human rights promotion, and to a measure of transitional justice.

4. Conclusions

Building a just and durable peace on the ground requires pursuing both peacebuilding and transitional justice activities, taking into consideration how they interact and where they might be more complementary or more contradictory. In this chapter we have sought to elaborate upon tensions and potential complementarities between key tools of transitional justice, such as trials, truth commissions, vetting, amnesties, and restorative measures such as reparations, and some of the most critical elements of post-conflict peace building, particularly as carried out by the UN, the EU, and bilateral donors today—DDR, SSR, and rule of law promotion. However the picture is even more complex than discussed here, for in fact, all three of these tools, strategies, and policies of peacebuilding are in a dynamic relationship with transitional justice processes and activities, sometimes complementary and sometimes contradictory. This is certainly well understood by programmers on the ground, but perhaps what is needed is a greater understanding at the level of policy, such that those designing general benchmarks and goals of one set of activities do so in discussion with those designing them for others. It is here that the addition of a transitional justice module to the IDDRS, being completed as this piece was written, may be one important contribution to efforts to develop greater complementarities amongst the tools.

More generally, the interaction between transitional justice and peacebuilding should be more closely examined in bodies such as the Peacebuilding Commission, and interagency groups in the UN, for example dealing with topics such as DDR and rule of law. Such work should consider not only the relevant roles and interaction of different actors working on peacebuilding and transitional justice, but lessons learned with regard to timing and sequencing of such activities, bearing in mind that there can be no
one-size-fits-all prescription. Improving the interaction between peacebuilding and transitional justice processes, of course, requires something that large bureaucracies with many offices with competing interests are not historically particularly good at—coordination. Nonetheless such coordinated efforts are needed if the different peacebuilding activities are to become less in tension, not to deny that there are very real tensions between the goals of these different activities.

We have identified a few limited areas of complementarity, but clearly more research and reflection is needed to consider ways in which transitional justice activities might be incorporated into more holistic strategies of peacebuilding. Further areas of research could include in-depth research both in the field and at the headquarters level of intergovernmental organizations such as the European Union and United Nations into the interaction of transitional justice processes with key peacebuilding tools and strategies such as DDR, SSR and rule of law.

Our inquiry has also considered only in passing short-term versus long-term results and options regarding timing and sequencing of transitional justice measures and peacebuilding measures deserve further research. We have argued that there cannot be rigid conceptions on timing and sequencing of activities of both peacebuilding and transitional justice, and in contrast to the argument of Bar-Siman-Tov in his chapter in this volume, we see no evidence in favour of postponing justice to an indeterminate “reconciliation phase”. Rather, we would argue that any determination of sequencing must be based upon the circumstances in a particular situation rather than a one-size-fits-all formula based on either theoretical reasoning or experiences.

What we have discerned in this study is that three of the four concerns for just and durable peace outlined in the introduction of this volume are actively pursued in postconflict situations: order, retribution, and restoration. These are often pursued simultaneously despite a range of tensions, and to a degree there are efforts to make peacebuilding and transitional justice processes more complementary. Peacebuilding activities such as rule of law promotion, DDR and SSR are largely designed to restore order, although rule of law promotion is also meant to lay the institutional foundations for future protections of justice and human rights. Often simultaneously, and often promoted by the same internal and external actors, efforts at both retributive and restorative justice are pursued through transitional justice measures such as commissions of inquiry, prosecutions, and reparations. Taken together, and despite their contradictions, these processes seek to foster a just and durable peace.

Ball, N. and L. van de Goor (2006) "Disarmament, demobilization, and reintegration: Mapping issues, dilemmas, and guiding principles."


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OSCE-Mission to Bosnia and Herzegovina (2005). War Crimes Trials before Domestic Courts of Bosnia and Herzegovina. Progress and Obstacles Sarajevo, OSCE.


As most such processes have not addressed questions of distribution, we do not address this issue in this chapter, but it is increasingly recognized to be important. See for example the 2008 issue of the International Journal of Transitional Justice on transitional justice and development (2008).

While the majority of such operations are led by large inter-governmental organizations such as the United Nations or the European Union, some are led by states themselves, with or without significant external support. Lebanese reconstruction after the civil war, not conceptualized explicitly as peacebuilding and their practices and terminology tend to set the terms of operations to a large degree.

UN, for example, was heavily funded domestically and with bilateral support from several countries, rather than driven by the UN or the EU. However, such organizations are generally the largest players; MIK regulation 2000/6 gave the SRSG the power to appoint an international judge and prosecutor and UNMIK regulation 2000/64 gave the SRSG the power to appoint majority judges. UNTAET set up the special panel through regulation 2000/15.

For the purposes of this paper, the international community refers to the United Nations, the European Union and other regional organizations, international financial institutions and bilateral donors.

See generally the website of the Peacebuilding Commission at http://www.un.org/peace/peacebuilding/.

The website of the International Criminal Court is available at http://www.icc-cpi.int/.

While some earlier commissions in Latin America were generally comprised of national commissioners, more recent commissions have been mixed in character.

According to Human Rights Watch (2009), in October 2008 the prison population was approximately 64,000, in a system designed for 43,400.

We discuss here only disarmament, demobilization, and reintegration (DDR) of ex-combatants for the sake of brevity, but many programmes in practice separate Reinsertion as a distinct category, and others also add an additional term of Reconciliation or Rehabilitation, leading to the expanded term DDRRRR. Further, while UN agencies refer to security sector reform, an increasingly used term is security system reform.

For example, the Initiative for Peacebuilding (IFP), funded by the EU has a Security cluster consisting of several civil society organisations that have examined justice-sensitive approaches to security in a few countries.