



United Nations
Office of the Special Adviser on Africa
(OSAA)



Government
of the Democratic Republic of Congo
(DRC)

**Second International Conference on DDR and Stability in Africa
Kinshasa, Democratic Republic of Congo
12-14 June 2007¹**

Issue Paper

“DDR and Transitional Justice”²

¹ This Conference is organized with the generous support of the Governments of Belgium and Sweden

² This document was prepared by an Independent Consultant engaged by UN/OSAA.
The opinions contained in this document do not necessarily reflect those of the United Nations

TRANSITIONAL JUSTICE AND DISARMAMENT, DEMOBILIZATION, AND REINTEGRATION IN AFRICA

Introduction

Since the mid-1980s, societies emerging from violent conflict or authoritarian rule have increasingly chosen to confront the legacies of serious human rights abuses with transitional justice measures such as criminal prosecutions, truth commissions, reparations for victims, and vetting or other forms of institutional reform. At the same time, programs for the disarmament, demobilization, and reintegration (DDR) of combatants have become integral elements of peacemaking, peacekeeping, and peacebuilding efforts. These two types of initiatives—one focused on justice and accountability and one focused on stability, yet both aimed at long-term peace—often coexist or overlap in the post-conflict period. Yet DDR programs have rarely been analyzed, designed, or implemented to consider justice related aims; and transitional justice mechanisms have infrequently developed strategies for coordinating with DDR programs.

While there is a growing body of research on DDR, there is little work that explores the connections between DDR and transitional justice efforts. DDR programs are usually analyzed in a void, as if they had no implications for efforts to achieve justice. Initial work by the International Center for Transitional Justice (ICTJ), however, suggests that failing to better understand the relationship between DDR and transitional justice may limit the extent to which societies achieve both reintegration and justice. DDR programs function as an important first step in ending or limiting violence by disarming large numbers of armed actors and disbanding illegal, dysfunctional, or oversized military organizations. The failure of a DDR process to get the guns out of the hands of fighters and reestablish legitimate state control of the use of force may reduce the security situation of a country and diminish the prospects for transitional justice. Conversely, DDR carried out in situations without recourse to, or coordination with, justice mechanisms can result in increased tensions and missed opportunities, including gross inequities between ex-combatants and victims that foster resentment and impede integration. Overall, this paper argues that while there may be inherent tensions between these two types of initiatives, the long-term goals of both DDR and transitional justice measures are similar, and that with a moderate degree of cooperation and coordination, they may, in fact, reinforce each other in positive ways.

Post-conflict countries in Africa have seen some of the most renowned initiatives in the field of transitional justice including the South African Truth and Reconciliation Commission, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Sierra Leone Truth and Reconciliation Commission, the *gacaca* process in Rwanda, and the first indictments of the International Criminal Court (ICC) against leaders of armed groups in Uganda. Africa has also been the site of the greatest number of DDR operations. The purpose of this paper is to generate informed debate about the relationship between DDR and transitional justice in Africa. It is written as a background

paper for the conference on “DDR and Stability in Africa,” organized by the United Nations Office of the Special Advisor on Africa, in cooperation with the Government of Belgium, to be held in Kinshasa, Democratic Republic of the Congo (DRC), in June 2007. The paper brings together information generated by a research project of the ICTJ entitled, “Transitional Justice and Disarmament, Demobilization, and Reintegration.” The ICTJ project explores the manifold ways in which DDR programs and transitional justice measures may contribute to, or hinder, the achievement of each other’s aims, including the prospects for a sustainable peace. The Africa case studies referred to throughout the paper are country-specific studies developed for the ICTJ project (DRC, Liberia, Mozambique, Rwanda, South Africa, Sierra Leone and Uganda).

The paper is organized into four sections. The first provides an introduction to transitional justice. The second section presents the four main approaches to transitional justice: prosecutions, truth-telling, reparations, and institutional reform. This section provides a brief reference to the international law or norm that supports each mechanism and examines its relationship to DDR. The third section of the paper explores prospects for coordination between transitional justice efforts and DDR in specific areas or moments of the post-conflict or transitional period: links in the legal framework, such as the cease-fire or peace agreement; implementation, coordination around information sharing and dissemination; conditionality; and reintegration and reconciliation. The final section of the paper offers some initial recommendations. The paper is accompanied by country specific overviews in the Annex.

What is Transitional Justice?

Transitional justice focuses on the question of how societies in transition from authoritarian rule to democracy, or from war to peace, address a history of massive human rights abuse. It is concerned with primarily with gross human rights violations understood as torture, summary executions, forced disappearances, slavery, and prolonged arbitrary detention, as well as certain “international crimes,” including genocide, crimes against humanity, and serious violations of the laws and customs applicable in armed conflicts, whether of a national or international character.³ Transitional justice refers to the range of approaches that societies use to contribute to a holistic sense of justice for all citizens, to establish or renew civic trust, to reconcile people and communities, and to prevent future abuses.

A number of characteristics distinguish transitional justice as a distinct field. First, transitional justice focuses on legacies of past human rights crimes. While the main approaches to transitional justice—prosecutions, truth-seeking initiatives, reparations, and institutional reform—have important forward-looking aims such as building trust between and among victims, citizens, and institutions, these mechanisms are primarily concerned with accountability for human rights crimes committed during a specific

³ Mark Freeman, “What is Transitional Justice?” (International Center for Transitional Justice, 2003, unpublished), 3.

period of time in the past. Second, transitional justice “does not argue for retroactive justice at any cost.”⁴ There is an understanding that in transitional societies the demand for transitional justice must be balanced with the need for peace, democracy, equitable development, and the rule of law. Third, transitional justice emphasizes the need for a comprehensive approach. The different measures of transitional justice are not meant to be implemented in isolation, but to complement each other. Fourth, transitional justice prioritizes a victim-centered approach. Mark Freeman states, “The legitimacy of transitional justice mechanisms is measured by the extent to which victims oppose or support them, and the degree to which they are able to participate in and benefit from them.”⁵

Transitional Justice Approaches and DDR in Africa

In the last 20 years, there have been 11 UN Peacekeeping Operations in Africa in which the disarmament, demobilization, and reintegration (DDR) of combatants has been part of the mandate. In eight of those post-conflict countries, there has also been some form of a transitional justice process. Furthermore, there are good reasons to anticipate a rise in post-conflict situations where DDR processes and transitional justice initiatives will coexist. First of all, DDR is considered an essential feature of peacemaking and peacekeeping. In 2002, UN Secretary General Kofi Annan stated in a report to the Security Council that DDR “has repeatedly proved to be vital to the stability in a post-conflict situation.”⁶ At the same time, there have also been significant advances in international norms and standards on transitional justice, particularly regarding amnesty, accountability, the right to truth, and the right to reparation. In addition, transitioning states are increasingly using transitional justice mechanisms to address past human rights violations—a trend that has been termed “a revolution in accountability.”⁷ There is also some evidence to indicate that the timing of DDR and justice mechanisms is creating a situation of increasing proximity. For instance, international and domestic advocates for accountability are asserting their claims earlier in the peace process. The progression of events in conflict and post-conflict Liberia and Sierra Leone, for example, where transitional justice initiatives were integrated into the peace agreement and implemented during the final stages of DDR, exhibit an increase in overlap between DDR programs and transitional justice mechanisms. The establishment of the International Criminal Court (ICC) also contributes to a situation of unavoidable proximity. The ICC indictments of armed actors and government representatives in the Democratic Republic of the Congo (DRC), Sudan, and Uganda, were presented in the context of on-going DDR efforts.

⁴ Ibid., 1.

⁵ Ibid., 2.

⁶ United Nations, “The Role of United Nations Peacekeeping in Disarmament, Demobilization, and Reintegration: Report of the Secretary General (2000)

⁷ Chandra Sriram, ‘Revolution in Accountability: New Approaches to Past Abuses’, *American University International Law Review* 19(2): 2003, 310-429.

Considering Transitional Justice and DDR

According to the UN, the aims of transitional justice are to ensure accountability, serve justice, and achieve reconciliation. The guarantee of non-reoccurrence of human rights abuse, i.e., prevention, is recognized as the “first imperative of justice” efforts. The ICTJ emphasizes the establishment or renewal of civic trust as an important objective of transitional justice. In comparison, the UN integrated standards for DDR define the aims of DDR as increasing security, reestablishing state control over the use of force, preventing renewed violence, encouraging trust and confidence, and reconciliation.⁸ Trust-building, prevention of renewed violence, and reconciliation, then, emerge as essential objectives for both types of processes.

However, not one of the seven Africa cases studies on transitional justice and DDR developed for the ICTJ exhibited an institutional relationship between a transitional justice initiative and a DDR program. Instead, interactions between the two types of processes tended to be ad hoc and reactionary.

There are multiple reasons for this lack of institutional linkage. For instance, it may arise from the tendency to approach DDR, particularly disarmament and demobilization, simply as a technical exercise. There is also the fact that DDR processes and transitional justice initiatives have different constituencies: DDR programs primarily benefit ex-combatants while transitional justice initiatives focus more on victims. In addition, these constituencies themselves have different objectives: victims seek accountability, while ex-combatants for the most part seek to minimize or reduce accountability. Often the different timing of these of these processes is a further challenge to forging formal institutional relationships. Although disarmament and demobilization components of DDR are frequently initiated during a cease-fire, or immediately after a peace agreement is signed; transitional justice initiatives often require the forming of a new government and some kind of legislative approval, which can delay implementation by months or, not uncommonly, years.

This lack of coordination between the two processes results in odd results and missed opportunities. In terms of odd results, for example, in every case examined for this paper, victims received markedly less attention and resources than ex-combatants. The inequity is most stark when comparing benefits for ex-combatants with reparations for victims. Out of 22 countries worldwide with on-going DDR programs involving 1.25 million beneficiaries, not one has implemented a reparations program for victims.⁹ In terms of missed opportunities, information is rarely shared between DDR and transitional justice processes. While sharing information about ex-combatants with a prosecutions process may be problematic, certain kinds of information could be shared with truth seeking initiatives to contribute to the creation of a historical record of the conflict.

⁸ Department of Peacekeeping Operations, “Integrated Disarmament, Demobilization, and Reintegration Standards (United Nations, 2006).

⁹ Escola de Cultura de Pau, Analysis of the Disarmament, Demobilization, and Reintegration Program Existing in the World During 2006 (Barcelona, March 2007).

The rest of this section provides an overview of the four main mechanisms of transitional justice: prosecutions, truth commissions, reparations, and institutional reform, as well as a discussion of local justice and reconciliation initiatives and justice for women as a cross-cutting issue. For each mechanism, a quick summary of the relevant international law, norms, and standards is offered, and an exploration of its relationship to DDR.

Prosecutions and Amnesties

The first broad category of transitional justice approaches consists of prosecutions, i.e., the conducting of a criminal trial in a court against a person suspected of human rights crimes.¹⁰ The form, function, and mandate of a prosecutions process can vary widely. They can be wide in scope, aiming to try as many people as possible for their involvement in human rights crimes, or they can be narrow in scope, focusing on leaders and on those most responsible. International human rights law creates an obligation for governments to investigate human rights crimes. The law establishes the duty to put an end to impunity¹¹ and states that governments “shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried, and duly punished.”¹²

Criminal punishment through prosecutions is considered by many to be the most effective insurance against future human rights crimes. These proceedings aim to create a deterrent effect, to offer public denunciation of criminal behavior, and to provide a direct and individual form of accountability for perpetrators. They also seek to contribute to increased confidence in the government’s willingness to implement the law.

The achievement of those aims, however, may be hindered by a number of factors. In post-conflict situations, prosecutions as a measure of transitional justice can face specific obstacles such as inadequate human or financial resources, a corrupt or weak judicial sector, a perception of victor’s justice, and the challenges of sheer numbers when the pool of potential victims and perpetrators is in the hundreds, thousands, or hundreds of thousands.

Amnesties can play a critical role in either eliminating prosecutions as an option or shaping a prosecutions strategy. Amnesties effectively grant immunity to a designated group of people for a certain class of offences. Amnesty is considered a critical tool in bringing the different parties to the conflict to the negotiating table and convincing combatants to disarm and demobilize. There are many different kinds of amnesties, from those referred to as blanket amnesties, which grant a very broad scope of immunity for all criminal acts and human rights crimes to all combatants, to more narrow ones, which grant immunity for lower level crimes such as illegal possession of a weapon. Broad

¹⁰ For the purposes of this paper, “human rights crimes” is used to refer to “gross human rights violations” and “international crimes.”

¹¹ See Commission on Human Rights Resolution on Impunity, UN Doc. E/CN.4/RES/2005/81.

¹² Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Ad.1, Principle 32

amnesties, however, are undesirable from a transitional justice perspective because they violate the right of victims to redress, and can be inconsistent with a state's obligation under international law to punish perpetrators of human rights crimes. Broad amnesties can undermine the deterrence role of law and create the impression that human rights crimes can be committed with impunity. Victims tend to view such amnesties with disillusion and cynicism, and in response may be motivated to take the law into their own hands. In his 2004 report on transitional justice, UN Secretary General Kofi Annan noted that there is a "growing shift in the international community, away from a tolerance for impunity and amnesty and towards the creation of an international rule of law."¹³ The Secretary General's Report rejects "any endorsement of amnesty for genocide, war crimes, or crimes against humanity, including those relating to ethnic, gender and sexually based international crimes, and ensures that no such amnesty previously granted is a bar to prosecution before any United Nations-created or assisted court."¹⁴

Domestic prosecutions efforts can play an important role in assigning individual criminal responsibility for serious human rights crimes and are generally preferred because they are more likely to strengthen local prosecutorial capacity, be generally more accountable and locally credible. Other important options, in terms of prosecutions for human rights crimes, are international or "internationalized" courts. The creation of international tribunals in situations where national actors are unwilling or unable to prosecute alleged perpetrators is a revolutionary step in establishing accountability for human rights abuse, war crimes, and crimes against humanity. In Africa there are two such tribunals operating: the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone.

The pursuit of criminal accountability through trials is often seen as the transitional justice measure that is most in tension with DDR efforts. The concern is that the threat of prosecution will derail the agreements, deter combatants from entering a DDR program, and/or inhibit the effort to reintegrate former fighters into communities. Some tension between prosecutions processes and DDR may be inherent, as DDR requires the cooperation of ex-combatants, while prosecutors seek to hold the war criminals among them accountable for their actions during the conflict. Bad or partial information about prosecutions efforts can contribute to this tension. Ex-combatants are often uninformed of the mandate of a prosecutions process and ignorant of the basic tenets of international humanitarian law. They may assume that all war crimes will be prosecuted or that all ex-combatants face arrest. As a result, DDR administrators often seek to isolate the DDR process from on-going prosecutions efforts. In Rwanda, for example, the Demobilization and Reintegration Commission refused to give investigators from the International Criminal Tribunal for Rwanda access to its demobilization camps. One of the Rwandan Commissioners stated, "For us, when they [ex-combatants] come, we assume everyone is innocent."¹⁵

¹³ Secretary General's Report.

¹⁴ Secretary General's Report, Recommendation C.

¹⁵ Quoted in Lars Waldorf, "Transitional Justice and DDR in Post-Genocide Rwanda," case study, ICTJ's research initiative on Transitional Justice and DDR.

A similar incident occurred in Sierra Leone, where, after receiving permission from the National Committee for Disarmament, Demobilization and Reintegration, the Special Court Working Group attempted to visit ex-combatants in cantonment to explain the mandate of the Special Court. Representatives of the Working Group were driven out of the camp by a Nigerian captain representing the Economic Community of West African States (ECOWAS) who feared that any discussion of the Special Court for Sierra Leone might cause ex-combatants to refuse to continue their participation in the DDR process.¹⁶

Prosecutions may have a particularly negative effect on efforts to demobilize or release children associated with armed forces and groups (CAAFG). While international law does allow for children under the age of 18 accused of human rights crimes to be prosecuted in a court of law, it calls for governments to look for alternatives. Children require special treatment because they are often forcibly recruited or volunteer under coercion or without a clear understanding of what their service will require. Depending on the context and the individual case, there may be more appropriate transitional justice measures than prosecutions for addressing child perpetrators.

Importantly, however, prosecutions may also make positive contributions to DDR. While the mandates of prosecutors and DDR administrators are probably most at odds during disarmament and demobilization, prosecutions may sometimes aid these phases of DDR by removing spoilers from the process. For instance, many people believe that the indictment of President Charles Taylor by the Special Court for Sierra Leone in 2003 allowed for the successful conclusion of the Accra peace process and the start of the DDR process in Liberia. Furthermore, the experiences of several recent post-conflict countries suggests that there is greater potential for harmony between transitional justice and DDR during the reintegration phase, particularly where prosecution mandates are limited to top-level offenders, such as in Sierra Leone. Prosecutions can help to reduce the culture of impunity that often surrounds ex-combatants and contribute to the reestablishment of the rule of law. They may serve to individualize the guilt of specific perpetrators and therefore lesson the public perception that all ex-combatants are guilty of human rights crimes, thereby potentially facilitating the reintegration process. Providing communities with some assurance that the worst perpetrators of human rights crimes are not benefiting from the DDR or reintegrating into society may increase the prospects for trust between ex-combatants and other citizens.

Truth Commissions

In an increasing number of transitional countries, local actors have begun to emphasize non-judicial truth-seeking measures. These have often taken the form of truth commissions, which are official local or national inquiries into patterns of past abuse that seek to establish an accurate historical record of events. Truth commissions employ investigations and hearings to this end, often identifying the individuals and institutions responsible for abuse, the patterns of human rights violations, as well as the enabling conditions for abuse. Truth-seeking bodies frequently have a relationship with other

¹⁶ Interview with Osman Kamara, AFRC ex-combatant; this was confirmed later in an interview by Senesie Allieu a former CDF combatant. From Mohamed Suma and Mohamed Gibril Sesay, "Transitional Justice in DDR in Sierra Leone," case study for ICTJ's research initiative on Transitional Justice and DDR.

transitional justice measures such as prosecutions and reparations and are often empowered to make recommendations for national policy.

According to the UN's *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, "[e]very people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations."¹⁷ The *Principles* stress the role of the state in "including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know."¹⁸

Ex-combatants may perceive truth-seeking initiatives as a threat. In Sierra Leone the concurrence of a tribunal and a truth commission created a lot of misunderstanding. Ex-combatants assumed that testimony taken by the Truth and Reconciliation Commission would be handed over to the prosecutor of the Special Court. Truth-seeking initiatives may also be seen as an opportunity for ex-combatants to tell their side of the story and/or an opportunity to apologize. In some cases, truth-seeking efforts may help break down rigid representations of victims and perpetrator by allowing perpetrators to tell their own stories of victimization and by exploring and identifying the structural roots of violent conflict. There is good reason to believe that truth commissions can facilitate reintegration and reconciliation by creating an important avenue of participation for ex-combatants, victims, and communities.

In Sierra Leone all parties to the peace agreement, including the national government and the rebel forces of the Revolutionary United Front (RUF), backed the establishment of a Truth and Reconciliation Commission (TRC), which began operations in 2002. Ex-combatants there had a "great deal of hope in the TRC to act as an effective and essential mechanism for promoting reconciliation."¹⁹ Support for the TRC rose from 53 percent to 85 percent once ex-combatants understood its design and purpose, while those who believed it would bring reconciliation rose from 52 percent to 84 percent. As one former combatant explained, the "truth will help families and victims forgive us."²⁰ For those ex-combatants who are guilty of committing a human rights crime, the TRC offered an opportunity to take responsibility for their actions. According to one report, "They want to confess to the TRC because they think it will enable them to return to their communities."²¹

Often, however, ex-combatants (who in some cases have experienced extreme victimization) are usually less prepared to identify themselves as victims. For example,

¹⁷ Updated Set of principles for the protection and promotion of human rights through action to combat impunity (hereinafter "Updated Set of Principles on combating impunity"), UN Doc. E/CN.4/2005/102/Ad.1, Principle 2.

¹⁸ Ibid., Principle 5.

¹⁹ PRIDE, "Ex-combatants Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone," Freetown, September 12, 2002, 16

²⁰ Ibid, 12.

²¹ Ibid, 23.

in South Africa ex-combatant participation in the Truth and Reconciliation Commission was limited primarily to the amnesty hearings—relatively few made statements as victims of abuse or were given a chance to testify at victim hearings. Marginalization of victims (ex-combatants) is the result. Ex-combatants in South Africa, for instance, expressed a sense that “they had been left out of the process.”²² Such marginalization may hinder successful reintegration.

Reparations

Reparations refer to attempts to provide direct benefits to victims. Reparations programs aim to present either material or symbolic benefits to victims of certain types of crimes through individual or collective distribution. Reparations programs have two goals: first, to provide a measure of recognition for victims; and, second, to encourage trust among citizens and particularly between citizens and the state, by demonstrating that past abuses are regarded seriously by the new government. An important point is that reparations programs are the only transitional justice measure that is enacted primarily on behalf of victims, rather than against perpetrators of human rights crimes.²³

The right to reparation is developed in the *Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*, which state that “[a]dequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim. States should endeavor to establish national programmes for reparation and other assistance to victims in the event that the party liable for the harm suffered is unable or unwilling to meet their obligations.”²⁴

Reparations for victims of human rights crimes can contribute to the reintegration efforts of a DDR program by reducing the resentment victims and communities may feel in the aftermath of violent conflict. Alternatively, the lack of reparations in the context of a DDR program can add to the perception that ex-combatants are receiving special treatment. In Sierra Leone, for example, radio ‘phone-ins’ received comments full or

²² Sasha Gear, “Wishing Us Away: Challenges facing ex-combatants in the “new” South Africa.” *Violence and Transition* series, Vol. 8, 2002

²³ Pablo de Greiff, “Introduction Repairing the Past: Compensation for Victims of Human Rights Violations,” in Pablo de Greiff, editor, *The Handbook for Reparations* (Oxford, UK: Oxford University Press, 2006), 2.

²⁴ UN Doc. A/RES/60/147, Principles 15 and 16.

resentment, such as, “those who ruined us are being given the chance to become better persons financially, academically, and skills-wise.”²⁵

Generally, programs for ex-combatants and reparations programs for victims are developed in isolation of each other. Reinsertion assistance is offered to demobilized combatants in order to assist with their resettlement—i.e., to get them home, and provide them with a start toward establishing a livelihood—alongside longer-term support for reintegration.²⁶ Support to ex-combatants is motivated by a concern that without such assistance ex-combatants will become frustrated and threaten the peace process. The result is that ex-combatants participating in DDR programs often receive aid in the form of cash, counseling, skills training, education opportunities, access to microcredit and/or land, while, in most cases victims of human rights violations receive nothing.

The 2002-2007 DDR program in Rwanda financed by the World Bank, for example, had a budget of \$57.3 million. Ex-combatants received reinsertion benefits in cash of about \$700 each. Twelve years after the genocide, the government has still not created the compensation fund for genocide survivors that it committed to in 1998. Representatives of survivor’s organizations express bitterness about the lack of reparations, as do individual survivors. A representative of a genocide widow’s organization stated, “The government says it is poor, but that doesn’t satisfy us. [The absence of reparations] is killing us a second time.”²⁷

Institutional Reform (Security Sector Reform)

Institutional reform to prevent serious abuses from recurring constitutes an important element of transitional justice. Such reforms aim to prevent violent conflict and human rights crimes by eliminating or transforming the structural conditions that gave rise to them. Given that massive systematic human rights violations are primarily carried out by state security forces, or non-state armed groups, the relationship between transitional justice, DDR, and Security Sector Reform (SSR) is of particular interest for this paper.

According to the UN’s *Updated Set of Principles on combating impunity*, “States must take all necessary measures, including legislative and administrative reforms, to ensure that public institutions are organized in a manner that ensures respect for the rule of law and protection of human rights. At a minimum, States should undertake the following measures: (a) Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions. Their removal shall comply with the requirements of due process of law and the principle of non-discrimination. Persons formally charged with individual responsibility for serious

²⁵ Jeremy Ginifer, “Prioritising Reintegration,” in Mark Malan et al, eds., *Sierra Leone: Building the Road to Recovery* (Pretoria: Institute for Security Studies, 2003), 46.

²⁶ The term reinsertion reflects the distinction between reinsertions (transitional) and reintegration (longer-term) drawn by the Integrated DDR Standards developed by the United Nations.

²⁷ Waldorf, 13.

crimes under international law shall be suspended from official duties during the criminal or disciplinary proceedings.”²⁸

According to the OECD/DAC’s guidelines on SSR, it is the “transformation of the security system –which includes all actors, their roles, responsibilities and actions—working together to manage and operate the system in a manner that is more consistent with democratic norms and sound principles of good governance.”²⁹ These actors include the national security forces, security management and oversight bodies, justice and law enforcement institutions; and non-state armed groups, liberation armies, guerrilla armies, political party militias and private security organizations.

SSR aims to provide efficient and effective state and human security within a framework of democratic governance. It is concerned with re-establishing the state’s legitimate control over the use of force and addressing both physical and human security deficits. From a justice perspective, SSR aims to build the integrity of the security system, promote its legitimacy, and empower citizens, in order to transform an overall abusive system into one that respects and protects human rights. On an operational level SSR includes a wide range of activities including vetting, training on security-related public expenditure management, improving the professionalization and governance of the armed forces and intelligence services, building the capacity of civil society organizations to monitor security institutions, and creating mechanisms for judicial oversight. Vetting procedures, for example, can screen current and new members of the armed forces, some of which may come from the armed groups that fought the war.

DDR has an intrinsic relationship to SSR. DDR can function as a preliminary step in ending or limiting violent conflict. Failure of DDR programs, particularly failure of reintegration, can profoundly impact the security environment and lead to internal unrest as well as increases in criminal activity. Decisions concerning the overall number of combatants to be demobilized, as well as on who will be kept on or eligible for security forces, sets important parameters for security sector reconstruction and reform. Criteria for entry into a DDR program, and manner in which employment choices are presented to ex-combatants, may provide incentives or disincentives for reintegration in the armed forces. This, in turn, may effect the representation of women or minorities in the security sector.

DDR programs often operate alongside, but without a connection between SSR initiatives. This lack of coordination or cohesion between different peacebuilding efforts can lead to the re-appointment of a human rights abuser into the security sector. In Uganda Taban Amin, the son of the former dictator, was named as an alleged perpetrator

²⁸ See E/CN.4/2005/102/Ad.1, Principle 36(a). *See also* Principle 36 (c) and (e) according to which “Civilian control of military and security forces as well as of intelligence agencies must be ensured and, where necessary, established or restored. To this end, States should establish effective institutions of civilian oversight over military and security forces and intelligence agencies, including legislative oversight bodies; ... Public officials and employees, in particular those involved in military, security, police, intelligence and judicial sectors, should receive comprehensive and ongoing training in human rights and, where applicable, humanitarian law standards and in implementation of those standards.”

²⁹ OECD/DAC, “Security System Reform,” (2007)

of human rights crimes. He was then provided an amnesty under the Ugandan Amnesty Act, which shield him from future prosecutions. He was consequently offered a position in the Ugandan security forces.³⁰ This kind of case undermines public trust in security sector institutions, and can also lead to distrust within the armed forces.

Local Justice and Reconciliation

Locally-based processes of justice and reconciliation range from informal courts to traditional ceremonies and have taken place in countries such as Rwanda, Sierra Leone, Mozambique, and Uganda. These processes are often referred to as “restorative justice,” which, according to one definition, refers to an approach to justice that involved victims and communities directly in defining the responsibilities and obligations of offenders.³¹ Roger Duthie argues that, “while local justice and reconciliation processes do contain elements of restorative justice...they also overlap with the functions of other transitional justice measures—prosecuting or punishing perpetrators, making reparations to victims, truth-telling, and institutional reform.”³² These local processes have been used promote trust between ex-combatants and their communities. In Mozambique, for example, cleansing ceremonies offered ex-combatants a way to reintegrate into communities by renouncing violence, acknowledging wrong-doing, and providing victims, or families of victims, with some kind of compensation.³³

Local processes can be more efficient for dealing with large numbers of perpetrators, and the community-based nature of these processes may make them more accessible and legitimate than other transitional justice measures. But these local processes can also be problematic in terms of the aims of both justice and reconciliation. First, local processes operate outside of formal legal systems and thus do not always respect national or international legal and human rights standards, in particular standards of due process. Second, as stated by Lars Waldorf, these local processes are often not equipped to handle serious human rights violations such as war crimes, crimes against humanity, or genocide. For example, traditional *gacaca* courts involved mostly civil matters.³⁴ Third, local processes can often replicate gender or other biases that are present in community life and traditions. Finally, while local processes can be a particularly appropriate alternative to criminal prosecutions for some child combatants, local justice should be considered a complement to other transitional justice measures for such children.

The most ambitious locally-based transitional justice mechanism ever attempted is underway in Rwanda, where 11,000 community courts (*gacaca*) were launched in 2002 to try low-level suspects of genocidal acts. In contrast to the strategies of amnesty or selective prosecution chosen by other countries in Africa dealing with large populations

³⁰ DDR and TJ in Uganda, country summary written for this paper.

³¹ Michele Maiese, “The Aims of Restorative Justice,” *Beyond Intractability* (October 2003) http://www.beyondintractability.org/essay/restorative_justice/

³² Roger Duthie, *Transitional Justice and Social Reintegration*, Background Studies, Stockholm Initiative on Disarmament Demobilization and Reintegration (Ministry for Foreign Affairs Sweden, 2006)

³³ Iraê Baptista Lundin, “Peace Process in Mozambique,” case study for ICTJ’s research initiative on Transitional Justice and DDR.

³⁴ Lars Waldorf, *Mass Justice for Mass Atrocity: Rethinking Local Justice As Transitional Justice*

of perpetrators, the Rwandan government chose to pursue accountability through community courts. According to *Gacaca* Law 2004, government prosecutors will investigate the charges made in *gacaca* courts before transferring the files to the national courts for trial.

Nearly 800,000 Rwandans have been accused before these courts, including high-ranking officers. The State's intent to prosecute these genocide suspects is seemingly in opposition of the objectives of its DDR program, which has reintegrated over 54,000 ex-combatants since 1995. Yet this risk of prosecution is not considered a threat by combatants and ex-combatants. There are two possible reasons for this finding. It is possible that those involved in *gacaca* differentiate between wartime killing and genocidal killing. Transitional justice in Rwanda has focused exclusively on accountability for the 1994 genocide, rather than the allegations of war crimes during the 1990-1994 civil war. It is also possible that with the immense backload of cases, ex-combatants are skeptical that the allegations made in *gacaca* courts will ever really come to trial. Even government officials admit that it will be impossible to arrest and try 800,000 people. Alternatively, perhaps the tension between DDR and criminal accountability is less important than is regularly assumed.³⁵

Justice for women

The relationship between transitional justice and DDR has particular implications for women that cut across the different approaches. On the DDR side, women are often not included in peace negotiations, thus their interests are usually marginalized from the political processes in which the parameters for DDR programs are often set. Narrow definitions of the term "combatant" and criteria for identification of combatants then often restrict women's participation in DDR programs. In Sierra Leone, for example, the criteria for participation included possession of a gun; women combatants either shared a gun with a few others, or were ordered by their commanders to give their guns to male combatants prior to the DDR process. These kinds of criteria may have long-term economic, political, social and legal repercussions, and often exclude or marginalize women.

Furthermore, demobilization camps often continue to fail to meet the needs of women and girls who do participate because of the lack of childcare and issues of physical security and/or forced labor. Women combatants, supporters, and dependents generally have not equally benefited from the services, cash incentives, health care, training, travel remittance, small business grants, or housing support that flow to their male counterparts. The result is that most women and girls participate in DDR in much lower numbers than their actual forces.

Women also face specific challenges to reintegration. In some cases, women and men are encouraged to act out similar roles as part of an armed group, and then women are expected to return to traditional women's role in their community post-conflict. Women

³⁵ From Lars Waldorf, "Transitional Justice and DDR in Post-Genocide Rwanda," case study, ICTJ's research initiative on Transitional Justice and DDR, forthcoming.

frequently will not reveal their past experience as ex-combatants for fear of marginalization in their communities. Women ex-combatants may receive less support from their families, suffer from a lack of education/opportunity, and have to support children.

Similarly, the failure of transitional justice measures to adequately incorporate a specific focus on women may undermine the reintegration of ex-combatants and reinforce gender biases. Ignoring gender-based violence committed by soldiers, while providing immediate DDR benefits to perpetrators, for example, can foster resentment among civilian victims. It can also mean that ex-combatant victims of gender-based violence go without the assistance or redress that they need to reintegrate into society. Further, justice measures that are designed and implemented without a concern for the implications for women may overlook such issues as the tension between acknowledging gender-based violence and the potential stigma and rejection that victims of such crimes may face in their communities.³⁶ Finally, transitional justice measures rarely consider the multiple roles of women in conflict. It is important, for example, that transitional justice measures acknowledge women not only as victims, but also as perpetrators, thereby breaking down traditional gender biases.³⁷

Conclusions

The relationship between transitional justice and DDR may be described in terms of its progression from their origins in the various attempts to negotiate a peace, to legal framework in the immediate post-conflict period, through the implementation process of both initiatives, to reintegration and reconciliation. Decisions made, or not made, in the beginning of both processes have long-term implications for the achievement of their individual and shared long-term goals. While the initial decisions about design and implementation will have an enduring impact on the progress of these mechanisms, it is also true that with time the range of options for both initiatives changes, including the increased possibility of coordination between the two. The challenge is to understand how transitional justice and DDR can interact in the short-term in ways that, at a minimum, do not obstruct their respective objectives of accountability and stability. Coordination between transitional justice and DDR practitioners should, however, aim beyond that minimum. It should seek ways to constructively connect these two processes in ways that contribute to a stable just peace in the long term. This section provides options for this interaction during different stages of that progression: legal frameworks, implementation, information strategies, and reintegration and reconciliation.

Legal frameworks

³⁶ Dyan E. Mazurana et al, "Girls in Fighting Forces and Groups: Their Recruitment, Participation, Demobilization, and Reintegration," *Peace and Conflict: Journal of Peace Psychology* 8, no. 2 (2002): 119.

³⁷ Vanessa Farr, *Gendering Demilitarization as a Peacebuilding Tool*, (Bonn International Center for Conversion, 2002), 17.

To begin with, the design of both transitional justice and DDR may be shaped in the peace negotiations, national legislation, and other components of the legal framework that regulate a post-conflict situation. When both types of initiatives are stipulated in an agreement, even if not explicitly connected, a relationship between the two is created. Amnesties negotiated in a peace agreement, for example, can limit the options for transitional justice, hindering the prospects for criminal prosecutions, but perhaps increasing the importance of non judicial measures such as truth commissions and institutional reform. Amnesties for lower-level combatants can be an incentive for their participation in demobilization and still allow for prosecutions against those most responsible for human rights crimes. For example, ex-combatants in Sierra Leone supported the work of the Special Court for Sierra Leone in part because of its promise to sort those bearing the most responsibility for the violent conflict from the bulk of the ex-combatants.

While formal connections between transitional justice and DDR in peace agreements have been limited in practice, creative thinking about possible connections could yield significant results. For example, creating an amnesty for child soldiers in the peace agreement may lead to increased numbers of children entering DDR programs and perhaps also increase their participation in non judicial accountability measures such as truth commissions. Transitional justice efforts can announce the intention to target leaders of armed groups who are recruiting and using children. This may provide an opportunity for more CAAF to enter a DDR program and reinforce the perception of children as victims. Reparations for victims could also be stipulated in the peace agreement.

Conditionality is another way in which transitional justice measures and DDR programs can be connected through the legal framework. For example, DDR benefits can be denied to ex-combatants accused of human rights crimes, or their access to those benefits could be conditional on their cooperation with transitional justice measures. Alternatively, combatants who have committed crimes can be offered a reduced penalty in exchange for demobilizing themselves and their unit (this is being implemented in Colombia).

Design and Implementation

The design and implementation of transitional justice measures and DDR in the early post-conflict period will also shape the relationship between the two kinds of initiatives and the prospects for coordination. For example during the registration process DDR programs can integrate screening procedures for ex-combatants accused of human rights crimes. Additionally, consideration may be given to how the design of the DDR program relates to the long-term security system reform process, for example, by creating incentives or disincentives for ex-combatants, particularly women and minorities, to reintegrate into the security sector.

There can also be coordination between DDR administrators and prosecutors in terms of sequencing. For example, prosecutors can agree to delay announcing indictments of certain commanders until the disarmament and demobilization process has processed a targeted number of beneficiaries. The design and disbursements of reintegration benefits

for ex-combatants through the DDR program can also be sequenced with reparation programs. Assistance offered to ex-combatants is less likely to foster resentment if reparations for victims are provided at a comparative level and within the same relative time period.

Truth Commissions can include special outreach to ex-combatants, and make efforts to recognize their varied experience as perpetrators and victims. Particular attention can be paid to creating safe spaces for women and children associated with armed groups to participate in the truth-telling process.

Both processes can make a commitment to justice for women. The criteria for entry into the DDR program defines who is considered a combatant, and thus eligible for benefits, and who is not. This may have consequences for those who cannot meet the criteria, particularly for women and children associated with armed forces and groups. In some situations disarmament and demobilization programs include an option for ex-combatants to reintegrate into the national armed forces. Recruitment strategies that target women and minorities may result in a more representative security sector, while a lack of attention may have the opposite effect. On the side of transitional justice, prosecutions strategies can choose cases that reinforce the criminality of rape and violence against women. Truth Commissions can also dedicate specific resources to create safe spaces for women to testify and generate information about the experience of women during violent conflict.

Information

Both transitional justice and DDR initiatives engage in gathering, sharing, and disseminating information. Information gathered through DDR programs from ex-combatants could be very useful for transitional justice. In terms of sharing information with prosecutions processes, however, the risk of hindering the disarmament and demobilization of ex-combatants may be greater than the potential value of the information. There are more possibilities for sharing certain kinds of information with truth commissions. Truth commissions often try to describe the broad patterns of violence. For that objective, information gathered from the DDR program such as size, location, and territory of armed groups, command structures, and recruitment process, is useful. That kind of information is not associated with the legal and ethical concerns that more individualized information provided by combatants might generate.

Dissemination of information through outreach activities are crucial tasks of both DDR and transitional justice initiatives. Lack of coordination around these tasks can lead to conflicting or impartial messages and generally restrain the goals of both processes. In Liberia, for example, ex-combatants expressed confusion about the mandate of the Special Court of Sierra Leone, which is limited to crimes committed in Sierra Leone, and decided not to participate in the DDR process because of fear of prosecution.³⁸ Increased consultation and coordination around what and how information is released to the public

³⁸ Conversation with researchers on the project entitled “Successful Determinants of Reintegration,” Columbia University (April 2007)

may, alternatively, reduce the spread of misinformation and reinforce the objectives of both transitional justice and DDR.

Reintegration and Reconciliation

Reintegration and reconciliation are frequently the most neglected areas of both transitional justice and DDR processes, but they may also carry the best prospects for coordination. In DDR programs, far greater attention and resources are given to the disarmament and demobilization activities of DDR, than to the strategy and implementation of activities to support reintegration. Communities are not adequately consulted or prepared for the return of ex-combatants. Ex-combatants are frequently not prepared, or provided the promised assistance for reintegration. Transitional justice initiatives too often focus on the process of carrying out justice, without sufficient investment in the impact of the processes on the ultimate goal of reconciliation. Transitional justice is often a top-down process with limited information available to the public about how justice and reconciliation will prevail at a local level and the information that is available tends to be communicated in complicated legal language.

The ICTJ understands reconciliation in terms of the level of trust that exists between and among citizens and government. Trust involves more than relying on a person to do or refrain from doing certain things; it also involves the expectation of a commitment to shared norms and values. Transitional justice initiatives aim to build trust between victims, society, and the state. DDR programs attempt to build civic trust between ex-combatants, society, and the state. Unfortunately both enterprises are hindered by poor implementation. Concepts of community focused reintegration may offer a more comprehensive reintegration model and perhaps a bridge between the claims and needs of ex-combatants and victims, as well as those of the communities where they reside. At the least, increased consultation with victims groups, communities receiving demobilized combatants, local governments, and religious organizations, including the demobilized combatants and their families, can inform and strengthen the legitimacy of DDR and transitional justice processes.

Recommendations

This paper provides an introduction of some of the aspects of the relationship between transitional justice and DDR. It proposes that both types of processes can be conceptualized as having the same goal—the reestablishment of trust and the prevention of renewed violent conflict. An important forward-looking aim of transitional justice is to promote trust through action, specifically through criminal prosecutions, truth commissions, reparations programs, and institutional reform. Concurrently, one of the goals of DDR is to reintegrate ex-combatants, a process which requires building trust between former fighters, communities, and their society. Transitional justice can contribute to this trust building processes by reaffirming confidence in the justice sector, holding perpetrators accountable, providing a balanced account of the conflict, and acknowledging the crimes committed against victims, among other things. This in turn reinforces the long-term goals of DDR—peace and reconciliation.

The ICTJ study is not yet completed, but it is possible at this point to offer preliminary recommendations. The recommendations attempt to balance the positive and negative aspects of the relationship between transitional justice and DDR, with the understanding that there will be inherent tensions.

Legal frameworks

- Amnesty should be considered as a tool. While broad “blanket” amnesties that eliminate the pursuit of criminal justice should be avoided, amnesties for lower-level combatants can be an incentive for their participation in demobilization and still allow for prosecutions against those most responsible for human rights crimes.
- Conditionality can be explored as a means of balancing transitional justice and DDR. For example the provision of an amnesty to can conditioned on the support and participation of ex-combatants in truth-seeking, reparation, and reform.
- Include reparations and DDR in peace negotiations and agreement.

Design and Implementation

- Screening procedures during the registration of ex-combatants into a DDR program could seek to identify and deny benefits to ex-combatants for whom investigations are already underway.
- Children Associated with Armed Forces and Groups should be treated according to international law, applying more moderate sanction and considering their status as possible perpetrators and victims.
- Coordination around the sequencing of DDR and transitional justice initiatives may help ease tension, for example, between demobilization and prosecutions or truth-telling initiatives in the early post-conflict period.
- Implement reparations programs earlier in transition.
- Balance fairly reparations with DDR benefits
- Include ex-combatants in truth-telling initiatives.
- Incorporate a gender perspective in the design of both transitional justice and DDR initiatives.
- Coordinate vetting and institutional reform efforts with DDR.

Information

- Share general data collected through the DDR process with the truth seeking efforts.
- Coordinate on public outreach efforts to ensure that information is accurate and consistent.
- Consider specific public outreach efforts for children and women associated with armed forces and groups.

Reintegration and Reconciliation

- Acknowledge and respect traditional justice measures.

- Explore ways to connect these local measures with national transitional justice initiatives.
- Include local leaders in negotiations around DDR and transitional justice.
- Incorporate a gender perspective.
- Consider initiatives with an aspect of restorative justice, which allow ex-combatants an opportunity to apologize and offer reparations directly to the victims or community.

Annex 1: Country summaries

1) Democratic Republic of the Congo

Reform of the security sector (SSR) and transitional justice appear today to be two of the most crucial issues for consolidating and assuring a lasting peace in the Democratic Republic of the Congo (DRC) in a fragile political context after 10 years marked by conflicts and more than 30 years of a brutal dictatorship. In the presence of groups that have not disarmed, when tensions break out they rise sharply and may compromise precarious equilibria, as illustrated by the creation of combined brigades in March 2007 and the acts of extortion they commit.

The DRC has experienced two successive wars in the last two years. The first war of the Congo, in 1996 and 1997, unleashed by the Rwandan genocide, was characterized as a “war of liberation” that led to the fall of Mobutu, with the support of Uganda and Rwanda. The alliance between Laurent-Désirée Kabila and his sponsors quickly broke down, and a second war was unleashed by these two neighboring states in 1998. Dividing the country into three zones, it involved several foreign powers and the armed groups and militia supported by different governments. At the end of a difficult peace process, between the Lusaka agreement in 1999, and the inter-Congolese Dialogue and comprehensive peace accord of Sun City in December 2002, the DRC embarked upon a transition period until President Kabila’s inauguration in December 2006. The transition should have made it possible to disarm the Congolese and foreign combatants. As certain armed groups refused to participate in the inter-Congolese Dialogue, the process of disarmament posed a considerable challenge. The issue of justice was raised by civil society to respond to the question of the extremely grave crimes committed. The conflicts affected, in particular, the civilian populations, victims of numerous acts of sexual violence, used as weapons of war, the recruitment by all the armed groups of children, numerous massacres, displacements of population, and other abuses – murder and mutilation, and acts of cannibalism.

To answer the question of the legacy of past crimes, the different transitional justice approaches vary from country to country. Their purpose is to restore the dignity of the victims, to instill confidence in the population despite the past, and to establish a healthy relationship with the State. The measures adopted should be part of a coherent whole. There are many such measures: prosecution of the highest-level persons responsible for the crimes committed; institutional reforms; a truth and reconciliation commission, or other type of work for reconciliation; or efforts to preserve memory. Despite adherence by the main parties to the conflicts to the principles of disarmament and transitional justice measures in different peace accords, justice measures have been routinely set aside during the transition, especially for fear of the tensions they could bring to bear on DDR.

This study casts light on the nefarious effects of impunity and the absence of reconciliation measures on the national DDR program in the medium term. It also underscores just how necessary completing DDR is for undertaking transitional justice

measures. And it shows that carrying out DDR has required ad hoc reconciliation measures locally, but such measures have not been made permanent due to the lack of an adequate framework. The findings, taken together, call into question the clear disjunction between DDR processes, on the one hand, and RSS and transitional justice projects, on the other. Possible links between the two are brought to light. Whereas the indispensable reform of the security sector appeared to be key for restoring the rule of law, as part of establishing the justice sector, the relationship between DDR and other types of transitional justice measures is equally crucial.

Results of the processes of disarmament, demobilization, and reinsertion and the absence of progress in the area of transitional justice

Disarmament, demobilization, and reinsertion

Supplemented by several emergency plans aimed at making up for its slow implementation, the National Program of DDR was intended to demobilize all the combatants, and see to their reinsertion into civilian life or their integration, after combined into one of 12 to 18 integrated brigades of the Armed Forces of the Democratic Republic of the Congo (FARDC), in order to limit the risks of a resurgence of armed conflicts. This program was implemented in the context of a “common trunk” before June 30, 2006 – then until the expiration of the supplemental period on December 31, 2006, for Ituri, the Kivus, and Katanga. The process was characterized by the lack of any initial rush on the part of the transition components and entities to achieve the objectives of the transition. Then it met with obstacles that had to do with the evolution of the program for repatriating former combatants who are foreigners, the reticence of certain groups to laying down their arms, in particular in the eastern part of the country, and finally, the poor administration of Conader, the institution in charge of the demobilization.

The urgency of providing security for the elections, the cost of DDR, as well as the transitory nature of the transition government have diminished the prospects for a genuine reform of the security sector. Such a reform would guarantee, in particular, the creation of a unified downsized army, endowed with an effective chain of command, streamlining of the other services, as well as all the institutions involved in providing security for persons, including the judicial institutions.

In May 2007, only 150,000 of the estimated 330,000 combatants were so processed; 50,000 of them have been incorporated into the 14 brigades formed, and 101,250 have been demobilized. Today, it appears that the army that has been put in place lacks trained soldiers and includes elements who have maintained ethnic loyalties and loyalties to their original groups. It does not have sufficient military capacity today to perform its security functions, and the FARDC are considered responsible for most human rights violations in the DRC. Half of the demobilized to be reinserted are not covered by the programs, and there is no assurance of financing for new demobilized combatants.

Nearly six months after the conclusion of the PNDDR, the lack of will on the part of the government and the major reticence of donors vis-à-vis the national institutions

compromise the continuation of the process. The creation of six combined brigades in North Kivu recently compromised the continued combination of the groups that were integrated into the FARDC and translates into backsliding of the process. The clear security risks stemming from the shortcomings of the DDR are considerably aggravated by the near total impunity enjoyed by the groups not combined, the FARDC, the elements of other security services, and the demobilized.

Transitional justice

The courts with jurisdiction to punish the perpetrators of the most serious crimes during the wars, who are not covered by the amnesty law, have initiated relatively few prosecutions. Internationally, the International Criminal Court has jurisdiction limited in time to events after July 1, 2002. The idea of an international tribunal for the DRC, which had never received the support of the transition government, has just been evoked once again by the High Commissioner for Human Rights. The International Criminal Court has undertaken a single case, against Thomas Lubanga, which is insufficient progress for contributing to a sense of justice for millions of victims of the conflicts.

At the national level, about 10 cases brought for crimes against humanity and war crimes in Equateur, Katanga, in the Eastern Province and in South Kivu, have constituted steps forward against impunity. The Rome Statute has been applied directly by the military tribunals of Mbandaka and Bunia, and several decisions have described the gravity of acts of sexual violence and recruitment of children. This justice, however, does not satisfy international standards regarding jurisdiction over such crimes – for in the DRC such cases are heard by military courts – and with respect to the guarantee of a fair trial. The postponement of several prosecutions and inquiries concerning extremely grave crimes, including all those committed during the two wars in the Congo, is explained by the lack of independence and capacity of the military courts as much as by the difficult political and security context. The courts are also limited by the lack of officers of adequate rank to prosecute the high-level perpetrators in the military hierarchy.

Moreover, the spectacular escapes of certain convicts have considerably reduced the impact, in the population, of the judgments handed down, as their confidence in the justice system was already precarious. The judicial system has shortcomings and requires a genuine reform of the sector and the strengthening of its capacities. The steps taken by the military courts have only been possible with the decisive role of the international community (MONUC, European Union, and various NGOs), particularly in Ituri.

The Truth and Reconciliation Commission (CVR) provided for by the Global and Inclusive Agreement as one of the five institutions for supporting the transition was given a mandate and composition that doomed it to failure. Designed on the principle of inclusiveness aimed at ensuring the impartiality of the transition institutions, the CVR was made up of figures from the political-military and opposition groups suspected of involvement in these crimes. Though it was given such a vast mandate, it limited itself to playing a mediating role, without any conclusive result. Locally, the transitional justice

measures in favor of the search for truth or reconciliation, led by civil society – national or international, including the churches – did not have lasting effects, due to stonewalling on the part of the local authorities, or threats, particularly in North Kivu.

The criminal convictions that included major financial reparations for victims have not been enforced. The CVR, inactive in this area, and without any resources, has not taken any measures of reparation in favor of the victims for damages. The Victims' Fund of the ICC can no longer play this role at this stage of this proceeding before the Court.

Absence of a formal link and interactions between DDR and transitional justice

Disarmament and integration in the FARDC and transitional justice

Designed for and by all the armed components, entities and groups, the PNDDR had no vettingⁱ measure in the process of forming the army. The conditions for entry had to do with very vague criteria of “morality” and more physical than military abilities. They provided that the perpetrators of crimes against humanity should be excluded, yet this provision was left without any effect in the absence of any action on the part of the judiciary. In the absence of sufficient progress in the police reform and of even the most minimal review for the other security services, the situation of the police is identical to that of the army.

Far from sufficient, the 45-day training given in the centers where the members of the different forces were combined deal only briefly with matters of human rights, international humanitarian law, and military discipline. The reactions of the participants to the notions presented demonstrate the immense need for information and growing awareness of the responsibility of the military, with the effect of reviving the idea of justice, and also serving the objectives of transitional justice.

The implementation of DDR strengthened impunity by putting in place a system that promoted the most serious crimes. The war lords, who feared the criminal prosecutions initiated against some of them, were convinced to join the army, where they received ranks and a form of de facto immunity. The explanations for those choices – i.e. the security risks in connection with the elections, the risks of a military defeat of the barely installed authority, the military weakness of the Congolese army, and the limits of the MONUC mandate – could not justify the price of this “purchase of peace” in the eyes of the victims. They live in fear, and consider their dignity has been attacked.

The presence of the former war lords maintains the loyalty of the combatants to their original group and makes it more difficult to break the cycle of violence. The FARDC brigades, in particular the combined, have already committed massacres in the same places where their members had committed atrocities in the framework of the armed factions during the conflicts, thus rendering illusory the hopes for reconciliation and the struggle against impunity. The groups that have not disarmed have undertaken new recruitment with a view to negotiating higher ranks. They thereby improve their remuneration, also diminishing the sums earmarked for their recruits – even if the

improvements in the chain of payment by EUSEC, the mission of the Council of the European Union entrusted by the Congolese government council with key responsibilities in relation to the army, have partially limited this phenomenon.

The current make-up of the Congolese army naturally compromises future transitional justice measures, and the prospect of a reform in the security sector, as well as the functioning of the judiciary. In the absence of other transitional justice measures, promotions in the army lead to the denial of past crimes and jeopardizes the possibility that they will be acknowledged, and punishment for such acts, in the long run.

Reinsertion of demobilized forces and transitional justice

The reinsertion of demobilized combatants also suffers from the lack of transitional justice mechanisms. In the context of sums of money (US\$110 then US\$25 per month) being allocated as a “safety net” for the demobilized combatants, the absence of any reparation for victims has confounded the population, who see the “privileged” status of the demobilized combatants. The design and organization of reinsertion programs with a community-based approach has necessitated engaging in dialogue with the communities, and their customary chiefs, to address issues related to landed property. The examples of successful reinsertion of children, after a dialogue and reconciliation process by local NGOs with the communities and their families, could inspire analyses as to how to address the question of past conflicts in other contexts. The beneficial effects of these programs will be difficult to maintain in the long run and it will be hard to respond in the absence of an approach arrived at in conjunction with all the relevant actors.

The dysfunctions of the demobilization effort illustrate the correlation between the success of the two processes, DDR and transitional justice. Due especially to the delays in the safety net payments and in implementation of the reinsertion program, the demobilized use the weapons that in many cases they have kept to continue to commit crimes against civilian populations. The absence of a mechanism for withholding the safety net payments, even in the case of arrest, has favored this phenomenon and furthered the population’s fear of the demobilized.

The case of North Kivu illustrates and brings together all the nefarious effects of the approach adopted during the transition. The absence of any progress towards reconciliation in North Kivu is one of the factors that led to the decision to combine forces. This new form of integration leads to security tensions in the East and political tensions in Kinshasa, calls into question the DDR, and contributes to the retrenchment of populations in ethnic logics, albeit within an incongruous whole.

Recommendations

The argument of stabilization with a view to elections is no longer valid, and steps towards transitional justice are now urgently awaited. To complete DDR, and in the broader perspective of a genuine reform of the security sector, the approaches taken should meet the objectives of transitional justice so as to make a lasting peace possible.

Reforms are needed in the short and medium term in the defense and internal security sector. A decision should be made to exclude the war lords. This will make it possible to clean up the chains of command within the brigades. These measures should be accompanied by an effort to restore the status of military service by making a clear improvement in their living conditions. They should also rely on all transitional justice initiatives – judicial and non-judicial. EUSEC and South Africa began to register the members of the FARDC. The registration effort should be carried out in the context of process of complete registration. The reform of the security sector should make it possible to take a census of all the services, so as to facilitate reorganization. In the longer term, vetting measures could be put in place.

In the justice sector, capacities should be strengthened and new legislation adopted to move towards rule of law. Such progress will help enable the Congolese courts to take on the issue of grave, imprescribable crimes not subject to amnesty that have been committed in the Congo. To this end, adequate capabilities should be developed in the police – particularly investigative capacity – and in the judiciary. Jurisdiction over war crimes, crimes against humanity, and the crime of genocide should be vested in the civilian courts, in keeping with the proposed legislation to implement the Rome Statute. The idea of taking a census of the grave crimes committed from 1993 to 2003 was recently floated, and could make up for the shortcomings of the Congolese courts. This operation should only be undertaken with a view to developing the capacities of Congolese institutions. The creation of mixed chambers, supported by international judges, within the Congolese courts could respond to this requirement.

Local transitional justice initiatives – seeking the truth, dedicating memorials, efforts towards work of dialogue and reconciliation – should be encouraged. To ensure that the local and “spontaneous” reconciliation measures not enter into contradiction with a possible national institution, coordination between local and national initiatives should be assured. The model of the CVR rendered devoid of credibility in the eyes of the population should not be taken up anew without the participation of local actors and a genuine renewal. Coordination with DDR and RSS could be considered. The National Assembly and the provincial assemblies, elected by direct and universal suffrage, should be seized of the issues of reconciliation and reparation, and help ensure that the government addressed them.

An integrated approach to RSS and justice requires major efforts to ensure coordination among donors, the ministries of interior, defense, and justice, and the United Nations. Developing harmonious policies is essential.

2) Liberia³⁹

Between 1989 and 2003, the West African state of Liberia was engulfed in 14 years of war and plunder. While the war is often analyzed as an ethnic conflict, ethnicity was only a facet of a wider complex of factors that shaped the war. Prior to the eruption of the conflict, Liberia was characterized by political repression, economic mismanagement, lack of access to health care and education, and lack of broad political participation, among other problems. It was the lack of security in the broader sense of the word for the vast majority of Liberians that created the conditions for the war.

The war was initiated by the National Patriotic Front of Liberia (NPFL), the armed group led by Charles Taylor to challenge the regime of President Samuel K. Doe in 1989. By the end of the war 10 armed groups were involved in the fighting. After 13 attempted peace agreements, the first phase of the war ended with the elections of July 1997 that brought Charles Taylor to power as President of Liberia. Regrettably, the opportunities for building peace and reconciling the people were squandered by President Taylor. The country returned to war in July 1999 and lasted until the Comprehensive Peace Agreement (CPA) was signed on August 18, 2003 in Accra, Ghana. The indictment of President Taylor by the Special Court for Sierra Leone, and his subsequent decision to avoid extradition by leaving the presidency and going to Nigeria, created a window of opportunity for advocates of peace and justice.

After the CPA was signed, a National Transitional Government of Liberia governed the country for a period of two years. With the support of the international community, the transitional government organised the elections of October 2005 which brought Mrs. Ellen Johnson-Sirleaf to power as the first democratically elected female President in Africa. The new administration inherited enormous social, economic, political and security deficits that need to be addressed in order to avoid any relapse into violent conflict.

Disarmament, Demobilization, Rehabilitation and Reintegration

Liberia has undertaken two Disarmament, Demobilization, Rehabilitation and Reintegration (DDRR) programmes. The first programme took place from 1994-1996, but was interrupted by the violence that erupted in Liberia between different factions of the United Liberation Movement of Liberia for Democracy (ULIMO)⁴⁰ and the NPFL in April of 1996. During the first DDRR programme about 24,000 out of an estimated 33,000 fighters were disarmed and demobilised, including an estimated 4,036 children and 250 adult women.

³⁹ The Liberia country summary was prepared by Dr. Thomas Jaye, a Senior Research Fellow at the Kofi Annan International Peacekeeping Training Centre (KAIPTC).

⁴⁰ The ULIMO broke into two separate militias in 1994: [ULIMO-J](#), an ethnic [Krahn](#) faction led by General [Roosevelt Johnson](#) and [ULIMO-K](#), a [Mandingo](#)-based faction led by [Alhaji G.V. Kromah](#).

The United Nations Mission in Liberia (UNMIL) implemented the second DDRR program in Liberia from 2003-2004 with monitoring by the The National Commission on Disarmament, Demobilization, Rehabilitation and Reintegration (NCDDRR). Initially, the United Nations estimated that about 38,000 ex-fighters would be disarmed and demobilised by UNMIL, but an overwhelming 103,019 ex-fighters eventually disarmed and demobilized through the program. Given this severe underestimation, the money allocated for the Rehabilitation and Reintegration phases had to be spent on the Disarmament and Demobilization phases. Children and women participated in the disarmament and demobilisation, but were separated from adult men. Roughly 11,000 children and 24,967 women participated in the second programmes. An estimated 60 percent of the ex-fighters have benefited from the rehabilitation and reintegration aspect of the programme through skills training and formal education. The remaining 35 percent have not benefited from the rehabilitation and reintegration parts of the program, primarily because of a lack of funds available to support these activities. Although the UNMIL declared the second programme complete on October 30, 2004, approximately 22,000 ex-combatants are still waiting to be placed in reintegration programs.

Transitional Justice

All the armed factions, including the Armed Forces of Liberia, were involved in massive human rights abuses and violations, including the killing of innocent people, raping of women and young girls, the forcible recruitment of children as child soldiers, extortion, the desecration of the cultural heritage of the country, the looting of the national economy, and the destruction of properties. According to the United Nations between 1990 and 2003 over 150,000 people lost their lives, and and most of the 3 million people in the country were displaced because of the conflict.⁴¹ In a study conducted by the UNDP in collaboration with the National Human Rights Center of Liberia in early 2004, it was reported that between 60 and 70 percent of the population suffered some form of sexual violence during the conflict. While women and girls were main targets, the study reveals that men and boys also had similar experiences.⁴²

The issue of justice for past human rights abuse was not addressed in the prior attempted peace agreements for Liberia except through the granting of amnesties. For example, the Cotonou Agreement of 1993 granted blanket amnesty to the fighters. During the peace talks in Accra in 2003, the stakeholders to the conflict, including the armed factions and civil society groups, negotiated between establishing a war crimes tribunal and a Truth and Reconciliation Commission. The truth seeking option was chosen as the best option at the time, but currently there are demands for a criminal justice process to also be established.

⁴¹ United Nations, United Nations Mission in Liberia: Background. Available at <http://www.un.org/Depts/dpko/missions/unmil/background.html>

⁴² Amnesty International, Liberia: No Impunity for Rape-A Crime Against Humanity and a War Crime (December 2004). Available at <http://web.amnesty.org/library/index/engaf340172004>

The Truth and Reconciliation Commission (TRC) of Liberia was inaugurated in 2006. Before the establishment of the TRC, between 2003 and 2006, there were some truth telling initiatives at the community level and vetting of individuals applying to serve in the army and the police. The TRC marks the first attempt to collect systematic information about crimes committed during the war; as of February 2007 over 5,000 statements had been taken from victim and witnesses around the country.

The TRC has an ambitious mandate including investigating gross human rights violations and crimes under international humanitarian law, creating a historical record, and, on the basis of the investigation, recommending reparations, institutional reforms, and prosecutions. The work of the TRC depends on donor funds and if these are withdrawn, the government of Liberia will find it difficult to continue this effort.

Links between DDRR and Transitional Justice

During the first and second wars in Liberia, no link was established between DDRR and transitional justice. The dynamics of ending the war in Liberia and nature of peace agreements made it extremely difficult to consider justice for past human rights violations. During the peace negotiations in 2003, it was decided to sequence these steps, implementing DDRR immediately, and then establishing the TRC. Those involved in the negotiation of the peace agreement considered that if both processes were pursued simultaneously, the process of peacebuilding could be disrupted.

The DDRR programme was implemented prior to the TRC because it was agreed that disarmament and demobilization of ex-combatants would build trust with and among the fighters who feared prosecutions. With the democratically elected government of Ellen Sirleaf Johnson in power, however, there was a window of opportunity to pursue transitional justice. The establishment of the TRC and institutional reforms are clear indications that Liberia is preparing to confront its difficult past.

Within the Liberian context, it can be argued that implementing transitional justice at the same time as the DDRR programme would have presented serious challenges. The Liberia case also illustrates that the nature of how war ends can dictate the way in which transitional justice and DDR are pursued either separately or together.

3) Rwanda⁴³

Rwanda endured civil war, genocide, and war from 1990 to 2002. Much of that violence resulted from the political manipulation of supposed ethnic differences between the majority Hutu and minority Tutsi. In 1990, the Rwandan Patriotic Front (“RPF”), a rebel movement dominated by Tutsi exiles, invaded Rwanda in support of their demands for power sharing and the right of return for Tutsi refugees who had been driven from the country in earlier pogroms. The resulting civil war culminated in the 1994 genocidal slaughter of at least half a million Tutsi. The RPF ended the genocide and installed a new government and military, while the defeated government and army retreated to eastern Congo, from where they launched attacks on Rwanda. The RPF-dominated government subsequently initiated two wars in Congo, which it justified as self-defense against those forces. The second Congo War eventually drew in nine African countries, lasted five years, and killed more than three million civilians. Rwanda withdrew its military from Congo in late 2002 under the terms of a peace agreement, but it remains understandably concerned about the 8,000 to 16,000 Hutu rebels still operating in eastern Congo.

Disarmament, Demobilization, and Reintegration

Rwanda is arguably the biggest success story of the Multi-Country Demobilization and Reintegration Program (MDRP), a World Bank and donor-funded DDR program for seven countries involved in the second Congo War (1998-2002): Angola, Burundi, Central African Republic, DRC, Republic of Congo (Brazzaville), Rwanda, and Uganda. From 2002 through 2005, Rwanda demobilized more than 35,000 combatants from the former army, the current military, and armed rebel groups in Congo. Not surprisingly, Rwanda has had the greatest difficulty with the latter group. To date, less than a third of those rebels have been disarmed, demobilized, and repatriated. There are two key reasons for this: (1) UN peacekeepers, the international community, and the Congolese government have not provided a credible threat of forcible disarmament; and (2) the Hutu rebel leadership, which is implicated in the genocide, maintains control over rank-and-file combatants.

Virtually all demobilized combatants have received reinsertion and reintegration support. Overall, ex-combatants appear to have reintegrated well into their chosen communities. While they have faced economic difficulties, they do not appear any worse off than most of the population. The Rwandan government also has encouraged ex-combatants to form associations and micro-credit projects to improve their economic opportunities.

Women account for less than one percent of the demobilized ex-combatants and very little is known about their reintegration. A larger proportion of ex-combatants were child soldiers and most seem to have reintegrated successfully. An ongoing concern, however, is the lengthy time they spend in rehabilitation centers before being reunited with their families. Since 2001, only two child soldiers have been girls. This is partly attributable to

⁴³ The country summary on transitional justice and DDR in Rwanda was prepared by Dr. Lars Waldorf, Lecturer in International Law and Human Rights, Institute for Commonwealth Studies, London University.

their small numbers and the greater difficulty that girls face in deserting the rebels (particularly if they are pregnant or have children). Also, girl soldiers are more likely to “self-demobilize” by returning to Rwanda as civilian refugees.

Transitional Justice

Transitional justice in Rwanda focuses almost exclusively on criminal prosecutions for the 1994 genocide. The Rwandan government rejected a truth and reconciliation commission early on and still has not established a compensation fund for genocide survivors (though it does assist some needy survivors). Although the government originally pushed the UN Security Council to create the International Criminal Tribunal for Rwanda, it voted against the Tribunal and has maintained a fairly antagonistic position towards the ICTR. The Tribunal, for all its flaws, has succeeded in apprehending or marginalizing most of the presumed genocidal leadership, thus contributing to stability in the Great Lakes region.

Transitional justice faces an enormous challenge in Rwanda given the scale and brutality of the 1994 genocide, the high degree of popular participation, and the geographical and economic constraints that force perpetrators, bystanders, survivors, and rescuers to live side by side. The government arrested and detained some 120,000 genocide suspects by 2000. Six years later, Rwanda’s overburdened courts have only managed to try some 10,000 suspects.

To speed up genocide trials and reduce the prison population, the Rwandan government created an ambitious system of some 11,000 local community courts (*gacaca*) to try lower-level genocide suspects. *Gacaca* rewards those who plead guilty with reduced sentences, including community service as an alternative to imprisonment. However, *gacaca* appears to have compounded, rather than resolved, the problem as 800,000 people have been accused in *gacaca* proceedings.

DDR and Transitional Justice Linkages

Surprisingly, Rwanda has not linked DDR and transitional justice despite its commitment to prosecuting large numbers of genocide suspects. Thus, Rwanda does not screen ex-combatants for genocide, share information from the demobilization process with judicial organs, or recoup demobilization packages from those accused of genocide.

There is an inherent tension between DDR and *gacaca*. DDR programs generally reassure former combatants they will be reintegrated not punished. Yet, all Hutu ex-combatants have to pass through *gacaca*, where they risk being accused of genocide.

Researching this chapter, I expected to find *gacaca* disrupting the DDR of Hutu combatants who had fought on the side of the genocidal forces in three ways. First, genocide survivors, who have yet to receive any government reparations, might level accusations against those combatants, who had received relatively generous DDR packages. Second, *gacaca* might undermine their fairly successful reintegration. Finally,

gacaca might dissuade armed combatants in the Congo still fighting under the former genocidal leadership from disarming and repatriating. I found little or no evidence, that any of this was taking place. That may reflect the limits of my research and the fact that *gacaca* was only just getting underway nationwide in mid-2006. Nonetheless, it does suggest that DDR and criminal accountability may not be as much in tension as first appears.

4) Sierra Leone

Sierra Leone's civil war led to the deaths of over 50,000 people and left thousands of others mutilated, injured and impoverished. Characterized by rampant human rights abuses and impunity, the conflict pitted the Revolutionary United Front (RUF), a well-organized rebel force aided by Liberia, against the government and its allies comprised of both indigenous and foreign fighters. What emerged as a culmination of bad governance, marginalization of rural areas and widespread injustice coupled by a corrupt justice system was perpetuated by the exploitation of the country's rich natural resources, namely manifested through the illegal diamond trade. This was in turn exacerbated by greed and grievance factors in both sides of the conflict. Following many years of fighting and numerous tenuous and reneged peace agreements between the government and the RUF, Sierra Leone's 11-year old civil war finally came to a historic end with the signing of the Abuja Protocols and the holding of elections in 2002. Aided by the intervention of British troops and a UN peacekeeping force, Abuja marked the end of the RUF's involvement in the government, and led to an immediate ceasefire and cessation of hostilities. It also marked the beginning of a national disarmament, demobilization and reintegration process.

Disarmament, Demobilization, and Reintegration

The Abuja Protocols represented the official end of the Civil War and provided the framework for a speedy disarmament process that incorporated both the government and rebel forces (AFRC, RUF and pro-government CDF forces). Within a year of its signing, over 76,000 combatants, including more than 6,000 children had been disarmed.

The disarmament and demobilization phases were considered to be highly successful. Reintegration efforts were perhaps less successful because of the inadequacy of resources, human and financial, to provide effective training. Groups and training institutions sprouted all over the country to access resources meant for aiding ex-combatant reintegration through training and other schemes. They implemented sub-standard schemes and ultimately failed to provide ex-combatants with skills or opportunities that would have eased their reintegration into society. The situation was exacerbated because of the economic situation of the country.

Despite the crucial role played by women in armed factions, most did not partake in DDR, and thus accounted for a nominal percentage of the process. This is partly attributed to criteria for entry into the DDR program that denied women access, such as requiring them to possess a weapon. Women also felt unsafe amongst men and stayed

away from DDR sites due to fear of reprisals at the reception centers. Many had little knowledge of the program owing to the lack of publicity to reach out to women and girls, and generally did not benefit from the reinsertion packages and training schemes designed to ease the reintegration of combatants into society.

Transitional Justice

Civil society group involved in the peace negotiations advocated for a truth commission and reparations for victims with the intention of addressing impunity, responding to the needs of victims, and promoting “healing and reconciliation.” The Lome Peace Agreement signed in 2002 established Sierra Leone’s Truth and Reconciliation Commission (TRC). Finalizing its report in 2004, the TRC called on the formulation of policies and legislation to engender reform, as well as the formation of a fund to provide reparations for the victims of war through a service package and symbolic measures. The recommendations of the TRC have not been implemented by the government, generating widespread disappointment among victims on the lack of government commitment to reparations and institutional change.

The Special Court for Sierra Leone (SCSL) was established in August of 2002 as a state/multi-state led endeavor. With both international and national judges, and employing both international and Sierra Leonean law, the SCSL represents an experiment in a hybrid tribunal. The SCSL defined its mandate as prosecuting those most responsible for the war, and has so far indicted 13 people. Despite its status as a court, its jurisdiction lies beyond the judicial framework. The SCSL has led campaigns to educate the populace about principles of law and human rights, hosted a victim’s commemoration conference in 2005, and provided trainings for priority constituencies. It is also involved in extensive outreach projects comprised of two phases: providing communities with information on the mandate and objectives of the court, and allaying ex-combatants’ fear of being indicted after completing DDR. Despite these contributions to justice and reconciliation, the court has limited and temporal jurisdiction. It is recognized that much more needs to be done at the community level.

DDR and Transitional Justice Linkages

The connections that existed between DDR and transitional justice mechanisms in Sierra Leone tended to be consequential rather than purposive. While the mandates for the TRC and for DDR were stipulated in the Lome Accord; there was no formal connections made between the two processes. As DDR was in its closing phases when the TRC started operations, and there were no operational linkages between the two processes, such as information sharing.

The establishment of the SLSC and the TRC stoked fears among ex-combatants about prosecution, but well organized civil society efforts to provide information about the justice processes served to allay most of their fears. While there was little adult ex-

combatant participation in the truth-seeking initiatives, children associated with the armed groups did participate.

The recommendations of the TRC, specifically the reparations program, have never been implemented. Civil society organizations with international support continue to advocate the government to follow through on its commitments. At the moment, however, Sierra Leone is another example where the post-conflict period has resulted in more benefits offered to ex-combatants than to victims. Victims and community members have been asked to be patient and to “reconcile,” while ex-combatants were offered money, training, and educational opportunities. Many Sierra Leoneans regard the assistance to ex-combatants as more akin to rewarding perpetrators for atrocities committed than to helping them reintegrate into their communities. Expressions of disappointment with the peace are common.

5) Uganda

To appreciate the justice dimension of processes of disarmament, demobilisation, reintegration in Uganda, one has to put it in the context of the extra-ordinarily turbulent post-independence history of Uganda. Since independence (1963) Uganda has had three national armies, without any continuity in the command structures of the successive armies. More than 20 rebel armies have been operating since the Uganda National Liberation Army (UNLA) defeated Amin's Uganda Army (UA). Most of these armed groups are, in one way or another, successors to the UA and UNLA. To date four rebel groups (Lord's Resistance Army (LRA), Allied Democratic Forces (ADF), NALU, National Army for the Liberation of Uganda (NALU) and the People's Redemption Army (PRA) are still operational.

The militarization of social life in Uganda is not limited to the rivalry between government armies and rebels. It also manifests itself in the important role of militias, especially in the northern and eastern parts of the country, and also in the large number of arms in the hands of civilians. In areas where the national army is unable to protect the population, where the presence of the state is only nominal, the government recruits militias to fill the security gap, or communities create vigilantes groups. In the Northeast of the country where endemic communal conflict prevails, civilians are heavily armed.

Below is a review the various military entities that have been disbanded over the past 30 years or are being disbanded. This country summary examines if and how they were disarmed, demobilised, reintegrated, and to what extent, and in what way, these processes were accompanied by measures ensuring some form of accountability: be it prosecution, truth-telling, local justice, or vetting.

The demise of the Uganda Army (1963-1979) and the Uganda National Liberation Army (1979-1986)

The former colonial army became the power-base of General Amin who in a coup in 1971 replaced the elected President Obote. General Amin decimated the army by killing large numbers of Acholi and Lango soldiers. He made up for the victims by recruiting soldiers from West Nile and Southern Sudan. Other security organs were put under the control of the Army. When the Uganda Army was defeated by the Uganda National Liberation Army (UNLA), with the help of the Tanzanian army, most of the soldiers fled to West Nile and later, after UNLA revenge operations, into Sudan and Congo. Others were captured and detained.

The defeat of the Uganda Army was not followed by a DDR process, let alone by procedures of vetting. Members of the defeated army were stigmatized, detained, and forced into exile. UA soldiers regrouped as Former Uganda National Army (FUNA) and United Rescue Front (UNRF) led by Moses Ali, and carried out attacks on UNLA. Only in March 2007 did the Court of Appeal rule that former UA soldiers are entitled to arrears and retirement benefits. In the publicity surrounding the case there is no mention of the atrocities some of these pensioners may have committed.

Beyond the UNRF and FUNA, other rebel groups emerged to fight the Obote II regime (1980-85). Except for Museveni's NRA, these rebel groups joined the Military Council of General Tito Okello, Commander of the Northern Brigade of UNLA which overthrew Obote in 1985. The NRA continued its armed opposition to the UNLA, but signalled its willingness to negotiate a peace.

Peace talks between the NRA and Okello's Military Council, hosted by Kenyan president Moi, were held in Nairobi in December 1985. The resulting 'Nairobi Peace Agreement' manifests concern for human rights violations and accountability. It is agreed that all parties will disarm and demobilize some of their forces. The newly formed army will have 3,700 UNLA, 3,580 NRA, and 1,200 FUNA, FEDEMU, UFM, UNRF combined. The soldiers will be vetted by a selection committee under the supervision of an international monitoring team. While the text stipulates that, in case they have committed crimes or human right violations, UNLA soldiers will be open to prosecution (Art. 1), the vetting especially targeted those who served under Amin. Whoever worked for Amin's secret services would be excluded from any position in the new dispensation (art. 14.2) Persons in leading functions in Amin's security apparatus 'known to have committed atrocities or heinous crimes (...) will be prosecuted and punished according to the law'. There is no expiry date for prosecution. The agreement collapsed within six weeks after signing when the NRA violated one of the key articles in the agreement: the demilitarization of Kampala. The NRA took control of Kampala, removed Okello's Military Council, and proclaimed Museveni as the president of Uganda.

Though the agreed vetting procedure may have been partial, the Nairobi Agreement is the first manifestation of political will in the government to deal with human rights violations of the army. As part of a process where combatants were demobilised from a defunct national army and reinserted in its successor, it was the first attempt to systematically screen combatants and security agents on their human rights record. Since 1985, no other opportunity for systematic screening has presented itself.

The only other response to the massive violations of human rights by the security forces during the Amin and Obote regimes were the investigations of the Commission of Inquiry into Human Rights Violations, established four months after the NRA took power. The results, a 720-page document, were published in 1994. A 97 page summary of the report was published simultaneously. Two years ago the International Institute for Historical Justice and Reconciliation in Salzburg, Austria took the initiative to explore the possibility of a country-wide reconciliation process by exploring the possibility of establishing a Uganda Historical Memory and Reconciliation Council. This initiative is still in its infancy.

So far victims of atrocities committed during the Amin and Obote regimes have had no access to justice. If there is any perception of justice at all in the termination of the successive Ugandan regimes, it is a cruel divine justice acting through vengeful human agents.

DDR and justice for rebel groups

Rebels fighting the NRA regime

Combatants of FUNA and UNLA regroup in Southern Sudan to fight the NRA-regime. A majority of Northerners in the UNLA regroup as Uganda People's Democratic Army (UPDA). Because of condescending treatment, dismissals from government positions, human rights abuses, and the fact that Tito Okello, an Acholi, was 'their man', the Acholi felt, more than others, humiliated and betrayed by the take over by the NRA. In the disarray following the collapse of the Military Council prophetic healing movements emerged: the Holy Spirit Movement led by the prophetess and healer Alice Lakwena in the second half of 1986, and in 1987, what later became known as the Lord's Resistance Army (LRA). The LRA focused on a young male spirit medium, by name Joseph Kony as the focus. Many UPDA joined these movements. Joseph Kony has been surrounded by former UPDA from the very beginning of his military activities. Former UPDA men still form the core of the LRA top command.

As a result of negotiations between the Government of Uganda and the UPDA (Juba, May 1987, Gulu, June 1988, Addis Ababa, July 2000) many UPDA were reinserted into the NRA. The agreements do not provide for any screening of the human rights record of the reinserted combatants. The negotiations were accompanied by a Government Amnesty (June 1987-June 1988) followed by a Presidential Pardon.

The Northern insurgency is not the only conflict. The UNDDR site lists the names of a total of 22 rebel movements that for shorter or longer periods fought the Museveni government since it took over in 1986. The important point here is that in the negotiations between the Uganda Government and the various rebel groups accountability for crimes and human rights violations committed by demobilised and/or reinserted combatants and members of other security organs was not an issue. All the agreements gravitated around military matters: proportional distribution of combatants from different armies and region; number of officers to be absorbed from the surrendering armed group, and for those going back to civilian life the size and composition of the resettlement package. Not only is there little concern for justice and for the victims of the fighting, interest in reconciliation of the communities that were affected or became divided as a result of the fighting is largely absent.

Amnesty Act: packages versus reparations

In response to popular pressure to resolve the conflict in the North through peaceful means, and as a measure of confidence building and reintegration, a bill was presented to parliament that allowed rebels to obtain amnesty for their participation in rebellions against the government. The text, presented in 1998, included the clause that the amnesty would not apply to persons guilty of 'heinous crimes' a term including genocide, murder, kidnapping and rape. The Acholi Religious Leaders Peace Initiative, representing popular feeling in Northern Uganda, campaigned for more conciliatory legislation arguing that the threat of prosecution of heinous crimes would be a deterrent for combatants to respond to the Amnesty. They also proposed that the Amnesty Commission would act as a body hearing victims' complaints, investigating heinous

crimes and ordering reparations and redress. In the Amnesty Act, approved by parliament in January 2000, the exclusion from amnesty of persons guilty of heinous crimes has been deleted. The Religious Leaders' recommendation to expand the mandate of the Amnesty Commission to include a responsibility for truth-seeking is not included. However the Amnesty Act mandates the Amnesty Commission: "to consider and promote appropriate reconciliation mechanisms in the affected areas" (Art. 9:c) The Act demands only that the former rebel or rebel-collaborator renounce rebellion. Upon renunciation he receives an amnesty certificate and a resettlement package.

The Act has been renewed up to May 2008. The implementation is done by 7 Demobilisation and Resettlement Teams with offices in Arua, Gulu, Kitgum, Mbale, Kasese and Kampala. Under the auspices of the Tripartite Joint Plus Commission, the Amnesty Commission opened an office in Beni, North Kivu, in the DRC, targeting ADF/NALU and PRA rebels.

Beneficiaries of the programme include ex-members of LRA (majority). By December 2006 about 21000 individuals had been demobilized and granted amnesty, a third of them (6,718) being under 18 years old. Since January 2005, the Amnesty Commission is supported by the Multi-Country Demobilization and Reintegration Programme (MDRP) funded by the World Bank. This enabled it to deal with the backlog of 15,000 resettlement packages that it had incurred by the end of 2005.

Considering that an estimated 21, 000 combatants have found their way back to civilian life, the Amnesty Act can be considered a success as an incentive for demobilization. The majority of the population in war-affected areas as well as the government consider the Amnesty Act an indispensable tool to reach peace. Those who have remained rebels, of course, view it as a tactical tool of the government to weaken them. Yet, as far as peace and reconciliation are concerned, the Amnesty Act has little to offer: no justice, no reparations, no truth, and no reconciliation. In these matters people are left to their own, mostly traditional, devices.

The lack of legitimate mechanisms for truth-telling and for reparations erodes the meaningfulness of reconciliation efforts. When reintegration packages are given to former rebels, victims of the war are likely to perceive this as a reward for rebellion. It has been suggested that the government should set up a reparations scheme. The difficulty with such a plan would be the demands it would trigger from the victims of the Luwero war (1981-86) who have not received any reparations. The government would need to reopen chapters of war crimes and human rights violations that it considers closed. The history of impunity that has characterised the conclusion of earlier armed conflicts is now an obstacle to including measures of transitional justice (truth telling, reparations, vetting) in the current peace process.

International prosecution: justice versus peace

The prosecution of the five LRA leaders by the ICC is generally seen by the war-affected population as a stumbling block put by the Uganda Government and/or the International Community on the way to peace (read ICTJ report: '*Forgotten Voices*'). Besides

dissuading the LRA leadership from leaving their hideouts, a trial of the LRA top-command in The Hague, alien as it is to the sensibility of the victims, will offer little satisfaction to their sense of justice. In addition there is a perceived unfairness when LRA leaders, who reported for amnesty in good time, go free, while five others, who did not report but committed the same crimes, are prosecuted. Another perceived unfairness is the fact that ICC can only investigate crimes that were committed after Uganda ratified the Rome Statute. ICC excludes war crimes committed between 1986 and July 1st 2002. According to local informants, it was especially during that period that NRA and its allies committed significant crimes.

In the middle of 2006, shortly before the beginning of the Juba talks, the Ugandan Parliament accepted an amendment to the Amnesty Act that made it possible to exclude suspects indicted by ICC from benefiting of the Amnesty Act. The amendment was designed to accommodate arrests of the five LRA commanders. The responsibility of submitting the names of the persons to be excluded lies with the Minister of Internal Affairs. With the amended amnesty Act in force, the four surviving commanders can still be given amnesty as long as their names are not submitted to the President.

The Tripartite Plus Commission, consisting of Uganda, DRC, Rwanda and Burundi, supported by the United States, issued a list of names of leaders of armed groups operating cross-border from one of the four countries, to be prosecuted in a joint effort of the member-states. The list has 35 Ugandan names (12 LRA commanders wanted for crimes against humanity, 10 ADF commanders wanted for terrorism, and 11 PRA commanders, wanted for treason). Some of the ADF and PRA leaders on the list had been granted amnesty, among them Taban Amin, the son of the former dictator, who was later offered a position in the Ugandan security services. In March 2007 the list was reduced to 10 names per country. Uganda submitted the four names of the ICC suspects and six names of ADF/NALU leaders.

Since the efforts of ICC and the law-enforcement agencies of the countries of the Tripartite Plus Commission complement the ongoing war effort of the Government, it could be questioned whether these are measures of *Transitional Justice*. Whether they have so far helped to shorten or solve the war is a matter of debate (Tim Allen, *Trial Justice: the International Criminal Court and the Lord's Resistance Army*, Zed Books: 2006). What they have accomplished is publicity for the vexed dilemma between amnesty -and by implication coning of impunity- and peace when war leaders who are responsible for war-crimes are also the exclusive interlocutors to negotiate peace.

Studies of attitudes among the war-affected population and among the victims of the war indicate that their rating of ICC as an agency providing them with access to justice is low. (ICTJ: *Forgotten Voices* p.28).

Local justice: reintegration of former rebels versus victims' access to justice

At the community level traditional cleansing and reconciliation rites are being performed on a limited scale as a step in the reintegration of former LRA combatants in their communities. Some NGOs are giving financial support to parties intending to reconcile in

this way. (See the research of the LIU Global Institute in collaboration with the Gulu District NGO Forum and the Council of Cultural Leaders : *Roco Wat I Acoli, Restoring Relationships in Acholi land: Traditional Approaches to Reconciliation and Reintegration*, 2005). While these ceremonies prove effective especially in restoring relationships between clans and in reintegrating former rebels into their communities of origin, it is not easy to see how these traditional mechanisms can deal with more generalised acts of violence such as mass abductions and massacres. The traditional approaches are geared to the restoring of community cohesiveness rather than to dispensing justice to individuals.

In the civil society of Uganda there is a growing awareness of the need for a mechanism that gives access to justice to individual victims of justice through procedures that establish the truth of their predicament in the presence of those responsible for it, and legitimate an entitlement to some form of payment of reparations. If the truth-process is carried out with seriousness it is inevitable that persons guilty of crimes on the side of the government will have to be subjected to the same process. The government may prefer to avoid this.

Dealing with militias and armed civilians:

Militias

Civil society advocacy groups like the Uganda Joint Christian Council have been calling on the Government to take full responsibility for the protection of its citizens and not to rely on militias, the Local Defence Units (LDUs). Militias are known under a variety of names (Amuka in Lango, Arrow Boys in Gulu, 'home guards'), are often recruited from the population they are expected to protect (in IDP camps for example), attached to the army, provided with arms and a small incentive (\$35 per month), are deployed in conflict areas. There are frequent reports of human rights abuses. The militias are an important factor perpetuating lawlessness in the conflict-ridden part of Uganda. In Karamoja, the Northeastern part of Uganda inhabited by pastoralist groups and plagued by endemic ethnic conflict, militias are recruited from the toughest warriors and expected to defend the interests of interethnic peace. There are cases of LDUs allying with their community of origin in carrying out raids. The demobilisation, disarmament and reintegration of the militias constitute a special challenge. Within Uganda's sector wide programme of Security Sector Reform, the issue of militias has not yet been tackled.

Armed civilians

While, strictly speaking, only the first 'D' of DDR applies in the case of armed civilians, there are good reasons to include them in this survey. Proliferation of ownership and use of small arms is a serious problem in Karamoja and disarmament of the Karimojong has become a national issue. Since 1920 46 disarmament operations are on record in this part of the country. The Karimojong acquired masses of modern firearms when they plundered the arms depot in Moroto at Amin's fall in 1979. During the periods that the Acholi and Teso were in rebellion, the government condoned extensive cattle raids of Karimojong on their neighbours leading to the near depletion of livestock in Teso and Acholi. Apart from the lethal and destructive consequences of the conflicts for the people

of Karamoja, military expeditions of Karimojong into neighbouring districts keep tens of thousands of people in displaced camps, especially in Teso.

The disarmament policies of the government have had a polarising effect on the relationship between government and local communities. Since the army fears the Karimojong for their fighting capacity, it uses armoured vehicles and helicopter gun ships in their disarmament operations. This is hardly conducive to the building of trust in the protective capacity of the state that is needed for the population to support disarmament. These policies strengthen the conviction that there is no alternative to the law of force. Policies that offer the Karimojong alternatives to revenge in seeking redress from losses of human life and cattle may be a way out of the cycles of violence. In the current circumstance this will mean building on traditional procedures of payment of blood wealth and support for initiatives that enable cattle-owners to retrieve their stolen cattle. Local civil society initiatives working from this perspective have booked some success. ICTJ could contribute to the design of measures that will set in motion an irreversible process from the negative reciprocity of cycles of vengeance to respect for conflict resolution mechanisms that carry the force of law. These measures could be integrated in the current harmonisation efforts between the government's Security Sector Reform programme and the Justice and Law and Order Sector programmes.

ⁱ "Vetting" designates the fact of proceeding, in the case of public employees, to discharge those who turn out to be unqualified to work in the public sector and so develop more effective, impartial, and trustworthy public institutions.