

## Dealing with Demons: Justice and Reconciliation

After conflict has ceased, societies often lack the mechanisms and institutions for upholding the rule of law and dealing with past abuses—processes that are crucial to rebuilding. Justice and reconciliation, in tandem, must be seen as a central pillar of any assistance for postconflict reconstruction and should receive priority attention early and throughout the life of an operation. Although various efforts to achieve justice and reconciliation can differ greatly in nature, they both establish processes to address grievances, both past and present, in hope of forging a more peaceful future. The past decade of international experience in postconflict assistance suggests that substantial gaps exist in the ability of the United States and the international community to assist in these areas rapidly as well as to develop an integrated strategy to achieve justice and reconciliation. The explosion of lawlessness, corruption, and crime that often accompanies postconflict vacuums can undermine all gains that international assistance makes. Assistance to establish justice must therefore be timely in order to be effective. Indeed, this area has been one of poor performance, if not outright failure, in many interventions.

Grouping the concepts of justice and reconciliation together may strike some as inconsistent, but the two share a common objective—addressing past abuses and ongoing grievances arising from the conflict. Past atrocities in postconflict societies, such as ethnic cleansing in Bosnia and Kosovo, mass amputations in Sierra Leone, and politically motivated hate crimes in East Timor and Haiti, have demonstrated that the most critical need in the earliest phases of a postconflict operation is often public security, along with

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the rule of law. Furthermore, postconflict societies often require the introduction of accountability and restorative justice mechanisms to break cycles of impunity and violence. Not only do these procedures prevent the recurrence of conflict, they also provide a valuable forum for individuals and communities to feel a sense of closure and to begin healing old wounds. As Archbishop Desmond Tutu noted, “We could not make the journey from a past marked by conflict, injustice, oppression, and exploitation to a new and

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democratic dispensation characterised by a culture of respect for human rights without coming face-to-face with our recent history. No one has disputed that. The differences of opinion have been about how we should deal with that past; how we should go about coming to terms with it.”<sup>1</sup>

To date, international assistance in the justice arena has focused too narrowly on reestablishing a functioning police force to maintain public safety. This task is indeed

critical, but the international community must take a much more comprehensive approach to justice and reconciliation for the intervention to succeed. Specifically, this pillar of postconflict reconstruction should include six key elements: (1) law enforcement instruments that are effective and respectful of human rights; (2) an impartial, open, and accountable judicial system; (3) a fair constitution and body of law; (4) mechanisms for monitoring and upholding human rights; (5) a humane corrections system; and (6) formal and informal reconciliation mechanisms for dealing with past abuses and resolving grievances arising from conflict.

Policymakers and practitioners should make every effort to build on functioning indigenous practices, laws, and institutions that existed before the conflict. *Indeed, the guiding principle for international assistance in the justice and reconciliation arena should always be to seek to empower local actors and to promote the building of sustainable indigenous capacity while reinforcing respect for human rights and international norms.* In practice, indigenous justice and reconciliation systems must be assessed early in the process to determine what can be salvaged and used and what must be discarded and replaced. Local actors must be given a meaningful role in the design and implementation of programs in order to help ensure sustainability once the period of extraordinary international intervention ends. Given their poor track record on these issues, the United States and the international community urgently need to reform existing capacities to promote the combined goal of justice and reconciliation better.

## Defining Justice and Reconciliation

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The justice and reconciliation pillar of postconflict reconstruction includes several distinct but interrelated tasks that may be undertaken during the life of an operation.<sup>2</sup> Four key categories form a useful framework for analyzing the U.S. role in supporting credible justice and sustainable reconciliation:

- emergency justice measures by international actors to fill the gap until indigenous processes and institutions can take over;
- longer-term efforts to rebuild indigenous judicial systems;
- international and national reconciliation mechanisms for addressing grievances and past atrocities; and
- critical predeployment enablers, that is, mechanisms that should be in place prior to external intervention to facilitate a rapid and effective international response.

Emergency justice measures are designed to establish, as quickly as possible, the bare essentials of an interim justice system that can handle the most urgent law and order issues. This effort may involve deploying international police either to monitor and mentor indigenous police forces or, in rare cases such as East Timor, to exercise executive police functions. It may also include the simultaneous deployment of legal experts to help establish an interim legal code, as well as international judges, prosecutors, defense attorneys, and court administrators to help indigenous actors set up interim courts to address immediate issues such as the status and fate of individuals detained by security forces. In this critical period, international institutions should ensure that vital needs in the sphere of justice and reconciliation are properly met. Failure to do so can lead to the loss of gains in areas such as security, governance, and social well-being.

At the same time, the international community should be launching efforts to help develop more permanent indigenous processes and institutions for the administration of justice. Although such assistance usually extends over many years, given the long lead times involved in institution building, the support must be part of the initial response in a postconflict operation. Activities to promote a culture of justice and reconciliation should be transparent and accessible to the broad population in order to support public security and counter any claims of international bias. Typically, international

**The international community must take a much more comprehensive approach.**

and regional efforts to support the development of a viable rule-of-law infrastructure could include the following steps: development and training of indigenous law enforcement personnel; organization and establishment of an independent judicial system; training for indigenous legal professionals; construction of key judicial infrastructures, including prisons and courts; revision of the constitution and legal codes; and training for indigenous human rights monitors.

A parallel effort to develop and support vital institutions dealing with civil society and nongovernmental activities promoting reconciliation and healing should accompany these measures. The establishment of appropriate

liaison mechanisms and ombudspersons for the citizenry should reflect the importance of local feedback and ownership.

Policymakers should also give immediate attention to establishing mechanisms for addressing abuses that occurred during the conflict, such as war crimes or gross violations of human rights. An assessment of the needs of the society in question may indicate that the international community should estab-

lish and administer international courts or tribunals to deal with alleged war crimes, to help establish truth commissions to deal with past abuses, and to help create programs to support the rebuilding of communities and the healing and empowerment of individuals. If the international community indeed undertakes such efforts, it should undoubtedly begin as soon as possible but should not expect those efforts to produce instant results. Although judicial institutions are more formal and have a higher profile than civil-society groups and nongovernmental entities involved in extrajudicial dispute resolution, these groups should also receive significant support. Reconciliation initiatives, which are best promoted and implemented by elements within the society, include programs in areas such as public education, mass media, and commemoration, as well as interfaith workshops and cultural exchanges. In this regard, many international organizations are better situated to provide alternative models to meet indigenous needs.

Finally, the United States and the international community should consider the critical enablers that ought to be in place before an actual operation begins; this forethought would facilitate a rapid and effective international response to justice and reconciliation needs. These measures could include compiling rosters of trained personnel available for rapid deployment, advance training in various justice or reconciliation

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tasks, standard operating procedures and contingency plans in key functional areas, standing capacities for material and private-sector support, and memorandums of understanding and contract vehicles among key international actors.

## **Addressing Key Capability Gaps and Shortfalls**

The United States and the international community have substantial gaps in their capability to provide the justice and reconciliation assistance that may be necessary. Taking a holistic approach to achieving justice and reconciliation in postconflict reconstruction operations can be a Herculean task. Nevertheless, failure to coordinate the delicate and complex relationship between justice and reconciliation carries great risks, as the absence of a viable justice system or adequate reconciliation mechanisms can undermine the security and stability essential to sustainable reconstruction efforts. Because every situation will be different, the international community should have the widest possible range of tools to meet specific needs in an appropriate fashion. Although the United States will not always play a lead role, it should be prepared to provide limited but critical assistance in areas such as training, communications, and logistical support where it has a strong comparative advantage. In many cases, actions taken by the United States will help provide incentives and will demonstrate political support for other international partners that step up to the plate.

### **U.S. POLICY AND STRATEGY**

Perhaps the most fundamental gap in U.S. capacity to assist in the justice and reconciliation arena is the absence of clear policy guidance from the administration on these issues. Previous attempts to organize and implement needed changes within the U.S. government in the area of international assistance for judicial development, including President Bill Clinton's Presidential Decision Directive 71, fell short of their lofty objectives. (The Bush administration has neither adopted nor replaced Clinton's directive, "Strengthening Criminal Justice Systems in Support of Peace Operations." During the Clinton administration's final year, several factors, including the lack of appropriate resources and leadership at the National Security Council (NSC) level, limited the implementation of the directive.)

Currently, no policy basis exists for determining what sort of justice and reconciliation assistance the United States should be prepared to provide, which agencies should have lead responsibility for which tasks, how officials should coordinate interagency programs, and where decisionmakers should

make additional investment to improve U.S. capacity in this critical area. Perhaps more troubling, no single office or individual within the U.S. government is responsible for this set of issues, leading to glaring gaps and improvised responses often dominated by short-term political goals. This situation is highly problematic at a time when the proliferation of ad hoc national and international institutions to address long-term justice and reconciliation issues has made coordination even more critical to preventing the squandering of scarce financial and political resources.

To fill this critical gap, the administration should:

- Develop and implement a National Security Presidential Directive (NSPD) on postconflict reconstruction that addresses U.S. strategy, capabilities, and interagency responsibilities and coordination in the area of postconflict justice and reconciliation assistance. In addition to addressing constabulary force and international civilian police (CIVPOL) force issues, this NSPD should define an integrated approach to providing assistance in developing judicial, penal, and legal systems. The directive should also address existing legislative and statutory restrictions that impair the efficiency and effectiveness of U.S. assistance in this area.
- Establish a Policy Coordination Committee (PCC) for postconflict reconstruction, whose tasks would include developing and coordinating strategy for justice and reconciliation activities by the United States. Lead responsibility for the PCC should be assigned to a senior director at the NSC. This individual would be responsible for leading the interagency process to draft and implement the new NSPD and would be empowered to deal directly with Congress. The PCC should also include the offices of U.S. representatives to international institutions such as the World Bank and specialized agencies of the United Nations (UN).

### **RAPIDLY DEPLOYABLE CAPABILITIES**

Another critical gap in U.S. and international capacity is the lack of rapidly deployable capabilities to fill immediate needs for “emergency justice” temporarily. Within this area, several specific shortfalls are evident. The first is an inadequate mechanism for summoning and deploying appropriately trained international constabulary security forces to safeguard public security until indigenous police forces are able to do so. Although the United States does not have a national constabulary force, a number of other countries, including many of the closest U.S. allies in Europe, have such forces, yet the international community has been unable to gain rapid access to them for postconflict reconstruction operations.

The second shortfall is a shortage of qualified international CIVPOL available for short-notice deployments as monitors and mentors of indigenous police forces or, in rare cases, to exercise executive policing authority. The post-September 11 demands placed on federal, state, and local law enforcement agencies suggest that the United States may not be able to sustain its ability to serve as a major provider of CIVPOL without major institutional reforms. The United States can, however, meaningfully contribute in this area by seeking to improve access to and availability of U.S. expertise in law enforcement.

A third shortfall is the absence of rapidly deployable legal experts who can assist indigenous actors in establishing interim legal codes and interim courts to address pressing judicial issues. Even if the international community manages to deploy adequate numbers of well-trained constabulary and CIVPOL forces rapidly in the future, such forces cannot operate effectively without appropriate laws and courts to hear cases regarding detainment and alleged violations.

A fourth deficiency is the inadequacy of physical matériel, such as generators and transport, required to support judicial initiatives. One of the most critical gaps in material support is the lack of deployable public information assets.

To improve its capability to deploy necessary qualified personnel and equipment rapidly, the U.S. government should:

- Enhance international rapid-response capabilities by launching a diplomatic initiative to increase the availability of national constabulary forces and international CIVPOL as interim guarantors of public security. Specifically, this effort would include endorsement of the European Union's plans to develop a rapid-reaction police force, as well as active U.S. support for the implementation of the UN's Brahimi Report recommendations regarding interim justice capabilities.<sup>3</sup> U.S. agencies could provide training in CIVPOL procedures to countries requesting assistance.
- Design and organize, in cooperation with local and state law enforcement institutions, a civilian reserve police system to support national homeland security needs and postconflict reconstruction. Units from such a volunteer force could be mobilized and deployed on order of the president to serve U.S. national interests in postconflict reconstruction operations. These individuals would have rights and protections similar to military reserve forces.

**Indigenous justice and reconciliation systems must be assessed early on.**

- Reform the U.S. government's CIVPOL program to take advantage of U.S. comparative advantages. The United States should negotiate agreements with sponsoring international organizations to ensure that U.S. experts in planning, training, organization, and finance are matched with jobs that take advantage of their particular skills and experience. Reforms should include taking steps to assure better quality control and accountability, as well as extending tours of duty to reduce the detrimental effects of high turnover. Furthermore, the White House and Congress should work together to close the jurisdictional loophole to allow for the prosecution of U.S. CIVPOL personnel who commit crimes abroad.
- Promote contracting capacities within the U.S. Agency for International Development (USAID) for rapidly deployable public-information equipment, programs, and experts. Drawing on expertise and experience from nongovernmental organizations (NGOs) such as Internews, USAID should have the ability to help promote justice and reconciliation activities and disseminate legal information through radio, print, and other communication resources.

### **CAPACITY BUILDING**

Similar critical gaps exist in both U.S. and international capacity to assist nations in the long-term tasks of rebuilding or developing judicial processes and institutions. The longest poles missing in this tent are the absence of an agreed, integrated approach to such assistance and the lack of available trained personnel who could be deployed to provide such assistance in a timely manner. The international community also lacks standard operating procedures for assessing justice and reconciliation needs in postconflict societies and mechanisms for gaining access to a wide pool of experts to assist indigenous actors with rewriting legal codes, organizing and operating courts, vetting and training police forces, compensating indigenous judicial officials, strengthening the legal education system, establishing penal systems, and developing a range of nonjudicial reconciliation mechanisms.

Although the United States may not have a comparative advantage in reconstituting judicial systems—especially in countries with civil, as opposed to common, law traditions—it does have significant capacity to provide material support and to assist in the development of bar associations, administrative systems, and units to combat corruption, terrorism and organized crime. For each operation, the United States should conduct an interagency assessment at the outset—one that draws on existing U.S. field personnel, ongoing UN and World Bank programs, and input from local actors—to develop a feasible plan and an integrated approach to building capacity throughout the judicial, police, security, and NGO sectors.



To fill this gap in capacity building, policymakers should:

- Keep the International Criminal Investigation Training Assistance Program (ICITAP) at the Department of Justice while significantly increasing financial support to carry out its mandate. The government should also ensure that the Justice Department's international assistance programs (Overseas Prosecutorial Development and Training [OPDAT] and ICITAP) are better coordinated with other initiatives undertaken by the Department of State, USAID, and the Department of Defense.
- Replace Section 660 of the Foreign Assistance Act of 1961 with new legislation outlining available authorities. Until then, U.S. agency lawyers should take advantage of the often-ignored 1996 "postconflict waiver" in Section 660 to allow U.S. assistance to be used for training indigenous police. Although this step would not automatically assume U.S. involvement in police development, it would allow a more holistic approach to justice institution-building activities in postconflict settings.
- Assign lead responsibility for coordinating private-sector and material support for justice assistance to the State Department's Bureau for Democracy, Human Rights, and Labor (DRL). The bureau's functions in this capacity would include facilitating sister-city bar association partnerships and law school exchange programs, as well as coordinating and disbursing donated or governmental excess property equipment, texts, and furniture. The United States should expand its "space available" programs to include support for courts, offices, and correctional facilities. Working with the Justice Department's Office of Litigation Support, DRL should also design material justice-support packages for procurement on short notice.
- Dedicate a portion of the State Department's human rights budget to discretionary purposes. With appropriate congressional oversight, the State Department would allocate those funds for emerging postconflict reconstruction needs rather than year-old programming. Setting aside \$20 million in an already existing DRL account would dramatically improve the surge capacity of justice and reconciliation assistance throughout the entire U.S. government. Funding should be transferred to USAID's Office of Democracy and Governance as necessary to ensure that legal development programs are balanced with civil society-based justice initiatives. Funding should also be used to provide language experts as support for justice and reconciliation efforts in need of translators and interpreters.

**Substantial gaps in the capability to provide justice and reconciliation assistance exist.**

The government could tap resources at the National Foreign Affairs Training Center, the Foreign Broadcasting Information Center, and the Peace Corps to support these initiatives.

### **INTERNATIONAL COURTS AND COMMISSIONS**

Another set of capability shortfalls lies in the area of U.S. support for both international and national commissions and tribunals. (Current political constraints and U.S. legislative restrictions on the International Criminal Court will limit U.S. engagement to ad hoc international tribunals and commissions.) Despite almost a decade of experience with ad hoc criminal tribunals for the former Yugoslavia and Rwanda, the United States still has difficulty

**The most fundamental gap in U.S. capacity may be the absence of clear policy guidance.**

finding appropriate mechanisms to support UN-sponsored initiatives for justice and reconciliation. The vast needs of these initiatives, ranging from evidence collection and legal assistance to adequate funding and qualified personnel, are daunting. Notably, international and local NGOs possess a significant comparative advantage in many of these areas. The issue of disproportionate resources allocated to tribunals compared with those allocated to truth commissions,

as well as the disparity in attention and funding for international initiatives and for rebuilding domestic judicial systems, are also worth addressing.

To build support for international tribunals and commissions, the U.S. government should:

- Amend relevant legislation to extend U.S. drawdown authority to support justice and reconciliation institutions based on certification by the president. Current law restricts U.S. assistance to the narrow category of UN-sanctioned ad hoc criminal tribunals. With truth commissions, hybrid tribunals, and specialized UN courts becoming increasingly common in postconflict societies, extending this assistance would have a significant impact at a relatively modest cost.
- Establish a mechanism at the U.S. Institute of Peace or the National Endowment for Democracy to allow tax-deductible, private contributions to UN trust funds to support international tribunals and commissions. Direct contributions to the UN are not tax deductible, unlike contributions to nonprofit organizations and foundations.
- Establish interagency agreements among the State, Justice, and Defense Departments that enable departmental resources, such as the Armed

Forces Institute of Pathology, to provide expert teams in forensics and evidence collection to help document international atrocities, such as the past investigations on behalf of the International Criminal Tribunal for Yugoslavia and the International Commission for Missing Persons as well as the portable morgues that were set up in Kosovo to conduct on-site autopsies.

- Improve the process used to rapidly declassify records on human rights violations in other countries if requested by international judicial institutions and commissions, assuming release of these records does not threaten U.S. national security. The Freedom of Information Act, which allows the release of classified documents after 25 years, is inadequate to assist countries investigating past criminal abuses. Previous attempts, such as the Human Rights Information Act, have failed to gain the necessary legislative momentum.

### **CRITICAL ENABLERS**

The last set of significant shortfalls lies in the area of critical enablers—actions that the United States and the international community could take to improve the speed and quality of their response. Several such shortfalls are particularly important. Currently, the international community lacks any agreed legal code for use as part of an interim justice package in postconflict operations. Consequently, every new operation reinvents this wheel at considerable effort and expense, as well as loss of valuable time. In addition, no common principles or standard operating procedures are in place to govern the use of CIVPOL, and no standard training or certification procedures have been established. The UN and other international organizations also lack adequate mechanisms, such as rosters and databases, to gain timely access to trained and available experts across the range of judicial and reconciliation functions. These organizations also lack the staff and tools needed for planning and executing an integrated assistance program in this area.

To develop critical enablers prepared to respond in postconflict settings, the U.S. government should:

- Support Brahimi Report recommendations regarding the development of interim legal codes for ongoing peace operations. Until the report's recommendations are implemented, a nonpartisan institution should convene a commission of international legal experts, including government lawyers and NGO representatives, to develop an international consensus about basic interim laws. The Project on Peacekeeping and the Administration of Justice, undertaken by the U.S. Institute of Peace, is an example of this kind of effort. Furthermore, the government should assist

UN efforts to establish common principles, standard operating procedures, and training for CIVPOL, including offering U.S. experts to participate in the effort. When appropriate, the United States should make its training programs available to international CIVPOL candidates.

- Develop and maintain rosters of U.S. judicial specialists, police, penal officers, planners, and human rights monitors who are readily available for rapid deployment to help establish and develop interim justice systems. Responsibility for vetting, background checks, and call-up should be assigned to a stand-alone staff working for the State Department's undersecretary for global affairs, thereby tapping the areas of expertise of the State Department's Bureau of International Narcotics and Law Enforcement Affairs and DRL without creating new administrative burdens for either bureau. A separate roster of mental health and psychological service professionals should be developed to assist the government's interagency teams that are assessing the reconciliation needs of postconflict societies. The government should make these rosters available to the UN Department of Peacekeeping Operations and to the Office of the UN High Commissioner for Human Rights.
- Empower the secretary of state to waive or modify personnel, medical, and other bureaucratic restrictions temporarily on immediately seconding and deploying U.S. government experts to assist critical justice and reconciliation initiatives. The inability of policymakers to meet various federal and state employment requirements often causes unacceptable delays in the internal transfer of federal employees.
- Establish predeployment training to familiarize U.S. experts with international humanitarian law, other applicable international laws, local laws and resources, the requirements of the specific mission, the operating environment to which they are deploying, and existing U.S. government programs and plans already in the area. The National Foreign Affairs Training Center should establish a similar training module and include it in courses for new ambassadors and USAID mission directors.

## **Conclusion**

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The damage wrought by mass atrocities and systemic lawlessness usually takes years, if not decades, to repair. The United States does not possess comparative advantages across the entire spectrum of needed assistance, but by enhancing selected U.S. and international capabilities in the key areas of strategy, deployable resources, capacity building, support for international courts and commissions, and critical enablers, it can play a unique and important role in promoting sustainable peace in postconflict environments.

## Notes

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1. See *Final Report of the South African Truth and Reconciliation Commission*, submitted October 29, 1998.
2. See Project on Post-Conflict Reconstruction, *Post-Conflict Reconstruction Task Framework* (CSIS and Association of the U.S. Army, May 2002), <http://www.pcrproject.org> (accessed July 10, 2002).
3. See UN Document A/55/305-S/2000/809.

