Policy Brief

Just & Durable Peace

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Transitional Justice and Peacebuilding Strategies: Considerations for Policymakers

Peacebuilding and transitional justice are both multifaceted processes, which although often treated as if they were in opposition, may actually involve shared goals and activities. This brief outlines several points policymakers should consider when implementing programmes and formulating policies for conflict-affected countries.

Introduction

It is critical to take into account the ways in which policies and programming in peacebuilding and transitional justice may be not only contradictory but also complementary.[1] This brief examines the interaction of the following peacebuilding activities with transitional justice processes: Disarmament, Demobilization, and Re-integration (DDR), Security Sector Reform (SSR) and rule of law promotion.

Justice vs. peace

The 'justice vs peace' debate has long dominated the literature on transitional justice and on peacebuilding, and shaped policy discussions in practice. This debate has presumed that a choice must be made between justice and peace at the time of peace negotiations or political transitions. Scholars and practitioners of transitional justice— who use a wide array of tools and processes including amnesties, commissions of inquiry, memorials, reparations, vetting, and prosecutions—have argued that justice is an essential good to be pursued, and also that it can contribute to democracy, rule of law, and peacebuilding. Scholars and practitioners of conflict resolution and peacebuilding, in contrast, have often argued that the pursuit of justice may undermine peacebuilding efforts and even provoke new conflicts.

It is clear that analysts and policymakers do not always operate in these simplistic dyads. In order to try to strike a balance between different demands and policies it is necessary to be aware of how transitional justice and peacebuilding tools interact.

Considerations for Policymakers

While the tensions between peacebuilding and transitional justice activities must be recognized, it is worth examining opportunities for better integration. Some tools of peacebuilding are more obviously complementary to transitional justice than others.

1. Transitional justice activities could potentially act as inducements to participate in DDR processes

DDR activities often appear to be at odds with transitional justice strategies. For example, the education and DDR packages provided to excombatants may be resented by victims who view the former as perpetrators, and who demand accountability, reparation, and other forms of recognition through commissions of inquiry or memorial. Former combatants may be wary of engaging with official processes that disarm them, for fear of facing prosecution, and may become restive when members of their groups are pursued. However, in principle it might be possible to develop programming whereby at least some aspects of DDR and transitional justice are more complementary.

Transitional justice activities might be an inducement rather than an impediment to DDR processes if certain incentives are offered—eg that those demobilizing who also engage with relevant transitional justice processes will face reduced penalties in comparison to if they seek to avoid engagement altogether. DDR processes which are linked to processes of reparations for victims might also alleviate the criticisms of the former processes as somehow rewarding perpetrators.

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Practitioners of transitional justice and/or peacebuilding should:

- Consider the possibilities of appropriate incentives within the DDR process for those that engage with transitional justice initiatives.
- When devising reintegration programmes, evaluate the potential impact on victims and the wider community.

2. Transitional justice and rule of law activities can be mutually reinforcing

Transitional justice processes could destabilize the environment in which rule of law promotion is pursued. Equally transitional justice mechanisms may be in competition for resources with other activities aimed at the strengthening of the rule of law. However, rule of law promotion, involving support to judicial, legislative, police and other security-sector reform, may also enhance the possibility that independent institutions can pursue transitional justice activities such as prosecutions, commissions of inquiry, vetting, and reparations.

It is certainly worth seeking to identify ways in which resources put into transitional justice activities may also benefit broader rule of law promotion, including reform of the judiciary, security, and corrections. Outreach activities of transitional justice activities institutions and processes could be designed to promote understanding of the rule of law and enhance public trust in related institutions.

None of this is to suggest that these two sets of activities can or should always be integrated. Any such integration must, further, be context-specific, taking into account the constellation of actors and interests on the ground in a particular conflict and post-conflict situation.

Practitioners of transitional justice and/or peacebuilding should:

- Seek to promote formal links between transitional justice activities and domestic institutions and organisations, for example the judiciary and national bar associations.
- Ensure that the outreach activities of transitional justice initiatives contribute to broader public understanding of the rule of law.

3. Transitional justice and SSR may have common activities and goals

Security sector reform (SSR) is obviously essential to peacebuilding, but is likely to be in greater tension with transitional justice processes than rule of law promotion is. It is a contentious process in itself, involving as it does a challenge to some who gain power from controlling the police, military, and other institutions, and may well be made more difficult where those same individuals face the threat of trials or other processes. Security forces generally should be reduced, post-conflict, and a key criterion for principled reduction can be and in some cases has been the exclusion of those responsible for serious abuses. Therefore, some activities, such as vetting, may be common to SSR and transitional justice processes, and it is worth considering how they might be better integrated.

Reforms, too, often entail (re)imposition of civilian control, oversight bodies, changes in mandates and training, which may explicitly include reference to human rights protections.

Practitioners of transitional justice and/or peacebuilding should:

- Where appropriate, use findings such as official reports of truth commissions and court judgements when undertaking a vetting process.
- Ensure that human rights training for security forces incorporates outcomes of transitional justice processes, such as recommendations from a truth commission.

4. Transitional justice and peacebuilding experts need to engage further

The divide between scholars and practitioners of transitional justice and of peacebuilding does appear to be narrowing, and peacebuilding missions incorporate many aspects of transitional justice in their rule of law and human rights divisions. The development of a module on transitional justice for the United Nations Integrated DDR Standards represents one attempt to better integrate activities at policy level. Clearer understanding on the part of peacebuilders and transitional justice practitioners of not only the purposes, but the functioning of the tools used by the other, is needed in order to enable more productive integration of both activities in practice, where appropriate.

Practitioners of transitional justice and/or peacebuilding should:

- At the field level, coordinate programming discussions and seek to identify shared or overlapping goals.
- At the headquarters level, develop more coherent policy statements that identify where transitional justice fits in peacebuilding activities.