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**Guidance paper: Evaluating and Comparing Strategies of
Peacebuilding and Transitional Justice**

by

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1. Overview: Competing and complementary demands of peacebuilding and transitional justice

a. Overview

Following the end of violent conflicts, whether by military victory or negotiated settlement, international actors such as the European Union and the United Nations play an increasing role in peacebuilding, through a range of security, governance, and development activities. These may or may not be mandated by a peace agreement or other formal settlement, and may or may not follow or work in tandem with a peacekeeping mission. International, regional, national, and local actors may work in a more or less collaborative, or coherent fashion. Nonetheless, many of the key challenges of peacebuilding remain the same, and a familiar set of policies and strategies have emerged in contemporary practice to address these. Chief among the challenges of contemporary peacebuilding is that of addressing demands for some form of accountability, often termed transitional justice (discussed in section 3). However, as this guidance paper explains, the demands of transitional justice and its relation to broader peacebuilding activities, involve not just decisions about accountability, but a complex set of policy and institutional choices about security and governance as well. Thus, this guidance paper examines peacebuilding and transitional justice as a set of linked policies and strategies regarding not just accountability, but security sector reform (SSR), disarmament, demobilization and reintegration (DDR) of ex-combatants, and development of the rule of law.

It is essential to understand that while the focus of this guidance paper, for the project and for the Commission, is upon the types of programming that external actors bring to bear, but that this should not be read in a narrow way, without reference to the local realities that peacebuilders must engage. Specifically, the policies and strategies outlined here will be affected by local practices, norms, power dynamics and networks of patronage. Further, policies and strategies outlined here may be complementary or in competition to local practices, such as traditional justice and conflict resolution procedures, and adaptations may be made to engage local norms. The outline of policies and strategies seeks to take account of this in general terms, while recognizing that only the specific case studies to be engaged across the project can address local specificities.

b. Aims

This guidance paper is designed to underpin the development of work across the JaD-PbP project, particularly although not only in Work Package 3, Policies and Strategies. The aim of this guidance paper is to distil a complex set of challenges, literature, practices, and lessons learned in the progressive development of peacebuilding and transitional justice. As such, it is meant largely to summarize key issues and debates and provide working definitions to assist in the overall work of the consortium, not to definitively resolve running debates about either normative preferences or policy choices in these areas. The guidance paper includes relatively few footnotes, except by way of clarification and with reference to key documents where directly quoted, and otherwise provides a detailed bibliography, divided into key policy/strategy sections for ease of reference. It also draws upon two notes developed by the Regional Centre for Conflict Prevention in Amman on different aspects of peace building in the Middle East and North Africa, which can be read as a complement to this document.

The paper is not designed to provide a detailed overview of activities undertaken by the European Union in transitional justice or peacebuilding, but rather to present the broader menu of activities engaged in by states internally, states as bilateral donors, regional organizations including the EU, international organizations such as the United Nations, and the international financial institutions. We cast this wide net because other guidance papers in the project specifically engage EU priorities and activities. Further, a comprehensive view of activities globally may help to shed light on EU priorities, enabling identification of its preferred tools and strategies, or preferred elements of specific tools and strategies. This might be useful either in identifying shortcomings, or identifying comparative advantages, of the EU in peacebuilding. Thus for example we might find that of peacebuilding activities, EU tend to emphasize rule of law promotion, or that particular aspects, be they support to training, are what they emphasize. Given that the peacebuilding and transitional justice programming field is often quite a crowded one, it may be important to identify where the EU will offer the most value added, and where it might be redundant. We turn now to the key definitions for the purposes of this paper.

2. Brief definition and overview of practice of peacebuilding

The definition and understanding of peacebuilding has developed and continues to be challenged as analysis of practice and experience has shown weaknesses and problems. It was first defined in ‘An Agenda for Peace’ as technical assistance to transform national structures and capabilities and strengthen new democratic institutions (including both building capacity in civilian and police/military structures as well as the rebuilding of social/political/economic institutions). The most recent definition by the UN Peacebuilding Commission focuses more on capacity building than on institutional support stating that it ‘involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict, to strengthen national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development.’ This reflects the fact that the field has grown rapidly, with no real consensus on its definition and therefore activities. A quick historical overview of practice, will elaborate the reasons for the lack of clarity and consensus.

Peacebuilding developed from the end of the Security Council deadlock following the end of the Cold War. The Security Council demonstrated its willingness to take action by authorising a record number of 14 missions during the 1990s. The scope of mandates for these missions was much broader than the previous narrow interpretation of Security Council responsibility. Earlier resolutions taken under Chapter VI had dealt with ‘traditional’ or ‘first generation’ peacekeeping,¹ where operations were authorised by the Security Council to provide neutral and impartial assistance during or after UN peacemaking initiatives.² Peacekeepers were to stay out of domestic politics, with activities such as monitoring a ceasefire or withdrawal of troops.

The new consensus in the Security Council and the sharp rise in internal conflicts caused by ethnic and identity divisions led to the development of multilateral peace operations or ‘second generation’ peacekeeping. These missions were better placed to deal with the

¹ Michael Doyle and Nicholas Sambanis use the term ‘first’, ‘second’ and ‘third generation’ as understood by Boutros-Ghali while Roland Paris defines these as ‘traditional peacekeeping’ and peace operations.

² Peacemaking initiatives include mediation, negotiation and so on.

complexity of peace agreements that targeted the multiple sources of such conflicts. Within this context, peacebuilding came after peacemaking and peacekeeping to deal with underlying economic, social, cultural and humanitarian problems.³ This demonstrated a change in the policy of non-interference with peacebuilding activities engaging directly with the internal governance of the state in order to provide foundations for lasting peace. Although there were a number considered ‘successes’ such as Namibia, El Salvador, Cambodia and Mozambique and Croatia,⁴ the failures in Rwanda, Somalia, Bosnia had severe and far-reaching consequences.

Scholarly and policy analysts began to assess missions, and identify the costs of failure by the mid-1990s, and identified a range of flaws in missions, including the lack of coordination between UN agencies and the overly broad range of activities undertaken.⁵ This analysis helped lead to a further examination of the problems created by a sequential and segmented approach. For this reason, Integrated Peace Support Operations were developed in order to address this problem. In the UN Secretary General's report, ‘No exit without strategy,’ the links between the peacekeeping and peacebuilding were confirmed, with the recommendation that peacekeeping operations should include elements of peacebuilding in their mandate.⁶ This was further supported by the panel on UN Peace Operations, which stated that peacebuilding was a key condition for the success of peace operations and that peacekeepers and peacebuilders were inseparable partners. In order to follow up on the recommendations made in the UN Secretary General's report ‘In Larger Freedom’ and to ensure that there was a coordinating body for UN activities, the UN General Assembly established the Peacebuilding Commission in December 2005.⁷ The Commission is an advisory body to both the General Assembly and Security Council, and is to be a forum for the development of strategies for long-term peacebuilding and link between immediate post-conflict efforts and long-term recovery and development efforts.

Although all UN agencies are in some way involved in implementation of peacebuilding programmes, the primary responsibility for coordination and direction in the field lies with the Department of Political Affairs (DPA) and the Department of Peacekeeping Operations (DPKO). There are a number of peacebuilding missions under the supervision of DPA and two peacebuilding support offices.⁸ These are relatively small operations compared with the peacekeeping operations administered by DPKO that also have a substantial peacebuilding component.⁹ DPKO also directs and supports

³ *An Agenda for Peace, Preventive diplomacy, peacemaking and peace-keeping* (17 June 1992) UN Doc. A/47/277 - S/24111, para. 61.

⁴ Successes are defined in Michael W. Doyle and Nicholas Sambanis, *Making War and Building Peace*, (Princeton: Princeton University Press, 2006) p. 199.

⁵ Elizabeth M. Cousens and Chetan Kumar, *Peacebuilding as Politics* (London: Lynne Rienner, 2001) p.15.

⁶ *No exit without strategy: Security Council decision-making and the closure or transition of United Nations peacekeeping operations. Report of the Secretary General.* (20 April 2001), para 12.

⁷ G.A Res. 60/180, U.N. GAOR, 60th Sess. U.N Doc. A/Res/60/180 (30 December 2005) and S.C. Res. 1645, U.N Doc. S/Res/1645 (20 December 2005).

⁸ Peacebuilding missions: UN Assistance Mission for Iraq (UNAMI), UN Mission in Nepal (UNMIN) Peacebuilding support offices: Guinea-Bissau and the Central African Republic. The UN Tajikistan Office of Peacebuilding (UNTOP) completed its mission on 31 July 2007.

⁹ UN Interim Administration Mission in Kosovo (UNMIK), UN Organization Mission in the Democratic Republic of the Congo (MONUC), UN Mission in Liberia (UNMIL), UN Operation in Côte d'Ivoire (UNOCI), UN Stabilization Mission in Haiti (MINUSTAH), UN Mission in the Sudan (UNMIS), UN Integrated Mission in Timor-Leste (UNMIT).

peacebuilding missions in Afghanistan, Burundi and Sierra Leone. In its first year the Peacebuilding Commission initiated integrated peacebuilding strategies (IPBS) for Burundi and Sierra Leone following requests from both countries. Although these are the only countries to have formal IPBS, which are part of the Commission's mandate, most integrated peace support operations have an overarching strategy. These frameworks do vary from country to country and the challenge remains to ensure that all actors' (not just UN) efforts are integrated.¹⁰

3. Brief definition and overview of practice of transitional justice

Practices of transitional justice, and analysis of them, are both vast and expanding, and thus this is but a brief overview.¹¹ Transitional justice attempts to address a political, moral, and legal dilemma. Populations in states that have experienced authoritarian rule, internal armed conflict, or transboundary conflict, or some combination of the three, will generally also have experienced significant human rights abuses or violations of international humanitarian law. Violations may include torture, extrajudicial execution, disappearances, war crimes, crimes against humanity, forced labour or enslavement, and genocide. They may have been committed by state security forces, rebel groups, militias, corporations, and private persons, many of whom may retain significant military, political, or economic power. Victims, members of civil society, transnational and international actors are also likely to call for some form of "justice", whether juridical or not. The dilemma emerges because calls for justice are likely to generate tensions and exacerbate conflicts that have the potential to undermine peacemaking and peacebuilding. There has thus developed a vast literature about how to respond to past abuses. Arguments about appropriate approaches to past abuses have taken several forms. These have been, variously, normative, empirical but case-specific, and empirical and overarching. All of these, taken together, may offer options for addressing demands for accountability, and help us to better understand the place of transitional justice in peacebuilding.

Transitional justice is more than an academic literature, however. It is also an active domain of policy, practiced by the UN,¹² and supported by regional organizations, international financial institutions, bilateral donors, and specialized NGOs such as the International Center for Transitional Justice, based in New York.¹³ While such organizations engage in the practice of transitional justice, they may differ significantly as to its appropriate scope, and may be as divided as the academic work discussed as to the necessity of legal accountability. However, a brief consideration of recent transitions and peace accords, as well as international peacebuilding efforts, demonstrates that a debate about accountability, and usually some efforts to prosecute, almost inevitably accompanies such transitions—such as the creation of the Special Court for Sierra Leone, the referral of crimes committed in Northern Uganda, Sudan, the Central African Republic, and the Democratic Republic of Congo to the International Criminal Court (by the UN Security Council or by states), and the continuing trials at the ad hoc tribunals for the former Yugoslavia and Rwanda.

¹⁰ Erin McCandless, "Lessons from Liberia: Integrated approaches to peacebuilding in transitional settings," Institute for Security Studies Paper 161, (Pretoria/Tshwane, ISS: 2008) p.4.

¹¹ Key sources, from which this discussion is drawn, are in the selected sources section at the end of this note.

¹² *Rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General*, UN Doc. S/2004/616 (23 August 2004)

¹³ See www.ictj.org.

Some will argue that legal accountability is absolutely necessary so that democracy and rule of law can be rebuilt, and future crimes prevented, while others will argue that for the sake of stability, accountability ought to be eschewed.¹⁴ Further, the option is seldom either peace or justice: rather, there are a range of tools that may be utilized: trials (in the formal or informal justice sectors), other informal justice and conflict resolution processes, commissions of inquiry, including truth and reconciliation commissions, lustration/vetting, reparations, and amnesty and pardon, selective or otherwise.¹⁵ Transitional justice, at its core, involves a range of tools and processes, and choices among them. Regimes emerging from violent conflict or state repression, often with the support of the UN, regional organizations, or bilateral donors, must make choices about whether, and if so, how, to address the crimes of the recent past.

These options have traditionally been considered the main components of transitional justice. But in contemporary practice transitional justice also involves broader strategies to address the sources of past and potential future violence. Specifically, it must be acknowledged that transitional strategies are now closely linked to a range of reforms and processes which are not in the first instance about accountability for past abuses, but include a broad set of activities, inextricably linked with a range of peacebuilding activities. These may range from institutional reform of judiciaries, training of judges, reformation of military and other security doctrines, to reform of security institutions themselves. Further, they are necessarily connected with other activities essential to peacebuilding: inclusion of former rebels in new security structures, and DDR of ex-combatants. For this reason it is important to elaborate upon a range of linked peacebuilding and transitional justice strategies: accountability; rule of law, DDR, and SSR, which the next sections seek to do.

4. Development of peacebuilding-transitional justice strategies and tools (and relation among them)

a. A note on the operating environment: peace agreements and power-sharing deals

It is essential to be aware that the terms of peace agreements shape, and often tightly constrain, the operating environment for peacebuilding and peace implementation, and in particular affect which peacebuilding and transitional justice tools are available, and/or how they might be utilized. Power-sharing agreements may involve deals in one or more of four dimensions. They are most often understood to involve *political* power-sharing—situations where members of the existing government and of opposition, whether political opposition or non-state armed groups—agree to share power through electoral formulas, rotating positions, set-asides of key posts and ministry roles, etc. However, it may also include resource-sharing, where competing groups, including former armed groups, are given control over key resources or roles in bodies overseeing allocation of such resources. It may also include power-sharing in the security realm, where members of armed groups are included in new or reformulated police or military structures, or maintain control over security in particular regions. Finally, power-sharing may involve a

¹⁴ These are not the full range of reasons offered: others such as the needs of victims may be adduced for accountability, and the need to entrench a nascent democracy may also be offered as a reason to abandon accountability.

¹⁵ In many instances, countries choose several of these options simultaneously, or serially.

degree of territorial autonomy, ranging from devolution to the prospect of complete independence (possibly through a referendum). It is not difficult to see how decisions about power-sharing in peace agreements shape the options for peacebuilding. For example, if individuals who might otherwise face accountability are guaranteed positions in government, or in the security forces, the likelihood of their facing prosecution is obviously reduced. Similarly, determinations in peace agreements about inclusion of armed groups in new security forces may shape how DDR and SSR processes are actually conducted. The prospect of future independence or greater regional autonomy may shape not only options regarding all tools, but the parties' priorities (for example, in Sudan, SSR programming involving the inclusion of former SPLM/A rebels in joint units outside South Sudan is hampered by the preference of these individuals to remain in South Sudan, which they expect to become independent). Finally, resource-sharing, or inclusion in bodies dealing with resource allocation, may empower actors which might otherwise be the subject of accountability, but may also provide incentives to remain within the peacebuilding framework.

Not all peace agreements include power-sharing elements. However, a significant number do, so it is critical to consider how the agreement shapes options for strategies and tools. We turn now to those tools in more detail.

b. Accountability

Accountability

As already noted, recent transitional process usually include some efforts to prosecute some perpetrators. During transitions in the 1970s and 1980s amnesties and pardons were frequently granted for the crimes committed in the course of armed conflicts or under repressive governments. More recently, we have seen the development of international norms rejecting blanket amnesties for international crimes and, simultaneously, the development of “globalized justice” through externalised accountability mechanisms,¹⁶ generally focused upon punishment for those individuals responsible for the most serious atrocities. However, amnesties do continue to be used, and in some cases are tailored in ways which may themselves involve a degree of accountability. Accountability, further, should not be understood merely as retributive justice. The tools available for accountability include the following:

Criminal prosecutions: Penal standards and mechanisms to address past atrocities have evolved from the end of the Second World War as means to combat impunity as well as in the hope that they might help to establish peace and stability, foster transitions to democracy and deter future atrocities. The establishment of the International Criminal Court (ICC) may represent the zenith of this evolutionary process. Criminal prosecutions may take place in the following fora:

¹⁶ Chandra Lekha Sriram defines “externalised justice” as those attempts to confront past human rights abuses in countries different of those in which the offences occurred, or through the use the legal system of the state where the perpetrations took place but not in its territory, therefore through different domestic or international standards, when justice can not be obtained in the country where crimes occurred, *Globalising Justice for Mass Atrocities: A Revolution in Accountability* (London: Routledge, 2005) p. 4.

National courts: In the 70s and 80s, many former dictators and war criminals were able to escape punishment following transitions, but more recently, this impunity has been challenged in the domestic courts of many nations. In Chile and Argentina, national courts declared the amnesties laws that followed the end of their dictatorial regimes unconstitutional, and allowed the proceeding against Pinochet and members of the military junta. In Colombia, trials of demobilised members of paramilitary groups involved in serious human rights violations in Colombia are underway. The role of domestic courts to try war crimes and crimes against humanity was also emphasized in the context of post-war Iraq, with the creation of the Iraqi Special Tribunal, strongly supported by the US Administration. However, there is cause for caution, especially where proceedings might not meet international standards. For example, in Colombia, the legal framework for bringing paramilitaries to justice was challenged as unconstitutional on the grounds that it did not comply with Colombia's international human rights obligations to protect the right to justice, truth and reparation.

The International Criminal Court: The entry into force of the ICC statute represents a significant advance for international justice. Unlike the *ad hoc* and mixed tribunals described below, the ICC is permanent and entirely international in nature. The ICC has jurisdiction over the crimes of genocide, war crimes and crimes against humanity committed after 1 July 2002 (the date of the entry into force of its statute), and will have jurisdiction over the crime of aggression when state parties agree upon a definition for it. 108 countries are now members of the Rome Statute. It is conceived as a court of last resort, with its jurisdiction been based on the principle of complementarity, therefore it cannot act over cases that are being prosecuted or investigated by national courts, unless those prove not to be genuine. The ICC can exercise jurisdiction over cases referred by state parties or by the UN Security Council, or the Office of the Prosecutor can initiate them *proprio motu* if the court has temporal and territorial jurisdiction. Thus the ICC may only exercise it jurisdiction if the state where the crimes were committed or the state of which the accused is a national is a party to the Statute, or where the UN Security Council refers a situation. The Office of the Prosecutor is currently investigating four cases: the Central African Republic, Northern Uganda and Democratic Republic of the Congo, all state referrals, and the situation in Darfur, which is in the territory of a non-state party, referred by the UN Security Council, acting under Chapter VII of the UN Charter.

The Ad Hoc Criminal Tribunals: These tribunals were established in the aftermath of the conflicts in the Former Republic of Yugoslavia and Rwanda. They were created by the international community, through respective United Nations Security Council Resolutions, to try the most serious violations of human rights: war crimes, crimes against humanity and genocide. They are unique, specialized institutions, with limited personal, territorial and temporal jurisdiction. Both are located outside of the countries where the atrocities occurred. The International Criminal Tribunal for the former Yugoslavia sits in The Hague (The Netherlands) while the International Criminal Tribunal for Rwanda sits in Arusha (Tanzania). While this model of international justice has been suggested in the aftermath of other conflicts to promote accountability for gross human rights violations, it has not been reproduced. The tribunals have proven costly, and have often been criticized on the grounds that their cost outweighs the benefit for a transitional society, given the limited scope of prosecutions and that they happen at great distance from the territories where the original crimes occurred.

Mixed tribunals: Mixed tribunals are promoted by their advocates as an alternative to the *ad hoc* tribunals, where the domestic judicial system is unable to address demands for accountability. They have been utilized in East Timor, Cambodia, Sierra Leone, and Lebanon. They represent a hybrid between domestic and international justice, combining both standards and personnel from both systems. The UN is generally responsible for providing funding, resources, judges and prosecutors, although the mandates of these institutions may vary. Some argue that they combine the best of international justice, in that they may be more impartial, because of the international presence, and of domestic justice, in that they may be more legitimate and locally accessible, because they take place in the territory of the countries affected.

Universal jurisdiction: A country can exercise jurisdiction over the perpetrators of certain serious international crimes, even in the absence of any territorial link between the country exercising jurisdiction and the location that perpetrators or victims of the crimes. There are a limited set of crimes for which universal jurisdiction may be exercised: these are genocide, war crimes, crimes against humanity and torture, and for historical reasons also include slavery and piracy. Universal jurisdiction has been established in both customary and conventional law. The Geneva Conventions establish the obligation to criminalize grave breaches regardless of the place of commission. Other treaties, such as the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, establish the obligation for states to either extradite or prosecute offenders found in territory under their jurisdiction, regardless of where the crimes were committed. States rarely exercised universal jurisdiction until the mid-1990s. Perhaps the most famous case was the attempt by Spanish judges to prosecute Augusto Pinochet for crimes committed during his rule in Chile. Several states have enacted domestic laws to prosecute extraterritorial conduct, even if international treaties do not contain specific obligations to do so.

Civil liability: In some cases victims have sought redress for violations suffered in the context of conflict through civil rather than criminal actions. The main forum for these actions has been the United States, which has a unique instrument to claim compensation for harms suffered as a consequence of the violation of the law of nations: the Alien Tort Claims Act (ATCA). This is an eighteenth century statute that allows foreign nationals to seek retribution in the US for tort committed abroad by both US and non-US citizens. Litigation under ATCA has allowed for civil liability to be found not only for individuals, but also for groups, such as corporations, such as Unocal acting in Burma or Coca-Cola in Colombia, and conceivably it could be used to impose civil liability upon nonstate armed groups as well. This litigation has proved politically controversial, both outside and inside the US.

Non-formal justice: So-called traditional justice processes play an important role in transitional justice, with mechanisms that may impose forms of accountability and/or be designed as tools of conflict resolution. Locally-based processes of justice may range from informal courts to traditional ceremonies, including a combination of restorative and retributive justice such as providing victims with some kind of reparation, public pardons by victims, and reconciliation ceremonies. These processes have been used in several countries as alternative to, or in conjunction to formal justice ones, such as in Rwanda, Sierra Leone, East Timor, Mozambique and Uganda.

While the content of traditional or informal processes may vary, and those in Africa are perhaps the ones most commonly discussed in the transitional justice and peacebuilding

literature, they are present in nearly every corner of the globe. In the Middle East, the rituals of *sulh* (settlement) and *musalha* (reconciliation) involve tribal and village forms of conflict management, practiced in the Levant areas of the Arab world. This process involves appealing for the intervention of a mediator (*muslib* or *jaha*), declaring a truce (*bodna*) after a fact-finding mission, possibly negotiating a *dija* (blood money, or exchange of good) and leading to a public ceremony of reconciliation. There may also be communally, rather than externally-enforced peace agreements. Public *sulh* can also take place between two countries, as a form of peace treaty.

Reparation

Traditionally the protagonists of the accountability processes have been the state and the perpetrator.¹⁷ In recent years, however, the victims have been placed in a more central role. International human rights law and the jurisprudence of regional human rights courts have progressively affirmed the rights of victims of human rights violations to seek reparation, and there is a growing sensitivity to the needs of victims in transitional justice and peacebuilding processes. These developments have contributed to the emergence of a new conception of justice, from a retributive model to a restorative or transformative model. This new vision, rather than emphasizing the punishment of the perpetrator, which is nonetheless not excluded, emphasizes the restoration of individuals and the community as a whole with a view not only to reparation but also to reconciliation.

Reparation in this sense is understood widely to include restitution and economic compensation but also symbolic aspects that seek the full and equal satisfaction of the victim with the objective of the rehabilitation of the persons that have suffered the consequences of the human rights violations, which can be achieved by both judicial and non-judicial paths. In this context, policies for the restoration of historical memory and collective reparations are considered an essential part of the reparation process. Some transitional justice processes, such as the one in Colombia following the demobilisation of the *Autodefensas Unidas de Colombia*, have emphasized the rights of victims, their claims to reparation, as well as national reconciliation.

Advocates of reparation argue that it not only provides recognition to the victims, but also encourages trust among citizens, and especially between victims and the state, by demonstrating the willingness to take past abuses seriously, and commit resources to repairing them.¹⁸

¹⁷ Felipe Gomez Isa, "El Derecho de las Víctimas a la Reparación por Violaciones Graves y Sistemáticas de los Derechos Humanos," in Felipe Gómez Isa, *El Derecho a la Memoria* (Bilbao: Universidad de Deusto 2006) p. 24.

¹⁸ *DDR and Transitional Justice*, Issue Paper, Second International Conference on DDR and Stability in Africa, United Nations Office of the Special Adviser on Africa and Government of the Democratic Republic of Congo, (Kinshasa, 12-14 June 2007) available at <http://www.un.org/africa/osaa/speeches/ddr%20and%20tj%20in%20africa%20-%20english.pdf>, last visited 17 September 2008.

Commissions of inquiry

Commissions of inquiry are usually established at the end of conflict or authoritarian rule, and are often designed with the express purpose of reconciliation. Such commissions may even include the term in the title, as many are called Truth and Reconciliation Commissions. However, others are termed truth commissions, or commissions of historical inquiry. Truth commissions are often created with the goal of establishing the truth about past events, largely to establish a public record regarding past human rights abuses. As Hayner explains, a truth commission may have one or more goals: to discover, clarify, and formally acknowledge past abuses; to respond to specific needs of victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; to promote reconciliation and reduce conflict over the past.¹⁹ Their powers, as well as the roles they are to play, vary considerably.

The reasons for establishing these commissions also vary, although they have become a central element in many peacebuilding processes. In some instances the emphasis is placed on national reconciliation, while in others it is seen as a way for the new government to distance itself from the previous regime and set the path for a new human rights culture.²⁰ Also they may immediately follow the end of a conflict, and be part of the peacebuilding process, or they may be developed long after the transition has concluded, but as a necessary means of reconciliation in societies in which old wounds have not had appropriate closure, such as in Peru, or in Spain where there are demands for new initiatives to contribute to collective memory, 30 years after Franco's oppressive regime came to an end.

The vast majority of commissions have been developed in Latin America and Africa, with many also established in Eastern Europe following the end of the Cold War and some in Asia. There have been fewer such processes in the Middle East. Morocco held the first official Truth and Reconciliation Commission in the Arab world in 2004. Although the process had some success, it was also criticized by international watchdogs for failing to name perpetrators, especially those still active in the current government. A Truth and Reconciliation process also took place in Iraq, though its methodology and objectives were far more controversial.

Amnesties

As already noted, amnesties are widely viewed as tools to avoid accountability, and historically this is largely how they have been utilized. Blanket amnesties have largely been rejected in international law and internationally-supported peace agreements. However, amnesties can also be part of accountability efforts. Partial amnesties, including ones which require testimony and in some cases apologies by perpetrators before commissions of inquiry in order to receive amnesty, sometimes with the threat of criminal sanction looming, may have features of accountability. So too may amnesties which are only granted to those who have committed crimes for political purposes, who may be required to defend any claim of political aims. It is important to be clear that, as with options between peace and justice, which are far more nuanced than much debate has suggested, there are different degrees of amnesty.

¹⁹ Priscilla Hayner, *Unspeakable truths: confronting state terror and atrocity* (London: Routledge, 2001) p. 24.

²⁰ *Ibid.*

Reconciliation

A goal of many transitional processes is creating the right conditions to encourage reconciliation between opposing groups, in order to promote a functioning society and prevent future conflict. Reconciliation can have several meanings, but in the context of post-conflict peacebuilding, a key goal is that of the restoration of relationships and trust among victims and perpetrators as individuals and among society as a whole. Reparative justice has often been proposed as a mode of promoting reconciliation²¹ and is described by its proponents as “survivors’ justice,” rather than “victors’ justice” or “victims’ justice”. They argue that it allows for the recognition of the complexities of conflicts and the fluid relationships between and among victims and perpetrators, who may have changeable roles during the course of a conflict. A reconciliation process is an attempt to acknowledge the different role of each individual or group, in the past but also to be inclusive about their potential roles in the future, treating them in common as “survivors of the conflict”.

Reconciliation may be linked to the pursuit of accountability, but may also include a wide range of other processes, including symbolic gestures such as changing street names, erecting monuments, reclaiming public spaces for the society, dedicating spaces to memory and education of future generation, restoring archives and sources of information, allowing public manifestations of grief, etc. While accountability is backwards-looking, focusing upon the punishment of perpetrators and less frequently offering reparations to victims for past atrocities, reconciliation seeks to be forwards-looking, focusing on overcoming obstacles that would prevent the promotion of a shared future in which the majority of the population could actively participate. As Mani describes, reconciliation represents a bridge between peace and justice, between past and future²².

c. Rule of Law development

A key goal of transitional justice is to contribute to sustainable peace and the rebuilding of a society based on the rule of law and the respect of human rights. Accountability and the rebuilding of the rule of law can be mutually reinforcing. On the one hand, the creation of processes to address past violations committed during the conflict can help to restore confidence in the justice sector. It can also help support the development of mechanisms and rules for democratic and fair institutions by a) establishing regularized procedures and rules b) promoting discussions and exchange rather than violence as a means of resolving differences. On the other hand, the emphasis on rebuilding the rule of law may support long-term transitional justice, particularly through embedding rules that may help to ensure the non-repetition of the atrocities. The (re)building of infrastructure and capacity of the judicial system is a major step in the creation of a culture of respect for rule of law and the peaceful resolution of conflict. The development of institutions that counterbalance the power of certain groups, including the government, such as human rights commissions or anti-corruption commissions, may contribute to the establishment of a strong institutional and social structure more capable of withstanding social tensions.

²¹ Rama Mani, “Does power trump morality? Reconciliation or transitional justice?” in Edel Hughes, William A. Schabas, and Ramesh Thakur, eds., *Atrocities and International Accountability. Beyond Transitional Justice* (New York: United Nations University, 2007) p. 37.

²² *Ibid*, p. 39.

d. Disarmament, demobilization, reintegration of ex-combatants (DDR)

Processes of DDR of ex-combatants seek to support security and stability in a post-conflict situation in order to enable peace implementation and broader reconciliation and socio-economic development. DDR has become a central part of UN peacekeeping and peacebuilding operations, as well as being promoted by donors and other UN agencies in countries where there is no UN peacekeeping presence. Similar to other peacebuilding activities, DDR cannot be successful in isolation and must be conceived of within the broader peacebuilding framework, with links to SSR, rebuilding of rule of law, reduction of small arms, and other elements of the recovery process such as economic development. However, it is important to note that a well-conceived DDR strategy is useless without political will of all parties to the conflict. The report of the UN Secretary General on DDR states that the political process should shape the DDR process rather than the other way around.²³ There should therefore be detailed provisions on DDR in peace agreements and all parties must uphold their commitments.

A DDR programme is aimed at ex-combatants from both official and unofficial armed groups (and receiving communities) with participation from a number of local, national and international actors leading to a complex multi-dimensional process with political, military, security, humanitarian and socio-economic dimensions. The UN Integrated DDR Standards (IDDRS) define each stage as the following:

- Disarmament involves the collection, documentation and disposal of small arms, ammunition, explosives and light and heavy weapons from both combatants and also the civilian population.
- Demobilization is the formal and controlled discharge of active combatants from armed forces or other armed groups. The first stage may extend from the processing of individual combatants in temporary centres to the massing of troops in camps (cantonment sites, encampments, assembly areas or barracks).
- Reinsertion is the assistance given immediately to ex-combatants during demobilization but prior to the longer-term process of reintegration. It is a transitional assistance with short-term material (i.e. food, clothes, and shelter) and/or financial assistance and lasts up to one year to address immediate needs.
- Reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. It is social and economic process with an open timeframe, primarily taking place in communities at the local level.

Programmes are not just aimed at ex-combatants. There are individuals who carried out support roles undertaking logistical task, as well as women and girls who were used for sexual exploitation. In addition, there are many who were forcibly recruited. Aside from those directly involved, many combatants have dependents, who are not directly included in such a process but should be considered in terms of keeping families together, or

²³ Report of the Secretary General on Disarmament, Demobilization and Reintegration, UN Doc. A/60/75, (2 March 2006), para. 9b.

providing counselling. The needs of women and children have often been ignored in DDR programming, and it is now recognised that there is a need for special targeting in order to ensure successful reintegration. There may be ex-combatants who became refugees, and may be among the returnee population after conflict. Finally, communities are an important part of the reintegration process. It is recommended that all assistance, such as training, employment, health services are delivered through community-based mechanisms, and communities should be consulted and participate in planning and implementation.

With DDR involving financial/material assistance, as well as reintegration assistance in the form of training and services, it can be challenging to develop programs in a conflict-sensitive way. Although a peace agreement will state which armed forces are included, a DDR strategy must ensure that this does not appear to unfairly target or benefit a particular group. It may seem to local communities that those who were perpetrators of violence and prolong the conflict are being compensated for their behaviour, while the victims often receive no form of reparation. Therefore, community consultation is crucial, along with service delivery through community-based mechanisms.

DDR processes thus necessarily interact with transitional justice processes, and the participation of ex-combatants in any truth commission process or their subjection to accountability processes will be particularly contentious.

Significant DDR processes have been undertaken in many African and Latin American countries emerging from conflict. DDR processes have also been undertaken in various parts of the former Yugoslavia. A preliminary effort at paramilitary demobilization has been taking place in Iraq.

e. Security Sector Reform

Security Sector (termed by some Security System) reform is now a critical element in most peacebuilding operations. SSR is defined in the OECD-DAC *Handbook on Security Sector Reform* as “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 and thus contributes to a well-functioning security framework..”²⁴ SSR entails a series of policies and programmes that may provide technical assistance and training for the reform of security forces themselves. It also involves support to institutions and individuals tasked with the security of the populace more broadly, and oversight of security institutions, including not only the police but also judges, prosecutors, corrections personnel and ombudspersons. Provision of security is linked to broader provision of access to justice, although the two are not therefore identical and both may be addressed in peace agreements. Peace agreements may, although they frequently do not, directly dictate some facets of security sector reform, where they provide for the inclusion of some ex-combatants in new security forces and militaries. However peace agreements, insofar as they often do dictate DDR strategy, have significant impact on SSR programming. SSR strategies may therefore involve restructuring existing armed forces, creating new unified armed forces, or merging existing armed forces, as well as the creation of oversight bodies.

²⁴ OECD-DAC Handbook, page 19.

Security sector reform is essential in states emerging from conflict because effective, legitimate and transparent security forces (such as police and attendant institutions) can contribute to stabilization. Conversely, forces lacking these features may have contributed to conflict in the past and may well do so again. Further, the perception that forces lack such transparency and legitimacy can contribute to societal resentment and mistrust, impeding longer-term peacebuilding. In the absence of security forces with transparency and legitimacy, securing the rule of law, the protection of human rights and functional and transparent governance would be difficult, if not impossible.

SSR involves a range of activities, including direct reform and restructuring of security forces themselves, which may also entail incorporation of a range of ex-combatants within the forces, or as part of the leadership of new forces. It also involves support to institutions and individuals tasked with the security of the populace more broadly, including not only the police but also judges, prosecutors, corrections personnel and ombudspersons. SSR is often a longer-term process than DDR, and is acutely challenging in post-conflict settings because of mutual animosity and mistrust; thus it is important that provisions for SSR identify ways to minimize mistrust and reassure parties regarding their own security. Peace agreements seldom include provisions for SSR—the accords in El Salvador are a notable exception—but given the acute security crises that often follow conflict termination, and the impact of DDR on SSR, as discussed below, there is a case to be made for addressing SSR early, including in peace talks. SSR might also be promoted “from below”, and outside the confines of a peace agreement, as through the promotion of community policing programmes.

SSR programming has been extensive following conflicts in Latin America, Africa, and to a lesser extent Asia. In the Western Balkans, extensive SSR programming has been undertaken in Kosovo during UN/international administration. The Occupied Palestinian Territories provide an interesting example of SSR, which has taken place not in a sovereign state, but rather in the context of the process of state-building and peacebuilding in the context of the broader Middle East Peace Process.

5. Cross-cutting issues

a. Regional dimensions of conflict, peacebuilding and accountability

When conflict breaks out between countries, there is often concern that this could destabilise the region, through the spillover of fighting to bordering countries as well as the likelihood that other countries will provide support to one side for their own reasons, for example the fighting of proxy wars during the Cold War period. However, it is important to recognise that there are regional implications even with intrastate conflict, although it may seem as though fighting is confined to within one country. Areas in which this is a major concern are West Africa and the Great Lakes region, although it is also relevant for Central America and Central Asia. The conflicts of the former Yugoslavia sought internal disputes become transnational in regionalized as that nation broke up. Regional involvement can include direct or indirect military support by external countries during an existing conflict, as in the case of Charles Taylor’s support to the RUF in Sierra Leone. It could also involve instigating conflict, such as the Ugandan and Rwandan support of Congolese rebels in the DRC in the 1997 coup, where ultimately 5 countries became embroiled in the conflict. There are many motivating factors why groups and countries may become involved, such as exploitation of natural resources, political gain and ideological beliefs. In addition to support by neighbouring

governments, there may also be mercenaries from other countries involved in the conflict, who support a particular side not for political reasons but for monetary gain.

If these regional factors prolong or even act as a cause of conflict, they need to be considered in any peacebuilding efforts. Any conflict resolution process must take such dynamics into account, and regional actors should be included in the mediation and negotiation of peace agreements in order to minimise the impact that the 'unseen' actors can have as spoilers. Regional bodies have acted to address the destabilizing effects of supposedly internal armed conflicts, with the African Union providing peacekeepers in Sudan and Nigerian forces acting in Sierra Leone under an ECOWAS mandate as well as the creation of an ECOWAS monitoring force in Liberia. Conflicts may also have regional effects because a significant portion of the civilian population may be made refugees in other countries; alternatively fighting forces may also cross borders and destabilize neighboring countries. Any DDR process will have to reach out to ex-combatants in other countries to inform them of the process and their eligibility to participate. Regional DDR programmes such as the Multi-country Demobilization and Reintegration Programme (which covers 11 countries in the Great Lakes region) have sought to address this challenge, with country programmes carrying out information campaigns in other countries and targeting specific activities at combatants on foreign soil.

Such regional dimensions also complicate any attempts at accountability. The mobility of fighters makes it difficult for domestic courts to hold perpetrators accountable, for example combatants from Sierra Leone fled to Liberia and Cote d'Ivoire. Although problems with domestic mechanisms may be due to lack of capacity or basic functioning due to conflict; transnational, hybrid or international mechanisms may not be better placed to ensure accountability. Although prohibitions against abuses in conflict, such as genocide, war crimes, crimes against humanity, torture and slavery are *jus cogens* norms, whereby all states have an obligation to prosecute violations, no matter where they take place, the legal mechanisms that currently exist to impose accountability of these acts may not have jurisdiction over the states concerned. This has led to geographical gaps in accountability that Sriram and Ross refer to as zones of impunity.²⁵ As mentioned in section 4.b, if a country has not become a party to the Rome Statute, the ICC has no jurisdiction unless the Security Council refers a situation to the court. This means that although there is an ICC investigation into LRA abuses in Northern Uganda, the ICC cannot investigate associated LRA activities in southern Sudan since Sudan is not a party to the statute. The ICC currently has four investigations, all in Africa, although there are many situations where an investigation could be merited, but the states concerned are not party, such as Burma, Sri Lanka and Turkey.²⁶ The avenue for an investigation into abuses in these countries would be through a referral from the Security Council. It is highly unlikely that the Council would refer such cases, and it is likely that any such referral would be extremely narrow, as was the case in the context of the Darfur one.

Another effect of this geographical gap is that the prosecution of high profile perpetrators depends upon the willingness of states to pursue it. Charles Taylor is facing trial for his crimes in Sierra Leone but not in Liberia, due to a lack of political will in his home state. The limited jurisdiction of the Special Court for Sierra Leone, encompassing

²⁵ Chandra Lekha Sriram and Amy Ross, "Geographies of Crime and Justice: Contemporary Transitional Justice and the Creation of 'Zones of Impunity,'" *The International Journal of Transitional Justice*, Vol.1 (2007) p.55.

²⁶ *Ibid*, p.62.

only crimes committed on its territory means makes it unlikely that he will be tried for crimes committed in Liberia or Cote d'Ivoire. In Northern Uganda LRA atrocities have been investigated but similar abuses perpetrated by the Army are unlikely to be subject to prosecution, although the prosecutor of the ICC has not ruled this possibility out. Leaders and former leaders can also evade accountability as long as they remain at home, or travel only to countries unlikely to pursue prosecutions. However, there are other venues for accountability, such as the use of civil accountability (such as ATCA) and criminal accountability through universal jurisdiction, discussed above.²⁷

b. Gender, vulnerable populations

During conflict widespread abuses are perpetrated on women because of their gender. The incidence of sexual and gender based violence (SGBV) during conflict is extremely high, with women and girl civilians not only raped and sexually abused by combatants, but also kidnapped and forced to act as 'wives'. Any attempts at accountability should ensure that these abuses are recognised and targeted. However, gender considerations should not only focus on women as victims, as women may also be combatants and perpetrators, but are often sidelined in peacebuilding activities such as DDR or are included in a simplistic way which does not take account of the range of roles, which they may play in conflict settings. Gender sensitivity is also important in any SSR and rule of law activities, and it is often included as an element of human rights training, as well as increased attempts to recruit women and the establishment of special sections or services related to protection of women. Peacebuilding processes should take account of the risk of stigmatization of women or girls in their communities, either because they were victims of sexual abuse or were combatants. Incidents of domestic violence and SGBV often increase after conflict, and thus there is a need for initiatives to specifically address this issue in a post-conflict context. These could include amending outdated legislation concerning rape and engaging in information and sensitisation activities on this subject with both men and women.

The importance of gender sensitivity within peacebuilding was recognised in UN Security Council Resolution 1325 (2000). This resolution recognises that civilians, particularly women and children, are the majority of those adversely affected by armed conflict, and that women have a role to play in the prevention and resolution of conflicts and peacebuilding. It therefore seeks to increase the role of women in peace operations and to mainstream a gender perspective, calling on actors to adopt a gender perspective during repatriation and resettlement and post-conflict reconstruction, to support local women's peace initiatives, and for the protection of and respect of human rights of women and girls. The resolution also specifically highlights protection of women and children from SGBV, and calls for an end to impunity for those crimes and states that they should be excluded from amnesty provisions. It also recognises that DDR programming should include women and children. Resolution 1325 has provided a platform for many women's groups to push for inclusion in peacebuilding, but its implementation in practice has been limited.

Conflict also has an impact on vulnerable populations such as children and creates vulnerable categories such as the disabled. Many children have been forcibly abducted to fight during conflict and forced to carry out atrocities on their own communities and families in order to prevent their escape. This complicates the approach to

²⁷ *Ibid*, p.65.

accountability, with issues around the agency of children carrying out these crimes as well as dealing with reintegration and psycho-social issues. However, even in conflicts where forcible abduction has not been carried out, children between the ages of 14-18 are used as soldiers in various Asian countries and in parts of Latin America, Europe and the Middle East. Although they may have volunteered to join a variety of paramilitary groups, militias and armed groups, they will have been motivated primarily by economic or social factors, or survival in a conflict context. DDR and SSR programmes should consider the problems of demobilizing children, and provide resources for economic activities and skills training to enable youths to find peaceful employment, and offer concrete benefits which may enable them to reintegrate into communities more easily.

c. Coercion and consent shaping the operative environment

As discussed in section 2, peacekeeping operations (also known as first-generation peacekeeping) in the Cold War required state consent. Second-generation peacekeeping, or multidimensional peace operations, entailed activities including peacemaking,²⁸ peacekeeping²⁹ and peacebuilding³⁰ activities.³¹ In third-generation peacekeeping or peace enforcement, one or more parties may not have consented to a UN mission. These involve very different activities authorised under Chapter VII: an operation can attempt to impose order, to impose specific security arrangements, such as no-fly zones, or to implement a peace agreement from which one or more parties has defected. Doyle states that such peace enforcement without consent is war-making and that the UN does not have such a good track record in this area when compared to peacekeeping or multilateral peace operations. He finds, in an analysis of all UN peacekeeping operations, that success is most likely where there is a comprehensive peace agreement.³²

If a peace treaty has been signed, the preferences of parties are clear, while where there is no treaty, all parties could be spoilers. In addition to the powers outlined above, a third generation mission has enforcement powers to protect civilians. In the absence of consent, an operation will only be able to keep a limited peace and cannot engage in the broader peacebuilding activities of a second generation mission. Such a situation can be better defined as a negative peace rather than a broader positive peace. Doyle suggests effective strategies in such missions will combine carrots for those willing to cooperate and sticks for those who act as spoilers. Any strategy may involve a combination of peace-making, peacekeeping, postconflict reconstruction and peace enforcement tools.³³

d. Perceptions

Perception of the populace, national government, and political actors of the way that the strategies and tools are designed and implemented is crucial to their acceptance, successful use and subsequent contribution to peacebuilding. If the population of a country perceives that the strategies and tools are being imposed on them and are not locally appropriate, such practices lose their legitimacy and efficacy.

²⁸ Examples include facilitating peace treaties.

²⁹ Examples include monitoring demobilization of combatants and resettling refugees.

³⁰ Examples include monitoring and organising human rights, democratic elections and economic rehabilitation.

³¹ Doyle, p.15.

³² *Ibid*, p.350.

³³ *Ibid*, p.58.

Local perceptions can undermine peacebuilding activities in a range of ways. If rule of law is weak, and corruption widespread, people may lack faith in any (re)constituted judiciary, and believe that achieving justice in the country is impossible. As discussed below in section 6.c. a special tribunal may not necessarily improve these perceptions, if it is held outside of the country, where there may be little knowledge about its work and little engagement in general. The perception that the same groups are in power or privileged will also undermine confidence in the peacebuilding process. For example, if there is no vetting of the judiciary and security forces, be they police or army, confidence in security and the rule of law will be undermined. Thus within DDR programming, activities should be targeted so as to benefit the community more generally, to limit the perception that combatants are being rewarded for fighting.

Seeking to engage with the local context and ensure that interventions are appropriate, some practitioners may turn to local traditional justice or other practices. However, it is also clear that such practices may be inconsistent with international human rights standards, and that the international community may be manipulated by local parties. Local leaders may wish to maintain their power by excluding others and promoting their vision of tradition. This complicates any engagement, although such locally-based processes may be able to complement a national transitional justice strategy and promote reconciliation.

e. Timing, sequencing, and prioritization

The timing, sequencing, and prioritization of transitional justice and peacebuilding strategies are crucial, but it is also context-dependent and there is no one-size-fits-all prescription. However, a few observations are in order. First, it is often presumed wrongly that timing of accountability strategies is always urgent—that if they are not taken up immediately, momentum for accountability will fade, perpetrators will blend into the woodwork or consolidate power, or that witnesses' memories will fade. However, in reality, experience has shown that there is seldom just one 'bite at the apple': rather countries may attempt different accountability strategies at different times, and may choose to revisit choices made previously 5, 10, or even 30 years later. This is not to say that accountability ought to be deferred, but merely to note that there is no single appropriate time to pursue it. Similarly, there is no fixed rule for sequencing accountability and peacebuilding efforts. It is certainly likely to be the case that it will be difficult to pursue accountability in the absence of stabilization, which may entail DDR, SSR, and significant rule of law reform. However, efforts at accountability have taken place in the absence of progress on some of these peacebuilding elements—the decision must be taken in context. And finally, prioritization is reliant on context, and may also change over time—in some instances there may be specific reason to institute accountability proceedings immediately, while in others consolidation of reform may win out. Importantly, preferences about prioritization are as likely to be shaped by where one sits (in a conflict resolution/peacebuilding role or a human rights/rule of law post) as by the local context.

6. Evaluating strategies: critical questions

There is a range of ways in which tools and strategies for peacebuilding may be assessed, and all of these should be taken into account in assessment in particular situations or contexts. These range from the relatively 'objective'—technical benchmarks against

which efficacy can be (at least in principle) measured—to the ‘subjective’—normative goals about which judgments as to success may be difficult and controversial.

a. Efficacy of tools according to technical benchmarks

Clearly, tools and strategies can be assessed according to the specific activities and benchmarks they are set within their mandates, and these may be relatively measurable for each of the four key tools discussed in this paper.

(i) Accountability

It is fairly simple to identify benchmarks to assess accountability mechanisms in technical terms. These may examine outputs (how many trials were held? How many persons were vetted for abuses?), process (did legal proceedings comport with key due process standards?) to participants (how many people testified before a truth commission?).

(ii) Rule of law

It is also relatively straightforward to identify benchmarks for rule of law promotion assessment. These may range from an assessment of specific assistance to infrastructure (was a new courthouse built?), to actors (how many judges were trained?), to outputs (are ordinary legal proceedings taking place? Are they taking place across the country?) to participants (are people seeking access to the justice sector?).

(iii) DDR

DDR can be assessed in terms of participants (how many persons were processed, how many weapons collected?) and outputs (how many persons were trained or educated? How many returned to civilian life?) and process (was the timeline adhered to? Did monitoring mechanisms monitor?).

(iv) SSR

SSR may be assessed in terms of participants (how many members of the police/other security forces were vetted or trained?) and outputs (was a new security doctrine created and affirmed? Were oversight bodies created and did they operate?).

b. Relationship between strategies and tools and overall conflict situation

However, the tools and strategies discussed here are not developed for their own sake, but as part of peacebuilding strategies. As such, they should also be assessed in terms of their relationship to the risk of conflict. Do they help to mitigate the return of conflict, address underlying or ‘root’ causes of conflict, limit incentives for conflict, or, perversely, run the risk of promoting conflict? Thus there is a need to first conduct a conflict assessment of the type utilized by development actors such as UNDP, the World Bank, bilateral donors, and the EU itself. What follows are the key elements of a conflict assessment for peacebuilding purposes, culled from tools such as Post Conflict Needs Assessments (UNDP and the World Bank), Conflict Assessment Framework (World Bank) Conflict Assessments (EU, and bilateral donors such as USAID), Peace and Conflict Impact Assessments (UNDP).

(i) Elements of a conflict assessment

There are a range of arguments about the causes of conflict, and the goal here is not to engage in the thriving debate, but rather to articulate the key causes and exacerbators of conflict upon which there is relatively settled consensus, and to which conflict-sensitive development agencies look in designing programming. There are several key elements to examine in a given situation, to discern what interests, actors, and institutions may have

the capacity to generate or restrain conflict. Strategies and tools may be designed in ways in which they engage these underpinnings of conflict.

Incentives for violence

In any given situation, one or more ‘causes’ of conflict may be in play, and in most conflicts there are multiple sources of conflict, which will have evolved over time. These may include ethnic and religious divides, or elite manipulation of such divides to their own advantage in ways that promote conflict. They may also include economic sources such as scarcity, poverty, horizontal inequality, and a shrinking economy, or competition over natural resources. They may include significant demographic shifts, including large scale movement of populations. And, finally, conflicts may be spurred by the interaction effects of several of these factors, such as when economic difficulties prompt specific populations to move, and where that is perceived as a threat by a particular ethnic group, or presented as one by manipulative leaders.

Exacerbators of conflict

Conflict may be facilitated or expanded through a variety of ways. Access to resources is critical—conflicts which may not have begun as disputes over valuable resources may subsequently be fuelled by them. Or resources may be tapped from other sources such as the diaspora. Global financial networks may facilitate the movement of goods and funds. Further, human resources may include the presence of a significant number of unemployed or underemployed youth available for recruitment (whether voluntary or involuntary).

State/institutional capacity

Weak, failed or failing, or corrupt states may be promoters of conflict, or simply unable to restrain it. Functional institutions of rule of law, and a transparent and human rights-respecting security sector may similarly maintain order and promote peaceful resolution of conflicts, while their weakness or absence may promote conflict. However, it is not only the strength of institutions which matters—so too does transparency and fairness or perceived fairness. The exclusion of groups from access to the state and its benefits—political, security, and economic—may be a source of conflict.

Regional or international dimensions

Clearly while most of the conflicts subject to peacebuilding have been primarily internal in nature, few are in fact completely contained within the borders of one state. Unstable countries may destabilize neighbors, and location in a ‘bad neighborhood’ can heighten the risks of conflict as flows of small arms, armed groups, and refugees strain state capacity or actively promote conflict. Further, financial flows across borders from the sale of goods may further facilitate conflict. Actors with ties to global conflict networks including but not limited to terrorist networks may further promote conflict within countries.

Risks and vulnerabilities

Specific events or transitions can heighten the risk of, and state vulnerability to, conflict. In particular, where the organization of or access to the state is up for grabs, as in situations of political transition, devolution, or elections, the risk of conflict is heightened as individuals and groups compete for a share.

(ii) Programming for identified conflict risks

Programming should therefore be oriented towards the conflict risks identified in a particular context, and can be assessed in terms of the appropriateness of design to the risks, and the evidence of actual mitigation of conflict risks. Programming in particular areas may seek to reduce the risks of conflict by engaging with particular state institutions to enhance their capacity to manage conflict, engaging with particular (state or civil society) actors to enhance their capacity to manage conflict, and targeting of incentives to reduce the risk of conflict or increase benefits from cooperation. Once past and potential sources of conflict are identified, specific tools and strategies should be designed in such a way that they engage the risks and avoid 'doing harm'. How might each of the four tools and strategies be designed to do this?

Accountability tools such as trials, truth commissions, and vetting may run the risk of provoking conflict, as they may induce past abusers or defenders of the status quo to act to defend themselves or their prerogatives. They may also mitigate the risk of conflict by addressing grievances. Mechanisms may be assessed not only on delivery of a 'good' such as accountability, but also whether they avoid conflict promotion or actively mitigate it.

Rule of Law promotion similarly may promote conflict, where reform of the judiciary, the construction of oversight bodies for state and security institutions, and other measures may challenge status quo actors. However, the promotion of more open transparent institutions may enhance state legitimacy and provide peaceful avenues for conflict resolution.

DDR is essential in limiting the risks of future conflict to the degree that it can not only involve the disarmament of combatants, but their transition to peaceful means of employment. However, groups which fear for their security may resist DDR, or be tempted to cheat in processes.

SSR may facilitate peaceful transition, as security forces are placed under civilian control, and subject to mandates requiring them to respect human rights. However, corrupt forces with leaders that benefit from predation, or membership that has engaged in abuses, will resist loss of prerogatives.

Because every situation is distinct, it is not possible to compile a laundry list of how any of these tools and strategies could mitigate specific risks in any or every situation. However, a couple of examples should suffice. So, where mass violence has taken place, as it did in the Rwandan genocide, a failure to address abusers may be conflict-promoting as individuals seek revenge, while some accountability strategy may limit this. However, also in Rwanda, the new status quo actors (here the Tutsi leadership, where it was Tutsi who were the primary victims of genocide) actively resist any attempt to try them for their own abuses, often through threats and violence. In neighbouring Burundi, the military was dominated for decades by the Tutsi minority. Thus in peace negotiations, Hutu rebels insisted upon military reform that would alter the balance within the military, and following agreement, some former rebels were integrated into the military. At the same time, Tutsis were resistant to this shift, fearing for their security. The Arusha Agreement of 2000 required that no more than 50% of police positions can be occupied by a single ethnicity.

c. Relationship between strategies and tools and overall accountability and reconciliation

The peacebuilding and transitional justice strategies and tools analysed in section 4 relate in various ways to the wider goals of accountability and reconciliation often said to be central to peacebuilding, in addition to stabilization and security. However, it is an open question which of these tools actually promotes these goals. This is even the case with accountability and reconciliation processes, which might, given their purpose, be expected to be best suited to promoting accountability and reconciliation in a state. In this context, it is also important to bear in mind that reconciliation may operate at (at least) two distinct levels: individual and national.³⁴ Peacebuilding efforts often focus on national reconciliation, in balancing the needs of both victims and perpetrators in aggregate. However, national reconciliation does not necessarily promote individual reconciliation, and might even run counter to it.³⁵

Accountability processes: what local impact?

It may seem tautological to ask what impact accountability processes may have on accountability and reconciliation. However, it isn't entirely, both because accountability has myriad aims, and because those designed and/or pursued abroad. The immediate goal of accountability is to bring perpetrators to justice, guaranteeing crimes do not go unpunished, and retribution, while other goals may include serving the needs of the victims, social pedagogy, rebuilding longer-term rule of law, and deterrence. However, accountability may help address particular local needs of societies in transitions, including reconciliation only if appropriately designed. Because local capacities are often weak, however, it is usually largely designed by outsiders, and in some cases is only carried out abroad.

As Sriram has observed, externalised justice can offer an alternative when states are unable or unwilling to prosecute, however, the further from the victims and society as a whole these processes occur, the greater is the risk of them taking sufficient account of the local needs in the context of the transition, and playing a weak if not counterproductive role in reconciliation.³⁶ This is true for all the tools that have been discussed in section 4. A number of limitations of each accountability tool, in light of local needs for justice or reconciliation, follow. We then turn to other tools, such as rule of law promotion, DDR, and SSR, to consider their impact on both accountability and reconciliation.

- *ICC*: The relationship between the international prosecutions in the ICC and national peace processes is complex. As the negotiations in Northern Uganda have demonstrated, the Prosecutor is prepared to proceed with the investigation of a case while peace negotiations are underway. ICC intervention could prove positive, if it promotes the inclusion of national accountability mechanisms in agreements, but it could also serve as a disincentive to continue negotiations for those who may have reasons to fear prosecution.³⁷ For example, in April 2008 Joseph Kony, the leader of the LRA of

³⁴ Mani, "Does power trump morality?", p. 29.

³⁵ *Ibid.*

³⁶ Sriram, *Globalising Justice for Mass Atrocity*, p. 48.

³⁷ Chandra Lekha Sriram, "Conflict Mediation and the ICC: Challenges and Options for pursuing peace with justice at the national level," paper presented at the International Conference *Building*

Uganda, refused to sign the peace accord, unless the ICC arrest warrants against the LRA were removed, paralyzing the Juba peace process. It is also important to remember that the ICC only has jurisdiction over a small number of serious crimes and will tend to focus upon a small number of perpetrators. Thus a great number of perpetrators are unlikely to be pursued by the ICC which, in the absence of appropriate national judicial procedures, could contribute to the perception of impunity.

- *Ad hoc Criminal Tribunals*: These tribunals sit far away from the affected population, which may limit their contribution to peacebuilding generally, or to reconciliation, reinstatement of the rule of law or deterrence specifically.³⁸ Some have also criticised what is seen as a two-tiered system of justice with a double standard in terms of treatment and penalty. Some Rwandans have complained that war criminals are provided with a better living standard in the UN-maintained prisons than the victims and local population; further the UN tribunal imposes limited sentences, while until recently Rwandan courts could impose the death penalty. Such objections may also undermine reconciliation efforts. Further, the cost of these courts is significant, and some have objected that these resources could be better used for post-conflict reconstruction and peacebuilding, including the reconstruction of the national judicial system.

- *Mixed Tribunals*: These tribunals are depicted by their advocates as less divisive and more meaningful for the victims and society in general than international ones, and to be able to play a role in rebuilding local judicial systems. They are also somewhat cheaper than the ad hoc tribunals. However, the purported benefits have not always emerged in practice, with the courts facing criticisms for their inefficiency, for limited local participation and for failing to uphold due process standards,³⁹ or that they have created unrealistic expectations.⁴⁰ Further, while not as costly as the ad hoc tribunals, they are still criticised by some analysts for diverting resources from other peacebuilding efforts.

- *Universal jurisdiction*: The exercise of universal jurisdiction offers the opportunity to promote accountability for international crimes. However, some of its critics question both the legitimacy of states to conduct such prosecutions or the impact they may have on transitions or the limited benefits they may offer victims from a great distance.

- *Civil liability*: Civil liability may be a useful alternative to criminal prosecution, and may offer reparations victims. However it provides limited benefits to peacebuilding, for similar reasons to those discussed in the context of universal jurisdiction.

- *Non-formal justice*: Such processes may be more accessible to victims, or indeed the only justice process to which they have access. However, these also have their flaws: they are often inconsistent with national and international human rights standards, particularly standards of due process; they were never designed to handle serious human

a Future on Peace and Justice, (Nuremberg, 25-27 June 2007) at <http://www.uel.ac.uk/chrc/publications/documents/Nurembergpaper.pdf>, p. 5.

In April 2008 Joseph Kony, the leader of the LRA of Uganda, refused to sign the peace accord until the ICC arrest warrants against the LRA had been removed, paralyzing the Juba peace process.

³⁸ Sriram, *Globalising Justice for Mass Atrocity*, p. 4.

³⁹ Suzanne Katzenstein, "Hybrid Tribunals: Searching for Justice in East Timor," *Harvard Human Rights Journal*, vol. 16 (2003) p. 246.

⁴⁰ Sriram, *Globalising Justice for Mass Atrocity*, p. 105.

rights violations, as they have traditionally being used for smaller offences, generally not of a criminal nature; they could reproduce societal dynamics, including dominance of certain groups, and exclusion of others, in particular vulnerable groups, such as women and youth.

- *Commissions of inquiry*: The establishment of a commission of inquiry, which may recommend judicial proceedings or merely stand as a record of past events, is a very delicate process. Its selection and functioning can be inclusionary or exclusionary; the release of a report runs the risk of triggering a backlash by named perpetrators. Furthermore, any report and recommendations will only have an impact on peacebuilding and reconciliation processes if political leaders have the will and capacity to implement them.

- *Reparations*: Reparation processes are slow, complex and expensive. Not only is the moral damage difficult to quantify but also the economic losses of victims have normally occurred in a context of generalised violence in which individual perpetrators are not easily identifiable. The provisions for compensations normally depend on the return of the goods by the perpetrators and in the constitution of public funds to assume the costs of reparation. Both present obvious challenges in post-conflict settings. However, reparations form an integral part of the accountability and reconciliation process. The reparation of the harm suffered by the victims is directly related to their perception of justice, the willingness to leave grief behind and their trust and support in the new institutions that need to face the rebuilding of peace.

Rule of Law

Rule of law promotion after a conflict is closely intertwined with the capacity of a country to address past human rights violations. The strengthening of the national judicial system can assist transitional justice processes. However, rebuilding the rule of law and in particular the judicial system is a lengthy process, particularly following protracted conflict and collapsed or corrupt state institutions. In such situations there may be a dearth of trained legal professionals as well as an absence of adequate infrastructure. In such a situation, human and physical resources may not be able to guarantee the conduct of fair trials, compliant with human rights standards. The lack of law enforcement officials able to apprehend suspects or to protect witnesses and the weak correctional systems with poor living conditions also present challenges. The rebuilding of the rule of law can have a positive impact over reconciliation when institutions are rebuilt in an inclusive fashion. However, the composition of new institutions may reproduce inequalities and imbalances of power within society, and perpetuate situations of injustice which may have triggered the original conflict or help ignite a new one.

DDR

DDR processes have effects on both accountability and reconciliation. DDR processes may establish amnesties for former members of oppressive regimes, or ex-combatants, as incentive for their participation in peace negotiations. These solutions impinge on accountability and may hinder reconciliation. The packages provided to ex-combatants to help their reintegration will often put them in a much more favorable economic position than that of the victims or society in general, creating unrest and perceptions of

discrimination among the population. However, through the reintegration and return of former combatants to home communities and civilian life, DDR may encompass community-based reconciliation activities, which may provide a means for the former combatants to feel accepted and for the community to signal their willingness to move forward.⁴¹

SSR

As discussed above, the reform of the security sector is crucial in a peacebuilding process. Without an effective and legitimate force which can guarantee a climate of security and transparency, accountability processes would be difficult to develop and their outcomes difficult to implement. Both victims and society as a whole need to feel that they can participate in these processes, in stable, safe environment. In the absence of security forces committed to the support of rule of law and transparent authority, both rule of law and accountability efforts are jeopardized.

d. Relationship between activities promoting accountability and those promoting conflict resolution/peacebuilding generally

In the context of conflict resolution and peacebuilding several interests might conflict. The so-called justice vs. peace debate is well-known, and is often exaggerated. However, as the discussion of specific tools thus far has already demonstrated, while the goals of accountability and conflict resolution may overlap significantly, there are also significant tensions, particularly with respect to the use of specific tools. Certainly, shared goals include the minimization and/or elimination of harm to persons, whether combatant or civilian, and long-term social peace and stability. However, priorities and sequencing, and the use of specific tools, are likely to come into conflict. Thus, as has already been discussed, tools of accountability such as trials, or even less punitive mechanisms such as truth commissions, may destabilize peace negotiations or implementation. Promotion of accountability may in particular challenge DDR processes, and the prioritization of ex-combatants in DDR processes can undermine efforts to support victims, provide them reparations, or promote broader reconciliation. Similarly, accountability processes may work in tandem with SSR processes, where those who are responsible for past abuses are vetted and excluded, but may also be in tension with reform processes which do not exclude serious offenders.

e. Contribution of activities to ‘social well being’ (or the reverse)

Transitional justice processes and efforts to rebuild the rule of law should ideally have a wider social impact and help to promote a long-term development process in the post-conflict society. The ultimate goal is to strengthen the capacity of national institutions and stakeholders to prevent and bring to an end violations, insecurity and impunity. A strong rule of law and a stable society are correlated with economic growth, investment

⁴¹ There are however important concerns to consider in relation to cleansing and reconciliation ceremonies and how this impacts transitional justice, see Johanna Herman, *Reintegration, Justice and Reconciliation in the Great Lakes Region: Lessons from the Multi-Country Demobilization and Reintegration Program*, Paper prepared for the Annual Convention of the International Studies Association, (San Francisco, 26-29 March 2008).

and social development. Peacebuilding tools may be judged in principle as to how they achieve their short- and medium-term goals, but also as to how they help to underpin in the long term a participatory and inclusive environment which will enable the fulfilment of international human rights and economic development. Long term development requires looking beyond peace and justice to opportunities to reduce poverty and provide for social well being. Success here might be measured in terms of greater standards of life expectancy, health, literacy and education, income and employment.

7. Criteria for case selection

The overall JaD-PbP project focuses upon the promotion of peacebuilding with a specific emphasis upon the Middle East and Western Balkans. These are two regions with many countries, and in the case of the Middle East there is some debate about which countries to include/exclude.⁴² Nonetheless, not all countries in either region can be the subject of detailed study during the project, given limited time and participants. Thus, some criteria to guide the selection of countries for country study are in order. Similarly, there are many lessons to be learned from peacebuilding operations which have taken place outside the two regions of study. This may be particularly important in the case of the Middle East, where there have been relatively few peacebuilding operations, and that in the wake of the invasion of Iraq has some unique characteristics. Many of the policies and strategies outlined in this guidance paper may have been used in the Western Balkans, but not in many (if any) countries in the Middle East until quite recently, such as SSR, DDR, etc. Therefore lessons may be learned from processes outside the regions of study which may have implications for those regions, and these criteria could help guide the identification of any such processes in other regions.

a. Conflict/postconflict situation?

For the purposes of this guidance paper, a country of study should be currently in violent conflict, have emerged from violent conflict, or be in the process of attempting conflict resolution/peacebuilding. Any threshold of the level of violence would be disputable, but countries of study should have experienced at least that level constituting conflict under Additional Protocol II (1977) of the Geneva Conventions of 1949, article 1 (2): “This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.” Another mode of identifying relevant countries would be through the use of the conflict indicators developed by the European Commission in its conflict prevention work.⁴³

b. Presence of peacebuilding activities, whether international, regional, bilateral, or largely domestic?

⁴² Drawing upon the Commission’s documentation, we treat the Middle East as the following, based upon its two categories of Mediterranean and Middle Eastern countries. Mediterranean countries: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Mauritania, Morocco, Occupied Palestinian Territories, Syria, Tunisia, Turkey, and Middle East countries: GCC (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE), Iran, Iraq, Yemen. On consultation we have excluded Albania, which is sometimes included by the Commission among Mediterranean countries. For the Western Balkans, we include the former Yugoslav republics Slovenia, Croatia, Macedonia, Montenegro, Bosnia-Herzegovina, and Serbia, along with Kosovo and Albania.

⁴³ See the European Commission Checklist for Root Causes of Conflict.

For the purposes of this guidance paper, a country of study should have been or currently be the site of peacebuilding activities, by any of international, regional, or bilateral organizations, or by the state apparatus or civil society itself. These may include a range of activities, including developmental, but should clearly involve efforts to prevent conflict or a return to conflict, and to resolve existing conflicts, not only broadly to promote development or a host of otherwise desirable social goods. Given that the project is focused upon supporting EU peacebuilding efforts, the presence of significant external (whether EU, UN, or bilateral) peacebuilding efforts in a particular country makes lessons from its experiences more directly applicable than where efforts have been exclusively internal.

c. Specific strategies and tools of interest, per section 4 above?

To enable the gleaning of comparative lessons, as well as to apply lessons from past cases to current and emergent ones, one or more of the broad strategies and tools of interest outlined in section 4 ought to have been attempted in the country of study. This would enable, for example, a comparison of accountability or rule of law strategies carried out in several locations (say, Kosovo, Lebanon) in the regions of focus perhaps informed by lessons from countries outside the region (say Sierra Leone, Sudan) and enable development of policy recommendations.

d. EU prioritization of a country

Countries may be the subjects of peacebuilding efforts without significant EU involvement. However, of particular interest will be countries where the EU has taken an active interest. These can be identified in part as one where the EU Rapid Reaction Mechanism has identified countries as of interest for immediate reaction to crises as well as post-crisis reconstruction. Countries prioritized range from Afghanistan to Ukraine, and also include regional (eg Afghanistan/Pakistan) dimensions.⁴⁴

8. Guidance and recommendations

Guidance and recommendations should be feasible in the outputs to come, building on this Guidance Paper in at least two dimensions. First, examination of the policies and strategies in a range of country contexts should enable clearer guidance as to the strengths and weaknesses, and need for reform, of the tools themselves. Second, this examination should enable sharper recommendations as to how and which tools to utilize or reform in peacebuilding efforts in a particular country context.

⁴⁴ European Commission Rapid Reaction Mechanism page, listing programmes in Afghanistan, Bolivia, Bosnia and Herzegovina, Burundi, Central African Republic, DRC, Republic of Congo, Cote d'Ivoire, East Timor, FYR of Macedonia, Georgia, Indonesia, Iraq, Lebanon, Libya, The Maldives, Moldova, Nepal, Palestinian Territories, Sri Lanka, Sudan, and Ukraine. Regional programmes include the Horn of Africa, Central Asia, Israel-Palestine, the Middle East, and Afghanistan-Pakistan.

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