TRANSITIONAL JUSTICE AND PEACEBUILDING ON THE GROUND

Victims and ex-combatants

Edited by Chandra Lekha Sriram, Jemima García-Godos, Johanna Herman and Olga Martin-Ortega

ROUTLEDGE

Transitional Justice and Peacebuilding on the Ground

This book seeks to refine our understanding of transitional justice and peacebuilding, and long-term security and reintegration challenges after violent conflicts.

As recent events following political change during the so-called "Arab Spring" demonstrate, demands for accountability often follow or attend conflict and political transition. While traditionally much literature and many practitioners highlighted tensions between peacebuilding and justice, recent research and practice demonstrate a turn away from the supposed "peace vs justice" dilemma.

This volume examines the complex relationship between peacebuilding and transitional justice through the lenses of the increased emphasis on victim-centered approaches to justice and the widespread practices of disarmament, demobilization, and reintegration (DDR) of ex-combatants. While recent volumes have sought to address either DDR or victim-centered approaches to justice, none has sought to make connections between the two, much less to place them in the larger context of the increasing linkages between transitional justice and peacebuilding.

This book will be of great interest to students of transitional justice, peacebuilding, human rights, war and conflict studies, security studies, and IR.

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"Is the pursuit of justice a necessary route to lasting peace in post-conflict settings? Do peace-building efforts routinely undermine durable justice? The editors explode this false dichotomy in their exciting new volume. Drawing on recent experiences from Colombia and Sierra Leone to Lebanon and Uganda they consider the trade-offs routinely confronted by traumatised societies at war's end. They show how activities often cast as oppositional, in particular restorative justice versus disarmament, demobilization and reintegration, are more closely aligned than assumed."

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– Hugo van der Merwe, Centre for the Study of Violence and Reconciliation (CSVR), Johannesburg, South Africa

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Abbreviations

CSO	civil society organization
DDR	disarmament, demobilization, and reintegration of ex-combatants
DDRR	disarmament, demobilization, rehabilitation, and reintegration of ex-combatants
DPA	Department of Political Affairs
DPKO	Department of Peacekeeping Operations
ECCC	Extraordinary Chambers in the Courts of Cambodia
GOU	Government of Uganda
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDDRS	Integrated Disarmament, Demobilization and Reintegration Standards
IDP	internally displaced person
IHL	international humanitarian law
IHRL	international human rights law
IMF	International Monetary Fund
INGO	international non-governmental organization
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OHCHR	Office of the High Commissioner for Human Rights
OHR	Office of the High Representative
OTP	Office of the Prosecutor
PB	peacebuilding
PBC	United Nations Peacebuilding Commission
PBF	Peacebuilding Fund
PBSO	Peacebuilding Support Office
RPF	Rwandan Patriotic Front
RtoP	Responsibility to Protect
SCSL	Special Court of Sierra Leone
SSR	security sector reform
STL	Special Tribunal for Lebanon
TJ	transitional justice

TRC	Truth and Reconciliation Commission
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
WCC	War Crimes Chambers of the State Court of Bosnia and Herzegovina

1 Introduction

Jemima García-Godos and Chandra Lekha Sriram

Introduction and rationale

Traditionally, peacebuilding and transitional justice literatures and practice either have not engaged one another or have been in tension, or even opposition. This is in part because long-standing "peace versus justice" debates posit that transitional justice and peacebuilding are necessarily in tension: that states emerging from violent conflict would have to choose to pursue peace *or* justice, but not both. This putative dilemma has never been, in fact, the reality, and a notable number of peace processes and subsequent peacebuilding activities have included measures of transitional justice, if not always criminal accountability. Thus we ask: Can transitional justice be not a challenge to, but an instrument of, peacebuilding? A range of contemporary post-conflict processes suggest different ways in which transitional justice mechanisms may contribute as an impetus for peacemaking and as a facilitator of peace implementation.

In this book, we seek to distill the findings of a range of studies designed for this purpose, examining the interaction between two specific aspects of transitional justice and peacebuilding: the promotion of victim-centered approaches to justice and short-term disarmament, demobilization, and reintegration (DDR) of ex-combatant processes, and longer-term security challenges and social return and reintegration of ex-combatants. We focus on these specific aspects here, as they are often in tension with one another and increasingly involve programming that deals with overlapping activities and actors, without significant reflection or planning. The individual chapters address a number of recurring themes, including development and post-conflict priorities, decisions on timing and sequencing, and choices about whether to integrate DDR processes (or at least reintegration) more tightly with justice processes. The conclusion explores the findings of the volume in more detail and seeks to tease out policy implications. The aim of this introductory chapter is thus to set up the conceptual framework guiding our academic inquiry. We hope not only to contribute to the academic scholarship on transitional justice and peacebuilding, but also to inform practitioners seeking to refine their own work in this area.

Transitional justice and peacebuilding: ongoing debates

Much ink has been spilled on the purposes and content of both transitional justice and peacebuilding, and both concepts continue to evolve. Here, we do not take a stand on narrow vs broad conceptions of each, on critiques of practices such as "liberal peacebuilding," or on calls for greater emphasis on development in transitional justice. Nor do we engage in far wider debates in the related and extraordinarily diverse field of peace and conflict studies. Rather, we briefly outline what the theory and practice of transitional justice and peacebuilding generally entail, and how they interact.

Transitional justice

Transitional justice is a broad set of practices that emerged from efforts by countries in transition from authoritarianism and conflict to address past abuse. Today, these practices are carried out by a mixture of local actors, national governments, the UN and other international organizations, bilateral donors, and national and international non-governmental organizations (NGOs).[1] According to a 2004 UN report on transitional justice and rule of law, it:

> comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (and none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.[2]

We focus on a specific subset of mechanisms which are often expected to address the needs and demands of victims, specifically prosecutions, reparations, commissions of inquiry, and traditional justice processes.

As we shall see, in many countries more than one mechanism is deployed, although often not in a coordinated way.[3] Increasingly, transitional justice processes are initiated alongside peacekeeping and peacebuilding operations, working in parallel to, and sometimes in tension with, a range of peacebuilding activities, including disarmament, demobilization, and reintegration of ex-combatants.[4] However, although they often operate simultaneously, transitional justice practices have a complex and contested relationship to peacemaking and peacebuilding.

Peacebuilding

Peacebuilding activities may be defined in a range of ways.[5] For the purposes of this volume, we rely on the approach of the UN system to peacebuilding, first defined in 1994 in *An Agenda for Peace* as the provision of assistance for institutional

reforms in support of democratization, to reform security forces and rebuild and reform state institutions. These build on, and often emerge from, peacekeeping operations, which received increasingly wide mandates from the UN Security Council during the 1990s, to address not just immediate security needs but also the original causes of conflict and build a durable peace.[6] These expanded peacekeeping missions begat peacebuilding as a multidimensional, longer-term political endeavor. Yet the record of peacebuilding activities to date has been mixed.[7] As part of a series of efforts to improve peacebuilding activities, in 2005 the UN General Assembly established the Peacebuilding Commission.[8] Sierra Leone, one of the countries examined in this volume, was one of the first countries to host an integrated peacebuilding mission supported by the commission. While peacebuilding activities have expanded, and increasingly overlapped with transitional justice activities, scholars and practitioners have continued to debate the appropriate relationship between each, in particular questioning whether accountability and transitional justice processes might interfere with peacemaking and peacebuilding.

Does transitional justice impede peace?

Although transitional justice measures often operate on the same territory, they are not necessarily complementary to peacebuilding missions, and much of the early literature on peace and justice suggested that the former would impede the latter.[9] Transitional justice can in fact interact in positive or negative ways with efforts to create and sustain peace in the wake of violent conflict or repression.

Advocates of transitional justice generally, and particularly of criminal accountability, claim that it promotes peace and may deter future abuses.[10] Some also claim that dealing with the past is essential to longer-term peacebuilding and to stop cycles of violence and prevent revenge and retaliation.[11] A few further state that the failure to pursue accountability will undermine the rule of law and the legitimacy of the post-transition government.[12] Finally, many advocates of accountability argue—and this is critical for the current inquiry—that it is needed to address the demands and needs of victims.[13]

On the other hand, peacebuilders are often concerned that transitional justice processes might disrupt fragile peace agreements. They are particularly concerned that parties to peace agreements, former combatants who are frequently responsible for abuses, might abandon peace processes and become spoilers, should they become targets of transitional justice.[14] For this reason, many peace agreements have included amnesties, though developing international norms reject blanket amnesties for serious international crimes, and United Nations mediators are not permitted to support their inclusion in peace deals.[15] Still, power-sharing deals often insulate parties to conflict from accountability without the use of amnesties.[16] Further, DDR processes often include former combatants in new or reformed security forces, in tension with demands for accountability or vetting and exclusion from roles in government of those who have abused human rights.[17]

Thus, while transitional justice processes continue to pose challenges to peacebuilding, and there is as yet insufficient empirical evidence to demonstrate that it can play a positive role in peacebuilding, further research is critical to learn whether, and if so how, this might be. This is the case, not least because practitioners operate with the belief or hope that rule of law and transitional justice efforts do support peacebuilding through statebuilding, enhancing the legitimacy of key actors and institutions.[18] The issue is thus not *whether* accountability is possible in processes of peacemaking and peacebuilding, but whether and, if so, *how* greater integration between the two might be achieved. In short, we ask: What are the necessary conditions and the major obstacles to coordination between accountability and peacebuilding processes, or even to the integration of accountability into peacebuilding processes? In this book, researchers investigate ways in which victim-centered approaches to transitional justice interact with peacebuilding, and specifically with DDR processes that seek to ensure the reincorporation into society of former combatants, many of whom may also have perpetrated serious human rights abuses. In order to understand the interplay between these two aspects of transitional justice and peacebuilding, we turn to victim-centered justice and DDR in turn.

Victim-centered justice

Developments in transitional justice have shown that justice is not only about retribution and perpetrators, but also about truth, reparations, the victims of past abuse, and the concerns of affected communities and the wider society. In the past two decades, the needs of victims of human rights violations and the promotion and protection of victims' rights have gained increasing international attention, in the fields of both international practice and academic inquiry.[19] While victims' rights are usually associated with reparations, the term also involves several other aspects of victims' needs, such as retributive justice and the right to truth. Related terms, such as "victim-centered" approaches or "victim-oriented" perspectives, are increasingly found in the transitional justice literature, unfortunately with various degrees of reflection upon what actually constitutes victims' rights. In this book we use the term, "victim-centered justice," in an attempt to highlight the encompassing dimension of victims' rights with regard to different aspects of transitional justice.

What are victims' rights?

Victims' rights have emerged as a body of norms within the fields of international human rights law, international criminal law, and international humanitarian law, determining the treatment and entitlements that victims of human rights violations ought to have with regard to remedy and reparation. Two critical parallel processes or "tracks" have directly contributed to this development: (i) the UN's work on the *Basic Principles and Guidelines on the Right to Remedy and Reparation*;[20] and (ii) the International Criminal Court's (ICC) focus on victims.[21]

The United Nations General Assembly approved the *Basic Principles on the Right to Remedy and Reparation* in December 2005, after about 16 years in the drafting process. According to Shelton, the principles refer to three categories of obligations and rights.[22] First, general obligations emanating from international human rights law (IHRL) and international humanitarian law (IHL) to ensure and protect victims' right to access to justice and to provide substantive remedies. Second, the obligation to investigate and prosecute violations to IHL and IHRL that constitute international crimes. And third, rights of access to justice, the right to substantive reparations, and the right to access to information (read "truth") in the event of gross violations of IHL and IHRL. Common to all three categories is the right to access to justice, while the right to substantive remedies is common to the first and third categories.

In its Preamble, the *Basic Principles* document not only identifies the legal sources from which the principles derive, but also announces the international community's adoption of a "victim-oriented perspective" based on human solidarity and respect for the international legal principles of accountability, justice, and the rule of law. On these legal and moral grounds, the *Basic Principles* basically bring together existing standards of IHRL and IHL regarding victims of human rights violations and violations of IHL to establish a more comprehensive and detailed set of rights to which all victims are entitled. The *Basic Principles* establish what is to be understood as victims' rights: access to justice, reparations, and truth. Each element is addressed by the *Basic Principles*, although the section on reparations is developed in most detail. They list specific forms of reparation, including compensation, restitution, rehabilitation, satisfaction, and guarantee of non-repetition. The latter two also include elements referring to the right to truth and access to information, as well as institutional and legal reform to guarantee non-repetition of abuses.

The *Basic Principles* make explicit reference to the ICC Statute and the ICC's requirements concerning the treatment of victims of core international crimes, specifically the establishment of various forms of reparation, the creation in the ICC Statute of a trust fund for victims, and the protection and participation of victims during court proceedings. Indeed, the ICC's Statute and Rules of Procedure and Evidence both establish a series of rights for victims of crimes that fall under its jurisdiction.[23] One innovation in the Statute is the provision for the participation of victims during court proceedings and the possibility to present their views and observations before the court. Regarding reparations, the court has the power to order individuals to pay reparation to other individuals, and it has the option of granting individual or collective reparation. Reparations may include restitution, indemnification, and rehabilitation, and the court may order these to be paid through the Victims' Fund. The ICC has two special units to ensure victims' participation. While the Victims' Participation and Reparation Section provides public information on reparation proceedings and applications, the Office of Public Counsel for Victims provides legal support and assistance to the legal representatives of victims and to victims.

Restorative justice

In addition to the inclusion of victim participation in the Statute, the inclusion of a reparations regime demonstrates the introduction of "reparative justice thinking" into international criminal procedures.[24] There are nonetheless concerns about the ability of international tribunals such as the ICC to actually ensure the effective participation of victims and the protection of victims' rights.[25] We turn now to several elements of victim-centered approaches to justice, beginning with restorative justice.

Restorative justice is commonly associated with victims' rights and victim-oriented perspectives, as it acknowledges the suffering and needs of victims and attempts to restore the damage done. It assumes that physical, psychological, and social damage must be acknowledged and addressed in order to heal and reconcile. In order to understand the role and influence of restorative justice in present-day processes of transitional justice and peacebuilding, it may be useful to address the origins of restorative justice, which lie outside transitional justice practice.

The principles of restorative justice developed in modern Western societies in the late 1970s as an alternative to retributive justice, expressing a deep dissatisfaction with traditional criminal justice systems.[26] Restorative justice emphasizes the need to understand crime or harm done in terms of the social actors involved or affected: offenders/victimizers, victims, and communities. In order to restore the damage done, the interests and needs of all three should be addressed. Contact between offenders and victims is considered a necessary step to seek understanding and reconciliation between otherwise opposing parties.[27] These principles are at the basis of various mechanisms of conflict mediation and conflict resolution now well established in Western societies.[28] Similar but distinct mechanisms have also developed in countries in the South, often based on or incorporating elements from customary law or traditional practices of conflict resolution, as we will see below.

The introduction of restorative justice principles to the practice of transitional justice is perhaps not a surprising development, and potentially may support wider goals for sustainable peace. While restorative justice generally emphasizes the needs of victims, programmers have also been concerned with taking a restorative approach to the reintegration of offenders into society. Offenders are expected to take responsibility for the harm done, and the community to provide for the protection and support of victims, as well as the effective reintegration of offenders.[29] Restorative principles have been incorporated in the practices of specific transitional justice mechanisms. The participation of local communities is emphasized to secure a satisfactory reintegration of ex-combatants.

The interaction between victims and victimizers is becoming more widespread in both truth commissions and judicial processes, although with mixed results. In Rwanda, traditional local practices are put at work to settle accounts and restore social relations damaged by past atrocities, albeit not without controversy and difficulty.[30] In Colombia, interaction between victims and victimizers occurs under restrictive security measures. Direct visual contact is not allowed, but

victims or their legal representatives—sitting in a separate room—can ask questions to the victimizer through a microphone, seeking information for the clarification of specific cases. The application of restorative justice principles in the realm of transitional justice must bear in mind the great differences existing between individual criminal offences (involving often a single offender and a single victim) and contexts where oppressive regimes or collective actors have committed massive human rights violations, often the result of complex situations where a number of factors, such as ethnicity, class, political allegiance, and religion, may combine to produce systems of oppression, violence, and abuse. Nonetheless, restorative processes that seek to promote reconciliation are not without risks: they have the potential to revictimize and stigmatize both victims and perpetrators. Victim-centered justice, however, builds on one of the most basic principles of restorative justice: the need to restore the dignity of victims on the victims' terms.[31] Retributive and restorative processes are ideally not in opposition or alternative to one another, but rather elements of a more coherent and sustainable approach to transitional justice and peacebuilding.[32]

While the rights formulated by the *Basic Principles* and the ICC Statute are grounded in international law, and influenced by principles of restorative justice, the practice of victims' rights is grounded in the everyday realities of victims and practitioners. As the country studies in this volume demonstrate, where transitional justice has been placed on the public agenda, so too have victims' rights. Victims' rights are often associated with the direct implementation of victim reparations programs; however, as we have seen earlier, victims' rights involve also access to justice and the right to truth. A focus on victim-centered justice can help us identify if and how specific transitional justice mechanisms incorporate a victim's perspective and take victims' needs into account. We thus examine the extent to which victims' needs, perceptions, and interests have been taken into account by policymakers in designing transitional justice mechanisms. Victim reparations programs have been a common response in the past 10–15 years, in an attempt to address the vulnerability of victims. In spite of the increased interest in victim reparations, such programs are still more the exception than the rule in transitional justice practice. Their design involves a number of political choices that governments in post-conflict or post-authoritarian contexts often find difficult or may be unable to make, due to economic or political constraints.

Why is it important to address victims' needs, beyond moral and ethical considerations? There is also a political rationale. Compared to the more visible and short-term effects and benefits of, for example, the demobilization of former combatants, the societal benefits of addressing the needs of victims are less apparent, in terms of both physical, visible effects and political impact. However, addressing victims' needs constitutes a central aspect of peacebuilding because, by so doing, governments and societies actively support ongoing processes of political transformation. Addressing the needs of victims enhances the legitimacy of political transitions in the eyes of victims. Various forms of remedy and reparations, in particular, demonstrate to victims that the state and society at large recognize

their suffering and vulnerability. Addressing victims' needs can help to signal their social inclusion or reinclusion into societies in which their rights have been violated. According to De Greiff, victim reparations can "be seen as a method to achieve one of the aims of a just state, namely, inclusiveness, in the sense that all citizens are equal participants in a common political project."[33]

In the wake of violent conflict, the formal justice system may be compromised or destroyed and international justice may be limited or unavailable; in such cases communities, the state, or international actors may promote the use of so-called traditional justice practices, a loose term used to refer to a range of largely non-state conflict resolution and justice mechanisms. Such practices vary widely across communities and countries, involving cleansing and forgiveness rituals, reconciliation ceremonies, or retributive measures. The use of such measures is not uncontroversial, given that traditional justice processes did not historically address serious large-scale crimes and often are modified to address them, as Nagy discusses in relation to *gacaca* in Rwanda in this volume.

Traditional justice processes may as noted involve retribution, but are also often restorative, and thus appeal to those who seek to both address the needs of victims and pursue reconciliation among victims, perpetrators, and communities.[34] In some countries, such as Sierra Leone and Uganda, they have been utilized to promote the reintegration of former combatants into communities, particularly children and adolescents. Advocates of traditional justice often argue that such processes are more local and legitimate, and better designed to promote reconciliation than retributive justice.[35]

However, as several of the chapters in this volume explore, the use of such processes to address serious international crimes has significant pitfalls, particularly when they are simultaneously expected to promote reintegration of former combatants who may be perpetrators and to promote reconciliation. In many cases, traditional processes may be used coercively or abusively, or be inconsistent with international human rights standards.[36] There is therefore reason for caution regarding their utility in supporting victims.

Peacebuilding

Peacebuilding processes involve an ever-increasing range of activities, both political and technical. These include the rebuilding of state institutions, including rule of law, DDR, and security sector reform, to list those most likely to overlap with efforts at pursuing transitional justice. It is conducted by a wide range of actors, including the UN and other multilateral organizations, bilateral donors, and national and international NGOs. Some analysts criticize contemporary peacebuilding processes, arguing that they are shaped by Western liberal paradigms emphasizing democratization and market liberalization, and that they fail to take sufficient account of local needs and demands. These criticisms are not the primary focus of the chapters here, although they have facilitated new discussions about the roles of local actors in peace and justice.[37] We focus on DDR, while recognizing that peacebuilding activities have a wider scope.

Why focus on DDR and reintegration?

This book focuses specifically on the relationship of DDR processes and the longer-term reintegration of former combatants with victim-centered justice. It does so both because DDR is essential to stabilizing security and limiting the risks of return to violence and because it has the potential to be in tension with victim-centered approaches to justice, as efforts to promote reintegration necessarily involve engagement with victims and affected communities. DDR has become a central part of international peacekeeping and peacebuilding operations, but its success depends on political will of all participants, including that of former combatants themselves.[38] While numerous DDR processes have been reasonably successful in disarmament and demobilization of former combatants, reintegration—as many chapters in this volume illustrate—is far more challenging.[39]

What does DDR entail? Most DDR programs involve combatants from state and non-state armed groups and proceed in several stages. The UN Integrated DDR Standards articulate the stages as follows.[40] First, disarmament involves the collection, documentation, and disposal of small arms, ammunition, explosives, and light and heavy weapons from former combatants and civilians. Second, demobilization entails the discharge of combatants from armed groups, often with their placement in cantonments or other assembly areas. Ex-combatants are given reinsertion support during demobilization, before reintegration. This may involve material assistance, including food and shelter, financial assistance, and technical training and education to enable them to transition to gainful employment. Finally, reintegration seeks to return ex-combatants to civilian status and provide them with viable employment. It also aims to place them in their own former communities or other communities, if return is not feasible, and thus relies on the willingness of communities to accept their return. As these are communities that may have been directly affected by abuses committed by former combatants, longer-term social reintegration often proves challenging.

The financial and material support, including training provided to former combatants at the demobilization and cantonment stage, as well as reintegration support, often in the form of cash payouts, may appear to victims or affected communities to unfairly benefit one group. Local communities may view these processes as compensation to those who perpetrated violence and abuses, while victims often receive no form of reparation, or are provided with reparations far later. Some reintegration may be eased with community consultation and incentives.

Regardless, DDR processes necessarily interact with transitional justice processes, by either comparison of benefits given to possible perpetrators and identified victims, or the participation of ex-combatants in transitional justice processes including truth commissions, trials, and traditional justice mechanisms. This is particularly the case as the practice of DDR has expanded in frequency and activities.[41] DDR has an inevitable effect on accountability for past violations because ex-combatants from one or more parties are likely to be highly resistant

to any accountability processes, and thus transitional justice efforts may be blocked by amnesties already enshrined in peace agreements. Leaders and their cadres are less likely to cede arms and canton fighters if they fear arrest. At the same time, the presence of large numbers of individuals responsible for abuses either in positions of power, or simply mixing with the rest of the population, may generate resentment and the risk of backlash, and is clearly in tension with calls for more victim-centered justice.

However, just as former combatants will demand a degree of impunity, victims and human rights advocates will demand accountability. Peace agreements may provide for a range of accountability (or non-accountability) mechanisms including vetting, or exclusion from certain official functions of those responsible for serious abuses, prosecution, truth commissions, reparations, and amnesty. Given the common objections of armed factions to accountability, it may be necessary to seek a compromise that balances demands for justice with the need for DDR, bearing in mind that the UN *Draft Set of Principles to Combat Impunity* reject blanket amnesties and amnesties for the most serious international crimes (such as genocide, war crimes, and crimes against humanity) and that international prosecution of such crimes is not subject to a statute of limitations.

DDR processes also operate alongside, and sometimes seek to utilize, non-state justice and conflict resolution mechanisms, often without recognizing that they may have an impact on these processes. They also rely openly or less so on these processes to aid "reintegration," but without any critical reflection. Thus, for example, returning fighters may take part in community or "traditional" cleansing or reconciliation ceremonies, as with some former members of the Lord's Resistance Army in Northern Uganda through the Acholi *mato oput* traditional justice or conflict resolution practices. While such processes may ease reintegration, it is worth recalling not only that traditional practices are not designed to cope with ordinary killing, much less mass atrocities, but also that the practices themselves may be inconsistent with international human rights standards. There are no formal guidelines for assessing which non-state practices of justice merit support, or to determine how they should interface with DDR processes. Because traditional systems are frequently utilized in post-conflict situations, practitioners need a greater understanding of how they engage communities, victims, and perpetrators.

Cross-cutting issues

While this volume focuses on the interplay between transitional justice and peacebuilding as expressed through the promotion of victim-centered justice and DDR practices, a number of cross-cutting issues run through most of the chapters, discussions of which may contribute to broader debates in transitional justice practice.[42] The issues are: development and priorities in post-conflict societies, timing and sequencing, and coordination/integration between transitional justice and peacebuilding programming. These are raised in very different contexts across many of the chapters, although some are more salient in particular

countries than others. In the conclusion, we seek to identify the key opportunities and risks related to these cross-cutting issues and to identify implications for practitioners.

Development and priorities in post-conflict societies

The challenges of socio-economic development are common to most transitional societies, creating constraints on the pursuit of transitional justice. The primary problem is funding: Amid a sea of demands for basic social services, public infrastructure, and the (re-)establishment of public institutions, how to legitimate public spending for the prosecution of perpetrators or a truth commission? However, the relation between transitional justice and development goes beyond funding, ultimately referring to what could be considered the overall objective of transitional societies—peacebuilding. Ongoing debates on the links between transitional justice and development emphasize the need for awareness of the national and local contexts where accountability mechanisms are to be applied, in order to tune transitional justice goals to national development objectives and policies.[43] Some advocates argue that sustainable peace needs to address structural inequalities, calling for the inclusion of distributive justice goals as an integral part of transitional justice.[44] While transitional justice and the goals of distributive justice can indeed be complementary, the mechanisms available to transitional justice, with their focus on addressing past violations, are generally insufficient or inappropriate to address structural inequalities.[45]

There is also an ongoing debate on the appropriateness of development projects as a form of collective reparations. For transitional societies with limited financial resources and large numbers of victims, collective reparation programs that provide goods and services—such as schools, small roads, community houses, start-up materials, and capital for community enterprises—are attractive alternatives to individual compensation schemes. However, human rights organizations in particular are keen to point out that such services are the duty of states in any situation, and do not capture or consider the restorative aspect of victim reparations. The position taken by victims' organizations on this issue varies greatly in different contexts. Empirically based research on the relation between collective reparation and development will contribute to illuminate this debate and, preferably, from a victim-centered perspective.

Timing and sequencing

There is no one-size-fits-all solution to the question of timing and sequencing, whether of peacebuilding or transitional justice generally; advocates continue to argue about the priority which one must take over the other.[46] Yet, frequently, justice measures are initiated, or reinitiated, well after the commission of the original crimes or after political transition, as has been the case in Argentina, Cambodia, Bosnia, and Lebanon.[47] In general, immediate security and stabilization concerns, and the dictates of peace agreements, mean that DDR processes specifically are

initiated early, at the start of transition and peacebuilding, while victim-oriented processes, whether criminal accountability or reparations, are significantly delayed. This may appear to be preferential treatment for ex-combatants who may also be perpetrators of abuses, and be resented in particular by victims and their advocates. However, in the absence of closer integration between DDR processes and victim-oriented processes, the time lag may be inevitable.

Policy and programming: coordination or integration?

This leads to an important question: Should DDR be more tightly integrated with transitional justice processes, including victim-centered approaches to justice? As we have discussed, DDR processes not only take place earlier than transitional justice in most countries, but also tend to engage successfully in disarmament and demobilization more frequently than in reintegration. In Colombia, DDR, truth-telling, retributive justice, and reparations have been linked to a degree, albeit not by evident design. In Sierra Leone and Northern Uganda, traditional justice processes have been touted as a means to return some former combatants and engage victims and communities. Yet, as the chapters on processes in these countries illustrate, tighter integration of processes may have a down side. In this volume, Lars Waldorf suggests that it is not the solution, but rather that transitional justice processes be left to take on elements of integration, while leaving peacebuilding processes with the earlier stages of disarmament and demobilization. The balance of evidence in the chapters suggests that coordination is preferable to tighter integration, although civil society actors interviewed in Sierra Leone frequently expressed a preference for the latter.

About this book

Methodology and research approach

This volume presents a number of thematic, cross-cutting chapters, followed by a series of country case study chapters. The thematic chapters address UN peacebuilding and transitional justice policy, the specific challenges of DDR, legal pluralism and the role of traditional justice, and the challenges of pursuing justice in ongoing conflicts, where peacebuilding remains a challenge. The country chapters present structured, focused case comparisons of a range of experiences from Africa, Asia, Latin America, and Europe. With a clear recognition that each country has its own particular history, political culture, conflict dynamics, and accountability processes, we seek to identify common challenges, themes, and approaches taken by these countries.[48] The country chapter authors were instructed to engage specifically with the broader literatures on peacebuilding and transitional justice, and to consider in their own studies the role or demands of victim-centered approaches to justice, and the place—if any—of DDR processes and longer-term questions of social reintegration. The way in which the country chapters engage with the two processes varies because of the significant

differences amongst country experiences. In some instances, countries engaged relatively little with transitional justice, while in others very little with peacebuilding, and in a few countries transitional justice processes were embedded in peacebuilding processes.

Structure

The volume proceeds in two parts. First, four chapters explore critical themes that arise across the volume, including the role of the UN Peacebuilding Commission, the challenges of pursuing justice in ongoing conflicts, the specific challenges of pursuing DDR and transitional justice, and legal pluralism and traditional justice. Second, eight country-specific chapters consider the challenges of peacebuilding and transitional justice, with a focus on victim-centered approaches to justice and DDR, and longer-term reintegration, allowing for comparative analysis of enduring challenges and possible opportunities.

We considered clustering chapters by the primacy of national, international, or hybrid processes and institutions. However, we found that too many countries experience several of these to draw meaningful distinctions. We also considered dividing countries between those that experienced "standard" peacebuilding or transitional justice processes vs those that did not, but found again that, while there were some evident outliers, such as Lebanon, Colombia, and Kenya, which have not truly experienced either, other countries were sufficiently atypical that the distinction did not further meaningful comparative analysis. We decided ultimately to present country experiences in loosely chronological order (based on the original transition or conflict termination point) and elaborate on lessons learned in the conclusion of this volume.

Thematic chapters

Dustin Sharp's chapter discusses ways in which the UN Peacebuilding Commission might play a stronger role in developing more integrated approaches to DDR and transitional justice. Despite the challenges, he finds that current policy approaches to reintegration need improvement. Specifically, Sharp examines how local practices in justice and reconciliation could be an area where the commission plays an important role in sharing experience, while relying and using its expertise to tailor initiatives to the particular context. He argues that, while overlap between DDR and transitional justice may well pose risks, there are also significant opportunities for better integrated policies and outcomes.

Par Engstrom's chapter discusses the challenges of pursuing transitional justice in the midst of ongoing conflict. He discusses the ways in which transitional justice is increasingly part of conflict resolution and peacebuilding efforts, and considers the role of judicial activities in the midst of conflicts. He observes several challenges. First, the increased use of judicial processes in conflict settings has helped to provoke calls for proof of the impact of transitional justice, which is often hard to produce. Second, the internationalization of transitional justice activities poses

a challenge to local actors and their role in the processes. Third, narrow legal and judicial approaches to transitional justice may not be well suited to address complex social/political problems and may indeed obscure their political nature.

Lars Waldorf's chapter on integrating DDR and transitional justice focuses on reintegration as the main area of overlap between the two fields. He examines whether the best way forward should be integration or coordination, and looks at specific transitional justice mechanisms: amnesties, prosecutions, truth commissions, local justice, reparations, vetting and screening, and how they can influence the social reintegration of ex-combatants and peacebuilding. He suggests that a more realistic approach would be the coordination of disarmament and demobilization and transitional justice in the short term, with longer-term reintegration left to other actors, rather than DDR programmers.

Rosemary Nagy discusses the pluralization of transitional justice in a number of dimensions: first, the diversification of measures beyond those that are internationally driven to those that are locally driven and second, the operation of justice in locales with both formal and informal or traditional justice sectors. She discusses in particular the complex ways in which traditional justice interacts with internationally driven justice, in particular highlighting concerns that this interaction may serve negatively to consolidate state power at the expense of justice, reconciliation, and durable peace.

Country chapters

The chapter by Johanna Herman examines the relationship between peacebuilding and transitional justice in Cambodia, focusing in particular on the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC). Cambodia's experience demonstrates the need for a pragmatic approach, as Herman describes it, to advance and link transitional justice and peacebuilding efforts. Such an approach can help actors to seize the few opportunities available as they come, as has been the case with victim participation in the ECCC, one of the most notable innovations of the tribunal.

The chapter by Chandra Lekha Sriram urges us to reflect on what constitutes peacemaking and peacebuilding, what constitutes a transitional justice mechanism, and what does not. Focusing on the Special Tribunal for Lebanon (STL), she considers the establishment and workings of the tribunal in a context of limited peacebuilding (if it can be so termed) and even more limited accountability, questioning the prospects of the STL to encourage domestically driven efforts to address a broad legacy of past violations during the civil war and the Syrian occupation. While she sees little relevance of the STL for wider accountability in Lebanon for significant abuses committed during and after the conflict, she suggests that there is a limited opportunity created by its presence for human rights advocates and victims' groups to make accountability part of public discourse. This is, however, limited by official policies of silence and the continued political dominance of former combatant groups.

Olga Martin-Ortega explores the interactions between peacebuilding and transitional justice in the reconstruction process in Bosnia and Herzegovina. At a superficial level at least, peacebuilding has been successful, because the country has not reverted to violence and national institutions have been consolidated. However, a closer look at the processes and mechanisms implemented in Bosnia shows a more nuanced picture. She argues that failures in managing nationalistic structures and dealing with demobilization and security have undermined the capacities of the country to promote accountability. Prosecutions have, she argues, contributed to the process of peacebuilding and helped pave the way for consolidating formal rule of law. However, justice has been mainly driven by the international community and has not promoted complementary, locally driven processes, and the reliance on retributive measures has not contributed to wider goals of social reconciliation.

Chandra Lekha Sriram's discussion of peacebuilding and transitional justice in Sierra Leone demonstrates both the challenges of attempting to link victim-centered justice to reintegration of ex-combatants and the problems of pursuing victim-centered justice well after formal DDR concludes. Victims' groups and civil society have strongly criticized the long delay between the completion of the DDR program, seen by some as unfairly privileging possible perpetrators of abuses, and the initiation of the relatively small reparations program. Yet, at the same time, efforts at social reintegration of former combatants through traditional justice measures emphasizing the engagement of victims, perpetrators, and communities have their own pitfalls.

Rosalind Raddatz discusses peacebuilding and transitional justice in Liberia. She suggests that, against great odds, important strides have been made in both, but cautions against "great expectations." She outlines the shortcomings and criticisms of the Truth and Reconciliation Commission (TRC) and the turn to viewing traditional justice mechanisms as a more viable solution than formal prosecutions. She outlines, too, the initial challenges faced by DDR, and its general failure to deal sufficiently with women and girls who had played a role in fighting forces. The extensive reparations recommended by the TRC are unlikely to ever receive significant funding. In short, the numerous demands for justice, security, and recognition espoused by Liberians seem unlikely to be addressed.

In her chapter on Uganda, Joanna Quinn brings our attention to one of the cross-cutting themes addressed in this volume, the relation between transitional justice and development. While calls for greater coordination and integration between the two fields are made by donors and international organizations, the case of Uganda demonstrates how difficult it is to develop effective and meaningful policies and programs that not only bring both fields together but, most importantly, take into consideration the distinctive requirements of the fields, particularly with regard to the needs of the people they are supposed to serve. This chapter demonstrates that, in situations with limited government capacity and will, amid many demands from national and international actors, the mixing of several related agendas can be a poor way to address the various issues.

Jemima García-Godos considers the unusual situation in Colombia, with the application of typical transitional justice measures in the context of ongoing conflict and in the absence of a transition or a peace agreement. Yet, as she notes, the Justice and Peace Law, and the attendant institutional structures that have grown up around the demobilization processes in Colombia, have linked demobilization and the rights of victims. The process has developed its own dynamic and, most importantly, it has contributed to the legitimation of victims' rights. While the process in Colombia faces many challenges and is far from a success, it illustrates one mode in which DDR and victims' rights may be linked, as well as possible limitations.

Stephen Brown assesses the contributions of the National Dialogue and Reconciliation process to transitional justice and peacebuilding in the Kenyan context—and the relationship between justice and peace. He argues that it is difficult to apply to Kenya traditional debates on the trade-offs between or complementarity of transitional justice and peacebuilding because there has not been a meaningful break with the past: suspected high-level perpetrators of large-scale violence have not been prosecuted and, in fact, several remain in positions of power. He suggests that the experience of Kenya serves as a cautionary tale for other countries, including on the dangers of adopting transitional justice mechanisms in the absence of a significant transition; the risk of entrenched elites sabotaging domestic justice mechanisms; the need for disarmament even in violent situations that fall short of civil war; and the vulnerability of victims.

The chapters in this book seek to explore relatively uncharted territory within the burgeoning fields of transitional justice and peacebuilding. Spanning decades and continents, the studies in this volume examine the interaction, and in some cases increased intertwining, of victim-centered approaches to justice and DDR programs. They document the challenges of pursuing both simultaneously, but also the pitfalls of failure to pursue justice, demobilization, and reintegration. As discussed in the conclusion, the lessons are complex, and in many cases potentially contradictory; there is much more research to be done. We hope, however, that the chapters that follow offer a contribution to important academic and policy debates.

Notes

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2 Report of the UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies* (2004) para. 8.

3 Naomi Roht-Arriaza, "The new landscape of transitional justice," in Naomi Roht-Arriaza and Javier Mariezcurrena, eds, *Transitional Justice in the Twenty-First Century* (New York: Cambridge University Press, 2006), pp. 1–16.

4 This is emphasized in the most recent UN report on the subject. See *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, Report of the Secretary-General, UN Doc. S/2011/634 (12 October 2011), paras 11–12.
5 Oliver Richmond, *The Transformation of Peace* (London: Palgrave, 2005); Roger MacGinty, *International Peacebuilding and Local Resistance: Hybrid forms of peace* (London: Palgrave, 2011).
6 *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-keeping* (17 June 1992) UN Doc. A/47/277 – S/24111, para. 61.
7 Elizabeth M. Cousens and Chetan Kumar, *Peacebuilding as Politics* (London: Lynne Rienner, 2001) p. 15; Chandra Lekha Sriram and Karin Wermester, eds, *From Promise to Practice: Strengthening UN capacities for the prevention of violent conflict* (Boulder, CO: Lynne Rienner, 2003); Stephen John Stedman, Elizabeth Cousens, and Donald Rothchild, *Ending Civil Wars: The implementation of peace agreements* (Boulder, CO: Lynne Rienner, 2001).
8 GA Res. 60/180, UN GAOR, 60th Sess. UN Doc. A/Res/60/180 (30 December 2005) and UN SC Res. 1645, UN Doc. S/Res/1645 (20 December 2005).
9 Sriram, *Confronting Past Human Rights Violations*, op. cit.; Wendy Lambourne, "Transitional justice and peacebuilding after mass violence," *International Journal of Transitional Justice*, vol. 3 (2009), pp. 28–48; Chandra Lekha Sriram, "Transitional justice and the liberal peace," in Edward Newman, Roland Paris, and Oliver P. Richmond, eds, *New Perspectives on Liberal Peacebuilding* (Tokyo: United Nations University Press, 2009), pp. 112–30; Gerhard Thallinger, "The UN Peacebuilding Commission and transitional justice," *German Law Journal*, vol. 8 (2007), pp. 681–710, <*www.germanlawjournal.com/index.php?pageID=11&artID=844*>.
10 Luc Huyse, "Amnesty, truth or prosecution," in Luc Reychler and Thania Paffenholz, eds, *Peace-building, A Field Guide* (Boulder: Lynne Rienner, 2001).
11 *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies* (2004), op. cit., para. 2.
12 Huyse, "Amnesty, truth or prosecution," op. cit., p. 325.
13 Priscilla B. Hayner, *Unspeakable Truths: Confronting state terror and atrocity* (New York: Routledge, 2001), p. 28.
14 Chandra Lekha Sriram and Youssef Mahmoud, "Bringing security back in," in Thomas Biersteker, Peter Spiro, Chandra Lekha Sriram, and Veronica Raffo, *International Law and International Relations: Bridging theory and practice* (London: Routledge, 2006), p. 223.
15 *Set of Principles to Combat Impunity* (latest update) at UN Doc. E/CN.4/2005/102/Add.1 (8 February 2005).
16 Stef Vandeginste and Chandra Lekha Sriram, "Power-sharing and transitional justice: A clash of paradigms?" *Global Governance*, vol. 17, no. 4 (October 2011); Ellen Lutz, "Transitional justice: Lessons learned and the road ahead," in Roht-Arriaza and Mariezcurrena, eds, *Transitional Justice in the Twenty-first Century*, p. 330.
17 Vandeginste and Sriram, "Power-sharing and transitional justice," op. cit.; Chandra Lekha Sriram and Johanna Herman, "DDR and transitional justice: Bridging the divide?" *Conflict, Security, and Development*, vol. 9, no. 4 (December 2009), pp. 455–74.
18 Report of the UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Situations* (2011), paras 16–17.
19 Koen De Feyter *et al.*, eds, *Out of the Ashes: Reparation for victims of gross and systematic human rights violations* (Antwerp and Oxford: Intersentia, 2005); Pablo De Greiff, ed., *The Handbook of Reparations* (Cambridge: Cambridge University Press, 2006).
20 United Nations General Assembly Resolution 147, UN GA, 60th Session, UN Doc. A/RES/60/147 (2005), *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. To be referred to as the *Basic Principles*.
21 For a more detailed discussion of each of these tracks, see Jemima García-Godos, "Victim reparations in transitional justice: What is at stake and why," *Nordic Journal of*

Human Rights, vol. 26 (2008), pp. 111–30. Developments in international law supporting this trend include also jurisprudence and court sentences, such as the influential *Velásquez-Rodríguez v Honduras* decision by the Inter-American Court of Human Rights in 1988, which identified a "right to truth." See: <*www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf*>.

22 Dinah Shelton, "The United Nations Draft Principles on Reparations for Human Rights Violations: Context and content," in Koen De Feyter *et al.*, eds, *Out of the Ashes*, op. cit., p. 20.

23 García-Godos, "Victim reparations," op. cit., p. 116.

24 Conor McCarthy, "Reparations under the Rome Statute of the International Criminal Court and reparative justice theory," *International Journal of Transitional Justice*, vol. 3 (2009), pp. 250–71. McCarthy uses the term "reparative justice" to refer to what is commonly known in the literature as "restorative justice." For a discussion of 'reparative justice' as a concept that emphasizes the "the principle of reparation, as the origin and core of the need for justice in times of violent and brutalizing transition," see Rama Mani, "Reparations as a component of transitional justice: Pursuing 'reparative justice' in the aftermath of violent conflict," in Koen De Feyter *et al.*, eds, *Out of the Ashes*, op. cit., pp. 53–82.

25 Elisabeth Baumgartner, "Aspects of victim participation in the proceedings of the International Criminal Court," *International Review of the Red Cross*, vol. 90 (2008), issue 870, pp. 409–40; Mina Rauschenbach and Damien Scalia, "Victims and international criminal justice: A vexed question?," *International Review of the Red Cross*, vol. 90 (2008), issue 870, pp. 441–59; Ralph Henham, "Some reflections on the role of victims in the international criminal trial process," *International Review of Victimology*, vol. 11 (2004), pp. 201–24.

26 Ronald L. Cohen, "Provocations of restorative justice," *Social Justice Research*, vol. 14 (2001), pp. 209–32.

27 Pamela Blume Leonard, "An introduction to restorative justice," in Elisabeth Beck *et al.*, eds, *Social Work and Restorative Justice. Skills for dialogue, peacemaking and reconciliation* (Oxford: Oxford University Press, 2011), pp. 31–63. For foundational works of restorative justice, see Nils Christie, "Conflict as property," *British Journal of Criminology*, vol. 17 (1977), pp. 1–15; John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge: Cambridge University Press, 1989).

28 For this understanding and practice of restorative justice, see <*www.restorativejustice.org*> for the USA-based Restorative Justice Online network and <*www.euforumrj.org*> for the European Forum for Restorative Justice. Both sites last accessed 31 October 2011.

29 Blume Leonard, "Introduction to restorative justice," op. cit., p. 48.

30 See generally Scott Straus and Lars Waldorf, eds, *Remaking Rwanda: State building and human rights after mass violence* (Madison: University of Wisconsin Press, 2011).

31 This does not mean that the risk of re-traumatizing victims is not present in restorative justice, although restorative justice professionals are possibly more aware of this problem.

32 Lambourne, "Transitional justice and peacebuilding," op. cit.

33 Pablo De Greiff, "Justice and reparations," in Pablo De Greiff, ed., *The Handbook of Reparations*, pp. 451–77, 464. To be clear, we do not assume that victims' interests and demands are homogeneous.

34 Mark A. Drumbl, *Atrocity, Punishment, and International Law* (Cambridge: Cambridge University Press, 2007), pp. 94–97.

35 Stovel and Valiñas, "Restorative justice after mass violence," p. 31. Some argue that reintegrative shaming is effective in more "traditional" communitarian societies. See Braithwaite, *Crime, Shame, and Reintegration*, op. cit.

36 Chandra Lekha Sriram, "(Re)building the rule of law in Sierra Leone," in Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman, eds, *Peacebuilding and Rule of Law in Africa: Just peace?* (London: Routledge, 2011).

37 Roland Paris, *At War's End: Building peace after civil conflict* (Cambridge: Cambridge University Press, 2004); Richmond, *The Transformation of Peace*; Roger MacGinty, *International Peacebuilding and Local Resistance: Hybrid forms of peace* (London: Palgrave 2011).