

## Research Brief

# Amnesties and DDR Programs

February 2010

---

**Mark Freeman**

---

Transitional justice experts and disarmament, demobilization, and reintegration (DDR) experts have traditionally worked in separate professional and academic silos, with contact between them being the exception, not the rule. This appears to have led to wide gaps in perception and practice on one of the crucial issues of concern to both fields: the place of amnesties in conflict resolution and peacebuilding.

Amnesties are typically, though not always fairly, viewed as sources of impunity that significantly threaten the underlying values and operational prospects of transitional justice. By contrast, when discussing amnesties with DDR practitioners, the subject tends to be treated as uncontroversial. Amnesties are usually seen as a key incentive or precondition for a successful DDR program. This gap in perception reflects profound differences about the paramount priority of each field in the context of a peace process: security for the DDR field; accountability for the transitional justice field.

This paper's principal aim is to provide a cogent analytical framework on the range of possible or ideal relationships between DDR programs and amnesties. It assesses whether and how amnesties can serve to maximize the effectiveness of a DDR program, which is generally assumed to be beneficial for disarming and demobilizing ex-combatants and hence beneficial for the durability of peace in the short term, while doing the least harm possible to the transitional justice values of truth, justice, reparation, and reform, which arguably contribute to the effective reintegration of ex-combatants and hence to the durability of peace in the long term.

## Amnesty and DDR: Types, Considerations, and Content

In practice, the term “amnesty” is used rather loosely. It is defined here as: a legal measure, adopted in exceptional circumstances, whose primary function is to remove, conditionally or unconditionally, the prospect and sometimes the consequences of a legal proceeding against designated individuals or classes of persons in respect of designated types of offenses.

---

**Research Project**

---

**Transitional Justice and DDR**

This project examines the relationship between disarmament, demobilization, and reintegration (DDR) programs and transitional justice measures. It explores the manifold ways in which DDR programs may contribute to, or hinder, the achievement of justice-related aims. The project seeks not only to learn how DDR programs to date have connected (or failed to connect) with transitional justice measures but to begin to articulate how future programs ought to link with transitional justice aims. The project is managed by Ana Patel, Deputy Director of the Policymakers and Civil Society Unit at ICTJ.

Just as there are no two identical DDR programs, there are no two identical amnesties. There are at least four broad types of amnesty that could apply in situations in which a DDR program is in place or under consideration:

- Amnesties that are designed as part of a DDR process but that grant a very broad scope of impunity to former combatants, thus tending to facilitate disarmament and demobilization.
- Amnesties that are designed as part of a DDR process but that grant a more narrow scope of impunity to former combatants, thus potentially complicating disarmament and demobilization.
- Amnesties that are not designed as part of a DDR process but that grant a very broad scope of impunity to former combatants, thus tending to facilitate disarmament and demobilization.
- Amnesties that are not designed as part of a DDR process but that grant a more narrow scope of impunity to former combatants, thus potentially complicating disarmament and demobilization.

---

*On the continuum of leniency measures considered necessary to facilitate a DDR process, an amnesty sits at the extreme end.*

The use of amnesties encounters little opposition in the DDR community. After all, combatants will be more likely to disarm and demobilize when they do not risk prosecution. However, on the continuum of leniency measures considered necessary to facilitate a DDR process, an amnesty sits at the extreme end. Amnesties are often viewed as a direct affront to states' remedial obligations, and correspondingly to victims' rights, under international law. By preventing punishment, such amnesties may run the risk of damaging public confidence in the rule of law, which may be crucial at a time when society is seeking to transition out of armed conflict. Amnesties of a broad nature also eliminate the possibility of removing war criminals from society and can have the effect of emboldening the amnestied class to commit further crimes. On occasion, they may even provoke victims into committing violent acts against perpetrators. As a result, amnesties should not be considered except as a last resort.

In some cases, an amnesty may not be necessary for a DDR program to operate. In such situations, it may be possible to consider other options, such as a reduced sentence regime or asylum in a third country.

Those who run DDR programs do not usually negotiate peace deals, but instead "inherit" the particular leniency measures conceded or adopted in the course of peace talks or in legislation. This means that managers of DDR programs will tend to have a limited ability to control the impact of their programs. Thus, a consultation process, and any accompanying public and democratic debate, can help reinforce national and international awareness and legitimacy for any amnesty (and to the extent they are connected, for any simultaneous or subsequent DDR program).

Soliciting the views of the most relevant constituencies for amnesty and DDR processes can help ensure any eventual legislation or policy reflects the realities on the ground

and balances the competing needs, preferences, and expectations of stakeholders. Nonetheless, consultation may reveal ambivalent public attitudes, rather than a clear majority in favor of a particular approach. One must also be aware that those responsible for violence may remain sufficiently powerful to block or threaten those seeking public input or a more accountability-oriented amnesty-DDR mix. Participation by the international community can, therefore, be a crucial element in ensuring that meaningful consultation and public debate occur.

A final procedural threshold when it comes to amnesty's relation to DDR concerns the issue of state motivation. "Good faith" is a core principle of international law. Where it is present, in the sense of a good faith effort to come to terms with a past conflict, the legitimacy of any amnesty or DDR program necessarily increases. Conversely, where it is absent, the prospect of legitimacy necessarily decreases.

An important indicator of state motivation concerns who is "giving" amnesties and who is "receiving" them. At one end of the spectrum are so-called self-amnesties, amnesties given by a state to itself and its allies. At the other end of the spectrum are what might be called "non-self-amnesties," amnesties given by a state to benefit only its opponents, whether political dissidents or armed rebel movements, either as an incentive to leave the field of battle or as a means to correct a past injustice. Between the extremes are so-called reciprocal amnesties, which encompass anything from an amnesty negotiated by state and nonstate actors in which both sides benefit, to an amnesty adopted unilaterally by a state but which benefits both itself and its opponents.

In contexts of armed conflict, amnesties cannot always be avoided. Military victory may be impossible, and other peacemaking tools, such as sanctions, may be ineffective or inappropriate. In addition, prosecutions (or the threat of prosecutions) may push back rather than facilitate the prospects of peace. In short, sometimes amnesty truly is a last option, without which there would be no serious prospect for DDR or the end of conflict. Thus, the question of an amnesty's content is crucially important.

It can be argued that the content of an amnesty should be evaluated on the basis of the degree to which it promises to: (1) fulfill a state's core justice obligations in regard to human rights crimes; and (2) impair each of those obligations as little as possible.

In an effort to design the most effective amnesty programs, four main clusters of questions should be kept in mind: the first cluster focuses on how to limit the scope and legal consequences of the amnesty; the second examines ways to add elements of accountability to the process; the third centers on the need to impose the most demanding conditions possible for an individual to retain the legal and other benefits an amnesty offers; and the fourth concerns relevant aspects of the juridical character of an amnesty.

---

#### About the Author

---

**Mark Freeman** is the Director of External Relations with the International Crisis Group. Previously, he worked in a variety of capacities with the International Center for Transitional Justice in both New York and Brussels.

---

*Just as DDR programs are not an unqualified good, amnesties are not an unqualified bad.*

## Conclusion

It is worth recalling that in contexts of armed conflict the question of amnesty is usually only one issue within a much larger negotiation process that involves other important bargains on peace, justice, and power. One should avoid passing judgment on any amnesty in isolation from these other bargains. Instead, the concessions and gains agreed to in respect of the content of any particular amnesty should be weighed against possible external concessions and gains. Such measures can partially mitigate the negative impact of an amnesty, and hence improve the prospects of success for any parallel DDR program.

Just as DDR programs are not an unqualified good, amnesties are not an unqualified bad. It may be that the success of DDR depends mostly on the economic benefits available to ex-combatants and not on legal benefits in the form of immunity from adverse legal proceedings. Alternatively, it could be that the relative gravity of the crimes committed by an ex-combatant constitutes the key determinant. Only significant additional research will illuminate the reality on the ground. For now, one must simply avoid overstatements and sweeping generalizations about the importance of amnesties in relation to DDR programs.

---

### Research Brief Series

---

ICTJ Research Briefs summarize longer studies prepared as part of research projects conducted by ICTJ's Research Unit. For the full Transitional Justice and DDR studies, visit [www.ictj.org/en/research/projects/ddr/index.html](http://www.ictj.org/en/research/projects/ddr/index.html).

*The International Center for Transitional Justice (ICTJ) wishes to thank the Federal Public Service of Foreign Affairs of the Government of the Kingdom of Belgium, the Ministry of Foreign Affairs of the Republic of Finland, the Ministry of Foreign Affairs of the Kingdom of the Netherlands, and the Ministry for Foreign Affairs of the Kingdom of Sweden, whose financial contributions made this research project possible.*

---

The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. To learn more, visit [www.ictj.org](http://www.ictj.org).

