

Research Brief

Transitional Justice and DDR: The Case of El Salvador

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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 the ICTJ.

In El Salvador there was a complex relationship between peacemaking and democratization, which in turn had a significant impact on the nature, scope, and limitations of disarmament, demobilization, and reintegration (DDR) and transitional justice processes. The DDR and transitional justice initiatives were connected by the timetable for the implementation of the peace accords. Progress in DDR was dependent on the implementation of political reforms, which included important measures related to transitional justice.

Background

In January 1992, the government of El Salvador and the guerrilla groups that had come together in the Farabundo Martí Liberation Front (FMLN) signed peace accords to put an end to twelve years of civil war in which approximately 80,000 people were killed.

The success of the peace depended on turning the guerrilla army into a political party. The peace negotiations, therefore, revolved around two issues: the democratization and demilitarization of society, and the incorporation of the guerrilla forces into the legal political system. Commitments on these issues were made in several agreements entered into from 1990 to 1992, which culminated in the peace accords. The wide range of measures set forth in the peace accords included: eliminating the repressive state apparatus, such as paramilitary groups; reforming and vetting the armed forces; building a new National Civilian Police; approving constitutional and judicial reforms; and reforming the electoral system, which included legalizing the FMLN as a political party.

DDR

The peace accords included a timetable for implementation that linked reintegration of the former FMLN combatants into civilian life with institutional reform measures that the government had undertaken to facilitate that process. This synchronization reflects the political and military strength of the FMLN. The FMLN was not willing to

demobilize and dismantle its military structure without simultaneously realizing all of the measures in the peace accords that were seen as fundamental for the security of its members and for their full incorporation into the political system.

According to the final figures provided by the United Nations Observer Mission in El Salvador in 1994, the total number of demobilized members of the FMLN came to 15,009. There were 4,492 women, accounting for approximately 30 percent of all the forces. Additionally, the reform of the Armed Forces of El Salvador (FAES) led to the demobilization of another 22,600 troops. It is estimated that some 40,000 persons were demobilized from both forces.

Unlike the disarmament and demobilization processes, which were largely successful, the reintegration process faced serious problems in its design and implementation, which stood in the way of compliance with the timetables established in the peace accords, and which afterward had a negative impact on the process of peacemaking and democratization in El Salvador. While the reinsertion and political reintegration of the FMLN was highly successful, the same cannot be said of the political insertion of the former combatants of the FAES, nor of the reintegration of former combatants from both sides into communities. In addition, the reinsertion programs failed to consider the specific needs of women and child combatants.

The DDR process in El Salvador challenges conventional thinking on DDR. For example, the relationship between DDR elements was not linear. Demobilization, disarmament, and political reintegration of the FMLN all took place simultaneously, since the reincorporation of the former combatants into civilian life began even before the formal disarmament. The DDR program in El Salvador was also innovative for its targeted training programs for mid-level commanders, and its decision to keep the command structure of the demobilized forces intact. Indeed, the continuation of the military structures facilitated the transition from war to peace.

Transitional Justice

Transitional justice in El Salvador has had two identifiable stages. In the first stage, which corresponds to the period of DDR, institutional reforms and a truth commission mandated in the peace agreements were implemented. Reforms included the restructuring of the functions and doctrine of the army, and the creation of a new National Civilian Police, the National Public Security Academy, and the Office of the Human Rights Ombudsperson. Additionally, the Legislative Assembly adopted the Law on Reconciliation in January 1992, which granted amnesty for those political offenses stipulated in the regular legislation, with the exception of crimes falling within the purview of the truth commission or crimes committed by persons already convicted in a court of law. This law benefited the ex-combatants of the FMLN, who, as a result, were able to exercise their political rights with no restrictions whatsoever. During this

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first phase, transitional justice benefited from a correlation of forces highly favorable to implementing the peace accords. The link between DDR and political reform made possible (albeit with delays) effective implementation of the main reform measures related to transitional justice, with the notable exception of those related to prosecutions.

The second phase corresponds to the period subsequent to the truth commission report, with the failure to implement the commission's recommendations, including those related to reparations and justice. The mandate of the truth commission was to investigate "serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth." The final report of the commission made a significant contribution toward the goal of acknowledging truth, as it included emblematic studies of human rights violations and identified several of the persons responsible for those acts. The truth commission found that 95 percent of the acts of violence had been committed by the government forces, mainly against civilians. The FMLN was responsible for the remaining 5 percent of acts of violence.

While publication of the report in 1993 had a major political impact nationally and internationally, most of its recommendations, especially those related to reparations, were never carried out, even though they were supposedly binding for the parties of the peace accords. The government not only failed to carry out most of the recommendations in the truth commission report, but five days after its publication, at the urging of President Alfredo Cristiani, the Legislative Assembly passed a general amnesty law covering persons implicated in the violations and abuses committed during the war.

In this second stage, the climate of political forces had become unfavorable for implementing transitional justice. The FMLN had been demobilized, disarmed, and reintegrated into the national political system, which meant it had a diminished influence over the implementation of the peace commitments. Moreover, the recommendations included in the truth commission report did not come out of the direct negotiations between the parties to the peace accords, and therefore did not benefit from the positive political and military correlation at the time of the agreements. Additionally, in this second phase, other Salvadoran political actors, such as the Legislative Assembly, had a more prominent role, and they were less interested in the implementation of justice measures.

Conclusions

One of the lessons to be drawn from the Salvadoran experience is that the process might have benefited from defining a timetable for implementing DDR that was linked to the implementation of transitional justice measures. The positive relationship established between DDR and transitional justice via the peace negotiations in El Salvador made progress possible in the objectives of both processes, at least in the short term. Additionally, the successful implementation of DDR shows that there is a

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positive and desirable link between DDR and transitional justice. Effective implementation of DDR can bring about a climate of stability and political security favorable for implementing transitional justice.

This positive relationship did not work, however, in the arena of prosecutions, since both the government and the FMLN wanted to maximize their impunity. Prosecutions and reparations were never assigned a high priority in the political agenda of the transition from war to peace, since they were not deemed to be determinant for the success of the processes of peacemaking and democratization.

In more general terms, the Salvadoran experience indicates that the relationship between DDR and transitional justice is influenced by the context in which those processes unfold. DDR and transitional justice in El Salvador took place in the context of the complex interrelationship between democratization and peacemaking. The main actors in the peace process considered that DDR and some dimensions of transitional justice were critical for the country's democratization. To this end both the Salvadoran and international actors made every effort necessary for DDR, and aspects of transitional justice, such as the vetting of the FAES and some institutional reforms, to be successful, at least in the short term.

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