

Research Brief

Local Justice and Reintegration Processes as Complements to Transitional Justice and DDR

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Roger Duthie

Justice measures at the local level in postconflict societies have attracted a growing amount of attention in recent years. Local justice is sometimes presented as an alternative to or substitute for other measures of transitional justice, often due to political, cultural, or practical considerations. This chapter argues that local justice addresses the (comparatively neglected) reintegration aspect of disarmament, demobilization, and reintegration (DDR) programs more directly, quickly, and efficiently than other transitional justice measures. It examines how local justice processes can best complement DDR efforts without foreclosing other transitional justice measures.

Local Processes as Justice and Reintegration

Local processes aimed at reintegrating ex-combatants and perpetrators of human rights violations into communities are or have been used in such countries as Rwanda, Timor-Leste, Sierra Leone, Liberia, Peru, Mozambique, and Uganda. The extent to which each process is actually local varies, though. While all involve public participation, the initiatives differ in their “localness” in the extent to which they are actually under local or state control; whether they are essentially top-down or bottom-up initiatives; and their linkages to more formal transitional justice measures.

The measures discussed here all, however, draw on or incorporate established or existing practices. To various extents, they also all contain elements of other transitional justice measures—prosecuting or punishing perpetrators, making reparations to victims, truth-telling, and institutional reform. Finally, local justice processes are often described in terms of reconciliation or their ability to improve social relations within communities.

Even with a minimal definition of reconciliation based on civic trust, it is difficult to show empirically the extent to which any transitional justice measure contributes to reconciliation, and particularly so with such an emerging and under-researched category as local processes. However, it can be concluded that local processes are often developed, in part, with the intention of reconciling individual perpetrators with

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.

victims. To the extent that they do lead to some degree of reconciliation, local justice processes may function as a means of reintegration. In addition, they can serve as an important civic educational tool and demonstrate an ex-combatant's acceptance of local norms, rules, and authority.

Linking Local Justice with DDR Programs and Other Transitional Justice Measures

Local justice processes may be linked in concrete ways with DDR programs and more formal transitional justice measures. Since they generally contain elements of transitional justice, local processes may interact with DDR programs, and particularly the process of reintegration, similarly to other justice measures. Local justice that involves punishment may provide a disincentive for combatants to demobilize and disarm, but might, at the same time, reduce resentment among victims or allow ex-combatants to contribute to the economy through community service. The truth-telling aspects of local justice may provide ex-combatants the opportunity to tell their side of the story and apologize. Reparations might reduce the resentment of victims, but requiring ex-combatants to pay the compensation may provide a disincentive to return.

As with other transitional justice measures, there may also be much potential for operationally linking local justice processes with DDR programs. If DDR programs seek to promote, facilitate, or make connections with local justice processes, however, they must do so critically. The use of local justice processes (and other transitional justice measures) by DDR programs should be determined only when it can be confidently assumed that neither strategy will undermine the other.

Local justice processes in transitional contexts can also vary greatly in the extent to which they are linked to more formal, state-run transitional justice measures. The healing and cleansing ceremonies in postconflict Mozambique, for example, were a national phenomenon, but functioned outside of the government's control and represented a completely bottom-up initiative. Local courts, such as in South Africa, may even be considered to be at odds with formal transitional justice measures if they are seen to be overly punitive and to undermine the rule of law. At the other end of the spectrum, however, both the community reconciliation process in Timor-Leste and the gacaca courts in Rwanda are linked closely with state prosecution efforts. In between the extremes, transitional justice processes may promote, facilitate, and reinforce the functioning of local justice processes.

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Local Justice and Reintegration as Complements to Transitional Justice and DDR

A number of important issues surround local justice and its application in transitional justice and DDR settings. Taken together, these suggest that local justice processes can make an important contribution to justice and reintegration, but that they are also flawed, reinforcing the argument that they should be considered complements rather than alternatives to more formal measures.

First, weak capacity of state institutions and underdevelopment are often among the reasons why local justice is applied in a transitional context. Pre-existing local justice processes are common in some underdeveloped countries to begin with, and in postconflict situations, when a society is struggling to recover from damage to its public institutions and the socioeconomic effects of conflict, these processes may take on even greater importance. Damaged national legal institutions may be unable to deal with massive numbers of perpetrators, and local processes may also have a positive developmental impact through the use of community service as a primary sanction.

Second, local justice processes can contribute to transitional justice because their community-based nature may make them more accessible and legitimate than other measures. They are usually located in communities, often encourage the participation of the local population, and draw on existing local practices, structures, and norms.

Local legitimacy should not be assumed, however, as some practices may have been damaged by many years of conflict, and local leaders may have been implicated in human rights abuses and therefore been discredited in the eyes of the community. More significantly, massive internal displacement can destroy the physical and cultural structures that previously made local practices possible. Further, it should not be assumed that local justice processes operate outside the realm of politics and are necessarily representative of their communities.

Third, one of the most common concerns about local justice processes is that, since they can operate outside formal legal systems and sometimes outside state control, they do not always respect national or international legal or human rights standards. The use of local justice processes may also reinforce gender or other biases embedded in local practices and structures. However, the modification of local processes for transitional justice purposes may provide an opportunity to improve human rights and the situation of women and children.

Fourth, local processes may not be appropriate for dealing with serious human rights violations. Most local justice processes were originally intended to deal with civil conflicts between family and community members, not violent crimes. While the processes are mostly, and sometimes significantly, modified versions of the original

About the Author

Roger Duthie is a Senior Associate in the Research Unit at the International Center for Transitional Justice. He recently managed a research project on transitional justice and development.

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practices, they are still not necessarily appropriate for serious human rights abuses.

At the same time, it can also be argued that local processes may be particularly useful in postconflict situations where, due to the nature of past abuses, establishing legal guilt for most perpetrators is difficult or impossible. Mass violence during conflicts involves not just huge numbers of perpetrators but perpetrators with varying, uncertain, and complicated levels of guilt and complicity. Local processes might be useful not because they are able to make distinctions between such degrees of guilt and resolve such dilemmas, but precisely because they avoid them to some degree or even altogether.

Finally, it is important to note the limitations of local justice processes. For one, while they may extend the reach of transitional justice significantly, it would be a mistake to think that local justice processes can come even close to bringing justice in all cases. Aside from the fact that the voluntary nature of many such processes allows the accused simply not to participate, even the most effective mechanisms of local justice will not bring justice to everyone. The danger of unrealistic expectations should be considered.

At the same time, however, the relative success of local processes might serve to discredit other transitional justice measures by creating a “justice gap.” A situation in which people were sanctioned for confessing to minor crimes while those who confessed to much more serious ones were left untouched would certainly undermine some of the benefits of a transitional justice program as a coherent whole.

Conclusion

Local justice is not a substitute for other forms of justice or reintegration, but rather a complement with potential to contribute to and be more firmly linked with other initiatives that share the goals of justice and reintegration. However, local justice processes, even when complementing other initiatives, are flawed and limited. It is important, ultimately, that designers of transitional justice and DDR initiatives consider how local justice can be incorporated into a broader peacebuilding program, in which reintegration and justice are integral goals.

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