

Research Brief

Beyond “Peace versus Justice”: The Relationship Between DDR and the Prosecution of International Crimes

February 2010

Eric A. Witte

Disarmament, demobilization, and reintegration (DDR) programs and prosecutions of international crimes have become prominent features in the landscape of postconflict states. Over the past twenty years, international organizations have gained experience in dismantling warring factions and promoting their reintegration into society through DDR. Meanwhile, the international community has established tribunals to try the perpetrators of genocide, crimes against humanity, and war crimes. These evolving DDR and prosecution mechanisms represent two important approaches to ending conflicts and consolidating peace. Some tension between them is inherent, given that DDR requires cooperation from ex-combatants, whereas prosecutions may foster resistance from ex-combatants.

In most postconflict states, DDR administrators and prosecutors have worked in isolation from each other. What little interaction does exist is frequently premised on the assumption that prosecutions impede DDR programs. Some commentators and policy-makers are prone to framing the issue as a binary choice between peace and justice. There is no doubt that prosecutions have sometimes complicated DDR (and vice versa), particularly at the earlier stages. Nonetheless, there is compatibility in the larger, long-term goals of DDR and prosecutions: both aim at reestablishing trust among ex-combatants, victims, the broader community, and state authorities. Prosecutions may even promote successful, long-term reintegration of ex-combatants. In fact, there is no evidence that prosecutions have seriously derailed DDR or that DDR has seriously disrupted prosecutions. Thus, DDR administrators and prosecutors should abandon the unhelpful “peace versus justice” cliché and focus instead on ways to mitigate the tensions between DDR and prosecutions to the benefit of both.

Where DDR May Cause Problems for Prosecutions

Generally, where conflict continues, the goal of DDR creates pressure to compromise on accountability for international crimes. In some situations, security environments are so fragile that peace negotiators are willing to grant broad amnesty to combatants or specific immunity to their leaders in order to entice them into participating in DDR.

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.

Although immunity deals for warlords and broader amnesties for ex-combatants have exacerbated tensions between DDR administrators and prosecutors during disarmament and demobilization in fragile security environments, there is good reason to believe that this will change.

Where Prosecutions May Cause Problems for DDR

If a DDR program is sharing (or perceived to be sharing) information with prosecutors, this can heighten fears of prosecution, creating a disincentive for combatants to disarm and demobilize. In practice, however, information on specific combatants going through DDR has generally not been shared with prosecutors, largely because prosecutors never request such information. Only rarely has the non-sharing of information explicitly arisen from DDR administrators’ concerns that such sharing could undermine the success of disarmament and demobilization. Information sharing between DDR administrators and prosecutors has been limited or nonexistent in most cases.

If ex-combatants believe that prosecutions amount to an extension of the conflict by other means, they are likely to be more reluctant to disarm and demobilize, thus increasing tensions between prosecutors and DDR administrators. Perceptions of victors’ justice can also hamper reintegration on the part of ex-combatants and their communities. Where there is good reason to believe that prosecutions were designed to be unfair, disarmament and demobilization can suffer. Less rational fears of victors’ justice can also create tensions. Conversely, it can be a bitter pill for reintegrating ex-combatants from the victorious side of a conflict when they realize that prosecutions are being undertaken on the basis of how factions fought, not why. If ex-combatants view prosecutions as one-sided, overly harsh, or as victors’ justice, then they may be more reluctant to reintegrate.

As of 2009, there was little evidence that prosecutions have actually derailed DDR programs. Indeed, the contexts where DDR has failed and conflict has restarted have generally had no active prosecution efforts on the ground. Indeed, it seems more likely that where heightened attention and political will have resulted in the establishment of an internationally supported prosecution mechanism, that same attention has also led to more robust military and diplomatic measures to end the conflict. There is clearly no mono-causal connection between the prosecution of international crimes and DDR failure or continued conflict.

Congruencies Between DDR and Prosecutions

In fragile security environments, prosecutions can contribute to the success of disarmament and demobilization by physically and/or politically sidelining warlords who are bent on conflict and blocking the negotiation or implementation of peace agreements.

There is clearly no mono-causal connection between the prosecution of international crimes and DDR failure or continued conflict.

Whereas DDR administrators seek to draw a broad group of ex-combatants into their programs, prosecutors are typically only interested in a small subset of ex-combatants: those suspected of having committed war crimes and crimes against humanity, with information on international crimes or command hierarchies implicated in such crimes, and who are potential victim-witnesses themselves. Those with the most to fear from prosecution almost always constitute a small percentage of the combatants or ex-combatants. Conversely, those ex-combatants with the least to fear are more likely to shift their loyalties away from former commanders and toward DDR programs that provide them with concrete benefits.

Prosecuting leaders can help draw a distinction between those who have the greatest responsibility for international crimes and the rank-and-file ex-combatants to be reintegrated into society. The community may also gain some confidence that those who will be reintegrated are not the worst perpetrators. Furthermore, findings of individual guilt may reduce the likelihood that collective guilt will be assigned by the victims and broader society, which, in turn, can aid reintegration.

Benefits from DDR programs can cause resentment among victims and the broader public, especially given the frequent absence of reparations for victims. This, in turn, can make communities more hostile to returning ex-combatants. However, prosecuting perpetrators of international crimes among ex-combatants may serve to offset such resentment by providing a sense of accountability and reducing the impression that perpetrators are being rewarded for the crimes they have committed.

Ameliorating Tensions Between DDR and Prosecutions

DDR programs and prosecution mechanisms can be sequenced in three ways: DDR first, prosecutions first, or simultaneous efforts. Most commonly, prosecutions are an afterthought to peace negotiations and DDR planning, and prosecutors take up their work after the completion or near completion of DDR. However, in rare cases, prosecutions have predated the end of hostilities and the development of a DDR program. DDR and prosecutions can also begin nearly at the same time, though with prosecutions occurring over a longer period of time.

Where prosecutions and DDR have overlapped, the breadth of the prosecution mandate also determines the extent of their intersection. A prosecution focused on warlords can present different challenges for DDR administrators than does a prosecution that extends to greater numbers of low-level perpetrators, who may be going through DDR themselves. Where DDR administrators and prosecutors think in terms of differential treatment for different categories of ex-combatants, they may be less likely to perceive conflict between their approaches during the disarmament and demobilization phases. From a DDR administrator's viewpoint, inducements for the mass of low-level ex-combatants are rightly regarded as a valuable tool in shifting their loyalty away from

About the Author

Eric A. Witte is an independent consultant in the fields of human rights and transitional justice and a Senior Associate at the Democratization Policy Council (DPC). He spent nearly two years as political advisor and special assistant to the chief prosecutor at the Special Court for Sierra Leone, where he focused on efforts to bring the former Liberian president Charles Taylor to justice.

Prosecuting leaders can help draw a distinction between those who have the greatest responsibility for international crimes and the rank-and-file ex-combatants to be reintegrated into society.

wartime commanders. In similar fashion, DDR administrators should more readily acknowledge that in many contexts prosecution mechanisms can serve this same end by demonstrating to the bulk of ex-combatants that wartime commanders have no viable future on the battlefield. Prosecutors and the policy-makers who design their mandates also share responsibility for differentiating among various categories of ex-combatants to reduce conflicts with DDR programs.

Some of the factors that exacerbate tensions between DDR programs and prosecutions of international crimes involve misconceptions among combatants and ex-combatants related to the scope of prosecution and whether DDR information is being shared with prosecutors. Such misconceptions can lead ex-combatants to have exaggerated fears of prosecution, hindering their willingness to participate.

Conclusion

Transitional justice and DDR share the same overall goals. The complex narrower relationship between the prosecution of international crimes and DDR programs generally has been marked by greater tensions during the disarmament and demobilization phases and greater harmony during the reintegration phase. But overall, the two approaches have not been as mutually disruptive as often assumed.

There are no magic formulas, but some lessons of a general nature can be identified. First, there has been little discernible advantage to sequencing DDR and prosecutions to date. Given the limited value of sharing DDR information with prosecutors and the risks to DDR implementation, administrators should generally err on the side of caution and only share broad data with prosecutors, not specific statements or names. Where the use of child combatants characterizes a conflict, prosecutors should pursue charges of forced recruitment of child soldiers as a war crime. Finally, prosecutors can cause problems for DDR if they are perceived to be using DDR information to target suspects or undertaking biased prosecutions.

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.

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.