

The Limits of Punishment

Transitional Justice and Violent Extremism

FRAMEWORK PAPER



Ronald Slye and Mark Freeman

May, 2018

Toward
a Transitional Justice
Framework for
Preventing and
Overcoming Violent
Extremism

About the Authors

RONALD SLYE is a Professor of Law at the Seattle University School of Law. He has provided advice to numerous countries in their efforts to address a legacy of gross violations of human rights, including Tunisia, Colombia, Burundi, South Africa, and Uganda. He is a legal advisor and board member of the Documentation Center of Cambodia, which has addressed the legacy of the atrocities committed by the Khmer Rouge. From 2009 to 2013, Professor Slye served as one of three international commissioners (and the only commissioner not from Africa) on the Kenyan Truth Justice and Reconciliation Commission. He is the author of the forthcoming book, *The Kenyan TJRC: An Outsider's View from the Inside* (Cambridge University Press), and is co-author of a best-selling casebook in the United States, *International Criminal Law and Its Enforcement* (Foundation Press). Professor Slye received his B.A. from Columbia University, his M.Phil in International Relations from the University of Cambridge, and his J.D. from the Yale Law School.

MARK FREEMAN is the founder and Executive Director of the Institute for Integrated Transitions (IFIT). Over the last two decades, he has supported and advised social, political and business leaders in over 25 countries. Before founding IFIT, Mark served as Chief of External Relations at the International Crisis Group and as a lecturer-in-law at KU Leuven. Prior to that, he helped launch and direct the International Center for Transitional Justice, in New York and Brussels. Mark holds a B.A. from McGill University, a J.D. from the University of Ottawa Faculty of Law, and an LL.M from Columbia Law School where

he was a Human Rights Fellow and James Kent Scholar. He is the author of [*Necessary Evils: Amnesties and the Search for Justice*](#) (Cambridge UP, 2010) and [*Truth Commissions and Procedural Fairness*](#) (Cambridge UP, 2006), which received the American Society of International Law's highest award. Currently he is co-authoring a new book, *Negotiating Transitional Justice* (Cambridge UP, forthcoming 2019), which draws on the years he worked as adviser inside the Havana peace talks between the Colombian government and FARC-EP.

ACKNOWLEDGEMENTS

The authors would like to thank Santiago Bautista, Mariana Casij, Phil Clark, Adam Day, Vanda Felbab-Brown, Jon Greenwald, Pierre Hazan, Louise Mallinder, Habib Nassar, Siobhan O'Neil, Mara Revkin, Cale Salih and Elettra Scivo for very helpful comments and suggestions.

COVER IMAGE

Iraq. Fishkhabur, Dohuk Province. 2014. Yazidi families fleeing their homes in Sinjar, where ISIS militants had moved in, arrive at the Fishkhabur border crossing between Iraq's Dohuk Province and Syria. © Moises Saman/Magnum Photos

This material has been supported by UK aid from the UK government; the views expressed are those of the authors.

Executive Summary

Several of today's deadliest conflicts involve violent extremist groups that have transnational reach; combine political, ideological and criminal agendas; and demonstrated capacity to exploit dysfunctional relations within and among local populations, elites, and states. Some of these groups have also succeeded in gaining control over large territories and populations, in which the state's predatory behaviour and/or inability to provide security often leaves locals little choice but to adapt to the presence of these groups through some form of association. Locals become associated with these groups in diverse violent and non-violent support roles, and under varied coercive, survival-driven and/or voluntary conditions.

Building on the empirical evidence of three country case studies – Nigeria (Boko Haram), Iraq (IS/Daesh) and Somalia (al Shabaab) – this paper seeks to assist national policymakers, and their international partners, in developing alternative responses to individuals accused of association with violent extremist groups. In particular, it offers a pragmatic framework for understanding how well-tailored transitional justice can contribute to more viable transitions away from conflict in settings confronted by such groups.

The case studies reveal multiple, often interrelated, factors that explain why a particular individual joined the extremist group. Yet, government officials, policymakers, and local communities often assume extremist group membership or support based merely upon demographic traits or unreliable evidence, and thus adopt policies that often undercut the objective of weakening such groups.

Harsh and overly aggressive prosecution practices, plus lack of clarity surrounding screening criteria, undermine the ability of individuals to seek a sustainable exit from violent extremist groups. Likewise, poorly conceived approaches to amnesty have made their usage less legitimate in the eyes of the population, despite the need for some leniency as part of any comprehensive attempt to prevent and counter violent extremism.

In this regard, lessons from other countries' experiences of facing illegal armed groups and militia suggest that, with appropriate adaptations, transitional justice could help places like Nigeria, Somalia and Iraq construct the framework for a strategy against violent extremist organisations capable of 1) enticing exit, 2) providing accountability, 3) offering redress to affected communities, and 4) addressing the conditions conducive to the creation and support of such organisations.

A transitional justice strategy may utilise, among other things, accountability mechanisms, truth commissions, reparations and healing programmes, and legal and institutional reforms. A successful strategy would incorporate combinations of these elements that build and reinforce one another, in a way that integrates the specific opportunities and constraints of the country. The more piecemeal the approach, the less likely it is to further its intended outcomes.

A first aspect of constructing a viable transitional justice strategy involves analytical customisation. There needs to be an in-depth empirical analysis of the particular organisation, the violations that have been committed, and their impacts on the ground.

The strategic objectives of a transitional justice strategy should normally encompass a mix of the long term (e.g. a society free of violent conflict; a society committed to robust protection of human rights and reconciliation), medium term (e.g. defeating an extremist group; providing increased access to fundamental social services) and short term (e.g. creating disincentives for joining an extremist group; prosecuting a set number of people; disarming others; healing and assisting victims).

The development of short, medium and long-term goals and the strategy to further them should be developed through a process that is as inclusive as politically feasible. As recounted in all three case studies, both the public and those to whom the policies are specifically directed have often been unclear or mistaken about the purpose and details of a particular programme, producing a number of negative effects.

In this regard, it is crucial for policymakers to understand that every transitional justice policy choice (on amnesty, accountability, reparations or anything else) will have a “signalling” function for the target armed group. Depending on how it designs and presents the measure, the state will be conveying a *de facto* intention to weaken or defeat the group militarily, initiate negotiations with elements of the group, promote peace and reconciliation, or other objectives.

The legal framework applicable to violent extremist groups is another key consideration. A careful review of the relevant international resolutions and treaties offers a more nuanced picture that provides room for a broader range of policy options and alternative accountability mechanisms than most assume.

In the area of prosecution, policies in the case studies reflect few of the basic lessons of transitional justice, often taking a dragnet and opaque form. A better approach would involve narrowly focusing prosecutorial resources on high-level members of the group, and on those who are most directly responsible for the worst acts of violence.

Well-crafted amnesties can also be critical in the fight against violent extremism, and can positively advance (rather than contradict) the broader objectives of transitional justice policy. For this to happen, there must be conditions attached to the amnesty, such as disarmament, truth telling, reparations, participation in other justice processes, non-recidivism, and more.

Truth commissions, at their best, provide a platform for individuals to share personal truths concerning past violations with the larger community, while also offering a vehicle for deep analysis of the structural and institutional causes of violent conflict. Although they are normally undertaken at a national level, they can also be implemented at a local or regional level.

Reparations and healing can further accountability by providing tangible redress to victims of past violations, contributing to the reintegration of perpetrators, and advancing the medium and long-term goal of creating peaceful and inclusive societies. Ideally, they should combine individual and communal approaches.

Despite the broader policy choices transitional justice offers, the case studies reflect a strong tendency to treat violent extremist groups as entities to be eradicated, and their affiliates – no matter how loosely associated – shown no mercy. In light of the atrocities associated with such groups (and their own insistence that no reconciliation with the state and political order is possible), the tendency is understandable. Yet, affected states have numerous alternative policy choices available that, when combined with greater understanding of the multiple reasons individuals stay in or leave from violent extremist groups, could improve the chance of achieving multiple policy objectives at once.

In that regard, transitional justice represents a middle path, offering adaptable tools that situate the problem and the solution somewhere between the extremes of accommodation and liquidation, and between prevention and punishment. That fact alone makes it necessary for policymakers directly confronted by violent extremism.

Introduction

Many of today's deadliest conflicts involve violent extremist groups that have transnational reach; combine political, ideological and criminal agendas; and demonstrate capacity to exploit dysfunctional relations within and among local populations, elites and states. Various such groups are self-defined jihadists who articulate extra-state goals that seek to fundamentally alter the political status quo in the region where they operate or beyond. Some have also succeeded in gaining control over large territories and populations. In these areas, the state's predatory behaviour and/or inability to provide security often leaves locals little choice but to adapt to them by some form of association, from traditional combat functions through a wide range of non-violent support roles, including "wives," cooks, drivers or even governance functions, such as dispute resolution and taxation. While some locals may be partly motivated by affinity for the group's ideology, many become associated for more practical reasons, including economic subsistence and self-preservation.

Resolving the complex and violent conflicts that involve such groups and their members, supporters and associates is a daunting challenge that requires carefully organised, targeted interventions. Unfortunately, affected states often rely on ad hoc, heavy-handed responses – frequently with strong public backing – that risk exacerbating violence by feeding into a worldview promoted by these groups, which often characterises authorities as predatory, corrupt and illegitimate. Locals caught between a violent extremist group and an overly militarised state response have few viable options for ending association with the former.

Predictably, the judicial side of state response tends to correspond to the militarised one: primarily seeking punishment through detention, prosecution and forms of retribution akin to collective punishment. In some cases, this is combined with amnesties intended to induce defections and sow internal division. Yet, a much broader spectrum of amnesty and accountability choices is available for states faced with violent extremism. In particular, transitional justice offers more varied options that could help affected states adopt a better balance between the interdependent goals of prevention, punishment, conflict resolution and reconciliation.

This paper builds on the empirical evidence presented in three country case studies on amnesty, accountability and defection processes that form part of the "Limits of Punishment" project:

MARA REVKIN, *After the Islamic State: Accountability and Reconciliation in Iraq*;

VANDA FELBAB-BROWN, *'In Nigeria, We Don't Want Them Back': The Challenges of Amnesties, Defectors Programs, Informal Reconciliation, and Punitive Responses to Boko Haram*; and

The Hard, Hot, Dusty Road to Accountability, Reconciliation and Peace in Somalia: Amnesties, Defectors Programs, Traditional Justice, Informal Reconciliation and Punitive Responses to Al Shabaab.

It is grounded in their findings, as well as broader lessons from decades of international experience with transitional justice, and meant to assist national policymakers and practitioners – as well as their international partners – in developing alternative responses to individuals accused of association with violent extremist groups.

The paper has four sections. First, there is a brief discussion of amnesty and accountability themes that arise across the case studies. Second, there is an analysis of the range of alternative policy choices that transitional justice offers to deal with extreme violence and atrocity. Third, a strategy-formation framework is presented, outlining the key transitional justice considerations relevant for policymakers committed to preventing and countering violent extremism effectively. Finally, the paper raises a number of questions requiring further research and analysis.

Case Studies

This paper draws upon original field research covering three situations involving extremist violence: Nigeria (Boko Haram), Iraq (IS/Daesh) and Somalia (al Shabaab). While each is unique, in both the nature of the challenges and the state responses, there are common themes. In general, all three have seen states apply both over- and under-inclusive levels of punishment and accountability; use a heavy-handed, securitised approach that has exacerbated, or at best shifted, the problem; send mixed signals to members of the extremist group and the local population, further undermining the effectiveness and legitimacy of the state response; and generally fail to address the needs of locals caught in the middle.

These problems are examined through two broad vectors. The first concerns assumptions about the characteristics of members, supporters and associates of violent extremist groups (including combatants and non-combatants who have played non-violent support roles). The second concerns the nature of official responses (based on the groups' perceived characteristics) and the environment in which these are formulated.

A. Assumptions about Members, Supporters and Associates

1. Motivations

To design a coherent, effective transitional justice strategy for violent extremist groups, it is imperative to understand why individuals associate with them. They may be pushed into one because of circumstances or life choices, or pulled in because of what is on offer.

Most independent research suggests that people often become associated with such groups for a combination of structural, social and individual factors, including but not limited to physical and food security, family and peer networks, financial incentives, coercion, status and identity. Understanding how such forces impact individuals and communities and the latter's experiences within or under armed groups is vital to designing a strategy with appropriate incentives – carrots and sticks – to encourage exit and deter future association.

In each case study, multiple, often interrelated factors explain why a particular individual joined. While some are ideologically motivated, government officials, policymakers and many locals overestimate ideology's role in membership creation and retention. For instance, surveys indicate that close to two thirds join al Shabaab in Somalia because of perceived exclusion and marginalisation, experiences of injustice and corruption, and lack of economic opportunity. While persons who join for non-ideological reasons may develop some ideological affinity once inside the group, de-radicalisation programmes (featured in the Somalia and Nigeria studies) are likely to be less effective for them, even if they provide external benefits, such as persuading a community it is safe to accept back someone formerly associated with a group.

2. Over- and under-inclusive assessments

In each case study, government officials, policymakers and local communities often assume extremist group membership or support based upon inaccurate indicators. These assumptions are used to develop official and unofficial responses to individuals that frequently undercut efforts to entice defections, increase reintegration and bolster accountability.

At one level, the assumptions tend to be over-inclusive, capturing a broad swathe of persons who may have dramatically different relationships with the extremist group. This risks generating new grievances that may make those wrongly accused more open to recruitment or retention by the group. But the assessments also appear under-inclusive. By using scarce resources to

detain and prosecute many who are innocent of serious crimes, the authorities are diverted from dealing with those who are actual sympathisers or members. These over- and under-inclusive determinations centre on three types of characteristics that are often used as proxies to determine membership: family; ethnicity or clan; and territory. Each is examined below.

First, the case studies illustrate a local tendency to assume that relatives of members are also members or supporters. This disproportionately impacts women and children, who often have no affiliation with the organisation or whose association is weak and circumstantial. The consequences of misidentification can be dire, including banishment, seizure of property and detention imposed disproportionately on women and children who have participated in de-radicalisation programmes.

In Nigeria, the spread of unverified stories of women associated with Boko Haram being killed after they return to their communities contributes to an atmosphere of fear and further reluctance for contact or reception of any kind. This contributes to some conditions, such as socio-economic and political marginalisation, that may push people into such an organisation in the first place. In Somalia, women and children are often viewed as spies. At best, they are not welcomed by the local community and government; at worst, they are subject to expulsion or other punishments. In Iraq, relatives of Islamic State (IS) members – some of whom were personally victimised by the group – have become targets for retaliation and extra-judicial violence by security forces, para-state militias and civilians. Relatives have also been forcibly displaced and dubbed “IS families” – a term that stigmatises them further. The influence of tradition-based justice mechanisms that rely on a principle of collective accountability (e.g., tribal law in Iraq and *xeer* in Somalia) puts relatives at yet further risk.

Some women and children are active members of violent extremist organisations. Boko Haram and IS have used them as suicide bombers; Al Shabaab uses women in its intelligence apparatus. Yet, many women and children (exact percentages are difficult to determine) are coerced into such activities or exist in the groups’ orbit, but not ranks. Moreover, children who commit violence for such groups have, by definition, attributes of both victim and perpetrator. Across the case studies, though, official responses reflect the use of few, if any, analytic tools that take such distinctions into account.

The studies illustrate that government officials and local populations also sometimes use demographic traits, such as gender, age, ethnicity or clan, as indicative of affiliation. In Iraq, for example, there is a tendency to assume that Sunnis who lived under IS rule rather than flee when it captured their town are sympathisers or supporters, and that all males of a certain age are active members. Those who indicate sympathy to any aspect of IS are often assumed to be active supporters: an interviewed Iraqi judge called IS ideology so poisonous as to justify punishment of mere belief, regardless of whether the person had committed criminal violence. In Nigeria, those captured by extremist groups are often presumed to be supporters, or at least “infected” or “brainwashed”. These descriptors contribute to the perception that they are beyond rehabilitation, thus bolstering public support for a heavy-handed response and creating further barriers to reintegration. Worse, such assumptions exacerbate existing ethnic cleavages or clan conflicts; divert scarce resources from more directed and effective screening and assessment; and result in overly broad penalisation of local populations, which in turn contributes to marginalisation and hostility to the state that increase the appeal of such groups.

In short, attributing membership or criminal activity based on family, ethnicity, clan, age or territory leads to collective guilt and punishment policies. In all three studies, this is evident in formal procedures of screening, detention and criminal accountability; tradition-based justice mechanisms; and informal processes of stigmatisation, banishment and confiscation. A mix of state, para-state and non-state actors perpetrate such forms of punishment and reveal persistent reliance on denunciations for identifying suspects. Especially in divided societies lacking basic

security, this opens the door for individuals to settle scores, often based on unrelated personal, family, clan, ethnic or territorial conflicts. More distrust between and within local populations and the government is the inevitable consequence.

B. Government Policies and Responses

1. Coordination and coherence gaps

Each case study illustrates the challenges presented by lack of policy coherence and coordination in government response. A mix of actions frequently undercut each other, sending contradictory signals that lessen trust and confidence.

Some of this is understandable, as policy coherence is intrinsically difficult to achieve with multiple armed groups and criminal groups operating in the same theatre. In all three cases, however, the perception and reality of large disparities in the carrots and sticks provided to groups creates confusion about government intentions, increases mistrust between locals and the government, and generates perverse incentives for movement between the groups.

The Nigerian paramilitary Civilian Joint Task Force (CJTF) arose in response to Boko Haram and has been used by the government to combat it, including as a source of identification, denunciation and screening. Dissatisfied with government support, members of the CJTF, which itself has committed serious abuses, have threatened to become insurgents unless incorporated into state security structures or given seed money for businesses. In Iraq, the Popular Mobilisation Forces – an umbrella of largely Shia militias, some strongly backed by Iran – were formed in 2014 to combat IS. They have been instrumental in the fight against it and so are viewed as heroes by much of the public. However, they have also been implicated in serious human rights abuses and challenge the state's claim to a monopoly on use of force. Thus, in both countries, organisations created to combat violent extremism risk exacerbating the conditions that led to that threat, by further alienating the local population with their own violence and demanding additional benefits from (or even challenging the legitimacy of) the state.

Other armed groups have emerged as breakaway factions of violent extremist groups: for example, Ansaru and the Islamic State in Nigeria, both of which grew out of Boko Haram factions. Such groups complicate state efforts to induce defections or promote negotiations, not least because memberships may be fluid. In that regard, excessively punitive approaches that leave no clear exit ramp could have the perverse effect of driving would-be defectors into the arms of another armed group. Incoherent policies may thus have the unintended consequence of shifting the problem from one group to another, leading members and supporters to move to equally violent ones that have not yet elicited a punitive response.

Even state responses to armed groups that have arisen independently of the extremist group and due to different factors have implications for developing a coherent counter-extremism approach. For example, Nigeria used amnesty and generous reintegration packages to deal with insurgents in the Niger Delta. However, many Nigerians view this policy negatively, as a pay-off that rewarded criminality without ending the violence. This colours their view of amnesty or other leniency measures for Boko Haram as a golden parachute for terrorists. The government has not addressed such concerns coherently, leading to distrust of leniency that sends a counterproductive signal to extremist group members who might want to defect or be reintegrated into society but see no clear path.

Related to lack of coherence is lack of coordination, which is evident between national and sub-national governments in Somalia, Nigeria and Iraq, as well as between informal authorities, such as militia groups in Nigeria and Somalia and formal defectors' programs. In particular, there are unclear relationships between national, local, and tribal laws and legal authorities. In Iraq,

for example, there is lack of coordination between the central government and the Kurdistan Regional Government (KRG), even on basic matters such as lists of wanted persons. This has resulted in the re-detention and duplicative punishment of IS suspects who move between the two jurisdictions. Formal laws and processes the central government and KRG promote and use often exist in tension with one another and local tribal law. The latter, in contrast to formal state law, tends to focus on collective guilt and repairing relationships between families, clans or tribes. Thus, while tribes have helped fill governance vacuums left by the state, increased tribal governance produces its own challenges for coordination, leading to unclear signals on policy and wasted resources.

Ultimately, the above examples are symptomatic of a deeper problem: lack of unified assessment and policymaking capacity. This in turn encourages erratic decisions and contributes to the legal uncertainty and lack of public trust noted in all three case studies.

2. Screening and prosecutions

Problematic membership assessments, evident across the case studies, contribute to equally problematic screening and prosecutorial procedures. Lack of clarity as to how individuals will be processed, combined with extremely harsh penalties in a generally militarised environment, create double disincentives: members are unclear how to exit extremist groups and what cooperation with the government might entail. If a key objective of state-run justice approaches is to encourage sustainable exit from such groups, screening and prosecution practices must not undermine it.

In Somalia, individuals are screened into three categories: low risk, high risk and high value. Only the first are eligible for disarmament, demobilisation and reintegration (DDR) programmes, which offer a de facto alternative to criminal justice. By contrast, high-risk individuals can expect harsh detention and punishment, often including execution; while high-value ones not only seem to enjoy near impunity, but also are often allowed to retain their militia forces. Nigeria is slightly different, as it uses but two categories: low and high risk. Only the former, with formal limiting qualifications, are eligible for defectors' programs that offer a similar de facto alternative to criminal justice. As for Iraq, it does not appear to differentiate on a risk basis, screening instead for past links to the group. Anyone determined to have ties or merely suspected of them is likely to face detention, prosecution and imprisonment, or forcible displacement.

Of the three cases, Somalia appears to consider more nuanced categories, using a multi-factor analysis based upon a questionnaire to assess risk, with an individual scored between zero and two for each question. At the same time, its experience shows the difficulty in consistently and transparently assessing who belongs in which category. In addition to legitimate concerns about the predictive value of some factors used to assess future risk (one question concerns how strongly the individual supports or rejects democracy), results are calculated such that positive and negative answers may point in the same direction. Thus, a person who indicates a strong preference for democracy is given a score of plus two, the same as a person previously arrested for violent activity; rather than one factor lessening the other's impact, they combine to give a score of four. Even by its own terms, therefore, the assessment instrument produces incoherent results. In addition, the tolerance of minimal accountability for high-value defectors, some of whom have been implicated in serious human rights violations, has created widespread consternation. Finally, lack of screening precision has led to over- and under-inclusive problems and resulted in highly violent and ideological individuals being detained with those less ideologically supportive of, or even indifferent to, the organisation. Shameful detention conditions have provided further opportunity for recruitment by groups.

In regard to criminal prosecution, each of the three states has been active. In Somalia, those identified as high risk are tried by military courts, with a high chance of a death sentence. In Nigeria, high-risk suspects languish in detention for years. Iraq's counter-terrorism law provides a minimum life-in-prison sentence and allows the death penalty for anyone who has committed, incited, planned, financed or assisted in an act of terror. The government reported 194 terrorism-related executions in 2016.

Yet, beyond the nature of the court sentences lie deeper defects in all three government responses, including over-broad, sometimes outdated laws and little forensic evidence, resulting in many convictions based on confessions or denunciations that are often the result of torture. Combined with screening criteria that are imprecise, largely unknown to the public and often arbitrarily applied, the problems in all three state responses reveal themselves as cumulative and self-reinforcing.

3. Amnesty

Carefully crafted, principled amnesties can aid conflict prevention and resolution, as in Argentina, South Africa, Macedonia and Uganda, to cite a few examples. If used too frequently or inconsistently, however, they can undercut public confidence and become less effective at balancing carrots and sticks to induce negotiated exits from armed groups and subsequent demobilisation.

In Nigeria and Somalia, amnesty is both misused and little understood as a constructive tool to address extremist organisations. For instance, amnesties declared in Somalia are lacking in clear criteria and procedural transparency, and provide little if any accountability. High-value members of al Shabaab have received economic and other benefits, and implicit promises that they will not be prosecuted, with little effort by the government to articulate the wisdom of such an approach to the public. Meanwhile, in Iraq, backlash against an amnesty law that was perceived as too lenient on terrorists and other violent criminals, such as kidnappers, resulted in major amendments that have rendered all IS members ineligible for amnesty, even those who became associated with the group against their will and did not commit any serious crimes while affiliated.

4. Reintegration

Reintegration of committed ideologues and high-level members of extremist groups is always challenging. For them, prosecution and detention may be a more natural, if not always realistic, response. By contrast, reintegration is more achievable with low-level members and those linked to but not supportive of the group, especially if combined with alternatives to prosecution and detention. In Somalia, this has saved perhaps 2,000 low-risk al Shabaab defectors from the military justice system, where they likely would have been sentenced to death. Yet, such an approach is often thwarted by weak communication of exit ramps and reintegration programming, deep local fears and prejudices and, frequently, poor treatment of those who pass through the system. These variables negatively affect women and children who, as noted, are often assumed to be associated with extremist organisations because of familial, tribal or clan ties, or simply because they were unlucky enough to have been captured by the organisation. State policy also appears disproportionately to penalise young men who, due to their age, are presumed to have been violent actors. In short, failure to distinguish between the committed core and non-affiliates (or affiliates amenable to exit) facilitates recruitment by extremist groups and decreases departures from them.

Alternative Approaches: Lessons from Transitional Justice

Many extremist groups present difficult conflict resolution challenges, including barriers to negotiations, diverse rank-and-file motivations, fragmented leadership, territorial control and transnational reach. Nevertheless, dozens of states, from Peru to Bosnia, Sierra Leone and Indonesia, have grappled with non-state armed groups posing comparable challenges and sharing numerous characteristics. These and other states have devised creative, customised approaches to transitional justice that have helped induce defections, incentivise negotiations and promote reconciliation. Building on lessons from relevant experiences – as well as from prior experiences within Iraq, Nigeria and Somalia themselves – can help inspire more effective strategies against groups like IS, Boko Haram and al Shabaab.

Quality transitional justice begins with deep analysis of the moral, legal, political, economic and psychological causes and effects of a country's past and present violence. So informed, governments can then address legacies of mass violence and historical injustice more holistically, so as to contribute to sustainable transition from violent conflict. A key aspect is to identify what motivations and factors influence those who were involved in conflict or perpetrated violence, what solutions will help address their needs as well as those of victims, and what structural reforms can lessen risk of any deepening of or return to violence. With these objectives in mind, a transitional justice strategy may utilise, inter alia, accountability mechanisms, truth commissions, reparations and healing programmes, and legal and institutional reforms. An effective one incorporates combinations that build and reinforce one another, so as to integrate specific opportunities and constraints. The more piecemeal the approach, the less likely there will be success.

A. Criminal Prosecutions

Criminal prosecutions are the most familiar element of transitional justice practice. A successful prosecution strategy can help address legacies of mass abuse and conflict by removing particularly violent individuals from society (specific deterrence); signalling that such activity has consequences (general deterrence); reinforcing the moral repudiation of such activity (expressive function); and fulfilling retributive expectations, particularly of persons and communities most affected.

They also have limitations. First, while they may provide strong individual accountability for wrongdoing, they are ill-equipped for analysing and exposing broader structural and institutional factors that contributed to violence. Secondly, while they may satisfy the need for retribution, they often contribute little to healing and may exacerbate perceptions of bias and injustice. Thirdly, they require a highly-resourced, stable environment to be credible, and operate on the premise that crime is the exception in society, not the rule. If that premise is reversed, criminal justice systems cannot cope: collecting evidence that warrants prosecution and punishment requires time and resources societies mired in or emerging from conflict lack or prefer to allocate elsewhere. Fourthly, when security is especially bad, identifying offenders and acquiring reliable evidence can be very hard. Evidence is often inaccessible or destroyed, leading to prosecutions that rely heavily on witness testimony and confessions. This encourages torture and/or facilitates false denunciations.

B. Alternative Accountability Mechanisms

Recognising prosecution's limits, policymakers in conflict-affected societies have used creative alternatives, such as conditional amnesties, hybrid plea bargaining schemes and quasi-judicial processes. Each has some individual accountability, may incorporate victim and survivor truth-telling, often involves suspended or reduced sentences and sanctions, and can entice defections and promote disarmament.

South Africa's Truth and Reconciliation Commission included a conditional amnesty process for which individuals had to self-identify and apply, make full disclosure of the acts for which they sought amnesty, and demonstrate that these had a political objective. The process thus contributed to truth telling and was incorporated into a broader victim-centred process. The amnesty carrot was combined with, and depended on, a credible prosecution threat. Police viewed the threat as credible, as a high-level officer was successfully prosecuted and sentenced to multiple life sentences prior to the opening of the amnesty process. As a result, a number of officers applied for amnesty. In contrast, a military commander and former defence minister's acquittal lessened the threat's credibility to members of the military, very few of whom then applied. Nevertheless, the experience underscores the potential value of crafting alternative accountability mechanisms in a way that incentivises offender participation through the combined stick of credible prosecutions and carrot of conditional amnesty.

In post-genocide Rwanda, a multi-tier system of prosecutions and alternative accountability included international and domestic court trials as well as use of a tradition-based justice system (*gacaca*) for low-level offenders. Those brought before the *gacaca* system could be sentenced either to prison or community service, depending on the severity of the offence. Offenders were divided into three categories: planners and organisers of the genocide, as well as those who committed rape or sexual torture; those who participated in killings and other violent crimes but did not qualify for the first category; and those who committed crimes against property. While the design and implementation of the *gacaca* process evolved and faced fierce criticisms at many stages, it is an example of the adaptation of a local dispute resolution process that incorporated truth telling, reconciliation and reparations and was complemented by a more traditional retributive justice system.

Timor-Leste created a truth commission that oversaw community reconciliation procedures for perpetrators of less serious crimes, not including murder, rape and torture. Victims were allowed to question individual perpetrators at a public hearing overseen by local leaders, resulting in a court-approved sentence of "acts of reconciliation" (e.g., community service or donation of money or services to victims) required for reacceptance by the local community. This provided some form of individual accountability while also contributing to truth telling, healing and reconciliation.

More recently, Colombia created peace and justice tribunals that drew, in part, upon South African and Timorese methods. Paramilitary members who disarmed, offered full disclosure of conflict-related crimes, made reparations to victims and guaranteed non-repetition, were eligible for reduced sentences. A variation adopted in the negotiations with the FARC-EP rebels resulted in an accountability system encompassing conditional amnesty, a special tribunal able to reduce sentences depending on the timing and quality of confessions, a missing persons office and a truth commission.

While all these examples have flaws, they offer the possibility to make meaningful contributions to accountability, truth telling, healing and incremental conflict resolution. Above all, they show that accountability is not necessarily synonymous with criminal justice, but can be integrated creatively with other policy priorities, even in conditions of insecurity and fragility.

C. Truth Commissions

Whether or not prosecution is possible, truth-telling mechanisms such as truth commissions will often be advocated, as they are currently in Nigeria and Somalia. The standard function of truth commissions is to investigate causes, patterns and effects of past human rights violations and atrocities over a limited period and produce a final report with findings of fact and recommendations for redress and reform. Because they provide a space for victims, survivors and others to testify about their experience – always in private, occasionally also in public – they can contribute to a national dialogue (or even a national narrative) about the recent past. As such, they can offer important benefits within a holistic strategy to address past violations. First, their creation implicitly serves as official acknowledgment of a legacy of abuse in need of historical clarification. Secondly, they offer a chance for deeper analysis of the structural and institutional causes of and contributors to past violations. Thirdly, their findings and recommendations can contribute to subsequent prosecutions, reparations and institutional reforms. Finally, while prosecutions and other accountability measures are more perpetrator-focused, truth commissions are victim-centred, offering opportunity to highlight the grey areas between categories such as victims, perpetrators, witnesses, bystanders and heroes.

D. Reparations and Healing

Reparations and healing programmes often get less priority than other parts of transitional justice, yet can be crucial for redressing past harms and legitimising alternative accountability measures that include leniency. Compensation or services can be provided directly to individual victims, or communally and/or regionally oriented as in Morocco and Peru, among others. Community-oriented reparations may be particularly relevant for societies confronting extremist groups. They can include creating community structures and support for regions most adversely affected by past violations, through funding for educational institutions, health care facilities and other measures directly related to harms suffered, such as meeting the burden of reintegrating former combatants.

E. Institutional Reforms

Trials, modified plea bargaining schemes, conditional amnesties, truth commissions and reparations can all contribute in the midst or aftermath of atrocity, yet be insufficient without institutional reforms to create an environment that anticipates and prevents the conditions that enabled atrocities. Such reforms typically focus on the security services, including police, military, intelligence and related institutions. They can also aim more broadly at the justice system, including the judiciary and new constitutional or legislative protections for human rights; governance structures, which might include devolving political power to marginalised regions or redressing inequities in land distribution; reforms geared to teaching more inclusive forms of citizenship and accurate history; and so on.

Of course, measuring the effectiveness of transitional justice initiatives in furthering long-term goals such as conflict prevention or reconciliation faces the same challenges as measuring any multi-dimensional public good. Too many other independent factors contribute to the ostensible outcome. Yet, we can point to at least two direct benefits of any good transitional justice strategy. First, it expands policy attention beyond the immediate effects of violence by surfacing systemic, environmental and institutional issues that enable such violence. Secondly, it produces outputs valuable in their own terms. Victims are acknowledged and get to tell their stories before a truth commission. Fair trials and convictions express public condemnation.

Alternative accountability mechanisms uncover important information and provide a modicum of justice for victims and communities, especially if accompanied by reparations and healing programmes. All in turn can make durable peace more viable.

Transitional Justice and Violent Extremism: Key Considerations

Lessons from other countries' experiences with illegal armed groups and militias suggest that, with appropriate adaptations, transitional justice could help Nigeria, Somalia and Iraq construct the framework for a strategy against extremist organisations capable of 1) enticing exit, 2) providing accountability, 3) offering support to victims, and 4) addressing conditions conducive to creation and support of such groups. Policy constraints may be large and the error margin small, but the opportunities are clear. Four overarching considerations bear attention: customisation; consultation and testing; the applicable legal framework; and strategy formation.

A. Customisation

A first step in constructing a viable transitional justice strategy involves in-depth empirical analysis of the particular armed group. Key questions include: Is the group hierarchical or decentralised? If decentralised, does it have a coherent vision and purpose, or is its self-identity diverse? If the latter, is the diversity determined by geography, the local leader's personality, tribal or clan dynamics or something else? Have members grown up inside the group (like those who have spent most of their life under al Shabaab, so know nothing different) or mostly recent recruits? What is the breakdown between those who joined for ideological reasons and those who did not? Do the latter develop a strong ideological affinity with the group or continue to be motivated by other concerns? The answers will inform assessment, sorting and screening processes that form part of any transitional justice response.

It is also important to develop a sophisticated understanding of the violations committed by the group and the impact on victims. Does it prey upon a particular segment of the population? Are women and children subject to different treatment than men? What does the public view as its worst violations? These answers will inform discussion of accountability, including the choice between prosecutions and alternative mechanisms, as well as of reparations and healing.

Understanding relations between an extremist organisation and its local operating environment is likewise critical. Important questions might include: How much territory does it control, and how strong is that control? What practices and dynamics define its relationship with the population? A group that exploits locals to fulfil governance functions, such as security and services, requires a different transitional justice approach than one that is only a violent predator. In Iraq, many individuals faced pressure to work for IS's civilian bureaucracy, which taxed, governed and delivered services; al Shabaab derives its entrenchment capacity in Somalia from providing governance in multiple forms; both impose harsh punishments for non-compliance with policies, such as edicts to pay zakat. Such details must be understood in order to formulate a customised transitional justice response that does not hold individuals accountable for support activities likely committed under duress or for survival.

At the same time, any assessments about the group must be based on reliable, regularly updated sources, since extremist organisations, like the surrounding national and regional environments, are fluid and evolving. Boko Haram's origins are in a social justice movement that arose out of poor socio-economic conditions, pervasive corruption and exclusionary politics in northern Nigeria, but a number of groups have spun off since. Similar fluidity is observable with IS, al Shabaab and their respective predecessors, al Qaeda in Iraq and the Islamic Courts Union.

Another aspect of a customised transitional justice strategy relates to suppleness of the diagnosis. Responses seen in the case studies often show a reductionist view of those associated with groups like IS, al Shabaab and Boko Haram. There is a tendency to see individuals as simply either victims or perpetrators, thus deliberately or inadvertently missing the blurred lines between them and ignoring such categories as bystander, witness and sympathiser. As such, opportunities are missed for transitional justice techniques that could encourage exit and reintegration, rather than punishing persons for acts outside their control and so increasing alienation and undercutting peacebuilding.

Transitional justice practice, as well as international law, teach how important distinctions (e.g., combatant versus non-combatant roles; subordinate versus superior responsibility; isolated versus representative cases) can help construct a strategic architecture that employs carrots and sticks effectively. For example, a sharper distinction can be made with extremist groups between those who exerted more agency over their association and actively support the organisation, and those whose involvement was coerced. High-risk members are more likely to be found among the former, low-risk or no-risk among the latter. In addition, among those who voluntarily joined, it is important to identify their motivating factors. Decision-makers have overemphasised ideology and thus missed other factors, particularly 1) grievances against systematic injustice, corruption, abusive governance and persecution by rival groups, and 2) motivations that can span economic interest, political ambition, tribal or clan identity or rivalry and family ties. A more systemic distinction could also be made between: high- and low-level members, with the former facing more retributive forms of accountability unless there is a countervailing interest in negotiation; those who played violent roles and those who exercised non-violent support functions; and those who committed serious violent crimes and those who did not.

Of course, low state capacity, especially where extremist groups operate and have controlled territory, will always make it problematic to formulate these distinctions reliably. This is particularly true for groups whose tight command and control structures make it more difficult to develop reliable intelligence on the nature and motivations of their members and supporters. Yet, however hard such assessments are, an effective transitional justice approach depends on them.

B. Consultation and Testing

Another front-end consideration of transitional justice strategy concerns consultation and testing. An important part of the process of developing strategic goals and the means to implement them is extensive outreach to experts and the public (itself a legitimising act for transitional justice policy). Small pilot projects to test promising but unproven ideas before going to scale are also helpful, especially on questions as transcendental as amnesty and accountability in the midst of conflict.

The authors of each case study recommend an inclusive consultation process that explores how to balance reconciliation with justice through a combination of punitive and non-punitive mechanisms, including reparations programmes. To do this well in a conflict-affected state, consultations at local, regional and national levels must be carefully sequenced to build on each other. While the security environment is a major challenge, civil society leaders and members of the business sector may provide access to areas and populations that otherwise would be difficult to reach.

Such consultations may result in multiple important outputs. First, they may uncover more accurate information about what public support is feasible. Indeed, each study offers evidence that the population may be more open to less punitive approaches than the government assumes. Secondly, a serious consultation process can increase public ownership and understanding of the strategic options and challenges; an important result, since each study reveals that lack of transparency and understanding of why choices were made have contributed to lack of trust in government and thus lack of support for its approaches. Finally, consultations may give diverse sectors of society, some perhaps in conflict, space to begin a dialogue to create positive local developments that can support a national process.

C. Applicable Legal Framework

Another key front-end consideration is that while transitional justice, by design and necessity, offers considerable flexibility on specific interventions states can devise, these are subject to overarching principles in international law applicable to armed conflict, human rights and criminal law, as well as binding UN Security Council resolutions. In the case of groups deemed terrorist, the norms appear especially harsh and punitive, based on a literal reading of the relevant treaties. Yet, a careful review of the treaties (and of UN Security Council resolutions) reveals a more nuanced picture that leaves room for a broader range of policy options and alternative accountability mechanisms than most assume.

For example, the Council's resolutions urge accountability but also encourage rehabilitation and reintegration. Thus, states are required to "bring to justice" those responsible for terrorism by criminalising such acts under domestic law and punishing those responsible in a way that reflects the seriousness of their acts (UNSCR 1373 (2001)), and responsibility for the acts extends to those who finance, plan, prepare or perpetrate them. But in the case of foreign fighters, states are called upon at the same time to rehabilitate and reintegrate returning individuals (UNSCR 2178 (2014)). As for treaty law, international lawyers who insist on absolutist interpretations often overstate the case. There is ample room under international law to construct nuanced, targeted interventions that include alternative accountability mechanisms and programmes aimed as much at rehabilitating and reintegrating ex-associates of extremist groups as punishing them. While accountability receives strong emphasis, it is not limited to prosecution or punishment; and even with prosecutions, there is general recognition that states have broad discretion in choosing whom to prosecute or punish, particularly in situations involving multiple responsible parties. This is so even for individuals considered responsible for terrorism or other atrocity crimes, especially those below the command level. Conditional amnesty or special plea-bargaining schemes incorporating both truth-telling and reparations can also be reconciled with international law.

Concerning the extremist groups examined in the case studies, it is noteworthy that the UN Security Council has passed resolutions with respect to Boko Haram and IS. UNSCR 2349 (2017), focusing on Boko Haram and the Lake Chad Basin crisis, calls on governments and the relevant UN agencies to pursue a laundry list of goals, including prosecution; access to medical and psychosocial services for survivors of abduction and sexual violence; human rights-compliant disarmament and demobilisation; de-radicalisation; and rehabilitation and reintegration. It also singles out the CJTF and "other community-based security groups" for DDR and prosecution. However, it does not provide guidance on how to prioritise these objectives if they come into tension with one another, as is likely with prosecution and reintegration. By contrast, UNSCR 2379 (2017) on IS in Iraq is far less comprehensive, focusing on prosecution of its violations of international criminal law (including war crimes, crimes against humanity and genocide) and calling upon the Secretary-General to establish a team to collect evidence.

It does not refer to other armed actors such as tribes and militias, nor to the need for support to victims and survivors, rehabilitation and reintegration, disarmament, de-radicalisation or demobilisation.

D. Strategy Formation

It is almost axiomatic that there can be no effective transitional justice strategy without a central place where strategy formation of some sort takes place. Unfortunately, such centres are the exception, not the rule, in fragile and conflict-affected societies. The consequence is ad hoc planning and wildly scattered results. Unless this is remedied, in-depth organisational and environmental analysis has nowhere to land, making it impossible to craft strategy that produces transformative opportunities for defection and exit, while striking the appropriate balance of military response, criminal justice, tradition-based reparation, conditional amnesties, rehabilitation, reintegration and more. Only an identifiable strategy formation centre – even one with initially low capacity – can produce the careful consideration required for harmonising carrots and sticks in a way that reinforces the combined goals of weakening extremist organisations, holding individuals accountable, assisting victims and addressing root causes.

Transitional Justice and Violent Extremism: Specific Choices

Beyond transitional justice's front-end considerations lie the policy choices themselves. There are three broad but combinable paths relevant for confronting violent extremist groups. First are mechanisms that focus on perpetrators. These include conditional amnesties, special plea-bargaining schemes and classic prosecutions – any of which may in turn be linked to DDR, truth-telling, documentation work, de-radicalisation, rehabilitation or healing. Second are victim-centred mechanisms, including truth commissions and reparations (understood broadly as compensation, restitution, rehabilitation and similar measures). Third are institutional reforms, which may include, *inter alia*, the security and justice sectors and governance.

A. Creating the Optimal Mix

Identifying the right mix of transitional justice mechanisms is a strategic, not technical exercise. It involves developing clear short-, medium- and long-term objectives that build on each other; undertaking broadly inclusive outreach and communication; ensuring that form of transitional justice follows rather than drives the functions; and tying the mechanisms to access conditions and benefit retention.

1. Developing and linking strategic objectives

The objectives of a quality transitional justice strategy should normally encompass a mix of the long term (a society free of violent conflict and committed to robust protection of human rights and reconciliation), medium term (defeating a violent extremist group and providing increased access to fundamental social services) and short term (creating disincentives for joining such a group, prosecuting some and disarming others and healing and assisting victims). Short-term objectives should be linked to and support the medium- and long-term ones. A short-term transitional justice strategy designed to weaken an extremist organisation that uses heavily punitive means may foster further recruitment and instability and thus undercut the medium-term goal of defeating the group and long-term goal of creating a society free of violent conflict.

Unfortunately, governments too often have a check-the-box approach, rather than make a serious effort to customise a multi-dimensional strategy. The resulting simplified approach fails to take account of the full policy spectrum, as well as lessons from abroad that could help inspire creative solutions. While the result may sometimes be attractive on paper for donors and political supporters (e.g., by use of the “right” words), implementation will likely be ineffective.

2. Outreach and communication

Short-, medium- and long-term goals and the strategy to further them should be developed in as inclusive a process as politically feasible. In all three case studies, however, both the public and those to whom the policies are directed have often been unclear or mistaken about purposes and details.

First, unclear articulation of the purpose and contours of a policy or programme may lead to mixed or negative signals. Without strategic communication, an amnesty designed to encourage DDR may be viewed as a golden handshake for a warlord or simple impunity. A prosecution prioritisation strategy that focuses on those most responsible and offers alternative processes

for low-level members will not entice the latter if, due to poor outreach and communication, they fear they may be arbitrarily screened as high-risk and swept into the harsher system. Secondly, it is advisable to include as many important stakeholders as possible, so as to make it more likely that strategic objectives and means will better address legitimate grievances and needs. Thirdly, widespread acceptance by stakeholders makes explaining and justifying choices easier. Fourthly, inclusive consultation with civil society, the public and security actors – as recommended in each case study – is more likely to lead to greater legitimacy and a tighter fit between a policy designed to further strategic objectives and its implementation.

Nigeria's Policy Framework and National Action Plan for Preventing and Countering Violent Extremism articulate an overarching strategy. However, the authority of these documents is weak, and they do not include an enforcement mechanism or a strategy for harnessing existing institutions to their objectives. There is thus a significant gap between rhetoric and action. While numerous factors are at work (including capacity, sectarian and management issues), more inclusive consultation and outreach could result in a more effective strategy, and increased buy-in and commitment to the policy.

3. Form and function

The “form” of any transitional justice strategy should follow the “function” it is meant to perform. Consider amnesty, a tool deployed in many armed conflicts involving groups carrying out atrocity crimes. If no negotiation is deemed possible or desirable with the particular group or parts of its leadership, amnesty would be designed to degrade the rank-and-file by promoting defections. This is seen over and over, from Somalia, to Syria, Turkey, Algeria, Guatemala and Uganda, when a state believes it can or must win militarily. If the state is interested in facilitating negotiations, however, the amnesty would include conditions designed to facilitate pursuit of a negotiated solution. If talks are already underway, the amnesty would be different again.

Especially when state or state-affiliated forces have retaken territory from an extremist group, as in Iraq, conditional amnesties may also be a tool to prevent mass penalisation of local populations that had become associated with the group under coercive conditions. In such contexts – and particularly when tied to complementary mechanisms that address victims' rights – such a scheme may help address blurred lines between victim and perpetrator and contribute to reconciliation.

Whatever the case, policymakers must understand that their approach to amnesty or other transitional justice measures will have a signalling function vis-à-vis the target group. Depending on how it designs and presents the measure, the state conveys intention to weaken or defeat the group militarily, initiate negotiations with elements of it, promote peace and reconciliation, or more. States must thus think about transitional justice as an ends-led communications tool, not as a box of legal mechanisms.

4. Reinforcement through Conditionalities

Once clear policy and communications goals have been identified, the hardest but most important choices on transitional justice arise. At one level, these concern the right mix of “hardware”, such as whether there will be prosecutions, amnesty, truth telling, reparations or reform. Although this is often treated as a bulk exercise, in which “more” is presumed to be better, in fact more can be worse. The art of transitional justice lies in “how” each element is designed and reinforces each other, rather than the accumulation of institutions and programmes not tailored to the challenge.

In this regard, one of the most important “software” devices is the use of conditions: devices whose purpose is both to restrict access for certain transitional justice benefits and allow for their revocation if their terms are violated. Conditions operate as commitment technologies, “nudging” their targets to favour certain actions by stipulating the terms of access or retention of benefits. They also perform a further vital role, helping lift otherwise disaggregated transitional justice bodies and initiatives into an interdependent system that fits a clear strategic objective and incorporates real-world constraints. Indeed, what stands out from the best transitional justice experiences around the world is how they use conditions to balance imperatives of prevention and punishment, creatively sequence mechanisms, structure interrelationships among the combination of transitional justice bodies and respond to particular contexts and the expressed needs and aspirations of affected communities.

* * *

With the above in mind, what follows is discussion of some of the major choice points in a transitional justice strategy that could be tailored to address violent extremist groups. For each choice, it provides a summary of the purposes that could be furthered; guiding principles to increase the choice’s effectiveness and legitimacy; and a summary of the specific mechanisms available to choose from. How each choice can impact the effectiveness of others is also examined.

B. Criminal Prosecution

1. Purposes

As noted, prosecutions can serve multiple purposes, including specific or general deterrence, moral repudiation and formal punishment. While a prioritisation strategy can achieve some or all these purposes, it should be crafted with the desired functions and outcomes in mind. For instance, if individuals choose to join an extremist group, intensive prosecution may deter some or perhaps many and also give others a strong incentive to take advantage of a defectors’ programme. But if membership is driven by threat or coercion, the same strategy is unlikely to contribute to deterrence and more likely to become another factor that pushes individuals into joining the group.

As a rule, over-prosecution strains resources unnecessarily; is less likely to further rehabilitation and reintegration; and risks signalling to members a stark choice: stay with the organisation or be prosecuted. When it results in detention, especially in poor conditions, it may push low-level affiliates, who were not originally strong supporters, toward violent behaviour and ideology. Under-prosecution likewise has risks, including allowing dangerous individuals to continue to recruit and commit violence; lessening the positive impact of general deterrence on those contemplating joining; and alienating victims and others who suffered greatly and demand some form of retributive punishment.

2. Guiding considerations and options

a) *Whom to prosecute?* The more narrowly prosecutorial resources focus on senior members and those most directly responsible for the worst acts, the more effective and legitimate prosecution strategy will be. While some argue that international law mandates prosecution of a wide range of actors responsible for acts of terror and other international crimes, the requirements are not so fixed. States are required to focus on prosecution of those most responsible for the worst crimes, but prioritising high-level offenders directly involved in violent acts will likely satisfy this requirement. Trying to prosecute too many can weaken useful alternatives under a

thoughtful transitional justice strategy (e.g., conditional amnesties or suspended sentences), waste limited resources that could be better used elsewhere (e.g., victim reparations and healing programmes) and exacerbate rather than lessen cycles of violence. Cumulatively, all this may weaken confidence in government's ability to address the multiple challenges presented by violent extremism.

b) *Due process* is part and parcel of any serious prosecution strategy. International law, and often national constitutions, obligate states to provide it to suspects. The policy rationale is strong: allowing suspects to know, hear and challenge the evidence against them in an open, transparent process makes a correct outcome more likely. In all three studies, however, due process appears as the exception, with trials often based upon membership in the extremist organisation rather than a specific criminal act. In Iraq, arbitrary arrests based on poorly sourced "wanted persons" lists, military involvement in pre-trial investigation, heavy reliance on secret informants' testimony and a weak public defence system threaten basic due process. Somalia's military courts sentence most alleged al Shabaab members to death without adequate transparency or procedural rights. Nigerian judges sometimes indicate that detainees cannot be brought to trial because there is no evidence of wrongdoing or they were tortured.

Providing due process to members of extremist organisations has another essential function: it signals commitment to justice and accuracy that may even reinforce reasons for exit. Studies have shown that group members who come into contact with the state and are treated fairly are more likely to defect, whereas harsh, arbitrary treatment only reinforces the group's narrative of the state as predatory and unjust. Visibly affording due process weakens such rhetoric, while signalling that those who did not directly support or engage in atrocity crimes will be treated differently. Due process also can increase victims' confidence that those actually responsible for wrongdoing are the ones being held to account.

c) *Transparency* is also important in prosecution strategy. It can ensure that stakeholders receive the intended policy signals, and provide a standard by which to evaluate how well the government implements its strategy. In Somalia, for example, opaque screening that subjects high-risk detainees to prosecution and death penalties increases the uncertainty of low-level members who might otherwise be enticed to defect. In effect, it forces them to risk their lives twice: first, to escape al Shabaab, then, by taking the substantial risk of being classified as high risk. It may also result in victims and others having less confidence in the state's ability to devote its limited capacity for prosecutions to the most dangerous members. Greater transparency in the process' rules, norms and mechanics could help avoid these costs.

d) *Consistent treatment* across organisations – treating likes alike – contributes to legitimacy and thus effectiveness of prosecution strategy. However, inconsistent treatment seems to be the rule with regard to violent extremism. In Nigeria, perception of inconsistent approach to serious violations by CJTF and the military, on the one hand, and Boko Haram on the other, creates a legitimacy deficit both for those who supported Boko Haram due to state persecution, abuses and corruption, and for victims of atrocities by state and militia forces. This does not mean that violence committed by CJTF or military forces needs to be treated the same as Boko Haram's. CJTF may have greater claims to legitimacy and public support given their resistance to Boko Haram, and the legal incentives that work for them will likely be different than those for Boko Haram. Nevertheless, it is important that any differential treatment be designed to further overall strategic goals and is communicated, justified and explained to all stakeholders.

Similar issues need to be considered in Iraq with respect to the predominately Shia Popular Mobilisation Forces, a state-affiliated but largely autonomous militia that was instrumental in regaining territory from IS. A failure to hold it accountable for serious abuses, while harshly penalising individuals accused of only tangential association with IS, is likely to drive local

grievances among Sunni Arabs in particular and further feed the narrative of a Shia-dominated government persecuting Sunnis.

e) *Civilian or military courts?* Civilian prosecutions will generally be viewed as more legitimate than those in military courts. Nevertheless, there may be good reasons (e.g., a volatile security environment) to hold trials in the latter on an exceptional basis. Also, military courts may have greater capacity and thus be the only viable option for a period. At the same time, the legitimacy of a military process can be increased the more the proceedings are transparent, and the more due process rights are provided. For military courts to be acceptable as a temporary necessity, however, the state needs to show its commitment to create or enhance civilian courts so they can take over as soon as possible. In Somalia, for instance, the government has accepted a new civilian court with enhanced capacity and security, built with UN and donor aid, thus signalling a desire to move to a more civilian-run judicial process.

f) *What to prosecute?* It is important that offences are clearly articulated and publicised, and prosecutorial priorities are likewise formalised and explained. The case studies, however, illustrate a tendency to criminalise mere membership in the extremist group rather than commission of a specific act. This implicitly lumps together die-hard believers and coerced followers, raising problems of legality and effectiveness by not sending a clear responsibility message that can contribute to general deterrence and by expending precious prosecutorial resources on individuals who could benefit from an alternative accountability process. The better path is to articulate the prosecutable offences and apply the law to those who commit the crimes, regardless of affiliation.

g) *Punishment options.* A wide variety of sanctions can result from successful prosecution. Capital punishment is the most problematic, as it risks the process' international, and sometimes local, legitimacy and irrevocably punishes a person whose prosecution may have been flawed. The threat of such punishment may also lessen defection or negotiation: if execution is probable, why stop fighting?

Incarceration presents its own risks, as confinement conditions can significantly impact the rehabilitation and reintegration possibilities of group members. Jailing hardened believers with low-level members, who often may not be strong believers or may have themselves been victims, risks exposing the latter to violence and an ideology or network that can motivate or facilitate more violence on release. Overly harsh conditions also lessen possibilities for prisoner rehabilitation, making the chances of eventual reoffending more likely. As such, the more governments can distinguish among detainees with respect to place and conditions of confinement, the more legitimate and effective incarceration will be. For example, separate facilities depending on risk and rank could be important. Those who were captured or coerced by the group – disproportionately women and children – should normally be housed separately rather than detained, as they are more victims than culprits. Even treating them as low-level perpetrators risks alienating them and harming efforts to eliminate incentives to join such groups.

Punishment options can also include individual contributions to victim reparations and healing. A person convicted of acts of violence against a community could be required to perform services that benefit that community, or to contribute monetary or in-kind reparations. This is likelier to be successful with those who can be treated in an alternative accountability system, but some high-level individuals who have been prosecuted may also be appropriate to include in a programme. This approach may, however, require legal or institutional reforms. Nigeria's law, for example, appears not to recognise the right of victims to reparations.

h) *Forms of responsibility.* Liability for violent acts can be thought of as existing along a continuum, even though roles are rarely static. At one end are those who directly engage in the acts; at the other are those who provide incidental support, such as drivers or cooks. In between are those who order, direct or incite the acts, or give financial, political or other support.

Determining whom to prosecute based upon forms of responsibility should take into account both the nature of the responsibility and the level of engagement. Thus, one who gives financial support to an extremist group by paying a mandatory tax, as with IS, Boko Haram and al Shabaab, would be less of a candidate for prosecution than a wealthy warlord or businessman who provides substantial proactive support. Similarly, one involved in low-level violence (e.g., killing livestock) would be less suitable for prosecution than one who kills a village's residents. Assessment of whom to prosecute should also be tied to both specific and general deterrence, as well as other strategic goals. It is inefficient to expend limited resources on those who may be effectively dealt with by another process.

B. Amnesty

1. Purposes

By definition and design, amnesties are major exceptions to the ordinary application of law and should be used sparingly, in conjunction with the promise of benefits for peace and stability. Since amnesties can take many forms, it is important for a state to be clear about what is contemplated, as well as requirements and effects. At one extreme are general amnesties, applicable to entire categories of individuals with no other eligibility criteria and no *quid pro quo*. They can be effective for enticing defections and demobilisation but quickly be considered illegitimate by stakeholders if not linked to other important transitional justice and conflict resolution processes. General amnesties that apply to individuals most responsible for violent crimes will not only be viewed as illegitimate, but also risk being illegal under international and domestic law. On the other end of the continuum are conditional amnesties with specific eligibility criteria and that require something in return, like disarmament, truth telling, reparations and/or cooperation with law enforcement. They can be important in furthering investigation, acknowledgement, reparations, peace and accountability and thus advance the broader objectives of a proper transitional justice strategy.

2. Guiding considerations and options

a) *Justification.* Because they offer an extraordinary benefit for an otherwise punishable crime, amnesties should be used rarely and carefully; coupled with clear and transparent criteria and conditions linking them to other important aims; and explained to stakeholders, including victims. Nigeria and Somalia have used them a number of times. The 2009 amnesty Nigeria gave MEND is often viewed as improper, as recipients not only avoided punishment, but also received generous payoffs. In Somalia, presidents have declared amnesties in an ad hoc fashion, often with no eligibility requirements, conditions or clear legal effects, while high-value defectors have received impunity deals widely perceived as red-carpet treatment for terrorists. Both countries thus are challenged in designing an appropriate, widely accepted amnesty. Frequent issuance makes their amnesties look unprincipled and undercuts the notion of an extraordinary measure meant to achieve a strategic objective.

b) *Eligibility.* Determination of eligibility for an amnesty can be viewed as the reverse of the determination of who should be prosecuted. In general, high-level individuals and those most responsible for violent acts are properly subjects of criminal proceedings, rather than a conditional amnesty. The corollary is that low-level individuals and those least responsible for violent

acts are generally appropriate candidates for a conditional amnesty. Distinctions can be based, among other things, on a person's rank in the organisation's hierarchy, notwithstanding the structural fluidity common to extremist groups. Some high-ranking individuals may warrant a form of leniency via a conditional amnesty as key players in an effort to negotiate an end to the conflict. If so used, however, it is important that the individual be subject to some form of accountability (including public truth telling that may include the participation of victims) and concrete acts of reparation or healing. In addition, such a concession should be clearly articulated and justified to relevant stakeholders.

An amnesty may also vary eligibility and conditions on the basis of organisational affiliation. However, such distinctions need to be justified carefully, so as not to foster the perception of uneven or special treatment, which would undercut medium- and long-term conflict resolution goals. In this regard, while the three case studies have at their centre a prominent violent extremist group, each operates in an environment involving other armed groups that commit widespread violence, including state security forces. A conditional amnesty available to members of many or all such groups might be the most sensible option – and has ample precedents in multi-actor conflicts (e.g., Colombia).

While broadening individual eligibility may increase cross-group buy-in, it can have the opposite effect of alienating or hardening the position of members of extremist groups. In Nigeria, Boko Haram has taken a strong stand against benefiting from an amnesty, arguing it has done nothing wrong so requires no legal protection. Rather, they argue, the state should be asking for amnesty for its many crimes. In this regard, making clear that an amnesty is centred on acts committed and willingness to meet conditions rather than organisational affiliation lessens the appeal of anti-state narratives, especially if the same eligibility standard applies to state and non-state actors alike. As such, conditional amnesty must be finely-grained to distinguish among categories of individual responsibility within a particular organisation, so that members not directly involved in violent crimes may benefit, while those who were involved are subject to more punitive processes.

c) *Conditions.* Attaching conditions to eligibility and retention of amnesty enables it to advance DDR, accountability, truth telling and reparations. Conditions can establish a link between the crimes being forgiven and the needs of affected communities. The more they are attached to obtaining or maintaining an amnesty, the more legitimate it will be. Too many, however, may lessen attractiveness to its potential beneficiaries and increase the operational complexity and cost. As such, a balance needs to be struck between the minimum conditions needed to sell the amnesty to important stakeholders, including victims, and the maximum after which few if any intended beneficiaries will participate, or reliable implementation becomes unrealistic. Conditions that further accountability include disclosure obligations; questioning by victims, their representatives or other affected parties; reparations; enhanced penalties for recidivism; and temporary restrictions on future political activity. These both hold a perpetrator to account and provide accountability and redress to victims. Tying amnesty to participation in DDR can induce defections, so weakening the target organisation and lessening the immediate threat it poses.

d) *Consultations.* Because conditional amnesty will be part of any serious transitional justice strategy for dealing with violent extremism, it could be used to spur an inclusive consultation process on transitional justice questions as a whole. The consultations could include inquiries about not only the purpose, terms and eligibility requirements for an amnesty, but also the broader range of strategic choices, including prosecutions, truth commissions, healing and reparations programmes and institutional reforms. Ideally the consultations would elicit the preferences of important stakeholders, which might then lead to more informed choices

about ends and means, form and function. For example, in Somalia, it is reported that many women's NGOs strongly oppose any form of amnesty for al Shabaab members. This hard-line position appears to shift, however, if an amnesty is combined with truth telling and apology. Consultations that lay out possibilities and trade-offs with respect to amnesty and the other choices (as done in Uganda in the late 1990s and early 2000s) are more likely to result in greater buy-in from important stakeholders, so have a higher possibility of success.

e) *Importance of prosecutions.* The carrot of conditional amnesty is only as sweet as the stick of prosecution (or battlefield death) is strong. If the threat is not convincing, the amnesty can entice neither participation by eligible beneficiaries nor continued adherence to its conditions. To be worthwhile, it must be designed in conjunction with a prosecution strategy that complements rather than contradicts it.

C. Truth Commissions

1. Purposes

Truth commissions offer a platform for individuals to share their own truths concerning past violations with the larger community, as well as a vehicle for deep analysis of the structural and institutional causes of those violations. They can be used to facilitate conversation at local, regional or national levels, and contribute to meeting a state's obligation to provide victims a process for access to complex individual and collective truths concerning past violations. The NGO Soyden has undertaken analogous community-level processes that may provide a model for a larger effort in Somalia. In Nigeria, lessons may be gleaned from a previous truth commission that investigated and reported on violations attributable to military governments between 1966 and 1999.

As noted elsewhere, communication of goals, policies and strategic choices is key to addressing the atrocities of extremist organisations. Truth commissions can make important contributions in this regard, especially when they have a strong public outreach mandate. For each case study country, a local variant on the classic forms of a truth commission that deals with the lack of official and public understanding of the multiple ways in which individuals may be associated with such an organisation could be beneficial. The studies show that victims – those kidnapped, coerced to provide a service or who simply remained in territory occupied by the group – are often conflated with active supporters. This leads to punitive reactions that alienate potential allies who might otherwise be reintegrated and assist in enticing defections or give insight into better ways to combat the group's appeal. A truth commission with a clear dialogue mandate could provide space to highlight the many ways people may come into contact with the group, thus helping overcome the tendency to label them simplistically as victims or perpetrators, members or non-members.

2. Guiding considerations and options

a) *Scale.* Truth commissions nearly always are undertaken at national level, but there is no reason they could not decentralise operations (as many commissions have done) or operate entirely at local or regional level. In general, the more consistent the experience of violations is across a national territory, the more appropriate it may be to have a centralised, national body; the less consistent the experience, the more decentralised the process should be. The issues and experiences in the north of Nigeria, for example, are dramatically different from those in the south. The areas in all three case studies that have been occupied by extremist groups arguably require a different focus from those that have not. Distinct experiences contribute

to the cleavages in each society, making it important that even an emphasis on local processes should feed into a national dialogue.

b) *Links to other processes.* As noted, truth commissions can complement both prosecutions and conditional amnesties. In the former case, information collected can be used, if the mandate allows, to further investigations related to possible prosecution. Such a commission would normally require strong investigative powers and resources. Yet, even without these, the relationship between its truth-seeking (investigative) and truth-telling functions needs to be clearly demarcated, and the trade-offs between them clearly addressed. Thus, testimonial immunity may be given to encourage truth telling, but only if such testimony cannot be used in a prosecution. This may require careful thought about who is eligible to testify. Creative options might include offering a reduced or suspended sentence in return for a credible, detailed confession before a truth commission by an already convicted person.

As South Africa demonstrated, a truth commission can also be linked to a process in which participation is a condition for receiving amnesty. The effectiveness of such a requirement is increased if the participation occurs before amnesty is granted, thus allowing its quality to inform the grant and creating a greater incentive for the beneficiary to be honest and forthcoming.

c) *Breadth of the mandate.* It is important to think about mandate along three dimensions: temporal, material, and personal. The first concerns the period under examination. In choosing a commission's temporal jurisdiction, reasoned justifications are needed for the cut-off dates. If these are perceived to be arbitrary or exclude important actors or events, legitimacy will be reduced. In an extreme case, it may even doom the commission, giving it the aura of an exclusionary or antagonistic political initiative, rather than an independent, nation-fortifying inquiry into past traumas.

Material jurisdiction can be narrowly focused on the worst acts of violence (killing, rape, torture) or expansively oriented to include violations of some or all international human rights law (ranging from civil and political rights to economic, social and cultural rights). The broader a mandate, the thinner engagement will be with each type of violation. Competing interests are at play: narrow substantive focus allows more robust investigations and more intensive engagement with specific perpetrators and victims; wider focus allows more analysis of the systemic and institutional forces that contributed to the conflict, including the root causes and drivers of extremist violence.

The commission's personal jurisdiction can be limited to specific groups (Boko Haram, IS, al Shabaab) or left open to encompass violations committed by members of any side. Narrowing personal jurisdiction too much risks alienating important stakeholders and feeding perception of the commission as one-sided in contexts where different communities have been victimised by different groups. Yet, it may make sense in some localities or regions to emphasise violations attributed to a particular organisation, while not precluding examination of violations committed by others, including state and state-affiliated armed groups. As with the other choices involved in crafting a transitional justice strategy, inclusive consultation about the concerns of important stakeholders will contribute to more informed choices concerning the scope of the mandate and related trade-offs.

D. Reparations and Healing

1. Purposes

Reparations and healing further accountability by providing tangible redress to victims, thus aiding reintegration of perpetrators and advancing the medium- and long-term goals of creating peaceful, inclusive societies. Reparations can be provided to individuals, groups or communities and be monetary, in-kind or symbolic. Whatever their form, the purpose is to contribute to a process by which victims can begin to recover morally, physically and economically from atrocity. Reparations can also give a strong legitimacy boost to alternative justice processes such as conditional amnesties, as well as to prosecutorial strategies focused on a limited number of perpetrators. The more leniency given perpetrators via limited prosecutions and conditional amnesties, the more robust the reparations programme (and any accompanying institutional reforms) should be.

Healing processes can take many forms, including rituals arising out of religious or local cultural practices. Psychosocial services at an individual level can offer important help to victims of particularly violent crimes and the bereaved, but healing can also result from other means. Giving victims a voice in the formation of transitional justice policy, including consultations on its design, can further healing. Optional participation in truth commission proceedings or a conditional amnesty process – being able to hear and question its beneficiaries – can further healing. If managed well, structured interactions between victims and perpetrators can even aid healing of both in some cases. Likewise, victims who achieve some healing might in turn assist in the rehabilitation and recovery of other victims and affected communities.

2. Guiding considerations and options

a) *Tailoring reparations to violations.* The form reparations takes is a function of the type of violations; available resources; and cultural norms. Direct medical and psychosocial services may be appropriate for victims of particularly violent acts; those who lost property or were displaced may require in-kind restitution of land or sufficient alternative resources with which to rebuild lives. In Iraq, IS reportedly expropriated the property of individuals in Iraq who fled areas they captured; at the same time, the military is said to have “gifted” abandoned properties to well-connected persons. This underscores the importance of tailoring reparations to particular violations and making sure they are applied evenly to those committed by all parties to the conflict. Consultation with victims and other relevant stakeholders are key to ensuring that reparations are considered fair and helpful.

b) *Individual and communal reparations.* A programme that combines individual and communal reparations is more likely to be viewed as legitimate and effective. The challenge with the former is establishing clear eligibility criteria and setting levels of compensation realistic both in ability to make a difference to the recipient and in terms of the availability of state resources. Concentrating on only a few victim categories risks resentment, particularly if the recipients are primarily from one community. An inclusive programme that does not discriminate based upon the nature of the perpetrator or perpetrator group is more likely to be acceptable. Consequently, criteria must be carefully considered and communicated so as not to create unreasonable expectations among victims and others.

Communal reparations can be both substantive and symbolic. The former might include providing services to a community that was displaced or had much land or infrastructure destroyed. In Iraq, where there has been expropriation and it is difficult to determine ownership, land might be restored to the community for viable economic activity. However, it would be crucial to ensure that the local governance structure is inclusive and transparent in membership and

decision-making. As for symbolic reparations, these can take the form of institutional apologies; memorials that acknowledge past violations and pay tribute to their victims; renaming of towns and streets; and so forth.

c) *Healing programmes*. Healing policies can be individualised (e.g., specific services to victims) or more community-focused, fostering engagement and dialogue between families or groups that were in conflict. However, the case studies indicate that communities are very reluctant to welcome back those who were even involuntarily associated with a violent extremist group. Overcoming such reluctance must draw on many mechanisms discussed above, under conditions that involve persuasive security guarantees and a quid pro quo. A targeted prosecutions policy focused on the most responsible could be combined with an outreach and communications strategy concerning who is or is not being prosecuted, and who does and does not present a clear risk. Such an approach could contribute to greater understanding of who is properly blamed for violations and with whom co-existence and reintegration is feasible. Similarly, a transparent amnesty process combined with a truth-telling obligation could produce narratives highlighting the different risks presented by members of the extremist organisation, and so lessen resistance to allowing some returns. A carefully crafted community dialogue that begins to break down the binary view – either perpetrator or victim – could further reduce community resistance. All policies together could help lay foundations for the collective healing process any society must eventually face.

Concluding Observations and Areas for Further Research

Transitional justice strategy formation, always complex, is even more so regarding extremist groups with whom a majority of society cannot imagine coexistence. Suggestion of even the most limited accommodation with members of such groups is often rejected categorically. Yet, expecting military and political liquidation looks no more realistic than a policy of universal embrace of such groups. In this regard, transitional justice represents a middle path, offering tools that situate the problem and the solution somewhere between the extremes of acceptance and liquidation, and between accommodation and punishment. That fact alone makes it a necessity for any serious policymaker directly confronted by violent extremism.

Whatever transitional justice strategy a government adopts, it needs continuously to assess and re-evaluate its efficacy. Some of this is accomplished through quantitative analysis (e.g., number of individuals subject to prosecution or DDR processes), with information ideally collected separately for women and children, since existing strategies and local prejudices disadvantage them. Yet, over-reliance on quantitative data can be misleading. Defectors may cycle in and out of the system unless meaningful job opportunities are provided, and unless there is substantial progress in addressing underlying factors and grievances that made the violent extremist organisation an attractive option. The presence of numerous other armed actors, including state-aligned militias, means that a defection or demobilisation process may merely displace the centre of violence, not diminish it. This is a subject that requires further study.

Additional research could also aim at clarifying synergies and tensions between violent extremist groups and other armed groups in a conflict arena, including criminal bands, private militias, insurgents and state security forces. This goes beyond an exercise in classification of the different types of groups; it requires a political economy analysis of the blurred borders and interplay among them. This will help determine what kinds of transitional justice interventions can make a lasting difference, and which instead will have at best a cosmetic impact, or at worst a damaging one.

Likewise, there may be some benefit in further research on the overarching international environment and its impact on extremist groups. Western governments and the UN Security Council have generally supported the decision of affected governments to treat extremist organisations through an aggressively punitive and military lens, which has produced the concerns noted throughout this paper. Western support has also been directed to efforts at enticing negotiated exits and providing rehabilitation and reintegration for ex-combatants, but these have been hampered by donor restrictions precluding “benefit” to extremist organisations (including any current or ex-members, even if low level or involuntarily associated). Yet, experience in conflict resolution and transitional justice from elsewhere shows that national policymakers will often consider a different approach if the international legal architecture, political framework and economic incentives point in that direction. Overlapping concerns – such as foreign fighters and the transnational nature of extremist groups – may offer the best window of opportunity for any possible adjustment of strategy.

Whether and how to harmonise tribal and informal justice systems with more formal systems also requires study. The formers’ emphasis on collective guilt is problematic, but Iraqi tribal justice offers important governance functions like security, dispute resolution and stability, particularly in areas where state institutions are viewed as weak or illegitimate. Somalia’s *xeer* system may provide some healing and reintegration, but undercuts these by its restriction to males and vulnerability to capture by inter-clan conflicts. Nevertheless, such traditional processes, including Soyden’s efforts in Somalia, may provide an entry point for developing a transitional justice strategy with increased local buy-in. Though tribal leaders may resist the

increased codification and lesser control that may come from integration into the national justice system, it would be useful to understand the tensions better and identify common interests that could advance a compromise that furthers a transitional justice strategy's conflict resolution goals.

Arguably the most important research question, however, is whether, when, what and how to negotiate with violent extremist groups. The possibility of negotiation confronts national and international policymakers alike, despite the discomfort, even distaste, the mere suggestion produces. Yet, it is worth noting that negotiation with groups considered both terrorist and fanatical has been accepted more than once: Afghanistan tried comprehensive peace talks with the Taliban, Uganda with the LRA and Sierra Leone with the RUF.

The choice to sit down with incomprehensibly violent groups will always be controversial, and thus any attempt should be driven less by hope and more by realism and a desire for restoration of public security. At the same time, in reckoning with the identities, ideologies and actions of groups such as IS, Boko Haram and al Shabaab, it is undeniably difficult to imagine negotiating comprehensive solutions with them. That is because such solutions operate on the premise that the group in question has the will and capacity to transform into a new and unarmed form with which society can co-exist.

When it comes to IS, Boko Haram or al Shabaab, that is a premise that, today at least, none of the affected governments (and indeed, none of the armed groups themselves) appears to take seriously. At the same time, the existence of amnesty and rehabilitation programmes in Iraq, Somalia and Nigeria implies that a capacity to transform does exist, at least at the individual if not institutional level. Nigeria has tried to negotiate peace with Boko Haram, and Somalia has brokered immunity deals with high-value al Shabaab defectors. Such efforts show recognition that military confrontation alone cannot end these insurgencies, and negotiation has a role.

Meanwhile, many "partial solution" negotiations are possible that do not depend on the group's transformation out of extremist violence. These include negotiation of prisoner exchanges, humanitarian corridors, partial or global ceasefires and much more. All are public goods in the form of violence reduction and prevention, independent of future benefits they may have for confidence building toward eventual comprehensive negotiations. As such, the link between transitional justice goals and negotiation goals requires closer attention and thought. If organised well, transitional justice – conditional amnesties in particular – can play a vital role in incentivising and facilitating negotiations of different types.

As noted, however, the tendency is to treat violent extremist groups as entities to be eradicated, and to show no mercy to affiliates. In light of the atrocities associated with such groups and their insistence that no reconciliation with the state is possible, that is understandable. Yet, every affected state needs strategists capable of broadening the lens of official response beyond the moment's crisis, assessing alternatives (including negotiation scenarios) and formulating new ideas that improve the chance of achieving multiple objectives in the face of great constraints and insecurity.

Unfortunately, none of the case studies shows the existence of centres for such strategy formation. They expose instead a patchwork of nerve centres and interventions, disconnected from effort at national dialogue, structured communication or victim-centred consultation. But lack of a strategy formation centre can be overcome with modest political will. Transitional justice can then begin to have an outsized impact on security and the politics associated with preventing and overcoming violent extremism. It can illuminate not only the broad spectrum of creative, realistic policy options, but also what today's extremist groups have in common with other illegal armed groups – from paramilitaries to local militia, organised criminal bands, violent secessionists or politically-motivated rebels – and where and how they differ.