IFIT

Transitional Justice and Violent Extremism

September 2020

About IFIT

The Institute for Integrated Transitions (IFIT) aims to help fragile and conflict-affected states achieve more sustainable transitions out of war or authoritarianism by serving as an independent expert resource for locally-led efforts to improve political, economic, social and security conditions. IFIT seeks to transform current practice away from fragmented interventions and toward more integrated solutions that strengthen peace, democracy and human rights in countries attempting to break cycles of conflict or repression.

The ideas in this publication are informed by the diverse global experiences of IFIT's Law and Peace Practice Group, whose members have had direct involvement in the negotiation of amnesty and accountability issues in over 20 countries.

About the Project

This publication is part of a project that aims to fill a major gap in policy making: the failure to integrate lessons learnt and best practices from the field of transitional justice in relation to conflict resolution strategies with two kinds of unconventional armed actors: 1) "violent extremist" groups, such as jihadists; and 2) organised crime groups, such as mafia, gang networks and drug cartels. IFIT's work on the former began in 2017 with the UN University Centre for Policy Research (UNU-CPR). The project was concerned with the fact that, to date, what has reigned is an overwhelmingly punitive and dragnet approach which, rather than helping address root causes and break cycles of resentment and violence, instead risks renewing or reinforcing them. This resulted in three jointly-published case studies (ISIS in Iraq, Al-Shabaab in Somalia, and Boko Haram in Nigeria) and an initial policy framework.

Building on this initial work, IFIT launched a second phase of research in 2019 on the same broad topic, drawing on lessons from a wider range of country situations where comparable challenges have been grappled with, in order to provide expanded guidance for policymakers. This involved fieldwork-based reports covering Libya (focused on the LIFG), Uganda (focused on the LRA), and Afghanistan (focused on the Taliban), all of which examine the intersection of negotiation and transitional justice goals. IFIT commissioned additional taxonomy research to plot identifiable similarities and differences of motivation, structure, and context along a wide spectrum of different archetypes of non-state or unconventional armed groups. All of this informed a final framework that aims to help policymakers tailor more effective negotiation and transitional justice strategies to address root causes, break cycles of violence, and strengthen the rule of law in settings affected by violent extremism.

About the Project Team

Hanny Megally Hanny Megally coordinated the project. He is a Senior Fellow at New York University's Center on International Cooperation (CIC), where he focuses on violent extremism, human rights and rule of law. Prior to joining CIC, Megally served as Chief of the Asia,

Pacific, Middle East and North Africa Branch at the UN Office of the High Commissioner for Human Rights in Geneva. Previously, he was Vice-President for Programs at the International Center for Transitional Justice, which he joined in 2003. He has nearly forty years of experience in the field of human rights, transitional justice and conflict resolution, having begun his professional career at the International Secretariat of Amnesty International in 1977. From 1984 to 1994, he headed the Middle East Research Department at Amnesty International in London. He later ran the Ford Foundation's social justice program in the Middle East from the Foundation's Cairo office, and from 1997 to 2003 he served as the Executive Director of the Middle East and North Africa Division of Human Rights Watch. Mr. Megally has overseen country programs and travelled extensively in the MENA and Asia/Pacific regions, including leading human rights investigation missions and conducting high-level discussions with heads of state and governments. He is a widely sought after commentator on human rights and political developments, particularly in the MENA region.

Ronald C. Slye Ron Slye is the author of the Policy Framework of this project. He is a Professor of Law at the Seattle University School of Law. He is an internationally-recognised expert in international criminal law, transitional justice, and international human rights law, and is co-author of a best-selling casebook in the United States, International Criminal Law and Its Enforcement (Foundation Press). He taught in the clinical program at the Yale Law School and served as the Associate Director of the Orville H. Schell, Jr. Center for International Human Rights at Yale Law School.

Professor Slye has provided advice to countries in their efforts to address a legacy of gross violations of human rights, including Tunisia, Colombia, Burundi, 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. He was a legal consultant to the South African Truth and Reconciliation Commission from 1996 to 2000. 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. His experience with the Kenyan truth commission is the subject of his book, The Kenyan TJRC: And Outsider's View from the Inside (Cambridge U Press).

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.

Barney Afako Barney Afako is the author of the Uganda case study. He is a lawyer and a mediation advisor. He has advised mediation and negotiation processes in Uganda, including as principal legal advisor to the Chief Mediator of the Uganda LRA negotiations, where he worked closely with both parties in drafting the Agreements. In 2009, he supported the African Union Panel on Darfur as a legal advisor, and thereafter has worked with the African Union High Level Implementation Panel on Sudan and South Sudan on the negotiations for the secession of South Sudan, and the relations between the two Sudans; and on Horn of Africa issues. As a member of the UN Standby Team of Senior Mediation Advisors, between 2016 and 2019, he supported several processes, including Yemen and South Sudan negotiations, and rendered advice on UN transitional justice strategies, including on the Western Balkans. He is a member of IFIT's Law and Peace and Practice Group and of the United Nations Commission for Human Rights in South Sudan.

Mary Fitzgerald Mary Fitzgerald is one of the authors of the Libya case study. She is a researcher specialising in the Euro-Mediterranean region with a particular focus on Libya. She has reported on and researched Libya since February 2011 and lived there in 2014. She has conducted research on Libya for the International Crisis Group (ICG), the European Council on Foreign Relations (ECFR), the European Institute of the Mediterranean (IEMED) and the European University Institute (EUI) among others. She has consulted for a number of international organisations working in Libya including in the areas of conflict mediation, local governance, civil society and youth empowerment. Her reporting on Libya has appeared in publications including the Economist, Foreign Policy, the New Yorker, the Financial Times, and the Guardian. She is a contributing author to an edited volume on the Libyan revolution and its aftermath published by Hurst/Oxford University Press.

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Dr Orzala Nemat Dr. Orzala Nemat is one of the authors of the Afghanistan case study. She is an expert in political ethnography holding a PhD in Development Studies from the School of Oriental and African Studies (UK). Her research interests include governance, conflict, gender & human rights, illicit economies, borderlands and state-building. She is the director of Afghanistan Research and Evaluation Unit (AREU).

Dr Srinjoy Bose Dr Sinjoy Bose is one of the authors of the Afghanistan case study. He is Senior Lecturer in Politics & International Relations at the University of New South Wales, Sydney. He researches topics in political order and violence, and the political economy of state-building and peacebuilding in "fragile" and deeply divided states and societies.

Mariana Casij Peña Mariana Casij served as adviser for the project. She is Research Associate at IFIT where she advises on the Institute's projects in relation to transitional justice and victims' rights. She works in several projects of the Institute such as Colombia, El Salvador and The Gambia as well as on the Law and Peace Practice Group. Prior to joining IFIT, Mariana worked as a consultant for the Presidential Advisor for Human Rights in

Colombia and as a legal adviser for the Victims Unit during the negotiations between the Colombian Government and the FARC, as well as during the subsequent implementation phase. Mariana also worked for the Victims Unit on national cases of collective reparations and as a consultant for the Transitional Justice Directorate of the Colombian Ministry of Justice. She teaches at the Universidad Javeriana in Bogota, Colombia in areas of memory, transitional justice and human rights. Mariana holds a BA in Law from the Universidad Javeriana and a Masters Degree in Human Rights and Democratisation from the European Inter-University Centre for Human Rights and Democratisation.

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CASE STUDIES

Prologue

Hanny Megally and Mariana Casij Peña

In attempting to address the challenges of "violent extremist" groups such as the Lord's Resistance Army (LRA), the Taliban or the Libyan Islamic Fighting Group (LIFG), most countries understandably employ a retributive tough-on-crime stance, outrightly dismissing engagement that may imply any recognition of the group as a legitimate interlocutor or the use of incentives that could give legal status to its members.* Yet, where the activities of these groups become especially pervasive and violent, purely military and punitive approaches at best have achieved limited deterrence and at worst have exacerbated grievance-based root causes of violence. Negotiation can thus sometimes emerge as a potentially useful or necessary option.

Of course, the very idea of negotiating with such groups is usually considered to be naïve, reckless, or even outrageous. Yet, the choice does not necessarily mean forsaking militaristic or punitive responses, but rather may operate as an additional avenue of action, along with institutional strengthening, legalisation measures and more. The reality is that violent conflicts seldom end with clear-cut winners, and the idea of bargaining frequently arises – with or without controversy – just as it did most recently with the US deal with the Taliban.

In negotiations with "violent extremist" groups, transitional justice may prove to be a relevant device to find common interests and areas for principled compromise. It also could provide both the parties and society at large with a more holistic strategy to address a legacy of grievances and atrocities that is victim-centred and allows for a variety of mechanisms and processes to further accountability, reparations and healing while at the same time facilitating reconciliation and peace.

In 2017, along with the UN University Centre for Policy Research (UNU-CPR), IFIT jointly implemented a project aimed at gathering lessons learned from the field of transitional justice in relation to the struggle to prevent and counter "violent extremist" groups. It encompassed three case studies (ISIS in Iraq, Al-Shabaab in Somalia, and Boko Haram in Nigeria) and an initial policy framework on the issue.

This new IFIT compilation builds on that earlier work. Since 2019, IFIT has widened the scope of the research to add three in-depth case studies and a more complete "choice architecture" for policymakers to help them tailor more effective negotiation and transitional justice strategies to address root causes, break cycles of violence, and strengthen the rule of law.

* "Violent extremism" is used in this project as a term that refers broadly to non-state organisations that instrumentally use acts of extreme violence, often against civilian populations, to pursue primarily religious or associated ideological goals.

The Uganda case study looks into the LRA, including its formation, development and social and political impacts. The paper touches upon the LRA's referral to the ICC and the negotiations in Juba, all in the context of different policies and strategies that the government has adopted to address this violent extremist group over many years. The author addresses in great detail the political, economic and social factors that have made it challenging to deal with the LRA, a group that has both a spiritual and religious identity and that has spread across four different countries.

The Libya case study looks into the LIFG, a Salafi-jihadist organisation formed by Libyan veterans of the war against the Soviets in Afghanistan, and its pre-2011 dialogues with Libyan authorities, in which aspects of transitional justice played a role. The paper looks into the relationships between the LIFG and the Gaddafi regime, the important role of individual actors on both sides, and the context that led to negotiations and prisoner releases. Through interviews with key LIFG actors, the paper sheds light on the years' long revisions process that led the LIFG to publicly declare an end to their armed jihad.

The Afghanistan case study looks into the ongoing conflict between the Taliban and the Afghan government as well as the role that the US has played. The paper delves into important milestones regarding negotiation and transitional justice, including the Bonn Agreement of 2001, the work of the Afghan Independent Human Rights Commission, and the intra-Afghan peace talks getting underway as of this writing. In doing so, the authors explore the possible peacebuilding uses of transitional justice, including the tailored application of amnesties, vetting, reintegration, reconciliation and memorialisation.

All three cases inform the ideas set out in the original policy framework that is included at the outset of the publication and that has a special focus on transitional justice in the scenario of any negotiation with "violent extremist" groups. Among other things, emphasis is placed on the importance of knowing the ideological, operational and other particularities of the groups, without assuming such particularities remain constant. In this regard, it echoes the Ugandan paper, which is emphatic in the importance of continuously assessing the varied characteristics of the group. This includes its discourse, its social appeal, its financing, its vulnerabilities, its cohesion, its structure, and the push and pull factors for its members.

Another element underscored in the framework paper is the importance of identifying entry points and confidence building measures; and in relation to this, the communications strategies between the parties, their constituencies, and with the public. Emphasis is placed on the limits of what can be accomplished through negotiating with such groups in the absence of transparency, adequate participation and buy-in among the wider population. In this regard, mention is made of the example of the process with the LIFG, in which some perceive successful dimensions but others only see shortcomings.

A further area of analysis in the publication concerns how transitional justice has to shift and mould depending on the realities on the ground, which can limit the aims that can realistically be pursued. When it comes to "violent extremist" groups, this implies additional effort in balancing prevention and punishment prerogatives, and in creatively adapting the scope and design of transitional justice tools. For example, the Afghanistan case study

discusses how important it will be to take account of local and traditional justice systems so as to make sure any transitional justice and peace solution with the Taliban has the best chance of acceptance and durable implementation.

Ultimately, what this new IFIT series shows is that negotiation cannot be discounted as an option with "violent extremist" groups, and that transitional justice can make any negotiated deal not only more achievable, but also more legitimate. Carefully designed incentives can actually channel the parties toward negotiation and eventually toward a tailored framework for peace, accountability and reconciliation. This never ceases to engender moral and legal risks, but the use of conditionalities for any legal benefits can function as a commitment mechanism for whatever may be agreed, and allow any accord to be more accepted by society and more sustainable in the international arena.

Whatever choices get made, controversy is unavoidable. But the lessons examined in this publication can help policymakers strategise better and thus reduce some of the polemics that, if not well managed, can destroy peacemaking efforts before they have a chance to breathe – and thus before they have a chance to save lives.

Transitional Justice and Violent Extremism

AN ORIGINAL POLICY FRAMEWORK

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Introduction

"Violent extremist" groups present an existential threat to the countries in which they operate. They deliberately use extreme violence; often have transnational reach and appeal; and frequently provide a strong, at times messianic, ideological framework that appeals to populations alienated from state structures. They impose tremendous adverse impacts on society and prove exceedingly difficult to contain or eradicate.

Too often the state response to violent extremist groups is overly militaristic and punitive. As set forth in an earlier IFIT-UNU report (*The Limits of Punishment: Transitional Justice and Violence Extremism*), traditional military and judicial responses to such groups have proved at best ineffective, and at worst exacerbate the threat posed by such groups. While military force and punishment may be important components in combating the threat posed by violent extremist groups, alone they cannot adequately address their impacts, nor, as experience has demonstrated, eliminate or reduce their threat.

This paper draws on the earlier IFIT report and the three case studies it examined: Boko Haram in Nigeria; Al-Shabaab in Somalia; and ISIL in Iraq. But it also, and primarily, draws on three new IFIT case studies on violent extremism – focusing on the Lord's Resistance Army (LRA) in Uganda; the Taliban in Afghanistan; and the Libya Islamic Fighting Group (LIFG) in Libya – which examine the intersection of negotiation and transitional justice goals. What these cases add to the prior case studies, and what they have in common in terms of their comparability vis-a-vis each other, are the following elements: conflict settings; a negotiation element; elaborate ideas or a public discourse on transitional justice; and situations under investigation by the International Criminal Court. The cases also add diverse experiences to develop this framework, encompassing a mix of groups with national and transnational ambitions, and Islamic and non-Islamic cases of violent extremism.

Additional taxonomy research was commissioned to plot identifiable similarities and differences of motivation, structure, and context along a wide spectrum of different archetypes of non-state or unconventional armed groups, including violent extremist groups, political rebels, organised crime groups, and paramilitaries. Likewise, this paper draws on IFIT research and writing on narrative and communication issues in negotiations and transitional justice; process design for peace negotiations; and experiences of negotiating with organised crime groups.

Based on all this research, this paper discusses two important components of any carefully considered approach to violent extremist groups: negotiations (and less formal types of non-coercive engagement) and transitional justice. Neither of these excludes the proper use of coercive force or punitive legal measures. Yet, the research conducted in this area and first-hand experience advising those presented with such threats support the

conclusion that negotiation and transitional justice represent important components of any comprehensive effort of strategy formation for conflict resolution.

Whether to negotiate with violent extremist groups – and if so, when and how – are questions that understandably provoke passionate responses. Most would consider the idea naïve, dangerous or both. Yet, there will be times when, combined with coercion, negotiation may provide a more effective approach in the short term (to diminish violence and other disruptive behaviour) and in the long term (to weaken or eliminate the organisation and its appeal, provide relief to ravaged communities, and prevent the re-emergence of similar threats). While negotiation may be inappropriate or inaccessible at any point in time (for a number of reasons discussed below), the changing dynamics within violent extremist groups and between such groups and the state and local communities, mean the viability of negotiation changes, and thus should be continuously reassessed.

The effectiveness of any negotiation hinges on several operational factors, including how it is initiated, who is involved, whether it is public or secret, and how communication occurs both between the parties and with the general public. But likewise, the substance of the negotiation, including whether or how to incorporate elements of transitional justice, is equally important. In this regard, there is a wide range of ways of conceiving and articulating options from legal pardon to legal accountability, and from healing to punishment.

Five overarching guidelines should be kept at the forefront of any strategic process of engagement with a violent extremist group in which negotiation and transitional justice are included. First, such groups present multiple threats and impacts to numerous sectors of society, often resulting in extreme and long-term effects on local communities. However, the motivations, capabilities and goals of the groups shift over time, sometimes rapidly. As such, any engagement strategy must be based on real-time analysis and continuous updating and adaptation. The longevity of any analysis may be brief.

Second, much of the public discourse about violent extremist groups and their supporters is misleadingly reductive, and dehumanising of the organisation and its members. Local and global communities often define such organisations and their supporters by their real or perceived ideology, or by their extreme use of violence. While ideology and extreme violence are important attributes of violent extremist groups, they do not provide a sufficient picture of the organisation on which to base a strategy of engagement. These over-simplified characterisations actually create barriers to engagement by further alienating the group and its supporters, by diverting attention away from characteristics that may offer opportunities and entry points, and by cementing public opinion against them. This has the additional negative effect of concealing the possibilities of what the group and its members could become at the end of a prospective negotiation and transformation process.

Third, research and experience demonstrate that the process of engagement can change the motivations and interests of the parties. Negotiations can create and increase trust, uncovering new areas of potential agreement. They also can reshape perceptions and the support of various stakeholders to the negotiating parties. This impact is as much a product of the nature of the negotiation, as it is a product of the narratives the parties construct to explain their participation. Alternatively, negotiations can risk alienating constituencies

from their negotiators by creating an insider dynamic that may appear to constituencies as co-option. The challenge is to take advantage of the opportunities presented by close cooperation among negotiators, while ensuring they continue to enjoy the support of their various constituencies. Failure to do this can create an opportunity for spoilers who may undercut even the most well-crafted, inclusive agreement.

Fourth, experience with more traditional negotiations underscores the importance of a victim-sensitive mindset to create public support for both the process and outcome of negotiations. If negotiations do not include victims or fail to seriously consider their legitimate demands, they can quickly become opponents and may end up providing moral and political support to those who oppose the negotiations for other reasons. This paper outlines specific recommendations for addressing the interests and needs of victims before, during and after any negotiation with a violent extremist group.

Fifth, while the process and substance of any negotiation are important, equally important is a communications strategy. A successful strategy will focus both on communication within the negotiation process (ie, between the parties to the negotiation) and on communication to wider stakeholders, including victims and the public. Even in situations where negotiations need to be conducted in secret, a communications strategy for explaining and justifying the negotiations if the parties decide to go public or if someone leaks the fact of the talks, must be considered.

There will be many violent extremist groups with whom, at any given juncture, it will be inadvisable to negotiate for a variety of tactical, pragmatic, ethical, legal or political reasons. This paper does not question that fact, and makes clear certain elements of transitional justice can be useful in such contexts, notwithstanding ongoing armed conflict and the privileging of a coercive or militarised logic. At the same time, states sometimes negotiate with archetypal violent extremist groups, or alternatively find themselves considering the prospect. In such circumstances, transitional justice methods and experiences have much to offer, not as isolated measures, but as part of a comprehensive peace strategy that balances prevention and punishment in relation to the commission of atrocities.

DEFINITIONS

For purposes of this paper, the following terms are defined as follows:

'Violent extremism' refers broadly to non-state organisations that instrumentally use acts of extreme violence, often against civilian populations, to pursue primarily religious or associated ideological goals.

'Negotiation' and **'engagement'** refer to a range of mechanisms by which parties to a conflict communicate with each other, either directly or through intermediaries, for the purpose of identifying differences and points of common interest, as well as areas for compromise and concession, ultimately for the purpose of reaching an agreement or series of agreements to lessen or eliminate violent conflict.

'Transitional justice' refers to a holistic and integrated approach to address a society's history of atrocities that is victim-centred and creatively utilises a variety of mechanisms and processes to further accountability, reparations, healing, reconciliation and peace.

Organisational Analysis

Successful negotiations require a clear understanding of the nature, motivations, interests, strengths and weaknesses of the parties, as well as external dynamics. A set of criteria (described below) was developed to evaluate and provide insight into these and other variables, and is useful for assessing if, when and how to negotiate. The criteria are not meant to provide a formula for understanding such groups, as some criteria may be more useful than others with respect to engaging with a particular organisation. But examples from the case studies illustrate how such criteria can influence a more tailored engagement and negotiation strategy.

Presenting the criteria this way seeks to avoid over-emphasising the accuracy of any taxonomy or organisational definition, as the lines between archetypal categories of armed actors often blur. The criteria are instead meant to provide insight into *how best to evaluate whether and how such organisations are open to engagement, negotiations and transitional justice initiatives at any specific juncture*. As such, the purpose is not to create a stronger academic understanding of violent extremist groups in relation to other non-state armed groups, but to develop operational analysis and strategies to assess the scope of opportunity for moving toward a "just peace" process with a specific group.

The caution against attempting to be too precise about labelling is underscored by the fluidity of key aspects of such organisations, as reflected in a number of the case studies. Violent extremist groups tend to be less stable in some of their key characteristics than other non-state armed actors, and more likely to be subject to strong external and internal forces aimed at destroying the organisation. Important characteristics of an organisation may thus shift over time, making continuous reassessment important in determining the appropriate intervention – whether it be to invite a negotiation, entice defection, increase accountability or achieve other strategic goals. Violent extremist groups also may evolve over time with respect to their motivations, goals and alliances, thus affecting their openness to engage.

The more detailed the information that can be gleaned first-hand from sources either inside of the organisation, or who directly engage with it, the better. While some of the factors below can be assessed from public sources, all of them can benefit from input from sources such as insiders, defectors, victims, the state and members of local communities in which the organisation operates. Cultivating such sources is thus a crucial component for developing an effective strategy.

Objectives and Relationship to the State

Three areas of inquiry with respect to a violent extremist group and the state are important to assess. First, understanding the goal or objective of the organisation with respect to the state. An organisation may be aligned, hostile or indifferent to the state. Second, an assessment of the different relationships between the extremist group and the state at the sub-state level, focusing on agencies, factions and individuals. Third, an assessment of the power relationship between the organisation and the state. The nature of this may vary at the sub-state level; in some areas the state may hold the power, in other areas the organisation.

A clear understanding along these three areas of inquiry is important for assessing whether a state is more an ally or an obstacle to engagement and negotiation. An organisation aligned closely with the state presents different challenges than one strongly opposed by it. In the former, the state may provide an entry point to the organisation, but also may act as a spoiler if their interests diverge; in the latter, the state is likely active in combating the organisation on multiple fronts. However, an excessively militaristic and punitive response that has created negative effects on local communities can easily decrease the legitimacy of the state in the eyes of victims and other important constituencies, hampering the state's ability to acquire the political leverage needed to support authentic engagement and any necessary compromise with the organisation in the future.

Goals Vis-a-Vis the State

A state-aligned violent extremist group may enjoy protection from the state; be more likely to operate freely within national borders; avoid military and legal confrontation with state agents; and rely on the state's military force and legal system to protect itself from accountability. A strong alliance can arise if there is mutual interest, which may be policy-driven or, alternatively, ideological or religious. A weak alliance can arise out of a situation of short-term mutual convenience, or where only some parts of the state have an interest in, or benefit directly from, the group. In situations where an alliance is with only parts of the state (eg, city officials), an assessment of the relationship between the group and the state at the sub-state level is necessary (as discussed below). Unaligned and unsympathetic individuals or agencies within the state may become useful sources of intelligence to better understand such relationships, and may provide an entry point for putting pressure on the state, and in turn the group, to engage and negotiate.

Groups opposed to the state manifest that opposition along a continuum, from viewing the state as the ultimate prize to secure (eg, overthrowing the current government), to seeking its division (eg, achieving self-determination for a region), to extortion and focused attacks against parts of the state that threaten operations and profit (eg, violent organised crime groups). For example, one of the early motivations for the creation of the LRA in Uganda was a desire in the northern Acholi region to resist and remove a central state that was viewed as an occupying force, while one early motivation for the creation of the Taliban in Afghanistan was to consolidate opposition to, and ultimately remove, a corrupt

government that was perceived to be anti-Pashtun. Hostility to the state may be premised on grievances against the state, and inadequate or insufficient state policy may have led communities to support the extremist organisation at key junctures. While a state facing a violent extremist group that threatens its legitimacy or the stability of the government will have a strong interest in weakening or eliminating the group, an excessively militaristic and punitive state response to the extremist organisation, which may appear productive in the short run, can prove counter-productive in the medium to long term – in some cases increasing local communities' motivation to support or tolerate the extremist organisation. Individuals and agencies within the state that take a medium- to long-term view are potential partners in developing a more comprehensive strategy that better balances the mix of coercion and inducement methods necessary to both diminish the immediate threat to the state and generate the conditions for a more permanent end to the conflict.

Indifference to the state may arise if the state is perceived neither as a barrier to an organisation's objectives, nor as an ally in its operations. Such an organisation may still present a challenge to the state through negative externalities (eg, increased violence, economic disruption) or may alternatively create positive externalities for it (eg, through actions such as unilaterally imposing order or addressing grievances that benefit the state indirectly). A state facing such a violent extremist group may be indifferent if it does not perceive the group as a threat to its own existence. Yet, the continued negative impact of the organisation on communities will decrease the legitimacy of the state (particularly if the state is viewed as indifferent to these impacts) and may create conditions for the development of additional violent extremist groups that view the state as a target. Individuals and agencies within the state that are directly affected by the group's negative impacts (eg, those most closely in touch with affected local communities), and those who are engaged in long-term risk assessment, are potential partners in evaluating the long-term consequences of state indifference to the extremist organisation and developing an effective strategy to combat it.

Sub-State Entities and Individuals

States consist of sub-bureaucracies and factions. The interests and relationships of one such bureaucracy or faction may be very different than, even opposed to, those of other parts of the state. Moreover, state agencies have both vertical and horizontal dimensions.

On the vertical dimension, high-level leaders may have different interests and relationships with respect to a violent extremist group than a career government employee. In a federal system, the local government may have different interests and relationships than the national government. Horizontally, parallel agencies also may have different interests and relationships with extremist groups. Such divergences might exist, for example, between security agencies and social service departments.

Understanding these divergences is crucial in analysing what assistance, if any, the group receives from the state, where the entry points are for engagement, and who the potential allies and spoilers are. A violent extremist group with close alignment with security agencies may enjoy protection from any military threat, and may be able to enlist the power of

the armed forces to further its own objectives. A group with close alignment with the justice system may enjoy protection from legal sanction and be able to enlist the system against its opponents. The analysis of the relationship between the group and the state must thus consider these vertical and horizontal relationships as part of a complete analysis.

Power Relationship between the Organisation and the State

An important aspect of the relationship between the state and an extremist organisation is the power balance between the two.

In the case of an organisation aligned with the state, which party is more dominant? Fundamentally, it is important to assess whether the state controls the organisation, or the organisation controls the state. Most relationships between the state and an allied organisation will not lend themselves to such a neat binary distinction. Yet, an overall assessment of the balance of power between the state and organisation is still useful. In the case of an organisation indifferent to the state, the question is whether it has the power to act mostly free from state interference, or alternatively faces significant state resistance. And in the case of an organisation opposed to the state, the question is whether the organisation is able to expand its areas of influence, or alternatively whether the state is successful in containing and limiting the reach of the organisation.

In addition to this macro-level analysis, it also is important to analyse the power relationship between the organisation and the state vis-a-vis a number of subject matter areas, which usually will correspond to different sub-state agencies and entities. For example, power with respect to the use of force may be different than power with respect to regulating economic activity or controlling the media and other communication outlets. An organisation may have the power to regulate economic activity (sometimes in alliance with the state), but be limited in the ability to expand its activities or areas of influence using military power in the face of a state's dominance in the use of force.

The nature of the power relationship may also vary geographically. If the organisation controls territory, then it will enjoy more freedom to operate within that territory and thus likely be in a superior power relationship in that region. In such a situation, the organisation may refuse to negotiate with the state, viewing it as irrelevant, and instead negotiate with other forces that more clearly threaten its power. For example, the Taliban in Afghanistan often refuse to engage with the Afghan government (at least formally), which they view as illegitimate and irrelevant, and instead engage in negotiations with the United States and other international actors that more effectively threaten their power. This has had a significant impact on the evolution of the conflict. The United States and its allies have prioritised their exit strategy over justice in their engagements with the Taliban. As a result, the demands for justice made by victims, local communities and others are often ignored, thus creating the risk of short-lived agreements. To the extent that these arrangements result in short-term stability, they are dependent on the continued presence of the United States and its allies, who now appear to be vacating the scene.

Structure and Appeal

Key to engagement with a violent extremist group is a sophisticated understanding of its nature, structure and internal dynamics. Of particular interest are the group's origin and initial motivations; level of cohesion; and degree of bureaucratisation, including its hierarchy and organisational structures. Of equal interest are adherents' motivations for membership or support, and barriers to their exit from the group.

Origins and Initial Motivations

Understanding the origin, formation and motivations of the violent extremist group is useful in crafting a negotiation and communications strategy, even if it requires continual re-examination to account for shifts. Violent extremist groups' origins are usually reactionary (in response to real or perceived grievances, or some significant founding event); opportunistic (filling a vacuum to increase economic or political power); ideological (political, economic or religious inspiration); or some combination thereof. These factors continue to influence the group's current motivations, no matter how fluid.

Understanding the conditions and factors driving the group's formation and their relative importance to ongoing motivations may point to substantive issues that can advance negotiations (ie, addressing the original circumstances that spawned the organisation) and provide insight for communicating with group members (ie, acknowledging a real or perceived grievance, using the language of the ideology that motivates the group). For example, understanding the LRA's formative spiritual and political motivations led to more effective negotiations. The Ugandan case study notes that the group adopted very practical political causes such as "the lack of northerners in government, the need to promote national unity, and the formation of an ethnically balanced national army", as well as explicitly spiritual goals, including the establishment of "a ministry of religious affairs to promote the Ten Commandments" and a commitment to fighting witchcraft and other forms of "moral degeneration". Although the LRA evolved into a more predatory actor in northern Uganda – kidnapping children and forcibly recruiting them to its cause – successful negotiating efforts benefitted from a deep knowledge of the group's origins and initial motivations. The ceasefire negotiated between the Ugandan government and the LRA in the early 1990s arose because chief government negotiator Betty Bigombe developed trust with the LRA by approaching them with "a high degree of local knowledge and empathy towards its spiritual beliefs, although without necessarily subscribing to, or endorsing, the values of the group".

Similarly, in Libya, engaging with and using the language of Islam established trust with the LIFG, shifting the negotiating dynamic. As one of the interlocutors in the LIFG negotiations observed, "Imagine if the state did not recognise the Islamic reference (*marji 'iyya*) of this dialogue – the whole effort would have been futile".

Understanding the conditions and motivations that contributed to a group's formation is useful for interacting with groups besides violent extremist ones. The FARC, for example, formed primarily to address a perceived need for land reform and social justice. It later was

motivated by other factors; but acknowledging its initial quest for social justice allowed negotiators to appeal to the leaders' and members' sense of purpose and legitimacy, and thus increased the space for compromise and agreement in Colombia's 2012-2016 peace deal. The same awareness of origins and motivations is emphasised in explaining the success of many of the negotiations that have taken place with street gangs in cities across the USA and Latin America.

Adherents' Motivations for Membership and Support

Understanding individuals' motivations for entering and supporting violent extremist groups is important for creating instability in its ranks, including fostering conditions to discourage membership and support, entice defections, and craft legal and other inducements to encourage direct engagement. With the exception of cases of direct or indirect coercion or forced recruitment, individuals are subject to pull factors that attract them to an organisation and push factors that lead them to seek an alternative to their current situation. Often an individual will join because of a combination of the two, though one set of factors may be more influential. The stronger the pull factors, the less important are push factors to entice membership. Members motivated by strong pull factors, such as ideology or cause, generally require stronger enticements to defect or negotiate.

Member support may be ideological or in pursuit of a policy or material interest. For example, an individual may join a violent extremist group due to the nationalistic or religious ideology of the group. Alternatively, they may be ideologically indifferent, but supportive of a policy goal, such as replacing the state or overthrowing the government. In the latter case, individuals still may have ideological motivations, such as a sense of social justice or grievance against the state, but these motivations are tied to a particular policy objective. Alternatively, an individual may join for more material reasons and be either indifferent or even hostile to the group's ideology or policy objectives.

It is also possible, even common, for member support to be rooted in a combination of factors. For example, while the LRA was formed with deeply spiritual motivations, even at its inception, it tapped into discontent with the political situation in Uganda. Its religious message provided a sense of identity for some adherents in a volatile and uncertain environment. Even as its coercive and predatory methods increased, LRA manifestos began to take on a more political tone, highlighting and claiming to address political grievances in Northern Uganda, thus seeking to project both a religious and political identity.

The field research on the Taliban illustrates multiple factors that influence membership, including religion, grievances and political opposition to the state. Adherents who joined for religious reasons also were motivated by narratives linked to national identity, nationalism and sovereignty. A sense of revenge and justice motivated those who lost family members. As the Afghanistan case study indicates, while the Taliban presents itself as "an anti-occupation force with Islam as its unifying ideology", such a description does not adequately explain the motivation of some, perhaps many, who joined. A more granular understanding of the motivations for membership and support, beyond the rhetorical propaganda, allows for the identification of potential partners and strategies for engagement.

Yet, the reasons why an individual member of a violent extremist group remains involved are fluid. For example, an individual who joins a group because of its policy goal of overthrowing the government, with time, may develop a strong affinity with the ideological motivations of the group. Similarly, an individual who initially is coerced may eventually identify strongly with the group's goals or ideology. Understanding both the initial motivations that lead an individual to join, and the interests they may have developed since joining (and how these may change over time), is necessary to developing an effective strategy to entice defections and encourage engagement.

Barriers to Exit

Enticing individuals to dialogue or defect is dependent on individuals' agency within the group, including their freedom of movement and volition to exit, as well as internal and external barriers. Individuals may be unwilling to exit due to strong positive ties to the organisation (ideological or political); or prohibitive risks may make them unable.

Regarding coercive barriers to exit, these may be internal (eg, those who attempt leaving the group are punished) or external. The latter may arise when the local community supports the organisation (defectors are traitors and suspicious), but likewise when the local community strongly opposes it (defectors are untrustworthy or tainted). Other external factors include legal barriers (threat of prosecution or other sanction); institutional (lack of assistance in reintegration); and economic (lack of opportunity or other support for basic necessities).

Ascertaining the presence and strength of external barriers requires an understanding of the relationship between the local community and the organisation, and an assessment of state and other institutional services. While there may be no coercive force keeping individuals in the organisation, the lack of any meaningful reintegration options may deter exit.

Level of Bureaucratisation, Hierarchy and Group Cohesion

Identifying the degree of bureaucratisation and relevant locus of power within a violent extremist group is crucial to any engagement strategy. If those negotiating do not have influence over or support from a unit responsible for implementation of an early ceasefire or a final agreement, the negotiating exercise may be fruitless. Some organisations have sophisticated bureaucracies, with specific units in charge of different aspects of the organisation's activities. The Taliban, for example, has a complex governance structure, including a leadership council and separate military and political sub-entities (mostly located in foreign territory). Alternatively, an organisation may have a looser and lighter structure (which may centre on the charisma and authority of one individual, such as Joseph Kony and the LRA) or a more decentralised network or cell-like approach (illustrated by the development of al-Qaeda network affiliates in different countries after the loss of Afghanistan as a safe haven).

Related to the level of bureaucratisation is the presence of a hierarchy with stable and consistent lines of command. The organisation's structure may be highly vertical and

hierarchical, or more horizontal and flat. Hierarchy allows for easier identification of relevant parties for engagement and negotiation, and increases the likelihood an agreement will be successful. A horizontal structure requires attention to an array of actors or the identification of the most influential individuals who can motivate full group support. As such, it is often more difficult to discern, requiring deeper organisational analysis than a hierarchical structure.

An assessment of the group's cohesion also is important for determining the best engagement strategy. A strongly cohesive group tends to move in sync, usually at the direction of a handful of key leaders or internal influencers, whereas a less cohesive group is open to internal strife and fractures. The latter scenario is desirable in a military confrontation; but in a negotiation, a minimum of cohesion is necessary to make the effort of bargaining meaningful.

In the Libyan case study, for example, the LIFG enjoyed some internal cohesion. Thus, providing benefits to select members – not influential ones or the group as a whole – had limited effect. At the same time, divisions existed between older members of the LIFG and younger militants outside the formal structure of the LIFG due to divergent motivations. Younger militants tended to be less educated and were radicalised by a transnational, messianic cause. Older members within the LIFG, many of whom were in jail, had more education and tended to emphasise political grievances and a national focus. As a result, successful strategies for negotiating with older members of the LIFG did little to reach the growing ranks of younger militants.

Similarly, dissension has existed between individual members and the leadership of Afghanistan's Taliban, with members growing resentful of the safe haven enjoyed by leaders overseas, leading to a spate of recent desertions. While the current assessment is that members will follow the direction of leadership, this needs to be continuously evaluated to effectively shape engagement and negotiation.

While information about bureaucratic structure, hierarchy and cohesion is best ascertained directly from insiders (including recent defectors), information gleaned from external sources can also aid understanding. One such source, the Analytical Support and Sanctions Monitoring Team of the United Nations Security Council, documented the Taliban structure and leadership – identifying it as a strongly-disciplined and well-organised structure despite some internal divisions – as well as its links with organised crime and al-Qaeda.

Support and Control

Understanding the relationship between an organisation and its environment (territory, local communities, revenue and financing, and external and transnational support) provides additional avenues for identifying strengths or vulnerabilities that may be leveraged in engagement. Areas of strong support may provide entry points to engagement, and if ignored, can create barriers to any agreement and opportunities for spoilers.

Territorial Control

While most violent extremist groups will have some territorial domination, the extent of the control they exercise in that territory and the size of the territory provide insight into their capabilities and relationship to local communities.

Control can be achieved through force and restrictions on movement and activity, or through support by individuals or groups in the territory. The nature of control over the local community – whether mainly negative (through force) or mainly positive (through support) – affects intelligence gathering about the community's relationship to the group, and the ability to influence that relationship. To mitigate these effects, it is important to develop a communications strategy and utilise direct or indirect outreach methods to reach the local population, such as providing humanitarian assistance. The more meaningful the outreach and the clearer the communication about it, the easier it is to achieve two key goals: 1) eliciting information from locals about the organisation and its influence; and 2) influencing them to support engagement or otherwise resist the organisation.

Relationship to Communities within which the Organisation Operates

While the organisation's relationship to a community may be related to territorial control, the two are not coextensive. Community support may be found outside controlled territory; and community opposition can be found within controlled territory.

A community may have a hostile, predatory, tolerant, supportive or enthusiastic relationship with a violent extremist group. Predatory and hostile relationships often give rise to numerous rights violations, which may embolden local communities to resist and demand redress and accountability, pressuring the organisation.

Supportive and enthusiastic relationships may arise out of a sense of ideological or religious affinity and obligation, or because the organisation is providing benefits to the community, such as social order, security or services. To engender support due to religious or ideological affinity, a group must address the tenets and use the language of the applicable religion or ideology. For example, the spiritual message of Alice Lawkena's Holy Spirit Movement (which later transformed into the LRA) may have found resonance in the local community because its rhetoric and rituals also borrowed from Catholicism. Fulfilling traditional state functions where there is a void can establish or deepen trust and confidence that the group can provide services to meet basic needs, and result in support for broader goals. The Taliban continues to enjoy support in some regions of Afghanistan because of its perceived ability to provide stability, security, and some form of justice.

Yet, community support is changeable. Hostility or tolerance may shift into more active support, either through coercion, familiarity or the provision of basic benefits. Territorial and social control can create an environment in which particularly young recruits can be steeped in the organisation's value system and worldview. Thereafter, supporters will shift only if they can see the limitations or even inaccuracies of their adopted belief system.

It is important to understand the history of the relationship between an organisation and local populations, as the nature of the relationship is likely to shift. The LRA "deployed

extreme violence systematically and almost ritualistically" as a means of both programming new members and terrorising the local population. Such extreme violence often is intended to weaken the relationship between the local community and the state, by tarnishing the state's reputation as willing and able to protect it. But shifting its bases from Uganda to Sudan shifted the LRA's relationship with its traditional local community, diminishing any pretence that the organisation exclusively supported that community (although the LRA still saw itself as linked to it). Sudanese support also lessened the LRA's need to cultivate spiritual and political support within Uganda. In fact, the Sudanese government provided the LRA with a safe haven in return for not only fighting the Ugandan government but also destabilising the country by engaging in brutal attacks against local communities in the north. The goal of its violence thus shifted from coercing support from the local population, to furthering the destabilising agenda of a foreign government.

Predatory behaviour that includes forcible recruitment, such as that undertaken by the LRA, creates a complex relationship between the organisation and the local community. The local community may be victimised by extreme violence, and yet may continue to perceive forcibly-recruited members and supporters equally as victims and perpetrators. This complex relationship helps explain the more nuanced view of the Acholi community to various proposals for negotiation and accountability with respect to the LRA. This complicated dynamic also resulted in distrust and even hatred towards the government, which Acholis often viewed as failing to prevent the LRA's predatory growth and as disinterested in ending the conflict.

Local support may be thin, indicating a relationship of convenience or tolerance rather than affirmative support for the violent extremist group. A relationship of convenience may arise when the organisation's presence and activities have little negative impact on the local community or when it provides protection from a predatory state, or order and stability otherwise lacking from a state. A community may shift from being tolerant to intolerant if it perceives the organisation provokes state responses that negatively affect it. Alternatively, the local community may shift from being indifferent or tolerant to being supportive if it perceives the organisation as engaged in a just struggle against the state, or as filling a void left by the state.

Sources of Financing

Organisations can be financed primarily through their own activities or by external support. Self-financing can come from business activities, often illicit, including mining and other extractive industries; trafficking in illicit items (eg, drugs, endangered animals, cultural artefacts) or humans; taxation; and legitimate business enterprises. External financing can come from sympathetic states, wealthy individuals or businesses, or transnational organised groups that are affiliated with, or seeking affiliation with, the organisation.

Identifying and disrupting an organisation's source of financing (by increasing enforcement against illicit activities or restricting markets) may put pressure on it to engage or negotiate. States, individuals and other organisations that provide support may serve as an entry point for engagement and negotiation as discussed below.

Organisational Analysis Checklist: Key Questions

Objectives and Relationship to the State

- Is the group more aligned with the state, in opposition to it, or indifferent to it?

- Which sub-entities or factions within the state are aligned with or supportive of the group, and which are negatively affected or opposed to the group?

- In which areas of interest or territory does the group hold the balance of power, and in which does the state?

Structure and Appeal

- What is the original motivation and appeal of the organisation?

- What push and pull factors contribute to members joining or supporting the organisation?

- Is the group organised with a strong vertical hierarchy?

- Does the group have a clear organisational structure with functioning bureaucracies?

- Is the group ideologically, politically, or otherwise cohesive, or are there strongly competing interests and factions within it?

Support and Control

- Does the group control territory?

- Is the group's relationship with the local community predatory, hostile, tolerant, supportive
  or enthusiastic?

- How much community support is the result of coercion or other predatory behaviour, and how much is the result of benefits received from the group?

- What is the source of the group's funding?

- Does the group receive substantial support from interests outside of the community in which it operates?

Engagement and Negotiations

It is common for states and other actors to adopt a hard line against engagement or negotiations with a violent extremist group. While such a position is sometimes warranted (the organisation may have no interest in negotiating or have proven itself untrustworthy with respect to agreements), case studies suggest that failure to evaluate continuously the possibility of negotiation may lead to significant missed opportunities. The exclusion of the Taliban from the 2001 Bonn talks on Afghanistan, bad governance (corruption, night raids, extra-judicial killings and arrests of Taliban members), and subsequent exclusion from politics, contributed to the years of conflict that ensued in the country. A thorough analysis of the violent extremist group using the criteria cited in Part 1 will assist in determining whether engagement and negotiation are possible or desirable.

While there may be a desire to seek a comprehensive negotiated agreement with a violent extremist group, an approach that focuses on intermediate steps is more likely to develop the trust necessary to ensure an effective long-term agreement and transformation of the conflict. Comprehensive agreements rarely occur quickly, if at all. When they do, they often require multiple iterations to build trust in the process and identify areas of common interest: prerequisites for any successful agreement. There is, indeed, no evidence of any examples of successful comprehensive agreements without prior engagement or negotiations over more modest goals. Overly ambitious negotiations are more prone to failure, which decreases political will and support for future engagement efforts. A failure to gain the trust of LRA leader Joseph Kony through incremental negotiations is one of the reasons given in the Ugandan case study for his refusal to sign the comprehensive agreement reached at Juba.

Entry Points: People

Prior to initiating any negotiation, contact must be made with the organisation or with individuals or groups who have influence with it. Identifying relevant prospects for such initial contact requires an assessment of the factors above concerning the degree of bureaucracy of the group, its relationship to the state and the local community, and its external supporters and financiers.

Individuals or factions within a violent extremist group may be open to engagement and negotiation, but the efficacy of any foray hinges on the authority and legitimacy they wield within the organisation. While they may initially have sufficient authority and legitimacy to make such overtures worthwhile, the support they retain internally will depend on whether members and supporters view the attempts at engagement and negotiations as furthering

the organisation's interest or as a threat, which in turn will be influenced by the narrative explaining and justifying such outreach. How such contacts are made and described may prove to be as important as with whom they are initiated. Such contacts may initially be kept secret, in which case a cost-benefit analysis of secret negotiations needs to be made.

A strong and positive relationship between the organisation and local communities may provide other opportunities for entry. For example, a respected local leader may have close ties to the group or even occupy a position within it. Such an individual may exercise additional influence given his or her important role with respect to a support base.

An organisation that has a negative, predatory relationship with the local community presents different challenges. Leaders of local communities may provide support and pressure for negotiations, but also may view negotiations as illegitimately rewarding predatory behaviour. Local communities negatively affected by an organisation are more likely to demand retributive and reparative measures, which must then be considered to ensure a successful comprehensive settlement and implementation phase.

Similarly, external supporters and financiers may be useful entry points for engagement. If the political calculus of the external supporters shifts to view the violent extremist group as a liability, they may be a source of information as well as a possible leverage point. Key to this strategy is understanding the external supporters' interest that the group furthers, and exploiting any gap between it and the interest of the organisation. For example, an external supporter may be indifferent to the legitimacy or interests of the state, whereas the organisation may have strong nationalist tendencies that positively or negatively inform its relationship to the state.

Divergent interests may be exploited to alienate the organisation from its external supporters, or provide a barrier to negotiation if it perceives its existence and legitimacy as tied to the supporters. For example, Sudan's support of the LRA had more to do with its own geopolitical interests than the ostensible religious ideology or political goals of the organisation. Discouraging Sudan from providing support requires focusing on those geopolitical dynamics, while the same concerns may have little if any relevance to negotiators' possible engagement with the LRA itself.

Entry Points: Substance and Confidence-Building

Negotiations often begin with discreet issues, such as protective measures for civilian populations, the provision of humanitarian relief, no-go combat areas, ceasefires, or hostage and prisoner release. These incremental, confidence-building measures may occur as part of a negotiation process to achieve a more comprehensive agreement or as the sole subject of a negotiation. They serve as substantive entry points for negotiation that complement the personal entry points discussed above.

In the early stage of any negotiation, public goals should be modest so as not to raise unreasonable expectations. It may be too ambitious if the announced goal is to end the conflict, dismantle the organisation, or transform it from a military threat to a non-violent

participant within the political order. Choosing incremental, modest goals increases the likelihood negotiations toward a comprehensive agreement will continue to be successful.

Achieving success even with a modest goal may have two important consequences – concrete benefits to victims and their communities (eg, through implementation of protective measures, delivery of relief, enactment of ceasefires and release of hostages) and trust between the negotiating parties – thus establishing the foundation for negotiations on more ambitious goals. Negotiations with the LRA in Uganda, for example, began with a ceasefire – a means by which both sides could signal they were taking negotiations seriously. The recent agreement between the United States and the Taliban resulted in a prisoner swap and the lifting of sanctions, in return for a commitment to not harbour terrorist organisations. Whether these incremental steps lead to bigger pacts and increased political support depends on the various parties' commitment to implementing and building upon these early outcomes.

Signalling a willingness to engage can be important even if there is no prospect of negotiations. Prior to any formal talks with the LIFG, the Gaddafi regime coordinated with United States and Pakistani authorities to evacuate Libyan families from Afghanistan after the US military intervention in response to 9/11, a gesture which the primary mediator in the LIFG dialogue process highlighted as fostering members' positive perception of the regime's intentions as families of some of the group's members benefited.

The LIFG case study also provides an illustration of how one party's actions can decrease trust and thereby the possibility of transformation. Violating what had been agreed, the Libyan government unilaterally decided to release some political prisoners and not others. The move backfired by creating a sense of guilt in those who were released. As one of them recalled, "They released us as promised but they kept the others in prison. I was embarrassed and pained. It was a strategy by the regime, using the fact the others were still inside in order to pressure us on the outside". As a result, many of those who were released were less willing to engage with the government as they viewed its action as incomplete (in releasing only some) and designed to divide the group.

The Afghanistan case study suggests a more positive role for providing selective benefits. Rank-and-file members of the Taliban appear to be more concerned than senior leaders with social and economic issues. Economic incentives thus may prove useful in encouraging them to relinquish their arms, participate in reintegration and reconciliation processes, and support other efforts of accountability and healing. Additionally, the case study emphasises that such selective benefits should not be limited to former Taliban fighters, but instead should target all former fighters in the community regardless of their relationship to the Taliban.

The sequencing of any agreed-upon negotiating agenda provides an opportunity for confidence-building measures, and may influence the perception of the negotiations by the parties, victims and other stakeholders. In the case of the LRA negotiations, for example, the first major agenda item concerned issues important to the communities of northern Uganda. This approach sent a strong signal that victim and community interests were central to the substance of the negotiations, and may have appealed to the LRA as a way to

enhance its legitimacy. Although it meant that the government of Uganda had to postpone discussion on furthering security and accountability for the LRA's crimes, the sequencing reflected an attitude of compromise and facilitated deepening of the dialogue.

Organisational Representatives

Successful engagement and negotiations require identifying individuals or groups with sufficient power within the organisation to reach an agreement on its behalf, and who enjoy the trust of its members and supporters. The factors listed earlier concerning the group's degree of bureaucracy, hierarchy, and cohesiveness are relevant for assessing the suitability of individual negotiating representatives.

The higher the level of bureaucratisation, hierarchy and group cohesiveness, the more likely the settlement will enjoy legitimacy within the organisation and the commitments made by negotiators on its behalf will be implemented. If a leader with widespread internal support manages the negotiation, the likelihood of any agreement's success increases. If lieutenants, and not the principal leader, spearhead negotiations, the relationship between them becomes important. If leadership perceives that its negotiators are overstepping their authority or developing interests apart from the organisation's, the negotiation's legitimacy decreases with leadership and, consequently, with members.

This happened in Uganda, where a division arose between Joseph Kony and his colleagues who directly participated in the Juba negotiations. It is rumoured Kony grew suspicious of the relationship between primary LRA negotiator Vincent Otti and the government of Uganda, which led to Kony ultimately ordering Otti's killing. Kony, who did not participate directly in the negotiations, ultimately refused to sign the final agreement, which included mutual compromise and a number of innovative provisions.

Crucial to the success of a strategy of incremental, confidence-building measures is a real-time assessment of the internal structure and leadership of the organisation. For example, releasing prisoners or implementing a ceasefire requires an accurate assessment of who has the ultimate authority to execute the final decision. Reaching such a successful agreement on modest measures may result in enhancing or diminishing the legitimacy and authority of an individual or faction within an organisation. Understanding in real time such shifts in legitimacy and authority is crucial for identifying who should be sought for future engagements, and for identifying what should be the subject matter of the next iteration of engagement.

Negotiating with individuals who do not clearly represent the organisation, or who represent a faction within it, is a risky strategy – unless the goal is to fracture or destabilise the group rather than to reach agreement sincerely. However, using negotiations to disrupt an organisation risks detection and will erode trust among the parties. It may also lessen the possibility of future, more constructive engagements. Engaging for the purpose of group destabilisation should only be adopted after a thorough assessment of the possible consequences, including the impact on future engagement or negotiation.

Communications Inside the Negotiations

The language used during a negotiation – or in persuading an organisation to engage – is often as important as its substance, but frequently under-appreciated. Important considerations when crafting a communication strategy internal to negotiations include: a violent extremist group's goals with respect to the state, its binding ideological or religious beliefs, and motivating factors for local support or opposition.

An organisation's description of its relationship and goals with respect to a state (or any other entity) may differ from how other actors and stakeholders view the relationship. Any divergence is relevant for creating effective communication strategies for or about such organisations. For example, an organisation that identifies itself as pure in its ideology may be viewed by the state or the local community as compromised, and vice versa. A communications strategy that fails to consider these differences will confuse, misfire and risk inflaming the situation, resulting in increased polarisation and undercut any effort at meaningful engagement.

Drawing upon specific ideological or religious language used by various parties builds trust, which opens possibilities for further engagement and increases the likelihood of identifying shared interests and goals. As noted above, the language used by Bigombe in engaging the LRA and the government's decision in Libya to use the language of Islam to discuss transitional justice, respectively, are two examples that illustrate this point.

It is also important to understand affected communities' perception of their relationship to the organisation and their position in support of or in opposition to the group, and accurately describe it in the communities' terms. As discussed, when coercion is a factor, the relationship between the community and the group is more complex, and the community may view support and opposition along a spectrum, rather than as stark contrasts.

In addition to being attentive to language, it is equally important that boundaries to any agreement be clearly articulated early in the negotiating process. For example, one negotiating party may identify unconditional amnesty as a proposal it will never consider supporting, a figurative point of no return. Which boundaries to establish will vary with context, but there are three important rules to consider with respect to these non-negotiable parameters. First, once adopted, they should not be altered. Altering boundaries during a negotiation signals a lack of resolve to negotiating parties and the general public. Second, parties should articulate such limits early in any negotiation. Introducing limits later risks derailing the process by introducing a level of substantive unpredictability and decreasing trust. Third, explaining these boundaries in an objective and non-punitive or threatening way decreases the likelihood they will negatively impact the negotiation. For example, making clear that unconditional amnesty is not subject to debate because its enforcement cannot be guaranteed given the international political and legal environment, may shift attention towards more productive areas of negotiation (eg, other forms of leniency, including conditional amnesties).

Communications Outside the Negotiations

The importance of a public communication strategy outside the negotiation is also under-appreciated. It is often viewed as a rote exercise of information-sharing rather than an opportunity to shape the dominant discourses and build political and constituent support for engagement, negotiation and any resulting agreement. To enhance such a strategy, it also helps to conduct inclusive consultations that can be used to effectively place negotiation within a broader political narrative. While inclusive consultation and a smart communication strategy cannot rehabilitate a flawed agreement, an otherwise excellent agreement may be undercut by lack of inclusivity and a bad strategy.

Crucial to any successful public communications strategy is the construction of a narrative that places the negotiation process (including the decision to negotiate, the process, choice of agenda items, and incremental agreements and other confidence-building measures) within a broader effort to achieve accountability, stability and peace. Holding a press conference every week without adequate attention to the content of the message and how it relates to overall goals may demonstrate transparency yet have counterproductive effects. Equally flawed is an approach that floods the public with information about process and activities without connecting the negotiations or their outcomes to the broader interests of victims and other important local, national and regional constituencies.

In addition to constructing a strong narrative, a successful communications strategy is sensitive to constituents' and stakeholders' clearest priorities. Analysis of the relationship between the violent extremist group and the local community is useful in constructing a narrative that appeals to the local audience. Where the organisation has a predatory or otherwise hostile relationship with the local community, the overarching goal of addressing its wrongs in some reasonable way is important to convey. In the case of a supportive or tolerant community, identifying the reason for support and exploiting any divergent interests may increase pressure on the organisation to negotiate in good faith and create political will for the process.

In crafting a public communications strategy, it is useful to collaborate with local media outlets trusted by the group's constituencies and with the broader community to craft an accessible, resonant narrative. Collaboration of this sort is key to avoid a two-fold risk: ignoring the priorities of important constituencies and allowing too many local priorities to fragment the broader political narrative. The overarching strategy and narrative must drive local messaging, rather than the reverse.

In this regard, successful public communications strategies can also benefit from direct consultations (public and private) with important constituencies. The Juba peace talks with the LRA incorporated formal consultations between important constituencies – including victims, and both the government and the LRA – which increased the legitimacy of the individual parties and the overall negotiating process. By facilitating local participation in the process, consultations provide a means for local ideas to trickle into the negotiating room, while also providing an opportunity for negotiators to create a narrative to increase the acceptability of any outcome. Yet, the Ugandan case study also shows that a careful

balance must be maintained between the power of the parties to reach an agreement and the communities' ability to influence an outcome that will impact their fundamental rights. When all is said and done, the point of a negotiation is to have parties in conflict reach agreements; consultation that detracts more than it contributes to that goal is best avoided. Stated differently, a negotiation is not the right place to try solving democratic deficits.

Engagement and Negotiations Checklist: Key Questions

Entry Points: People

- Where does the authority and legitimacy of the organisation reside, both generally and with respect to specific areas of interest?

- Are there people outside of the organisation who have influence within it? How congruent are their interests with those of the organisation?

- Are there people within the state who have links to or influence with the organisation?

Entry Points: Substance and Confidence-Building

- What modest incremental measures can be pursued that build upon common interests between the organisation and the state, and address an important interest or need of victims and affected communities?

- How can such an incremental measure contribute to the overall strategy of addressing the impacts of the violent extremist organisation and the state's response?

Organisational Representatives

- Which individuals or groups within an organisation have power and authority to implement any agreement reached on a designated topic?

Communications Inside the Negotiations

- What is the narrative the organisation and its supporters use to describe its purpose and activities, and how do those affect the language used within the talks?

- What is the narrative used by victims and affected communities to describe the organisation and its activities, and how do those affect the language used within the talks?

Communications Outside the Negotiations

- How do the current engagements and negotiations fit within a broader strategic framework for addressing the impacts of and combatting the harms of the extremist organisation?

- Who are the key stakeholders that should be consulted and kept informed about such engagements and negotiations?

Transitional Justice Strategy

While a thoughtfully-designed negotiation process considering the above issues is necessary to ensure a positive outcome, it is insufficient. Equally important is the substance of any agreement, which must be politically defensible not only for the government and its local, regional and international allies, but also for the violent extremist group vis-a-vis its internal and external narrative, identity, and bases of support. However, the acceptance of the agreement is also affected by the presence or absence of elements of transitional justice including healing, reconciliation and reparations; criminal accountability; customary/local judicial systems; amnesty/leniency; and truth-telling.

Some of these transitional justice mechanisms and techniques are relevant to the pre-negotiation phase, as well as the negotiation itself. During pre-negotiation, they may provide legal inducements for participation, signal the importance of certain issues, and contribute to building trust between the parties and with their constituents. To be maximally effective, the positive incentives and signalling needs to be harmonised with negative incentives, including the credible threat and use of prosecution and the deployment of defection-oriented amnesties.

It is important to adopt and develop these measures as part of a larger strategic whole, in which transitional justice fits into a broader peace transformation agenda, rather than the reverse. The interconnectedness and conditionality between the measures increases the likelihood of an effective negotiation and agreement. Included below are suggestions for how best to incorporate the multiple demands of peace and justice in a way that reinforces, rather than undercuts, the contribution of each individual measure to the prospect of negotiated deals.

Two points warrant repeating. First, it is important to continuously update information about the needs and desires of the local population, including victims, with respect to addressing harms inflicted by the organisation. Second, the language used to negotiate and communicate should reflect the language and perspectives of the various stakeholders, including the members of the extremist organisation.

Healing and Reparations

Healing and reparations are intended to provide relief to victims whose rights have been violated by the violent extremist group, the state, paramilitaries, organised crime, or other armed actors. There is no need to wait for a negotiated agreement to start addressing harms suffered by victims and others. Providing relief early contributes to building trust between the state and the local community; signals negotiations and related processes

are not only concerned with the violent extremist group, but also with victims; emphasises the benefit of siding with the state over the organisation; and potentially increases access to information about the local population and the extremist organisation, including the level of support of the former for the latter.

While the state itself is obligated to provide reparations and other relief for violations, the extremist organisation can contribute to reparations either voluntarily or by state mandate (through, for example, asset seizures). While reparations and other relief should be provided to victims of the extremist organisation, they also should be provided to those who were harmed by the state, regardless of whether state action was legally justified. Failure to treat victims of state violence the same as victims of extremist violence risks increasing tensions between classes of victims (which may exacerbate ethnic, religious, geographic or other divisions), underscoring existing grievances, and creating new ones, thus contributing to an environment in which extremist organisations thrive.

Providing reparations and healing tools to victims of both state and extremist group violence increases the legitimacy of the state; prepares and empowers these survivors as key stakeholders in peace negotiations; and increases the resiliency of the local population to resist future extremist organisations that may arise. As noted in the Ugandan case study, healing and reconciliation can be advanced by increasing the agency of the affected community, both by involving it in peace negotiations (as occurred during the Juba peace talks, among others), and by drawing upon traditional processes and expertise to further accountability (as was done with *mato oput*).

In all circumstances, advance consultation with victims and affected communities is crucial in crafting a reparation and healing programme, which should be tailored to address the specific violations and disruptions created by the conflict with the extremist group. Doing so will not only help legitimise the effort, but also identify key decision points, including the balance between individual and collective forms of reparation.

Criminal Prosecution

Prosecution is one of the more traditional tools used to combat criminal behaviour. As noted in the first paper in this IFIT series, overly legalistic approaches concentrated on prosecution have often failed or proved to be counterproductive, both in preventing and countering violent extremism. Nevertheless, traditional criminal prosecution can be an important component of a strategy to address a violent extremist group for at least four reasons.

First, victims and the public may demand perpetrators be treated like any other criminal given the nature of crimes committed, and thus be prosecuted. While a communications strategy that explains the benefits of leniency or other alternative forms of accountability that form part of a negotiated deal may dampen this demand, it may not eliminate it completely. Therefore, it is important that any accountability strategy be developed with inclusive consultation of victims and other interested parties, and that the possibility of criminal prosecution is part of those discussions.

Second, extracting benefits from perpetrators in return for participation in alternative accountability mechanisms or in exchange for some form of leniency, requires a credible threat of prosecution. Without such a threat, the incentive to participate in an alternative process is diminished. Selective prosecutions may be necessary to underscore the credibility of the threat.

Third, prosecutorial discretion – who to prosecute and for what – should be exercised with attention to the overall goals of the process. For example, if the goal is to entice members of the violent extremist group to participate in or support negotiations, targeting its high-profile members for prosecution may be the best use of limited prosecutorial resources. If instead a negotiated deal has already been reached, signalling that both leaders and ordinary members may be targeted for prosecution could be important to maximise participation in a truth-telling process.

Fourth, prosecution of a high-profile individual may serve as an important signal of accountability (to victims) and deterrence (to existing and future leaders of similar groups). Such prosecutions, where possible, should be undertaken only if there is strong evidence of culpability for the crimes charged; a failed prosecution risks diminishing the attractiveness of any alternative process, and decreases the legitimacy of the state. In addition, the judicial process must provide legal security and be perceived and accepted as fair, particularly by those being charged and by other members of their organisation. Prosecutions without basic due process protections will rightfully be viewed as illegitimate or politically motivated – a vindictive exercise cloaked in a sham legal process – and may hinder either negotiations or participation in an alternative accountability process agreed by the conflict parties.

A credible threat of prosecution also may increase the possibility of fruitful negotiations by signalling who and how individuals may expect to be prosecuted or otherwise held to account. Effective signalling requires a sophisticated understanding of the motivations and dynamics of the group members. Each organisation and its environment will present unique opportunities with respect to prosecutions, but certain choices have important consequences for the effectiveness of a credible prosecution threat.

First, it is important to be clear about what crimes trigger prosecution. Clear signals about what offences will be subject to prosecution can affect members' calculations concerning exit, cooperation or resistance. Equally important, such clarity may address some of the local communities' and victims' concerns about justice.

Second, it is important to be clear what level of criminal involvement will trigger prosecution. Prosecutions can be limited to the leadership, those most responsible, or anyone who committed or facilitated specific targeted crimes. Clarity on who will be prosecuted may prove as important as decisions about what crimes will be prosecuted in influencing members' calculations concerning exit, cooperation, and resistance, and the demands for justice by victims and the local community.

Third, a common weakness of prosecutorial strategy with respect to violent extremist groups has been the failure to distinguish different levels of agency and culpability,

including failure to distinguish between victims and perpetrators and to appreciate the subtle ambiguity of these categories, especially when coercion is involved. It may be necessary both to hold individuals accountable for violent acts they perpetrated and to provide them with reparations or other assistance for violent acts they suffered. Being attentive to the complexity of individual experiences that include both is not only wise as a matter of fairness to the individual, but also may address the often complex reactions victims and others have to such individuals. For example, many LRA members were kidnapped or otherwise coerced to join the organisation, and may be viewed by the local community as both victims and perpetrators. Clarity with respect to how individuals will be identified as targets for prosecution, as well as leniency or other forms of mitigation, can send important signals that may influence members' openness to negotiations or other forms of cooperation.

The International Criminal Court (ICC) is a final element worth mentioning in relation to realistic prosecution and negotiation strategies, as highlighted with special relevance in the Afghanistan and Uganda case studies. As an international body outside of the control of the target state, the ICC provides an added level of complexity to the negotiating environment. While the ICC's specific prosecutorial strategy may vary from situation to situation, making the effect of its involvement difficult to predict with precision, there are three important observations about how the ICC operates that may contribute to a better strategy of engagement and that, if ignored, could complicate, and even derail, a process of negotiation.

First, it is important that the parties to the negotiation have a clear understanding of the process that the ICC typically follows, including how and under what authority investigations are initiated, and the different key decision points at the pre-trial, trial, and appeals phase of the process. Familiarity with the process by all parties avoids unnecessary surprises or misunderstandings about who is responsible for a new development in the ICC process, and allows the negotiating parties to construct a coherent narrative that places the ICC's role within the context of the broader negotiations.

Second, it is important to be clear about which aspects of the ICC process the parties can influence, and which are solely within the control of the Prosecutor and the Court. Who to investigate, and for what, is in the first place within the power of the Prosecutor, though with frequent oversight by the Court's judges. The Prosecutor's office has issued a number of policy papers to guide its operations which can help inform an assessment of likely prosecutorial targets. For example, the Prosecutor has indicated that they will focus on those individuals "most responsible", and will focus on "the most serious crimes".

While the parties cannot influence these prosecutorial decisions, they can influence whether a case is ultimately pursued. Under the doctrine of complementarity, the Court will not hear a case if it is currently under some form of investigation or prosecution domestically. This means that if the state is prosecuting an individual for acts that constitute an international crime, the ICC will decline to proceed with its own prosecution of the same person for the same incidents. Parties to a negotiation may thus influence whether a particular individual or incident is targeted by initiating their own prosecutions of the

same individuals or matters. While it is clear that a domestic prosecution will succeed in removing the possibility of an ICC prosecution, some of the ICC's jurisprudence suggests that other forms of robust accountability may also act as a similar barrier to ICC involvement. For purposes of any negotiation, therefore, the presence of the ICC can be used as an external source of pressure to push for more concessions regarding accountability, at least for those most responsible for the worst atrocities.

Third, it is important that both the internal and external communications strategy with respect to the negotiations make clear the role of the ICC and what it can and cannot do. This is particularly important with respect to victims, who in some ICC situation countries have had their expectations raised with respect to both prosecutions and reparations, only to have the former fall apart and the latter never materialise.

Customary/Local Judicial Systems

Incorporating local or traditional conflict resolution processes may enhance the credibility and legitimacy of any prosecutorial or alternative accountability scheme, particularly if they enjoy widespread legitimacy from different stakeholders. By drawing upon established and legitimate mechanisms, local community and extremist group member support for the process is more likely to be achieved.

Drawing upon such processes may be necessary if the traditional judicial system is corrupt, ineffective or suffers from large legitimacy gaps. The Afghanistan case study notes that while the official judicial system has collapsed and thus enjoys limited support, customary law processes enjoy a comparatively high level of respect, particularly in the rural areas. Local leaders, including religious leaders, managing these customary processes tend to have higher support from local populations than national leaders. At the same time, the case study notes that such customary processes need to be adapted to ensure that harmful traditions embedded in them are not strengthened.

Customary and traditional judicial systems, like all social institutions, will have evolved over time, adapting to the changing demands of the societies they serve. The challenge is to capitalise on the existence of these customary processes in a way that furthers accountability and reconciliation, which may require amending such institutions to be more open and inclusive, while ensuring they are perceived as legitimate and fair places for accountability. In Uganda, the traditional process of *mato oput* was adapted with some success to address the crimes committed by the LRA. As noted in the Uganda case study, part of the appeal of *mato oput*, in contrast to the more formal justice system, is that it allows for the recognition of perpetrators as victims and thus is better equipped to facilitate reconciliation and healing. In addition, because it is an endogenous and longstanding system, it provides a vehicle to tap into local expertise and provide agency to conflict-affected communities. As noted in the case study, communities in northern Uganda "through their appeals and recourse to tradition … occupied and defended political and juridical territory, transforming themselves from passive spectators to more central actors in the processes of ending the war".

Amnesty/Leniency

Amnesties and other forms of legal leniency can be some of the most creative and useful components of a broad strategy for engaging violent extremist groups. They tend to be the least understood mechanism. They are often viewed (in some cases rightly) as the equivalent of impunity, and bring their own controversies and challenges. Nevertheless, if crafted carefully, amnesties and other forms of legal leniency can be powerful entry points for negotiation and effective mechanisms in preventing and overcoming violent extremism, while facilitating important goals like justice, peace and stability.

Amnesty provides legal immunity from criminal (and often civil) liability for designated offences. Legal leniency is a broader concept that encompasses forms of legal accountability that are situated above amnesty but below full prosecution and punishment along the continuum of accountability measures. It includes reduced and suspended sentencing practices; alternative forms of incarceration; expanded categories of legal defences and mitigating factors; and a less formal judgement process that can incorporate interests of victims and other interested parties and that may be less adversarial.

There are three important conditions that make an amnesty or other form of legal leniency acceptable and effective. First, such a benefit should be given in return for something significant that facilitates an important goal of a comprehensive peace and transformation strategy. Amnesty and legal leniency are extraordinary benefits, and only should be provided in return for something equally significant. Second, amnesty and legal leniency should be combined with reparations, truth-seeking, or other benefits specifically aimed at advancing justice for victims and others affected by the violent extremist group's actions. Thus, it is important that beneficiaries of amnesty or leniency commit to supporting and participating in processes that further accountability, reparations, healing and reconciliation, ideally as a condition of benefit eligibility or retention. Third, any amnesty or legal leniency should not be granted to only one party in the conflict. If such measures are viewed as one-sided (eg, the state over the violent extremist group), they will undercut the legitimacy and effectiveness of broader measures to address the group.

The Afghanistan case study provides an example of a misuse of leniency that created impunity for serious crimes with no discernible reciprocal benefit. Some warlords were enticed to give up their militias in return for positions of political power. This was supplemented by a 2007 amnesty law, which provided immunity for crimes committed before 2001, with no provision for reparations, healing, or reconciliation other than a statement of forgiveness between the parties involved in the war. While giving warlords political power in return for eliminating militias may have been justified, the failure to require good behaviour going forward or measures addressing economic crimes and corruption resulted in warlords using their newly acquired political legitimacy to continue their illegal activities, and may have emboldened the Afghan special police to conduct forced disappearances, summary executions and torture of detainees. What might have been part of a broader package to decrease violence and increase accountability and healing, became a means for perpetrators merely to shift the form of their criminal activity, further entrenching their power.

Truth-Seeking/Telling

While prosecutions and alternative justice systems contribute to truth-telling and truth-seeking, it is often useful to provide a specific space, such as a truth commission, to highlight the experiences of victims and those who traditionally have minor roles in more formal justice processes. Even if victims are given a robust role in a prosecution or other accountability mechanism, the focus of those processes is appropriately on the actions and motivations of perpetrators and other responsible individuals. A truth commission can shift the focus to the experiences of victims and others, which can contribute to enhancing individual dignity, healing and repair.

Any decision to incorporate a truth commission should be part of a broader set of commitments to further a just and lasting peace. Too often, truth commissions are created with the expectation they will be the sole providers of accountability, justice, reparations and reconciliation. These high expectations set the process up for failure. Instead, truth commissions should be designed as part of a comprehensive set of measures to advance goals of weakening or reintegrating the extremist organisation, addressing victim needs, and supporting other accountability efforts.

Since truth commissions examine past violations and are meant to serve as a bridge to a better future, they make little sense while the conflict still rages. However, truth-seeking in relation to missing persons need not wait. To the contrary, creating a non-judicial mechanism focused on the search for missing persons of all sides can be an important form of mid-conflict transitional justice that feeds into many goals at once, including documentation of war crimes for future truth-telling or accountability processes, and healing and reparation for the families of the missing.

Interconnectedness and Conditionalities

While each element of a transitional justice strategy is important to the success of a larger negotiation effort, the relationship among components, particularly through the creative use of conditionalities, is vital. Conditionalities create incentives for participation, and provide mechanisms for accountability otherwise unavailable. For example, providing amnesty or leniency in return for participation in a truth-telling or alternative accountability process may advance justice and reconciliation more than relying on the existing justice system.

Thinking creatively about the relationship between new and existing transitional justice bodies and projects can further increase their impact and success. In Uganda, for example, the aborted agreement with the LRA envisaged linkages between the traditional or customary justice system and the formal justice system. Under the agreement, participating in a traditional reconciliation and accountability mechanism would be a mitigating factor in the formal prosecution under a new special division of the Ugandan High Court (what would later be established as the International Crimes Division). While such linkages will bring their own challenges, their advantage lies in creating synergies and benefits to shore up the effectiveness and legitimacy of what is new.

Transitional Justice Strategy Checklist: Key Questions

Healing and Reparations

- Are there immediate resources and programmes that can be made available to victims and affected communities to address the violations they have suffered?

- Has the state engaged with victims and affected communities to better understand what would best address the impact of the violations they have suffered?

Criminal Prosecution

- Is there a demand for criminal prosecutions from victims and other affected communities?

- Is the justice system adequate to provide criminal prosecutions that are likely to succeed, appear to be and are fair, and protect the rights of suspects?

- How do criminal prosecutions fit within an overall peace and accountability strategy?

- Which crimes are the most notorious, and which are the ones for which victims and affected communities are most intent in pursuing justice?

- Has the International Criminal Court indicated it is undertaking a preliminary or other investigation of the crimes committed?

Customary/Local Judicial Systems

- Is there a local or customary judicial system that enjoys legitimacy with victims, perpetrators, and other important stakeholders?

- What modifications, if any, are necessary to increase the legitimacy and effectiveness of the local or customary justice system?

- Are there ways to link a local or customary justice system with the more centralised standard justice system, and with other parts of the strategy for addressing the extremist organisation?

Amnesty/Leniency

- What significant concession or *quid pro quo* can be acquired by offering or negotiating a conditional amnesty or other form of leniency?

- How does a conditional amnesty or other form of leniency further other goals of the transitional justice strategy, including truth-seeking, healing, accountability, and reconciliation?

Truth-Seeking/Telling

- Are victims and affected communities interested in having their truths told and heard publicly?

- What support or other incentives are necessary to ensure that a truth-seeking process enjoys broad participation across different stakeholder communities?

Interconnectedness and Conditionalities

- How can the different mechanisms being negotiated to address the impacts of the extremist organisation and the state response relate to each other?

- What tensions, if any, exist between the different mechanisms being contemplated?

- How can the different mechanisms be created, and sequenced, in a way that supports the whole strategic approach?

Conclusion

This paper has set out a policy framework for addressing violent extremist organisations, with a particular focus on negotiations and insights from the experience of transitional justice. While much of the paper is premised on some form of engagement and negotiation with a violent extremist group, the question of whether, when, and why negotiations and other forms of engagement should be undertaken will depend on context, and may not be immediately appropriate. Regardless of whether engagement or negotiation appears feasible at any juncture, the research for this paper and its predecessor makes clear that the possibility of engagement and negotiation should be continuously assessed.

Engagement, negotiation, and the adoption of a comprehensive transitional justice strategy can contribute not only to minimising and ending the violent disruption created by an extremist organisation and the state's response, but also to creating an environment in which the appeal of such organisations is lessened. By providing reparations or other healing mechanisms to victims early in the process, and by incorporating a consultation and communications strategy that builds on the narratives of important stakeholders, a state may increase its legitimacy and simultaneously decrease the push factors that often contribute to the appeal of such organisations in the first place.

Further Reading

IFIT, The Limits of Punishment: Transitional Justice and Violent Extremism

IFIT, Negotiations with Criminal Groups in Latin America and the Caribbean

IFIT, Changing the Narrative: The Role of Communications in Transitional Justice

IFIT, Rethinking Peace and Justice

IFIT, Process Design for Secret Talks

IFIT, Process Design Tips for Political and Peace Negotiations

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INSTITUTE FOR INTEGRATED TRANSITIONS

Between Revulsion and Realism

POLICIES AND DILEMMAS IN RESPONDING TO THE LRA

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Acronyms

AAR	Agreement on Accountability and Reconciliation (2007/8)
ADF	Allied Democratic Forces
AIMM	Agreement on Implementation and Monitoring Mechanisms
ARLPI	Acholi Religious Leaders' Peace Initiative
AU	African Union
AU-RTF	African Union-Regional Task Force (on the LRA)
CAR	Central African Republic
CPA	Comprehensive Peace Agreement
DRC	Democratic Republic of Congo
FEDEMU	Federal Democratic Movement of Uganda
FRONASA	Front for the National Salvation
HSMF	Holy Spirit Mobile Forces
ICC	International Criminal Court
ICD	International Crimes Division
ICGLR	International Conference on the Great Lakes Region
IGAD	Intergovernmental Authority on Development
LRA/M	Lord's Resistance Army/Movement
NRA	National Resistance Army
NRM	National Resistance Movement
SPLM/A	Sudan Peoples' Liberation Movement/Army
TJWG	Transitional Justice Working Group
UCDM/A	Uganda Christian Democratic Movement/Army
UNLA	Uganda National Liberation Army
UNRF (II)	Uganda National Rescue Front
UPA	Uganda Peoples' Army
UPDA	Uganda Peoples' Democratic Army
UPDF	Uganda Peoples' Defence Forces
UPM	Uganda Patriotic Movement
WCC	War Crimes Court

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Introduction

For more than thirty years, Joseph Kony's Lord's Resistance Army (LRA) has evaded defeat. Defying concerted national, regional and international military efforts, LRA forces continue to operate in several countries, including the Central African Republic and the Democratic Republic of Congo (DRC) – in the process, committing serious abuses against civilians. Kony is said to be hiding in Kafia Kingi, a disputed region lying between Sudan and South Sudan.

But how did a young man from a small village in northern Uganda mobilise one of the most notorious and brutal armed groups, and become the first person to be indicted by the International Criminal Court (ICC)? After more than thirty years of operations across four countries, what have been the social and political impacts of the LRA and what explains the group's longevity? And more to the point, what can be done to bring groups like the LRA in from the cold?

While the government of Uganda has long favoured a military solution to the LRA, under strong internal pressure from affected communities it has conceded the need to provide incentives for defections and dialogue. The country introduced a comprehensive amnesty law in 2000, but within three years it referred the LRA to the ICC, which later issued its first arrest warrants against LRA leaders. Three years after the ICC referral, Uganda accepted the invitation of the government of Southern Sudan to negotiate with the LRA in Juba. During those negotiations, the government's approach to questions of justice was profoundly tested, and by 2008, it had agreed to exclusively domestic processes for the LRA, seemingly abandoning the ICC process. Although it established a special division of the High Court to facilitate domestic trials, Uganda did not object to former LRA commander, Dominic Ongwen, being tried by the ICC, after being surrendered to the court by the Central African Republic in 2015. In 2019, after more than a decade in development, Uganda adopted a national transitional justice policy. Its implementation is yet to begin.

Violent extremist groups do not emerge from a vacuum. They are formed and influenced by a range of political, social and economic forces, including grievances. Spiritual visions and existential calculations sustain them. And when old influences fade, new alliances and motivations emerge. Similarly, the policies and strategies of societies in response to violent extremist groups are also shaped by political, economic and social factors, including their (in)capacity to deal decisively with such groups. These multiple and changing motivations and influences are to be studied for the light they shed on why certain strategies for preventing and addressing the impacts of violent extremist groups succeed or flounder.

Drawing heavily on the author's direct experience and participation in some of the key events and initiatives described, this study focuses on how policy in response to the LRA

was made, sustained and adjusted over the years. It puts this in a historical context, charting the key events and actors, and examining the processes by which amnesty, dialogue, recourse to international criminal justice and transitional justice policies were adopted and implemented. Since they provide a unique opportunity for competing political and justice visions to be interrogated – including the dilemma of the ICC – the Juba peace process and its outcome are discussed in particular detail.

Because they must search for durable solutions to the actions of groups like the LRA, societies and states will normally pursue and contest a range of divergent, domestic, regional and geopolitical goals. In systematically using brutality and coercion to achieve political aims, while appropriating Christian and traditional practices, the LRA has posed challenges similar to those posed by radical Islamist groups. But the story of why and how groups like this emerge, endure and are confronted, is more complex than a paper of limited aims and length can honour. As such, the observations and potential lessons with which the paper concludes are intended to catalyse further reflection rather than provide any definitive answers to what are often case-specific issues. Uganda's policy changes and hesitations reflect the complexity of maintaining strategies that are both principled and effective in containing, if not eradicating entirely, the actions and impacts of groups like the LRA. Therein lies the abiding dilemma in pursuing transitional justice goals in the face of violent extremism.

Revulsion and Reality

In November 1997, President Yoweri Museveni of Uganda wrote to the Lord's Resistance Movement (the political wing of the LRA). Some ten years after the start of the conflict, the group had requested another round of talks with the government, even as it continued to attack northern Ugandan villages from bases in Sudan. After reciting the group's crimes, Museveni conceded that reasonable numbers of Ugandans nevertheless considered it appropriate to negotiate with the LRA. He was therefore prepared to extend an amnesty to the group – except for Joseph Kony and senior commanders, whom he considered to be "the authors of these heinous crimes against humanity". The President then offered to send a government delegation to negotiate with the LRA, "our revulsion at your methods notwithstanding".[1]

Years before, Major General Salim Saleh, a senior officer in the national army – who is also President Museveni's sibling – had been tasked to engage the LRA, but had become exasperated by what he considered to be the group's prevarications and unusual demands: "they should come back to reality first before they talk to us."[2] But the LRA did not go away. For northern Ugandan communities, realism about the improbability of an outright government victory ending the increasingly costly and damaging war, fuelled their insistence that dialogue, supported by leniency incentives, were the keys to resolving the LRA problem. Thus General Saleh and others would keep returning to northern Uganda, sometimes exploring new dialogue opportunities.

Origins and Context

This story must begin with a survey of Uganda's past for the light history sheds on the political and social context in which the Lord's Resistance Army emerged to become a notoriously violent group. The country's political divides and grievances, its repressive regimes, its socio-economic structures, its coups and conflicts, and, of course, its neighbourhood; all have shaped the trajectory of the LRA. Such historical perspective deepens understanding of the multiplicity of factors that influenced the attitudes, motivations, calculations and choices of the national and regional actors in instigating, sustaining, impeding or facilitating the resolution of the conflict; one in which relations between Uganda and Sudan added a complicating geo-political dimension, transforming a domestic conflict into a proxy war between neighbours.

Long before independence in October 1962, the seeds of instability in Uganda had already been sown.[3] In an ethnically diverse polity, in which over forty languages are spoken, colonial rule had left behind a country with unequal social and economic development, where

the north lagged behind the south in all key social and economic indicators. Under colonial policies, northerners had also been recruited in large numbers into the army, police and prisons services, and thus dominated senior as well as rank-and-file positions in these institutions. Invariably, northerners came to be associated with the actions of successive repressive regimes, although this association with political power did not translate into social and economic advantages for the north. All this fuelled mutual resentments and grievances. As such, instead of delivering a much-needed nation and state building project to address these emerging imbalances, the years after independence saw instead an accentuation of north-south divides, which still shape national politics to this day.

In the new federal system, Sir Edward Muteesa, king of the (southern) Baganda, became president and head of state, while Milton Obote, a northerner, was the first Prime Minister and head of government. Tensions quickly mounted. Within four years, Obote ordered the army commander, Major General Idi Amin (from the West Nile region in the north), to attack Muteesa's Kampala palace. The king narrowly escaped, dying in exile in London; and that was the end of federalism. Obote installed himself as the new president and head of state. Under his reign, resistance by perceived royalists was crushed and political opponents detained. However, in January 1971, the Major General toppled Obote (who was abroad at the time) in a coup that brought jubilation onto the streets of Kampala.

Brutal reprisals ensued against mainly Acholi and Langi military personnel whom Amin regarded as Obote loyalists. Soon after taking power, the Amin government ordered all Acholi and Langi soldiers to report to barracks. Many who did were subsequently murdered. Others, instead, fled across Uganda's northern border into Sudan. They initially set up camp in Owiny Kibul, in Eastern Equatoria, and later made their way to Tanzania where Obote had settled under the protection of President Julius Nyerere.

The notorious Amin years wreaked considerable havoc on all aspects of Ugandan national life and institutionalised brutality even further. Acholi and Langi were particularly targeted for their perceived connection with Obote, who remained in neighbouring Tanzania. Thousands fled into exile, where some joined the resistance. In 1972, all Asian-origin Ugandans were expelled from the country, gutting the economy in which they were key players. In Tanzania, Acholi and Langi soldiers formed the nucleus of the Uganda National Liberation Army (UNLA), an umbrella army of Ugandan groups, which included Yoweri Museveni's Front for National Salvation. Ultimately, in 1979, a combined Tanzanian and Ugandan force drove Idi Amin from Kampala.

With its significant number of Acholi and Langi senior officers, the UNLA paved the way for Obote's return to Uganda. He arrived in 1980 to lead his Uganda People's Congress (UPC) into national elections mired by irregularities, which the UPC controversially won. Once again, Obote was President of Uganda. Others, including Yoweri Museveni, whose Uganda Patriotic Movement (UPM) had contested and lost the elections, took up arms anew accusing the regime of rigging the elections in favour of the UPC. Museveni re-formed a group that eventually became known as the National Resistance Movement/Army (NRM/A) operating mainly in Luwero, in central Uganda. As the counter-insurgency unfolded, the area became known as the "Luwero Triangle". It was the epicentre of serious atrocities and

tens of thousands of deaths, particularly from 1983 when the UNLA launched Operation Bonanza, a major military operation to push the NRA out of the area. Estimates of civilian deaths in Luwero Triangle have reached 300,000, including women and children. Thousands were the victims of a scorched earth policy and deliberate starvation.

Acholi soldiers, who had continued to be recruited into the army in high numbers and assigned to the front, were widely held to be responsible for the atrocities, certainly by the local Baganda communities. This was problematic as many army personnel, including officers, were from other parts of Uganda, yet were able to avoid similar scrutiny. Making matters worse was the fact that the war took an especially big toll on Acholi foot soldiers. All of this contributed to differences and rivalries between Acholi and Langi officers, deepening the fissures within the army.

In July 1985, the army fractured. Acholi Generals, Bazilio Okello and Tito Okello (not related), mobilised a force and drove from Kitgum and Gulu into Kampala. Once again, Milton Obote was toppled, but this time by another set of northerners: the Acholi. The new generals in charge immediately sued for peace with all armed groups that had been fighting Obote, as they attempted to broaden the government. While some like the Uganda Freedom Movement of Andrew Kayiira, and the Federal Democratic Movement of Uganda (FEDEMU), heeded the call and took part in the military government, Yoweri Museveni's NRM rejected the junta's power-sharing overtures, insisting instead on a new, negotiated political dispensation.

But while it engaged the junta in acrimonious dialogue in Nairobi, from August 1985 onward, the NRM/A continued to consolidate both militarily and politically, readying itself for a decisive push on Kampala. At this time, many Rwandese exiles also joined the NRA; they already had an eye on future military intervention in Rwanda. In December 1985, the junta and the NRM/A signed a peace agreement. Almost immediately afterwards, Museveni denounced the agreement, accusing the regime of continuing to violate human rights. His forces ratcheted up the fighting and, the following month, marched on Kampala.

The National Resistance Movement

On 26 January 1986, Yoweri Museveni was sworn in as president of Uganda, even as columns of (the now former) regime forces were still retreating northwards. Thousands of soldiers ended up back in Acholi towns and villages, melting into communities with their arms. A period of intense uncertainty and instability descended upon the Acholi. In their sense of humiliation and resentment at being defeated, and what they saw as southern perfidy, many ex-soldiers started to prepare to resist the southerners. This was prescient, as by March 1986, the victorious NRA had advanced into northern Uganda.

At first, the NRA continued to display the discipline for which they had been contrasted with the former army, the UNLA and other armed groups. Although regarded with deep suspicion, the NRA was not immediately attacked, and there were indeed signs that many former soldiers were beginning to resign themselves to a new life as civilians. Unfortunately, this uneasy probationary period did not last. Due to a combination of inexperience, poor judgement and perhaps hubris, the new authorities mismanaged their entry into Acholi areas.

In one ill-judged intervention, Radio Uganda ordered all former UNLA soldiers to report to the military barracks within 10 days. Inevitably, the echoes of Idi Amin's summons in 1971 reverberated in the countryside. Many former soldiers went into hiding, while others fled across the Sudanese border or joined groups that had taken up arms. Some of the former UNLA soldiers were rounded up and ill-treated in re-politicisation camps. The NRA also deployed its 67th Battalion to the home area of General Tito Okello, who had led the brief military government. The battalion was largely drawn from the Federal Democratic Movement of Uganda (FEDEMU), which lacked the discipline of the NRA and was intent on reprisals against Acholi civilians. Because of its conduct, the battalion was eventually withdrawn from northern Uganda.

But serious damage had already been done. Other incidents of the time included not only the confiscation of livestock and the destruction of granaries, but also mistreatment of former UNLA soldiers by the NRA, torture of perceived opponents of the government, and atrocities including systemic male rape.[4] Karimojong cattle raiders, apparently with the connivance of elements of the military, made forays deep into Acholi lands, making off with even more cattle.

These emerging violations were fuel for insurgency in the north and cemented deep resentment and grievances that would resurface twenty years later in the Juba peace talks. By mismanaging the early phase of the disarmament and reintegration of the thousands of Acholi soldiers, and in its reaction to the first incidents of insurgency by the Uganda People's Democratic Movement/Army (UPDM/A) – which had been formed in Juba with Sudan's support – the Museveni government contributed to re-emergence of conflict. Yet conflict in the north was never simply a local or national rebellion; the structural causes and drivers ran much deeper and transcended territorial boundaries.

Alice Lakwena's Holy Spirit Movement

The Acholi region of 1986 was a place of intense social dislocation and uncertainty. Thousands of soldiers, displaced from the south by Museveni's forces, had arrived back into rural communities, while others had fled into yet another round of exile in Sudan. For answers and reassurance amidst this deep unsettling, many, including ex-soldiers, turned to the diviners and spirit mediums who had long been a part of Acholi society. In their ministrations, the diviners and mediums were increasingly combining traditional beliefs and practices with Christian and Islamic influences. Of particular note, in January 1985, a 30-year-old woman from Opit in Gulu district named Alice Auma had received a calling to follow in the footsteps of her father, Severino Lukoya, a medium. Alice became possessed by spirits, rendering her deaf and mute. Disappearing from home, she returned from her 40-day sojourn to the nearby national park, having found her voice. She had communed with the animals and the elements and brought back a new message from the Lakwena (Luo for Messenger – the spirit of a dead Italian from the First World War) that she should start working as a healer (*nebi)*.

Setting up her practice in Opit, Alice's influence grew beyond her village as her reputation for healing spread. In the Acholi belief system, when a person kills another, the malevolent

spirit of the deceased (cen) will haunt the killer until it is exorcised. Many former soldiers believed they were being haunted by the spirits of those whose deaths they had caused, including in Luwero. Alice could cast out cen and therefore many now turned to her for help. Alice also provided an anxious society with spiritual explanations and remedies for those uncertain and troubled times. In her message, the defeat of the UNLA and the crisis in the land were direct consequences of the sins and atrocities committed in the Luwero Triangle.

Alice's work soon took a new turn. In August 1986, the spirits instructed her to stop working as a healer and instead to raise a force with a two-fold mission: to purify the Acholi and their lands and, thereafter, to turn her attention to Uganda as a whole. For this, she needed to seize control of the levers of power in Kampala, and thus as a first step she set up camp in Kilak (in the present Pader District), where she established the Holy Spirit Movement, also known as the Holy Spirit Mobile Forces (HSMF). With an initial force of about 10,000, Alice began her long southward march towards Kampala, along the way picking up fresh recruits and winning some stunning, if unorthodox, battles.

Within the Holy Spirit Movement, strict rules reinforced Alice Lakwena's message: witchcraft and sorcery were forbidden, as were sex and alcohol. Combatants were not to take cover or retreat in the heat of battle; instead, they were to trust in the protection that the *shea* butter smeared on their bodies would provide against enemy bullets. Stones dipped in holy water should be trusted to explode like bombs when hurled at the enemy. Her undoubted charisma and the evidence of battlefield successes served only to fan the faith of her adherents and to attract new believers. But by the time her forces reached the outskirts of Jinja, less than 100 kilometres from Kampala, they had over-extended themselves. Operating in increasingly hostile territory, and prepared to attack fortified military camps, the HSMF ran into a massive NRA offensive and was defeated and scattered. A follower took Alice to safety and exile in Kenya, on the back of a bicycle.

Explanations for the unexpected and spectacular rise of Alice Lakwena must include the fact that she provided answers that were both spiritual and political, at a time of both great angst and anger in northern Uganda. Combining a message of hope and agency, she addressed the fears that had settled over Acholi society while catalysing new forms of political aspiration. Moreover, the close affinity of parts of her teachings and rituals to known Catholic practices, gave a greater familiarity and currency to her message, helping to extend her appeal to Christian adherents. Peasants, former UNLA soldiers and officers, and even a former minister in the Obote government, Professor Isaac Newton Ojok, heeded her call. They were all drawn in by her undoubted charisma. Such a breadth of following reflected dislocation and social trauma, but also a collective urge within the society to resist and correct real and perceived southern intrusions and injustices.

Despite her eventual defeat, Alice Lakwena's Holy Spirit Movement struck a telling psychological blow, with undeniable political ramifications: a spirit medium with limited military skills had burst the aura of invincibility of the government forces and had even managed to evade capture. Alice was proof that a peasant movement – if mobilised with the combination of a corrective political message, a spiritualist vision and just a modicum of military expertise – could become a potent force, capable of inflicting serious political, if not

military, damage on a secular and resented government. Far from restraining their appetite for resistance, HSMF stragglers who made it back to northern Uganda after the Jinja debacle promptly joined Alice's father, Severino Lukoya, who had also started to raise a force but lacked his daughter's charisma. He was unable to match her success. Instead, when government forces later captured Lukoya, the HSMF remnants were absorbed by the next rising phenomenon: a young relative of Alice had started to raise his own force. It was Joseph Kony's turn to lead the resistance.

Joseph Kony and the Legacy of Alice Lakwena

Born in 1961, Joseph Kony came from a family of mediums. In his twenties, he too became possessed by several spirits and became a spirit medium. He is said to have spent a brief period as a "spiritual mobiliser" in a unit of the anti-Museveni Uganda People's Democratic Army (UPDA) before striking out on his own with some fighters. At different times, Kony has claimed to be possessed by different spirits originating from Uganda, America, and China, among others; although there has been some dispute about whether the Lakwena had also possessed him. On the military front, apart from absorbing some remnants of Alice Lakwena's force, Kony's major break came in 1988, after the UPDA signed a peace agreement with the government when some of the UPDA refused to go along with the deal, choosing to fight on. They now turned to Joseph Kony, which greatly boosted his numbers and enhanced his military capabilities.

Another Spiritual Force

Joseph Kony's group took different names in the early years, including Holy Spirit Movement II, United Holy Salvation Army, then the Uganda Democratic Christian Movement/Army (UDCM/A). By 1993, the group had settled for the "Lord's Resistance Army". In that name, Kony had shrewdly managed to combine a reference to spirituality (Lord's), politics (Resistance), and military means (Army), while at the same time alluding – and subtly suggesting an equivalence – to Yoweri Museveni's National Resistance Army. Even as his military capabilities grew, Kony continued with his teaching, spiritual practices, divinations and cleansing rituals. In his self-portrayal as the heir of Alice Lakwena, Kony maintained the message of the need for Acholi redemption through moral renewal and purification. His message resonated in northern Uganda at a time of continuing flux and uncertainty when no rapprochement had been reached with the new power in Kampala. Where Alice had inspired with a message of repentance and a promise of power, Kony's message and methods, perhaps because he was guaranteed Sudanese support, evolved to rely more on compulsion and reprisals.

Throughout the time that it was active in northern Uganda, the LRA maintained complex rituals, rules and hierarchies. Kony gave teachings and led prayers thrice a day; Fridays and Sundays were days of rest. Fasting was practiced and, perhaps in deference to his supporters in Khartoum, this included the month of Ramadan. But all through these spiritual practices there was an unmistakable political thread: the LRA promoted its mission as ridding northern Uganda of what it saw as an occupying force. LRA manifestos were and remain decidedly political; indistinguishable from what one would expect to find in

conventional political parties. Among other things, the LRA has cited the lack of northerners in government, the need to promote national unity, and formation of an ethnically balanced national army as some of the goals for which it was fighting.

Overtly spiritual goals included the pledge to establish a ministry of religious affairs to promote the Ten Commandments and the fight against "moral degeneration", including the practice of witchcraft. Combatants were trained and indoctrinated to go into battle with the firm assurance of victory through God's guidance and protection. Another indicator of spiritual inspiration is the LRA's organisational structure: the apex military brigade is called Control Altar; Joseph Kony is regarded as the Holy Messenger (*Laor*) or Prophet. Military orders originate from the Spirit and are channelled to the field units for implementation. Spirits often predict attacks and battle outcomes.

Early LRA Methods and Violations

Unlike Alice Lakwena, the LRA took a decidedly harsher approach towards civilians. After the government sought to mobilise a militia ("Arrow Boys") in the early 1990s to fight the rebels or report on LRA movements, the group started to target civilians perceived to be sympathetic to the government. Maiming and mutilations, such as the cutting of limbs and the slicing of the lips of presumed informers, were among the particularly gruesome punishments meted out by the LRA. Perhaps the practice that the LRA became most notorious for, and that drew international notoriety and condemnation, was the abduction of children and young people. The abduction of the girls of St Mary's College Aboke in 1996 captured news headlines and mobilised international attention in an age before social media, similar to Boko Haram's abduction of the Chibok Girls in April 2014. Then too, high-profile interventions, including an appeal by the Pope, failed to secure the girls' release.

Over the years, the LRA has systematically used abduction of both adults and children. The estimates of abductions exceed 70,000, and the pattern has continued outside Uganda, including the DRC and the Central African Republic. While Kony initially claimed that the children were to form the nucleus of the new Acholi nation of the future, other more sinister rationales soon emerged: the LRA understood that children forced to commit crimes at a young age, often against their own relatives, friends or communities, were likely to become alienated from their communities and thus cemented to the LRA. The impact of such intimate brutality on the families and communities would be devastating and underline the failure of state protection. The children would become ruthless and efficient fighters. And, with the passage of time, loyal adults to the organisation; some inevitably becoming senior LRA commanders.

Having built upon the beliefs that had propelled Alice Lakwena before her star was extinguished, Joseph Kony added much more calculation to his approach. For example, in its early years, the LRA absorbed some well-trained officers from the Uganda People's Army, which operated in eastern Uganda, and from other armed groups. In this way he added to the conventional military capabilities of his force. Arguably, Kony ended up building one of the most resilient violent millenarian movements of recent times. Drawing upon, and mixing, mainstream Christian theologies with other beliefs, the LRA, like many other

violent extremist groups, has deployed terror systematically and almost ritualistically, not only as a form of indoctrination of new conscripts, but also as a means of sowing total fear in communities. Whether publicised by the group itself or by others, the use of spectacular violence is also designed to destroy the morale and reputation of the states and entities responsible for protecting the targeted communities. In turn, the fear engendered by the egregiousness of the violence acts as a force multiplier, furthering the survival of the group.[5]

In this regard, some have drawn attention to the similarities between the LRA and the Islamic State of Iraq and al-Sham (ISIS), both of which employ coercive radicalisation characterised by violent induction into the group; assimilation through learning religious rules; and the propagation of millenarian narratives framing violence as purification (in the case of the LRA, the building of a new Acholi community, hence its abduction of young people).[6] This sustaining logic of violence, when added to the deliberate elevation of the spiritual leader, is a potent combination. In the case of the LRA, Kony's proximity to and communion with the spirits, has added to his charismatic authority, cultivating and reinforcing the allegiance of coerced inductees.

While its emphases and projections might have evolved over the years, the LRA has always maintained a dual spiritual and political identity. In its earlier interactions with the government and communities, particularly in the 1990s, it emphasised its spiritual credentials and made those an element of its negotiations. However, in the Juba talks from 2006, its political identity was on full display. Although the LRA did not emphasise spiritual themes as a core part of its negotiating strategy, spirituality remained very much a part of the group identity.

Crossing Boundaries

In line with its policy of engaging armed groups, the NRM government, through Ms. Betty Bigombe, the minister responsible for northern Uganda, made attempts to engage the LRA between 1992 and 1994. These overtures appear to have arisen as much from Bigombe's personal commitment to addressing the conflict as from any official obligation. After several interactions in the field, and talks held in Gulu town, Bigombe's team, which included Ugandan army officers, managed to secure the LRA's signature to the Gulu Ceasefire Agreement on 2 February 1994. Unfortunately, this important text was never implemented: the LRA declined to return to Gulu, stating that it had lost faith in the government's intentions. Although Bigombe brought a considerable degree of empathy to the process, the political and military odds were stacked very heavily in the government's favour. Under any agreement, only the LRA would be expected to disarm and there would be no fundamental changes in the political facts on the ground in the north.

During the negotiations, the LRA's spiritual practices and priorities were very much in evidence. The text of the agreement even included a provision under which the LRA, upon demobilising, would "meet nominated elders and draw a program for cleansing rituals" to be performed in line with the agreed schedule.[7] But tensions remained at quite high levels throughout the process. Kony requested more time in order to gather his forces in

preparation for demobilisation and the implementation of the ceasefire. While allowing time for preparation was not unreasonable, during the delay that ensued the peace process was scuppered.

In February 1994, President Museveni gave a seven-day ultimatum to the LRA to reach a full peace settlement with the government or face military defeat on the battlefield. Many have subsequently speculated about why Museveni became impatient with the dialogue process, which seemingly undercut Bigombe's efforts. At a minimum, it is clear that (over)confidence in the capacity of the Ugandan army to defeat Kony played a part, fuelling the impatience of some elements within the military with the peace process. Yet the LRA's tactics at this time were already quite different to those employed by Alice Lakwena. Kony did not over-expose his forces by attempting substantial battles with the army or straying too far outside familiar territory. The government has also claimed that it received credible intelligence that Kony had made contact with the Sudanese government and was preparing to relocate to southern Sudan. In any event, the Bigombe process effectively came to an end. Eventually, the LRA did move to southern Sudan, where it received sanctuary. Thus, a Ugandan group with Christian and traditional inspirations became the proxy for an Islamist regime intent on destabilising its neighbours.

Apart from the obvious military benefits of having rear bases beyond the reach of the Ugandan forces, accepting Sudanese support inevitably affected the political priorities and ideological moorings of the LRA. At the political level, Sudanese support relieved the LRA of any serious need to invest in cultivating a political or spiritual support base within Uganda or to develop and propagate a political agenda and structures for the movement within the country. In fact, only a few individuals, most of whom were northern Uganda exiles, were said to be part of the political wing of the LRA. Joseph Kony effectively held all the reins of the LRA primarily as a military organisation, additionally providing spiritual oversight. Because its brutal methods have overshadowed its political credentials, which it failed to promote consistently, the LRA has been portrayed as little more than a criminal organisation.

As a condition of its support to the LRA, Sudan expected the group to fight the Sudan People's Liberation Army within Sudan, and to carry out attacks on Ugandan territory. The LRA accomplished this with notable effectiveness, carrying out some of the most vicious attacks against communities in northern Uganda – the Acholi, Lango and Madi communities. LRA attacks extended to (southern) Sudanese refugees in Uganda; the large settlement at Acholi-Pii in Pader District had to be closed after an LRA attack in August 2002. Although the LRA continued to frame its war as a rebellion against Museveni's government, with the guarantee of external support from Sudan, it could afford to alienate the Acholi communities without paying a political price for doing so. Reliance on Sudanese support thus allowed the LRA to mete out violence without political constraints. It did not need to cultivate and invest in conventional political methods of winning hearts and minds.

In any event, the brutal methods employed by Kony ensured that there could be little support for the LRA within the communities that suffered the brunt of the group's violence. This was not because northern grievances against the government had disappeared; in

fact, the failure to end the war and mismanagement of the socio-economic conditions in northern Uganda had generated new grievances, particularly owing to the deprived conditions in the displacement camps. Many considered that military and political leaders were deliberately prolonging the war effort for political and financial gain. Because most LRA members had been forcibly taken from among them, communities understood that the majority of the LRA were unwilling combatants. Having lost family members or friends to abduction, many in the community also saw peaceful settlement as the best way of ensuring the safe return of loved ones. As such, there were high levels of personal investment in a resolution. Moreover, given the reprisals that the LRA would visit upon communities perceived to be collaborating with the government, people were careful not to voice open criticism of the group. All these considerations, including the realisation that military methods were unlikely to bring a swift end to the conflict, generated strong support both for an amnesty and for dialogue with the LRA.

Resort to Amnesty

As already noted, the LRA was neither the first nor the only insurgency against the Museveni regime. In fact, almost immediately after it took power in 1986, the NRM faced rebellion across the country, not just in the north. Most notably, the Uganda People's Army (some of whose officers later joined the LRA) took up arms in the Teso Region, to the east of the country; and in western Uganda, the Allied Democratic Forces (ADF) (which continues to operate in the DRC) emerged. In the West Nile region (which borders the DRC and South Sudan), elements of some groups that had been formed from the remnants of Idi Amin's troops remained under arms and continued their fight against the new government.

Recognising that rebellions would sap its political energies, deplete national resources and undermine credentials for stabilisation, the NRM invested in bringing on board the different political formations in Uganda as well as the new armed groups and their political wings. In pursuit of this "broad-based government" approach, the NRM used a combination of political and military co-optation as incentives in its engagements and negotiations with opponents. Whereas in the 1985 Nairobi Peace Talks with the military government, the NRM had pursued a strong accountability line – and had insisted on the vetting and exclusion of individuals responsible for serious crimes – when in office the NRM turned pragmatic. It regularly employed amnesties and pardons in its peace-making strategy.

With many former politicians fomenting rebellion from exile, the government introduced the Amnesty Statute in 1987, which was designed to encourage the return of leaders of the various armed groups that had rebelled against the NRM, particularly individuals who had fled Uganda and feared to return for fear of prosecution. It was nevertheless a limited amnesty: a person responsible for the crimes of genocide, murder, kidnapping or rape would not be pardoned. But its main purpose was to offer reassurance and confidence to political opponents and other individuals to return home, and thus no political or military leader was denied the amnesty on these grounds. In addition, armed groups that sued for peace were often incorporated into the army *en masse*, thus obviating the need to carry out demobilisation programs. But the amnesty, which expired after three months, was not

extended beyond 1987. Thereafter, the government used presidential pardons to buttress its negotiations with opponents, always insisting that it would not seek retribution against those who were prepared to make peace.

Despite the 1987 amnesty law, northern Uganda remained restive. Following the failure of the first Bigombe talks in 1994, the years that followed witnessed several other contacts and attempts to engage the LRA, including through groups like Sant'Egidio, the Carter Center, and the (southern) Sudanese NGO Equatoria Civic Fund, headed by a Sudanese Acholi, Dr Leonzio Onek. However, none of these yielded sustained or high-level talks.

Persistence of Conflict and Calls for another Amnesty

As armed conflict persisted in northern Uganda, its economic and social costs rose quite dramatically. At its height, up to two million Ugandans were displaced across northern Uganda due to LRA activities, including most of the Acholi population.[8] Across all social and economic indicators, including poverty, HIV/AIDs infection rates, and mortality rates, northern Uganda lagged behind the rest of the country, and was often worsening while other parts were registering improvements. Some commentators even described the situation as a genocide or social torture.[9] Without the prospects of a quick military victory, the affected communities realised that their suffering was likely to continue indefinitely.

Across northern Uganda, and in the diaspora, the Acholi community started to organise itself to advocate for an end to war. For example, in 1996, the Acholi diaspora formed the *Kacoke Madit* ("the large meeting"), an organisation that periodically brought together northern Ugandans to advocate for peaceful resolution of the conflict; and in 1997, faith leaders in Acholi launched the Acholi Religious Leaders' Peace Initiative (ARLPI). Through these fora, the Acholi community started to call for a "blanket amnesty". It was understood, first, that military options were insufficient and thus dialogue was necessary; and second, that dialogue required the incentive of an amnesty. However, if leaders were excluded from the amnesty, there would be no one with whom to dialogue and make peace.

It was well understood in the community that the LRA was composed largely of the forcibly conscripted; with even the senior commanders having been taken unwillingly from Acholi villages and schools, often as children. Many carried a sense of responsibility for the failure of society to protect these unwilling combatants, whom they referred to as "our children", but who were nevertheless inflicting immense damage on the community. These understandings of the complexity of the LRA phenomenon, and the complicity of society, were bound to clash with retributive policies. Local and diaspora advocates for dialogue and amnesty were propelled into this policy terrain by the need to end the slow-motion tragedy that was unfolding in northern Uganda.

Although in practice the government rarely pursued the prosecution of individuals associated with insurgency, in 1998, it unveiled proposals for a limited amnesty along the lines of the 1987 Amnesty Statute. But while the principle was accepted in the north, the scope of the proposals was not. Acholi civic, cultural, religious and political leaders continued to press for a more comprehensive approach. The ARLPI produced alternative written proposals for a blanket amnesty to be accompanied by a commitment to pursue

dialogue. Alongside the call for amnesty, others also advocated for alternative forms of accountability to address the impacts of the LRA's crimes, and to lay the foundations for healing and social reintegration.

Although the sophistication of the above approach was often diminished by references to a "blanket amnesty", it nevertheless prompted calls for traditional justice to be applied to the LRA situation, with political, legislative and other facilitation by the state. An early elaboration of this approach was by Dennis Pain in a 1997 consultancy report co-commissioned by Kacoke Madit.[10] Meanwhile, others argued, controversially, for the formal codification of traditional justice to facilitate the process. This vibrant debate ensued across northern Uganda, interrogating the contours of justice, accountability, reconciliation and the role of communities and local traditions in dealing with the past.[11] It translated into strong community support for the ARLPI proposals. These were views that the government could not afford to ignore.

Enacting a Second Amnesty: The 2000 Amnesty Act

In addition to internal pressures, another impetus for re-enacting an amnesty law came from an external source: thawing relations between Uganda and Sudan. In December 1999, President Jimmy Carter, whose Carter Center had been involved in efforts to heal the rift between Uganda and Sudan, convened the two sides in Nairobi for talks. With Carter shuttling between Presidents Bashir and Museveni, they eventually reached an agreement which was to have a significant impact on Uganda's domestic policy response to the LRA. Under the Nairobi Agreement,[12] each country pledged to disband and disarm terrorist groups and to prevent cross-border acts of terrorism originating in their territories (a clause clearly referencing the LRA). The parties also foreswore any further support to hostile elements against the other side (a clear allusion to the SPLM/A). And in addition to the return of all prisoners of war to their respective countries (Uganda was holding Sudanese prisoners of war), each side was to "offer amnesty and reintegration assistance to all former combatants who renounce the use of force".[13]

By the time the Carter-brokered deal was signed, a strong headwind had built up for an amnesty in Uganda: the Acholi Religious Leaders' Peace Initiative and other civic and political leaders from the north had led an effective campaign for an amnesty that would encompass the leaders of the LRA. Their objections to the 1998 Amnesty Bill were accepted by the government, which also carried out its own consultations and found solid support across the country for a fulsome amnesty.[14] The new legislation was now based on the ARLPI's written proposals. This is how the amnesty came to be viewed as a document "for the people and by the people" as one man put it.[15]

Content of the Amnesty Law

When it was finally enacted, the Amnesty Act was framed as an expression of the government's "policy of reconciliation". Unusual for an Act of Parliament, the law set out in a detailed preamble the rationale for the amnesty. It noted that hostilities directed at the government of Uganda continued to persist in parts of the country, "causing unnecessary

suffering to the people of those areas". This important acknowledgement of the impacts of conflict was matched by recognition of the "expressed desire of the people of Uganda to end armed hostilities, reconcile with those who have caused suffering and rebuild their communities". The government also professed its determination to "genuinely implement its policy of reconciliation in order to establish peace, security and tranquillity throughout the whole country". This language was deliberately broad so it could apply not only to the LRA but to other groups as well. Read through a domestic lens, the law sought to address a perception that the government had not been taking seriously or giving equal priority to the suffering of the people of northern Uganda. No specific mention was made of the 1999 Nairobi Agreement.

In substance, four features of the Amnesty Act stand out. First, it sought, as the preamble demonstrates, to serve broader social goals of resolving armed conflict while also promoting recovery and reconciliation at both community and political levels. Second, while the goals were broad, the formal mechanisms were limited: there was a process for individual, but not group, amnesty. The intention was to catalyse individual defections while also sending a more general signal that the government was open to dialogue with insurgent groups. A third notable feature of the Act was its procedural simplicity: as under the old 1987 Amnesty Statute, the processes for the grant of individual amnesty were relatively straightforward. It was enough to report and formally declare interest in the amnesty. Fourth, unlike the 1987 law, the new Act was more elaborate: it established an oversight and implementation architecture in the form of an Amnesty Commission. The Commission's mandate was to promote the objectives of the Act, promote dialogue and reconciliation initiatives, and oversee programs of demobilisation, reintegration and resettlement (a task for which a dedicated Demobilisation and Resettlement Team was established).

Criteria for Receiving the Amnesty

Although its failure to end the LRA war inflicted domestic and international reputational damage, the Ugandan government did not regard the LRA conflict as an existential or political threat. The group's activities were largely limited to northern Uganda. It was incapable of toppling or inflicting significant political damage on the government, which considered the LRA to be a proxy of Sudan, unable to survive without Khartoum's support. However, the government also recognised that the LRA was a destabilising force that could, among other things, impede the self-determination aspirations of Uganda's SPLA allies in southern Sudan. These varied perceptions of the LRA informed Uganda's approach to the adoption and maintenance of the amnesty scheme.

Under the Amnesty Act, any Ugandan committing a crime in the cause of war or armed rebellion against the government after 26 January 1986 (the date that the NRM government took power) could qualify for amnesty. Although the law apparently excluded foreign nationals, Uganda in fact formally and informally extended leniency to foreign nationals as well. Notably, the 1999 Nairobi Agreement provided for the mutual release of prisoners of war by Uganda and Sudan. At the time that the Amnesty Act was enacted, regional (multi-state) security responses to armed groups, such as the ADF and LRA,[16] had not yet been adopted.

In terms of process, a person seeking to be granted the amnesty (a "reporter") could present themselves to "the nearest army or police unit, a chief, a member of the executive committee of a local Government unit, a magistrate or a religious leader".[17] A person could also make an application at a Ugandan diplomatic mission outside the country. In addition to geographical ease of access, procedurally, any applicant who "renounces and abandons involvement in the war or armed rebellion"[18] and surrenders any weapon in his or her possession[19] is deemed eligible to receive amnesty. In practice, the individual is then referred to the Amnesty Commission for the formal processing of his or her application; but the issuance of a certificate by the Commission is merely a confirmation of the grant of the amnesty.[20]

Formally involving civilians like chiefs and religious leaders in the initial stages of the amnesty procedures might seem unusual, but this was to recognise and harness the social capital and credibility of these leaders who had championed the amnesty and dialogue initiatives and who were often present and trusted within all communities, even when officials were absent. The effect was to underscore the community-centredness of the process and to enhance local ownership, which was essential, particularly at the inception stages.

Promoting Reconciliation through Amnesty

Building on its preamble, the Amnesty Act tasked the Amnesty Commission with promoting individual and community reconciliation as processes to achieve social recovery and healing in the conflict-affected areas. While political reconciliation was to be pursued through dialogue processes, the various mechanisms of social repair found within the affected communities would be used to promote individual and community reconciliation. And in its pursuit of a simplified process, the Amnesty Act left to the Amnesty Commission the responsibility of identifying and promoting the most appropriate mechanisms for reconciliation and accountability through which community-based accountability processes could be promoted.[21]

Because of resource and capacity limitations, the Commission in turn left it to the affected communities to determine the processes to be applied in specific cases. Consequently, the application of reconciliation measures has been neither systematic nor consistent. Whereas preliminary rituals of reception such as the *Nyono tong gweno* (the ritual stepping on eggs to welcome back the estranged) were regularly carried out, other processes that involved more preparation and content, such as truth-telling or *mato oput* (a more elaborate process involving acknowledgement, reparation and reconciliation, symbolised by the ingestion of a bitter drink), were not routinely pursued. Many high-ranking LRA officers, whose conduct might have been expected to warrant greater scrutiny, were simply allowed to resettle in society.

One explanation for this apparent lack of investment in reconciliation processes is that, for different reasons, both the government and communities favoured the least onerous and complex solutions, as these afforded maximum incentives and flexibility. Within communities, there was little appetite for imposing additional and burdensome requirements that might act as disincentives to defections. For the military, a simpler amnesty process

would allow it to draw easily from the combat and intelligence contributions that former LRA combatants could make to the war effort.

Despite this, communities have continued informally to promote reconciliation and other social processes. To this day, communities continue to resort to traditional rituals and confession to deliver healing for individuals suffering hauntings, including from *cen*. In this way, their social reintegration is promoted.[22]

Impacts of the Amnesty Act

Since the Amnesty Act was enacted in 2000, about 28,500 Ugandans have taken advantage of the offer; just under half of them from the LRA.[23] These figures confirm that although the strongest impetus for introducing the amnesty might have come from northern Uganda (and had in mind the LRA situation), the law was also applied to other conflicts in Uganda. Indeed, the language the Act employed needed to clarify that the amnesty applied to other groups like the ADF (another arguably extremist group) as well as the West Nile Bank Front (a more conventional insurgent group). The number of former LRA granted the amnesty also confirms that many individuals have re-joined society without any significant procedural formalities. This is another indication that during the height of the conflict there was indeed little official or community inclination to pursue individual accountability.

The Amnesty Act nevertheless generated tensions during its implementation. One abiding area of contention was the perceived unfairness in the fact that former insurgents were provided with some resettlement support while the needs and rights of the communities and individuals who had been targeted by such groups remained unfulfilled. Some have condemned the generosity of the Amnesty Commission's standard package – which consists of basic personal effects and a lump sum of about 60 U.S. dollars – while others have criticised the package as insufficient to induce defection or achieve effective reintegration. Both these criticisms reflect the underlying tensions that accompany efforts to pursue incentive-based strategies.

On several occasions, the government sought to limit the scope of the amnesty – including in 2002, in order to prevent those who returned to insurgency from benefiting from the amnesty a second time. Subsequently, after the government referred the LRA situation to the International Criminal Court, it also sought further amendments to allow individuals to be excluded from the amnesty. In 2006, it pushed through an amendment giving the minister of internal affairs the power, with the approval of Parliament, to declare a person ineligible for the amnesty. This amendment also allowed the minister to revoke the Part II of the Act, which contains the provisions granting the amnesty.

In fact, the scope of the amnesty scheme was already limited in important ways. First, the Act required that the applicant should renounce armed rebellion and associated crimes, and hand over any weapons, as a condition of amnesty eligibility. This entailed that the renunciation should be genuine. Furthermore, if an applicant failed to disclose the whereabouts of hidden weapons, he or she could not be said to have renounced rebellion. Moreover, based on its obligation to promote reconciliation and perform other functions associated with its mandate,[24] the Amnesty Commission could require an individual applicant to

undertake more detailed disclosures or engagements with communities in order to satisfy itself of the person's good faith.

Perhaps owing to the preference for procedural simplicity, the full implication of this underlying good faith condition has not been explored or brought to bear on the processes of the Amnesty Act. Even when, in 2006, the government successfully amended the law to permit the minister to exclude unsuitable persons from receiving amnesty, it neither took the opportunity to refine the criteria for exclusion, nor did it impose additional conditions for benefiting from the amnesty. Although crafted in general language, the 2006 amendment was promoted as a response to ICC arrest warrants, with the government insisting to Parliament that it remained open to dialogue with the LRA. A few months after the adoption of the amendment, the government commenced the 2006-2008 Juba peace talks (discussed in the next section of this paper).

Revoking and Reinstating the Amnesty

Following the inconclusive outcome of the Juba peace talks, fresh challenges to the amnesty process emerged. In May 2012, the Minister for Internal Affairs yielded to pressure from the judiciary, its Justice Law and Order Sector (JLOS) actors, the United Nations and others, and declared the lapse of Part II of the Act, and with it the amnesty.[25] These actors perceived the Amnesty Act as an impediment to domestic criminal justice initiatives, particularly the operation of the International Crimes Division (ICD) of the Uganda High Court, which was heavily funded by external donors through the JLOS. The effect of lapsing Part II of the Act was to remove from the statute book the power to grant amnesty while preserving other aspects of the Amnesty Act, such as the responsibility of the Amnesty Commission to reintegrate individuals and to promote reconciliation. In justifying his decision, the minister declared that the conflicts in Uganda had ended and there was no longer any need for the amnesty.

This decision inevitably attracted dissent from the same constituency that had campaigned for the amnesty more than a decade before; they demanded the reinstatement of the amnesty law, arguing that with remnants of the LRA still operating outside the country, and the jihadist ADF causing havoc in the DRC, the reasons for introducing the amnesty had not yet lapsed.[26] Among those who supported the reinstatement of the amnesty were the Ugandan military and some of the international NGOs which had continued to follow the activities of the LRA outside Uganda, such as the U.S.-based Enough Project, whose findings indicated that the removal of the amnesty was driven by donors pursuing an anti-impunity agenda and was causing significant upheaval in LRA-affected communities and discouraging future defections and escapes from the group.[27] U.S.-based organisations might also have been influenced by the fact that, through their campaigning, in October 2011, the Obama administration had announced the deployment of around 100 American Special Forces to pursue Joseph Kony. Along with the African Union's LRA Task Force, these forces made full use of the existence of the amnesty in Uganda, tailoring messages, including radio broadcasts, and leaflet drops, to encourage defections based on the prospect of amnesty.

In May 2013, having been petitioned by northern Ugandans, Parliament debated the lapsing of the amnesty and decided, unanimously, that the law should be reinstated. On the advice of the attorney general, the minister of internal affairs subsequently issued another instrument revoking the May 2012 instrument that had repealed the amnesty. The full Amnesty Act has since remained on the statute books. Even among former LRA who had already been granted the amnesty, the lapsing of the Act heightened a sense of legal insecurity. Since 2013, a trickle of fighters from the much-depleted LRA has been emerging from the bushes of Central Africa and the DRC to take up the offer of amnesty.[28]

The revocation of the amnesty in 2012 illustrates the tensions in transitional justice policymaking within the government of Uganda. All three arms of government (executive, legislative and judicial) have time and again taken differing positions on the value and validity of the amnesty. Although the executive at times hesitated over retaining the amnesty, Parliament's active interventions have kept the law on the statute books. Without its interventions, its unanimity and the strong lead from the Deputy Speaker, the amnesty would almost certainly have succumbed to external donor pressure and been allowed to lapse.[29] Even if the amnesty had not been reinstated, it is unlikely that the government would have systematically pursued criminal proceedings against insurgents. Indeed, in the period between 2012 and 2013, when the amnesty provisions had lapsed, there was no discernible increase in criminal proceedings targeting insurgents.

In political terms, the amnesty has allowed the government, which had come under criticism for its handling of the conflict, to appear responsive to northern Ugandan concerns. Although the Act initially expired every six months and, subsequently, after every two years, the government unfailingly extended its duration and never allowed it to lapse naturally, as it had done with the 1987 Statute. With the extensions and the 2013 reinstatement of the law, the government could signal flexibility without abandoning its preferred military options. In terms of dialogue, the Act also provided a ready framework for conflict resolution and the engagement of various armed groups other than the LRA.[30] Yet despite retaining the amnesty on the statute books, the government also pursued international justice options against the LRA.

Judicial Challenges to Amnesty

Legal contestation over the Amnesty Act continued in the Ugandan courts, pushed behind the scenes by international donors and legal technocrats. Debates about the appropriate role of amnesty in Uganda were not new. Without much participation in the earlier phase of adopting the amnesty, the Ugandan judiciary now played an active role in the fate of the amnesty. Following the initial challenges by the attorney general's representative in the case of Thomas Kwoyelo, a mid-level LRA commander captured in the DRC in 2009, the Constitutional Court accepted in September 2011 that Kwoyelo was indeed entitled to the amnesty. However, this position was reversed by the Supreme Court in 2015 in a final decision that allowed his trial at the ICD to be reinstated. Nevertheless, owing to various impediments, including lack of resources, the trial has continued to suffer delays as of the time of writing. Apart from the Kwoyelo case, the ICD has dealt with other individuals

who might otherwise have benefited from the amnesty, including Jamil Mukulu, the leader of the ADF, who was indicted in 2015 on various charges including terrorism and crimes against humanity.

International Criminal Justice and Amnesty

The domestic challenge to the amnesty was partly a consequence of the increasing emphasis on transitional justice and international criminal justice, particularly the intervention of the International Criminal Court (ICC). Like many other African states, Uganda participated in the 1998 process to adopt the Rome Statute of the ICC. Even as it introduced the Amnesty Act, Uganda had already signed the Rome Statute (ultimately ratifying it in June 2002). In December 2003, at the covert behest of Moreno Ocampo, the ICC prosecutor, and with intense lobbying from representatives of international organisations, including United Nations agencies, Uganda referred the LRA situation in northern Uganda to the ICC prosecutor for investigation.

Uganda's motivations in making this referral were complex, and certainly involved calculations that this move would mobilise international support and deflect growing criticism of the situation in northern Uganda. But regional dynamics were also at play.[31] A key supporter of the southern Sudanese SPLM cause, Kampala was keen to apply pressure on Khartoum, the prime backer of the LRA, particularly at a time when the SPLM was locked in critical negotiations with the government of Sudan in Kenya. In Uganda's calculations, ICC interest in the LRA would ultimately point the finger at the group's backer, Khartoum, thereby also assisting the SPLM in its negotiation positions with the Sudanese government. Without direct prior experience of international criminal justice, Ugandan officials simply failed to anticipate how intrusive and complicating the obligations triggered by a referral would become.

In northern Uganda, where the conflict continued to rage, news of the referral predictably provoked immediate and passionate opposition, as many saw the introduction of the ICC as a major setback for the prospects of a peaceful settlement. But even in resorting to the ICC, the Ugandan government was still expecting to keep all its options open. As we have already noted, it did not revoke the Amnesty Act (although it later amended it to enable exclusion of certain individuals). Neither did the government scale back on dialogue initiatives with the LRA; through the Bigombe-led processes, from 2004 to 2005, it continued to seek a settlement with the LRA.

To be sure, Kampala had become quite adept at identifying opportunities for cultivating and sustaining international support – particularly by providing backing to initiatives in the area of security policies in Africa and beyond, including such initiatives as the war against terror – while at the same time deftly fending off more intrusive political demands. In referring the LRA situation to the ICC, Uganda assumed the prosecutor would defer to its domestic priorities on the LRA conflict, should the issue arise in the future. But that assumption was soon to be tested, and the response indeed played out strongly in the process and outcomes of the Juba peace talks.

The Road to Juba – Dialogue and Politics

Since independence in 1962, successive Ugandan governments have supported the southern Sudanese struggle against the Khartoum regime; a posture that the NRM intensified through its multi-level backing for the Sudan Peoples' Liberation Movement/Army (SPLM/A) led by Dr John Garang, a Dar-es-Salaam University friend of President Museveni. Progress in the intra-Sudanese peace talks between the SPLM and the Sudanese government – held in Kenya and facilitated by the Intergovernmental Authority on Development (IGAD)[32] – enabled Sudan to continue loosening its links with the LRA, although it did not sever them completely. An ardent supporter of southern Sudanese self-determination, Uganda participated at the talks as a key observer. After the Comprehensive Peace Agreement (CPA) was signed in Nairobi in January 2005, it then became one of the guarantors of the deal. Under the CPA, a six-year interim period ensued, with semi-autonomy for Southern Sudan.[33] This period would be followed by a referendum in which the people of South Sudan would exercise their right to self-determination by voting on whether to secede or remain part of Sudan.

The CPA thus heightened the political and security stakes in Southern Sudan, making it urgent to address the continuing presence of the LRA there. Under the deal, the Sudanese army would withdraw from Southern Sudan, leaving responsibility for security to the SPLM/A. Because it was a Khartoum proxy, which had already carried out attacks on SPLA forces, there were realistic fears within the SPLM/A that the LRA would be used to undermine the transition and southern aspirations for self-determination. With good cause, Uganda shared these fears. By 2005, LRA forces remained active in northern Uganda and Southern Sudan, continuing to attack and displace Sudanese civilians close to Juba, often in raids for food, even after its leadership had relocated to Garamba National Park in the DRC.

By late 2005, the new Southern Sudanese leaders began to send overtures to the LRA, offering mediation for a negotiated settlement of its conflict with the Ugandan government. In May 2006, on a visit to Kampala, President Salva Kiir – who succeeded Garang after the latter's untimely death in a crash involving a Ugandan presidential helicopter – formally offered his government's mediation. Through contacts led by Vice President Dr Riek Machar, the SPLM had received indications that the LRA was prepared to engage in talks. Despite his government's continuing doubts about the seriousness of the LRA, President Museveni could not spurn the offer. As such, he announced Uganda's readiness to negotiate with the LRA and extend the amnesty to Joseph Kony, indicating that he would intercede with the ICC on behalf of the indicted LRA leaders. Against this background, preparations began in earnest for the negotiations to be held in Juba.

Positioning for Negotiations

As Uganda's engagement with the LRA has demonstrated, for as long as states fail to remove violent extremists from the theatre of conflict, a "calculus of pain" encourages the exploration of non-military and non-retributive ways of securing an end to the destructive

activities of such groups. Particularly when the prospect of a swift settlement becomes unrealistic, and as the damage to the society mounts, states often find they can no longer avoid the obligation to explore other avenues for ending or reducing the activities and adverse impacts of such groups. In such circumstances, states have often resorted to alternative incentives, including leniency and amnesty options.

Converging on Juba, the Museveni government, the LRA and other Ugandans were not the only stakeholders. The mediators were also invested in the outcomes of the negotiations, as were many others who wanted to see peace in northern Uganda and political progress in Southern Sudan. Because the LRA leaders were the subject of ICC arrest warrants, the Court – still in its infancy – and its supporters also considered that a lot was at stake.

Well before LRA negotiators sat across from the government of Uganda's delegation in Juba to determine the agenda for the negotiations, Kampala had already made two seemingly contradictory policy choices. On one hand, it had successfully introduced an unconditional amnesty process that led to the defection of about 10,000 persons from the LRA; on the other hand, it came to the table as a state party to the Rome Statute, its territory now the subject of the first investigation by the ICC prosecutor. As such, the government needed to reconcile these realities with its pressing domestic and regional imperatives to bring an end to the LRA conflict. It could neither defer nor gloss over the acute tension between these realities, knowing that, unless resolved, the demobilisation of the LRA would not occur. At the same time, many in the Ugandan establishment were sceptical of the Juba process and preferred to press the military advantage against Kony.

By the time the talks began in July 2006, the bulk of the LRA, including its leadership, had already relocated to Garamba National Park, although others remained in Uganda and Southern Sudan. Through its engagements with the two Bigombe processes, and in other interactions with the Ugandan government, the LRA had already demonstrated that it was capable of negotiating with the national authorities. Moreover, in the government of Southern Sudan, the LRA had a third-party mediator and an opportunity to burnish its political credentials and secure guarantees about the implementation of the outcome of the agreement. Particularly for some of its diaspora supporters, these negotiations provided a long-awaited opportunity to present a corrected version of Uganda's political history that they considered had been ignored. The talks also represented a venue to answer the claims that the LRA was devoid of an intelligible political agenda.

While there is a global trend away from the invested mediator, the SPLM was extremely self-interested in its offer of mediation. Although it could have used other methods to remove the LRA from its territory, Southern Sudan's leaders, drawing on their more recent political experiences and security challenges, favoured dialogue options. Indeed, this stance went back to their leader, John Garang, who, well before the CPA was signed, had engaged northern Ugandan leaders to explore the prospects of a settlement of the LRA conflict.

Fresh from their own CPA negotiations with the Khartoum government, the SPLM mediators brought a decidedly political lens to their mediation. For them, the need for the talks to address the underlying political issues was a given. Dr Riek Machar's team was also supported both politically and logistically from the beginning by the United Nations office in

Juba. Pax Christi (Netherlands) undertook some of the early groundwork and facilitation support. Later, after the talks were underway, the UN Secretary General's Special Envoy, Joaquim Chissano, made critical contributions, including by helping to put the talks back on track at a time when LRA confidence in the process had virtually collapsed. But while the Southern Sudan mediation was highly invested in the outcome of the talks, and desperately needed a resolution to the LRA presence on its territory and environs, as a new entity, it lacked the political and military capacity to impose its will on either party and thus could not employ the methods of a high-powered mediator.

Informed by its political approach, the mediation invested considerable effort to understand in granular detail the politics of the conflict, the Ugandan political and legal architecture, as well as the room for manoeuvre within the Rome Statute. Drawing on Ugandan experts (as well as from the international experts who had assisted in the CPA negotiations, and from its partnership with the Pax Christi), the Southern Sudanese managed to assemble and develop a support team to assist with the technical aspects of preparations. Not being an independent entity, Southern Sudan could not exert decisive influence on the international plane, as it had to operate through Sudan, which was not a party to the Rome Statute but was actively under the scrutiny of the ICC prosecutor. However, Southern Sudan had the benefit of flexibility, since it did not have any obligations in relation to the LRA arrest warrants.

There was yet another influential constituency in the Juba process: the representatives of northern Ugandan communities. They included cultural and religious leaders as well as local and national politicians, civil society actors and others. Going back to its establishment in 1997, the Acholi Religious Leaders' Peace Initiative (ARLPI) had worked alongside cultural and political leaders to advocate for a negotiated solution to the northern Ugandan conflict. In addition to taking up the amnesty legislation as their flagship activity, these faith-based stakeholders were also strong supporters of a truth and reconciliation commission. They were critical of the ICC's intervention and extremely anxious that the arrest warrants could risk destroying the prospect of peace. In Juba, they pushed instead for non-retributive transitional justice options and for alternative reconciliation-based processes anchored within the community. Special arrangements were made for many of these representatives to accompany the process, acting as observers and advisers; they were, in reality, co-mediators. They spent time with the LRA leaders at their bases in Garamba and in meetings at the border village of Ri-Kwangba, pushing for progress in the Juba sessions. All were anxious to play their part in helping to resolve the conflict, although this occasionally sparked tensions with the LRA's negotiating team about political priorities.

The LRA case was crucial for the ICC. It was the first country situation handled by the Court; the first self-referral by a state party; and the subject of the prosecutor's first arrest warrants. As such, the Juba process came under a relentless spotlight. It was presented by ICC supporters as a huge test of the credibility of the Court, and senior personnel of the Court, particularly the prosecutor, frequently commented negatively on the talks in Juba. Yet, the "peace versus justice" framing of the process turned out not to be quite so stark. Once the negotiators had agreed that international justice should be replaced by national accountability, the real contestation around Juba lay in the meaning of the Rome Statute

principle of complementarity under which the ICC was envisioned as a "court of last resort" established not to supplant but rather to enable and yield to bona fide domestic efforts to address the most serious crimes. Everything turned on this: for it was understood in Juba that there would be no LRA demobilisation unless international justice yielded. And without LRA demobilisation, there would be no settlement.

Regional and International Engagement

Former Mozambican President, Joaquim Chissano, served as the UN Secretary General's special envoy to the LRA-affected areas, with responsibility for supporting the Juba peace process. Chissano was respected by all sides, particularly for his role in the Mozambican peace process; and the LRA trusted him even when, periodically, its relationship with the Chief Mediator became strained. Supported by an active office, Chissano became the main conduit between Juba and the international community, regularly briefing the UN Security Council, the Secretary General and other regional leaders on the status of the talks, while also maintaining close contact with the LRA. His excellent relations with President Museveni went back many years, and now provided reassurance to the Uganda government, which remained wary of Dr Riek Machar due to his previous links with the Khartoum government and the LRA.

In November 2006, just before President Chissano's appointment as the UN Special Envoy, Jan Egeland (then the UN Under-Secretary-General for Humanitarian Affairs) had made a high-profile visit to meet with Joseph Kony on the border between Sudan and the DRC. Egeland was careful not to discuss the ICC with Kony, and took as his starting point humanitarian considerations, though he was unsuccessful in securing the release of any of the children held by the LRA. Nevertheless, his visit raised the profile of the talks and made it difficult for other international interlocutors still harbouring misgivings about Juba to contest the legitimacy of engagement with the LRA.

As he assumed his role in December 2006, President Chissano persuaded the African Union (AU) to send a strong team of high-level observers to the talks, drawn from neighbouring and other countries, including, Kenya, Tanzania, Mozambique, South Africa and the DRC. This marked the start of the AU's formal engagement with the LRA issue. Not only did the observers' participation lend added legitimacy to the talks, it ensured the full support of their national governments, which also sent senior military personnel to serve as the foreign component of the cessation of hostilities monitoring team. These measures were meant to dissuade the LRA from seeking alternative fora and facilitators for the negotiations.

Designing and Framing the Negotiations

If both the government and the LRA brought to the table clear positions, the mediation now had the challenge, under intense scrutiny, of designing a process that would deliver durable outcomes. Its first task was to ensure that the LRA could participate effectively in the talks. Despite the assurances of Southern Sudanese authorities, Kony would not come to Juba, but later nominated senior LRA officers to the cessation of hostilities monitoring

team. An early attempt by Dr Riek Machar to stampede Vincent Otti, deputy leader of the LRA, into travelling to Juba failed and instead caused ructions between the LRA delegation and the Chief Mediator.

Without the presence of senior LRA leaders, the mediation needed to ensure the LRA would not be disadvantaged by a format that invariably favoured the government delegation, which was more accustomed to negotiations. Already, the LRA's organisational structure had left the group without a functional political wing that could have assumed the negotiating role. As such, the mediation facilitated the assembling of the LRA's delegation. Several individuals, mostly drawn from the Ugandan diaspora, and some with very weak historical links with the LRA, agreed to participate in the delegation. Before the talks began, the new delegation met the LRA leadership in Garamba, and Kony endorsed and fully mandated them. Although LRA leaders remained in Garamba, the mediation facilitated the delegation with communication capabilities. For at least one year into the talks, Vincent Otti kept in close contact with the delegation, mediators and the government of Uganda.

In promoting the participation of northern Ugandan community representatives, the mediation understood that such broader engagement would enhance the credibility of the process and its outcomes. Meanwhile, national support for the process remained solid across Uganda, as seen from the local media coverage at the time. Importantly, the Ugandan government also sent emissaries, including some of Kony's relatives, to Garamba in its own parallel efforts to enhance the confidence of the LRA in the process. These overtures and interactions helped create meaningful interactions with the LRA outside of the combative environment of the negotiations. They were confidence-building measures – opportunities for the prospect of eventual social, political and even spiritual reintegration into Ugandan society to take root in the group's thinking.

In that regard, all sides understood that for the peace process to succeed, the LRA would need to re-imagine itself and its relationship with Ugandan society. An added challenge for the talks was how to achieve such a change in political posture from the same LRA leaders who were also under the cloud of ICC arrest warrants. From the outset, therefore, Juba was faced with two daunting and linked tasks: firstly, to assist LRA leaders to cultivate and imagine a different, non-conflictual relationship with the Uganda government and with the communities of northern Uganda, in particular; and secondly, to find a credible accountability alternative to the ICC. Thus, the LRA required from the Juba process more than just assurances about the personal and legal security of its leaders; it also needed the talks to deliver some tangible political gains, including wider social and economic dividends for northern Uganda.

The Agenda in the Negotiations

Shortly after they convened in Juba in July 2006, the parties debated and eventually adopted a five-point agenda for the talks, with the mediation guiding the process. On 26 August 2006, the parties reached the first agreement: the cessation of hostilities under which the LRA would be allowed safe passage out of Uganda, to reach assembly areas inside Southern Sudan. One of the areas chosen for the LRA to assemble was Owiny Kibul, in Eastern

Equatoria; the same place where Acholi and Langi soldiers fleeing Idi Amin in 1971 had regrouped. Among LRA commanders to surface from northern Uganda and head towards Sudan was Dominic Ongwen. That Ugandan authorities made no attempt to intercept or arrest him was an early signal that they were indeed rethinking Uganda's cooperation with the ICC. The cessation of hostilities agreement and the departure of LRA forces marked the end of the group's activities in northern Uganda. Negotiations had produced an early security dividend for northern Uganda.

Political Discourses – Agenda Item II

Agenda Item II – on Comprehensive Solutions – was significant and controversial. It formed the rubric under which the parties would discuss the key political issues, such as equitable participation in national politics and institutions; economic and social development of northern and eastern regions of Uganda; and the resettlement of internally displaced persons. The Ugandan delegation was clearly taken aback by the mediation's proposal to accept this agenda item, as they did not consider that issues of domestic politics should be debated in Juba. President Museveni's position was that these were matters to be debated within Uganda. Throughout the talks, the government delegation sought to limit the claims and commitments that could be sustained under this agenda item. A sign the government did not expect to be drawn into intensive political discussion, or to be detained in Juba for long, was that senior military and security personnel constituted a significant part of its delegation.[34]

Eventually, the negotiations focused on the socio-economic recovery of the conflict-affected areas; protection of land rights; a commitment to addressing developmental imbalances; and the promotion of inclusiveness in governance, including through equal opportunity policies. Transitional justice themes also entered into the discussions, including strengthening the judiciary and providing remedial social interventions such as educational arrangements for children associated with the LRA. Other provisions under discussion included a commitment to implement re-stocking programs to replace livestock confiscated by government agents during the conflict. An important provision, agreed only late in the process, was the establishment of a special fund for victims.[35]

For the LRA delegation, commencing the discussion with these issues allowed them to engage and challenge the government delegation about its record. With Acholi and other northern Ugandan diaspora within its delegation, many of whom had retained strong memories of the failed Nairobi peace talks of 1985, the sessions on Agenda Item II became heated affairs. This was exacerbated by the fact that some local leaders grew impatient with the political debates, desperate to see the swiftest conclusion of the negotiations and the demobilisation of the LRA. The issues being raised, including the question of compensation, reparations and effective oversight of the reconstruction of northern Uganda resonated with local leaders, although some questioned the legitimacy of the LRA delegation in representing these concerns. By corollary, the presence of observers on the margins of the talks, particularly northern Ugandan politicians, sometimes irritated the LRA delegation. But their presence also ensured that the government delegation could not be

seen to resist these topics or dismiss them as irrelevant or detached from the concerns of key stakeholders.

The framing and discussion of these transitional justice-related issues as political matters also allowed negotiators greater freedom to ventilate grievances and advance alternative narratives about the origins and consequences of the conflict. Instead of deferring, and confining, such debate to future truth-telling bodies, LRA negotiators could use the arena and licence of the negotiations to attack the government's policies and record more robustly. Indeed negotiations are often charged political spaces in which grandstanding, accusation and counter accusations are permitted forms of discourse and expression, unconstrained by formalities. Juba thus afforded the LRA their full rights of political expression: having complained that their narrative had long been ignored, these sessions were politically invaluable for LRA negotiators. And members of the LRA delegation would have understood that such opportunities were unlikely to be replicated in any future fora or formal processes back in Uganda.

Negotiating Accountability and Reconciliation – Agenda Item III

In a signal that the talks intended to strike a different balance on issues of justice, the third issue for negotiation was framed as Reconciliation and Accountability; with "reconciliation" deliberately coming first in the title. Owing in particular to the arrest warrants, Agenda Item III was always going to be a difficult discussion for the LRA; and sequencing the negotiations so that the political issues preceded the more sensitive justice question avoided placing a spotlight on the LRA's conduct at too early a stage of the talks. Discussing justice first would have disadvantaged the LRA and accentuated the political asymmetries between the government and the LRA.

When the parties first elaborated the detail of Agenda Item III in 2006, they identified just three issues: *mato oput* (Acholi traditional mechanisms of accountability), amnesty, and others. This rather sparse list gives an indication of the direction of the parties' thinking at the time – they were intent on finding domestic solutions rather than international justice. One benefit of the length of time that Agenda Item II took to negotiate is that the parties had time to develop their thinking on the transitional justice issues. Through workshops presented by experts and other engagements, the mediation facilitated technical discussions, which helped the parties and the mediators themselves to unpack the issues including the ICC question, complementarity, and the role of traditional justice, among others.

A lingering, and speculative, narrative about the talks credits the threat of ICC prosecution as being responsible for bringing the LRA to the negotiating table. While the LRA was of course concerned about the arrest warrants, justice was much less a dilemma for the group than for others: the mediation, the government of Uganda, the northern Uganda communities and the additional supporters of the negotiations. From the outset, Joseph Kony's position on the justice question was as simple as it was emphatic: if the ICC warrants were not replaced with suitable alternative domestic processes, the LRA would not demobilise. Thus, rather than bringing LRA leaders to the table, the warrants ensured that Kony and senior commanders stayed away from Juba and were even more determined to

retain complete control of their security arrangements. This deprived the key LRA leaders, and the Juba process, of the opportunities that negotiation contexts normally provide for the parties to build trust in each other and the process, to envision new futures, and re-orient their politics to contemporary and emerging realities.

Neither did the way the LRA approached the negotiations indicate the group felt under siege by the ICC arrest warrants. By prioritising political topics for discussion, the LRA intended to communicate that it was not solely fixated on the warrants. Yet it also had a decidedly political view of the ICC. Often in his interactions with mediators and other inter-locutors, Joseph Kony cited the experiences of Thomas Lubanga and Charles Taylor, both of whom, in Kony's view, had become vulnerable to international arrest precisely because they had become politically weakened. Kony considered that the Ugandan government had only introduced the ICC into the equation to undermine the LRA politically, and that the Court had colluded in this political enterprise, pursuing only one side in the conflict. Each of these claims could of course be countered, but they were the strongly held views of one of the parties to the negotiations and could not be wished away.

While others might legitimately assume the role of countering or stigmatising conflict ac-tors, the mediator must relate to each conflict party as a political actor pursuing political ends and often using particular narratives. The mediator acts on the basis of consent and should not appear to de-politicise a party's positions or motivations even where, as in the LRA case, the party or its leaders are subject to proscription or justice processes. Since LRA leaders regarded the ICC as a partial institution instrumentalised by those in power, and were averse to cooperating with the Court, the mediation could not ignore that and insist upon international justice as a viable element of the negotiation.

Juba did not frame the issues under Agenda Item III as "transitional justice". In part, this was because the concept was not widely understood, and unpacking its meanings would have increased the already heavy pedagogical burdens on the process without adding sig-nificant value. Instead, a more organic approach was adopted, allowing each party to put on the table all the issues with which it was most concerned. This meant that the govern-ment, which would be responsible for engaging its Rome Statute obligations, needed to grapple more closely with the legal implications of any agreement, while LRA negotiators focused on domestic accountability options, including traditional justice, reparations and dealing with historical injustices. Because they were not shoehorned into a transitional justice negotiating framework, many of these issues were addressed and concluded in the discussions on Comprehensive Solutions under Agenda Item II.

The LRA leaders were not alone in their concerns about international trials. Every key stake-holder, including the government of Uganda, recognised from the outset that a negotiated settlement of the LRA conflict would not co-exist with ICC trials. But the government and the supporters of the Court – many of whom had long supported the resolution of the northern Uganda conflict – also craved a peace outcome that avoided undermining the Court or the international criminal justice project more widely. Striking the right balance was therefore crucial; and the key lay in securing a Rome Statute-compliant agreement, anchored in the ICC principle of complementarity, which would allow Uganda to reassert

its right to exercise criminal jurisdiction over the crimes committed by the LRA. The first pillar of the Agreement on Accountability and Reconciliation (AAR) therefore became the re-assertion of a national justice and reconciliation agenda.[36] This implied the need to elaborate domestic justice solutions in the form of an alternative legal framework combining conditional amnesty, traditional mechanisms and formal justice.

Although there could be no ironclad guarantees about the future stance of the ICC towards the domestic options Juba adopted, for the mediators, the objective in the talks was not to secure the endorsement of the ICC judges, but to facilitate a peace agreement that no serious policymaker could reasonably reject. In this regard, it helped to have President Museveni's early interventions on the question of amnesty, which showed that it had already decided on domestic rather than international accountability solutions should the LRA choose a political settlement. This freed the mediation to focus on the task of facilitating the adoption of a framework of domestic solutions that would best command and sustain national, regional and broader deference.

An effective agreement would be one that not only ended the war definitively (thus preventing further crimes) but also 1) paved the way for rebuilding northern Uganda, by repairing its economic and social fabric and fostering deep reconciliation; and 2) achieved credible accountability through proceedings endorsed and embraced by victims and communities. If the key stakeholders (at the time, primarily, the northern Uganda communities) did not endorse the outcome of Juba, it was unlikely that external interlocutors would do so. In that regard, it was not Agenda Item III alone that was critical; the whole Juba package was essential.

The Alternative Justice Framework

To provide a credible domestic answer to the justice and reconciliation challenge, the AAR adopted an overarching and holistic framework. This would combine formal mechanisms, notably a special criminal division of the High Court; and an official truth-telling mechanism with complementary alternative justice mechanisms, including traditional justice processes. The latter were necessary because existing laws, procedures, the amnesty and severe sentences were either a disincentive to the LRA or were legally unsustainable as a basis for resolving the conflict. Given the range of potentially applicable mechanisms, the choice of forum for the consideration of any issue would depend on a range of factors, including the gravity of the conduct in question.

Adjusting the Amnesty

Although at the beginning of the talks both sides had advocated for the use of the amnesty and traditional justice measures, they soon accepted that to stand a chance of putting to rest the ICC issue, formal accountability through criminal justice was necessary. Because it was already an established feature of the Ugandan legal system, the question for Juba was not whether an amnesty should be granted, but what to do with the existing one. Arguably, this was an easier task than introducing a new amnesty; especially since, owing

to the amendments introduced by the government, it was already possible to exclude individuals from the amnesty.

The Juba Agreement nevertheless required adjustments (in the form of further amendments) to be made to the amnesty law in order to promote the new processes of accountability. For example, future applicants might be required to make disclosures, provide certain relevant information or be subjected to other appropriate conditions that promote reconciliation and accountability. However, the Agreement ensured that children would not be subjected to criminal justice processes,[37] effectively retaining the amnesty for them. Overall, the amnesty would continue to apply, unchanged, to the vast majority of those within the LRA; in part because most were coerced into joining and remaining in the group and were not the most responsible for the most serious violations.

Role for Formal Criminal Justice

After securing the commitment that the LRA would not be subjected to trials outside Uganda, LRA negotiators accepted the need for a special division of the High Court of Uganda as the forum for domestic trials. The trials would be based on the highest standards of investigations, prosecutions, defence and adjudication. An alternative sentencing and sanctioning regime would exclude the death penalty and introduce offsets and tariffs on imprisonment. It would also require, at sentencing, that an individual's cooperation with the proceedings be taken into account.[38]

This concept of cooperation within formal proceedings was an innovation aimed at giving the opportunity to individuals to secure reduced sentences without prejudicing their legal rights: a person could, for example, make formal admissions, acknowledge any wrongdoing, and contribute to other relevant proceedings or processes. Procedures would enable an individual facing formal criminal charges to participate in traditional reconciliation and accountability mechanisms as well, and to have that participation credited within a formal prosecution. In this way, the goals of eliciting the truth and achieving reconciliation would be facilitated without compromising the procedural integrity of criminal proceedings or violating the fair trial rights of accused persons, including the protection against self-incrimination.

Accountability for State Actors

One point of constant contention during the negotiations was how state actors would be treated. The government argued strongly, and successfully, that state actors should not be subjected to alternative justice mechanisms – by which it meant alternatives to ordinary prosecutions. However, the LRA delegation understood this as an attempt by the government to exempt its personnel and record during the conflict from judicial scrutiny. LRA negotiators cited a consistent absence of criminal trials for violations by military personnel during the conflict, arguing that the government could not be trusted to ensure that its military court system would indeed prosecute government soldiers responsible for serious crimes. Their concerns are reflected in a widely-held view in the country that if state actors are not consistently held accountable, this negatively affects attitudes to

reconciliation.[39] Ultimately, the Agreement maintained the criminal justice status quo for state actors, while permitting state actors to participate in other mechanisms, including truth-telling processes.

Complementary Accountability Mechanisms

In addition to formal criminal justice, other processes would also contribute to accountability and reconciliation. A truth commission-like body was to be established, whose procedures and rules would be adapted to enable it to be a forum for receiving admissions and other relevant information. This proposal, strongly pushed by the LRA, but holding much wider resonance, had a distinctly political edge. In May 1986, shortly after it came to power, the NRM Government established the Commission of Inquiry into Violations of Human Rights, which had looked into a range of past violations and highlighted the events in the Luwero Triangle, where the NRA forces had operated.[40] The LRA now demanded an inquiry that would also investigate violations in northern Uganda.

While both sides acknowledged the need to examine the root causes of the conflict, the government saw the LRA's demands for a truth commission as potentially politically damaging; as such, it was more comfortable with advocating for community reconciliation and truth-telling initiatives. It might nevertheless seem odd that the LRA would be championing a truth commission and reparations while the government was reluctant to offer wholehearted support. Yet the LRA knew it had no political ambitions and would cease to exist; thus it had nothing to lose but something to gain in supporting a truth-seeking mechanism that applied to LRA and state actors alike.

Traditional Justice

In their search for alternatives to retributive justice, both parties initially came to the negotiations with a preference for applying traditional justice. In their campaigning for the adoption of the amnesty law and in supporting the processes of its implementation, Acholi communities periodically promoted rituals and processes of welcome and cleansing. When the Juba negotiations with the LRA were contemplated, the government cited traditional mechanisms of justice as acceptable alternatives to formal prosecution even as it declared that it would grant amnesty to Joseph Kony. In its Agenda Item III background paper, the LRA likewise emphasised the role of traditional justice mechanisms. Both parties thus agreed to place *mato oput on the agenda of the talks.*

Negotiators and mediators were already familiar with some of the traditional justice principles and processes, especially their reliance on trust, individual volition, truth-telling, compensation and restoration of relationships. But the need for further consultations to identify specific mechanisms for inter-communal reconciliation was also apparent, as there are a range of such processes across the various communities.

It is important to note that the appeals to tradition reflected deeper social and political understandings of the conflict. Firstly, local communities felt a sense of responsibility to contribute to the resolution of a conflict that had, at least in part, drawn some of its initial inspiration from grievances and aspirations within the society. Secondly, formal justice

mechanisms were widely considered to suffer from serious limitations; in particular, they were perceived as unable to recognise the victimhood of perpetrators or to promote goals of reconciliation and healing.

But the appeal to traditional justice also played a more political role: it became the strongest vehicle by which conflict-affected communities could assert their agency with respect to the choices for ending the war. Those most affected by violence are often viewed as victims or even collaborators and relegated to being spectators or passive recipients of policy prescriptions that are often mediated by "experts". In traditional justice, communities discovered terrain from which others could not easily dislodge them, and in which, for a change, they were the experts.

The political significance of this recourse to traditional justice has been insufficiently appreciated, with some criticising the "reinvention" of tradition. This gets things wrong. Across the world, social, cultural and traditional practices, even rituals, are dynamic; they are continually adapting and responsive to new influences. As such, it should present no surprise if northern Ugandans were adapting elements of the past. As demonstrated in the practices of Joseph Kony and Alice Lakwena, Acholi mediums had also responded to the appeal of Christianity by appropriating its rituals and symbols.

Faced with protracted conflict and what they saw as ineffective or potentially damaging policies, northern Ugandan communities in fact exhibited resourcefulness in re-imagining their traditions and institutions to make them responsive to what were extraordinary circumstances. Through their appeals and recourse to tradition, they occupied and defended political and juridical territory, transforming themselves from passive spectators to more central actors in the efforts to end a long and profoundly damaging war.

Reparations

While the negotiations recognised the necessity for a range of collective and individual reparations, the government, wary of over-commitment, was resistant to attempts to introduce a fund for reparations. In the end, it committed to such a fund, but only after the consultations in Uganda; albeit not until after the negotiations on accountability and reconciliation had been closed, preferring to include the matter in the Protocol to Agenda Item II.

Although the government undertook to implement all its obligations under the Juba Agreements unilaterally, it is not surprising that a fund it had resisted during the negotiations, ostensibly because of the perceived cost to the public purse, has never been set up. Another reason for the government's attitude might also be that all of Uganda's historical conflicts, particularly since 1979, have caused immense damage, including of infrastructure, and the government was thus afraid of opening a political Pandora's box of similar demands. Whatever the case, following the collapse of the Juba negotiations, the government never prioritised reparations. Yet it is indisputable that individuals and communities have suffered specific, and sometimes structural, harm at the hands of the LRA and also government actors, and that some have suffered more than others. Increasingly, individuals and communities are demanding recognition and reparation for these disparate harms.[41]

Gender Issues

The Agreement provided for a gender-sensitive approach in which the special needs of women and girls would be recognised and addressed. Their experiences, views and concerns would need to be at the centre of all considerations; and their participation in relevant processes would be facilitated, while their dignity, privacy and security would be protected.[42] In addition, under the Annexure to the AAR, the truth-seeking and criminal investigation mechanisms were to prioritise gender-related violations and crimes.[43]

Throughout its years of operation, the LRA has carried out thousands of abductions: young boys and girls have been taken away from families and conscripted. Girls have been forced to become wives of LRA commanders, or their domestic servants. These violations, which scarred so many lives, needed to be addressed in a manner that could facilitate acknowledgement and the identification of appropriate reparations. This required an appreciation of how to address the gender dimensions within negotiations and a peace agreement. But due to limited expertise on these issues, the Agreement confined itself to identifying the broad principles of a gender-sensitive approach and left the elaboration to future implementers.

In fact, the gendered nature of the LRA conflict and the policies for responding to it, were typically under-recognised. For example, the Amnesty Act did not refer specifically to gender aspects. In addition, mostly male LRA commanders had always been absorbed into the army, with the attendant benefits, while female former captives were left outside, often with children, and without any form of support.[44] Despite the efforts to promote reconciliation, many women formerly associated with the LRA continued to experience stigma and sometimes rejection by families and society.[45]

Conceptualising Reconciliation

Although reconciliation was a key pillar of the negotiations, it proved to be a challenging concept on which to find consensus. The parties could agree that collective as well as individual acts of reconciliation were required at all levels of society but disagreed on whether it was necessary to identify in the Agreement the issues on which reconciliation was required (the LRA's preference).

In what the government took to be a political stance, the LRA pressed for a truth commission with a mandate to analyse and inquire into the past. For its part, the government was more comfortable with the social and individual concepts of reconciliation, which could be mediated at the community level and would not entail criticism of government policies. The parties were thus most at variance on the need for a national reconciliation exercise and how, if at all, it would be conceptualised and implemented.

Closure Provision

One of the key principles of the Agreement on Accountability and Reconciliation (AAR) was the need to achieve finality in the relevant accountability and reconciliation mechanisms. The idea was to ensure that an individual would not have to face repeated processes of accountability or reconciliation and that, as far as possible, the full extent of their conduct

would be addressed in one process. The same consideration would also apply to the affected societies and the country; there was consensus that the adopted processes should aim for healing and that the conversation in the country should be allowed to progress to other future challenges rather than remain locked in unending examinations of the past. Other transitional justice processes, such as commemorations and memorialisation, were not affected by this provision.

Finalising and Promoting the Deal

In Juba, the mediation encouraged the negotiators to include sufficient detail in the agreement to lock down the key elements of the approach on the basis of which implementation could commence, while acknowledging that some details could only be worked out later. Clarity on key principles such as the exclusivity of domestic processes, and the need for truth-telling, reparations and leniency were essential. For the LRA leaders, the agreements needed to spell out as far as possible what the alternative to ICC prosecutions would look like. Detail was also necessary in order to dispel some of the speculation and concerns that Juba would seek to extend an unconditional amnesty to the LRA.

Elaborating some of the specifics also served to lock all sides, including the government of Uganda, into a definite framework, and to mitigate the risk that some elements might be de-emphasised or otherwise lost in the implementation. For this reason, the LRA negotiators insisted on certain matters to be captured fully. The text was thus sending multiple signals calibrated towards the needs of different stakeholders. It needed to serve not only as a roadmap for implementers, but also as a tool for mobilising wider political and practical support for the post-conflict consolidation.

In line with the commitment to ensure that the affected communities were fully engaged in the process, the AAR required the parties to undertake consultations in Uganda, including with the guidance of the mediator.[46] On the day of signature of the Principal Agreement, the mediator provided detailed guidance on the consultations. These became the basis for the government and the LRA separately to undertake countrywide consultations in Uganda in an effort to explain the process and the already agreed principles, and to enhance national ownership. The consultation would also address any concerns that the Juba process was delinked from affected communities or a domestic consensus. Following their consultations, the parties were to return to Juba with their findings, which would inform the elaboration of the detailed mechanisms.

The Burdens of Juba

Although the Juba talks were a classical negotiation between the LRA and the government of Uganda, the outcome needed to address different goals and interests, going beyond the positions of the two parties. These included the demands of the Rome Statute, the needs of Southern Sudan and, most crucially, the need for the northern Uganda conflict to end. To the extent that a principal objective of the process, and the AAR in particular, was to provide sufficient incentive for the LRA to demobilise voluntarily, the agreement did not succeed.

Impeding the attainment of this goal was the LRA's concern that its leaders might nevertheless be subjected to inappropriate international or domestic criminal trials. This was not simply a fear of justice; the mediation's interactions with the group revealed that the LRA resisted the political implications of the spectacle of a trial. For many armed groups, a criminal trial is not a politically neutral process: it symbolises defeat of the arraigned party and political victory to their (state) adversary. Through the principles and processes of the Alternative Justice System, Agenda Item III attempted to ensure credible processes of accountability while attenuating elements of formal justice that would serve as disincentives to cooperation.

Faced with ICC arrest warrants, the outcome of Agenda Item III was inevitably and intensely personal to the leaders of the LRA. Yet those warrants also meant that Juba's daily negotiations took place in the absence of the key individuals whose personal interests were most affected and whose political assent was indispensable. It became clear by the end that a group so dependent on its talismanic leader could not negotiate a satisfactory outcome to these difficult justice matters without Joseph Kony. And there were no easy answers to the questions; everything that could work required a high level of trust in an erstwhile adversary, namely the government of Uganda. For equally complex reasons, Juba's solutions needed to be couched in procedurally complex terms including caveats and staggered implementation. In addition, some issues and explanations could not be addressed in the text and required direct and verbal assurances – a process that required time, calm and faith in the process. But even before the formal talks had staggered to an anti-climactic close in 2008, the government had lost patience, believing that Kony was no longer serious about the talks. War drums were sounding and military preparations and activity had resumed. Any chance of a more deliberative and careful re-exploration of the justice issues was squandered.

After Juba

Failure of LRA Signature

On 10 April 2008, Joseph Kony and Yoweri Museveni were supposed to sign the peace agreement; Museveni was due to sign in Juba, and Kony in Ri-Kwangba by the Congolese border. When Kony did not appear, it was agreed to leave the Final Peace Agreement open for his signature as efforts were made to address his lingering concerns. Kony later agreed to meet with the Acholi Paramount Chief, Rwot Achana II, and other Acholi leaders to explain why he was not prepared to sign the Agreement. He told them that he did not fully understand how the relationship between the traditional justice mechanisms (*mato oput*) and the proposed Special Division of the High Court would work and wanted more clarification. Upon the team's return, the mediators, delegations and other stakeholders discussed the matter and agreed that no further progress could be made on this matter in Juba. Instead, the key stakeholders were to be convened by the traditional leaders in Kampala, where they would reflect and identify potential answers to the matters that Joseph Kony had raised.

Rwot Achana convened a workshop in early May 2008 at the Fairway Hotel in Kampala with the expectation that its outcomes would clarify answers to the questions the LRA had posed. It was also an opportunity to identify the immediate steps for implementing the Agreement, including the preparation of necessary legislation for adopting the Alternative Justice System. Members of the LRA negotiation team also participated in the workshop and accepted that they had not had enough opportunity to explain to the field command-ers the full details of the Agreements. They confirmed that Joseph Kony apparently still harboured fears that the talks were an elaborate ruse to trap and arrest him.

Nevertheless, the workshop sought to clarify the steps and processes that would be undertaken in the process of any LRA returns. Traditional leaders explained the various preparations that had already been undertaken in order to be able to deal with a range of offences and profiles of individuals who would undergo these processes. Judicial officers, Uganda Human Rights Commission officials and Uganda Amnesty Commission members explained the kind of adjustments and legal amendments that would be required to ena-ble their respective institutions to implement their part of the Juba Agreement. Meanwhile, the government delegation took the opportunity to re-confirm its commitment, first made in Juba after the failure of Joseph Kony to sign the agreement, that it would unilaterally implement the Agreements. It pledged to immediately put in place the mechanisms and procedures necessary for the implementation of the Juba Agreement while the LRA sig-natures were awaited.

But even before these events, the peace process had in fact started to unravel. Towards the end of 2007, rumours started to circulate that Joseph Kony had ordered Vincent Otti's death, apparently because Kony had become concerned about Otti's role in the talks, which he perceived as too friendly to the government. This was a grim reminder of the risks associated with parallel initiatives and the difficulty in managing information, suspicions and the lack of cohesion of groups like the LRA. As the Vice Chairman of the LRA, Otti had indeed been the key link between the LRA and the mediation; as such, he regularly gave instructions to the negotiators. Otti also undertook the main interactions with external interlocutors; he was a regular figure on domestic and international media.

With Otti dead, some of the negotiators peeled away, forcing Kony to make changes to the LRA negotiating team, which was a serious setback. Although the talks still proceeded in 2008, it became more difficult to access Kony. External donors also became impatient with the expensive talks and demanded faster progress. After missing the April 2008 signing ceremony, Kony did not have further meaningful interactions with the mediation, and the prospects of the LRA signing and implementing the Juba Agreement receded. These chal-lenges illustrate the complexity and unpredictability of engaging violent extremist groups and demonstrate that the substance of the process cannot be separated from the range of its weaknesses.

Resumption of Military Operations

In December 2008, with U.S. support, a Ugandan-led military initiative with the coopera-tion of other regional armies attacked LRA positions in Garamba. Code-named Operation Lightning and Thunder, the official purpose was to ensure that the LRA signed the Final

Peace Agreement, which, even then, remained open for signature. Kony escaped and the operation failed to capture the critical LRA leaders.

Predictably, the LRA splintered into small groups and then swung into vengeful action, attacking villages in the DRC, including the Christmas Day massacres in Faradje in 2008. The renewed military action caused new waves of displacement in Southern Sudan as well. Once again, in an echo of Operation Iron Fist in 2002, serious crimes followed an unsuccessful military campaign against the LRA. With continuing U.S. financial backing and military support – through a contingent of U.S. Special Forces – an African Union-Regional Task Force (AU-RTF) was established in 2011 under the leadership of the AU and with the endorsement of the Security Council. Its task was to eliminate the LRA.

In December 2014, while the AU-RTF was still active, Dominic Ongwen, one of the LRA commanders indicted by the ICC, offered to surrender to the Ugandan army in the Central African Republic. He was later taken into custody by U.S. forces, who facilitated his transfer to the ICC. The AU signed off on his handover through the Central African authorities. In this way, Kampala spared itself the tricky dilemma of what to do with Ongwen in the light of its professed commitment in the Juba Agreement to try the LRA leaders in Uganda. By this time, Uganda, like several African countries, had also become an increasingly vocal critic of the strategies of the ICC in Africa.

The AU-RTF continued to pursue principally military objectives, operating largely independently of any effective political oversight from the region. As the amnesty remained in force in Uganda, the AU-RTF used this to encourage LRA combatants to surrender so that they could be repatriated to Uganda without fear of reprisals. For its part, the Uganda Amnesty Commission maintained offices in the DRC and continued to support repatriation of combatants who had defected. Many years later, after U.S. President Donald Trump came to office and rolled back American involvement in foreign military engagements, the U.S. Special Forces were ordered out of the hunt for Joseph Kony and left in 2017. Without U.S. resources, Uganda also withdrew its forces, effectively putting an end to the pursuit of Kony.

Loss of Implementation Momentum after Juba

Despite the inconclusive outcomes of Juba, the LRA had left northern Uganda as a result of the cessation of hostilities agreement. Displaced civilians began to leave the camps and return to their original homes to begin rebuilding their lives. Although it had undertaken to implement the Agreements unilaterally, without the LRA's participation the government lacked incentive to adopt the complex mechanisms and measures for accountability that required high levels of political and material investment. Perhaps it baulked at the political cost of transitional justice, including the uncomfortable scrutiny truth-telling processes would entail. With some opposition politicians and other activists advocating for a truth commission, the government was unsurprisingly wary of such a process.

Given the legal difficulties and the political capital it would need to expend to disentangle itself from ICC obligations, the government was also clearly unwilling to take any steps to remove the threat of international prosecutions before the LRA had demobilised. During

the talks, Ugandan officials had continually presented the removal of ICC arrest warrants as a quid pro quo for the LRA's demobilisation. In the end, the Agreement on Implementation and Monitoring Mechanisms (AIMM) provided for a series of steps in which the government would urgently establish the accountability and reconciliation mechanisms agreed in the AAR, with priority accorded to the Special Division of the High Court.[47]

On the basis of those mechanisms, the government would approach the UN Security Council requesting a deferral of the LRA cases (pursuant to Article 16 of the Rome Statute).[48] For its part, the LRA was to complete assembling in Ri-Kwangba within one month, and any of its forces in Uganda were to surface.[49] These provisions were the closest form of assurance that the government was willing to give that it would pursue the removal of the arrest warrants. By this point, however, there were already large question marks about whether Kony would in fact sign the final agreement.

Uganda thus continued to maintain its relationship with the ICC throughout the Juba talks. In fact, in 2007, right in the middle of the talks, the government rather surprisingly volunteered (and was quickly selected) to host the Review Conference of the Rome Statute, which indeed took place in Kampala in 2010. In preparation for that hosting, and in order to burnish its international justice credentials, the government ensured that Parliament passed the International Criminal Court Bill, to facilitate its cooperation with the ICC and enable the prosecution of international crimes in Uganda. However, the government did not take advantage of that legislative opportunity to introduce many of the other principles and measures contemplated by the Accountability and Reconciliation provisions of the Juba Agreement.

New Trajectories in Transitional Justice Policy

Even though Joseph Kony declined to sign the Final Peace Agreement, the Uganda government, with the encouragement of the mediation, undertook that it would nevertheless implement the Juba Agreement. That decision, which was endorsed by the Cabinet of Uganda, sent a positive signal to conflict-affected communities that the Juba process, which had achieved the withdrawal of the LRA from Uganda, had not been in vain and would be consolidated. Without the LRA's presence or proximity, northern Ugandan began to experience peace and communities started to return home to reestablish their lives.

Concerning the transitional justice components of the deal, it is important to note that the Agreement did not employ the term. When the talks started in 2006, transitional justice had not yet gained wide currency in policy and political cycles. Only in 2008, after the Juba Agreement had been completed, did the Justice Law and Order Sector (JLOS)[50] set up a Transitional Justice Working Group (TJWG), with the stated aim of implementing the deal. The technical work of the TJWG was supported and coordinated by a specialised JLOS Secretariat.

Framing the JLOS initiative as the promotion of "transitional justice", and giving it a national rather than a localised (northern Uganda) focus, had several effects. First, it became possible to delink the development of transitional justice from the implementation of the Agreement, including the oversight of its envisaged implementation architecture.[51] This

led to a high degree of selectivity in the implementation of the Agreement: for example, only the establishment of the International Crimes Division was advanced, but without the leniency or broader reparative provisions expected under the Juba Agreement.

A second effect of a delinked implementation was that the negotiation history of the justice provisions, particularly some of the political understandings that underpinned the leniency and alternative mechanisms, were lost. And with only one of the parties to the talks (the government) remaining part of the implementation process, transitional justice technocrats and donors now drove the project which had by this point evolved into the development of a transitional justice policy for Uganda; an important but quite different process from the implementation of an Agreement. Unsurprisingly, that process became protracted and contested, particularly around questions of truth-telling, reparations and amnesty.

Delay and Selectivity

That it took more than a decade after the conclusion of the Juba talks for a national transitional justice policy to be adopted is significant at several levels: it reveals the ambivalence the government has had towards the more intrusive and costly aspects of transitional justice. But the loss of momentum was also inevitable, because without the demobilisation of the LRA, the government was less inclined to invest political and other capital in promoting alternative justice mechanisms.

It was not always thus: during the Juba talks, and in response to the AAR, the Principal Judge, Justice Ogoola, took immediate steps to establish the War Crimes Court (WCC), and in July 2008, the creation of the WCC as a division of the High Court was announced. Owing perhaps to the absence of formal implementation processes of the Agreement, the WCC – later renamed the International Crimes Division (ICD) – was established without the range of amendments envisaged by the Juba deal. However, proponents of international criminal justice seized the opportunity to shape the development of the Court into a "mini ICC".[52] In this emulation of the ICC, it was inevitable that some of the nuance of the Juba Agreement, including the tempering of the most retributive aspects of the criminal justice process, would be lost. As already noted, the co-existence of the ICD with the Amnesty Act generated legal tensions, as illustrated by the chequered history of the *Kwoyelo litigation*.

The process also became susceptible to more direct donor influence. Uganda's international donors, mostly European countries and the European Union, championed the transitional justice project for their own policy reasons, and contributed to the selectivity of the implementation of the Juba Agreement. Referred to as "development partners", international donors participate actively in the various sectors of government (such as JLOS) where they have considerable leverage in reviewing, proposing and approving funding for government programs. However, this apparently intrusive latitude has limits: the security and political sector and their budgets are off limits; and, whenever the government considers that it needs to protect its core interests, it will often find a way to ensure that donor priorities do not prejudice those interests.[53]

While the implementation of the Juba Agreement principles and mechanisms suffered from delay and revision, the Agreement was undoubtedly responsible for triggering the development of a transitional justice policy for Uganda. Whether the implementation will suffer selectivity remains to be seen; but for the many who have been waiting for the gains of Juba to be realised, the policy, adopted in June 2019, has been widely welcomed.[54] There is an expectation that a serious program of reparations will now be implemented in northern Uganda. Overall, the need and desire for reckoning with Uganda's past also remains strong. All these were key elements of the Juba Agreement.

Architecture of the Transitional Justice Policy

The June 2019 transitional justice policy aims to address the key accountability and reconciliation needs of post-conflict Uganda and includes the usual options of prosecution, truth-telling, reconciliation, reparations, memorialisation and other initiatives. Building on Juba, it emphasises traditional justice mechanisms in recognition of the contribution these make to the resilience and cohesion of Ugandan communities. Legislation will be introduced in the form of a Transitional Justice Act to implement the policy. Other laws will also be enacted to facilitate, among other things, traditional mechanisms, reparations, and witness and victim protection. The lead implementation role will be with the Ministry of Internal Affairs, which has administratively and politically overseen the amnesty and dialogue processes in Uganda.

This is, in fact, the first time that Uganda has adopted a comprehensive policy to deal with the past. Its adoption was widely welcomed, following years of campaigning by many Ugandan organisations and stakeholders.[55] But the policy will require legislation. Moreover, it is ambitious in scope and is consequently resource-intensive. As with many Ugandan policies, its effective implementation will depend, to a significant degree, on the vagaries of external funding. This leaves a real prospect that the implementation of transitional justice processes will not only be inadequate but also selectively weighted towards the preferences of the key donors.

In northern Uganda, one interviewee considered the policy as bringing "an added intelligence to how to provide justice beyond the legalistic template", while noting that "we must not wait for another crisis to start rethinking traditional justice".[56] That seems a fair assessment. Properly interpreted and applied, the policy has the potential to achieve an elaboration of transitional justice processes that respond effectively to the complex aftermath of conflict in northern Uganda.

The Future of the Amnesty

Given the controversy over efforts to abolish the amnesty, the 2019 transitional justice policy approaches the matter more carefully. It aims to address perceived gaps in the amnesty process and is committed to amending (not removing) the Amnesty Act in order to introduce a clearer conditionality. In particular, future applicants would need to make relevant disclosures before they could receive the amnesty. They would also be encouraged to participate in mechanisms of reconciliation and accountability.

With the passage of time since the Juba talks, however, the pool of potential amnesty claimants has markedly reduced. The number of applicants has already dropped to a mere trickle emerging from the Central African Republic and the DRC. Nevertheless, even in relation to previous amnesty recipients there are still outstanding social processes of reconciliation as well as individual and collective reparations to be addressed.

Challenging Perpetrators: Thomas Kwoyelo and Dominic Ongwen

After he was injured and captured by Ugandan forces in the jungles of the DRC in March 2009, Thomas Kwoyelo was brought back to Uganda, where the government decided to put him on trial. He challenged the decision, claiming he was entitled to the amnesty. Like Ongwen, it is said that Kwoyelo was abducted as a child while on his way to school. In a demonstration of the policy dilemmas and tensions surrounding the amnesty, the Constitutional Court ruled that he was entitled to the amnesty, but its decision was later overturned by the Supreme Court of Uganda in 2015.[57]

Meanwhile, Kwoyelo was on pre-trial detention for nearly a decade before charges against him were confirmed in the ICD in August 2018. But the trial was adjourned yet again, with Kwoyelo remaining in detention, denied bail. Frustrated by the delays and treatment, in March 2019, he even requested to be transferred to the ICC for trial.[58]

Both the Ongwen and Kwoyelo cases have brought mixed feelings in northern Uganda about these formal processes. As the two men sit in docks and cells, others who were more senior than them in the LRA walk the streets of Gulu freely, creating the impression that justice is a lottery. Although the ICD has adopted identical procedures to the ICC, it lacks the resources to implement these in full, which is resulting in further delays. As such, when challenged about the Kwoyelo case, judges of the Division have openly blamed these adopted procedures for the delays.[59] Lengthy delay in the Kwoyelo trial has another pernicious and unintended consequence: it risks normalising the already widespread and inordinately lengthy pre-trial detention of defendants in Uganda's criminal justice system. It is deeply ironic that Kwoyelo's case is already failing to set higher justice standards in a country where thousands languish for years in overcrowded prisons, awaiting trial.

Unlike Kwoyelo's lawyers, Ongwen's legal team has already made its closing statements (in March 2020), at the end of a trial in which he pleaded not guilty to all charges. His defence team has focused on the claim that Ongwen was abducted at a young age and brutalised into becoming the LRA's fighting machine. The question of the impact of coercion, particularly in relation to persons abducted as children, is central to these two cases. It cuts to the heart of some of the most pressing justice dilemmas generated by the routine use of coercive methods by violent extremist groups. It also illustrates starkly the moral quandary in applying unmodified criminal justice processes in response to groups like the LRA. Although this challenge of the dual identity of individuals as both perpetrators and victims has not yet been satisfactorily addressed in the jurisprudence of domestic or international criminal courts, for years, this has agonised communities of northern Uganda and has informed their choices for leniency options, including amnesty. The concept in the Juba

Agreement of an alternative justice system that provided for multiple fora and methods for pursuing accountability was intended, among others, to address this particular dilemma.

It is noteworthy that after Ongwen was transferred to The Hague for trial, the ICC increased its outreach in the north, later also streaming the proceedings for communities to watch. Hearings of Kwoyelo's long-running case have also been periodically scheduled in Gulu and are streamed. With greater exposure, there has been heightened interest and expectation in these cases; indeed some of the communities associated with Ongwen's alleged crimes are now under the impression that a successful conviction will bring them financial reparations.[60] This is already generating some contention and debate, including unfavourable comparisons between the ICC framework and the absence of an effective reparation regime under the national system.[61] Regardless of their final outcomes, these two emblematic cases have already had far-reaching and complex ramifications, and their significance at the domestic and international level will continue to unfold.

Navigating Complexity

Responding effectively to violent extremist groups inevitably engages several aspects of policy and the participation of key state institutions, including the military and security agencies, as well as a range of non-state stakeholders. Coherence is therefore essential in terms of the identification and implementation of strategies, including in ensuring that the contributions of the different policy actors and stakeholders are valued. As Uganda's experience shows, national priorities, style of governance, resourcing, and other internal and external influences will have a strong bearing on policy choices and their implementation. Responsiveness to the political and other identities of the armed groups is also critical.

Conceding Political Dimensions and Durability

Citing the heinous crimes of the LRA and the nebulousness of the group's spiritual goals and practices, national and international actors have often struggled to concede a political identity to the LRA. Assertions that the group has "no political agenda" or is "out of touch with reality", have been commonplace. President Museveni's professed revulsion at the LRA's conduct was not contrived; but the government understood that revulsion was not enough. It also acknowledged that the failure to end the LRA conflict had wrought severe consequences, including the appalling economic and social conditions of displaced persons in northern Uganda.[62]

Fearing to confer legitimacy on violent extremist groups – which, admittedly, often crave recognition – governments often fail to concede that whenever a group takes up arms to resist the state or the established order the group embarks on an essentially political enterprise even though its methods might be undoubtedly criminal. Instead, governments are often preoccupied with denying such groups any political capital, including "the oxygen of publicity", and invest inordinately in efforts to depoliticise the groups. Focusing on the criminal aspects of their enterprise is often part of a multi-pronged strategy to deny a political rationale to a group's violence, while also prioritising and justifying increased investment in securitised responses to such groups.

A political framing avoids the pitfalls of caricature, and provides a rationale and framework for identifying durable solutions as well as immediate incentives, including adjustments and alternatives to retributive justice. It also enables the principled and transparent exploration of processes for dealing with the past and the full range of grievances, including those that instigated the conflict. However, a political framing is also more likely to expose the conduct of the state to greater scrutiny, including in its choice of policies to address the violence of extremist groups.

A political lens is important for another reason: it facilitates a deeper appreciation of the endurance of such violent groups. Although they might begin with one set of political goals or spiritual motivations, with the passage of time, change of circumstances, or interaction with other actors, these groups often change strategies or tactics. This is certainly the case for the LRA which, in three decades of existence, has proved to be highly adaptive.[63] Starting off with a strong millenarian identity located within Acholi society in northern Uganda, it then morphed into a proxy force for the Khartoum regime.[64] Gradually drifting farther and farther away from its Ugandan political and spiritual moorings, it now operates hundreds of miles from Uganda, across several territories. Other groups, such as Al Qaeda, have also evolved towards more existential motivations. Such an appreciation of the evolution of these groups allows policymakers to tailor appropriate responses, including incentives, to facilitate their demobilisation.

While its capacities have been degraded by concerted military and other campaigns – in which more than a billion dollars has been spent by several actors, with a considerable outlay of U.S. military resources – the LRA has not been removed from the theatre of conflict.[65] That the group has continued to survive in environments that others would find most inhospitable is a remarkable feat and reminds us that such groups are not readily susceptible to quick military defeat. Strategies of impatience, such as the pressures brought to bear on the Juba negotiations when the Ugandan and U.S. governments pressed mediators to wrap up negotiations speedily, in anticipation of military action, can close off the door to peaceful options without delivering decisive security gains, as the failure of Operation Lightning and Thunder demonstrated.

Recognition of a group's true characteristics, including its endurance and adaptability, can also have implications for the way in which processes of engagement are designed. Dialogue processes are normally designed with an expected sequence of: pre-talks, dialogue, settlement and implementation. However, this assumption of linear progression is often at variance with the realities associated with such groups. The Juba process was also hamstrung by this conventional linearity, which was compounded by the domestic and external political pressures on the mediators and negotiators to reach a deal (or abandon the talks) within specified timelines as the government and others lost patience with the process.

Unconventional and highly adaptive violent groups challenge conflict resolution practice, particularly the dominant approach where the singular pursuit of comprehensive agreement is the main goal. Shifting the emphasis towards a more gradual and incremental approach might yield greater progress. Such an approach would not press relentlessly

for signatures but would allow issues on which consensus emerges to be implemented – perhaps with joint or consensual oversight. For example, in the Juba process, the implementation of some elements of the Comprehensive Solutions Agreement and of the AAR could conceivably have begun with LRA participation, even as the exploration of other issues continued in Juba.

Such an approach would require a complete reorientation and the buy-in of all parties. In 2006, however, the Juba parties, stakeholders and mediation were not of this mindset. Instead, the process was (inadvertently) allowed to become hostage to a single, climactic signature by Joseph Kony. When that failed to materialise, support for the process dissipated; the opportunity to try another approach had already been lost, even though the government undertook that it would unilaterally implement the Agreement.

Adapting Policy for Unconventional Groups

Taking seriously the characteristics and proclivities of violent extremist groups is essential for developing appropriate strategies of engagement, including in the framing of the issues and the design of any negotiation process. In this regard, Betty Bigombe's facilitation of the early negotiations (1992-94) between the LRA and the government is an example of good craft in dealing with a violent group as one finds it and not as one wishes it to be. By approaching the LRA with the benefit of local knowledge and empathy towards its spiritual beliefs – although without subscribing to the values of the group – Bigombe was able to win the trust and secure the engagement of the LRA's leaders sufficiently to advance the negotiations towards a ceasefire.

In the Juba process, although the mediation could not benefit from the same degree of local expertise, it nevertheless enlisted and facilitated others – cultural, community, religious and political leaders and representatives, who were more familiar with the group's worldview – to come to Juba and visit Ri-Kwangba and Garamba to engage the LRA. Being a third party, the mediation had little control over these interactions; but neither did it desire or seek to exert control. Like Bigombe, the Juba mediation recognised the value of taking seriously the LRA's projections of itself, and of understanding and accommodating the ideological, spiritual and other belief systems of the group. Doing so also had the benefit of sending an important signal of recognition.

Promoting Local Engagement and Agency

Groups like the LRA often leave a wide trail of damage in their wake, blighting communities across national boundaries. Yet, those who most bear the brunt of the violence are rarely involved in adopting the policies and processes for engaging such groups, even though they invariably become key stakeholders in any efforts to address the groups' actions.

As the Acholi experience has demonstrated, members of affected communities do not lose their social and other connections with groups like the LRA, even if they might repudiate its actions, or indeed be their primary victims. Such groups will often appropriate ethnic or religious identity for political reasons, as this provides a reference for making broader demands. Communities within which these groups emerge often understand

more than outsiders the origins, operations and motivations of the group. They can thus assist in identifying viable dialogue, accountability or rehabilitation options. Where they are allowed to make positive contributions to the development or implementation of a policy responding to such groups, this enhances the legitimacy of the policy. It also helps to prevent or mitigate the stigmas and simplistic characterisations of host communities as either victims or collaborators.

Even though today's violent extremists operate across national boundaries, this enhances, rather than diminishes, the need to ensure that the most affected communities – and there will be several – are part of the search for solutions, rather than merely passive recipients of the policy choices that others have made. As witnessed in the development of amnesty and transitional justice processes, and in the Juba peace talks, when communities are afforded real opportunities to participate in the diverse policy development processes and in their implementation, this leads to better policymaking and enhances a sense of community ownership of the outcomes. Engaging citizens genuinely, respectfully, and candidly will signal that their views and circumstances are taken seriously and help to reinforce civic trust. Citizens who have been consulted or actively engaged are also more likely to be mobilised and positioned to contribute to transitional justice processes, particularly where, as in Uganda, the policies seek to rely upon the communities' contribution.

Traditional Justice

Northern Ugandan communities have been particularly active and influential in promoting traditional justice mechanisms as a tool for social reintegration, going back to their advocacy for amnesty and for dialogue during the late 1990s. In the Juba talks, the thread of traditional justice thus ran strongly, and it has now been knitted into the national transitional justice policy, which will increase the prospects of its application. The emphasis on traditional justice reflects the continuing relevance of social and spiritual meanings of justice within Acholi society, where traditional reconciliation processes are regarded as an important vehicle for the recovery of truth and fostering personal and collective healing.[66]

A deepened appreciation of the contribution that local systems of knowledge and practice can make is crucial, and across African societies some patterns are discernible. Concepts of guilt and responsibility are not approached in exclusively individualistic terms, but are understood to have social and spiritual dimensions, to be mediated through ritual and other social processes. Societies might also differ in how they remember: many African communities commemorate not through the construction of monuments but through celebration, where narratives of the past are woven into the music and performance. As one interviewee opined: "the [construction of] physical structures or memorial structures does not make sense [to us]; it instead traumatises the returnees even more".[67]

At their best, traditional mechanisms enrich understandings and practices of transitional justice, including reparations, memorialisation and acknowledgements. For example, in addition to promoting reconciliation between the living, many traditional societies also emphasise propitiation and atonement – including the making of solemn commitments – to the departed. These belief systems and practices enrich transitional justice with

their vibrant and socialised avenues for promoting accountability, renewing and healing relationships, and promoting reconciliation and reparation through mechanisms that have deep resonance in practising societies, but might not be accessible through formal systems. Each society and community will need to consider how best its traditional and customary practices can contribute to the goals of accountability, reconciliation and social recovery.

The experience from northern Uganda demonstrates that the impetus for exploring traditional systems grows when the formal systems of justice are perceived to be inadequate or obstructive towards the attainment of durable peace. In this regard, the resort to traditional justice can also serves as a vehicle for communities to assert political agency, by assuming responsibility for implementing critical accountability and social interventions.

Harnessing these often local systems of knowledge and practice is a complex undertaking that requires careful and empathetic adaptation. While these systems might not have the capacity to respond to all the heightened demands of addressing large-scale violations, alongside formal mechanisms, they are capable of making important contributions towards the recovery of societies. Securing this outcome also requires the adoption of criteria and procedures by which formal institutions can systematically and predictably defer to these complementary alternatives. The recognition and adoption of traditional justice as a pillar of Uganda's transitional justice policy is an important affirmation, which is in harmony with the aspirations of Ugandan society. The policy should therefore serve as the basis for more rigorous and systematic adaptation of traditional justice in order to secure the full benefit of these crucial local systems of social repair.

The Challenge of Resourcing Transitional Justice

Seeking to address the impacts of groups like the LRA is resource-intensive at several levels. Where the administration of justice faces immense resource constraints – as reflected in a horrendous backlog of cases before the criminal and civil courts – the national capacity to meet the costs associated with transitional justice is a highly relevant consideration and policy and implementation can flounder in the face of inadequate resources. For this reason, the Juba Agreement obliged the Government to avail and solicit resources for the implementation of the Accountability and Reconciliation Agreement.[68]

But reliance on external resources raises questions about the long-term sustainability of transitional justice processes and potential distortion of implementation patterns. Policymakers must decide whether to design processes that are beyond their existing resources – with the risk that they might not be implemented – or to remain cautious and realistic, and therefore avoid transitional justice processes that might prove to be beyond the means of the state and society. Lack of resources is a reality that cannot be avoided; its impacts can be immediate and limiting. Strategies employed by Uganda to mitigate resource constraints have included its minimalist approach to the amnesty process. Furthermore, the government has simply scaled back, or failed to progress, resource-intensive interventions, including formal criminal justice processes. Although transitional justice must seek to transform a society and transcend its weaknesses, its planners and implementers must also operate within that society's constraints.

Managing Legislation and Policymaking

If groups like the LRA present challenges because they are dynamic, then the strategies for responding to them should also be adaptable and nimble. Uganda has changed tack often in its responses to the LRA; even when it has introduced legislation, as in the case of the Anti-Terrorism Act or the ICC Statute, it has not allowed those laws to prevent efforts to engage in dialogue or to promote defections through formal leniency. Although it amended the Amnesty Act to introduce provisions for excluding unsuitable claimants, the government showed restraint by not aggressively using these powers of exclusion. Since enacting the law in 2000, the government has, almost constantly, ensured that the amnesty was available to nearly all claimants.

Both the exceptions to the grant of amnesty and to the application of anti-terrorism rules have sought to enshrine formal flexibility. Likewise, in the implementation of these laws, the government has generally leaned towards maintaining its options for leniency. Within the Juba negotiations, however, the government accepted the need to develop a more comprehensive domestic transitional justice package, with clearer criteria for the application of the different mechanisms. Moreover, it was prepared to move away from both blanket amnesty and international prosecutions. To achieve this, it was necessary to elaborate the relevant principles and mechanisms in sufficient detail in the Juba texts, with further elaboration contemplated at the implementation stage. But when the process did not deliver the LRA's demobilisation, the government lost its main incentive to implementing those obligations, and reverted to its previous ad hoc approach.

Since the enactment of the amnesty, and particularly in the period after Juba, the Ugandan parliament has emerged as the more consistent policy actor, protecting the values and goals of the amnesty process and peace-making agenda even when the executive branch sought to change policy directions. Legislatures are sometimes less susceptible to the external pressures that the executive might come under; and legislative debate can provide important opportunities for building consensus, political scrutiny and validation, adding legitimacy to adopted policies. But this requires legislators to be well-informed and well-attuned to the complexity of the issues at stake, otherwise they might fail to act as a corrective to the executive branch or, worse, obstruct viable policies out of political expediency or an incomplete grasp of the issues.

Etching transitional justice policies into legislation does carry the risk of cementing delicate matters whose implementation often requires contextual application and flexibility. At its best, legislation in response to such challenging phenomena will confer broad discretion on the implementers to tailor responses, thereby allowing for adjustments to be made in circumstances for which law cannot provide full answers in advance. In addition to clarity of purpose, transitional justice legislation must be accompanied by sufficient detail and guidance to facilitate the most effective implementation that contributes to the attainment of its goals. As an example, one of the stated objectives of the Amnesty Act – to "promote appropriate mechanisms of reconciliation" – was insufficiently elaborated and, consequently, has arguably been inadequately implemented for lack of such guidance.

Role of the Military

Like the military and security sector in many countries, Uganda's military has been a key domestic player on shaping policy and other responses to insurgencies and violent extremism. Because of its origins in Museveni's bush war, the views of the military on the conflict and dialogue efforts, and its support for the amnesty, have been highly influential. Even after the transformation of the National Resistance Army (NRA) into the Uganda People's Defence Forces (UPDF) following the adoption of a new constitution in 1995, the army has remained a dominant policy influence, with the UPDF having reserved seats in the Parliament.[69]

Since 1986, the army has often been the main face of the state in northern Uganda – and its violations since its earliest entry into the north have not been forgotten by the affected communities. As was illustrated in the Juba discourses, debate about accountability for the LRA invariably implicates questions of the responsibility of the army for past violations. The population still awaits justice and reparations. Over the years, in order to improve relations with the civil population, army divisions in the north have established and maintained civil military committees to engage with the community. The army has also recruited heavily from the community, with the result that Acholi have often been highly represented (and thus taking casualties) on both sides of the fighting, adding to the societal dilemmas about the conflict.

As seen during the Bigombe and Juba talks, the military has been a key player in all peace processes, with military and security officials always part of the delegations of the government. Moreover, the military's decisions and actions in the field often have direct and immediate effects on the direction of dialogue processes. Because of the combination of its role in the proxy war with Sudan, particularly its support for the SPLA, and the fact that it was allowed to operate on the territory of Sudan and other neighbouring states, the army's understanding of the regional dynamics of the conflict has often been deeper than that of many civilian actors, including some policymakers.

Recognising the potential of the law for achieving defections from the LRA, the army has been a consistent supporter of the amnesty process. As the first institution potential defectors will encounter in the field, the army has established centres and modalities for receiving former LRA combatants. Over the years, it has also absorbed former LRA combatants, including by constituting a special battalion (105th Battalion) of former LRA combatants, which it has deployed back into the fight against the group. This has been controversial: recruitment is supported by some as preventing the temptation for individuals to return to the bush owing to hardships in reintegration, but opposed by others in the community for continuing the militarisation of vulnerable former combatants.[70] Another criticism is that the army's practice has privileged male former combatants and not the women who tended to be left to fend for themselves.[71]

Although it has its own formal justice system, the military has not systematically investigated or held to account its members who were responsible for violations. This imbalance in accountability has created grievances and political tensions over the years, and

the issue featured heavily in the Juba negotiations. Moreover, key figures in the military establishment have benefitted from the war, including through corruption as manifested in the phenomenon of "ghost soldiers" in northern army divisions. But the military, and other security agencies, have brought understandings of context, as well as of the changing methods and motivations of the LRA, which are not always available to other interlocutors. Uganda's military has also been involved in the adoption and implementation of key policy decisions in response to the LRA, including the amnesty, dialogue, accountability and even international justice.[72] Their greater inclusion in the development and management of holistic strategies would add to the coherence and effectiveness of the response to unconventional groups.

Concluding Reflections and Recommendations

This section revisits some of the key policy interventions that have sought to address accountability, reconciliation or leniency in relation to the LRA, and considers possible actions for the future. Since the LRA conflict and its impacts are still unresolved, Uganda's engagement with transitional justice issues over the years provides insights that might assist in the further development and application of interventions towards the group and hold lessons for addressing comparable challenges posed by other groups.

The Amnesty Act – Alternatives to Prosecution

For a period before the start of the new millennium, Uganda conferred ad hoc amnesties, including presidential pardons, to encourage insurgents and political opponents to abandon their activities. When under domestic and regional pressures Uganda adopted the Amnesty Act in 2000, this became the government's chief conflict resolution and management instrument. The Act aimed to incentivise defection by exempting individual members of armed group from the formal, retributive justice system, towards other, more appropriate, reintegration strategies.

Although in practice Uganda had not been systematically prosecuting former insurgents, particularly formerly abducted persons, the amnesty process provided a formal reassurance to beneficiaries and formally facilitated their resettlement into society. The simplicity and accessibility of its processes have been key hallmarks that should be preserved. However, severe under-resourcing has left the Amnesty Commission cash-strapped and heavily reliant on inconsistent donor funding or partnerships with other organisations. Among other consequences, the Commission has been unable to fulfil certain aspects of its mandate, such as the systematic promotion of social reconciliation processes in conflict-affected communities.

Faced with the scale, motivations and characteristics of groups like the LRA, societies might understandably conclude that widespread prosecutions are not only unviable but undesirable, focusing instead on a few emblematic cases. While a Ugandan debate continues about how best to adjust the amnesty process so that it strikes the right balance between conflict resolution and the promotion of accountability, and between reconciliation and healing, the fact that approximately 28,500 individuals (about half of whom are from the LRA) have taken up the amnesty and reintegrated in society is a clear sign of its success as an inducement for defections.

In terms of the future, the national transitional justice policy now envisages amendments to the amnesty law to make it more explicitly conditional. Although the number of potential claimants has markedly decreased, any future amnesty regime will still need to be well resourced, particularly if new procedures will require greater administrative oversight. By creating a presumption in favour of amnesty and decentralising the application process, the current model has been able to convey an unambiguous message that provides incentives for defection and demobilisation. This combination of clarity of scope and simplified procedures should be retained. Any criteria for excluding individuals from the amnesty will need to be framed in the clearest terms, so as to avoid damaging uncertainty and confusion. And the process for excluding claimants should provide sufficient rights and procedures for an individual to challenge any adverse findings. In lieu of exclusion, certain individuals could be required to participate in alternative accountability processes as a condition for exemption from formal prosecution. In this connection, social reintegration, truth-telling and appropriate reparations could be systematically promoted, by making use of community mechanisms, including traditional justice, as an integral part of the amnesty process.

International and Domestic Criminal Justice

Informed by a range of political calculations, the Ugandan government referred the LRA situation to the ICC in December 2003. But in making that referral, Uganda kept its political and legal options open; neither revoking its amnesty law nor abandoning the exploration of dialogue initiatives.

The Ugandan experience of engaging transitional justice issues, including in the Juba process, encapsulates the challenges entailed in the concurrent pursuit of international and domestic justice interventions alongside peace processes and dialogue efforts. Because they symbolise and accentuate the power and domination of the status quo, while at the same time stigmatising and delegitimising individuals and groups, public trials represent a strong negotiation disincentive for those who fear they might become targets of criminal prosecution in the future. Moreover, in the case of the LRA, the group already had low trust in the ICC, which it considered had not been even-handed in its handling of the northern Uganda case, and had allowed the Ugandan government to insulate itself from the scrutiny of the Court. This political objection to international justice, which was based on the perceived flaws of the Court, could not to be dismissed as mere evasion.

At the domestic level, the delays and handling of Thomas Kwoyelo's trial, and the failure of the government to adopt and promote alternative proceedings, including the cooperation and sentencing regimes identified in the Juba Agreement, have undoubtedly hampered the contribution of the International Crimes Division of the Ugandan High Court to both accountability and reconciliation.

Another lesson the Ugandan case teaches is that while armed groups will often resist judicial stigmatisation, they might be willing to accept the necessity or inevitability of other forms of accountability that they perceive to be less stigmatising. A combination of

alternative approaches that seek to mitigate political damage, but without sacrificing the rigour or fairness of investigations or adjudication, is more likely to strike the right balance. Adjustments to formal procedures, and the adoption of other adjudicatory processes with which individuals and communities might identify more closely – such as traditional justice – can assist in attenuating the stigma associated with criminal proceedings. But in any mixed model, it is imperative to ensure that the various transitional justice measures operate compatibly with each other. This might require additional legislation and the support of key stakeholders, including affected non-state implementers and communities.

Pedagogical Needs and Negotiation Design

All of the transitional justice questions under discussion in Juba were complex: the implications of the ICC arrest warrants, including the application of the principle of complementarity; the scope of reparations; the rationale and workings of a truth commission; the meanings of political and social reconciliation; the efficacy of traditional justice mechanisms, particularly the relationship between *mato oput* and criminal justice; and more. Each side, and indeed individuals within each side, brought different understandings, experiences, prejudices and preconceptions of these questions. Matters were further complicated by the fact that the key interlocutors (Joseph Kony and senior LRA commanders) remained far away in Garamba Park while others were grappling with these involved issues in Juba.

For all the key agenda items, the mediation encouraged an iterative approach whereby each party developed, exchanged and presented position papers before embarking on detailed negotiations. Only after these were debated would the mediation assume any role in harmonising the positions. This approach ensured that each party grappled for itself with the difficult issues. For Agenda Item III, in particular, the mediation also organised workshops and presentations on a range of transitional justice issues, including on the Rome Statute and traditional justice. In addition, lawyers attached to the mediation spent considerable time with the parties, including the LRA and government leaders, explaining proposals and listening to concerns.

Allowing them time to settle into a rhythm of negotiations prior to tackling Agenda Item III was considered to have enabled the parties to deepen their understandings and to reach consensus on a strategy to prioritise credible domestic proceedings. What had started as a sparse agenda on "Amnesty, Mato Oput and Reconciliation", became a much richer and more coherent text, with the name of the agreement also changing to reference accountability before reconciliation. While transitional justice has become a highly legalised field, it remains essential that negotiations and mediated processes allow the parties to reach their own genuine and informed agreements after grappling with the issues. It is important, but insufficient, to enhance the parties' understanding of the technical issues.

Political Framing

Defining violent groups like the LRA exclusively in terms of their criminal conduct risks obscuring their political characteristics and motivations. Despite the government's evident discomfiture with this approach, under the rubric of Comprehensive Solutions a range of

thorny political issues, such as the marginalisation of northern Uganda and the question of reparations, were placed on the agenda. This implied balancing politics with the more procedural aspects of justice discussed under Agenda Item III.

Juba teaches that processes of engagement should not de-emphasise political questions in favour of justice issues exclusively. Instead, they should recognise that even justice issues have political dimensions. In the design and management of engagements, mediators and facilitators should allow each party its due rights as a core participant and avoid creating an environment hostile to, or disadvantageous for, any party's self-understanding.

The Contribution of Consultations

Through the formal consultations, for which the negotiations were adjourned between June 2007 and February the following year, the parties engaged Ugandans on questions of accountability and reconciliation. This process was intended to secure a high degree of societal buy-in for the Juba proposals, and to insulate the legitimacy of the outcomes.

The process provided the LRA delegation with an opportunity to engage with citizens and to anchor their future discussions in the realities on the ground in Uganda. It was, significantly, the first time for some of its representatives to return to Uganda since the NRM took power. That they were well-received, including by President Museveni, helped build confidence. Their ability to conduct meetings and rallies in northern Uganda without interference also exposed them to citizens' views, some of which were critical of the way that the consultations, including apologies, were being handled.[73] That more senior leaders of the LRA could not be part of the delegation that travelled to Uganda was a missed opportunity to build confidence.

As for the government's consultations, led by Dr Ruhakana Rugunda, its negotiating team systematically engaged a cross-section of citizens to discuss the war and its impacts and to hear views about questions of justice and reconciliation. The exchanges were frank; the views varied. The quality and intensity of those discussions – taking place while the conflict was ongoing – are unlikely to be re-captured. Moreover, the inputs directly shaped the positions of the government delegation, particularly on the issues of truth-telling, reparations and traditional justice. The process and outcome stand as an important record and significant contribution to methods and virtues of citizen engagement.

Of course, consultations are not a substitute for negotiation and agreement: even inclusive models of mediation need the core parties to reach agreements which they will own and honour. As such, a balance needs to be maintained between the right of the parties to reach agreements that they will honour, and the entitlement of citizens to shape outcomes that will affect their core interests. Juba sought to achieve this balance by ensuring that the parties negotiated the transitional justice elements in two freestanding parts, producing an agreement on key principles and some mechanisms (prior to the consultations) and a further agreement on the implementation mechanisms (after the consultations). The consultations thus bridged the two agreements, validating the decision to break off negotiations to carry them out. The act stands out as a powerful example of innovation to strengthen national ownership and the buy-in of the parties to home-grown transitional justice.

The Shadow of Arrest Warrants

When leaders of violent armed groups like the LRA are the subjects of arrest warrants, sanctions and other justice threats, their need for personal legal security grows, requiring tailored solutions. This introduces an added personal dimension to the process, which might affect the psychology and security demands of key individuals. Moreover, arrest warrants bring added scrutiny as well as interventions from justice and human rights actors, which can be to the detriment of the process.

During the Juba negotiations, judges of the ICC Pre-Trial Chamber dealing with the LRA case often scheduled status conferences, demanding updates and comment from the ICC prosecutor and from the Ugandan government. As the negotiations continued, Moreno Ocampo, the ICC prosecutor, became more explicit in his criticism of the Juba process. Such interventions complicated the task of nurturing the confidence of the parties in the process and its outcomes. In March 2018, after the conclusion of the main texts, and ahead of scheduling any signing, an LRA delegation travelled to the seat of the ICC in The Hague, in order to enhance its understanding of the court's process and the prospects of deference to the Juba Agreement. There, it held meetings with registry officials; by contrast, the prosecutor declined to meet with the delegation.

As a consequence of the lack of clarity about judicial outcomes, a serious political search for solutions to a very damaging conflict was ultimately determined by the uncertainty over procedural rather than substantive questions. The sticking point boiled down to whether the ICC would defer to national proceedings agreed in Juba. This raises some troubling questions about the capacity of international justice (both substantively and procedurally) to respond effectively to the need for predictability in conflict resolution contexts, particularly where, as in Juba, there was a real prospect that a peace deal would in fact promote domestic accountability for serious violations while also preventing the commission of new ones.[74]

Because the question of the most appropriate fora and form for the delivery of justice will continue to arise in settings where domestic and international justice are in competition, a refinement of the principles and procedures for facilitating deference of international justice processes to domestic systems, would assist in managing these tensions and avoid damage to prospects of both peace and justice. In the meantime, the states or institutions concerned with a case can confidentially provide or reinforce – outside of the text – legal and political assurances that will engender confidence about the implementation of any negotiated outcomes.[75]

Insulating Gains of Peace Agreements against Setbacks

Although they might fail to deliver the immediate goal of demobilising an armed group, where detailed agreements have been reached – particularly on elements that address broader grievances and issues of transitional justice, and where the process has been inclusive – more consideration should be given to implementing those outcomes. This

includes recognition that the outcomes of peace processes do not belong exclusively to the belligerents.

Although the Juba talks did not formally proceed on the basis that "nothing is agreed until everything is agreed", each agreement, though potentially freestanding, was instead collated with others to serve the single goal of achieving the demobilisation of the LRA in accordance with the specified time table. This made all the broader gains of the process hostage to a single final signature, which became an impediment to the implementation of the agreements. Instead, negotiations involving groups like the LRA should be designed to enable the agreements that emerge to be freestanding and implementable even when full implementation, or a complete end to violence, is not immediately achieved. This would allow for some early implementation in areas on which there has been agreement, particularly if these confer broader social, economic or other benefits and obligations upon other actors. Because they apply to a wide range of stakeholders and entities beyond the negotiating parties, many aspects of transitional justice are particularly amenable to such prioritised implementation.

Beyond Boundaries: Transnational Transitional Justice

Once the LRA started to operate in Sudan from the mid-1990s, it was inevitable that its violations would affect individuals and communities outside Uganda. After the group relocated to the DRC and then to the Central African Republic, it soon became clear that it would be necessary to address the LRA's conduct in those countries in addition to the long history of violations in northern Uganda. In the text of the Juba talks, this issue was addressed by ensuring accountability and reconciliation processes would be promoted with respect to "the conflict between the Parties in Northern and North Eastern Uganda, including its impacts in the neighbouring countries".[76] As regards reconciliation, the agreement also provided for "appropriate reconciliation mechanisms to address issues arising from within or outside Uganda with respect to the conflict".[77]

All countries and territories affected by the conflict were present at the talks as observers, facilitators, or as part of the Cessation of Hostilities Monitoring Team.[78] As such, it was understood that on accountability issues, those countries would defer to Uganda, with the details of future collaboration to be worked out later. However, due to the non-implementation of the agreement, these informal understandings on accountability and reconciliation cooperation were never acted upon either legislatively or administratively.

Many northern Ugandan leaders, including the Acholi Religious Leaders' Peace Initiative (ARLPI), see transitional justice as contributing to addressing the impacts of the conflict beyond Uganda's borders. For them, the answer is in a regional strategy whereby the DRC, Sudan and the Central African Republic would also adopt responses to the LRA along the lines of the Ugandan transitional justice policy and amnesty process.[79] Indeed, the ARLPI has engaged with communities in neighbouring countries including Faradje in the DRC, where attacks have taken place.

But at least three ingredients are critical for effective transnational transitional justice responses: 1) domestic architecture in each country for dealing with members of the group and with the social impacts of their violations, ideally combining formal and community-based processes; 2) common standards for promoting accountability, reconciliation and social repair; and 3) institutions for coordinating the different transitional justice initiatives. In this regard, the African Union's new Transitional Justice Policy, adopted by the Assembly of the AU in February 2019, offers an important common framework to support the development of appropriate transnational interventions.[80]

The African Union LRA Task Force

Even when their activities might be confined to the territory of one country, responding effectively to violent extremist groups is rarely a matter exclusively for the state of origin. Today, these groups routinely attract membership from beyond boundaries, making them the concern of neighbouring states, regional bodies and the international community. In 2011, in order to address the trans-boundary challenge of the LRA, the African Union Peace and Security Council established a Regional Task Force (AU-RTF) for the elimination of the LRA, drawing troops from Uganda, the DRC, the Central African Republic and South Sudan. But from the outset, the AU-RTF was plagued by the severe domestic challenges faced by the contributing states.

While the AU-RTF achieved some notable military successes, Joseph Kony is still at large in Kafia Kingi, and the group, now operating in small itinerant units, is still active in the Central African Republic and the DRC continuing with attacks and violations into 2020.[81] Since it was designed principally as a military mission, the AU-RTF did not have a prominent mandate to engage on other political questions such as addressing the violations of the LRA or its impacts on communities. After the LRA scattered from Garamba in 2008, there has been little opportunity to engage the group directly, although the AU-RTF invested in catalysing individual or small group defections to take advantage of Uganda's well-known amnesty law.

Because groups like the LRA will often operate in spaces where the state is either absent or dysfunctional, national authorities are often unable to protect their citizens. On the African continent, in the Sahel, north Africa, the Horn of Africa and elsewhere, the transnational reach of violent extremist groups poses a challenge not only in terms of the adequacy of security and military responses but also in terms of the need to identify appropriate transitional justice architectures at multiple levels and across boundaries. By reason of its longer history of addressing the LRA issues, including the policy architecture it has developed, Uganda still enjoys certain comparative advantages in addressing the remnant of the LRA. Ultimately, military initiatives, such as the AU-RTF, are only part of the answer to violent extremist groups. The limitations of militaristic responses can, however, be partly mitigated by allowing the military to develop and manage initiatives for peaceful engagement as an extension of promoting defections. This could be undertaken by dedicated personnel trained for these tasks, and might include the development of initial dialogue

tracks. Such a broader approach to the role of the military would ensure that viable opportunities for securing peaceful demobilisation of violent groups are not lost.

Developing Uganda's Transitional Justice Policy

After more than 10 years in development, Uganda's 2019 Transitional Justice Policy seeks to offer a comprehensive framework for delivering a range of transitional justice goals. It is an important starting point upon which advocacy and expectations for transformative transitional justice should focus. A Transitional Justice Act will give the policy formal legal standing, and may include some of the elements of the alternative justice system identified in the Juba Agreements, such as the promotion of traditional justice mechanisms, alternative sentences, reparations, and incentives and procedures for cooperation by defendants. In addition to broad citizen support, its effective implementation will require significant political and financial investment by the state, as well as external support.

Over the years, particularly under the NRM government, Uganda has adopted several ad hoc policies and mechanisms to address specific aspects of its violent history and politics, perhaps most significantly the 1986 Commission of Inquiry into the Violation of Human Rights, which informed the drafting of the 1995 Constitution, including the establishment of the Uganda Human Rights Commission as a constitutional body. Despite imperfections, these interventions are invaluable antecedents of transitional justice in Uganda, providing a range of lessons for the implementation of the new policy. Other significant interventions include the ongoing work of the Amnesty Commission and the Uganda Human Rights Commission, which promote reconciliation and complementary accountability processes. The outcomes of the national consultations conducted by the government of Uganda and the LRA as part of the Juba peace talks will also provide rich material.

Any process that mobilises citizens to reflect on their society's past, and to identify transformative changes, is unavoidably political and that dimension should not be ignored. At its most transformative, a transitional justice policy should bring tangible and positive difference to the lives and relationships of citizens and communities and the way that they are governed at all levels. But without consistent political investment, such outcomes cannot be achieved. Instead, the implementation of the policy may become selective, pivoting towards safer options, focusing on a few individuals' conduct without tackling systemic and structural injustices. While the adoption of the 2019 policy has re-ignited hope and expectation that the impacts of the conflicts will now be systematically addressed, there is also lingering scepticism to be overcome. In the words of one interviewee, "The reason [transitional justice] worked in South Africa was because it was a post-apartheid government; a new regime had come in. We can't do that here because the system is still the same [and] the actors are still the same".[82] A bold implementation of the policy should dispel these doubts.

Adapting Policy to Unconventional Groups

Although the heinous actions of violent groups cause revulsion, their resilience and complexity – and the immense damage they inflict across boundaries and diverse communities – drive governments and societies toward realism about the limitations of securitised responses. Difficult and fundamental questions regarding the goals and expressions of justice, reconciliation and societal healing arise and must be faced.

During its search for a durable solution to the LRA challenge, Uganda has invested in an amnesty process; peace talks, especially the Juba process; international justice through the ICC; domestic criminal justice responses; and traditional justice mechanisms. In navigating these policy options, the country has sought to maintain the greatest room for manoeuvre and flexibility, even as its concurrent recourse to international justice and amnesty has attracted criticism for inconsistency. However, its experience of engaging in dialogue, and involving conflict-affected communities in the identification and implementation of key policies, reflects the value of people-centred approaches to transitional justice design and policymaking.

A further complexity, also epitomised in the LRA situation, is the transnational character of many violent extremist groups, which often operate with ease across national boundaries. While a great deal has been invested in developing multilateral strategies and institutions for security and military cooperation, much less has been done to adopt transitional justice responses with effective transnational impacts.

The mixed experience of addressing the LRA phenomenon holds insights on how to deal with other unconventional violent groups. It demonstrates the potential for harnessing contributions from the community, national, regional and global levels to identify and refine the values, architectures and methodologies for engaging such groups and delivering both accountability and peace in complex situations. It also shows the limits of what can be accomplished through negotiating with such groups in the absence of leadership participation and buy-in, especially when, like the proverbial Sword of Damocles, the threat of international justice cannot be wished away.

Annex 1: Chronology of Events

Oct 1992	Uganda gains independence from Great Britain
Jan 1971	General Idi Amin deposes President Milton Obote in a coup
Aug 1972	Amin expels Asians from Uganda, giving 90 days for them to leave
Apr 1979	Idi Amin is driven from power
Dec 1980	Milton Obote's Uganda People's Congress declared winner of national elections
Feb 1981	Yoweri Museveni launches bush war to topple Obote government
Jul 1985	Army ousts Milton Obote, who flees to Kenya
Dec 1985	Uganda government and National Resistance Movement (NRM) sign peace agreement in Nairobi, brokered by Kenyan government
Jan 1986	Museveni's NRA seizes Kampala, NRM takes power
May 1986	NRM establishes the Uganda Commission of Inquiry into Violations of Human Rights 1962–1986
Sep 1986	Alice Lakwena forms the Holy Spirit Mobile Forces (HMSF) and launches her insurgency
Jan 1987	Joseph Kony forms a fighting group aligned to the HSMF; by 1993, it evolves into the Lord's Resistance Army
May 1987	Uganda introduces the Amnesty Statute to facilitate negotiations with insurgents; the Statute lapses after three months
Nov 1987	Alice Lakwena's Holy Spirit Mobile Forces defeated near Jinja; she flees to Kenya
Feb 1994	Betty Bigombe and government delegation meet Joseph Kony; ceasefire is agreed but not implemented; LRA later relocates to Sudan
Oct 1995	New Constitution of Uganda
Dec 1999	Uganda and Sudan sign Nairobi Agreement, brokered by President Jimmy Carter; it includes amnesty provisions
Jan 2000	Amnesty Act is enacted
Mar 2002	Launch of Operation Iron Fist; Sudan permits Ugandan forces to attack LRA bases inside Sudan
Dec 2003	Uganda refers the LRA to the ICC, which later opens investigations into situation in northern Uganda
2004–2005	Bigombe resumes dialogue initiatives engaging the LRA in northern Uganda

Jan 2005	SPLM and Sudan government sign Comprehensive Peace Agreement in Nairobi; Government of Southern Sudan is formed
Oct 2005	ICC unveils arrest warrants for Joseph Kony and other LRA leaders, including Dominic Ongwen
Jul 2006	Juba peace talks open between government and LRA, with Southern Sudanese mediation
Aug 2006	Cessation of Hostilities Agreement signed, followed by withdrawal of LRA forces from Uganda
Dec 2006	UN appoints President Joaquim Chissano to be Special Envoy for LRA-affected areas and to support Juba process
Jun 2007	Agreement on Accountability and Reconciliation signed in Juba
Apr 2008	Kony fails to appear in Ri-Kwangba to sign the Final Peace Agreement
May 2008	Judiciary establishes War Crimes Court, later renamed International Crimes Division
Dec 2008	Uganda launches Operation Lightning and Thunder; LRA positions in Garamba Park attacked, but Kony escapes and LRA disperses
Mar 2009	LRA commander, Thomas Kwoyelo captured in DRC, is refused amnesty in Uganda and put on trial; he challenges amnesty decision
May-Jun 2010	Review Conference of the Rome Statute of the ICC is held in Kampala
Jun 2010	Uganda enacts International Criminal Court Act
Oct 2011	United States sends Special Forces to help the hunt for the LRA
Nov 2011	African Union establishes Regional Task Force to support hunt for LRA
May 2012	Minister of Internal Affairs withdraws amnesty law
May 2013	Government of Uganda reinstates amnesty law after resolution by Parliament
Jan 2015	Dominic Ongwen surrenders and is transferred by the Central African Republic to the ICC
Apr 2015	Uganda Supreme Court upholds denial of amnesty to Kwoyelo
Feb 2019	African Union adopts continental Transitional Justice Policy
Jun 2019	Uganda adopts its national Transitional Justice Policy

Endnotes

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2. Caroline Lamwaka, "The Peace Process in Northern Uganda 1986-1990", *Accord: An International Review of Peace Initiatives*, issue 11 (2002), p.31.

3. For historical discussion: Samwiri Karugire, *The Roots of Instability in Uganda* (Kampala, 1996).; and Thomas P. Ofcansky, Uganda: Tarnished Pearl of Africa (Oxford, 1996), Ch. 2 & 3.

4. Robert Gersony, *The Anguish of Northern Uganda: Results of a Field-Based Assessment of the Civil Conflicts in Northern Uganda* (Commissioned by U.S. Embassy Kampala and USAID Mission Kampala, 1997).

5. On LRA violence as a force multiplier: Anthony Vinci, "The Strategic Use of Fear by the Lord's Resistance Army", *Small Wars and Insurgencies*, vol. 16, no. 3 (2005), p. 360-381.

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7. "Gulu Ceasefire Agreement Appendix A: Ceasefire Implementation Programme Schedule", 2 February 1994, articles 2(a) & (b).

8. The 2014 national census put the Acholi population at just over 1.4 million: "The National Population and Housing Census 2014", Uganda Bureau of Statistics 2016 (ubos.org).

9. Chris Dolan, *Social Torture: The Case of Northern Uganda*, 1986-2006 (Oxford, 2009).

10. Dennis Pain, *The Bending of Spears: Producing Consensus for Peace and Development in Northern Uganda* (Commissioned by International Alert and Kacoke Madit, 1997).

11. Barney Afako, "Northern Uganda: Justice in Conflict", *African Rights*, (London, 2000).

12. "Agreement between the Governments of Sudan and Uganda", (www.peaceau.org), 8 December 1999.

13. Ibid. Article 10.

14. Barney Afako, "Reconciliation and Justice: 'Mato Oput' and the Amnesty Act", *Accord: An International Review of Peace Initiatives*, issue 11 (2002).

15. Interview, GO, Gulu, August 2019.

16. Such as the International Conference on the Great Lakes Region and the AU Regional Task Force on the LRA.

17. "The Amnesty Act, 2000", Government of Uganda, section 4 (1) (a).

18. Ibid. section 4 (1) (b).

19. Ibid. section 4 (1) (c).

20. Ibid. section 4 (1) (d).

21. Ibid. sections 9 (c), (d) & (e).

22. Interview, Catholic Priest, Gulu, December 2019.

23. About 3,000 applicants associated with the Allied Democratic Forces have also been granted amnesty: Information from Amnesty Commission, April 2020.

24. "The Amnesty Act, 2000", Government of Uganda, section 9 (e).

25. This was achieved by a statutory instrument declaring the lapse of Part II of the Amnesty Act, under which the amnesty is defined and granted.

26. "Communiqué of Traditional and Religious Leaders, Civil Society and other Organisations Concerning the Declaration of Lapse of the Operation of Part II of the Amnesty Act", In possession of author.

27. "The End of Amnesty in Uganda: Implications for LRA Defections", Enough Project (www.enoughproject.org), August 2012.

28. Estimates – though notoriously unreliable – put the LRA's current strength at about 300 fighters, mostly operating out of Kafia and CAR.

29. The Deputy Speaker, the Rt Hon Jacob Oulanyah, was one of the legal advisors to the Juba peace talks and earlier LRA dialogue initiatives.

30. The government's negotiations with groups such as the Uganda National Rescue Front II (2002), and overtures to the ADC (2009 onwards) were also based on the Amnesty Act framework.

31. For detailed discussion, see: Phil Clark, *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge, 2018), Chapter 3; and Sarah Nouwen, Complementarity in the Line of Fire (Cambridge, 2012), Chapter 3.

32. IGAD is an eight-state regional cooperation bloc, encompassing eastern Africa and Horn of Africa countries. It has played a lead role in facilitating peace processes in Sudan and South Sudan.

33. Under the CPA, Southern Sudan would be a semi-autonomous region within the Republic of Sudan, with its own government. In July 2011, Southern Sudan became the new state of South Sudan, following its secession from Sudan.

34. In addition to Dr Ruhakana Rugunda, then the Minister of Internal Affairs and a senior member of the Government, and Mr Henry Okello, the Minister of State for Foreign Affairs, Uganda's delegation included the Director General of External Service Organisation, the Director General of the Internal Service Organisation and the Chief of Military Intelligence.

35. "Implementation Protocol to the Agreement on Comprehensive Solutions", Government of Uganda and LRA, 2 May 2007, clause 28.

36. "Agreement on Accountability and Reconciliation", Government of Uganda, 29 June 2007, clause 4.4.

37. Ibid. clause 12 (iv).

38. Ibid. clause 6.4.

39. Interview, Gulu, September 2019.

40. "The Report of the Commission of Inquiry into the Violations of Human Rights: Findings, Conclusions and Recommendations", Uganda Commission of Inquiry into Violations of Human Rights, December 1994. However, the Commission's report and its summary have never been widely circulated or publicly debated.

41. One person suggested that the kind of (individual) reparations being promoted through the ICC process had no direct parallels in Acholi Society. Interview, GO, Gulu, August 2019. Another questioned the concept of the victim: "I do not remember an Acholi word for '*victim*'. Nobody would like to be called a victim and to parade it around". Interview, Gulu, December 2019.

42. "Agreement on Accountability and Reconciliation", Government of Uganda, 29 June 2007, clause 10.

43. "Annexure to Agreement on Accountability and Reconciliation", Government of Uganda, 2008, clauses 4 & 13.

44. Interview, Gulu, September 2019.

45. Interview, GA, Gulu, September 2019.

46. "Agreement on Accountability and Reconciliation", Government of Uganda, 29 June 2007, clause 15.

47. "Agreement on Implementation and Monitoring Mechanisms", clause 36.

48. Ibid. clause 37.

49. Ibid. clauses 40 & 42.

50. An ad hoc Government body for coordinating the agencies within the justice sector, including courts, the police and others.

51. An Oversight Forum would include international actors, a Joint Liaison Group of the parties, and a role for the Chief Mediator (see Agreement on Implementation and Monitoring Mechanisms).

52. Phil Clark (2018), Sarah Nouwen (2013).

53. Donors generally do not oversee the budgets of the Ministry of Defence or the President's Office under which a wide range of programs are overseen or implemented.

54. Stephen Oola and Francis Nono, "Uganda's Transitional Justice Policy 2019: Better Late than Never!", New Vision (www.newvision.co.ug/new_vision/news/1502988/uganda-transitional-justice-policy-2019-late), 5 July 2019.

55. The Refugee Law Project and others have long promoted the policy and emphasised the need for a truth commission.

56. Interview, AO, Gulu, December 2019

57. Uganda v Kwoyelo (CONSTITUTIONAL APPEAL NO. 01 OF 2012) [2015] UGSC 5 (8 April 2015); at: https://ulii.org/ug/judgment/supreme-court/2015/5/

58. His lawyers had earlier brought a challenge before the African Commission of Peoples and Human Rights in Banjul, which ruled on account of the delays (up to 2013) in his case, Kwoyelo had been denied the right to be tried within a reasonable time as guaranteed under Article 7(1)(d) of the African Charter on Human and People's Rights. *Kwoyelo v Uganda* (Communication 431/12) ACHPR 129 (17 October 2018).

59. Julius Ocungi, "Kwoyelo Trial too Slow, Acholi Leaders Cry Out", Daily Monitor (https://www.monitor.co.ug/News/National/Kwoyelo-trial-too-slow-Acholi-leaders-cry-out/688334-5160924-xwobki/index.html), 18 June 2019.

60. Interview, key informant, Gulu, December 2019.

61. Lino Ogora, "Why Victims Feel Abandoned by the Ugandan Government", *International Justice Monitor* (www.ijmonitor.org/2017/05/why-victims-feel-abandoned-by-the-ugandan-Government/). March 2017

62. In November 2003, Jan Egeland famously, and to the discomfort of the Government, referred to northern Uganda as the "worst forgotten crisis".

63. Ledio Cacaj, *When the Walking Defeats You: One man's Journey as Joseph Kony's Bodyguard* (London, 2016).

64. Anthony Vinci, "Existential Motivations in the Lord's Resistance Army's Continuing Conflict", *Studies in Conflict & Terrorism*, vol. 30, no. 4 (2007), pp. 337-352.

65. David Gauvey Herbert, "Billions of dollars later, Joseph Kony remains at large and the first world has lost interest in bringing him to justice", Quartz

(https://qz.com/960220/billions-of-dollars-later-joseph-kony-remains-at-large-and-the-first-world-has-lost-interest-in-bringing-him-to-justice/) 27 April 2017.

66. Interview, JO, Gulu, December 2019. One interviewee emphasised that traditional justice's power resides in "bringing people together to tell their stories". Interview, KO, Gulu, September 2019.

67. Interview, FO, Gulu, September 2019.

68. The government also has relied on external funding for the International Crimes Division and the further development and implementation of the 2019 transitional justice policy: "Agreement on Accountability and Reconciliation", Government of Uganda, 29 June 2007, clause 13.

69. Pursuant to Chapter 12 of the 1995 Constitution, the NRA became the Uganda People's Defence Forces.

70. Interview, FO, Gulu, September 2019.

71. Interview, JA, Gulu, September 2019.

72. See Phil Clark (2018) for the role of the Ministry of Defence in pushing for ICC referral.

73. IWPR, *Doubts Raised Over LRA Peace Tour: Sincerity of LRA delegation seeking forgiveness in the north questioned* (https://iwpr.net/global-voices/doubts-raised-over-lra-peace-tour) 27 November 2007.

74. For critiques of the ICC role, see Phil Clark (2018); and Sarah Nouwen (2013).

75. For illustration and discussion of dilemmas and mediation techniques: Priscilla Hayner, *The Peacemaker's Paradox: Pursuing Justice in the Shadow of Conflict* (New York, 2018).

76. "Agreement on Accountability and Reconciliation", Government of Uganda, 29 June 2007, clause 1.

77. Ibid. clause 7.1.

78. These included Southern Sudan and the Democratic Republic of Congo, but not the Central African Republic, as the LRA had not yet relocated to that country.

79. Interview, Sheikh Musa Khelil, Gulu, December 2019.

80. African Union, *Transitional Justice Policy* (https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf) Addis Ababa, February 2019

81. For an account of LRA attacks into May 2020: https://reliefweb.int/report/democratic-republic-congo/special-alert-escalation-lra-attacks-causes-displacement

82. Interview, Gulu, November 2019.

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The Limits of Reconciliation

ASSESSING THE REVISIONS OF THE LIBYAN ISLAMIC FIGHTING GROUP (LIFG)

MARY FITZGERALD & EMADEDDIN BADI

September 2020

Acronyms

AQIM	Al-Qaeda in the Islamic Maghreb
CIA	Central Intelligence Agency
GIA	Armed Islamic Group (of Algeria)
IS	Islamic State
LIFG	Libyan Islamic Fighting Group
LIMC	Libyan Islamic Movement for Change
MI6	British Foreign Intelligence Service
NTC	National Transitional Council

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Introduction

In August 2009, the Libyan Islamic Fighting Group (LIFG) – a Salafi-jihadist[1] organisation formed by Libyan veterans of the war against the Soviets in Afghanistan, which posed what was once considered the most serious threat to Muammar Gaddafi – published a set of revisions declaring the end of their armed campaign against the Gaddafi regime. The 417-page document, "Corrective Studies in the Concepts of Jihad, Accountability and the Judgment of People", was the culmination not only of several years of internal debate within the group but also of dialogue between the leadership of the LIFG (which negotiated from prison and thus had a strong self-interest in using the dialogue as an opportunity to regain its freedom) and the Libyan authorities.

The revisions process took place during a decade when some within the Libyan regime – chiefly Gaddafi's son Saif al-Islam – began tentatively incorporating elements of transitional justice in order to address legacy issues, including the Abu Selim prison massacre.[2] This took place against broader ad hoc efforts to reform the Libyan state as part of its process of re-engaging with the international community, particularly the United States and the United Kingdom.

While the process that led to these revisions was very much a product of the Libyan context and the LIFG's specific evolution as a group, the treatise that resulted – drawing on a range of references from key Islamic texts to denounce extremism and the use of violence to instigate change – held relevance beyond Libya. The doctrinal arguments developed by the LIFG signatories echoed and built on those made by Egypt's Islamic Group and al-Jihad Organisation during their de-radicalisation process earlier that decade. A number of prominent Islamic scholars – including in Egypt, Saudi Arabia and Mauritania – publicly endorsed the LIFG's revisions document, thus giving a wider audience to their theological and ideological repudiation of violence against one's own rulers. Authorities in Algeria and Mauritania incorporated the LIFG text into their own prison de-radicalisation programmes.

After overcoming scepticism within the wider security apparatus, Gaddafi's heir apparent, Saif al-Islam, drove the de-radicalisation process on the regime side and heavily publicised its outcomes in order to bolster his own reformist credentials. In return for their renunciation of armed opposition to the Gaddafi regime, LIFG prisoners and other inmates who signed up to the treatise (even if they were not members of the LIFG) were freed from jail in a series of mass releases, the final of which took place two days before 17 February 2011 – the date Libyans who supported the uprising that ousted Gaddafi that year say their revolution began. The LIFG, though then considered defunct, subsequently emerged under a different name to participate in the uprising, with several figures, including Abdelhakim Belhaj, the man who last held the title emir (or leader) of the group, playing key roles that year and during the post-Gaddafi period.

Sceptics of the revisions process point to the participation of the former LIFG leadership in the 2011 uprising to argue that their engagement with the process was "more transactional than transformative".[3] However, the fact they embraced a democratic transition for post-Gaddafi Libya – founding political parties, running for election and serving in key posts in transitional governments – suggests they had moved beyond their jihadist past. Although several former LIFG leaders maintained links with armed groups (as did other political players and factions scrambling for influence in the post-2011 period), their participation in democratic politics not only served to distance themselves from the country's jihadist milieu but also drew criticism from the younger militants that inhabited it.

In brief, the revisions process marked a major juncture in the LIFG's history. This paper shows that while the resulting recantations were to a significant degree a product of circumstance in that the group's leaders were negotiating while imprisoned, they were already on a path that would lead them to abandon the jihadist worldview they had adopted as young men. In agreeing to end their jihad they were not, however, agreeing they would stop being opponents of the regime.

The paper begins with a background section that: discusses the Libyan and international context when the LIFG first organised itself; traces the group's history from its emergence to when negotiations with the Gaddafi regime began; and outlines state responses to the LIFG before negotiations were considered, including military repression and detention practices. The following section details how a negotiated deal was initially approached, exploring the motivations of both the LIFG leadership and the Gaddafi regime. The next section discusses the de-radicalisation process itself, examining the five factors that proved key: the role of leaders; the role of mediators; the dynamic between the imprisoned LIFG leadership and those outside; trust building between the LIFG and the Gaddafi regime; and the use of incentives. It also explores how much notions of transitional justice informed the process and were understood by participants. Thereafter, the paper includes a section that examines the content of the LIFG revisions and the impact they had on the wider jihadist milieu outside Libya. This is followed by a concluding section that analyses the role played by the former LIFG during the uprising that ousted Muammar Gaddafi in 2011 and in the transitional period that followed.

The paper is based primarily on fieldwork and in-depth interviews with several of the main actors in the LIFG de-radicalisation process, including most of the signatories of the revisions document and a number of Gaddafi regime officials. Interviews were also conducted with mid-level and rank-and-file members of the former LIFG, as well as other non-aligned Libyan Islamists who were imprisoned with them. Former jihadists of other nationalities were interviewed on how the LIFG revisions process and treatise influenced militant currents beyond the Libyan context. The paper also draws on interviews with sources who participated in the 2011 uprising and prominent figures from the period that followed, including officials from several transitional governments. Cumulatively, the interviewed sources provide a unique, first-hand and historical perspective on events that remain highly contested in the country. In that regard, this account seeks to inform the discourse surrounding this under-researched area of Libya's past while linking it to its present.

Background Context

The Politics of the LIFG

"Angry Young Men"

The nucleus of what was to become the LIFG was initially comprised of young Libyans, most of whom were in their 20s. They were veterans of the wars in Afghanistan that followed the Soviet invasion and occupation of that country. Most of those who later became part of the LIFG's consultative Shura Council were already opposed to the Gaddafi regime before they left Libya to join the anti-Soviet forces referred to broadly as "the mujahideen" in Afghanistan. Some of those from Tripoli had already started organising as students. Indeed, several traced their initial radicalisation to witnessing the suppression of student protests in Libya in the 1970s and 1980s.[4] In a number of cases, student dissidents were publicly hanged on campuses in the capital, Tripoli, and in Benghazi, Libya's second city. "Very early on, we considered armed struggle against the regime and developed our thinking on that basis", recalled Abdelhakim Belhaj, who later became leader of the LIFG.[5]

> "We were not leftists or communists and the only thing that brought us together was the mosque. We were what you could call 'religiously conservative' and had a common goal: toppling the regime. We had very scarce resources and showed our opposition mainly through graffiti on walls or small pamphlets we distributed covertly. After that, the jihad in Afghanistan was the second phase. The tight security grip of the regime in Libya was a 'push factor' that created an environment that one could not stay in. We did not have the space to move, let alone speak or express our opposition through any action. The pull factor was the Afghan cause (jihad) itself".

The Libyans started to loosely organise themselves in the Pakistani city of Peshawar as of the late 1980s, drawing on the large number of Libyans already in Afghanistan and Pakistan who, having gained battlefield experience against the Soviets and their Afghan allies, now wanted to turn their attention to "pharaoh" Gaddafi. "We were young, angry and excitable. We went for armed struggle against the regime because we felt all the other doors were closed", said Khalid al-Sharif, who later became deputy leader of the LIFG. "We had already seen how Gaddafi had dealt with more peaceful forms of opposition".[6]

The Libyans were influenced by jihadist groups including the Egyptian al-Jihad group, which had a strong presence in Peshawar, and others then being formed by other veterans of the wars in Afghanistan. Sami al-Saadi, scion of a prominent Tripoli family and the group's chief ideologue, outlined the nascent group's ideology in an internal manifesto he authored. With his central premise that armed confrontation (jihad) was an individual

obligation (fard 'ain) for every Muslim, as opposed to a collective or communal obligation (fard kifaya), Saadi argued that there were five key justifications for this stance: invasions by "infidels"; the "apostasy" of Muslim rulers; the military dominance and control of "apostate" rulers; the absence of the Caliphate; and the mistreatment of imprisoned Muslim dissidents.

Despite this, a number of senior LIFG figures have said they believed, in hindsight, that it was a mistake to name the group as they did – Al-Jama'a al-Islamiyyah al-Muqatilah – with the explicit reference to fighting. "In my view, we could have chosen a better name", said Miftah al-Dawadi, who later served as the LIFG's emir, in 2012.[7] "We could have been the 'Islamic Front for Change' or something like that because the term muqatilah, or fighters, is so easily associated with terrorism by people in different parts of the world". In 2019, Khalid al-Sharif expressed similar regrets but acknowledged the name was a product of its time. "The environment and experience in Afghanistan pushed us towards certain trends".[8] Al-Saadi concurred: "Maybe other groups were more clever than us and realised that the word *muqatilah* would ultimately be restrictive. It did not reflect the holistic goals we had in the long term".[9]

The group adopted an organisational structure that comprised an emir or leader, a Shura Council, and a number of committees subordinate to the Shura Council, including a sharia committee tasked with religious guidance, a military committee, a media committee and an economic committee tasked with overseeing the LIFG's financing.[10] As the highest executive element of the LIFG, the Shura Council was responsible for all key decisions that were made through majority vote. The group designed a military structure for its activities in Libya in which they divided the country into three zones of operations: east, west and south.

From Nucleus to Fully-Fledged Group

Between 1990 and 1995, the nucleus that had formed in Afghanistan and Pakistan began to expand as the leadership built an organisation that was clandestine and paramilitary in nature. In the first years, the LIFG was able to recruit from the large community of battle-hardened Libyans – estimated at up to 1,000 – who were living in Afghanistan and in Pakistani border towns like Peshawar.

In 1993, the leadership of the fledgling LIFG moved to Sudan, where the Islamist government of Omar al-Bashir welcomed a range of foreign opposition groups and figures, many of whom had gained experience in Afghanistan, including Osama bin Laden. Other Libyans who relocated to Sudan included a number who would later become senior figures in al-Qaeda. The circles intermingled but the LIFG as a group remained separate, and most of its members left Sudan in the late 1990s after Gaddafi pressured Khartoum.

In 1998, bin Laden announced the formation of his "International Islamic Front for Jihad against the Jews and the Crusaders". However, according to LIFG leaders and other non-Libyan militants, the LIFG refused to be part of it, insisting theirs was a Libyan battle only.[11] Former LIFG leaders and rank-and-file members assert that their agenda was always nationalist and focused on ousting Gaddafi.[12] The group did, however, make an ill-fated

foray into the early stages of the Algerian civil war that began in 1991, funnelling trained fighters from Afghanistan. It proved disastrous as the Libyans fell out with their Algerian counterparts over strategy and tactics. The LIFG later published two communiqués criticising the Algerian Armed Islamic Group (GIA) for killing civilians and "deviating from the principles of jihad as well as those of the Sharia". A number of LIFG figures cite lessons from the experience in Algeria – where a number of LIFG fighters were killed by their erstwhile allies – as key to their later rethinking of armed action.[13]

While the LIFG regarded itself first and foremost as a Libyan opposition group rooted in a Salafi-jihadist ideology, it did on occasion express solidarity with radical Islamists elsewhere. The writings of Sami al-Saadi, particularly his earlier work (which by his own admission was more radical), were cited by prominent figures within the wider jihadist sphere, including the influential Jordanian ideologue Muhammad al-Maqdisi.

The LIFG published communiqués on conflicts outside Libya, including in Palestine, and criticised what it called American aggression in Sudan and Afghanistan following the U.S. retaliatory attacks there after the 1998 U.S. embassy bombings by al-Qaeda.[14] It condemned the U.S. for its 2003 invasion of Iraq and described the fight against the American occupation as "defensive jihad".[15]

Although the LIFG swam in similar ideological waters to al-Qaeda, it did not condone the group's broader strategy of targeting the West. Although one former LIFG member Abu Anas al-Libi was implicated in the planning of the blasts in Kenya and Tanzania, the group never publicly congratulated al-Qaeda on the bombings or other attacks such as the USS Cole bombings and the 11 September 2001 attacks.

According to the testimony of several former LIFG leaders, during 2000 – when many of them were again living in Afghanistan – they met with bin Laden to request that he stop using the country as a base from which to plan attacks against Western targets, arguing that he risked endangering their Taliban hosts, as subsequently happened with the U.S. bombing campaign in the aftermath of the 11 September 2001 attacks.[16] A small circle of Libyans around Abu Laith al-Libi (who was killed in 2008 in the tribal areas of Pakistan) did ally itself with al-Qaeda, but this was a splinter move.

Despite claims by al-Qaeda deputy Ayman al-Zawahiri and Abu Laith al-Libi in 2007 that the LIFG had joined its ranks,[17] the group never joined bin Laden's organisation – a Shura Council decision on the matter in 2000 was unanimous, according to several who were present – due to ideological differences but also to the belief that it would undermine their ability to pursue their primary goal of toppling Gaddafi.[18]

Emergence in Libya

Although the LIFG had been operating secretly in Libya between 1990 and 1995 – mostly building a clandestine network capable of taking on the Gaddafi regime militarily – it only declared its existence in late 1995 following clashes in Benghazi. That summer, the LIFG commander for eastern Libya, Saad al-Ferjani, oversaw an audacious and ultimately

successful operation to release an LIFG member who was being treated in a Benghazi hospital after he had been captured by security forces. Subsequent security sweeps across the city and its hinterland resulted in a number of armed confrontations between LIFG cadre and regime forces. The Gaddafi regime realised it had a new opponent and in October the LIFG announced itself with its first communique, in which it claimed responsibility for the clashes of the previous four months. Abdelhakim Belhaj, from Tripoli, became emir, a position he held for the remainder of the group's existence.

"The regime's security apparatus discovered that it was not just facing small Islamist groups as before, but rather a large organisational network (like an octopus) that was present across Libya", recalled Anis al-Sharif, an LIFG member from Derna who later issued communiques for the group from his home in London. "The regime also discovered the presence of LIFG leadership outside the country".[19]

Over the next three years, the LIFG tried to prove itself with several unsuccessful attempts to assassinate Gaddafi. The closest they came was in November 1996 when an LIFG operative hurled a grenade at Gaddafi during his visit to the desert town of Brak. "We saw the regime as a triangle. Kill Gaddafi and the whole regime will fall. The strategy was to target Gaddafi, people close to him and his security forces. We never targeted civilians", recalled one Shura Council member who joined in 1995.[20] In recounting their history, former members of the LIFG make a point of noting that they did not seek to target civilians or foreigners nor did they carry out bombings in public areas like jihadist groups in other countries such as Algeria and Egypt at the time.[21]

In a 2010 report, Amnesty International noted that Saif al-Islam Gaddafi claimed there had been civilian casualties during the LIFG insurgency of the 1990s, but he provided no statistics. Amnesty added that, according to its best knowledge, the LIFG did not target civilians.[22]

The group conducted a campaign targeting security forces across eastern Libya but concentrated particularly around the town of Derna – home to several prominent LIFG members and other veterans of the war in Afghanistan, and the rugged Green Mountains area between it and Benghazi. In March 1996, several dozen Islamist detainees who had escaped from al-Kuwaifiya prison near Benghazi fled into the Green Mountains pursued by security forces who then came under attack by LIFG guerrillas. In June, LIFG fighters killed eight policemen at a training centre near Derna. In July, the government carried out massive arrests throughout the country and launched a major air and ground assault on LIFG mountain bases. Fierce fighting between the LIFG and regime forces in a remote valley west of Derna only ended when the LIFG found itself under aerial bombardment and facing thousands of soldiers deployed by Tripoli. The LIFG was forced to withdraw after sustaining heavy casualties.

The following year, Fath bin Sulaiman (alias Abu Abdulrahman al-Hattab), a founding member of the LIFG and a key commander in the group, was killed in a confrontation with regime forces in the Green Mountains where LIFG fighters were hiding out, sometimes in caves. Several others from the LIFG cadre were rounded up and jailed. Throughout this time, the LIFG failed to assassinate Gaddafi and suffered major losses. Its leaders also

wrestled with the fact it was unable to gain the same level of popular legitimacy that other groups elsewhere had, such as the Armed Islamic Group (GIA) during the initial stages of the Algerian civil war. In that case, the GIA was seen as an avenging force against a regime that had denied the population the Islamist government it had voted for. There was no such galvanising moment for the LIFG in the Libyan context: revelations regarding the Abu Salim prison massacre, for example, did not emerge until years after it took place. In June 1996, security officers at the high security Abu Salim prison killed some 1,200 inmates, many of them Islamists, after a revolt over poor conditions.[23] The first public acknowledgement of the incident came only in April 2004, when Muammar Gaddafi publicly stated that killings (in an unspecified number) had taken place in Abu Salim. Furthermore, regime tactics in the mid-late 1990s, such as cutting electricity and water supplies to towns suspected of harbouring LIFG members and rounding up scores of alleged sympathisers, helped undermine the group's local support network.

Within a few years of the LIFG going public, the Gaddafi regime had all but routed the group. Many of the LIFG cadre who had not been killed or jailed fled Libya. Some sought asylum in the UK, where many other Arab dissidents and veterans of the Afghan war were based, as well as in other European countries. Others moved to Istanbul. But a larger number returned to Afghanistan, one of the few places where Libyans lacking proper documentation could settle.

A First Revision

All of these events formed the backdrop to a meeting of the LIFG Shura Council in Istanbul in 1998 in which future strategies were discussed. Some members argued that that their losses had been close to catastrophic but the Council did not move to suspend its operations in Libya. "What we suffered in the 1990s was essentially a defeat but some were in denial", recalled one member.[24] Abdelhakim Belhaj says he considers 1999 the year "where we officially started what I would call the 'revisions' process … I personally proposed reassessing the strategy of using armed struggle against the regime in-country and its viability".[25]

Two years later, at another Shura Council meeting – this time in Kabul – the group decided to halt all military activities in Libya for three years, at which time that decision would be reviewed. "We came to the conclusion that we could not continue as before", recalled one Shura Council member who was present. "The group was almost finished inside Libya. Our view was that, while we are freezing our operations there, if there is a chance to target Gaddafi and assassinate him, we will take it. Those of us outside Libya felt we needed to do more media work, highlight the repression of the Gaddafi regime, and put pressure that way".[26]

The LIFG continued to recruit, however, and those volunteers continued to go to Afghanistan for training at a camp named after Salah al-Magrabi, an LIFG member killed in Libya in 1995.

Overall, the LIFG insurgency throughout the 1990s left 165 Libyan officials dead and another 159 wounded. More than 170 LIFG members were killed, including al-Hattab and four other Shura Council members, not including those who perished in the Abu Salim massacre.[27]

Overview of State Approaches to the LIFG Before Negotiations

The Gaddafi regime's response to the challenge posed by the LIFG after it emerged in the 1990s was a predominantly military one. The counter-insurgency campaign against the LIFG was conducted by military officers, special forces and other elements of the security apparatus; and notably, it included aerial bombardment of LIFG targets in eastern Libya in 1996. The subsequent losses incurred by the LIFG were key to the initial rethinking of strategy among the group's leadership.[28] The Gaddafi regime's military campaign was accompanied by various forms of repression including imprisonment and ill-treatment. Even before the emergence of the LIFG, the Gaddafi regime had ruthlessly dealt with any opposition. Under the Libyan penal code, the death penalty could be imposed on "anyone who calls for the establishment of any association or party which is against the Revolution in purpose and means".[29] Dissidents of various political leanings were arbitrarily arrested and held for years without charge in prisons and other detention facilities, and often for long periods in incommunicado detention. Torture of those in custody was widespread and systematic. Family members of suspected regime opponents were harassed, threatened and often detained. Given the seriousness with which Gaddafi viewed the threat posed by the LIFG, such practices took on a particular ferocity when it came to the regime's crackdown on the group. The corpses of dead LIFG members were paraded publicly. The homes of families of LIFG members were demolished. Extended family members, friends, acquaintances and neighbours of LIFG suspects were monitored and subjected to intimidation and threats. Several key LIFG figures – among them Shura Council members Miftah al-Dawadi and Abdulwahab al-Qaid, both of whom were later involved in the revisions process – were jailed during the 1990s. Both men spent years in solitary confinement.

The mass killings at Abu Salim prison in 1996 had an extra impact on the LIFG and the wider Islamist milieu. Several LIFG members and the relatives of others – including a brother of Sami al-Saadi – were among the dead. "After the massacre, there was a sense something had to be done", said Mohamed Busidra, a non-aligned Islamist detainee at Abu Salim who was close to LIFG prisoners, including Dawadi, with whom he shared a cell between 1996 and 2000.[30] But Qaid, who was injured by a bullet fragment on the day of the massacre, said it did not prompt him to consider engaging with the regime: "We knew the regime was brutal; thus while the scale of the massacre surprised me, it didn't bring about a change in my mind. That came later for other reasons".[31]

Moving Toward Dialogue: Motivations of the Libyan Regime

While members of the LIFG had been engaging either in personal reflection or group debate regarding the feasibility of armed insurgency against the Gaddafi regime since the late 1990s, global shifts following the 11 September 2001 attacks and the U.S. invasion of Iraq in 2003, which in turn contributed to a tentative opening up in Libya, helped set the stage for the revisions process.

In 2003, Libya's international isolation came to an end when the UN lifted 11-year-old sanctions on the country and Gaddafi agreed to abandon all efforts to develop any chemical, biological and nuclear weapons. This boosted those considered reformists in Libya, including Gaddafi's son and heir apparent, Saif al-Islam. He focused on reconciling the regime with the country's opposition currents, engaging with figures from the Libyan branch of the Muslim Brotherhood – a process that led to the release of Brotherhood prisoners from Abu Salim and other detention centres – and the National Salvation Front, a group which had been involved in a number of coup attempts against Gaddafi. "Saif al-Islam came to the conclusion that unless a process of national reconciliation was ignited and the many elements opposed to his father's regime are involved so they have some kind of participation and end hostilities, the desired reform would not be possible or meaningful", recalled a former official who worked closely with the younger Gaddafi. "Thus he embarked on this process and became more convinced that it may well be even more useful once he had the support of Islamists".[32]

Prison conditions started to improve as the regime began allowing international human rights organisations into Libya. As such, the LIFG's revisions process was part of a wider program of state reforms in Libya. "There were those within the regime who realised that it had to sacrifice and compromise on some things to ensure it could continue", said Akeel Hussin Akeel, a former higher education minister who proved key to initiating the dialogue with the LIFG.[33]

After the United States rescinded Libya's designation as a state sponsor of terrorism in 2006, the Gaddafi regime began presenting itself as an ally not only willing to cooperate with the international community on counter-terrorism but uniquely positioned to provide intelligence on militants. Saif al-Islam was keen to demonstrate his reformist credentials and present a Libyan success story when it came to de-radicalisation. The Libyan regime was also worried about the emergence of a younger generation of militants, particularly in eastern Libya, who were drawn to a harder, more transnational, ideology than that espoused by the LIFG. Many of them flocked to Iraq to join al-Qaeda-linked insurgent groups after the 2003 invasion.[34]

In July 2007, not long after tentative dialogue efforts between the LIFG leadership and the regime had begun, Libyan security forces disrupted a network in eastern Libya that was recruiting volunteers to fight in Algeria and Iraq and plotting bomb attacks against Libyan targets. More than 100 individuals were arrested.

Not everyone within the Gaddafi regime – particularly its security apparatus – was in favour of engaging in dialogue with the LIFG leadership. As one senior official involved in the process recalled: "The security apparatus and revolutionary committees (paralegal bodies formed in the 1970s ostensibly to "protect the revolution" that underpinned Gaddafi's rule) were not ready to accept it. However, security officials – after some resistance – realised they had to be involved in the process. The revolutionary committees were against it but had no real means to obstruct it".[35]

The backing of Abdullah Senussi, Gaddafi's long-time intelligence chief who favoured the idea of dialogue, was key to Saif al-Islam's push. "This meant that the process went ahead despite some reservations and it also received some qualified support from elements within the external security apparatus led by Abuzeid Dorda...I think that Saif al-Islam was pinning great hopes on the success of the whole reconciliation process and insisted on it despite the obvious risks, the opposition from within the regime, and the lack of any guarantees that the Islamists would not resort to their old ways". [36]

Among those who endorsed the initiative, there was an acknowledgement that force alone would not resolve the challenge of homegrown militancy. Others grew to realise this as the dialogue continued. "There is no means to combat an ideology except through ideology", declared Tuhami Khaled, a senior security official who had been sceptical of the revisions process, when it concluded in 2010.[37] Similarly, in a speech the same year, Saif al-Islam expressed hope that the resulting treatise would help address any new militancy challenge: "I advise a lot of young people, before they get ready to blow up oil installations in Libya or think of kidnapping tourists in Libya, or to join armed groups in Algeria and Mali, I advise them to read this book, and I also convey a message to other Libyan brothers who are now fighting in the mountains of Algeria and in the Malian desert, and tell them that you are in the wrong place".[38]

Motivations of the LIFG

Several LIFG leaders insist they considered dialogue with the Gaddafi regime only "after all other options were exhausted".[39] But the fallout from the 11 September 2001 attacks in the U.S. was also a key factor, given the dramatic consequences for their group. The LIFG leadership realised that the so-called "war on terror" launched by the George W. Bush administration and pursued by the U.S. and its allies across the world meant not only the loss of Afghanistan as their "safe haven"; it also meant greater international scrutiny than before. "After 9/11, we understood that the world had changed as had the possibility of continuing the same campaign against the Gaddafi regime. The rules of the game had changed", recalled Anis al-Sharif.[40]

According to the LIFG leadership, they had repeatedly rebuffed bin Laden's overtures and rejected offers to merge with al-Qaeda. Despite the defeats it experienced in the late 1990s in Libya, the group remained focused on its sole objective of overthrowing Gaddafi. In a 2005 interview, Noman Benotman, a former LIFG member who left the organisation in 2001 but contributed to the revisions process through his interaction with Saif al-Islam

Gaddafi, stated: "The LIFG has always been wholly focused on Libya. Our ultimate objective was the creation of an Islamic state in Libya".[41]

While in Afghanistan, the LIFG leadership preferred to give their allegiance to their Taliban hosts. Sami al-Saadi gave a series of lectures in Afghanistan in which he advised other Arabs there to follow the law of the Taliban government rather than Bin Laden so long as they were living on their land.[42]

LIFG leaders say they warned bin Laden that any attack launched on the U.S. from Taliban-ruled Afghanistan without the endorsement of Taliban leader Mullah Omar would be a violation of religious principles. Benotman later recounted these discussions in media articles, including an open letter he wrote to bin Laden.[43] When the U.S.-led bombing of Afghanistan began in late 2001, the LIFG ordered its cadre to leave the place they had known since the 1980s and where they had hoped to rebuild the group and train new recruits. They had no choice but to disperse beyond Afghanistan's borders.

The LIFG's post 9/11 flight from Afghanistan brought about the first contact between the group (or at least some of its rank-and-file and their families) and the Gaddafi regime. This transpired through Saif al-Islam Gaddafi's NGO, the Gaddafi International Charity and Development Foundation. It coordinated with U.S. and Pakistani authorities to evacuate Libyan families from Afghanistan and repatriate them to Libya where they were assisted by the authorities. According to Libyan scholar and Islamist Ali Sallabi, later the primary mediator in the LIFG dialogue process, this gesture had an impact on perceptions of the Gaddafi regime among some of the group's rank-and-file.[44]

Senior LIFG figures, however, including several of the group's leaders, ended up in a number of countries including Pakistan, Iran, Indonesia and China. Suspicion followed them. "Before 9/11 only Gaddafi targeted us but after 9/11 we were targeted by the whole world because the regime capitalised on the attacks to paint everyone as al-Qaeda", said Sami al-Saadi.[45] Gaddafi's rapprochement with the West meant the LIFG was now under greater surveillance, including in the UK. Several members were detained there. The group was also hit by augmented global efforts to disrupt the financing of militant groups, giving it further incentive to change tactics.

In March 2004, the LIFG's emir Abdelhakim Belhaj, who had settled first in Malaysia after leaving Afghanistan before moving to China, was rendered back to Libya, along with his wife.[46] It later transpired that their rendition, and that of Sami al-Saadi and his family from Hong Kong the same month, was coordinated by the CIA, British intelligence (MI6) and the Gaddafi regime. Saadi noted that after his arrival in Tripoli, regime officials warned him there was no longer anywhere to hide. The head of external security, Musa Kusa, told him: "After September 11, I can pick up the phone and the CIA or MI6 would give us the latest information on you".[47]

Later in 2004, the U.S. State Department placed the LIFG on its list of terrorist groups. The UK followed suit the year after. The LIFG had already been included on the UN 1267 Committee Consolidated List of individuals and entities associated with al Qaida or the Taliban since October 2001.

Other senior LIFG members caught up in post 9/11 sweeps included Khalid al-Sharif who was arrested in Pakistan in April 2003 and transferred to the U.S.-run detention facilities in Afghanistan before he was rendered to Libya in 2005.

By the end of 2005, the majority of the LIFG's historically most important figures – its emir Abdelhakim Belhaj; its religious ideologue Sami al-Saadi; two of its military commanders Khalid al-Sharif and Mustafa Qanaifidh; former emir Miftah al-Dawadi; and Abdulwahab al-Qaid – were in prison in Libya.

Having spent many years in jail already, the worldview of Dawadi, Qanaifidh and Qaid had been shaped by very different experiences to those of Belhaj, Saadi and Sharif. "I spent seven years in solitary confinement where I felt I was just getting ready to die. I had no contact with the outside world", said Qaid, who was imprisoned from 1995 to 2010. "Those outside could measure the regime's behaviour from a distance but also see what was happening internationally in terms of shifting political and ideological currents".[48]

Ali Sallabi, who was the key mediator in the dialogue process, observed the same:

> "[They] were aware of the fundamental changes that took place in the global and regional arena and … such events affected their thinking and made them reassess their priorities. It also gave them a newfound sense of developing ideas; unlike the people who had been in prison and had been cut off from the outside world since the 1990s. When these leaders interacted with their members inside the prison they were able to influence them. These dynamics helped them adopt the initiative".[49]

Although they approached it from varying perspectives borne out of starkly different personal experiences, all six men shared a sense that perhaps it was time to reassess the strategies and ideology that had underpinned the LIFG up to that point. "There were now several generations – older than me, the same age and younger – with me in the prison and that underscored for me the futility of armed struggle", recalled Qaid.[50] With conditions at Abu Salim jail starting to improve after 2002 – though they deteriorated again in 2005 after tensions flared between inmates and guards – Qaid, Dawadi and Qanaifidh were able to sit together and debate what had gone wrong for the LIFG. Television sets were later installed in the prison, opening up the world outside for those who had been incarcerated for years.

Meanwhile, a conversation had already started between Belhaj and Saadi when they were both living in China in early 2004. They discussed the mood among the scattered LIFG cadre and wondered if the group was ripe for some sort of transition. "China was the 'fighter's break' as we say in Arabic. We had time to sit and reflect in a way that was impossible when we were constantly on the move and looking over our shoulder", recalled Saadi. "That is where the root change in mentality began".[51]

Between their rendition to Libya and the beginning of the dialogue with the regime, Belhaj, Saadi and Sharif were held in solitary confinement in Tajoura prison on the outskirts of Tripoli for a number of years before being transferred to Abu Salim. In Tajoura, all three

were interrogated by Libyan authorities but also personnel from several foreign security services, and subjected to beatings and other forms of ill-treatment.

For Khalid al-Sharif, that period and the preceding two years he spent in U.S.-run detention facilities in Afghanistan, gave him a deeper appreciation of what longer-term LIFG prisoners in Libya had experienced. "There had been a slow realisation over several years that armed opposition had only led to more suffering. The fact so many of our companions were between prison and death helped prompt our rethinking".[52]

The De-radicalisation Process

Some years earlier, when the Libyan Muslim Brotherhood was gradually opening a dialogue with the Gaddafi regime, a senior figure from the Brotherhood approached Akeel Hussin Akeel requesting that Ali Sallabi, a theologian and dissident close to the Brotherhood, be allowed return to Libya. Sallabi had spent much of the 1980s in Abu Salim prison during a period of repression that largely targeted the Brotherhood and the National Salvation Front. He then went into exile, first in Saudi Arabia, then Sudan, Yemen and finally Qatar.[53] Akeel was close to intelligence chief Abdullah Senussi (they are from the same tribe) and was able to start the process that led to Sallabi's return. "In 2004, Ali asked me what can we do to help the people in the prison", recalled Akeel. "I went to Abdullah Senussi to raise the subject. He was supportive from the beginning".[54]

Sallabi had known several of the LIFG leaders from Saudi Arabia – which had been a transit point to Afghanistan for them – and Sudan. The Sallabi family had a history of opposition to the regime. Some of his relatives, including his brother Ismail, had been incarcerated in Abu Salim. "There were five keys to how the LIFG revisions process started", said Akeel. "Ali Sallabi opened the key with me, I opened the key with Abdullah Senussi, he opened the key with Saif al-Islam and Saif opened the final key with his father, Muammar Gaddafi. Without Senussi, none of this would have happened".

The LIFG engagement with the regime began tentatively in late 2005, following some exploratory meetings and one-on-one conversations between regime officials and individual LIFG figures in which the regime proposed the idea of the LIFG putting down arms. By early 2007, these six members of the Shura Council were involved in the talks which took on a more structured form the following year:

Abdelhakim Belhaj (Abu Abdullah)
Emir (1995-2010)

Sami al-Saadi (Abu al-Mundir)
Chief ideologue

Khalid al-Sharif (Abu Hazim)
Deputy emir

Mustafa Qanaifidh (Abu al-Zubair)
Head of the military committee; field commander

Miftah al-Dawadi (Abd al-Ghaffar)
Former emir

Abdulwahab al-Qaid (Abu Idris)
Field commander

Noman Benotman, the former LIFG member then based in London, was allowed to travel to Libya and consult with the imprisoned leadership. Benotman published an open letter to Ayman al-Zawahiri in late 2007, criticising al-Qaeda and calling for it to end all operations.[55] Benotman's relationship with his former associates was sometimes strained but he worked closely with Saif al-Islam.

Early in the process, Sallabi encouraged the LIFG leaders to examine the experiences of armed groups in other countries including Egypt, Yemen and Algeria and see which lessons could be applied to the Libyan context. A committee was formed which included the LIFG leadership, figures from the security apparatus and the Gaddafi Foundation. "It took time to generate confidence among them", said Sallabi. "The next phase concerned psychological and emotional 'release', so that each party expressed its views and ideas and motives for the exit or motives for the use of counter-violence. The idea was that this would help calm all parties".[56]

As the process continued, the regime agreed to facilitate family visits to prison and pledged to improve conditions, including food and access to medical assistance, for the inmates. There were sessions – according to Sallabi more than 60 – where LIFG leaders debated with regime officials for hours. "There were open intellectual conversations about everything: Iraq, the U.S. occupation, Afghanistan, the Taliban, reform in Libya, the constitution, freedom of opinion and expression, state institutions, and even the issue of birth certificates for children born outside Libya were discussed", said Sallabi.

The participants were allowed to meet in locations close to Abu Salim where they were provided with books – according to Sallabi more than 12,000 volumes – and other material to use as a foundation as they considered the revisions. The literature included works of classical jurisprudence. There were also more contemporary texts, among them those produced by leaders of the Egyptian militant Islamic Group who underwent a reassessment of their doctrine after declaring a ceasefire in 1997, and key figures within the al-Jihad Group including Sayyid Imam al-Sharif – known as Dr Fadl – who was then questioning the ideology underpinning it. Abdelhakim Belhaj has said he believes that literature represented a "guiding support" in the LIFG's transition from armed opposition. But the process was painstaking.

"Drafting the revisions was not easy", said Abdulwahab al-Qaid. "This was an ideology of more than 20 years that needed to be unpicked. It was not something you can do quickly or in a short brainstorming session".[57] Key to the process was the ability of the imprisoned leadership to interact with their rank-and-file, both within Abu Salim jail and outside it. "Our mindsets were already ripe for [the revisions] but our fears were two-fold: one that the regime was not serious; and two that that mindset was not shared by other fighters in the prison", recalled Khalid Sharif. "We needed to be able to discuss, debate and explain".[58]

Elements within Libya's internal security, which had been sceptical of the process from the outset, including its director Tuhami Khaled, believed such interactions and communications posed a security threat. But their concerns were overruled when Saif al-Islam and Abdullah Senussi, head of Military Intelligence, approved them, agreeing with the LIFG leadership and Ali Sallabi that any decision to abandon armed opposition to the regime had to be a collective one or at the very least based on *ijma' al-aghlabiya* (consensus of the majority). In 2007, a number of key LIFG members outside Libya, including three Shura Council members based in the UK, began participating through Sallabi. "We decided to support the process, but using pressure those who were in prison did not have", said Abdulbaset Buhliqa, a Shura Council member who published a letter in al-Hayat newspaper

in June 2009 under the pseudonym Abdullah Mansour.[59] Using the title, "In defence of the Libyan Fighting Group in its new approach calling for reconciliation", Buhliqa stressed the importance of "firm and sincere intention".[60]

The enduring scepticism of Libya's internal security regarding the dialogue could also be seen in a disagreement in the latter stages of the process over whether the book produced by the LIFG outlining their revisions should be made public and when. Some officials felt publication of the 417-page "Corrective Studies" might bolster the LIFG's credentials both domestically and internationally by demonstrating their theological nous. Again, those concerns were overruled by Saif al-Islam and Abdullah Senussi. Another dispute arose regarding the timing of publication after the LIFG insisted that it happen only after the release of its leadership, partly as an "insurance policy", as one member put it. However, the LIFG ultimately agreed to publication before the leadership was released; hence the much-publicised press conference in March 2010, in which Saif al-Islam, flanked by Abdelhakim Belhaj, Sami al-Saadi and Khalid al-Sharif, announced their imminent release.

The Key Factors That Drove the Process

The Role of Leaders

In the years before the LIFG dialogue process began, officials from Libya's internal security and religious establishment tried to replicate efforts in other countries such as Egypt whereby individual Islamist detainees were targeted for de-radicalisation or at least attempts to persuade them to abandon their opposition to the regime. The decision to engage with individuals and not groups was partly to do with the wish not to legitimise a group through recognition. Results were piecemeal at best – a small number of prisoners were released – but the LIFG, by far the largest single jihadist group in Libya, and the most cohesive, was not affected.

The LIFG would have to be engaged with as a group as represented by the six Shura Council members who were in Abu Salim. "The regime saw the LIFG as the main problem because it was a group and a large group at that", said Khalid al-Sharif. "They believed that once the LIFG problem was solved, the rest would follow".[61]

The role of the LIFG emir was key. "The revisions could not have happened without Abdelhakim Belhaj", said Anis al-Sharif, a view shared by most of the LIFG from Shura Council level to rank-and-file.[62] Belhaj had been emir of the LIFG since 1995, making him the longest serving emir in the group's history. He commanded respect among the LIFG cadre because he had overseen the group during its most difficult periods, but also because of his personal experience, including his rendition to Libya. He was also seen as a unifying figure within the LIFG and was perceived as less dogmatic than other senior figures. "Belhaj was more flexible", recalled one regime official. "That made a big difference, given he was the emir".[63]

The role of Sami al-Saadi, the LIFG's principal ideologue, was also key. He had written the group's very first charter so the revisions were deeply personal for him. The breadth of Saadi's theological knowledge was crucial when it came to drafting a revisions document

that could persuade any sceptical elements among the grassroots. In this regard, the insistence of Belhaj and the other imprisoned leaders that they interact with the rank-and-file so that any decision to abandon armed opposition would have the support of as much of the grassroots as possible was another key variable.

One of the greatest challenges faced by the LIFG leadership during the revisions process was the declaration by bin Laden's deputy Ayman al-Zawahiri in November 2007 that the LIFG had joined al-Qaida. The announcement came in two video clips produced by Al-Qaida's propaganda arm, Al-Sahab. The first clip featured Zawahiri and the second Abu Laith al-Libi (born Ali Ammar al-Ruqayi), a founding member of the LIFG who had previously sat on its Shura Council. According to several former LIFG leaders and members, Abu Laith was already considered to have distanced himself from the LIFG, though he was close to a rump faction mostly concentrated in the tribal areas of Pakistan which disapproved of the negotiations with the Gaddafi regime. Furthermore, he was acting unilaterally in making the declaration and did not have the authority to act or issue statements in the name of the group.[64] For these reasons, it failed to gain traction among the LIFG grassroots. It would, however, return to haunt the LIFG leadership in future when their political opponents in post-Gaddafi Libya used it against them.

Also critical to the dialogue process were those on the regime side who managed to overcome the objections of elements within the security apparatus, some of whose scepticism was rooted in personal experience of the campaign against the LIFG in eastern Libya in the 1990s. Saif al-Islam Gaddafi was able to assuage his father's reservations about the initiative and Abdullah Senussi helped build crucial support within the security services. "The relationship between Saif al-Islam and Senussi was very important", recalled Akeel Hussin Akeel.[65] Saif al-Islam assigned Salah Abdulsalam from the Gaddafi Foundation to be his main interlocutor in the dialogue. Abdulsalam, who regularly briefed diplomats including from the U.S. embassy on the process, was generally respected by the LIFG leadership. Ali Sallabi singled him out as one of the regime figures that contributed to the success of the dialogue. Sallabi also noted the constructive role of three Libyan intelligence officers: Salah al-Meshri, Sabri Hleyla and Mohamed al-Kilani. "As men of the security apparatus, their approach is usually one of caution, suspicion, and overall securitisation of this file", Sallabi said. "But they participated in the discussions and contributed to solving issues throughout the dialogue process, which was also a factor in its success".[66] According to Sallabi, also of note was the role of Khalifa Arhoma, director of Abu Salim prison, who had developed good relations with the LIFG leadership. "The dialogue needed an appropriate environment and atmosphere for it to succeed [and] Colonel Arhoma was the one who created that".

The Role of Mediators

Given the mutual suspicion and distrust between the LIFG leadership and the Gaddafi regime, the dialogue process that led to the group's revisions was likely to succeed or fail depending on the mediator. It had to be someone who had the trust of the LIFG leadership but also good relations with Saif al-Islam Gaddafi. Ali Sallabi, from a Benghazi family known to oppose the regime, had spent almost a decade in Abu Salim prison before

leaving Libya in the late 1980s. After a short stint in Afghanistan, where he met some of those who later formed the LIFG, he studied in Saudi Arabia – his fellow students included Libyans who went on to join the LIFG. He then lived in Sudan (at the same time the LIFG core was based there) and Yemen before settling in Qatar. He had known several of the LIFG leaders for more than two decades. The bonds between them, rooted in their similar histories of opposition and exile, meant there was a high level of trust.[67] Sallabi, who was close to the Muslim Brotherhood, had returned to Libya as the rapprochement between the Brotherhood and the regime developed. After gaining the trust of Saif al-Islam and other regime officials, Sallabi became a board member of the Gaddafi Foundation and was appointed "Islamic advisor" to the committee formed by Saif-al-Islam to develop a reformist constitution as part of his *Libya al-Ghad* program.

Sallabi's personal relationships with both the LIFG leaders – he often referred to them, particularly Belhaj and Saadi, as friends – and senior regime officials proved key, as did his theological background which commanded respect from the LIFG cohort engaged in the revisions process.

Sallabi has argued that a key reason for the success of the dialogue was its Islamic/Islamist framework and the Gaddafi regime's acceptance and recognition of that. "Imagine", he said, "if the state did not recognise the Islamic reference (*marji 'iyya*) of this dialogue … the whole effort would have been futile".[68]

The Inside/Outside Prison Dynamic of the LIFG

Ali Sallabi was also able to open channels with prominent LIFG figures outside Libya – particularly the UK, its main base, where three other Shura Council members lived – in order to include them in the process. That correspondence began in 2007 and included LIFG figures whom Sallabi had studied with in Saudi Arabia such as Abdulbaset Buhliqa and Ismail Kamoka.[69] Sallabi also acted as an interlocutor with media as the revisions process developed. The LIFG made tactical use of the media at certain points during the process, publishing open letters in Arab media – al-Hayat was a favourite – in order to get their perspective across, particularly at times of strain in the dialogue. The engagement with the LIFG outside prison drew in members from several different countries apart from the UK, including Switzerland, Turkey, Morocco, Iran, and South Africa. There was concern among the overseas cohort that the imprisoned leaders were vulnerable because they were incarcerated. Initial scepticism and opposition to the process stemmed from the fact many within the grassroots had no faith in the regime.

"For many, changing the name and tactics of the group was one thing – and it had already been discussed internally since the late 1990s – but accommodation with the regime was something else", recalled another member then based in the UK. "We outside made it clear that we would not give the regime a green light for nothing. There was a fear that the regime wanted to take everything and not give anything. We were tougher in our demands; it was a way to negotiate because we knew those inside were restricted because they were in prison".[70]

Reflecting this, the LIFG overseas continued to recruit up to late 2008 and early 2009. "Some of us were expecting a split", said Buhliqa. "We were aware of the Irish experience in 1998 (where dissident republicans who rejected Sinn Fein's and the IRA's endorsement of the Belfast Agreement ending the conflict formed their own splinter groups). If we had just 50 people who rejected it, they could cause a big problem".[71]

Eventually, the approximately 30 LIFG members living in the UK decided to back the process. They included not only Shura Council members but also twelve individuals once subject to British government "control orders" restricting their movement and communications because they were deemed to pose a threat to national security. Senior figures met with British intelligence in 2007 to inform them of their positions on the dialogue.[72] A year later, the UK announced the designation of three prominent LIFG members including Buhliqa. "We suspected the impetus for this came from the Gaddafi regime and may have been a negotiating tactic for the process back in Libya", Buhliqa recalled. "It seemed their strategy was to go hard on the people who were outside Libya and softer with those inside prison because they were under their control".

Nevertheless, a number of LIFG members based in the UK had their control orders dropped after the dialogue process gathered momentum in Tripoli; several more had orders dropped against them after the revisions were published.[73] British security services distributed copies of the revisions to these latter individuals because of their lack of access to the internet.

Trust Building Between the LIFG and the Regime

Breaking down the high level of suspicion between the LIFG leadership and the Gaddafi regime took time. Although a certain degree of trust was forged in order for the process to continue as it did, for the LIFG leaders the question of how much the regime could really be trusted always remained, even after the release of Abdulhakin Belhaj, Khalid al-Sharif and Sami al-Saadi in March 2010. Qaid and Dawadi were not released until 2011 which, for some of the LIFG cadre, confirmed their suspicions that the regime would not act in good faith.

"If we hadn't had these trust issues, the process would have taken months, not years", said Khalid al-Sharif. "We always had a question in the back our minds whether the regime wanted this to be a true dialogue with benefits for both sides or just something to benefit them as a PR stunt".[74]

For Sami al-Saadi, having lost relatives in the Abu Salim prison massacre, the trust issue was particularly acute. "At one of the early meetings, we asked them, how can we trust you?" he recalled. "Sabri Hleyla (one of the three senior intelligence officers involved in the process) replied, 'There's only our word to trust'".[75]

During the preliminary stages of the dialogue process, a number of confidence-building measures were taken. Visits from relatives were permitted and detainees were allowed to sit alone with their families. Efforts were made to improve conditions in the prison, particularly in terms of better food and medical assistance, but also to allow for more interaction

between inmates. Regular sessions took place with regime officials to discuss issues of contention, including what had happened in Iraq and Afghanistan but also domestic matters such as the question of reforming the Libyan state, preparing a constitution and freedom of speech. According to Ali Sallabi, it was important that the root causes behind the detainees' decision to take up arms against the Gaddafi regime were addressed given that most of the LIFG cadre insisted they had done so only because there were no other ways to express criticism of the regime.[76]

The first objective of these discussions was to secure agreement from the detainees that they would abandon their violent opposition to the regime; the second was that they would condemn the use of armed insurgency against the regime. Sallabi believed that "bonds were built" between the various participants in the dialogue – the detainees, the security officials and clerics like himself – which allowed a "synchronicity" that fostered an ultimately successful outcome.[77] But there were points in the process when relations became strained between the LIFG leadership and their regime interlocutors, at times threatening a complete breakdown. Sami al-Saadi recalls one meeting in 2009 when Salah Abdulsalam of the Gaddafi Foundation presented a document for them to sign. The text lauded the Gaddafi regime and also included a declaration of loyalty to it. The LIFG leaders present refused to sign. Miftah al-Dawadi said, "I've been in prison for almost twenty years, I have no problem staying here for another twenty but I won't go against what I consider a basic principle".[78]

The Role of Incentives

When the dialogue process began, the LIFG as a group was at the weakest point in its history. Given this, and the fact that its leadership was mostly imprisoned, the primary challenge for the LIFG was how to negotiate an agreement with a still-hated regime while ensuring a minimum loss of face. The incentives the Gaddafi regime could offer, the most important of which was the promise of release, were therefore key. However, the episode in early 2009 in which LIFG leaders refused to sign a statement declaring their loyalty to the regime shows there were lines they were not prepared to cross. In January 2010, Noman Benotman referred to this at an event in London: "The [revisions] were not just written because they wanted to be released from prison – they had been offered (and rejected) this opportunity before".[79]

Yet the dialogue continued, driven largely by the prospect of release from prison. This also helped persuade sceptics within the LIFG grassroots overseas. "There were many debates and some hardliners were against the dialogue and revisions in theory. But they decided to go along with it for the sake of securing releases for those incarcerated", recalled Anis al-Sharif. "The feeling was, let's give it a chance if it will end the misery of our people in prison".[80]

In the meantime, there were incremental and immediate inducements – including the mentioned improvements in prison conditions – aimed at strengthening the hand of the LIFG leadership so they could win over their co-imprisoned rank-and-file to the idea of dialogue and eventually renunciation of armed opposition. To a large extent, this approach

was inspired by the Egyptian process in the case of the imprisoned Islamic Group earlier that decade.[81]

But while the regime made use of such inducements, it also deployed threats. Sami al-Saadi recalled Tuhami Khaled, one of the dialogue sceptics within the security apparatus, saying: "It's up to you. If you don't do this, there are court cases". According to Khalid al-Sharif, "There was always in the background this sense of 'if you don't like it, we have a trial for you'". In point of fact, several of the LIFG leaders were tried, convicted and sentenced between 2008 and 2009, long after the dialogue process had started. For example, Abdelhakim Belhaj was tried and sentenced to death in 2008 for crimes against the state. Although he had a state-appointed lawyer, he was never given a chance to meet with him, there were no witnesses at the trial, and the only evidence taken into consideration was a report from Libyan security services. The same year, Khalid al-Sharif was convicted of attempting to overthrow the regime, and sentenced to death by firing squad. In 2009, Sami al-Saadi was charged with 14 crimes, including attempting to overthrow the government and spreading ideology against Muammar Gaddafi's 1969 revolution. He too was convicted and sentenced to death.[82]

Apart from inducements offered during the years of dialogue in order to push the process forward, there were also those aimed at ensuring the reintegration of released prisoners went smoothly. Officials at the Gaddafi Foundation, in particular, were keen to impress international interlocutors with an approach they sometimes portrayed as "transitional justice" – offering financial compensation, restitution of legal and property rights (the latter being of particular importance given how the regime often confiscated or demolished property as a means of social control) and assistance with finding employment and housing. These officials of the Foundation – in comparison to those within the security apparatus – showed a better understanding of how Libya's domestic reforms could be affected by the extent to which the former prisoners could be rehabilitated and reintegrated into Libyan society.

In March 2010, the regime released 214 LIFG members, suspects (some had been imprisoned due to association or blood ties with members of the LIFG or other groups) and other former militants. Upon release, they were given an initial "loan" of 10,000 Libyan dinars to help them resettle, an amount described as "very handsome financial compensation" by one regime official involved in the process.[83] The Gaddafi Foundation remained in contact with those released through local administrative authorities (*lajnaat al-shabiya*) and the security services continued to monitor the former detainees to ensure they have "become citizens again and have peaceful ideas".[84] They were nevertheless forbidden to take part in any activity considered political.

Reintegration proved challenging in many cases. Former detainees suffered from delays in compensation payments or difficulties in finding employment.[85] When Khalid al-Sharif got a job at a construction company in Tripoli but was sacked just a month later, he believed it was due to pressure from security officials.[86] In other cases, former detainees attempted to return to their previous jobs but employers often refused to accept them, citing an earlier order from Libya's internal security that anyone suspected of being a dissident be fired.[87]

Symbolic incentives were another dimension under consideration as part of the reintegration process. For example, some officials – including Saif al-Islam Gaddafi – expressed an intention to investigate past crimes of the regime, the Abu Salim prison massacre being the most prominent. Eventually, compensation was offered to the families of the Abu Salim victims – which included a number of LIFG members – but a majority rejected it. At one point, Saif al-Islam publicly stated he wanted to demolish the prison at Abu Salim or turn it into a civic facility.[88]

The Influence of Transitional Justice on the Process

The LIFG revisions process occurred against a background of tentative changes within the Libyan regime, largely driven by Saif al-Islam Gaddafi. In 2003, he established the Gaddafi International Charity and Development Foundation, which included a human rights society. The foundation raised awareness about human rights violations, launched a campaign against torture and called for more freedom of expression and association. Saif al-Islam and the foundation were also key to opening up a public conversation on the Abu Salim prison massacre, which the regime had long been silent about, only publicly acknowledging it had taken place in 2004. In a 2008 speech, "Libya: Truth for All", Saif al-Islam highlighted the importance of bringing the Abu Salim "incident" to light, calling it "the biggest and most tragic problem and incontestably very, very painful".[89]

The foundation's handling of the Abu Salim matter – acknowledging the deaths, informing the families of the victims, and offering financial compensation to some – showed that some notion of transitional justice appeared to inform the decisions of Saif al-Islam and his colleagues. In conversations with foreigners, officials from the foundation sometimes framed the LIFG revisions process using the language of transitional justice, particularly in discussions with diplomats. Others who engaged with senior regime officials detected little awareness of transitional justice. "I didn't ever encounter a whiff of transitional justice", said one researcher who visited Libya during this period. "It wasn't an operative framework for them at the time".[90]

In 2009, two international human rights organisations, Human Rights Watch and Amnesty International, were permitted rare and highly restricted visits to Abu Salim prison. These were facilitated by the Gaddafi Foundation. In April 2009, when Human Rights Watch researchers visited, they spoke with a number of LIFG prisoners including Belhaj; but there was no mention of the revisions process either by the inmates or regime officials. When Amnesty International visited Abu Salim the following month, its researchers noted in a subsequent report that "it was clear… [the visit] came at a sensitive time"; and Belhaj refused to be interviewed. Between the two visits, another prisoner, Mohamed Abdelaziz al-Fakheri (known as Ibn al-Sheikh al-Libi), had been found dead in his cell in what the regime said was a suicide. He was another Libyan veteran of Afghanistan and helped run the Khaldan training camp there from 1995 to 2000 before he was captured by the U.S. and subjected to rendition.[91] A CNN report that November cited sources familiar with the talks saying Saif al-Islam was worried that al-Fakheri's death, which some prisoners considered suspicious, could jeopardise the LIFG revisions process.[92]

Saif al-Islam and the small group of regime officials working on the revisions were a minority within a regime where security-driven ideas prevailed in terms of how to deal with the threat from militants, including the LIFG. More profound change – particularly reform of the power structures that had been created in the early decades of the Gaddafi era to ensure the survival of his regime –remained elusive. That fact was not lost on either the LIFG leadership or the Abu Salim families, many of whom continued to press for accountability and not merely financial compensation. In 2009, those families published a list of demands including the prosecution of those responsible for the prison massacre. Two years later, their clamour for justice would spark the anti-regime protests in Benghazi that later tipped into an armed uprising that resulted in the ousting of Gaddafi.

While Saif al-Islam and his team were instrumental in making the LIFG revisions process happen, Ali Sallabi was, in many respects, its architect. As mediator, Sallabi's sense of transitional justice was rooted in his religious faith and he shaped the revisions process accordingly, drawing on notions of compromise and reconciliation through a faith-based approach he knew would resonate with the prisoners. But neither he nor the LIFG leaders participating in the revisions appear to have been aware of transitional justice concepts and processes from elsewhere, other than the literature available to them on the similar dialogues in Egypt and Yemen.

Ultimately, the offers of post-release financial compensation, restitution of legal and property rights, and assistance with finding employment and accommodation were not fully honoured by the Gaddafi regime. This reflected the political limitations of the space Saif al-Islam and his team worked in, as far as transitional justice was concerned.

The Revisions

The Content of the Revisions

In August 2009, the LIFG published the revisions with the title: "Corrective Studies of the Concepts of Jihad, Accountability and the Judgment of People" (*al-kitab al-dirasat al-tashihiyya*). The text is divided into nine chapters, each with sections and sub-headings.

In their recantation of the concept of "armed opposition to a said ruler", the LIFG make arguments that utilise examples from Islamic history as well as modern-day experiences, including the LIFG's very own. The authors explain at length the transformative process that led them to redefine key terms and revise their stance on the concept of jihad, particularly with reference to bringing about political change through violent means.

By way of summary, the preface of the revisions emphasises the fact that the beliefs outlined by the authors are the result of lessons learnt and informed by their shared experience of armed struggle over the years. The LIFG leaders state that the revisions may appear to run counter to previous writings or views that they may have publicly shared; however, they also stress the notion of *ijtihad* (contextualisation) to explain their change in conviction.[93] While the notion of adapting jurisprudential decisions to modern-day developments is stressed throughout the revisions, the first four chapters are heavily focused on defining traditional Islamic precepts and elucidating the meaning behind them. This provides a theoretical grounding that informs the central fifth chapter of the revisions, which focuses on the concept of jihad and violent armed struggle aimed at inducing political change; as well as subsequent chapters, which focus less on how to deal with discord in a society with dialogue and etiquette.

The first chapter of the revisions is general in scope and focuses on the "Islamic contract" and conditions for one to be considered a Muslim. It aims to define the link between Islam and spirituality, emphasising co-existence and the fact that the conditions for one to be considered a Muslim are – by and large – based on intent and should not be judged by others. This helps frame the subsequent chapters but also indirectly touches on the notion of *takfir*,[94] which is a concept utilised by several jihadist groups. The chapter's emphasis on pluralism in the contemporary world – coupled with definitions that highlight the sanctity of the "Islamic contract" – is meant to highlight that lack of knowledge on these basic issues may lead well-intended believers into violating others' dignity or viewing killing as lawful.

The second chapter emphasises the importance of bridging theory and practice in Islamic jurisprudence. It outlines the importance of respecting Islamic scholars, but stresses that

scholars should not be followed if they are deemed to have been wrong on key issues. The chapter specifies that only Islamic scholars of a certain stature are allowed to critique other scholars, provided the former respect certain ethics in the way they point out the latter's mistakes. The authors note: "We mention that many of the calamities besetting Muslims today have arisen on account of ignorance and the issuing of decisions, without jurisprudential qualifications on matters of great importance, especially those having to do with blood and money".[95]

The third chapter focuses on the importance of *daw'ah* (preaching). In it, the authors apply their ethics of criticism to highlight how some scholars often omit that the use of dialogue to proselytise or to bring about change in society is much more desirable than violence.

The fourth chapter is the most important one of the revisions as it discusses the notion of jihad, its definition according to Islamic jurisprudence, and its merits in light of contemporary reality. The authors detail the ethical requirements, regulations and etiquette (*adab*) of jihad – among them, caring for prisoners of war and forbidding any desecration of the dead – noting the "disastrous consequences of deviating from these regulations".[96] It also argues that "the reduction of jihad to fighting with the sword is an error and shortcoming".[97]

The chapter declares that jihad is *fard kifaya* (a collective or communal obligation) and that, if carried out by a sufficient amount of people, ceases to be obligatory for the rest. This was a clear refutation of the premise Sami al-Saadi laid out in the early years of the LIFG, when he stated in the group's manifesto that jihad was an individual obligation (*fard 'ain*) for every Muslim, as opposed to a collective one. Al Qaeda and other jihadist groups also hold that jihad is *fard 'ain*.

Saadi had argued in the early 1990s that there were five key justifications for this position: invasions by "infidels"; the "apostasy" of Muslim rulers; the military dominance and control of "apostate" rulers; the absence of the caliphate; and the mistreatment of imprisoned Muslim dissidents.

The revisions also make clear the LIFG's position on the targeting of civilians, noting "it is forbidden to kill women, children, elderly people, priests, messengers, traders and the like".[98] More generally, the authors focus on reasons why the use of violence to bring about change in Muslim countries or to reform a particular society is not permissible.

The fifth chapter builds on the LIFG's conceptualisation of jihad and focuses on the theological ethics of disagreement, an argument which allows the authors to posit that disagreements cannot be resolved through violence. Subsequent chapters focus on more spiritual issues, highlighting how these relate to jihad and the ethics of disagreement outlined in the fourth and fifth chapters. In particular, authors outline how perceptions of good and evil – while being important – do not justify resorting to violence.

Multiple legal texts and fatwas by Islamic scholars are put forward, in order to highlight that revolting against rulers is prohibited. The authors state that it is generally agreed by Islamic scholars that this path only has negative consequences. Instead, "patience, advocacy and dialogue" are considered the appropriate methods to introduce change in a society.

The fourth chapter on jihad ends with a statement to the effect that a government can use violence to fight evil, but it is impermissible for society to take up arms to pursue reform or fight a perceived evil. This assertion, in particular, was held up by LIFG critics as proof that their participation in the 2011 uprising against Gaddafi constituted a reversal of their previous stance.

When the revisions were made public, several commentators highlighted one particular section in the chapter on jihad. It argues that jihad was an obligation when "non-believers invade a Muslim country" adding that "it is upon the people of that country to push back the enemies and expel them from their land, and if they are unable to do so, it is upon the people who neighbour them".[99] It goes on to list "Palestine, Iraq and Afghanistan" as "among the places of jihad today".

Asked about this by a journalist at the time, Ali Sallabi defended the argument: "Violence against occupation is a sacred act … It is a sacred jihad". The then U.S. ambassador to Libya, Gene Cretz, expressed concern. "I don't know how you parse jihad", he said. "If it means that, 'If you don't do it in Libya, you are free to go and do it elsewhere,' that would be a little troubling to us".[100]

The LIFG leadership made a deliberate decision not to mention al-Qaeda or any other group by name in the revisions document, presumably judging that explicit criticism might complicate efforts to engage with and persuade younger militants.

Initial Reactions to the Revisions

After the LIFG revisions were published, those within the Gaddafi regime who backed the process were keen to present the group's recantations as a major success, one that would have an impact far beyond Libya's borders. U.S. diplomats in Tripoli reported that the Libyan government was touting the process as a "revolutionary new method to combat terrorism and the influence of Al Qaeda in the region".[101] However, a U.S. diplomatic cable later published by WikiLeaks was more cautious in its assessment:

> While local and international opinions are still being formulated on the initiative, the LIFG's renouncement of violent jihad and extremist ideology, and the document's direct challenge to Al Qaeda, represents a significant achievement for Saif al-Islam in particular and the Libyan government as a whole. The primary motivation for Muammar al-Qadhafi's backing of the initiative was undoubtedly regime security, and for Saif al-Islam, it may also have been political, designed to shore up his credentials both at home and abroad.

> The [Libyan Government's] immediate payoff on this investment is significant: the elimination of one of Qadhafi's most staunch opposition groups and a high-profile public relations coup in Libya's ongoing quest to position itself as a leader in the Islamic world. However, the long-term effects of the initiative, particularly with respect to the ideology of jihad and global counter-radicalization efforts, remains to be seen.[102]

Though Libya remained a country where access for journalists and researchers was restricted, foreign media and academics were invited there to learn about the revisions process when it concluded. They could interview LIFG members and attend press conferences showcasing the initiative, particularly Saif al-Islam's role in making it happen. CNN broadcast a lengthy feature from Tripoli, including footage from inside Abu Salim, declaring that "In essence the new code for jihad is exactly what the West has been waiting for: a credible challenge from within jihadist ranks to Al Qaeda's ideology".[103] According to media reports at the time, Saudi Arabia had offered to translate the document into sixteen languages.

Ali Sallabi was keen to highlight the fact that the LIFG revisions were endorsed by a number of prominent religious scholars, several of whom were influential in jihadist and wider Islamist circles, including Saudi cleric Salman al-Ouda (who also met with the LIFG leaders in Tripoli during the process) and Yusuf al-Qaradawi (the Qatar-based Egyptian cleric with links to the Muslim Brotherhood).[104] Both Ouda and Qaradawi were close associates of Sallabi. Among the Libyan scholars who gave it a positive review was Sadiq al-Gheriani, who was appointed Grand Mufti of Libya after the fall of Gaddafi.[105]

Such endorsements were key to counter sceptics who viewed the LIFG revisions – as with similar recantations authored by their Egyptian peers – with suspicion because they were drafted in prison.[106] Among the prominent figures who criticised the process on that basis were Ali Belhaj, former leader of the Algerian Islamic Salvation Front (FIS), and Hani al-Sibai, a London-based Egyptian militant who argued the LIFG revisions had been produced in "the kitchens of tyrants".[107]

Such criticisms fuelled heated debate on jihadist web forums as the LIFG recantations were dissected by former associates and others. Abdulwahab al-Qaid recalled: "Our critics interpreted the whole thing – the process and the document we produced – as a coercion by the regime. They were not aware of how many of us had been rethinking our strategy for years".[108]

Saif al-Islam Gaddafi was keen to publicise the revisions not just internationally, but also inside Libya. They were published as a nine-part series in Oea, a newspaper close to him, and also appeared on its website. One former Libyan official noted that while Saif al-Islam and his circle held up the revisions process as a success, others within the regime remained sceptical:

> "Despite the assurances [of the LIFG leaders] that they reached the convictions outlined in the revisions on their own and after consultations amongst their rank-and-file as well as from respected religious scholars, few seemed ready to accept their claims. They were in prison and many of them were sentenced to death. They had seen how others had perished in jail or had been executed. This must have been instrumental in leading them to adopt the revisions".[109]

Al-Qaeda did not officially comment on the LIFG revisions, despite having commented on the earlier recantation by Egyptian jihadists. Some LIFG members believed this was because the al-Qaeda leadership – which at that point included a number of Libyans, some of them former LIFG, at senior level – did not want to draw more attention to a document

challenging their ideology.[110] Security concerns may also have been a factor, given that drone surveillance at that time meant senior al-Qaeda figures were constantly monitored. According to Qaid, his younger brother Abu Yahya al-Libi – a former LIFG member who left to join al-Qaeda and later became its chief propagandist – did not make contact to give his views.[111]

Authorities in Algeria, Mauritania and Morocco incorporated the LIFG revisions into their own efforts at de-radicalisation, distributing copies both inside and outside prisons. Given the significant number of Libyans who had joined al-Qaeda in the Islamic Maghreb (AQIM) in the preceding years, the government of Algeria – where AQIM was concentrated – hoped the revisions could stem the flow of Libyan recruits. When the LIFG revisions were circulated in Morocco, Mohamed Abdel Wahab Rafiki (also known as Abu Hafs), the leader of a Moroccan jihadist group, endorsed the text and called on the Moroccan authorities to launch a similar process.

Promises Betrayed

On 23 March 2010, a total of 214 detainees were released from Abu Salim prison. International and local media were allowed to film their release along with accompanying speeches made by Saif al-Islam Gaddafi and other officials. In his speech, Saif al Islam hailed what he said was an "important day" and specified that among the 214 released were 34 members of the LIFG, including Abdelhakim Belhaj, Sami al-Saadi and Khalid al-Sharif, but not the other three figures who signed the revisions. The others comprised "100 individuals linked directly to the file of groups in Iraq" and "80 individuals who also have links to jihadist cells at home and who were acquitted but whose release was delayed for several reasons".[112]

According to Saif al-Islam, that brought the number released to 705 people and those who remained in prison totalled 409. He added that some 232 of those were "targeted for release" and "as soon as we make sure that these individuals no longer pose a danger to society, and that they are ready for integration into the community, there will be no problem to set them free, and therefore the process will continue until the release of the last prisoner".[113]

Christopher Boucek, an American researcher who studied de-radicalisation and rehabilitation programs in Yemen and Saudi Arabia and was in Tripoli to witness the release of the prisoners in March 2010, was struck by the ad hoc nature of the process:

> Libyan authorities were unable to answer many questions about how the program was designed to work. They were incapable of providing details about what metrics were used to determine when detainees would be released or what instructions were offered in prison prior to release. And they would not offer any information about post-release support and monitoring. It quickly became apparent that the Libyans were not deliberately withholding answers, but simply didn't have answers because their program did not address any of these points. This was not rehabilitation or disengagement. It was pragmatic demobilization …. All of the detainees were freshly

dressed in new clothes provided for the occasion, but few seemed to realize they were truly free and would soon be rejoining their families. Some detainees had to walk home from Abu Salim as their families were not even notified of their release. One released militant observed that if they could not get rides home, how would the regime manage to provide for them once they were freed? It was a remarkable and chaotic scene. There was no intermediate step between detention and release, no reintegration process, and no program to facilitate their return to society. The doors of the notorious prison were just thrown open. This was not rehabilitation or reintegration, but the emptying of a prison. In the absence of a post-release support program, there is no way to do the follow-up monitoring necessary and encourage continued disengagement from terrorism.[114]

LIFG Shura Council members Dawadi, Qaid and Qanaifidh remained in Abu Salim that day even though they had been key to the drafting of the revisions and constituted half of the six signatories. Nevertheless, Saif al-Islam claimed, "the greatest importance lies in the release of [the LIFG's] leaders," and he insisted, "today we have reached the crest of the reconciliation and dialogue program".[115]

That was not how the LIFG saw it. "They released us as they promised but they kept the others in prison. I was embarrassed and pained", recalled Sami al-Saadi. "It was a strategy by the regime, using the fact the others were still inside in order to pressure us on the outside".[116]

A shift in the Gaddafi regime's internal dynamics at the time had also affected the process. The cohort around Saif al-Islam was being challenged by others within the regime. Those tensions could be felt on the day of the press conference announcing the prisoners' release. Senior security official Tuhami Khaled, for example, referred to the LIFG revisions as "repentance from heresy" as opposed to reconciliation.[117]

"Those who were sceptical of Saif al-Islam were putting obstacles in the path of a full release", said one LIFG member. "When we objected to the proposal to release only half, they said 'we decide who gets released, it's not up to you'. The conclusion among us was that it was better to have something instead of nothing and this was the first step. There was also a concern that if we put too many conditions to the regime, they might close down the whole negotiation process".[118]

But as frustrations grew in late 2010, LIFG members outside Libya issued a number of statements raising concerns about those who remained in prison. This angered officials within the Libyan security apparatus and Belhaj was summoned to explain. According to a UK-based LIFG member who drafted the third and most important statement:

"We called on the regime to release the remaining detainees and warned them that the way they have been corrupting their promises could affect a new generation. We said we had been prepared to commit to the negotiations and their outcome but if we believe the regime is trying to play a game then we are free to resume our opposition, though not by taking up arms again".[119]

Despite these efforts to pressure for their release, Dawadi, Qaid, Qanaifidh and some 50 more men from the LIFG rank-and-file would have to wait until 16 February 2011 when they – along with 150 other prisoners – were allowed leave Abu Salim jail just as protests against the Gaddafi regime, particularly in eastern Libya, were gathering momentum. "At the time, officials were hesitant about releasing us", recalled Dawadi. "Some were very opposed, and argued about whether our release would calm things down or worsen the situation if we joined the revolution".[120]

Reneging for Revolution?

Former LIFG member Noman Benotman has argued that the timing of Libya's 2011 uprising – which was inspired by the ousting of autocrats in neighbouring Tunisia and Egypt – was very fortuitous for the group:

> "Firstly, the revolt occurred when all of the LIFG's members were out of prison and available to take up arms – as well as freeing the group to act without fearing reprisals against their imprisoned colleagues. Secondly, due to the reconciliation program, the organization and its leaders were known to the Libyan people, and the group had begun reestablishing its old organization and communication networks both in Libya and abroad. Thirdly, the LIFG refutations, widely publicized on media outlets such as CNN, had succeeded in finally disassociating the LIFG from al-Qaeda and particularly from al-Qaeda's vision of global jihad". [121]

Soon after he was released from Abu Salim, Dawadi left for Tunisia where he connected with others then joining the gathering uprising which would later draw in a UN-mandated NATO-led intervention. Qaid, Saadi, Belhaj and Khalid al-Sharif were summoned by regime officials, including Saif al-Islam Gaddafi and Abdullah Senussi, who demanded they denounce the anti-regime protests. They declined. Days later, Saadi and Sharif were detained again and held in Abu Salim until rebel forces entered Tripoli in August. "The regime broke its word when they put Sami and I back in prison", said Sharif. "When they realized they could not use us against the revolution, they decided to blame us for it". [122]

Belhaj managed to avoid arrest and escaped to Tunisia where he joined Dawadi. Both men ended up coordinating with various elements of the Libyan opposition (both political and armed) and internationals including the Qataris who supported the military intervention. Ali Sallabi was an important interlocutor for Qatar during the 2011 uprising. His personal relationships with the LIFG leaders, which pre-existed the revisions process but were deepened as a result of it, proved key to the role its former members played that year. As Sallabi himself observed: "The prison and reconciliation efforts created a very secure, trusted and strong relationship between [those who participated]. There were Abu Salim prisoners in all Libyan cities. They had very close bonds based on trust. It was a hard network to penetrate". [123]

Abdulwahab al-Qaid fled southwards to Sudan, travelling from there to Benghazi where the Libyan opposition was headquartered. Other released LIFG members dispersed to their hometowns across Libya where they joined with the ad hoc rebel forces. Earlier in February, senior LIFG figures in the UK – chiefly Abdulbaset Buhliqa and Anis al-Sharif – had announced the Libyan Islamic Movement for Change (LIMC), a public relaunch of the

LIFG designed to chime with the calls for protest back in Libya. The LIMC issued statements supporting Libyan calls for foreign intervention, noting in one that it was "aware of the sensitivity of this call and the desire of our people not to see any foreign interference on Libyan soil".[124]

A key episode in the former LIFG's participation in the uprising against Gaddafi was the founding of the Omar al-Mukhtar brigade in eastern Libya in March 2011. Among those who formed it were Buhliqa and Abdulmonem al-Madhuni, an LIFG Shura Council member known as "Urwa" who was the mastermind of the 1996 assassination attempt on Gaddafi.[125] He was one of around a dozen LIFG members who fled Afghanistan for Iran after 9/11, most of whom made their way back to Libya when the 2011 uprising began. Long-exiled LIFG members from a number of other countries, particularly the UK, also returned to participate in the revolt, joining rebel forces in both east and west Libya. In several cases, they brought along their sons and other young male relatives. The older LIFG cohort with combat experience was considered an asset to the opposition given that many of those flocking to the frontlines were civilian volunteers without any formal military training.

Buhliqa's decision to name the brigade after Omar Mukhtar, a member of the Sanussi Sufi order who is revered by Libyans for his role in fighting the Italian occupation during the colonial era, was also noteworthy, suggesting a more inclusive approach. The brigade comprised former LIFG members, defectors from the Libyan army and other non-Islamist Libyans seeking military training. "There was no attempt to classify people as LIFG or non-LIFG …. There was no sense of Islamists organising separately to the others", recalled Buhliqa. "Omar al-Mukhtar was mixed …. At the frontline we had people getting drunk at night and others complaining about them".[126]

Many LIFG members died during the uprising, including Madhuni, who was killed on the eastern frontline in mid-April. Given his history, experience and standing, his death was considered a significant loss for the group.

Former LIFG members helped found or became leading figures in a number of other rebel units across Libya, including Katibat Shuhada Abu Salim (named after the "martyrs" of Abu Salim prison) and Katibat al-Nur in Derna, and Katibat Rafallah Sahati in Benghazi. After Gaddafi fled Tripoli in August and rebel forces took control of the capital, Belhaj was appointed head of the Tripoli Military Council by Mustafa Abdul Jalil who led the National Transitional Council (NTC).

In a media interview that same month, Noman Benotman noted that the LIFG "no longer exists under the old name and structure" but that it had regrouped under the LIMC name. "They accept the idea of a new democratic Libya and they have made it clear they will engage in and participate in any political process in the post-Gaddafi era", he said. "Because they accept the democratic system they cannot be considered 'jihadists' in the international understanding of the term. They are also opposed to more extreme jihadists such as those from al-Qaeda".[127]

Benotman's remarks echoed what LIFG leaders and rank-and-file had been telling foreign interlocutors monitoring any sign of extremist or al-Qaeda linked currents within Libya's

rebel forces. Belhaj and other senior figures gave media interviews insisting they were fighting under the NTC's banner and were not interested in separating themselves or trying to claim the revolution as their own. In their own internal conversations, LIFG members acknowledged that it had been a mass of ordinary Libyans who rose up against the Gaddafi regime and ultimately achieved what they had sought since the 1980s. "It was not an LIFG revolution and it was not dependent on the LIFG. The revolution would have happened anyway if we had still been in prison", said Khalid al-Sharif. "But because the Libyan revolution became an armed one – unlike in Tunisia or Egypt – it wasn't surprising that the LIFG got involved in the way they did".[128]

For those within the Gaddafi regime who had been sceptical about the LIFG revisions, the decision of the LIFG to join the 2011 revolt confirmed their suspicions. "The fact that Islamists and jihadists like the LIFG were early participating actors in the uprisings suggests that they had only exploited Saif al-Islam's need for reconciliation", one former regime official argued in 2016.[129] "They were ready and willing to abandon all the premises of their revisions once an opportunity to fight the regime appeared in the horizon .... Their sincerity was always in question .... Had there not been any uprisings, they probably would have stuck to their undertakings or else left the country. Had the regime been able to win in 2011, any LIFG or other jihadists would have been slaughtered by the regime".

Akeel Hussin Akeel, the former higher education minister who helped lay the groundwork for the LIFG dialogue process and wrote a preface to the revisions document, took a different view. "It was conciliation not reconciliation. They decided to put down arms but they never agreed with the regime or supported it".[130]

For most LIFG members, the revisions constituted a specific process with a specific purpose and objective at a particular time and within a particular context.

"We continued supporting opposition currents and Libyan human rights groups trying to highlight abuses by the regime", noted Abdulbaset Buhliqa. "We cannot say that we made peace with the regime. In 2011, most of the Libyan population was rising against the regime; how could we stand apart from that?"[131]

Asked in a September 2011 interview with Al-Hayat newspaper if the revisions were still applicable, Sami al-Saadi replied:

> "We tied the issue of banning confrontation with the state to good and evil. I do not think it is right or correct now to open these studies and address the revolutionaries by telling them: Do not raise arms. They were in a self-defence position. The revolution began as peaceful. The people took to the streets to tell Gaddafi we do not want you. They said this with their voices and bare chests. He surprised them with anti-aircraft guns and tanks; that is, with violence. Thus, they were defending themselves. It would be wrong and naive of us to tell them: Do not defend yourselves. I say this so that the corrective studies would not be taken as absolute words at any time and in any place. This issue (confrontation of the state) is tied to good and evil".[132]

In an opinion piece published in the Guardian newspaper in September 2011, Belhaj inferred that the regime had not acted in good faith during the revisions:

> "I engaged in negotiations with the Libyan regime as a result of which my group renounced violence on the understanding that we would participate in a process of reform. I was released in 2010, but there was no sign of reform. Meanwhile, the people's dissatisfaction with the regime grew daily. With the start of the Arab spring, the conditions were set for the Libyan people to start their uprising. The revolution hoped to achieve its aims peacefully. But Gaddafi was prepared to exterminate his people in order to remain in power, so the Libyan people were forced to take up arms. My initial view that it was impossible to change the Gaddafi regime except by force was vindicated".[133]

The Former LIFG after Gaddafi

In the immediate aftermath of the 2011 uprising, many among the former LIFG now known as the LIMC, experienced something close to an existential crisis.[134] The group's founding objective of overthrowing Gaddafi by force, though abandoned during the Abu Salim revisions process, reappeared during an uprising in which the former LIFG joined with the wider population, leaving ideological considerations aside. Now they faced the question of what role, if any, the former LIFG could play in post-Gaddafi Libya.

This was the focus of a LIFG/LIMC congress held in November 2011, the month after Gaddafi had been killed at the hands of rebel forces. Hundreds of members took part in discussions on whether the group should get involved in the nascent politics of Libya's transition, focus on preaching (*da'wah*) or dissolve entirely given that their original goal had been achieved. While the congress ended with no defined strategy for the future, attendees voted to change the name of the LIMC to the Islamic Movement for Reform and elected a new consultative committee, comprising most previous LIFG Shura Council members (including Belhaj, Dawadi, Khalid al-Sharif, Qaid and Buhliqa, and headed by Sami al-Saadi). Among those present it is notable that there were no objections to Libya pursuing a democratic trajectory after Gaddafi, despite initial concerns that the former LIFG grassroots would view things differently, having been indoctrinated for decades in the belief that democracy was inherently anti-Islamic.

The changes in attitudes to democracy among the LIFG leadership – shared by most but not all their former rank-and-file – were indicative of wider trends in Muslim-majority countries at the time. "In the past we said that participation in any democratic or political activity is prohibited", said Saadi. "We were not mature, politically speaking, and focused more on the practical reality of armed struggle more than researching the political landscape. We have experienced many things since then and have seen what happened in other Muslim countries. Many had followed what had happened in Turkey [where the ruling AK party had Islamist roots], and they liked it".[135]

Belhaj was influenced by what he had seen in Turkey and Malaysia. "They succeeded in developing their countries and their economies, and in establishing effective institutions that provide justice and welfare for their people …. This experience is worth aspiring towards".[136] The examples of Tunisia and Egypt – where the electoral success in late 2011 of Ennahda in the former and the Muslim Brotherhood in the latter – also helped. "From an Islamic point of view, one must reform or change one's thinking when one realises there is a better way", Saadi said. "Libya was changing and we wanted to be involved".[137]

Toward their fellow Libyans and the international community, the leaders of the former LIFG appeared keen to demonstrate their credentials not only as nationalists (eg, their founding goal of replacing Gaddafi's regime with an Islamic state was replaced with talk of the nation, or *al-watan*) but also as fledgling democrats. In his September 2011 column in the Guardian newspaper, Belhaj defended his past and attempted to project a new image of moderation and pragmatism with an Islamist framing.[138]

The former LIFG did become involved in the political and security dynamics of post-Gaddafi Libya but not as a group. After rebranding itself as the Islamic Movement for Reform in late 2011, the LIMC failed to gain traction and eventually fizzled out. What at senior levels had been a relatively cohesive organisation as the LIFG and then LIMC began to fragment internally. Individual members of the former LIFG – particularly the leaders and Shura Council members – pursued their own paths, whether taking up positions within the transitional authorities or establishing political parties and running for election. Others from the rank-and-file were active in armed groups in several cities and towns across Libya, including Tripoli, Benghazi, Derna and Sabratha. Among the most prominent of these were Ziad Balam in Benghazi, Salem Derby in Derna and Abduljawad al-Badeen who joined federalists agitating for regional autonomy in eastern Libya. While some within the former LIFG grassroots were wary of democratic politics, they did not seek to prevent the 2012 elections (i.e., the first post-Gaddafi ballot) from taking place. In Derna, Salem Derby and other LIFG veterans coordinated with the transitional authorities to provide security for that vote.

Shortly after his release from Abu Salim in 2011, Khalid al-Sharif formed a 'National Guard', ostensibly aimed at preventing former regime elements from fleeing across the Tunisian border. It also ran its own detention centres. When the force came under the Ministry of Defence in early 2012, Sharif became the minister's deputy in charge of borders and protection of key facilities. In this position, Sharif oversaw Hadba prison where scores of former regime figures – including Abdullah Senussi, Abuzaid Dorda and Muammar Gaddafi's son, Saadi – were detained until 2017 when a Tripoli militia seized control of the facility and transferred the prisoners to another location. Human rights groups highlighted allegations of torture and ill-treatment at Hadba, where some of the prison guards were former LIFG members. In 2015, Sharif told Human Rights Watch that the former director of Hadba, a former LIFG member named Saleh al-Daiki, had been suspended because of such allegations, which included ill-treatment of Saadi Gaddafi.[139] Later, in something of a reversal of roles, Sharif facilitated dialogue in the prison, allowing a number of the high-profile former regime detainees to receive their fellow tribesmen for discussions about reconciliation.

Sadiq al-Ghaithi al-Obaidi, a former LIFG prisoner from Tobruk in eastern Libya, became another deputy defence minister, while Miftah al-Dawadi was appointed deputy minister for the martyrs and the missing. Dawadi served in that post until he died in a plane crash in Tunisia in February 2014. Under post-Gaddafi Libya's second transitional prime minister Ali Zeidan, Abdulbaset Buhliqa was appointed deputy interior minister, a role which involved engaging with security officials from several countries, including the UK, where he had once lived and had been designated. Sami al-Saadi was offered, but declined, the post of minister for the martyrs and missing. In many cases, the ascendance of former LIFG figures on a national and local level in the immediate aftermath of Gaddafi's fall had less to do with their LIFG past than political factors related to their individual experiences during the uprising, as well as personal tribal and other connections.

The former LIFG's political organising took different forms, splitting into two main currents. Belhaj became a founding member of the Homeland Party (al-Watan). Its slogan, "All Partners for the Homeland", reflected a diverse membership that ranged from former Muslim Brotherhood and LIFG members including Belhaj and Buhliqa, to non-Islamist business figures and more liberal Libyans active in civil society. In the 2012 parliamentary elections, for example, its lead candidate in Benghazi was a female academic and activist educated in the UK who did not wear hijab. Despite their nationalist messaging, Homeland Party candidates failed to win a single seat, including Belhaj who ran in the Tripoli neighbourhood where he had grown up.

Many of the former LIFG were uneasy with the inclusive approach of the Homeland Party and were drawn instead to the Moderate Nation (al-Umma al-Wasat) Party founded by Sami al-Saadi. Members of the party, which had a more overtly religious aspect, included Khalid al-Sharif, Dawadi, Qaid and Qanaifidh. Qaid, who ran in his hometown of Murzuq in southern Libya, won a seat in the General National Congress where he was adept at forming alliances. "Abdulwahab proved to be very good at the political game", observed Saadi, who unsuccessfully ran as a candidate in Tripoli.[140] In the following years, Saadi sought to make use of his background, history and religious scholarship to establish a counter-extremism institute but failed to get support from the transitional government.

Several of the signatories to the LIFG revisions say the direction they took after the fall of Gaddafi reflected the evolution in their thinking. "All the leaders of the former LIFG moved towards politics even though we had the tools – weapons – to impose ourselves if we wished", said Khalid al-Sharif.[141] This assertion belied the fact that politics in the post-Gaddafi period was largely beholden to either the threat or use of force. Most political factions across the ideological spectrum, from Islamist to anti-Islamist, had direct or indirect ties with armed groups, several of them ostensibly under the control of the interior or defence ministries. In the case of former LIFG leaders who decided to participate in politics or take up posts in transitional governments, these links gave them more clout.

Several years after Libya's transition unravelled in 2014 – partly due to dynamics supported by former LIFG members – a number of the signatories to the revisions maintained that their commitment to a democratic future for Libya still stands. "The way we formed political parties and took part in elections reflects the philosophical path we were on",

said Qaid. "I remain convinced that a democratic Libya is inevitable and that it is the best system for us".[142]

The former LIFG continued to face residual suspicion among the general Libyan population, which was grounded in the perception that they had not changed their jihadist ways. This was one of the reasons why the political parties they founded performed so badly in post-Gaddafi elections. Their opponents used the lingering belief that the LIFG had been affiliated with al-Qaeda despite the insistence of former members that this was not the case. One prominent Libyan political figure regularly briefed foreign diplomats claiming there were "dozens of al-Qaeda members" within the transitional authorities, a reference to those who had either been LIFG members in the past or had been tenuously associated with the group. Even though the LIFG was defunct and its leaders and rank-and-file followed different political and personal paths after the fall of Gaddafi, they were often collectively referred to as *al muqatilah* (the fighters) in public discourse. Media outlets owned or funded by their political opponents sought to portray the LIFG as still in existence in the form of a secretive group pursuing shadowy agendas to control and dominate Libya. Accusing adversaries of being LIFG, even if they were not, became a common and potent smear.

After Libya tipped into civil conflict in 2014, members of the former LIFG responded in different ways. A handful, including Noman Benotman, initially supported Khalifa Haftar, the commander who in May 2014 launched a military offensive ostensibly aimed at "terrorists" but which also targeted the then parliament in Tripoli. The offensive sparked a power struggle leading to years of civil conflict.

Others – including Belhaj, Saadi, Sharif and Qaid – were opposed to Haftar. They backed the Libya Dawn militia coalition that routed Haftar's militia allies from Tripoli in August 2014 following parliamentary elections that favoured his political allies. As alliances shifted in the following years, most of the prominent former LIFG figures lost ground and influence. By 2019, the majority of the former leaders of the LIFG and a significant number of its rank-and-file were again living in exile outside Libya. Some, including Belhaj and Sharif, took part in efforts by international organisations trying to mediate an end to the civil conflict. Accusations inside Libya that individual former members of the LIFG retained links to militias there continued and, in January 2019, the country's attorney general issued an arrest warrant for Belhaj for alleged complicity in attacks on oil installations. Belhaj denied the charges, insisting it was a "plot to distance [him] from the political scene".[143]

The Enduring Challenge of the Younger Generation

The six signatories to the LIFG revisions represented an older generation with a particular experience beginning in Afghanistan in the 1980s. But the younger generation of Libyan militants, which included sons and nephews of those rounded up or killed during the crackdown against the LIFG and other jihadist groups in the 1990s, were exposed to more radical ideological currents emerging in the early 2000s. While Saif al-Islam Gaddafi had hoped the LIFG recantations would influence that younger cohort and help draw them away from militancy, there were already signs in Abu Salim prison of inter-generational

differences between the older LIFG members and younger militants inspired by new figures such as Abu Musab al-Zarqawi, the Jordanian-born leader of al-Qaeda in Iraq. In March 2010, Belhaj and Saadi complained to Omar Ashour, a scholar then visiting Libya to meet those involved in the revisions process, that some younger militants did not respect the LIFG leadership and were challenging their authority.[144]

Many of the younger inmates had either fought in Iraq – where some of their fellow Libyans had carried out suicide bombings, a tactic never used by the LIFG – or had been arrested while trying to get there. According to Abdulwahab al-Qaid, the younger jihadists were poorly educated (few had even finished high school) and were radicalised by a broader cause: "Our grievances were domestic – related to the Gaddafi regime – and therefore easier to address than grievances that are rooted in a more transnational agenda as theirs were".[145]

After the LIFG leadership drafted their revisions, the Gaddafi regime offered the prospect of release to prisoners who were not members of the LIFG if they agreed with the principles within the LIFG revisions document. As a result, in order to secure their release, a significant number of the younger non-LIFG prisoners are believed to have opportunistically signed up to the revisions, even if they regarded the LIFG leadership with scorn. Their low level of education meant they were unlikely to have substantially engaged with the scholarly document detailing the theological underpinning for the recantations. Referring to attempts to engage with what he called "grassroots jihadis" in the prison, Noman Benotman said in 2010:

> "A few hundred were told to read the book. Most of them said they didn't understand anything because it was sophisticated and complicated. It is nine chapters written in a highly academic style. Here is the problem. We have a book from one of the most influential groups in the jihadi movement, but we don't know how to disseminate its ideas".[146]

Almost a decade later, some senior figures from the former LIFG expressed regret that there hadn't been more engagement with the younger militants. "Perhaps if people had taken time to work on them more, we wouldn't have had the problems we had after Gaddafi was gone", said one in 2019.[147]

After the 2011 uprising, many of these younger militants went on to form radical groups which opposed a democratic trajectory for post-Gaddafi Libya. Chief among them was Ansar al-Sharia, which developed several branches across Libya and was later designated a terrorist organisation by the UN. Some of its members participated in the September 2012 attack on the U.S. diplomatic compound in Benghazi that resulted in the deaths of the American ambassador and several of his colleagues.[148] Many subsequently joined Islamic State (IS) when it emerged in Libya.

Initially, some former LIFG members and associates tried to engage with these elements and convince them to embrace a democratic path.[149] In addition, Ali Sallabi attempted to draw on the lessons of the LIFG revisions process in order to persuade them against using violence.[150] These efforts failed, partly due to the fact the younger militants accused the

former LIFG leaders of being sell-outs, not only because of their dialogue with the Gaddafi regime but also because they supported a democratic transition after the 2011 uprising.[151] As Islamic State developed its presence in Libya, it targeted members of the former LIFG – particularly its leaders – both in its propaganda and operations.

Conclusions

The LIFG's revisions process followed a similar pattern to that previously seen in Egyptian, Yemeni, Saudi and other cases of collective and individual jihadist de-radicalisation.[152] Key to the initiation, development and ultimate result of the process were 1) the role of leaders – on both the LIFG and regime side – who were able to deliver their rank-and-file in the case of the former and overrule sceptics in the case of both; 2) the role of skilled and trusted mediators who could introduce confidence-building measures and follow through on them; and 3) the use of incentives, both incremental and final, as in the offer of possible release from prison. Although on an individual and group level several of the LIFG leaders had already begun re-examining worldviews and rethinking strategies some years before following the group's heavy military losses, other factors (beyond an obvious self-interest in getting out of prison) created an environment ripe for the revisions process. As Abdulwahab al-Qaid observed:

> "There was a convergence of several dynamics: the Gaddafi regime was changing; the world was changing after 9/11; we had been going through our own personal evolutions in thinking as a result of our experiences; and we were watching a new generation – a younger and fiercer generation – of jihadis emerging and making mistakes".

The LIFG did not just abandon armed opposition to the Gaddafi regime. Its leaders also produced a 417-page document detailing the theological underpinning of their decision, which de-legitimised violence as a political tool. As a result, the ideological framing of the LIFG revisions, while rooted in a very Libyan context, could be applied to cases outside Libya. This explains the use of the book in prisons in de-radicalisation programs in countries including Algeria and Morocco.

Within the Libyan context, the revisions did not mean that the LIFG decided to support the Gaddafi regime but that its members would no longer oppose it militarily. Furthermore, for most of the LIFG cadre, it was a specific process with a specific purpose and objective at a particular time and within a particular context. For this reason, the LIFG leaders did not consider that their early participation in the 2011 uprising against Gaddafi constituted a reneging on what they agreed during the revisions process. Instead, they insisted that process had been one of conciliation but not reconciliation.

The experience of debating worldviews and strategies with their fellow LIFG members but also regime officials and external mediators, particularly Ali Sallabi, during the years-long revisions process proved impactful for the six LIFG leaders who drafted and signed the final document. That, along with the experience of the 2011 uprising – and, in the case of those such as Belhaj, Sharif and Saadi, the experience of living in different countries

with different political systems – led them to abandon the opposition to democracy and dream of establishing an Islamic state that, along with the goal of overthrowing Gaddafi, had characterised the early years of the LIFG's history. Instead, they not only supported a democratic path for Libya but actively participated. Two of the signatories, Sami al-Saa-di and Abdelhakim Belhaj, formed political parties with the remaining four joining either of the two parties. Several of the six signatories ran in parliamentary elections in 2012, though Abdulwahab al-Qaid was the only one to win a seat. While they maintained links with non-jihadist armed groups in post-Gaddafi Libya, the fact the LIFG leaders established political parties, ran for and voted in elections, and served in key ministerial and security posts in several transitional governments, provides strong indication they had left their jihadist past behind.

From a contextual perspective, the process of dialogue between the regime and the LIFG did occur in a transitional phase. Though not a post-authoritarian phase, the broader context was one where the Gaddafi regime sought to demonstrate to the international community its intention to reform, albeit in a limited way.

Yet, the revisions process was not used as an opportunity to address past injustice. While the LIFG cadre renounced violence as a means to overthrow the regime, the latter failed to acknowledge that its repression of political opponents may have been counterproductive. The one-sidedness of the reflection, along with the fact the dialogue was conducted in prison meant that, by design, the process fell short of being tantamount to a formal transitional justice process.

The perception that the regime failed to acknowledge its own shortcomings was compounded by its failure to live up to its own promises. The release of prisoners after the revisions process concluded was only partially implemented. This in turn created a dynamic of "winners and losers" and therefore further undermined the intended objective.

In retrospect, the Gaddafi regime's approach to dialogue with the LIFG failed to meet the basic standards for restorative justice. By design, the process was unable to provide the regime and the LIFG the opportunity to address past offences in a holistic, collaborative, and humanising fashion. While the dialogue culminated with the publication of the LIFG's revisions, it failed to bring about a resolution that would lend itself towards reparation and that would prevent further harm or victimisation. Moreover, the lack of transparency that characterised the dialogue process – along with the ulterior motives behind the media showcasing of the prisoners' release – influenced public perception about the process. The LIFG leaders' buy-in to the dialogue process was predicated on their desire for freedom, their own convictions, and more importantly, the regime's predisposition to make amends with them. However, the optics surrounding the dialogue and its outcome shaped a narrative whereby the LIFG leaders appeared to have merely renounced violence in exchange for freedom. This framing shifted the onus for honouring the agreement on the LIFG, whose burden of proof for not being labelled as a terrorist group became never to engage in violence.

Ultimately, it can be argued that the threshold for genuine trust and reconciliation was never truly met. But it is also certain that the security environment at the time – in Libya

and elsewhere – was skewed by the post-2001 framing of terrorism. This contributed to the LIFG being labelled as terrorists – a dynamic which carried over way beyond the dialogue, in particular by creating a meta-conflict between the LIFG and the regime. Thus while the LIFG's emergence in the 1990s was symptomatic of the wider frustration felt by Libyan youth chafing under the Gaddafi regime's authoritarianism, these historical realities were overlooked as the regime weaponised the post-2001 terrorism label against them. By design, this meta-conflict hampered the ability of the dialogue process to create a consensus and framework informed by the multitude of lessons that transitional justice could have offered for the benefit of all Libyans.

Annex 1: Chronology of Events

Late 1980s	Those who later comprised the LIFG begin to organise in Afghanistan and Pakistan.
1990–1994	The LIFG builds a clandestine network inside Libya.
1995	The LIFG declares its existence following clashes in Benghazi.
1995–1999	LIFG insurgency in Libya, concentrated in eastern Libya, in which among other things they made several attempts to assassinate Muammar Gaddafi, including the Bab al Azziziya compound attack.
Jun 1996	Abu Salim prison massacre in Tripoli. More than 1,200 inmates, including LIFG members, are killed by regime forces.
Oct 2001	The LIFG is included on the UN 1267 Committee Consolidated List of individuals and entities associated with al Qaida or the Taliban.
Dec 2005	Most of the LIFG's historically most important figures – its emir Abdelhakim Belhaj; its religious ideologue Sami al-Saadi; two of its military commanders Khalid al-Sharif and Mustafa Qanaifidh; former emir Miftah al-Dawadi; and Abdulwahab al-Qaid – are in Abu Salim prison in Libya. Belhaj, Saadi and Sharif have been "rendered" to Libya by western intelligence agencies in post 9/11 security sweeps.
Jan 2007	The six members of the Shura Council mentioned above are engaged in talks with the Gaddafi regime which took on a more structured form the following year.
Aug 2009	The LIFG publishes "Corrective Studies of the Concepts of Jihad, Accountability and the Judgment of the People", the culmination of internal discussions and their dialogue with the Gaddafi regime.
Mar 2010	More than 200 inmates are released from Abu Salim prison, among them Abdelhakim Belhaj, Sami al-Saadi and Khalid al-Sharif, but not the other three leaders who signed the revisions.
Feb 2011	Anti-regime protests erupt in Libya. The Gaddafi regime releases more prisoners from Abu Salim, including the three remaining LIFG leaders.
Oct 2011	Muammar Gaddafi is killed by rebel forces, bringing an end to the uprising in which the former LIFG members played key roles.
Nov 2011	The former LIFG, now renamed the Libyan Islamic Movement for Change, holds a congress to debate future directions. The LIMC later fizzles out and the former leaders go in different directions, with several forming political parties and running for elections.

Endnotes

1. The Libyan Islamic Fighting Group was listed by the UN al-Qaeda Sanctions Committee on 6 October 2001 pursuant to paragraph 8(c) of resolution 1333 (2000) as being associated with Al-Qaeda, Osama bin Laden or the Taliban for "participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf or in support of", "supplying, selling or transferring arms and related materiel to" or "otherwise supporting acts or activities of" Al-Qaeda (QDe.004), Osama bin Laden and the Taliban. The listing includes the assertion that the LIFG "formally merged with Al-Qaeda" in 2007, but this is denied by the LIFG leadership. The listing also asserts that the LIFG participated with the Moroccan Islamic Combatant Group in planning the 2003 bombings in Casablanca, Morocco and that it had also been linked to the 2004 attacks in Madrid, Spain. These assertions appear to originate from allegations which appeared in the Spanish media in 2005 linking LIFG member Ziyad Hashem and Abdelhakim Belhaj with Serhane Ben Abdelmajid Fakhet, a Tunisian Islamist and suspected ringleader in the Madrid attacks. The article, which cited a leaked Spanish police report, also claimed that Hashem was linked by marriage to Mustapha Maimouni, a Moroccan who was detained in Morocco in connection with the Casablanca bombings. According to specialist Alison Pargeter, these allegations do not appear to be substantiated (see LIFG: An Organization in Eclipse, published by Jamestown Foundation in November, 2005). They have been denied by the LIFG leadership. The LIFG was designated by the U.S. Treasury in 2001.The U.S. State Department designated the LIFG a foreign terrorist organisation in 2004 and removed this designation in 2015. Britain proscribed the LIFG as a terrorist group in 2005 and removed it from the list of proscribed groups in November 2019.

2. More than 1,200 inmates are estimated to have been killed by security forces at Abu Selim prison in Tripoli in 1996: "Libya: June 1996 Killings at Abu Salim Prison", Human Rights Watch (https://www.hrw.org/news/2006/06/27/libya-june-1996-killings-abu-salim-prison), June 2006.

3. Remarks by a former member of Libyan National Dialogue Committee, at IFIT conference, Barcelona, November 2019.

4. Interviews with Libyans who fought in Afghanistan including leaders and rank-and-file of the former LIFG conducted by authors in Libya, UK, Tunisia, Ireland and Turkey 2011-2019.

5. Abdelhakim Belhaj, remarks at symposium "From Bullets to Ballots – Transformations from Armed to Unarmed Political Activism" at the Arab Centre for Research and Policy Studies (https://www.dohainstitute.org/ar/Events/From-Bullets-to-Ballots-Transformations-from-Armed-to-Unarmed-Political-Activism/Pages/VideoGalleryPage.aspx?VideoFolder=Sixth-Session&speakerID=36330), the Doha Institute, November 2018.

6. Interview with authors, Turkey, 2019.

7. Interview with primary author, Libya, 2012.

8. Interview with authors, Turkey, 2019.

9. Interview with authors, Turkey, 2019.

10. Interviews with former members of the LIFG Shura Council, 2019.

11. Interviews with authors, 2019.

12. Alison Pargeter, "LIFG: An Organization in Eclipse", Jamestown Foundation, November 2005.

13. Interviews with former LIFG members, 2012.

14. "Statement #14: Regarding the American Aggression against Sudan and Afghanistan", Libyan Islamic Fighting Group, 25 August 1998.

15. "Statement #21: Regarding the Occupation of Iraq", Libyan Islamic Fighting Group, 11 April 2003.

16. Interviews with former LIFG members who met Bin Laden, 2011-2019.

17. Zawahiri and Abu Laith al-Libi made the claim via two video clips produced by Al-Qaida's propaganda arm, Al-Sahab. The first clip featured Zawahiri and the second featured Abu Laith al-Libi.

18. Interviews with former LIFG members, 2011-2019.

19. Anis Sharif, remarks at symposium "From Bullets to Ballots - Transformations from Armed to Unarmed Political Activism" at the Arab Centre for Research and Policy Studies (https://www.dohainstitute.org/ar/Events/From-Bullets-to-Ballots-Transformations-from-Armed-to-Unarmed-Political-Activism/Pages/VideoGalleryPage.aspx?VideoFolder=Fifth-Session&speakerID=36326), the Doha Institute, November 2018.

20. Interview with primary author, Turkey, 2019.

21. Interviews with former LIFG members, 2011-2019.

22. Amnesty International, "Libya of Tomorrow – What Hope for Human Rights?" July 2010.

23. The prison conditions which gave rise to the revolt were acknowledged by Special Rapporteur on torture at the time, Sir Nigel S. Rodley. In his 1999 report, he

noted his concerns regarding the death in custody of several political detainees in Abu Salim. He said, "Their deaths were allegedly the result of torture and other forms of ill-treatment, as well as harsh prison conditions, including lack of adequate medical care, overcrowded prison cells, poor diet and poor hygiene. Injuries sustained during interrogation are also said not to receive adequate medical treatment". See Report of the Special Rapporteur on torture, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1998/38 (UN Doc: E/CN.4/1999/61).

24. Interview with authors, Turkey, 2019.

25. Abdelhakim Belhaj, remarks at symposium "From Bullets to Ballots – Transformations from Armed to Unarmed Political Activism" at the Arab Centre for Research and Policy Studies (https://www.dohainstitute.org/ar/Events/From-Bullets-to-Ballots-Transformations-from-Armed-to-Unarmed-Political-Activism/Pages/VideoGalleryPage.aspx?VideoFolder=Sixth-Session&speakerID=36330), the Doha Institute, November 2018.

26. Interview with primary author, Turkey, 2019.

27. Omar Ashour, "De-Radicalizing Jihadists the Libyan Way", Carnegie Endowment for International Peace, (carnegieendowment.org/sada/40531), 7 April 2010.

28. Interviews with former LIFG members, 2011-2019.

29. "Libya: Words to Deeds, the Urgent Need for Human Rights Reform", Human Rights Watch, 2006.

30. Interview with authors, Turkey, 2019.

31. Interview with authors, Turkey, 2019.

32. Electronic interview with primary author, 2016.

33. Interview with primary author, 2019.

34. The extent of Libyan participation in jihadist activity in Iraq became apparent with the 2007 seizure by U.S. forces of significant cache of recruitment files from an al Qaeda safe house in the Iraqi city of Sinjar. Of the 595 files recovered, 112 of them pertained to Libyans. The Sinjar documents suggest that a proportionally higher percentage of Libyans joined the insurgency in Iraq than nationals from other countries in the region. They also showed that more than 60 percent of the Libyan fighters had listed their home city as Derna and almost 24 percent had come from Benghazi. The two eastern Libya cities had long been nodes of domestic jihadist activity, including by the LIFG in the 1990s, but there is no evidence linking the LIFG as group to the recruitment or passage of Libyan fighters to Iraq. One former LIFG member from Benghazi, Abdel-Hakim al-Gritli (a.k.a. Abu Hafs al-Libi), became a key associate of al-Qaeda in Iraq leader Abu Musab al-Zarqawi before he was killed there by U.S. forces in 2004.

35. Electronic interview with primary author, 2016.

36. Electronic interview with primary author, 2016.

37. "Combating Terrorism in Libya Through Dialogue and Reintegration", International Centre for Political Violence and Terrorism Research (ICPVTR) at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore, March 2010.

38. Transcript of Saif al-Islam Gaddafi's speech, contained in "Combating Terrorism in Libya Through Dialogue and Reintegration", a report by the International Centre for Political Violence and Terrorism Research (ICPVTR) at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore, March 2010.

39. Interviews with former LIFG leaders, 2011-2019.

40. Interview with authors, Turkey, 2019.

41. Mahan Abedin, "From Mujahid to Activist: An Interview with a Libyan Veteran of the Afghan Jihad", Spotlight on Terror, 2005.

42. Camille Tawil, "Al-Qaida wa Akhawatia", London: Saqi Books, 2007.

43. Benotman's open letter to bin Laden was published in a number of outlets including Foreign Policy magazine in 2010.

44. Interview with Ali Sallabi published in al-Tajdid, a Moroccan outlet, in April 2010. https://www.maghress.com/attajdid/57479

45. Interview with authors, Turkey, 2019.

46. "Delivered Into Enemy Hands: U.S.-Led Abuse and Rendition of Opponents to Gaddafi's Libya," Human Rights Watch (https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya), 2012.

47. Interview with Sami al-Saadi by Camille Tawil, published in al-Hayat newspaper in September 2011 and accessed on Tawil's blog: http://camilletawil.blogspot.com/2011/09/sami-al-saadi-interview-on-lifg-aq.html.

48. Interview with authors, Turkey, 2019.

49. Interview with Ali Sallabi published in al-Tajdid, a Moroccan outlet, in April 2010. https://www.maghress.com/attajdid/57479

50. Interview with authors, Turkey, 2019.

51. Interview with authors, Turkey, 2019.

52. Interview with authors, Turkey, 2019.

53. Interview with primary author, Libya, 2011.

54. Interview with primary author, 2019.

55. Interviews with primary author in the UK, 2015, 2018.

56. Interview with Ali Sallabi published in al-Taj-did, a Moroccan outlet, in April 2010. https://www.maghress.com/attajdid/57479

57. Interview with authors, Turkey, 2019.

58. Interview with authors, Turkey, 2019.

59. Interview with primary author, Turkey, 2019.

60. The letter was republished by online media outlet Elaph: https://elaph.com/Web/NewsPa-pers/2009/6/450006.html

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62. Interview with authors, Turkey, 2019.

63. Interview with primary author, 2015.

64. Interviews with primary author, 2011-2018, and with both authors, 2019.

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67. Interviews with primary author, Libya, 2011.

68. Omar Ashour, "Post-Jihadism: Libya and the Glob-al Transformations of Armed Islamist Movements", Terrorism and Political Violence, 23(3), 2011.

69. Interviews with primary author, 2019.

70. Interview with primary author, 2019.

71. Interview with primary author, Turkey, 2019.

72. Interview with primary author, 2019.

73. Duncan Gardham, "Terrorism suspects released from house arrests after peace deal," Daily Telegraph, 13 November 2009.

74. Interview with authors, Turkey, 2019.

75. Interview with authors, Turkey, 2019.

76. Interview with primary author, 2012.

77. Interview with Ali Sallabi published in al-Taj-did, a Moroccan outlet, in April 2010. https://www.maghress.com/attajdid/57479

78. Interview with authors, Turkey, 2019.

79. Quilliam International, "Refuting Al-Qaeda: For-mer jihadists and the battle of ideologies", roundta-ble, London, 2010.

80. Interview with authors, Turkey, 2019.

81. Omar Ashour, "Post-Jihadism: Libya and the Glob-al Transformations of Armed Islamist Movements", Terrorism and Political Violence, 23(3), 2011.

82. "Delivered Into Enemy Hands: U.S.-Led Abuse and Rendition of Opponents to Gaddafi's Lib-ya", Human Rights Watch (https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-lib-ya), 2012.

83. Electronic interview with primary author, 2016.

84. Electronic interview with primary author, 2016.

85. Several months after the March 2010 releas-es, the Libyan government announced it would pay compensation to some people it had wrongfully im-prisoned. A Reuters report on 8 August 2010 cited a Justice Ministry statement saying the categories of ex-prisoner eligible for compensation payments in-cluded people who were detained without trial and prisoners who were convicted but later acquitted.

https://www.reuters.com/article/us-libya-rights-pris-oners/libya-promises-payouts-over-wrongful-impris-onment-idUSTRE6771EU20100808

Reuters also cited a report in Oea, a newspaper with ties to Saif al-Islam Gaddafi, claiming former LIFG pris-oners would receive compensation ranging between 1,000 and 2,000 Libyan dinars for each month of imprisonment. In interviews for this research paper, LIFG members said no such compensation was paid.

86. Interview with authors, Turkey, 2019.

87. Omar Ashour, "Post-Jihadism: Libya and the Glob-al Transformations of Armed Islamist Movements", Terrorism and Political Violence, 23(3), 2011.

88. Amnesty International Country Report, 2010.

89. "Libya of Tomorrow, What Hope for Human Rights?" Amnesty International, 2010.

90. Interview with human rights researcher, May 2020.

91. "Libya/U.S.: Investigate Death of Former CIA Pris-oner", Human Rights Watch, May 2019.

92. Nic Robertson and Paul Cruickshank, "New jihad code threatens al-Qaeda", CNN, 10 November 2009.

93. Ijtih d is an Islamic concept outlined in sharia that stresses the importance of taking context into account when assessing the interpretation of religious sourc-es. Jurisprudential decisions are therefore informed by modern-day developments as well as historic Is-lamic experiences.

94. This is a controversial concept of Islamic dis-course in which one Muslim declares another a non-believer.

95. LIFG, "Corrective Studies in the Concepts of Ji-had, Accountability and the Judgment of People", 6 September 2009.

96. LIFG, "Corrective Studies in the Concepts of Ji-had, Accountability and the Judgment of People", 6 September 2009.

97. LIFG, "Corrective Studies in the Concepts of Ji-had, Accountability and the Judgment of People", 6 September 2009.

98. The reference to messengers here is taken to mean diplomats, ergo embassies should not be targeted. "Corrective Studies in the Concepts of Jihad, Accountability and the Judgment of People."

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104. Interview with Ali Sallabi published in al-Tajdid, a Moroccan outlet, in April 2010. https://www.maghress.com/attajdid/57479

105. Authors' interviews with LIFG leaders and Akeel Hussin Akeel, 2019.

106. Alison Pargeter, "LIFG Revisions Unlikely to Reduce Jihadist Violence", *CTC Sentinel*, Combating Terrorism Center, West Point (https://ctc.usma.edu/lifg-revisions-unlikely-to-reduce-jihadist-violence/), vol 2, issue 10, October 2009.

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108. Interview with authors, Turkey, 2019.

109. Electronic interview with primary author, 2016.

110. Interviews with authors, 2019.

111. Interview with authors, Turkey, 2019.

112. Transcript of Saif al-Islam Gaddafi's speech contained in "Combating Terrorism in Libya Through Dialogue and Reintegration", a report by the International Centre for Political Violence and Terrorism Research (ICPVTR) at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore, March 2010.

113. Ibid.

114. Christopher Boucek, "Dangerous Fallout from Libya's Implosion", Carnegie Endowment, March 2011.

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(ICPVTR) at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore, March 2010.

116. Interview with primary author, Libya, 2012.

117. Omar Ashour, "De-Radicalizing Jihadists the Libyan Way", Carnegie Endowment for International Peace, April 2010.

118. Interview with primary author, Libya, 2012.

119. Interview with primary author, Libya, 2012.

120. Interview with primary author, Libya, 2012.

121. Noman Benotman is the primary author, along with Jason Pack and James Brandon, of the chapter, "Islamists" – from which this section is excerpted – in *The 2011 Libyan Uprisings and the Struggle for the Post-Qaddafi Future*, in J. Pack (Ed.), Palgrave Macmillan, June 2013.

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126. Mary Fitzgerald, "Finding Their Place: Libya's Islamists During And After The Revolution", in The Libyan Revolution And Its Aftermath, eds. Peter Cole and Brian McQuinn (Oxford: Oxford University Press, 2015).

127. "Libya After General Younis's Murder: Q &A with Noman Benotman", Quilliam Foundation republished by the Eurasia Review (https://www.eurasiareview.com/04082011-libya-after-general-younis%E2%80%99s-murder-q-and-a-with-noman-benotman-analysis/) August 2011

128. Interview with authors, Turkey, 2019.

129. Interview with primary author, 2016.

130. Interview with primary author, 2019.

131. Interview with primary author, 2019.

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147. Interview with authors, Turkey, 2019.

148. Interviews with Ansar al-Sharia members by primary author, Libya, 2014.

149. Interviews with former LIFG members and associates by primary author, Libya, 2014.

150. Interview with primary author, Libya, 2014.

151. Interviews with former LIFG members and associates by primary author, Libya, 2014.

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In War, No One Distributes Sweets

ASSESSING TRANSITIONAL JUSTICE RESPONSES & APPROACHES IN POST-2001 AFGHANISTAN

ORZALA NEMAT & SRINJOY BOSE

September 2020

Acronyms

ACJC	Anti-Corruption Justice Centre
AIA	Afghan Interim Administration
AIHRC	Afghanistan Independent Commission for Human Rights
AMF	Afghan Militia Forces
ANA	Afghan National Army
ANBP	Afghan New Beginnings Programme
ANSF	Afghan National Security Forces
ANDSF	Afghan National Defence and Security Forces
APRP	Afghanistan Peace and Reintegration Program
AREU	Afghanistan Research and Evaluation Unit
ARHDO	Afghanistan Human Rights and Democracy Organisation
BSA	US-Afghanistan Bilateral Security Agreement
CIA	Central Intelligence Agency
DDR	Disarmament, Demobilization and Reintegration
DIAG	Disbandment of Illegal Armed Groups
ERW	Explosive Remnants of War
HIG	Hezb-i-Islami Gulbuddin
HPC	High Peace Council
HRW	Human Rights Watch
ICC	International Criminal Court
IED	Improvised Explosive Devices
ISK	Islamic State of Khorasan
MSF	Médecins Sans Frontières – Doctors Without Borders
NATO	North Atlantic Treaty Organisation
NDS	National Directorate of Security
OSF	Open Society Foundations
PDPA	People's Democratic Party of Afghanistan
PPC	Provincial Peace Committee
PTS	Projay-e-Tahkeem-e Solha - Program Tahkeem-e-Sulh
RiV	Reduction in Violence
SAAJ	Social Association of Afghan Justice Seeker
SIGAR	U.S. Special Inspector General for Afghanistan Reconstruction
UF	United Front

UNAMA	United Nations Assistance Mission to Afghanistan
UNDP	United Nations Development Programme
UNMAS	UN Mine Action Service
UNU-CPR	United Nations University, Centre for Policy Research
USIP	United States Institute of Peace

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Introduction

In a warzone, no one distributes sweets or cookies.

AFGHAN PROVERB: *Pa Jang Ki Halwa Na Taqseemizhi*

Over 40 years, every side in Afghanistan's armed conflict has violated fundamental human rights or international humanitarian law. This is the grim reality that has shaped the country and underscores the stakes of the incipient intra-Afghan peace talks.

Afghanistan became known as the "Great Game" in the 19th century, a buffer at the core of prolonged political and diplomatic confrontations between the mutually suspicious Russian and British empires. After independence in 1919, the 40-year reign of King Zahir Shah (1933–1973) saw some reforms until his constitutional monarchy was overthrown by his first cousin and former prime minister, Sardar Mohammad Daoud Khan, who declared Afghanistan a republic. Daoud Khan's unsuccessful efforts to play off the West and the Soviet Union culminated in the 1978 coup that launched a civil war and led to the Soviet invasion of 1979 (1979–1989).

But the victorious Mujahideen failed to maintain unity and peace, opening the way for the hard-line Islamic movement, the Taliban, to gain power in 1996. Its rule, based on a strict interpretation of Sharia law and recognised by only three states, was ended by the 2001 U.S. invasion following the September 11 attacks. Since then, the Taliban has violently opposed the government established by the 2001 Bonn Agreement, also known as the Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions.

Plagued by political instability, systemic corruption, a culture of impunity, poverty and a deteriorating security environment, Afghanistan today is arguably much farther away from securing peace than it was in 2001. State institutions are still weak, economic development is slow, and large sections of the population are affected by food insecurity. The government controls Kabul, provincial capitals and most district centres, while the Taliban dominates vast amounts of less densely populated territory.[1] The population has experienced only limited relief from the violence and instability, such as during the Eid al-Fitr ceasefires (2018 and 2020) and a temporary reduction in violence in the week prior to the 2020 signing of an agreement between the U.S. and the Taliban.

Battle-related fatalities have increased greatly since 2001 and there have been more than 10,000 civilian casualties for six years in a row. These have been carried out mainly by anti-government armed groups such as the Taliban and the Islamic State of Iraq and the Levant – Khorasan Province (ISIL-KP), but also by government and international military ground and aerial attacks, the latter mainly U.S.

The economic development situation is also alarming. Afghanistan ranks 170th out of 189 countries in the UN's 2018 Human Development Report, and foreign aid has decreased since 2011. While Kabul is still a leading recipient of net official development assistance, many experts believe that, without a sustained flow, security and economic institutions and sectors may collapse, precipitating state failure. Afghanistan also ranked 173rd out of 180 on Transparency International's Corruption Perceptions Index in 2019. The government is accused of misusing foreign aid, and high-profile scandals have rocked past and present administrations.[2] Amidst very limited efforts by the current government, major corruption cases are not investigated, and there has been a lack of clear mechanisms to avoid further corruption, particularly after the second presidential term by outgoing officials.

Within this context, it is challenging to implement laws and policies that address war crimes, egregious human rights violations, victims' rights and concerns, and past and present injustices. Demands for accountability have mostly not been acted upon.[3] Besides policy and legal inaction, inability to reach consensus on the best-suited approach to transitional justice, if any, is a major gap in the response to human rights abuses by both state and non-state armed groups.

The 2001 Bonn Agreement highlighted the importance of identifying systematic human rights violations and war crimes and prescribed formation of the AIHRC, which has undertaken some initiatives. However, the prevailing approach to addressing war crimes since then has been to forget the past (*Ter Pa Heyr*) and focus on the future.

Promoting truth disclosure and accountability may threaten elites and thus is not well favoured. The U.S. has feared that opposing strongmen and warlords in the absence of a strong central state would be detrimental to counterterrorism and stoke instability, possibly igniting a new cycle of civil war. Military and political imperatives thus have trumped the need to address victims' and survivors' grievances through effective transitional justice mechanisms. Justice has been sacrificed to secure help from local elites and forces viewed as vital partners for the U.S.-led war effort and state-building project. The international community has prioritised short-term political and military stability, so accommodated actors accused of egregious human rights violations and war crimes.[4]

On 29 February 2020, after a year and a half of negotiations, the U.S. and the Taliban agreed on a conditional U.S. troop withdrawal. Among other things, the signed deal provided for a prisoner swap, lifting of sanctions and a commitment that the Taliban would not host terrorist organisations like al-Qaeda. The deal also set the stage for a dialogue between the Taliban and the Afghan government.

While multiple local and international actors have emerged and disappeared from the conflict, this paper aims to contribute to an understanding of the war and its parties since 2001, mainly the Taliban, the government and pro-government forces; unpack the transitional justice approaches applied to human rights violations;[5] and draw lessons on preventing or reducing violent extremism, as well as on transitional justice's role in furthering that objective. First, it provides historical background, identifying each party's views and approaches to addressing grave violations in the immediate and longer-term contexts of a peace deal and political settlement. Second, it analyses the opportunities and challenges

of the transitional justice options: how these are understood by the parties and how decisions have been made and with what intent. Third, it develops ideas on opportunities, challenges, and lessons learned that may be applicable for the present context.

Methodology

This paper is part of a series of country case studies led by the Institute for Integrated Transitions (IFIT) on how well-tailored transitional justice mechanisms and policy may contribute to viable moves away from conflict with "violent extremist groups". It is based on a comprehensive review of relevant literature on transitional justice in Afghanistan; 15 semi-structured confidential interviews with a diverse high-level group of Afghan and international stakeholders; an Afghanistan Research and Evaluation Unit (AREU) 2016 study on Afghans' transitional justice perceptions;[6] and AREU's years of continuous on the ground conversations with key actors on all sides of the conflict. The questionnaire used for the interviews (see Annex 1) was designed to address the study's main questions, namely 1) what approaches did parties to the Afghan conflict follow when addressing past abuses?, and 2) how are issues of reconciliation and transitional justice addressed in the context of sustainable peace?

Given the subject's inherent sensitivity and the moment in time when interviews were held (during Taliban-U.S. negotiations), the authors have excluded parties' military and formal political representatives for security and safety reasons. Interviewees were ex-government and Taliban officials, human rights activists, civil society actors, journalists, and personnel and representatives of international organisations working on justice. Their comments are anonymised, but their views are expressed throughout.

Historical Background of the Conflict

Afghanistan has been embroiled in violent conflict for four decades – the pro-Soviet coup in 1978, followed by Soviet invasion (1979–1989), intra-Mujahideen fighting (1992–1996) and internal conflict during Taliban rule (1996–2001), the 2001 U.S. invasion, to the current government-Taliban struggle. The country and its people have witnessed the collapse of a functioning state and its public institutions and endured widespread human rights violations. The Soviet invasion followed the 40-year reign of King Zahir Shah, who was toppled in a bloodless 1973 coup. General Mohamed Daoud's republic was overthrown in a pro-Soviet countercoup in 1978 led by the People's Democratic Party of Afghanistan (PDPA), which established the Democratic Republic of Afghanistan that lasted until 1987.

Opposition to PDPA rule grew as it introduced land redistribution reforms and modernisation policies impacting civil and marriage laws. The Mujahideen who opposed these reforms received Pakistani and U.S. backing, while the Soviet Union brought in thousands of military advisers. Ultimately, Moscow invaded to prevent PDPA collapse in 1979. The resulting conflict produced a million deaths and injuries, and the displacement of some six million Afghans, who mainly fled to Pakistan and Iran.

With Soviet casualties growing, Moscow sought to withdraw via a negotiated settlement without giving the impression of defeat. Dr Muhammad Najibullah Ahmadzai, from the People's Democratic Party (PDPA), was installed to pacify the Mujahideen through a national reconciliation policy that relied on economic incentives. Social reforms included changing the name of the country from Democratic Republic of Afghanistan to the Republic of Afghanistan and helping to restore its Islamic identity, but they did not go far enough to win over the anti-Soviet fighters and different leaders.[7]

Following the Soviet withdrawal in 1989, the country devolved into a regional conflict that led to a civil war between Mujahideen fighters, mainly supported by Western opponents of the Soviets or by regional powers such as Pakistan and Iran. That conflict peaked between 1990 and 1996 with widescale atrocities and grave human rights violations.

The fighting between Mujahideen factions caused discontent and provided space for the Taliban ("students" in Arabic) – a new group under Mullah Mohammad Omar's leadership (and made up of former mujahideen fighters) – to emerge around 1994. With military, financial and political support from Pakistan and later Saudi Arabia and the United Arab Emirates, it took over the vast majority of Afghan territory by September 1996. During their period in power, and though they maintained a monopoly over violence, human rights violations were widespread across the country.

The Taliban government was not recognised by the UN or the majority of the international community due to violations stemming from its harsh rule and strict interpretation of Sharia law. Public executions, amputation and mutilation of petty thieves, stoning to death of women accused of adultery, prohibition of girls' schools and severe limitations on women's access to public life were among the reasons why international recognition was withheld. The Taliban hosted and protected Osama Bin Laden, whom the U.S. held responsible for the September 11 terrorist attacks. For these reasons, the U.S. and its allies, including NATO member states, launched Operation Enduring Freedom in October 2001. Working alongside the Northern Alliance and the Afghan United Military Front, which had been in consistent opposition, they overthrew the Taliban within two months.

The past four decades have thus created a complex, internecine conflict with an ever-changing set of belligerents, overlaid with the implications of international patronage and intervention. While questions about war crimes and accountability have been raised since the 1980s, they have never found adequate political support – internationally or otherwise.

Actors in the Conflict

Multiple local and international actors have emerged and disappeared from the conflict scene. Currently there are several pro-government forces, such as the Afghan National Security and Defence Forces (ANDSF), international military elements (U.S. and the NATO Resolute Support Mission) and pro-government armed groups also known as militias or local uprising members. Anti-government entities include the Taliban and the ISIL-KP, which in the last eleven years have been responsible for over 100,000 civilian casualties and the displacement of more than two million Afghans (half internally displaced). This paper mainly focuses on the violations committed by the pro-government forces and the Taliban as two major parties in conflict who are aiming to enter a negotiated settlement covering the recent years.

Government and Pro-Government Forces

A week after the 11 September 2001 attacks, U.S. President George W. Bush approved the use of force against those responsible. Operation Enduring Freedom, with Northern Alliance support, entered Afghanistan a month later, prioritising counter-terrorism, later counter-insurgency and ultimately short-term stability.

The Curse of the Militias

For many decades, and especially since the fall of the Taliban, the Afghan government has been unable to maintain a monopoly of violence. Armed groups roam the countryside, often unchecked and with confidence boosted by system-wide impunity and lack of accountability. Following the 2001 invasion, the government and the international coalition called upon local proxies – informal or quasi-formal militias – to defeat the Taliban, which meant balancing the mission's urgency with the local partners' questionable human rights records.[8] Local militias found themselves with a bolstered arsenal, which was supposed to reduce the chances of a significant Taliban resurrection. Some local commanders, by then accused of multiple war crimes, used the support to strengthen their hold over territory and solidify criminal enterprises such as human trafficking, forced evictions and extortion. The militia were expected to leave areas controlled by the International Security Assistance Force (ISAF) but did not. Very slow U.S. support for ISAF expansion in 2003 (which a host of international actors and donor nations supported) allowed insecurity to breed.

The actions of international military forces ultimately prevented the government from expanding its writ nationwide: the emphasis on fighting the Taliban (and their affiliates) – and later, an exit strategy – saw international forces support informal militias allied with local power brokers and strongmen, in effect de-monopolising the use of legitimate

violence. In some cases, the Americans had a direct interest in preventing effective de-mobilisation. Since 2005, and throughout south, south-eastern and eastern Afghanistan, U.S. forces have provided support for some non-state militias.[9]

Human rights abuses by the U.S.'s Afghan allies have a long, sordid history. Pro-government militias trained and supported by U.S. intelligence agencies are known for egregious human rights violations and frequent use of excessive force. They operate at arm's length from the state and are difficult to control and discipline, making them more likely to pursue corrupt or private goals. Also, some warlords have been awarded important positions within the national security forces. An example is the late Kandahar province police chief, General Abdul Raziq, once championed by Coalition forces as a key actor in the fight against the Taliban. The UN Committee Against Torture insisted he should be prosecuted for war crimes.[10]

Prior to his assassination in 2018 by the Taliban, Raziq controlled several thousand men and operated within the Afghan chain of command, but with little to no accountability. His well-known hatred of the Taliban and ruthlessness in fighting them won many admirers among foreign troops, but he was long suspected of drug trafficking, corruption, extrajudicial killings, torture and illegal imprisonments.[11] More often than not, his victims were Pashtuns, framed as Taliban fighters. Investigative journalist Matthieu Aikins wrote that he often administered retributive justice against personal enemies whom Raziq described as insurgents and terrorists.[12] Nevertheless, he and his militia continued to receive U.S. military training and support.[13]

While the engagement of U.S. allies in rights violations extends far beyond the case of one individual, Raziq's position as Kandahar's police chief warrants special mention because it highlights the illicit practices of militias. His role in abuses against Pashtuns, who may or may not have been affiliated with the Taliban, helps in understanding why the Taliban view Washington as directly complicit in training and supporting forces that commit crimes against Pashtuns. Little wonder, then, that the Taliban consider U.S. withdrawal essential to any viable peace agreement.

There are numerous studies on militia involvement in torture and extrajudicial killing of Taliban or other opponents and virtual freedom from accountability.[14] Another militia group reportedly involved in such violations was led by the former first vice president, General Abdul Rashid Dostum, who recently got a Marshal title as a result of a political deal. Dostum was part of the Northern Alliance and assisted U.S. military operations against the Taliban after September 11. Under his command, Northern Alliance forces carried out a massacre in the north; mass graves in Dasht-i-Leili indicated that hundreds of Taliban prisoners of war were likely suffocated or shot.[15] These graves probably received more attention than similar ones due to claims that U.S. forces were present at the killings, and because they indicate that serious violations also occurred under the post-2001 power structures. Physicians for Human Rights assisted in the preliminary forensic examination and urged then President Hamid Karzai and the UN Security Council to preserve the sites. Doing so, and acknowledging that hundreds of Taliban prisoners were killed, would have constituted a welcome indication that the state was ready to apply a modicum of transitional justice.

Night Raids

Night raids are a military tactic used by U.S. and Afghan special forces against non-state armed groups like the Taliban. Per the 2015 U.S.-Afghanistan Bilateral Security Agreement (BSA), they are a critical part of the Coalition's counter-terror operations and objectives. Using night vision equipment, troops forcibly enter civilian homes and kill, capture or detain suspected enemy combatants. The operations are controversial because they tend to result in civilian casualties and are anathema to Afghan culture. Tactics considered particularly offensive include troops entering homes when women are present or using dogs. For many years, the U.S. led such raids in joint operations with Afghan counterparts. In 2014, President Ashraf Ghani lifted a 2012 moratorium on the raids, after which time government and pro-government forces have led a significant proportion of them.

The UN Assistance Mission in Afghanistan (UNAMA) documented that raids carried out by National Directorate of Security (NDS) Special Forces, and pro-government militias/ armed groups, such as the Khost Protection Force and Shaheen Forces, have significantly higher civilian casualty figures and death rates than those run by the Afghan army.[16] This suggests that the former may lack proper command and control structures; clear rules of engagement; and/or accountability for wrongdoing. Human Rights Watch documented 14 cases in which foreign and Afghan forces conducted night search operations in civilian homes, causing terror and killing family members.[17]

These issues are not new. Both UNAMA and civil society groups have raised concerns. In 2019, UNAMA documented 360 civilian casualties from such operations. As far back as 2010, *The Washington Post* reported that night raids might be fuelling the insurgency. Similarly, a 2011 Open Society Foundations report stated that the malpractices reinforced Afghan perceptions that military forces use night raids to "kill, harass, and intimidate civilians with impunity".[18]

The raids are not merely a source of public grievance. The Afghan government has failed to investigate alleged war crimes committed by its security forces. The few times an investigation has been promised, no information has been made public, and there have been no convictions.

Air Strikes

The Afghan government and the U.S. have increasingly deployed airstrikes resulting in serious civilian harm. UNAMA identified aerial operations as the leading cause of civilian deaths in the first quarter 2019.[19]

In October 2015, one of many painful examples, a "U.S. Airforce AC-130U gunship attacked the hospital known as Kunduz Trauma Centre that was operated by Médecins Sans Frontières in Kunduz. The attack killed at least 42 people and injured over 30 people, including medical personnel and patients or patient's visitors".[20] On 2 April 2018, the Afghan Air Force targeted senior Taliban leaders in Kunduz province in midday during an open-air *dastar bandi* religious ceremony next to a madrassa where hundreds of men and boys

were gathered, killing 30 civilians and injuring 65 others, including 79 children. UNAMA documented 162 civilian deaths and injuries from aerial operations in 2014; this increased to 1,045 in 2019, mostly caused by the U.S. military.[21]

Corruption and State Economic Crimes

Despite establishment of the Anti-Corruption Justice Centre (ACJC) in 2016, there have only been periodic arrests and prosecutions and limited dismissals of subversive civilian and military officials. Corruption clearly remains a major problem. An October 2018 report from the U.S. Special Inspector General for Afghanistan Reconstruction (SIGAR) confirmed that the ACJC was failing to prosecute senior officials.[22] Allegations of top-level corruption increased after the 2019 presidential election, with members of the government, including presidential candidates accusing each other of misappropriating funds to pay for campaigns.[23] SIGAR's July 2020 report indicates that the post-2019 government led by President Ghani lacks serious commitment on anti-corruption.[24]

Slow progress in addressing impunity has not only helped alleged perpetrators of corrupt practices to strengthen their positions, but also given them the platform to participate in other forms of crime such as illegal land grabs. Although land grabbing started during the civil war, when properties belonging to Hindu/Sikh communities were seized, it became more prevalent after 2001. Many powerful Afghans have engaged in such activities. In September 2003, when 100 police officers demolished 30 houses in Shirpur, a number of high government officials reportedly divided up the land.[25] This is not the only instance: a parliament-commissioned 2013 report assessed that high-level officials had seized lands worth approximately $7 billion.[26] A separate report by Afghanistan Freedom House stated that 1,966,411 *jiribs* of land were seized unlawfully in 18 provinces.[27]

The U.S. special representative and former ambassador to Afghanistan, Zalmay Khalilzad, wrote that he travelled to various areas on missions to convince warlords to join the political process by surrendering their militias in return for political positions.[28] What he does not mention is the concession given to the warlords in the form of impunity for continuing engagement in many economic crimes, including mining theft, corruption, land grabbing and drug trafficking. Impunity and failure to investigate and prosecute these crimes (reinforced by the Amnesty Law discussed later in this paper) have enabled this situation to continue and may have even emboldened Afghan special police forces to carry out forced disappearances, summary executions and routine torture of detainees.

The Taliban

Origins

The Taliban emerged in 1994 in response to infighting among Afghan Mujahideen who had opposed the Soviets with U.S. and Pakistani support, and younger Pashtun tribesmen who are the predominant ethnic group in the south and east. The Taliban was initially welcomed for dissolving several militias and promising stability after four years of war among rival Mujahideen factions. They took over the southern city of Kandahar in November 1994,

ending violence and rampant crime. Two years later, they entered Kabul to remove President Burhanuddin Rabbani, an ethnic Tajik and the rest of the Mujahideen leaders they considered corrupt, and established the Islamic Emirate of Afghanistan.

The Taliban, who do not recognise the legitimacy of the current government, brought their own form of governance based on a strict interpretation of Sharia, causing fear and violence. They implemented their own interpretation of Islamic *hudud* punishments. The atrocities previous groups committed were used to validate harsh Islamic rule.[29]

As the Taliban gained more power, the Northern Alliance resurfaced in opposition, formed from parties based mostly in the north. These included Jamiat-e-Islami, Etehad-e-Islami (in Kabul and Parwan), Junbish-e-Milli, Hezb-e-Wahdat, and Shora-e-Nizaar. The conflict between the Taliban and the Northern Alliance to seize territorial control in northern and central Afghanistan resulted in serious atrocities. While the Taliban killed, displaced, tortured and detained many ethnic and religious minorities, many Northern Alliance commanders were also implicated: Uzbek and Hazara militias killed, raped and displaced Pashtuns in the north.[30] Among the most known atrocities by the Taliban in this period are incidents in Mazar-e-Sharif in August 1998 and in Bamyan in central highlands in January 2001 where the Taliban carried out summary executions of thousands of people.[31] Both incidents, which targeted mainly non-Pashtun communities among Tajik, Hazara and Uzbek, were widely considered as a form of ethnic and religious cleansing at the time.

The Taliban regime was toppled in 2001 by the U.S.-led international military intervention. It did not resist, as some members moved to sanctuaries in Pakistan, while others returned to villages. The U.S. detained several of the leaders in Guantanamo Bay prison. No reconciliation plan was implemented let alone contemplated. Instead, violence against these individuals and their communities were among the driving factors for the Taliban's re-emergence in the mid 2000s. Other factors include the lack of accountability for violations during operations by Afghan and NATO forces; bombardments of houses; and the torture, cruel and inhuman treatment of detained Taliban members. Local conflicts between Taliban commanders and ex-Mujahideen warlords were crucial in garnering support for a revitalised Taliban.

Regional factors cannot be ignored either. Iran used Taliban fighters to attack U.S. bases in western Afghanistan, while Pakistan continued to provide safe haven for Taliban leaders, whose main political councils (Shura-e-Quetta and Shura-e-Peshawar) are named after two Pakistani cities.

The Taliban's Constituency and Narrative

The Taliban cannot be easily identified with a single ideological constituency or a unique ethnic group. Instead, it has social support among different communities. Considering the public nature of its violence, it is thus relevant to look at the push and pull factors for people to join the movement.

First, while initially religious devotion and jihad were primary motives for joining (many fighters considered jihad a religious duty to fight against foreign forces), since 2001 many

recruits appear to have been motivated by exclusion from the political system, retaliation against perceived military aggression, opposition to abuse of power and impunity, economic necessity and forced recruitment.[32] But it remains difficult to separate out religious and political factors, both of which merge with questions of national identity, nationalism and sovereignty in times.

Second, some individuals who lost family members and friends in the conflict simply sought revenge and saw the Taliban as a path for acting on that. Anger at the air strikes and night raids by U.S. and Afghan special forces, for example, provided a steady supply of new combatants. Emotions and traumas played key roles.[33]

Aside from individual motivations, the dominant narrative propagated by the Taliban is that the group is a symbol of defiance, an anti-occupation force with Islam as its unifying ideology. While there are smaller groups, such as ISIL-KP, the Taliban is visibly the country's main insurgency group.

The Taliban's Structure

It is estimated that the Taliban has around 60–65,000 fighters (with an upper estimate of 85,000) and half that number or more of facilitators and non-combatant members, for a grand total of some 100,000 as of mid-2019.[34] As it has re-emerged, it has proven to be highly organised and bureaucratic. Its highest body is the Leadership Council, which sits above several commissions and organs. According to the UN's Analytical Support and Sanctions Monitoring Team, internal divisions within the Taliban's Political and Military Commissions have grown more pronounced. There is notable discontent among rank-and-file soldiers, who resent the safe havens leaders enjoy in foreign countries away from the front line.

Some report this as the main reason for a recent spate of desertions. Those in the Political Office in Doha recognise a need to interact with the U.S. and other internationals, whereas fighters do not see the utility in moderation. Nevertheless, it appears that most Taliban fighters will follow orders from their leadership, whatever those may be.[35]

The Taliban's Main Violations

Since its resurgence in 2006, the Taliban has used intimidation, threats, physical coercion (including kidnappings and targeted killings), and suicide bombing and other terror tactics against civilians in its war against the Afghan government and its international partners. Because of such acts, there has been a growing demand among Afghans to hold those responsible accountable.

Suicide bombings and non-suicide improvised explosive devices (IEDs) are the leading cause of civilian casualties attributed to the Taliban, followed by ground engagements and targeted killings. As reported by UNAMA, 62 per cent of civilian casualties in 2019 were attributed to anti-government actors, 42 per cent of which correspond to IEDs, including suicide and non-suicide together. This was equivalent to 4,336 casualties due to IEDs in 2019.[36]

Though the Taliban has historically been receptive to some forms of aid, it has also deliberately targeted humanitarian and medical workers. One reason could be that it does not view aid workers as impartial and altruistic, but rather as having hidden agendas.[37] The group has also made death threats to journalists to pressure them to stop reporting abuses and violations.[38] Such targeting appears to be part of a strategy to intimidate local populations and dissuade national and international assistance from reaching those in most need.

The Taliban has also targeted those affiliated to the government, including civil servants, tribal leaders and religious clerics. For example, the Taliban carried out an ambulance-based suicide bomb attack in January 2018 in the centre of Kabul city which is also home to government offices. The attack claimed the lives of at least 95 civilians and inured 158 others.[39] Attacks also tend to increase during moments of heightened civic and political activity, like elections. For example, a string of bombings was reported across the country both during the 2019 election campaign and on polling day to dissuade the public from voting. Voters were threatened, in order to deter participation. Back in 2014, the Taliban cut off the fingers of at least 6 voters in the lead up to election day.[40] Then, during the 2018 parliamentary elections, they again cut off the fingers of another 8 men as a punishment for having voted.[41] As the Taliban does not recognise the government's legitimacy, it views any elections as unlawful.

The Taliban has sought to distance itself from ISIL-KP, which it criticises for cruelty. For example, a troop leader was quoted in 2017 as saying, "ISIS [ISKP] kills anyone that they think is not supporting them, without having any evidence. They even kill children and elders, whom we respect and protect".[42] However, some have blamed the Taliban for the attack on a maternity hospital supported by Médecins Sans Frontières (MSF) in Kabul in May 2019 that ISIL-KP claimed. There are sources indicating that the Taliban and ISIL-KP are both part of a broader "jihadist movement industry" operating within the same areas, involving internal rivalries while also targeting the state.[43]

Treatment of Women, Girls and Gender-Based Violence

Women and girls have long suffered rights violations at the hands of different parties to conflict throughout the years of war. However, the Taliban's treatment of women during their rule and in the post-2001 context is uniquely extreme as they applied a more systematic form of discrimination against women, even controlling their dress code.

Girls were generally not allowed to go to school after puberty under Taliban rule. Women's access to public spaces and political participation was constrained by threats and harassment. Social restrictions on travelling alone and appearing in public further compounded the situation.

In the post-2001 context, despite a women-friendly constitution (with 25 per cent reserved seats in the parliament and 30 per cent in the public administration) and a relatively supportive government, the proportion of women registered as voters declined from 41 per cent in 2010 to 34 per cent in 2018.[44] Gender-based violence against women and girls

– including rape, murder and mutilation – persists as a result of insecurity, weak rule of law and harmful traditional practices. Women in key political positions have often been attacked or assassinated at national and provincial levels. These include women who served as government officials, journalists, police officers and members of civil society organisations.[45] Systematic discrimination remains evident, despite enormous efforts to close the gender gap in representation, political participation and access to jobs and basic services.

It was perhaps the violent subjugation of women and attacks on Afghanistan's cultural heritage (such as the destruction of the Buddha statues) that most raised the Taliban's worldwide notoriety. From beginning to end of their rule, the Taliban never meaningfully evolved or adapted their positions. The only slight change since then has been in the tone of statements (mostly verbal) that they are not against women. Twenty-six years on, however, there is no female representation in their group.

Negotiating Transitional Justice in the Early Years

Following their military defeat in 2001, Taliban leaders took flight, while some, from senior members to rank-and-file soldiers, surrendered to the new government. This surrender contributed to the December 2001 Bonn Agreement, which brought hopes that the country would transition from war to peace, from disarray to a new type of political order, and from disunity to unity.

The Bonn Talks

In December 2001, the UN Envoy to Afghanistan (Lakhdar Brahimi), the U.S. Envoy to the Afghan Opposition (Ambassador James Dobbins), and a carefully selected delegation of Afghans met at the Hotel St Petersburg in Bonn, to chart a course for Afghanistan that became the Bonn Agreement.[46]

In attendance were delegations of four Afghan factions that had opposed the Taliban:

The Northern Alliance or United Islamic Front (UIF) – the only party which arrived directly from Afghanistan. It controlled much of the country, including Kabul, and had been the main recipient of U.S. support during military operations. Its head, Burhanuddin Rabbani, had installed himself in the Presidential Palace. He apparently wanted the talks to happen in Kabul, without outside interference in selection of the interim government, so did not attend. Yunus Qanuni, a younger man, led the delegation. The Northern Alliance subsequently received around half the posts in the interim administration.

The "Rome group" – a contingent of eleven members loyal to former King Mohammad Zahir Shah, who remained in exile in Rome. The Northern Alliance was apparently opposed to his return, so it supported Abdul Satar Sirat, an ex-justice minister under the king. According to a participant, however, Sirat was not accepted to lead the interim administration for two reasons: disagreement with the international military presence and being an ethnic Uzbek rather than Pashtun.[47]

The "Cypress group" – Afghan exiles with close ties to Iran, led by Humayoon Jarir, the son-in-law of Gulbaddin Hekmatyar and others from the anti-Soviet resistance, including Jalil Shams and Aziz Ludin.

> The "Peshawar group" – seven mostly Pashtun individuals led by Pir Sayed Ahmad Gailani and including Sheik Asif Muhsini and Anrwar-ul-Haq Ahadi.

The confidential negotiations were limited to 25 participants and were not fully representative of Afghan society. Brahimi later called the Taliban's exclusion "the original sin", while recognising that agreement would not have been possible with their involvement and that the other parties, especially the U.S., would not have accepted their participation.[48] There was also no direct survivor representation. The UN and various foreign governments played key facilitative roles, and the UN Security Council blessed the agreement.

The Bonn Agreement

The Afghan Interim Administration (AIA) was formed pursuant to the agreement, and political leadership was redistributed among pre-Taliban leaders, including Mujahideen, technocrats, a few ex-PDPA members and other influential personalities. The AIA consisted of a chairman (Pashtun leader Hamid Karzai), five vice chairs and 24 heads of departments equivalent to ministries. A Supreme Court was formed, as was a Special Independent Commission for the Convening of an Emergency Loya Jirga (a traditional grand assembly). The Loya Jirga took place in July 2002 and put in place an Afghan Transitional Authority to replace the AIA.

The Bonn Agreement set out a three-year roadmap for the transition that the executive and judicial authorities were to establish. Some important milestones were achieved: in July 2002, the Emergency Loya Jirga took place and the AIHRC and Afghan Transitional Authority were created; in 2004, a Supreme Court judiciary council was formed and a new constitution ratified; and in 2004 and 2005, presidential and parliamentary elections took place.

The various independent commissions did not start well, however, due to scepticism about their independence. For example, Judiciary council members had connections with the Supreme Court as well as various ministries, and the government dissolved the body within three months.[49] The Independent Commission for Convening the Emergency Loya Jirga had made it mandatory for applicants to sign a disclaimer stating they had not engaged in homicide, terrorism or drug trafficking. Yet, there was no realistic way to enforce this, as most powerful leaders simply brought in their own loyal aides.[50]

Bonn and Transitional Justice

The Bonn Agreement avoided references to transitional justice, including neither accountability mechanisms nor amnesty. However, the AIHRC enabled the start of a conversation on past abuses. Created by presidential decree, its mandate was to develop a National Human Rights Plan, monitor and report on human rights and state institutions' performance, and promote human rights through training and other capacity building. It was also to undertake "national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past".[51]

Transitional Justice and Peace in the Post-Bonn Period

The period immediately after the signing of the Bonn Agreement offered a moment – though one with little chance of success – to tackle deep grievances and demands for justice and accountability by victims and survivors, and help state and society begin to heal wounds and move toward state-building and a shared future.[52] But neither the Afghan government nor the U.S. had much interest in justice. While the former, particularly President Karzai, briefly considered a selective approach, the overriding U.S. priority was to combat terrorism. Moreover, victims and survivors were divided about whom to hold accountable and how best to get justice. An immediate challenge for the state was finding a balance between achieving peace and addressing victims' and survivors' demands. Later this "peace versus justice" dilemma became a "war on terror versus justice" conundrum. The ultimate approach prioritised supporting the U.S.-led war on terror and ending conflict, while sacrificing serious action on accountability or broad reconciliation. All approaches also excluded the Taliban, who were treated only as perpetrators and war criminals and never consulted about their own grievances or victimisation.

War Crimes Documentation and Victim Consultations

The AIHRC and civil society have been at the forefront of documentation efforts for past war crimes.

The AIHRC was established pursuant to the Bonn Agreement to oversee the areas of promotion, protection and monitoring of human rights in Afghanistan. It publishes regular annual reports and thematic papers covering areas of its monitoring work, and conducts training sessions for government departments and civil society groups. It is also mandated to visit prisons and report on the condition of the facilities as well as the treatment of detainees; and to push forward a national strategy of transitional justice to address past abuses.

Perhaps its most significant report is "A Call for Justice" (2005): an ambitious national project that polled Afghans on whether they wanted accountability and justice. Its origins trace to the first national human rights workshop, held in 2002 and organised with participation of religious leaders and civil society groups. The workshop discussed ways to craft a nation-building process on transitional justice and address justice and accountability issues pertaining to human rights violations. The AIHRC then designed a survey that received 4,151 individual responses and organised 200 focus groups involving over 2,000 people. The consultation, incorporating qualitative and quantitative research, lasted eight

months, and covered 32 of 34 Afghan provinces and refugee communities in Pakistan and Iran. It gave war survivors and victims an opportunity to speak out and share grievances.

Some 70 per cent of respondents said that either they or their direct families were victims of human rights abuses during the conflict.[53] The report found that:

> More than a million people lost their lives and almost the same number became disabled in the course of the war …. Thousands of people were put in jail for their political beliefs and tortured. Thousands of children lost their family members and their fathers. … Almost all of the country's major cities were destroyed. … More than seven million people were forced to leave their villages and towns and take refuge in Iran and Pakistan. The miseries of this period of conflict cannot be described in words.[54]

The report concluded that there was substantial support for accountability and removing wrongdoers from power. Its recommendations became the foundation for the government's 2006 "Action Plan on Peace, Reconciliation, and Justice": a combined effort of the AIHRC, the president's office and UNAMA. Its main objective was to promote "peace, reconciliation, justice and rule of law in Afghanistan, and the establishment of a culture of accountability and respect for human rights". It mapped out transitional justice tools to be implemented over three years and focused on themes such as acknowledgement, accountable state institutions, truth-seeking and reconciliation.

Another ambitious AIHRC effort was a "Conflict Mapping" project launched in 2005 to identify the types of atrocities each party had committed during each phase of the war. For unknown reasons, however, the report has not been published, although it is known to have been presented to President Karzai in 2011. Not long after the report was submitted, AIHRC spokesperson Nader Nadery was removed.[55]

The other major actor involved in war crimes documentation and victim consultations is civil society. Relevant groupings include the Afghanistan Justice Project,[56] the Transitional Justice Working Group, the Civil Society and Human Rights Network, and victims' associations such as the Afghanistan Human Rights and Democracy Organisation (AHRDO) and the Social Association of Afghan Justice Seeker (SAAJs). These and other non-governmental actors continue to push forward processes of documenting past crimes, identifying mass graves, recording the names of the missing, mobilising families of the victims and raising awareness domestically and abroad. These efforts, however, are challenged and remain limited. Most civil society organisations are in Kabul, and even when acting alongside the AIHRC, it has been difficult to promote awareness and engage broader sectors of society, especially victims and families of the Taliban side of the conflict.

Amnesty and Reconciliation

Peace scholar Johan Galtung defines reconciliation as a process of "closure plus healing; closure in the sense of not reopening hostilities, healing in the sense of being rehabilitated".[57] Reconciliation at a society-wide level aims to restore communal harmony and

peaceful cohabitation between communities or groups previously at war, and rebuild trust between the state and its citizens. Some express concern, however, that political actors may see reconciliation as a way to engage belligerents in a new political order while avoiding any form of justice or accountability.

After the Taliban's removal from power, some chief lieutenants surrendered, including Tayeb Agha, Mullah Omar's secretary; Mullah Beradar Akhund, Mullah Omar's deputy Sirajuddin Haqqani; Mullah Abdul Salam Zaeef, former ambassador to Pakistan; and many others. They wrote Karzai that they accepted him as interim leader and admitted that their Islamic Emirate had no possibility of surviving.[58] They continued to communicate with the new government, which a number of other ex-Taliban viewed at the time as legitimate and Islamic. Those who did not accept this nevertheless did not turn to violent jihad as an immediate response. Their main request was for amnesty in return for staying away from political life.

Instead, the U.S.-led coalition and its proxies launched an operation against the ex-Taliban, pushing many into Pakistan and an eventual new insurgency.[59] Even the former governor of Kandahar, Gul Agha Sherzai, who had initially taken a less hostile approach toward the Taliban, changed his stance due to close links with U.S. special forces. Torture, harassment and intimidation of ex-Taliban became prevalent. Some commanders previously ousted by the Taliban wanted vengeance and opposed amnesty. Many signatories of the letter to Karzai became top figures in the insurgency that emerged after 2006. For instance, Haqqani became an important member on its political side; Agha assumed a leading role in the financial committee and served on the Quetta Shura; and Beradar became the day-to-day leader of the whole movement. Growing insecurity thwarted efforts for transitional justice, as Afghanistan drifted back toward intractable conflict.

There was a general sense among both top Taliban leaders and rank-and-file members that they were removed from Afghan political life. Journalist and author Anand Gopal argues that the opportunity to integrate ex-Taliban into the political system was abandoned, and the group's marginalisation and deliberate targeting was a key factor in its revival.[60] Even after escaping to Pakistan, many former members were still receptive to the idea of returning to Kabul and abandoning the new insurgency. But the government's lack of political will to deal with the legacy of conflict, opposition from some parts of U.S. leadership, regional countries' interest to remobilise the Taliban against foreign troops, and general social marginalisation, drove the Taliban to regroup and focus on toppling the Kabul government and regaining power.

In 2009, the National Assembly approved a highly contested Amnesty Law (also known as the National Reconciliation, General Amnesty and National Stability Law) proposed by members of parliament who had themselves been parties to war and conflict. Taking effect in late 2008, it provided immunity from prosecution for crimes committed before 2001, without specifying or limiting their type, in exchange for ceasing armed activity against the state. It also stipulated that all involved in the war forgive each other in the interest of peace and stability.[61] The law allowed many warlords accused of atrocities to benefit from immunity and re-enter politics, including eight men accused of war crimes who stood for

the presidency in 2014. Tellingly, the law did not refer to the Taliban's atrocities and how to deal with them.

By 2008, efforts at reconciliation with the Taliban and other insurgent groups could be seen. Many identified two streams: the first involved rank-and-file members; the second aimed at high-level discussions to bring senior leaders to the negotiating table. A former U.S. general, David D McKiernan, has referred to the first group, whose primary concerns are social and economic needs, as "small-t Taliban". Reconciliation with them could involve economic and financial incentives, prospects for political participation and removing their names from target lists.[62] The Afghan government in fact drafted a program for such reconciliation, and presented it in 2010 at an international donor conference in London. Known as the Afghanistan Peace and Reintegration Program (APRP), it marked a first formal acknowledgement about the limits of the war on terror and signalled the eventuality of peace talks with the Taliban.

Apart from that, in May 2017, the government reached a deal with Gulbuddin Hekmatyar, an important warlord involved in rocket attacks on Kabul that cost thousands of lives. The deal included an amnesty, the release of prisoners linked to him, and the possibility to participate in politics and contest elections.[63] However, this was more of a political deal than one related to peace, and there is nothing in it addressing the past crimes attributed to Hekmatyar's militia.

Vetting

Since 2001, the government has applied several vetting programs for senior political appointments, parliamentary candidates and provincial police chiefs. The electoral law also stipulated a vetting process in presidential and provincial council elections.[64]

Political expediency has prevailed, however, and the efforts have not been successful. This is again related to the fact that the whole post-2001 order is contingent on the distribution of power among leaders who had committed various violations during the war. Any vetting process could jeopardise the political balancing act. A significant example is General Abdul Rashid Dustom's case. Despite advances in vetting capacity, he remains highly important in politics and oversees a significant portion of seats and power positions.[65]

Reintegration

Reintegration programs are usually undertaken to persuade ex-combatants to lay down arms and help reintegrate them into society. They are part and parcel of the broader reconciliation process. This report understands reintegration as "the long-term process of an ex-combatant gaining acceptance from his or her community and finding a sustainable livelihood".[66]

Afghanistan has had four programs: 1) Disarmament, Demobilisation and Reintegration (DDR, 2003-2005), 2) Disbandment of Illegal Armed Groups (DIAG, 2005-2011), 3) Program Tahkim-e-Sulh (PTS, 2005–2011), and 4) the Afghanistan Peace and Reintegration

Program (APRP, 2010–2016). The first of these started when the UN Development Programme (UNDP) managed the Afghan New Beginnings Programme (ANBP) with the aim of selecting 100,000 soldiers and officers for DDR work. DDR was, therefore, implemented through the ANBP.[67] A major goal was to decrease the power of mid-level commanders by removing the bulk of their troops. However, the program was a voluntary process of selecting fighters from the Afghan Militia Forces (AMF) and did not include Taliban fighters.[68] Some ex-fighters received vocational training packages; others could join the army or police. Reportedly, thousands of former fighters had given up their weapons by 2006, the number of militias had decreased, and 11,000 children had taken part in a reintegration program focused on education and vocational training. Even female relatives of ex-fighters received education and employment opportunities.[69]

Overall, the initial DDR actions had a mixed public response. Some found them useful at least to disarm certain powerful groups, while others viewed them as a complete failure. While permitting ex-combatants to join the security forces and reintegrate into society risked undermining justice and accountability, DDR has the benefit of constricting militia capacity to engage in further organised armed violence because stockpiles of heavy weapons are reduced dramatically.[70]

Though DDR did not extend to Taliban fighters, there was an attempt to reintegrate them through the PTS program in 2005.[71] It was criticised, however, for failing to provide safeguards and genuinely reintegrate Taliban militants.[72] Concerns were expressed in some quarters that its chairperson and others used it to provide leverage and resources to their former party commanders.[73]

For its part, the Taliban considered the national DDR process heavily biased. Even after it was underway, *Jami'at* members' influence over selection of groups to be demobilised and disbanded and which ex-combatants to reintegrate into the state system likely empowered non-state actors. Key members within the defence ministry were under pressure from their local military clients to help protect their interests.[74] This reduced DDR's impact on ground realities, and weapons collection was not imposed strictly. Moreover, political factions within the defence ministry were reportedly able to manipulate DDR and exclude ex-Taliban fighters from the process; this came back to haunt the government, since excluded former combatants joined the revived insurgency in 2006.[75]

The reintegration component of DDR in Afghanistan had similar problems. While combatants had to give up their weapons, little effort was made to prevent them from being reabsorbed into groups run by other strongmen. This further entrenched a system of patronage and military power that contravened the government's and state's legitimacy claims.[76]

In 2010, the Afghanistan Peace and Reintegration Program (APRP) tried to incentivise low-level fighters through reintegration schemes, while leaving the door open for political negotiations with senior leaders to achieve reconciliation. But while the former received U.S. and NATO support, the latter met strong U.S. resistance.[77] In 2019, the U.S. Special Inspector General for Afghanistan Reconstruction (SIGAR) noted that previous reintegration efforts had failed, inter alia, due to lack of a comprehensive peace agreement, security

measures and economic or legal opportunities for the participants, as well as the U.S. partnership with the militias.[78]

Overall, there is scepticism regarding these reintegration programs. A SIGAR report stated that evaluation and monitoring systems were unable to determine their effectiveness: in particular, whether ex-fighters were accepted back into their communities and what eventually happened to them. The report found that: "(N)one of the reintegration programs succeeded in enabling any significant number of ex-combatants to socially and economically re-join civil society. Programs specifically targeting Taliban insurgents did not weaken the insurgency to any substantial degree or contribute meaningfully to parallel reconciliation efforts".[79]

There are also ongoing reintegration efforts involving Hezb-i-Islami Gulbuddin (HIG) fighters following a 2016 peace deal with the government. However, efforts to help HIG combatants join security forces have been delayed due to changes in the recruitment process, opposition from other factions and the present priority given to peace talks with the Taliban.[80]

In sum, a core component of reintegration is also reconciliation and finding the most effective ways of overcoming the hostilities and enmities among warring factions. Increased attention to reintegration and its fit with broader goals of peace and transitional justice will be important in future.

Customary Justice

Many Afghans have been sceptical of top-down transitional justice initiatives. This is reinforced when, for example, the appointment of state officials to the Provincial Peace Committees (PPCs) and the High Peace Council (HPC) reflects choices that raise concern about the priority transitional justice will be given in peace talks.

The scepticism of the top-tier application of transitional justice opens an opportunity to explore bottom-up approaches, including using customary justice at the grassroots level. There are possibilities of tapping into customary justice as a tool of conflict resolution to achieve some degree of reconciliation at local and community levels, including through traditional leaders who may provide some guarantee that the voices of victims will be heard and their injustices tackled. This could address part of the demands put forward by rural Afghans; for example, those that relate to the drivers of local disputes and conflicts identified at the Loya Jirga for Peace in April 2019.[81] Customary justice at the local level could also create a substantial foundation of support for bottom-up mechanisms until political will at the national level is strong enough to create a more formal transitional justice process.[82]

Customary law (*rawaj*) involves a complex set of regulations that originate from accepted community practices and vary from locality to locality.[83] While official state law collapsed during the wars, customary justice displayed resilience despite many challenges. Though the government has recognised the importance of incorporating customary structures, and elders have offered to help, the mechanism has been largely unexplored. This is despite

its long history of resolving disputes, owing to its strong cultural value, in Afghanistan's very tradition-oriented society.[84]

Given that the formal court system is time consuming and has been limited to cities or district headquarter levels, the rural majority have relied on customary mechanisms that are deemed more accessible and efficient in delivering context-specific justice. A 2018 Asia Foundation survey found that 45.4 per cent of respondents go to a shura/jirga (up from 43.2 per cent in 2017), 41.9 per cent go to a state court and 27 per cent go to the *huquq* department to resolve disputes. More rural respondents (47.6 per cent) prefer to go to a shura/jirga than their urban counterparts (32.5 per cent).[85]

Religious and community leaders commonly in charge of these traditional mechanisms use restorative justice by gathering all parties to reestablish their relations and inculcate community bonding.[86] Retributive goals are secondary, and most customary justice facilitators in any case are not formal justice specialists. Importantly, the role of religious leaders is beneficial, given the central role religion plays in Afghan society.[87] As such, their involvement in future transitional justice initiatives could help avoid misinterpretation or misjudgement of transitional justice, and instead help build support for it.

One possibility in future could be to integrate customary justice into the mandate and implementation of a truth and reconciliation commission, which could draw lessons from countries such as Sierra Leone and Timor-Leste where this blending was done. Such an approach allows multiple transitional goals to be achieved at once (eg, truth-telling, victim participation, interpersonal reconciliation, and ex-combatant reintegration), helping discover why an individual committed a crime and the conditions to bring him or her back to peace, which under customary justice systems usually involve apology and reparation to the victim as a condition of readmission to the community.

Memorialisation

Efforts have been underway since 2001 to set up war crimes memorials and museums to pay tribute to survivors and victims. The Afghanistan Centre for Memories and Dialogue is the latest museum created by the Afghanistan Human Rights and Democracy Organisation (AHRDO) in 2019. It seeks to capture the stories of war survivors and victims and increase the government's understanding of their memories. Such initiatives could be amplified in future.

Negotiations between the Taliban and the U.S.

Starting mid-2018 and for about a year and a half, the U.S. and Taliban engaged in talks on ending the long war. The Taliban initially refused to engage the government directly (viewing it as a puppet regime) and opposed a power-sharing agreement. As a result – and though Taliban representatives, government members and former officials met unofficially – the Afghan government was side-lined.

The Taliban long emphasised that the presence of foreign troops drives the insurrection and is a major impediment to peace. They demanded withdrawal of U.S. forces. In exchange, the U.S. demanded the Taliban stop giving refuge to terrorist organisations and negotiate with the government.[88]

In June 2018, during the three-day Eid-al Fitr period, a temporary ceasefire was agreed. During this time, there was minimum violence and almost no civilian casualties.[89] It was a welcome reprieve, and there were scenes of Afghan soldiers and Taliban fighters rejoicing together. It appeared that Taliban rank-and-file complied with commanders' orders to cease hostilities.

While fighters learned of the ceasefire through various sources, few knew why the Taliban reciprocated the government's ceasefire offer. Speculation was that it wanted to show unity of command amid rumours of fragmentation. For both government and Taliban, the 2018 Eid-ul-Fitr ceasefire was an experiment that showed the potential for a more lasting halt. Unfortunately, it was followed by an uptick of violence in the following months.

However, in February 2020, the U.S. announced a two-stage deal with the Taliban, the first of which would witness a reduction in violence between the two protagonists. As one of this paper's authors wrote at the time:

> Beyond a showing of good faith, the most likely explanation is that the US wants demonstrable assurance that the Taliban leaders have full control over their commanders and rank-and-file fighters spread across the nation. It is unlikely that the US would agree to Taliban demands if they suspect that individuals or groups will violate any peace deal in future. And so, on the eve of the first stage of the peace deal, the Taliban political office issued a decree that explicitly ordered Taliban commanders and fighters to cease attacks against the Afghan government's provincial headquarters and foreigners based in the capital, Kabul.[90]

The deal paves the way for the next phase of the negotiation and disengagement process. There are four main issues: withdrawal of U.S. and NATO forces (the Taliban's major demand; indeed, their very *raison d'être* as a resistance); an intra-Afghan dialogue; a Taliban guarantee not to permit terrorist groups to use Afghanistan as a launchpad; and a permanent ceasefire. The agreement provides for gradual U.S. and NATO withdrawal over 135 days, dependent on Taliban reduction of violence and engagement on counter-terrorism. The parties also agreed on a mutual prisoner release (disproportionately beneficial for the Taliban) and a Taliban commitment to formal talks with the Afghan government.[91]

The agreement has been criticised, among other reasons, for the number of U.S. commitments compared to the Taliban's, as well as the unlikelihood the Taliban can enforce those it made.[92] Many fear Afghanistan will lose its post-2001 gains in human rights, women's rights and transitional justice. There are criticisms that women and civil society have been marginalised, and their grievances will not be adequately addressed in the peace talks. Some are also apprehensive that the U.S. has prematurely made a deal simply to end its military involvement, without considering the uncertain long-term implications. This could be due to U.S. domestic pressure related to elections and shifting public opinion on ending the "endless war".

Others consider this process a turning point that opens a window of opportunity to end the long conflict. The UN welcomed the agreement as importantly advancing hope for peace.[93] Its Analytical Support and Sanctions Monitoring Team noted that though the process increases the Taliban's visibility and political leverage, there are positive signs, such as the release of ten Afghan National Defence and Security Forces personnel and two civilian international hostages, some of whom the Taliban had held for up to two years, in exchange for three Haqqani Network prisoners held by the Afghan government.[94]

As of this writing, the Afghan government and the Taliban are deep into the process of prisoner releases (with 4,600 already released), based on the U.S.-Taliban deal. The U.S. has also drawn down a number of its military forces from Afghanistan. But even as he intra-Afghan dialogue is about to begin, there is little known about the agenda of the talks and both sides have had phases of intensifying violence against each other with high civilian losses.

Narratives, Views and Expectations of the Parties on Transitional Justice

Key actors understand transitional justice differently. AREU interviews with a diverse group of political actors demonstrate that it is alternately perceived as a "project" to attract donor funding; a means to get revenge against political rivals; a guise for impunity; or a sincere effort to face up to past atrocities. Interviews have also highlighted different forms of justice or injustice, including unequal distribution of resources, patronage-based government appointments and widespread corruption, all seen as linked to the impunity enjoyed by perpetrators.[95]

Since 2010, the Afghan government and its donors have agreed that the war cannot be won by military or coercive means alone. The concern, however, is that the Taliban continue to view the peace talks as an opportunity to build legitimacy for their Islamic Emirate. They have been able to remove some of their top leaders from UN and U.S. terrorist blacklists and have maintained a political office in Doha, while continuing violent operations that have generally targeted Afghan military and government officials.[96]

This section elaborates briefly the perceived multitude of expectations each party has regarding transitional justice and how it intersects with the overall peace process.

The Afghan Government

The post-Bonn strongmen (mainly Northern Alliance members and ex-Mujahideen) expected attention to be on war crimes committed by ex-PDPA and the Taliban, thus bypassing the civil war period. By 2009, however, the environment had changed: a presidential candidacy while accused of war crimes was no longer acceptable. This led to prioritising the amnesty law's blanket forgiveness.

Kabul's current political elite – notwithstanding the disputes around the 2019 presidential election – is largely united on maintaining the government's status and reaching a political settlement that makes the Taliban part of the political system. There is no clear message on past abuses. The terms "human rights" and "transitional justice" were central for a time in a few strategic public documents, such as the Transitional Justice Action Plan, but have gradually disappeared from the narrative. From the perspective of powerful war crime perpetrators, the main concern is that addressing human rights violations might lead to their own trials. This has been the chief concern since 2001 and likely the biggest obstacle to moving on criminal accountability. The current focus is, instead, power sharing.

The dominant government approach to justice has simply been to forget the past and move on. What is needed is to help policymakers shift thinking from "transition" as a temporary process to "transformation" that seeks sustainable and long-term processes. This could encompass a broad agenda that involves changing political, economic and social processes, and a more community-based approach to justice and reconciliation that respects core principles of human rights and Afghan law.

The AIHRC

The AIHRC's new leadership is taking a more proactive approach to monitor and denounce all forms of human rights violations, in particular the targeting of civilians during ongoing violent conflict. The AIHRC endorses the peace process with the Taliban, and advocates holding an observatory seat to ensure that no decision excessively undermines human rights values.

As talks with the Taliban get underway, the role of the AIHRC (regardless whether they become formal observers inside the negotiation) will be critical, both in articulating substantive ideas about the balance of peace and justice and in advocating direct or indirect participation by victims. At the same time, one of its key challenges will be how to earn the full trust of all parties to the conflict in order to be able to take an impartial position in defending the human rights of all Afghan citizens.

The Taliban

As already noted, the Taliban were excluded from the Bonn Agreement. From 2001 to 2006, they suffered serious attacks: intimidation, arrests, torture, and night raids and bombings that killed not only fighters but also innocent community members. At the time they issued statements that they played no part in suicide attacks or bombings that caused massive civilian casualties. This, however, is in conflict with them claiming responsibility for many attacks that did cause civilian casualties.

Barnett Rubin has long argued that discussion about victims should include Taliban fighters, since their educational and employment opportunities were limited.[97] They were raised to stringently adhere to the jihadi ideology, and taking up arms appeared to be a sensible choice. Rhetorically, the Taliban leadership uses discourses of justice, human rights, war crimes and even crimes against humanity to highlight the violations against their members and violations against civilians under government control.[98] Former leaders interviewed by AREU cited examples from South Africa and Sri Lanka for their vision of justice, insisting that reconciliation is a critical starting point to address the injustices that all actors have experienced.[99]

Taliban demands in the peace talks with the U.S. focused heavily on prisoner release and UN and U.S. sanctions. But while this may suggest a direction of discussion for the incipient intra-Afghan talks, there is reason to be concerned about the war-ending goals that undergird such concessions. The U.S. Institute of Peace (USIP) found in a 2018 survey that

low-ranking fighters – soldiers most of their lives and convinced of the justification for a holy war – would have trouble conceiving a life without guns and violence.[100]

In any case, Taliban political demands to date have centred around the return of their Islamic Emirate. They envision any political settlement as being on their terms, meaning re-establishing the Emirate and revising the constitution. There is no clear public articulation of their position on addressing war crimes or violations, nor have they discussed plans for reconciliation and reintegration of their forces. When some ex-Taliban were asked how they would deal with past war crimes and violations, they refused to respond.[101]

What is clear is that the Taliban is a violent extremist group with which meaningful negotiations are possible; something that cannot as easily be said about many other jihadist groups. This capacity and willingness to negotiate is reflected, inter alia, in the fact that a deal has already been reached with the U.S. But it is not only this: the Taliban has governed Afghanistan in the past, and thus likely views the value of negotiation with greater realism and self-interest than a jihadist group that has not. For that same reason, however, the group is more likely than not to view questions of accountability or justice as a threat to its political goals, including the aspirations for power among its leaders.

Afghan Civil Society

Research for this paper revealed that Afghans have varying understandings of the terms "peace", "justice" and "reconciliation". The few civil society organisations that have endorsed and promoted transitional justice have contributed in modest ways to introduce it in debates, mobilise victims groups and raise awareness; but none appears to have developed a resonant and realistic transitional justice vision for a post-conflict future.[102] In addition, members of these civil society groups are not part of the negotiations and thus lack direct access to the peace process.

A 2019 report commissioned by USIP concluded that most Afghan civilians had affinity neither for the government nor the Taliban.[103] Members of civil society and victim groups interviewed for that report felt the state could create better economic opportunities and increase human development, but the Taliban could provide better stability and security in some ways. Many women, however, had reservations about the Taliban, due to the restrictions they impose on their freedom of movement, attire and education. Some respondents were negative toward the U.S., feeling that that the presence of its military aggravated the conflict, and that it wanted to control Afghanistan's natural resources and lacked genuineness in the peace talks. Yet, responses varied by locality: for example, city residents were more favourable to the U.S. and international forces, perhaps because of greater opportunity to benefit from foreign aid than residents of Taliban-controlled areas.[104] One important point across all interviews including civil society was an emphasis to end this war and prioritise peace efforts.

Whether citizens will be able to participate in the peace talks – through written, verbal or combined submissions – is unclear. The prevailing, if malleable, expectation is that the

government and the Taliban will run a closed peace negotiation and place political recon-ciliation above any form of individual or group accountability.

International Actors

Afghanistan's allies have never been fully on the same page on human rights, transition-al justice, peace support, reconciliation and reintegration. For example, the EU and most EU member states strongly support the government's effort to address human rights and are committed to fund the AIHRC. But the U.S., despite support for multiple accountabil-ity and anti-corruption institutions and mechanisms, is largely quiet on war crimes and transitional justice. In addition, until recently it rejected reconciliation via high-level nego-tiation with Taliban leaders, supporting only reintegration of low-ranking Taliban fighters.

Being with the Bonn process, there is general consensus that both Afghan governments and US/NATO countries have tended to resist implementing accountability and justice processes. Even when Brahimi, the then Special UN Representative, created a long-term justice policy, he focused on "peace first, justice later".[105] International actors engaged with the Afghan political system feared that accountability mechanisms could disrupt the fragile peace and spark another civil war.

That the Bonn Agreement paid little attention to justice and accountability, and that the International Criminal Court (ICC) has not even started an investigation let alone issue ar-rest warrants for alleged war criminals, are sources of frustration for many Afghan victims. International community reticence is perceived as linked to fear that pursuing charges may drive strongmen to cease cooperation with the state. According to the AIHRC, however, 76 per cent of Afghans believed in 2005 that bringing war criminals to justice would *increase* stability and bring security. Only 8 per cent felt stability and security would decrease.[106]

On 5 March 2020, the ICC Appeals Chamber decided unanimously to authorise the pros-ecutor to begin an investigation that could include alleged war crimes "committed on the territory of Afghanistan in the period since 1 May 2003, as well as other alleged crimes that have a nexus to the armed conflict in Afghanistan and are sufficiently linked to the situation and were committed on the territory of other States Parties in the period since 1 July 2002".[107] The decision, based on the fact that crimes were committed in Afghanistan, a state party of the Rome Statute, came after the prosecutor asserted a reasonable basis of evidence that the Taliban and affiliated groups, as well as the Afghan National Security Forces and U.S. armed forces, had "committed acts of torture, cruel treatment, outrages upon personal dignity, rape and sexual violence" in Afghanistan and clandestine CIA fa-cilities in Poland, Romania and Lithuania.[108] In response, U.S. President Donald Trump has indicated an intention to disrupt the Court's work by imposing sanctions against in-vestigating officials and revoking the U.S. visa of the chief prosecutor, Fatou Bensouda.[109] This reaction contrasts with the EU, which has generally emphasised the importance of addressing war crimes. It is also possible that, once underway, the mediators of the in-tra-Afghan talks will encourage the parties to consider a realistic accord that balances domestic peace and justice goals, such that the ICC prosecutor can defer to the national process. After all, the ICC is designed as a court of last resort, which acts only when na-tional authorities fail to act reasonably.

Conclusion: A Way Forward

Afghanistan is a case study of how a war cascaded into more war and crime. In the deteriorating security situation, the state has arguably prioritised temporary security and stability over human rights, justice and accountability that have always been short lived.

Security and human rights are often seen as conflicting, disparate objectives. While the army and police are responsible for security, human rights and justice are left for the judiciary, human rights commission and NGOs. Transitional justice has suffered the same fate in Afghanistan. This is despite the fact that there is not even agreed understanding of what transitional justice is and how it might contribute to all conflict parties.

The government has seemingly devolved the responsibility for transitional justice to the AIHRC. Yet, transitional justice is a complex process that requires the cooperation and engagement of multiple stakeholders and institutions including those outside the system who are affected by violations. Despite limited capacity, the AIHRC has nevertheless done considerable work. Its early nationwide consultations were extensive and sought to capture the sentiments of various stakeholders. But overall, the political process and transitional justice have developed on divergent rather than convergent tracks.

Afghanistan's situation is more politically complicated than that of many other post-conflict states. Many former commanders and faction leaders who returned to power after 2001 have tried to de-legitimise transitional justice efforts due to fears they would target the Mujahideen, who are viewed as the emancipators of the country from the Soviets and the Taliban. Civil society's weakness, coupled with an insecure environment and culture of fear, has prevented Afghans from seeking redress or pursuing transitional justice. They need their government's commitment to handle the strongmen, the potential "spoilers of peace" who thrive on the insecure environment.

With a new peace process in the making, a new opportunity arises to consider whether or how to face past atrocities. Thinking in terms of what is politically achievable could be critical. Creating a special court or tribunal for prosecution would be politically infeasible, but other mechanisms such as an office of missing persons or collective reparations program might face less resistance. Bottom-up customary processes with an emphasis on restorative justice and community harmonisation could also offer a suitable component of any accord for addressing grievances and accountability at local levels. Customary justice has demonstrated resilience during many years of war and political turmoil. However, some regulatory mechanisms on ensuring that human rights and especially women's rights are not compromised by customary justice approaches to reconciliation will need to be taken into account. The international community should thus try to view such justice in a broader light, given that rural residents prefer jirgas/shuras to state courts. While customary

justice has many limitations and should not be engaged uncritically, if it is applied contextually it can fill important gaps.

Ultimately, any transitional justice plans will need to fit within the peace process, and not the reverse. Fortunately, this is feasible. The parties' presumed expectations of legal forgiveness for past atrocities offer an entry point to raise larger questions about the price of peace in Afghanistan. Being prepared with creative, locally-inspired and internationally-informed ideas is vital for all actors who believe that a different balance is possible and desirable this time around.

Annex 1: Questions for Interviews

Name	
Position/Title	
Date of Interview	
Place of Interview	

1. How do you define the main themes around injustice, war crimes, and violations of human rights in the post-2001 context? [Note: you can also indicate your personal definition of these terms]	
• Injustice by government	
• Injustice by the Taliban	
• Injustice by other parties	
2. Have you experienced violence and/or injustice in Afghanistan? If 'yes', what is your experience of them (whether directly to you or your close family and or as a part of the constituency you represent)?	
• When	
• Where	
• By whom	
• How/what happened	
3. How do you assess the approaches to (in)justice by the main parties to the conflict?	
• Government's approaches	
• Taliban's approaches	
• International community's approaches	
4. What could be done now and in future to address these injustices?	
• *By government:*	
a. Now	
b. In future	
• *By the Taliban:*	
a. Now	
b. In future	
• *By International actors:*	
a. Now	
b. In future	
5. What are the benefits you envisage in the above-identified recommendations?	
6. Are you familiar with the concept of transitional justice?	
• How do you understand this concept?	
• What comes to mind when you hear about it or discuss it?	
• Are you aware of other countries using and or addressing transitional justices issues?	
• What are the core lessons we can learn from other countries? Which country and which lessons?	

Annex 2: Chronology of Events

Dec 2001	Bonn Agreement is signed
Jun 2002	Afghan Independent Human Right Commission (AIHRC) is formally established
Jan 2004	The new Afghan constitution is finalised through a Loya Jirga
2002–2005	Many Taliban leaders are arrested and sent to Guantanamo Bay or Bagram Prison
2004–2006	War between NATO forces and Taliban grows; first wave of suicide attacks by Taliban and Al-Qaida
2007	U.S. build-up, ISAF war against Taliban or counterinsurgency operations
2008	Reassessment and renewed commitment and Taliban attacks on supply lines
	UNAMA launches its firsts civilian casualties report
2009	U.S. reinforcements and the start of the military surge with troop increase and intensification of war
	The Amnesty Law (originally known as the National Reconciliation, General Amnesty and National Stability Law) is approved by parliament
2010	American-British offensive and further intensification of war on terror
	London Conference is held in which Afghanistan roadmap for peace is endorsed by international partners
2011	Withdrawal of international military forces starts
2013	Withdrawal plans implemented and a post-2014 plan also prepared for military engagement
	Taliban Political Office is established in Doha (Qatar)
2014	Bilateral Strategic Agreement signed between the U.S. and Afghan governments
	Taliban resurgence and the start of drone strikes by international military forces
2016	Peace deal is signed with Hezb-i-Islami; withdrawal of U.S. troops from Afghanistan
2020	Taliban-U.S. peace deal is signed in Doha

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