



INSTITUTE FOR INTEGRATED TRANSITIONS

Transitional Justice and Violent Extremism

AN ORIGINAL POLICY FRAMEWORK



RONALD C. SLYE

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ABOUT THE PROJECT

The [Institute for Integrated Transitions \(IFIT\)](#) is an international think tank that brings together under one roof the best of theory and practice in relation to successful negotiations and transitions out of conflict or authoritarian rule.

This paper 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.

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ABOUT THE AUTHOR

Professor Slye 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: An Outsider’s View from the Inside* (Cambridge U Press).

Professor Slye received his B.A. from Columbia University, his M.Phil in International Relations from the University of Cambridge, and his J.D. from the Yale Law School.

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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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DESIGN & TYPESETTING

Koru Form & Function / Kjell Olsson

Institute for Integrated Transitions

Sant Pau-Recinte Modernista (Pavelló Central)
C/Sant Antoni Maria Claret, num.167
08025 Barcelona
Spain

Tel: +34 93 524 1011
Email: info@ifit-transitions.org

For more information about IFIT, please visit the Institute's website:
www.ifit-transitions.org
