



## AFRICA POLICY BRIEF

### Security Forces' Strategies of Resistance to Transitional Justice

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Security forces are key actors in transitional justice, with the ability to hamper or upend the process. While concerns have often centred on their possible violent responses to transitional justice, security forces are generally more likely to mobilise more discrete forms of resistance. Drawing on transitional justice experiences in Brazil, Chile, Sierra Leone and Uganda this policy brief identifies six types of resistance strategies used by security forces: threatening violence, obstructionism, de-legitimation, strategic cooperation, disengagement and appropriation. It also examines which contextual factors may influence which strategies the security forces are more likely to pursue.

#### INTRODUCTION

The role and behaviour of the security forces are crucial in periods following the end of authoritarian rule or armed conflict, and they play a determining role in the unfolding of a transition.<sup>i</sup> They can, for instance, unduly interfere in politics, act as forces of destabilisation and insecurity or, conversely, be too weak to help (re)assert state authority and

impose law and order. Both dysfunctional and politicised security forces pose a significant challenge to democratic institution-building, as they create an environment marked by insecurity and instability. Moreover, security forces are often important sources of human rights violations, a behaviour which they can carry over into the (post-) transition period if left unreformed. In such contexts, the implementation of transitional justice mechanisms is increasingly seen as an important means by which the democratic transformation of national security forces can be supported.<sup>ii</sup> However, security forces can also be formidable obstacles to transitional justice efforts, especially when they feel directly at threat from such undertakings. Therefore, the response of security forces to transitional justice matters significantly for its operation, as it will outline the political and practical boundaries within which transitional justice must operate.

Domestic and international actors' reluctance to support transitional justice is frequently tied to fears that security forces will resort to violence if overly harsh justice policies are pursued. While this is understandable and certainly a consideration not to be neglected when setting up transitional justice mechanisms, outright violent resistance by security forces is, in fact, uncommon. The security threat posed by

transitional justice has thus often been overestimated, while insufficient attention has been paid to the variety of more discreet and pernicious ways by which security forces can curtail or scupper transitional justice efforts. Improving the effectiveness of transitional justice thus requires an understanding of the full scope of strategies that security forces can deploy. In this policy brief, I will draw on research on transitional justice experiences in Brazil, Chile, Sierra Leone and Uganda to identify six types of resistance strategies used by security forces: threatening violence, obstructionism, de-legitimation, strategic cooperation, disengagement and appropriation. I will then propose several contextual factors that may influence which strategies the security forces choose to pursue. This can offer an analytical tool for assessing risk factors posed by transitional justice.

### THREATENING VIOLENCE

There is a common fear that transitional justice might provoke sections of the security forces who feel threatened by such processes to use violent means, such as coups or defections from an ongoing peace or disarmament process, to halt these efforts and reverse the transition. This threat is on occasion very real or can be instrumentalised by security forces to gain leverage within ongoing peace, disarmament or reform negotiations. In Chile, for instance, in the early years of the transition from military to civilian rule, the security forces twice made overt threats to reverse the democratisation process in response to attempts to investigate the military. But these threats were never acted upon, and even as domestic prosecutions ratcheted up in Chile in the 2000s, the military did not reissue the threats. In Sierra Leone and Brazil, security forces were also concerned over transitional justice efforts but on no occasion did they signal a threat of violence. Following the 2003 arrest by the Special Court for Sierra Leone (SCSL) of

Samuel Hinga Norman, the leader of the Civil Defence Forces (CDF) who fought in support of the government during the civil war, there were widespread concerns that violence would break out.<sup>iii</sup> This led the SCSL to take extra security measures. However, no such violence ensued, even after further CDF arrests were made.

The recourse to violence is a high-risk strategy which security forces may be reluctant to pursue. The perceived threat posed by transitional justice is likely only one among a host of factors which guide security forces' decisions about whether to unsettle a transition process. Security forces whose military capacity has weakened, who lack strong political support, or who face important internal divisions may be reluctant to mobilise force. The costs of attempting a destabilisation might also be seen as outstripping the threat posed by transitional justice; the degree to which the military feels it can control, curb or reorient transitional justice processes; the political and strategic gains they may accrue from participating in the democratisation or peace process; and the political and reputational costs involved in destabilising the transition. It is also likely that the further ahead a country is in the democratisation process, the bigger the stake the security forces have in remaining within the democratic system, especially once generational changes have taken place within the security forces.

### OBSTRUCTIONISM

A more common strategy of resistance is for security forces to try to weigh in on the political decision-making process in order to obstruct transitional justice. The objective is to block the creation of transitional justice mechanisms or, if this proves impossible, to circumscribe significantly their scope so that they pose a

minimal threat to the security forces, or even to force their premature shutdown. Obstruction can also take the form of a refusal to cooperate with a transitional justice mechanism or direct interference in the operation of transitional justice mechanisms (either by exerting pressure on transitional justice officials or by demanding a guaranteed representation within a transitional mechanism or its oversight body).

In Chile, the security forces successfully pressured the government to adopt measures to curtail transitional justice efforts. They obtained, amongst others, that the government would not revoke the 1978 amnesty law; that convicted military officers would serve out their sentences in special military facilities; and that the testimonies given before the 2003 truth commission remained under seal for 50 years. Similarly, in Brazil, the minister of defence and three generals threatened to resign in 2009 if the government followed up on its proposal to create a truth commission.<sup>iv</sup> This led to a protracted reopening of negotiations about the truth commission proposal, which had been drafted following an extensive consultation process with civil society actors. While the military was ultimately unsuccessful in blocking the creation of the truth commission it did obtain some concessions, such as an express exclusion of criminal liability for political crimes and the removal of any mention of political repression in the text.<sup>v</sup> To avoid the military dictatorship being singled out in its investigations, they also obtained a broadening of the time period the truth commission would be mandated to investigate. Over the course of the commission's operations, the military further continued to obstruct its work by refusing to grant access to military records, claiming that most documents had been destroyed.

Another, more outright, form of obstructionism is the deliberate curtailing of the mandate of a

transitional justice mechanism, in order to exclude the security forces from its scope. For instance, the Commission of Inquiry into Violations of Human Rights set up in 1986 in Uganda was only mandated to investigate human rights violations committed by state forces between October 1962 and January 1986. This meant that it was expressly barred from looking at any violations committed by the National Resistance Army (NRA) which had seized power through an armed struggle in 1986, and which came to form the bulk of the new national security forces.

### DE-LEGITIMATION

Security forces can also mobilise discourses that aim to undermine the credibility of actors calling for the establishment of transitional justice or raise doubts about the legitimacy of the transitional justice process itself. In Brazil, as part of efforts to undermine the National Truth Commission, the political right and military mobilised a discourse depicting truth-telling as an exercise in 'revanchism' against agents of the former regime. They based these claims on the fact that the commission was established by President Dilma Rousseff, a former 'guerrilla' and political prisoner under the military regime. They also continued to glorify the events of 1964, by referring to them as a 'revolution' rather than a 'coup'. In Chile, upon release of the report of the National Commission for Truth and Reconciliation, the army vehemently rejected its findings, accusing its drafters of putting forward a historical perspective that was false and unpatriotic as it did not align with the military's claim that its actions had served to protect the country from an impending civil war. Through such discourses, the security forces and their supporters (whether in the media or political institutions) thus seek to portray transitional justice efforts as unpatriotic and biased.

Another example of this strategy is Ugandan President Yoweri Museveni's adoption of an anti-International Criminal Court (ICC) rhetoric (even though the Ugandan government had itself referred the situation in northern Uganda to the ICC), accusing the ICC of being a neo-colonialist and politicised institution unfairly targeting African countries.<sup>vi</sup> In part, his positioning was driven by his ambition to be seen a key leader on the African continent and as a strong defender of African interests and solidarity. However, his anti-ICC discourse also served as a reminder of his limited support for the ICC (conditional on it only targeting rebel actors and not the security forces) and his preference for domestic and non-traditional justice approaches, as formalised in the 2007 Juba Agreement on Accountability and Reconciliation,<sup>vii</sup> over which he can could maintain greater control.

Another de-legitimation strategy consists of the misuse of the term 'reconciliation'. In the context of transitional justice, reconciliation refers to the objective of restoring relatively peaceful cohabitation between communities previously at war, between victims and perpetrators, and of rebuilding relations of trust between the state and its citizens. However, political actors often frame 'reconciliation' as the need to engage political adversaries in dialogue and in the new political order and invoke it as an excuse for not engaging in transitional justice. Reconciliation is presented as being aimed, first and foremost, at appeasing combatants and therefore requiring disarmament-through-amnesties (as in the case of Uganda), power-sharing between belligerent parties, or the prioritising of military reform over military accountability (as in the case of Sierra Leone).

## STRATEGIC COOPERATION

Where the cost of outright opposition to transitional justice is too high or where such

opposition is unlikely to produce results, security forces may instead opt to engage in strategic cooperation. Such strategic cooperation is aimed at garnering political goodwill and reducing external pressures to confront past abuses while tightly controlling the extent of cooperation with transitional justice processes. Security forces may agree to cooperate or directly participate in a transitional justice mechanism, but then, in practice, hold back some crucial documents or other forms of evidence, only encourage or allow lower-ranking officials to testify, or exert pressure on witnesses.

Such strategic cooperation was evident with the Mesa de Diálogo held in Chile from 1999 to 2001. To address the unresolved cases of disappearances under the military regime, the government chose to engage the army directly by organising a series of round tables bringing together government officials, church representatives, military officials and civil society representatives tasked with producing a fact-finding plan. The aim was to obtain the collaboration of the security forces in locating the remains of the disappeared. In a rapidly evolving socio-political environment, it became increasingly difficult for the security forces to persist in their public opposition to transitional justice efforts. As a result, they (reluctantly) agreed to participate in the Diálogo, following which a process was initiated whereby during a six-month period, perpetrators or other informants could submit information about the location of the remains of disappeared individuals to church or military authorities without facing any risk of criminal liability. While the military produced information on 200 disappearances, most of this was restricted to incidents that occurred in the period immediately following the military coup (1973-1974), to cases of people whose bodies had been thrown into the ocean, and/or to cases where

the information provided turned out to be misleading or false.<sup>viii</sup> In the end, few remains were found or identified because of the information produced by the Diálogo.

## DISENGAGEMENT

While generally security forces who feel threatened by transitional justice will seek to hamper or curtail it, resistance can also take on a more ‘passive’ form where security forces simply disengage from transitional justice efforts and debates. This is most likely to arise in contexts where transitional justice has gained such momentum that security forces are no longer able to influence it. Any prevalent feelings among the security forces that they are being scapegoated by transitional justice can also lead to acts of disengagement.

In Sierra Leone, it is notable that the rate of participation of perpetrators (from rebel groups and state-allied forces) in the Truth and Reconciliation Commission was extremely low. This is in part the result of the commission’s reluctance to use its subpoena powers and to the uncertainty among perpetrators about whether statements made before the commission could be used by the Special Court for Sierra Leone to hold them criminally liable. But perceptions that the Truth and Reconciliation Commission was tethered to specific political interests and would likely misrepresent what they considered to be the legitimacy of their armed struggles and ultimately scapegoat them, also explains this low rate of participation.<sup>ix</sup>

Disengagement can also manifest itself through efforts by security forces to perpetuate their own historical narratives and a commemoration of the past which stands apart from more ‘official’ transitional justice processes. This reflects an attempt by the security forces to create spaces of dissent within the dominant societal discourse about the past. This has been

most striking in Chile where the army over the past two decades has moved towards a defensive strategy of retrenchment, in a bid to preserve maximum autonomy from the executive, and continues to present itself as being unduly scapegoated for past abuses. In a memorial landscape that is already highly fragmented, counter-narratives have been pushed by Pinochet supporters from the political right and by security forces through their own memorial and commemoration initiatives. Research on attitudes towards the military past by members of the police force in Brazil similarly illustrates the persistence of beliefs in the justified nature of past behaviour, which is merely masked by the formulation of new moral frames.<sup>x</sup>

## APPROPRIATION

The final resistance strategy is the appropriation of transitional justice mechanisms and spaces. Often, this is not merely aimed at weakening or curtailing transitional justice, but at mobilising (some might say, perverting) the latter to serve the direct interests of the security forces. It is, for instance, notable in the case of Uganda that the government has entirely framed transitional justice as a ‘special’ form of justice geared towards responding only to human rights abuses committed by non-state actors.<sup>xi</sup> The government’s ICC referral was clearly aimed at the Lord’s Resistance Army (LRA) rebel group, while the International Crimes Division at the Ugandan High Court was similarly conceived as a domestic instrument exclusively meant for the prosecution of rebel and terrorist groups. This narrow view of transitional justice is also perpetuated in the National Transitional Justice Policy adopted by the government.<sup>xii</sup> In contrast, crimes committed by the security forces have been downplayed as ‘merely’ constituting cases of individual excesses which fall under the purview of domestic military courts. Military officials have been particularly quick to invoke the ICC’s decision to focus only on LRA crimes



as evidence to ‘clear’ the Ugandan People’s Defence Forces (UPDF) of any wrongdoing.<sup>xiii</sup>

Framing transitional justice in this way has served the government in not only downplaying the institutional responsibility of the security forces for abuses committed during anti-insurgency operations, but also in legitimising its militarised response to the war in northern Uganda and downplaying the central role of broader governance problems as causes of war in the country. Instead, the sole focus of prosecutions on the LRA has cemented the narrative that the LRA is the only evil at the root of conflicts in northern Uganda.<sup>xiv</sup> Transitional justice has thus been appropriated by the government as an instrument to defeat its (political) opponents and to avoid addressing drivers of regime discontent, while also diverting international focus away from the government’s own misconduct and poor governance.

But appropriation of transitional justice by the security forces need not always produce negative effects. Chile offers an interesting illustration of how sections of the security forces can use existing transitional justice spaces to express their own justice demands. Truth-telling and accountability efforts in the country have served as a catalyst for the emergence of a movement representing forced conscripts within the national army, who demanded to be recognised as victims of the military. While they have so far not received this recognition from existing transitional justice mechanisms, the demand has challenged and expanded the boundaries of memory debates in Chile.<sup>xv</sup>

### THE IMPORTANCE OF CONTEXTUAL FACTORS IN RESISTANCE CHOICES

There is thus significant diversity in the strategies of resistance to transitional justice mobilised by security forces. Most of these are directly aimed at curtailing or managing the

effect of transitional justice rather than at destabilising the transition process. An important conclusion therefore is that we should be less concerned with the alleged ‘security threat’ posed by transitional justice and instead be more concerned by the ways in which security forces’ responses may thwart transitional justice processes and considerably constrain the hoped-for transformative effects of transitional justice. It is thus essential that managing security forces’ possible reactions to transitional justice be built into transitional justice programming at the early stages.

It is of course difficult to ascertain from the outset which strategies security forces will deploy. The case of Chile also illustrates that security forces’ responses to transitional justice are not static but evolve over time as the socio-political context changes. And, of course, there is no universal template for how security forces will respond to transitional justice, as this will vary from country to country. There are nonetheless several factors which may help identify the resistance strategies that security forces are more likely to deploy.

**Nature of the transition:** The most obvious factor is the way in which power relations are configured at the time of the transition or at the time at which transitional justice mechanisms are under negotiation. The stronger the security forces’ military, strategic and political position is at the time of transition, the greater capacity it has to block or curtail transitional justice efforts. Brazil, Chile and Uganda all offer examples of this. In Brazil, the very progressive transition from military to civilian rule meant that the security forces were able to hold transitional justice efforts at bay for decades. In turn, the institutional embedding of security forces into the post-transition political institutions in Chile underwrote their ability to curtail the effects of transitional justice processes. In Uganda, the

outright military victory by the NRA in 1986 meant it had full leeway to insulate the security forces from the reach of transitional justice. It could also be expected that where the balance of power is strongly in favour of the security forces, the latter are likely to be less risk-averse and therefore willing to consider the recourse to violence if transitional justice is nevertheless pursued. This, however, did not bear out in the four case studies examined in this brief.

**Nature and timing of transitional justice:** As previously mentioned, the costs of violently resisting transitional justice will likely increase the more advanced the transition process is. In contexts of ‘post-transitional justice’,<sup>xvi</sup> strategies of obstructionism, strategic cooperation, delegitimation or disengagement are therefore more likely than violent resistance. However, this observation may not hold in cases where a political or peace transition process flounders or a radical regime change occurs, as these are likely to alter significantly the vested interest various actors have in maintaining stability.

The nature of the transitional justice mechanisms may also affect how security forces choose to respond. For instance, in the case of Chile where trials were held at the domestic level, the security forces possessed greater leverage to pressure the government into adopting measures which would minimise the scope and effects of transitional justice. In contrast, when trials are held before hybrid or international courts, as in Sierra Leone, the security forces are often less able to directly weigh on their investigations. As a result, the risk of a violent response increases. But where security forces believe domestic political authorities may be willing to shield them from these institutions (as in the case of Uganda), strategies of disengagement or strategic cooperation are more likely.

**Nature of civil–military relations and degree of state capacity:** The extent to which close ties exist between the security forces and the civilian authorities is likely to affect strongly the type of strategies that security forces are able and willing to deploy. These dynamics may even, to some extent, counterbalance the above-mentioned balance-of-power effects and reduce the risk of threats of violence. In Chile, the position of the military was strong but its relations with the new civilian authorities were very fraught, thereby limiting the degree of political support it could garner for violently resisting transitional justice and increasing the costs of opting for such a strategy. Pressure to (re)negotiate the boundaries of transitional justice and strategic cooperation were therefore a more feasible strategy for the security forces to pursue.

In contrast, in Uganda the security forces were closely intertwined with the political leadership as the NRA leader, Yoweri Museveni, became the country’s new president. His regime has attached significant value to a military ethos, whereby political and military power is seen as intrinsically linked (the army, for instance, has a guaranteed ten-seat representation in parliament) and forms the bedrock of regime stability.<sup>xvii</sup> This creates an environment where security forces feel they enjoy sufficient support from the civilian authorities to insulate them from transitional justice.

In Sierra Leone, the relationship between President Ahmed Tejan Kabbah and the army was more fractious because of his earlier reliance on the CDF as an alternative to the national army whose loyalty he questioned. But Kabbah’s rejection of the findings of the Sierra Leone Truth and Reconciliation Commission acted as a strong signal that he would not pursue punitive justice for crimes committed by the national security forces. Therefore, in cases such as Uganda and Sierra Leone, the threat of violence

is not seen as a useful response by the security forces, which are then more likely to engage in obstructionism or disengagement.

**Degree of external involvement:** The last factor which may weigh on security forces' response to transitional justice is the nature and extent of involvement of external actors – such as the United Nations, the African Union or powerful donors – in the transition process. Such external involvement is often more present in peace transitions than in political transitions. It can have the effect of reducing the risk of violent responses to transitional justice (unless external actors are seen as an active party to the armed conflict). The involvement of external actors may increase the reputational costs for security forces, should they resort to force or interfere in transitional justice efforts, thereby insulating the transitional justice efforts from obstructionism and appropriation.

But external involvement may not always strengthen efforts to pursue transitional justice. For instance, if security forces feel their agenda is supported by these external actors or the external actors are perceived as being lukewarm towards transitional justice, security forces can disengage from transitional justice efforts. It is important to underline, however, that since of our four case studies only Sierra Leone experienced extensive external involvement in the transition process, more research is needed to obtain a fuller picture of the effects of external involvement on security force responses to transitional justice.

## CONCLUSION

Security forces are key actors in transitional justice, with the ability to hamper or upend the process. But despite acknowledging that security forces can potentially hamstring transitional justice, there has been little systematic analysis of the different ways in which they interact with

transitional justice processes. This policy brief has proposed six different strategies of resistance used by security forces: threatening violence, obstructionism, de-legitimation, strategic cooperation, disengagement and appropriation. The assumption that the risk of violent response is high has often led to the adoption of overly cautious appeasement and pro-impunity policies towards the security forces. At the same time, the other more discreet ways in which security forces respond to transitional justice processes have been overlooked or undervalued. Yet creating conditions favourable for transitional justice to operate and produce the hoped-for transformative effects relies on managing expectations and attitudes towards these processes – including the responses of those targeted by transitional justice. The better we understand how security forces interact with transitional justice, the better we may be able to manage and circumvent their efforts at hampering, curtailing or diverting transitional justice efforts.

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