



Reconciliation and Traditional Justice: Learning from African Experiences

Project Description

I. Project Background

Countries that emerge from a bitter conflict tend to adopt one or both of two strategies in dealing with a legacy of violence: trials and truth telling. This choice has been fully encouraged by the international donor communities and NGOs. It has even sometimes been written into internationally brokered peace agreements, as in Guatemala, Sierra Leone and Burundi. However, situations arise where retributive justice and a truth commission are out of reach. Obstacles may be political (the previous and post-conflict balance of power, the intensity of division in society, the need to address all energy and resources to other issues on the transition agenda, the collapse of the social and legal system) and/or cultural (a non-Western vision on crime, guilt and punishment). In such cases alternatives may be found in the legacy of indigenous mechanisms of dispute settlement. On the other hand, there might be instances where trials and extensive truth seeking are possible, but where such mechanisms can play a welcome complementary role.

Traditional dispute settlement procedures have, according to the NGO Penal Reform International, in principle the following strengths:

- they are accessible to rural people in that their proceedings are carried out in the local language often within walking distance;
- with simple procedures Traditional Justice Mechanisms (TJMs) do not require the services of a lawyer, and the delays associated with the formal system; in most cases, the type of justice they offer — based on reconciliation, compensation, restoration and rehabilitation — is more appropriate to people living in close-knit communities who must rely on continuous social and economic cooperation with their neighbours;
- TJM's are highly participatory giving the victim, the offender, and the community as a whole, a real voice in finding a (hopefully) lasting solution to the conflict;
- they assist in educating all members of the community as to the rules to be followed, the circumstances which may lead to them being broken, and how ensuing conflict may be peacefully resolved;
- they employ non-custodial sentences, effectively reduce prison overcrowding, may allow prison budget allocations to be diverted towards social development purposes, permit the offender to continue to contribute to the economy and to pay compensation to the victim, and prevent the economic and social dislocation of the family;
- generally traditional mechanisms are much more cost effective in comparison to their international counterparts.

These traditional mechanisms have, however, some significant weak points, which sometimes are in contradiction with international human rights and particularly women's and children's rights. In addition, traditional forms of justice are designed to deal with relatively small numbers of cases of minor wrongdoing - theft, disputes between neighbours and so on. Do they have the capacity to restore peace after years and sometimes decades of violence? Can they bear the weight of the most serious crimes, including state crimes with important structural and institutional dimensions? Can they be used in situations where perpetrators and victims don't know each other?

The difficulty in answering these questions is that there are as yet only a few and fairly recent experiences (the most ambitious operation so far is the remodelling of the *Gacaca* tribunals in Rwanda.) and there has not been any comprehensive and comparative analysis of these processes. It will need a lot of imagination and creativity to reframe traditional forms of justice for use in the context of massive atrocities, such as genocide or prolonged human rights violations. Every initiative will have to take an uncharted path. In addition, recent developments in the international environment (United Nations, International NGOs) almost exclusively favour retributive institutions (ad hoc tribunals, the permanent International Criminal Court, universal jurisdiction). This one-sided approach discourages the mobilization of locally-based forms of justice and reconciliation.

Looking at retributive justice from a purely economic perspective one can see that ad hoc tribunals are very expensive to administer and are often active for many years. For example, the total cost of the International Criminal Tribunal for Rwanda located in Arusha, Tanzania is over US \$1.3 Billion and the Special Court for Sierra Leone is close to US \$100 million. As a result, it may be worth investigating whether traditional justice mechanisms could offer a cheaper alternative or complement to these UN tribunals and similar courts in the future.

II. Project aims and objectives

The project will address the above problems, realizing the following aims and objectives;

1. To establish an inventory of indigenous mechanisms that have been or are being used in post-conflict situations. The focus will be on their salient features, their strengths and their weaknesses. Special attention will be given to the implications on gender and child soldiers. The inventory will create an opportunity to compare the Gacaca experience with other existing traditional justice systems.
2. To analyze the applicability of TJMs in a post-conflict context. The perspective will be twofold:
 - how can interpersonal and community based processes of conflict management lead to reconciliation and, eventually, be integrated in a society-wide good governance policy (bottom-up approach)
 - how can state-organized transitional justice systems create space for and use of culturally-based initiatives (top-down approach as in the organization of the Gacaca)?

In both perspectives ample attention will be given to the question of the minimal conditions that are needed to give indigenous mechanisms an acceptable degree of 'productivity' in terms of reconciliation.

3. To propose guidelines, to be used by local stakeholders and the international donor community, that links the mechanisms with rule of law norms, international human rights standards and codes of good governance.

4. To use the collected information and the established contacts with African scholars to produce a comprehensive Report on 'African Traditional Justice Mechanisms in the context of grave and massive human rights violations'. The Report will be intended as a practitioner's guide targeted at national agencies seeking to employ traditional justice mechanisms as well as to donor organizations seeking to support such processes. The Report will provide an analysis of the use of traditional justice mechanisms in the context of grave and massive human rights violations.

III. Project Activities

To meet the aims and objectives of this proposal the project will have five distinct phases:

1. Initial desk study on the use of Traditional Justice Mechanisms in African in a post-conflict context.
2. Development of a research methodology in consultation with national researchers to provide a common approach to the case studies.
3. Preparation and drafting of case studies
4. Production of Report
5. Final conference and launch of Report

1. Initial research on the topic of Traditional Justice Mechanisms and development of research methodology. Considering the very limited amount of existing literature on the topic the research team will undertake a desk study to collect information via an exchange with institutions that are active in the field of the project (the IDEA Africa Programme; Avocats sans Frontières; Penal Reform International; DFID; South African Law Commission; the Johannesburg based Centre for the Study of Violence and Reconciliation; the Cape Town based Institute for Justice and Reconciliation; the Irish Centre for Human Rights; the Post Conflict Unit of the World Bank; Global Rights; Réseau des Citoyens). Contact with most of these institutions has already been made. The project has already benefited from consultations with the network of West African experts that International IDEA has established following the launching of the French version of the IDEA Reconciliation Handbook (Dakar, May 25-26 2005) and a follow-up workshop aimed at the Anglophone countries of West Africa (Accra, April 2006).

2. Research methodology development and workshop. A detailed methodology for the case study writers will be developed in the initial stages of the project to ensure an even approach to the task and to ensure that the resulting case studies will be of comparable quality and content.

A methodology/consultation workshop (hosted by IDEA's Africa Regional Office in Pretoria) will be held in September 2006, at which the lead project researcher will share his/her findings from the initial desk research. The project team will also guide the national researchers through the newly developed methodology. The approach is designed to be participatory, allowing input and experiences to be shared between the participants to develop the final research methodology.

3. Field research and production of case studies. IDEA will contract six local consultants to carry out a case study in each of the following countries:

- **Sierra Leone** (healing and reconciliation rituals)
- **Liberia** (healing and reconciliation rituals e.g. palaver huts)
- **Uganda** (Mato Oput ceremonies, Acholi region).
- **Burundi** (Conseil National des Bashingantahe)
- **Rwanda** (Gacaca tribunals)
- **Mozambique** (healing rituals of the *curandeiros*)

The case study authors will be expected to conduct the research *inter alia* through meetings with the key stakeholders in the country. The six case studies will then be synthesized into a final project report / publication.

4. Production of the Final Report. The results of the study, a synthesis of the case studies as well as an analysis of the African experience in the use of traditional justice mechanisms in a post conflict context will constitute the content of a report whose production will be managed by IDEA's publishing department.

5. Conference on African Traditional Justice Mechanisms. A conference will be held in Brussels at the end of the project to launch the findings of the research along with the final report and related guidelines. The Brussels conference, to be co-hosted by the Belgian Ministry of Foreign Affairs, will bring together local experts from the six countries along with representatives of key audiences to which the project's findings are addressed including the donor community at large, relevant research institutions, international policy makers, national institutions in the countries in focus, other African countries dealing with a legacy of violent conflict.

The methodology adopted to carry out this project emphasizes a blend of desk research and field research allowing an inclusive and participatory approach using local experts to carry out a number of case studies. This method has been found, through years of IDEA experience to be the best way to gather information and to ensure that the project remains relevant to the targeted beneficiaries. The methodology increases the south-south exchange of information and enhances the ownership of both the project and the project outputs such as the Report and the Guidelines.

V. Timing

The project will be carried out between March 2006 and October 2007.

- April – August 2006. Drafting and completion of an Issues/Overview Report and a Project Methodology Proposal (IDEA project research team.)
- September 2007. Holding of Pretoria Project Methodology Workshop (Full project research team).
- October 2006 – February 2007. Research and production of project case studies
- March – September 2007. Finalization and production of project final report and guidelines. (IDEA project research team)
- October 2007. International conference (Brussels) to launch the final project report. (IDEA, Belgian Ministry of Foreign Affairs.)

Contact for further project information:

Mark Salter, Senior Programme Officer
International Institute for Democracy and Electoral Assistance (IDEA)
Strömsborg
SE-103 34 Stockholm, Sweden
Tel: +46-8-698 37 00 - Fax: +46-8-20 24 22
E-mail: m.salter@idea.int
Website: www.idea.int