



***Reconciliation and Traditional Justice:
Learning from African Experiences***

**Project Methodology Workshop, Pretoria
26-27 September 2006**

Workshop Report*

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1.0 Introduction

The Institute for Democracy and Electoral Assistance (IDEA) regional office in Pretoria, South Africa hosted a workshop titled ***Reconciliation and Traditional Justice: Learning from African Experiences*** at the Burgers Park Hotel, Pretoria on 26-27 September 2006. The workshop was organized within the framework of an IDEA research project financially supported by the Belgian Ministry of Foreign Affairs. The project is aimed at examining the role(s) played by local/traditional justice mechanisms (TJMs) in addressing the legacy of large-scale violent conflicts in countries across the African continent. A key component of the project is the elaboration of six country-specific case studies - Liberia, Sierra Leone, Rwanda, Burundi, Uganda and Mozambique - on the role of TJMs. The workshop brought together 22 participants, including the country case study authors, representatives of locally-based organizations and thematic and regional experts, to deliberate and share field experiences on the role(s) played by TJMs in addressing the legacy of large-scale violent conflicts in countries across the African continent.

In the aftermath of major conflicts a key challenge has always been how best to deal with both *perpetrators* and *victims*. A shift towards an emphasis on justice started in the mid-1980s, largely as a result of advocacy by the international human rights community, which emphasized the argument that there is no peace without justice, and the importance of breaking the cycle of impunity in the aftermath of conflict. This shift led in turn to the establishment of institutions such the Hague (ICTY) and Arusha (ICTR) tribunals and the International Court of Justice (ICC). It is, however, apparent that these institutions, which rely heavily on conventional penal systems, are not necessarily effective and/or efficient: in situations where cultural and societal issues have to be addressed: in contexts of delicate regime change, large-scale crimes; or where other priorities besides justice may be paramount within an overall framework of ensuring stability and peace during and after post-conflict transition.

In addition, when considering questions of justice and reconciliation in a country emerging from a civil conflict there is the difficult task of identifying the best system to adopt. Is a retributive or restorative justice based-approach most desirable, and what will be the impact of either choice? Will the system adopted be capable of addressing crimes committed in a war situation, how can impunity be addressed, and will the system adopted either foster or hamper the existing fragile social harmony?

Conflict is a core component of everyday human lives and every society has its own ways of dealing with conflicts in order to ensure peaceful coexistence. Communities within every society are different, hence there exist diverse methods and approaches to dealing with conflicts, which are in turn equally of differing kind, nature and intensity. It is widely accepted that the performance of conventional structures of justice and governance is dismal in many African countries. Practitioners are thus

increasingly turning to traditional structures for resources for conflict resolution and reconciliation.

Traditionally, conflict resolution in Africa was a communal affair that emphasized reconciling the protagonists with each other rather than establishing right and wrong. Punishments were not aimed at retaliation but at restoring social equilibrium, usually through mechanisms of restitution, apology and reconciliation, with an emphasis on justice and fairness, forgiveness, tolerance and peaceful coexistence. Traditional forms of justice are thus rooted in social norms, as illustrated by such proverbs as *'He who brings a Kola Nut brings life'* – the Liberian sharing of Kola nuts in a gesture for dispute resolution in the spirit of 'letting bygones be bygones'; or, *'No bush to throw away a bad child'*, meaning that irrespective of the crime someone has committed, they are still regarded and accepted as members of Sierra Leonean society.

Traditional forms of justice were, however, designed to deal with relatively small numbers of cases of minor wrongdoing - theft, disputes between neighbours and so on. Thus in relation to contemporary conflict a key challenge for such systems is to establish how they can be brought to bear on post-conflict settings characterized by mass-scale atrocities such as genocide and/or sustained human rights violations. In addition, although traditional mechanisms are familiar, accessible, participatory and acceptable to the majority of the people in the community, it is also true that they may have significant weaknesses. Many TJMs are characterized by inequitable representation and participation, as such systems are generally male dominated. In addition, they sometimes work in ways that are in contradiction with international human rights norms, particularly with respect to women's and children's rights.

Project Focus and Summary Workshop Conclusions

The current project aims to explore new areas of policy-related research using six country-specific case studies as a starting point. These are as follows:

1. **Liberia** (healing and reconciliation rituals e.g. palaver huts)
2. **Sierra Leone** (healing and reconciliation rituals);
3. **Rwanda** (*Gacaca* tribunals);
4. **Burundi** (Conseil National des *Bashingantaha*);
5. **Uganda** (*Mato Oput* ceremonies, Acholi region)
6. **Mozambique** (healing rituals of the *Curandeiros*)

Each of the case studies will:

- Broadly, investigate the impact of conflict on traditional justice mechanisms in the case study countries
- Specifically, analyse the nature of transition in which each specific conflict is located, with a view to establishing the extent to which it is locally and/or externally driven. If the latter, key 'drivers of change' will not necessarily understand

or appreciate the importance of traditional justice mechanisms, and may even tend to ignore them.

- Establish the plurality of stakeholders involved in the conflict and the social and political trajectories of its various components
- Identify how micro-level traditional justice mechanisms deriving from one community can be used in macro-level (i.e. multi-ethnic) environments
- Explore tensions between the often competing dictates of healing and justice within a post-conflict society
- Identify the ways in which traditional mechanisms can and do relate to formal judicial structures, and how they can be 'scaled-up' and diversified for successful application in multi-dimensional / regional conflict contexts.

The Pretoria workshop provided the project facilitators with an opportunity to share the findings from the initial desk research, to guide the national researchers through the proposed research methodology, and to finalize it through inputs and contributions informed by the experiences of the workshop participants. The workshop also benefited from specific experiences drawn from South Africa and two invited observers from Burma.

It was evident from discussions held during the workshop that in overall terms more attention needs to be given to the role and function of TJMs, focusing in particular on questions of **scaling-up, diversity and potential application in multi-dimensional/regional conflict contexts**. In contexts where TJMs can effectively complement conventional judicial systems they represent a real potential and opportunity to promote justice and sustainable reconciliation. In addition, even in situations where communities are more inclined to demand straightforward retribution against the perpetrators of conflict-related crimes, TJMs may none the less offer a way both of restoring a sense of accountability and linking justice to democratic development.

2.0 Workshop Discussions

Introductory remarks

Joram Rukambe, IDEA Africa Programme Officer welcomed and thanked the participants for attending the workshop. He outlined the work of IDEA – a 24 member inter-governmental organization working broadly in the field of democracy promotion – and pointed out that IDEA recognized conflict as a cross-cutting aspect of human life with both positive and negative impacts, and that democracy is the best political approach to dealing with its negative aspects. This being so, it was also acknowledged that especially among communities in transition, there are many ways of dealing with conflict. With regard to traditional justice systems the challenge is to establish how they can be brought to bear on critical issues in post-conflict situations. It is further suggested that the best research in this area focuses on identify-

ing the critical questions to raise, as opposed to proposing theoretical 'answers' to what are essentially contextual questions.

Bart Pennewaet, Belgian Embassy to South Africa also welcomed the participants, noting that the agenda of the workshop could not have been timelier. In line with similar efforts by other key states the Belgian Ministry of Foreign Affairs is setting up a unit dedicated to looking at post-conflict issues in the African continent. This new drive is in recognition of the fact that ceasefires and peace agreements do not necessarily lead to peace. The international community needs to support other long-term engagements in, for example, the areas of justice and reconciliation, which are the cornerstones for ensuring peace.

Mr. Pennewaet noted that this workshop, and the IDEA project in general, were breaking new ground in exploring strategies for intervention by development and international co-operation agencies. Local communities are the key stakeholders in this new endeavour, as they should play the primary role in finding solutions to their 'own' conflicts. The workshop will hopefully make a real contribution to search for insights into African perspectives on conflict resolution, peacebuilding and co-existence.

Mark Salter, IDEA Senior Programme Officer also welcomed the participants to the workshop, noting that they were embarking on a very challenging project that was opening discussion and sharing of experiences in new and unexplored territory. In particular, the challenge rests heavily on the authors of the project case-studies, whose work stands to benefit from the contributions and deliberations of the other invited workshop participants. Special gratitude was extended to Professor Luc Huyse, who had mid-wifed, mentored and advised on the project from its inception.

Luc Huyse, Project Senior Advisor underscored the fact that the key challenge for the project lies in exploring the role of traditional justice mechanisms in communities emerging from conflicts. In the aftermath of conflict a key difficulty has always been how best to deal with both perpetrators and victims. Historically, from 1950s through until the mid-1980s the tendency was to 'look away' from the legacy of war (or violent conflict), even at the price of encouraging impunity, using the granting amnesty as a way of attempting to 'close the books' on the past. This was in some respects surprising, since issues of accountability gained increased significance in the immediate post-World War II period, as evidenced in the Nuremberg trials and the 1948 Genocide and Geneva conventions.

A shift towards a renewed emphasis on justice started from the mid-1980s, largely as a result of advocacy by Human Rights organizations and others. This was born out of the dual realization that there can be no peace without justice, and that it is important to break the perpetual cycle of impunity. The new emphasis on post-conflict justice in turn led to the establishment of such institutions as The Hague and Arusha tribunals and the International Court of Justice (ICC). It has, however, since become apparent that these institutions, which rely heavily on conventional

penal systems, are not necessarily effective and/or efficient in situations where cultural and societal dimensions of conflict need to be addressed, contexts of delicate regime change, large-scale crimes or where other priorities besides justice are paramount in efforts to ensure stability and peace.

By the end of 1990s, informed by practical experiences of the South African Truth and Reconciliation Commission (TRC), for example, the need for multiple approaches to conflict resolution was recognized. These include legal, semi- and non-legal mechanisms, varieties of amnesty, local community-based approaches and so on. It is based on this critical realization that the current project to examine the role of TJMs across the African continent was formulated.

3.0 Country Case Studies

3.1 Liberia

Touted as the oldest independent republic in Africa after gaining independence in 1847, Liberia has been plagued by military coups and counter-coups, starting in 1980 with Master Sergeant Samuel Doe and his Peoples Redemption Council (PRC) and culminating in a deadly civil war initiated in December 1989 by the National Patriotic Front of Liberia (NPFL) led by Charles Taylor. The civil war that ended in 2003 claimed more than 200.000 lives and sent 1 million refugees into neighbouring countries and internally displaced another million people. After numerous successive peace conferences, the Accra Comprehensive Peace Agreement, reached in August 2003, had three fundamental tenets: cessation of hostilities, deployment of international peacekeepers and the holding of free and fair elections.

The Accra Agreement provided for the establishment of a Truth and Reconciliation Commission (TRC). Article XIII of the Agreement states that the aim of the TRC is to 'provide a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to get a clear picture of the past to facilitate genuine healing and reconciliation'. Gazetted in June 2005 and inaugurated a year later, one of the novelties of the Liberian TRC Act is the provision for investigating economic crimes committed during the period January 1979-October 2003. The Act provides for Amnesty, reparation as well as recommendation for prosecutions for war crimes/ crimes against humanity. Most importantly the Act also provides for the employment of traditional mechanisms of conflict resolution. This is mainly in recognition of the following facts:

- a) Although the newly elected democratic government of Ellen Johnson Sirleaf has been in place since October 2005, the government faces extremely severe challenges occasioned by the devastations visited on the country by military dictatorship and civil war, and it will require some time for the new government to settle in.

- b) Long years of misrule and war dealt a severe economic blow to the country. UNDP currently estimates that over 70% of Liberians live on under US\$1/day, and half of the country's population in absolute poverty. This means that in terms of priorities, the elected government has its hands full to avoid a relapse into further conflict.
- c) Neglect, corruption and incompetence are some of the factors that have contributed to the near total collapse of the judicial system. In view of this ordinary Liberians can not reasonably expect and/or be accorded the benefits of a conventional justice system.

In light of the above, traditional justice mechanisms are the only obvious option available to the majority of the population for settling their disputes. Two of the most popular TJMs are the *Palava Hut* and *Sharing of the Kola Nut* mechanisms.

Palava Hut Mechanism: Conducted by elders – mostly men above 45 years of age – this mechanism is used to settle matters such as extra-marital affairs, divorce, land disputes and criminal matters including theft and murder. In some local settings, settlement of death and witchcraft cases takes the form of 'trial by ordeal', locally referred to as *Sassywood*, where the alleged perpetrator is made to drink a concoction made from indigenous plants. Those who do not manage to regurgitate the drink are pronounced guilty and are either banished from the village, scorned or shamed. Another variation of the *Sassywood* involves the bringing of a red-hot piece of metal into contact with the alleged perpetrators who, if they are innocent, will not be burned by the metal.

Sharing the Kola Nut: 'He who brings a Kola Nut brings life' is a popular proverb among Liberians. The sharing of kola nuts is a dispute resolution mechanism largely based on principles of forgiveness. Perpetrators are required to atone for their wrongdoing by bringing in kola nuts, chickens or goats to the aggrieved person who, as a result of social coercion, accepts the gifts in the Liberian spirit of 'letting bygones be bygones'.

Looking at these two forms of traditional justice mechanisms, obvious questions of fairness, due process, personal rights and so on are raised. In addition, it was argued, it is also apparent that as with similar traditional approaches employed throughout the continent, these practices are formulated, executed and enforced by a select group in the community, be they elders or otherwise. While it can be argued that they draw their legitimacy from accepted social norms, issues of representation, participation, validity, objectivity and rationality cry out for further analysis. This is especially so in the case of Liberia, where for reasons of political expediency successive governments have consistently endeavoured to co-opt local leaders by corrupting them with grants of unchecked and disproportionate powers to simultaneously accuse and judge. In addition, it is also important to interrogate the impact of brutal civil wars, human displacements and evolving global changes on the efficacy and effectiveness of TJMs.

3.2 Sierra Leone

Between the years 1991-2002 Sierra Leone witnessed a deadly civil conflict that although regarded as internal was none the less internationalized as a result of many competing interests, the majority relating to natural and mineral resource exploitation. The war was characterized by extreme brutality visited on the local population in the form of indiscriminate killings and mutilations. Local warlords enlisted the services of child soldiers, both boys and girls, whom they proceeded to abuse and molest, thereby turning them into 'drugged' killing machines, porters and sex-slaves. As could be expected the war resulted in massive human displacements of both refugees and internal migrants, and excessive destruction of social and economic infrastructures. The root causes of the Sierra Leone conflict conform to a predictable pattern comprising factors including political injustice, breakdown of the rule of law, politicization of institutions (military, civil service, judiciary), economic sabotage (mismanagement, embezzlement, misappropriation etc), targeting and marginalization of vast sections of the population resulting in mass poverty, illiteracy and a growing culture of violence and subsequent impunity.

A Peace Accord reached in Abidjan in November 1996 and a Peace Agreement signed in Lomé in July 1999 contained provisions including complete cessation of hostilities, power-sharing, amnesty, establishment of a Truth and Reconciliation Commission and reparations. Major stakeholders in the peace agreements included the Economic Commission for West African States (ECOWAS), the United Nations (UN), the African Union (AU) and non-state actors (civil society, inter-faith groups, women groups and International Non-Governmental Organizations (INGOs).

When considering the question of justice and reconciliation in a country emerging from a civil conflict one is faced with the difficulty of identifying the best system to adopt. For example, should one adopt a retributive or restorative justice-based approach and what will be the impact of either choice? Will the system adopted be capable of addressing crimes committed in a war situation, and how can the question of impunity be addressed and/or will the system adopted foster or hamper the existing fragile social harmony? There are no simple answers to these questions and while the authorities continue to grapple with the problem of choice, communities continue to cry out for immediate justice in response to gross violations of their rights.

While this was the case in Sierra Leone, the country was lucky not only to have traditional systems of justice but also to be guided by traditional norms that encourage tolerance and forgiveness. This is illustrated by the following saying 'No bush to throw away a bad child', meaning that irrespective of the crimes people have committed, they are still regarded and accepted as members of society. This means that the country could at least find ways to accommodate and address the twin issues of rebels and child soldiers. In any case, the dynamics of the conflict were such that in any single family there were often members who fought on both sides in the war (rebels and Kamajoh).

Given such scenarios, communities have continued to rely on traditional forms of conflict resolution and reconciliation through existing 'secret societies' – the Bondo (Sande), analogous to kinship groups – which create a sense of comradeship between members (e.g. women). These secret societies are important avenues of (re) connection, especially for those families whose children had been rebels, as they encouraged reconciliation as opposed to condemnation, ostracization and retaliation. In addition communities turned to other traditional tools and instruments including cleansing ceremonies (the *Kpaa Gortli*) and the use of songs, dance and proverbs that focus on tolerance and harmonious rebuilding of society.

Traditional justice systems entail such unique features as their community-centredness, rendering them participative, easily acceptable and with inbuilt capacity to limit selfish manipulations. They focus on restoration of *persons*, intertwining justice and reconciliation and at the same time attempting to recapture and recreate the social harmony that existed before the civil war, as symbolized in the 'Wonde' dance. There are, however, challenges facing the traditional justice system in Sierra Leone. Not least among them is the dominant political emphasis on the conventional justice system, which is largely retributive in nature. Modernity has continuously challenged the traditional system and regards it as archaic, retrogressive and ineffective.

Unfortunately, traditional systems such as Sierra Leone's lack the capacity to deal with the new dynamics of conflict - in particular in modern, highly violent civil wars – not least as such systems tend to focus more on low-level localized conflicts. In many cases there is inequitable representation and participation in the deliberations of traditional justice systems, particularly for women and youth, as the systems tend to be male dominated. Finally, in the case of Sierra Leone TJMs are yet to be fully appreciated by the TRC and work more in parallel competition than complementarity.

Plenary Discussion

Should TRCs be viewed as externally-imposed structures not familiar to local population, that may also be in contradiction to existing community-based conflict resolution and reconciliation approaches?

In the case of Liberia the TRC was a compromise. It does not resonate with the local communities as it is not an organic or home-grown entity. Indeed, the TRC will probably best serve as a documentation process of what transpired during the conflict in order to inform future policy formulation. At the same time, however, the TRC is an important 'first' in so far as victims will be accorded an unprecedented opportunity for and forum in which to express their feelings and opinions with respect to past conflicts. In Sierra Leone, however, although the TRC was also an externally-driven initiative, local civil society organizations embarked on a rigorous education process of the community concerning the TRC, its merits and potential

benefits, including the all-important opportunity for community participation it provided.

What are the age limitations as regards child soldiers? What are the principles behind traditional justice mechanisms and how do they operate in multi-ethnic situations that might have different value systems or when dealing with the question of immunity of powerful individuals?

There is a universal definition of child soldiers that covers those under 18 years of age. TJMs tend to have an edge over conventional judicial systems in that the latter's form of prosecution, involving complicated bureaucracy and procedural formats, is far removed from the community. One of the challenges for TJMs is indeed how to deal with the potentially different value systems of the communities involved in violent conflict. To complicate the question further, such conflicts are in most cases also internationalized and the continuing question is whether and how TJMs can address conflicts that cut across community and/or international boundaries.

The question is less complicated in cases where the conflict is not necessarily ethnically based but is one that affects all communities equally in terms of victims and perpetrators. In such cases, a more universal approach to conflict resolution and reconciliation can be adopted and accepted by the majority of people. In addition, for the purposes of simplifying and/or encouraging acceptance of justice systems, governments can make provisions for exceptions. For example, in the case of Liberia it was recommended that child soldiers should not be prosecuted, and the TRC has special provisions for women and children including testifying *in camera*. How to deal with perpetrators who are now in government and/or in the forefront of campaigning and advocating for justice in ways that stand in stark contrast to their past dark history and role in conflicts is indeed a major current dilemma and challenge.

3.3 Rwanda

Rwanda has experienced sporadic conflicts amongst its two major ethnic groups dating back to the colonial period, but worsening in intensity in the post-independence era. One of the characteristics of violent conflict in the country has been a seemingly deliberate attempt to attack the other ethnicity, as witnessed in the years 1959, 1975 and intermittently in between, but culminating in the spring and early summer of 1994, when a systematic programme of massacres literally decimated the population, with upwards of 800 000 people out of a population of 7.5 million being hacked to death and otherwise murdered in a period of just 100 days.

By the end of the civil war in 1994, besides the dead, millions of others were in refugee camps in surrounding countries and thousands internally displaced within the country. By 1995 120 000 people were languishing in jail waiting for trial on crimes of genocide, and the UN-sponsored international tribunal was underway in Arusha for similar purposes. The war devastated the country's social and economic

infrastructure, with the country's professionals including judges, lawyers, business community and teachers either in refugee camps, in jail or simply on the run for fear of arrest on account of their role in the conflict. It was therefore literally impossible for Rwanda to expeditiously conduct trials of all those held in jail.

In addition the country was in fragile transition, with frequent violent incursions by the routed former army whose goal was to destabilize the incipient government. The government also had its hands full with returning refugees, the internally displaced and returning Diaspora. Under these circumstances the new Rwanda Patriotic Front (RPF) government headed by Paul Kagame revived and invigorated an age old traditional justice mechanism, the *Gacaca*, and empowered it to deal with the overwhelming number of cases awaiting trial.

Gacaca is a traditional community-based conflict resolution system that dealt with simple disputes. It was never intended to deal with blood-related crimes, which were always the preserve of other justice systems, principally of the conventional type. *Gacaca* is based on the 'plea of guilty' by the accused, who are expected to confess their crimes. One of the challenges with this approach, however, is the form in which the confession is made and/or how justice is interpreted by the wider community, which depending on the case in question may tend towards a highly subjective view of the issue. Other features of traditional *Gacaca* include widespread community participation in its proceedings and a fundamentally restorative approach in which restoring and maintaining the social fabric is of paramount concern.

The 120.000 pending cases of genocide trials were divided into different categories based on the degree of culpability of individuals: those who actively advocated for the genocide; those who actually carried out the genocide; those who were coerced into committing violent acts; and those who did nothing to prevent the execution of the genocide. The more serious cases were reserved for the conventional justice mechanism, but the less serious ones are now handled at the *Gacaca* level. Unlike in the traditional *Gacaca* system, where the facilitators were renowned leaders who had proven themselves amongst the community, the refurbished *Gacaca* has government elected and backed judges. Of the 1.700 *Gacaca* judges 45% are women. The *Gacaca* courts have been running since 2001 with a pilot phase targeting 25% of the 120.000 cases.

One of the setbacks of the current *Gacaca* system is its unilateral approach. Simply put, it is mandated to deal with crimes largely committed by one ethnic group but not to address suspected cases of abuses committed by the victorious, formerly rebel RPF forces. This bias does not augur well in a situation where as already indicated, and for historical reasons, the line of perception between victim and perpetrator is fairly thin. Another setback is that large-scale crimes such as those committed during the genocide in Rwanda touch nearly everyone in the country, including those elected and/or appointed as judges for the *Gacaca* process. Since the role of some *Gacaca* judges in genocide-related crimes is known and/or implied, their judgement can never be universally considered as objective. Another aspect of such large-scale violent conflict is the degree of social shock experienced by the entire

population. The resulting trauma is still very real and fresh to the majority of people, who need time to heal, come to terms and then deal with their wounds.

Although the *Gacaca* process has provisions for reducing the penalty for those who confess their crimes, there is a specific social problem with confessions in Rwanda. It was argued that 19th century Rwanda was built through a culture of crisis that to date still regards confession as a mechanical, even arrogant act. Lastly, although the current *Gacaca* mechanism espouses participation, to date participation in *Gacaca* trials has been far less than voluntary, in contrast to its traditional format where free will ruled. The current *Gacaca* is still in its pilot stages and it is too early to judge its overall efficacy and effectiveness. The government sees the process as a way of finally restoring a sense of accountability and linking justice to democracy issues, although the affected population are still more inclined to demand straight-forward retribution.

3.4 Burundi

With an average population density of 290 persons/Km² in a country with a total area of approximately 27.834/Km², Burundi is a small, densely-populated country of four main ethnic groups, the Bahutu, Batutsi, Baganwa and the Batwa. Ever since its independence in 1962 the country has intermittently experienced intense ethnic and politically-instigated conflict. The violence snowballed on two occasions; in 1972 and again in 1993 following the assassination of democratically elected President Melchior Ndadaye, which led to wide-scale violence resulting in 300.000 deaths and 800.000 either as refugees or internally displaced persons. The search for peace led to the Arusha Accord for Peace and Reconciliation in August 2000 which was affirmed again through the November 2003 Pretoria Peace Accord.

The reforms envisaged in the peace accords are now well underway, but after years of violent conflict the country faces the challenges of destroyed and politicized physical and social structures, lawlessness and crime, an ineffective judicial system and a culture of suspicion and intolerance amongst the population, chiefly between the two largest ethnic groups the Batutsi and Bahutu. With the conventional judicial system incapacitated and the need to quickly restore the rule of law, Burundi turned to its traditional justice system known as the *Bashingantahe*.

The term *abashingantahe* on which the traditional justice system is based commonly refers to persons of renowned character and integrity traditionally charged with the responsibility for conflict resolution at all levels of society, from hill communities up to the courts of the king. *Bashingantahe* also borrows from other verbs and nouns which when combined simply mean 'the one who plants the stick', in reference to a rod (stick) used by the arbitrators to hit the ground continuously to emphasize points during deliberations, or when pronouncing judgements following arbitrations of disputes between conflict parties.

The term also captures and emphasizes the ethics of justice, equity and fairness. Traditionally the institution of *Bashingantahe* is considered to be democratic par-

ticularly because of its rigorous, inclusive and meticulous methods of selecting members, who are not imposed but only proposed and then vetted by the community. The *Bashingantahe* have always played a key role in bridging the gaps between those in power and the general populace. Traditionally the institution had jurisdiction over matters related to property (land and livestock), family and social conflicts and conflicts between different hills. Serious cases, for example those involving murder or theft of cattle were dealt with at the court of chiefs, while difficult cases went to the *Mwami*.

As a result of its popular acceptance and subsequent authority, the *Bashingantahe* has always been viewed as a challenge to conventional forms of justice. In the 1920s, while drawing from the *Bashingantahe* form of justice the Belgian colonial authorities were also determined to weaken and dilute its authority by running parallel justice systems, co-opting and imposing the leadership of the *Bashingantahe* in the process. The country's post-independence authorities continued where the colonialists left off and in mid-July 1962 all customary jurisdictions were suppressed in favour of one conventional authority, although to its credit the independent state left the 'Counsel of Notables of the Hill' intact, and they retained their responsibilities of resolving disputes and reconciling conflicting parties. However, an additional criterion for appointing the *Bashingantahe* was introduced with an emphasis on conventional legal training.

The years 1966-1976 saw a blatant attempt by the state to politicise the institution of *Bashingantahe*. The fortunes of the *Bashingantahe* improved somewhat during the period 1976-1987, and the community assumed limited roles in determining their *Bashingantahe*, although the state still retained the upper hand. A 1987 law recognized and reinstated the 'Counsel of the Notables of the Hills' and empowered it to be the 'first call for justice' before a recourse to conventional justice was undertaken. The *Bashingantahe* gradually reclaimed their authority, but unfortunately this led to their targeting by death squads most notably during the crisis of 1993, for the simple reason that they hampered the escalation of the conflict.

Serious revamping of the institution of *Bashingantahe* started in 1991-92 but was interrupted by the 1993 conflict, before picking up again in earnest in 1996 with a dedicated project of rehabilitation implemented between the years 1999-2001. A second phase of rehabilitation was embarked on between 2002 and 2004, at which time the basic organs and sub-organs of the institution were examined in detail, gaps identified and a programme of rationalization undertaken e.g. via the initiation of an engendering process. The capacity of the *Bashingantahe* was reinvigorated through training programmes in judicial and general law principles, property and family law and in conflict prevention and resolution approaches. In recognition of its authority the *Bashingantahe* was also involved in community development processes. Indeed, the *Bashingantahe* is a recognized entity to the extent that it was expressly referred to in the Arusha Peace Accord as part and parcel of the Burundi judicial system.

The *Bashingantahe* is credited with such competencies as the reduction of overcrowding in the conventional courts; offering free counselling and reconciliation; simplicity and fast processing of cases and - very importantly – offering easy accessibility to justice to local communities. Currently the institution is still undergoing changes and continues to suffer from a number of problems including lack of uniformity across the country, slow recovery from deliberate historical political interference, a lack of equitable participation by women and youth and occasional opportunistic attempts to hijack the process for selfish gain, particularly stemming from political aspirants. Irrespective of these setbacks, the *Bashingantahe* represents real potential and opportunity for a TJM that can effectively complement the existing conventional judicial system.

3.5 Uganda

After gaining independence in 1962 Uganda gradually descended into violent cyclic conflict, originally as a result of the political disfranchisement of different communities, as the leaders of the day sought to propagate and entrench their political interests. Since then, however, the primary causes of the conflict have become blurred, and in recent times there has been strong controversy regarding the definition/interpretation of the war/insurgency. The definition depends on who one talks to, the slant of the respective propaganda machines, stereotyping and creation of enemy images, opportunism and the ethnic orientation in focus. For the past 20 years violent conflict has afflicted the northern part of the country, particularly Acholiland. The conflict is usually attributed to an ethnic-oriented war initiated by President Yoweri Museveni's National Resistance Movement (NRM/A) forces in the Luwero Triangle against 'northerners'.

The conflict has gone on for a long time and resulted in the near collapse of Acholi society, leading in turn to resentment and polarization with respect to the rest of the Uganda society. Over 1.8 million people, the majority of them Acholi, currently live in 'internment camps' where approximately 1.000 persons are estimated to die weekly. Over the years different initiatives have been undertaken to try and resolve the conflict, but with little success. The latest entrant into this effort is the International Criminal Court (ICC), which in June 2006 issued a controversial arrest warrant for senior members of the rebel Lord's Resistance Army (LRA). Little is expected of this latest initiative by the local population, and ordinary Acholis who have borne the blunt of the atrocities committed over the last decade prefer to use their own time-tested traditional justice mechanism – the *Mato Oput*.

Traditionally the Acholi sought to amicably resolve any conflicts amongst them as soon as they occurred. The Acholi traditional form of governance was firmly rooted in religious beliefs, norms and customs that demanded peace and stability. Unlike in many other societies in Africa, the British colonial powers left this governance system largely intact. The traditional structure, informed by Acholi traditional religion, was maintained by Chiefs known as *Rwodi Moo*, meaning 'the Anointed Chiefs'. The *Rwodi* or Divine Kings who headed Acholi traditional government were believed to

be divine, and at enthronement they were anointed with fat preserved from the carcass of lions in solemn religious ceremonies.

The Rwodi Moo were assumed to communicate with the world of invisible deities and ancestral spirits and were therefore held in high esteem by the community. The Rwodi Moo did not have executive powers, and governance was carried out jointly with a Council of Clan Elders (*Ludito Kakas*), who were democratically elected by the respective clans to sit at the Grand Council (*Gure Madit*). An interesting aspect of the elders sitting in Gure Madit was active competition among themselves to excel in their work. The Grand Council also doubled as the Supreme Court and was mandated to try both criminal and civil cases, including mass killings and land disputes between different clans.

In conflicts where blood was deliberately or accidentally spilt, various ceremonies and rituals were performed. Depending on the context and circumstances of the conflict they included the following:

- *Riyo Tal* – cessation of hostilities or ceasefire
- *Nyono Tongweno* – ‘stepping on the egg’ as an act of purification
- *Moyo Kom* – act of cleansing the body of evil taints
- *Culo Kwor* – compensation/reparation
- *Lakereket* - exhortation of evil spirits from the body
- *Mato Oput* – reconciliation
- *Gomo Tong* – ‘bending the spear’ which signifies a commitment not to repeat violent acts.

The *Mato Oput* process entails the principles of acknowledgement, tolerance, forgiveness and collective guilt where the parties to a conflict resolve their differences amicably. The process recognizes and seeks to salvage and affirm the dignity of all those involved – victims, perpetrators and the community at large for the purposes of reconciliation. *Mato Oput* advocates the severing of relations between conflicting societies until a cleansing ceremony is performed. Some time lapse is allowed before conducting the cleansing ceremony to allow the victims to suppress their resentment and any remaining hatred towards the perpetrators.

A goat and ram are slaughtered and exchanged to remind the perpetrators and the community in general that there is a price to be paid for violating agreed community norms. *Mato Oput* embodies restorative as opposed to retributive justice, and although the Council of Elders at the clan and kingdom levels did not have an established police force or prison service they commanded such authority that social pressure ensured that their judgements were respected.

Although *Mato Oput* is the preferred justice mechanism among the Acholi there are several factors that have an impact on its efficacy. The long war has resulted in millions of displaced, thousands of abducted children, large numbers of abused and devastation of the local social and economic infrastructure. There appears to be no definite strategy on the part of the current government to comprehensively address

these problems. There is a lack of deliberate effort and desire to pursue the search for an inclusive, problem-solving approach. Instead a military solution is erroneously being pursued, despite the fact that history demonstrates that this cannot succeed.

Although *Mato Oput* is widely accepted at the community level it lacks sufficient appreciation at higher levels of government, which tend to sideline it at crucial points of the conflict resolution and reconciliation process. What is required at this stage of the conflict is an objective, all-inclusive forum that will facilitate proper investigation and documentation of atrocities and pursue innovative ways of ensuring justice is carried out in order to allow closure by the community.

3.6 Mozambique

Mozambique was engaged in armed struggle for independence during the years 1964-1974. After gaining independence the country descended into a protracted civil war that lasted from 1976-1992, when a peace agreement was reached in October of the same year. One of the characteristics of the ensuing peace was a culture of silence and impunity regarding crimes committed during the civil war.

Traditionally the main source of health care at the community was the responsibility of healers (*Dzoca*), whose main stock-in-trade was working with family ancestral spirits (*Madzoca*) to heal injured parties. Another type of healer and spirit - *Gamba* (plural *Magamba*) - emerged after the war. The key feature of the *Magamba's* work is an elaborate ritual in which war-time experiences are re-enacted as a means to heal people. The process of re-enacting the war is undertaken through the revisiting of wartime objects e.g. guns, knives, other weapons; narration of war experiences; and songs and choreographed body movements.

The justice aspect of *Gamba* is that the narratives evoke abuses that occurred during the war, and there are appeals for righting wrongs and repairing damages suffered. The reconciliation aspect is present since the *Gamba* spirit forces formerly estranged people to come together and resolve their unsettled wartime disputes. In this way, the work of the *Magamba* reflects local notions of theorizing and practicing justice, reconciliation and healing in the aftermath of the civil war.

Plenary Discussion

The traditional approaches presented dealt significantly with cultural rituals that would appear to contradict the ethics of formal or conventional religious faiths. They also seem to focus chiefly on the aspect of healing and little on justice. Furthermore, even though healing is an important component of these approaches, what about the issue of trauma? How is it interpreted and/or dealt with at the community level?

In Uganda traditional and conventional religious leaders work in tandem where their primary goal is the search of peace, and although there are latent tensions between the two they occasionally share the same platforms in their work. This harmonious tolerance could probably be attributed to the fact that the war has lasted so long and has affected everyone indiscriminately. Most of the traditional approaches endeavour to bring together victims and suspected perpetrators. They all go through the same processes and it is believed that questions of justice are addressed if successful reconciliation is achieved. The question of trauma has largely been considered as academic, as the priority has always been to end violence and restore peace.

In Mozambique the community is encouraged not to suppress the past but instead to recreate it in its search for justice and overcoming trauma by acknowledging and coming to terms with the issues. The entire approach of traditional systems is aimed primarily at the whole: it is holistic and encompasses questions of justice. Similarly to Uganda, although conventional religious leaders do not recognize the traditional approaches, there is no open conflict but rather tolerance of each other.

Although there is need to define what is understood by traditional justice mechanisms and how they can be scaled-up from the micro-level (village) to macro-levels (regional and national), it was observed that the project does not aim to provide straight 'answers' to these challenging questions, but rather to pose them as hypotheses, overall offering a prism through which various conflicts can be examined, discussed and elaborated based on the diversity of existing experiences.

It was also observed that some Truth and Reconciliation Commissions have inherent setbacks: even though they offer victims and perpetrators a chance to meet and express themselves, they do not always delve into the systemic issues that led or contributed to violations of human rights. In such cases it is difficult for the victims to deal with the emotional issues involved, as mere confession by the perpetrators is not sufficient for the purpose. However, the importance of truth-telling and documentation was reiterated because if this is not undertaken, those in power can distort facts, deliberately obscure the question of victims and perpetrators in past conflict and use it as a political weapon, as currently evidenced in Mozambique.

Luc Huyse, Project Senior Advisor and **Klaas de Jonge, Project Lead Researcher**, concluded the day's session by observing that the rich proceedings had been highly informative and educative. It is difficult to appreciate all the nuances of a particular case until one comes into more direct contact with it, as occurred through the country presentations. Indeed, if the project were to be conceptualized afresh the following aspects could usefully be built into the case studies:

- a) Investigating the impact of conflict on TJMs, including the twin questions of whether this impact had a direct relation to the length of the conflict, and

which aspects - local or external - had the bigger impact on the mechanisms in focus;

- b) Investigating the nature of the transition and establishing the extent to which it was locally and/or externally driven. If the latter, the 'drivers of change' do not necessarily understand or appreciate the importance of traditional justice, and may well tend to ignore it;
- c) Establish the plurality of stakeholders involved in the conflict process and the social and political trajectories of its various components;
- d) Explore contextual dilemmas/questions of healing and justice and how traditional mechanisms relate to formal/conventional judicial structures.

In addition to these aspects, one of the potentials for the project could be to establish how micro-approaches to traditional justice mechanisms applicable to a specific community could be used and adapted in multi-ethnic environments.

4.0 Research Questions and Methodology

4.1 Methodology

Luc Huyse (Project Senior Advisor) led a discussion of various aspects of the research process including the principles, methodology, content and format of the final report. The main points are highlighted below.

- a) As a starting point the existing outline of the case-study format should prevail. The annotated checklist (Annex 3) is also important because it will facilitate comparative analysis across the case-studies. Understandably, not all the points on the checklist are necessarily applicable to all the case-studies, and it should be treated more as an open-ended guide to country analysis. For example, the case of Burundi is exceptional in that the *Bashingantahe* has not been used in cases of mass human rights abuse hence, the case-study will focus on analysing its hypothetical prospects and potential.
- b) Reflecting on the presentations made at the workshop, it was gratifying to note that **substantial preliminary work had already been accomplished by the individual researchers** - especially significant in view of the fact that the case studies are intended not as academic exercises but rather as general analyses aimed at the documentation of practical field experiences. This does not in any way mean that the reports should not be professionally produced: indeed, it will be important to clearly outline all reference sources of information and documentation used, as well as a list of useful related websites and/or sites where additional information can be obtained.

- c) **It would be useful if the case studies could attempt to discuss the question of sequencing** i.e. the appropriate timing and tempo for introducing and/or applying traditional justice mechanisms, especially in situations of on-going conflicts such as in Uganda. Sequencing aside it would also be interesting to establish whether there are over-arching principles in regard to the application of TJMs, for example, in multi-ethnic situations. Cross-country comparison will be undertaken at a later stage of the project i.e. once final versions of the case-study reports have been received.
- d) **It would be useful to attempt to establish a common definition of TJMs.** It was proposed that all project researchers outline their understanding and/or interpretation of the notion of TJMs and circulate their working definitions to each other. An operational definition / standard notion of TJMs could then be elaborated and adopted by all those involved in the project, which would also make cross-referencing of the different case-studies easier.
- e) While 'universal' definitions of the various terms involved do indeed exist, what would be interesting for project purposes is to **see how these terms are perceived and/or interpreted by local communities.** Perception at the local community level is what determines the values that ensure that particular TJMs are sustainable.
- f) While the search for a common definition continues it is important to note that **the term 'tradition' is itself controversial.** While it wants to be seen and regarded as a concept of 'what has been' this is actually a misrepresentation, because tradition is in constant flux, continuously evolving and adapting to the current situation. It has also been observed that notions of 'tradition' are sometimes blatantly abused by ruling elites to suit their particular political purposes. Having said this, it is also important to reiterate that every community in every society has its traditions, and these should be the starting point for the project researchers. (N.B. It would be interesting to make a short comparative analysis of 'what was' and 'what is' in regard to different understandings of TJMs).
- g) As regards the definition of justice itself the researchers were urged to use the notion as it applies to conflict resolution; in other words, **how the various practices/values as rooted in tradition are used in resolving conflicts.** Understandably, there might be issues of language determining the definition of these terms. In Burma, for example, the term 'justice' has significantly different meanings that are informed by culture, religion, conventional law etc. For this reason, for the purposes of clarity a few words on the context in which the definition is made would be useful.
- h) Given that in some cases a variety of TJMs may exist, it was proposed that **individual case-study discussions begin with a general overview and brief description of what is available and/or in existence, and then**

focus on one specific mechanism for the purposes of detailed analysis. Reasons should be given as to why a particular mechanism has been chosen. At the end of the discussion it would be useful to reflect on what the mechanism in focus has meant to the wider community including those who use different mechanisms. The discussion can indeed go a step further and highlight changes to the traditional mechanisms in focus during the course of the conflict, and why these were necessary (see checklist item 2.a).

- i) As regards the question of how TJMs deal with crimes committed by perpetrators outside the community, for example soldiers or foreign combatants, this could be part of the discussion under the sub-heading on regional dimensions of the conflicts (see checklist item 1.c). Where conflicts have a regional dimension, for example cutting across international borders or two different communities, it is proposed that the analysis focus in the first instance on TJMs operating within the case-study focus country.
- j) The actual tools, instruments, processes, rituals etc that make up TJMs are usually very detailed, extensive and in some cases confidential or secret and thus only known to a handful of people, usually community elders and the medicine-women/men who carry them out. Should such details be included in the case studies? While it is not strictly necessary to include the actual details, to add flavour to the analysis it would be interesting to highlight anything of significance regarding the practice of specific rituals.
- k) When dealing with the question of whose initiative it was to resort to the TJM it is important to highlight **whether the initiative was 'bottom-up' or 'top-down' in origin**. This distinction is important in order to understand what informed the process (e.g. formal law, traditional dictation etc.).
- l) In the analysis it is important to discuss the **interrelationship between the TJM under discussion and other transitional justice policies in operation in the country**. Thus, an attempt to answer the question of what avenues are opened by the interrelationships between different instruments should be made. For example, in the case of Sierra Leone victims and perpetrators were accorded the opportunity to carry out important rituals pertinent to both groups.
- m) It is also important to discuss the **role of traditional leaders in both the conflict and the TJMs in focus**. Are they co-opted by the authorities? What are the prevailing power relations and how are they dealt with? While doing this it should be noted that the state itself is a critical stakeholder in the conflict execution, resolution and reconciliation processes.

Klaas de Jonge (Project Lead Researcher) presented the SWOT (Strengths, Weakness, Opportunities and Threats) analytical approach, which is extensively used for project activity formulation in conventional development programmes, and pro-

posed it for use with respect to the case-study analysis. The following conclusions were drawn from the ensuing plenary discussion.

- a) While the SWOT tool can elicit a range of useful insights into the various aspects of conflicts it proved to be quite challenging to use when applied to the analysis of TJMs. Part of this challenge stems from the difficulties in mapping the many cross-references, understandings and interpretations of individual perspectives in a conflict situation. Indeed, when mapping these aspects of a TJM on a SWOT chart it became apparent that it is important to state clearly from whose perspective a particular aspect is being viewed – victims, perpetrators, governments, development partners etc.
- b) Another difficulty is that whenever a threat is identified there is also an equivalent opportunity for improving social conditions and/or looking for answers to the threat. Thus, the mapping into specific ‘boxes’ within the SWOT framework can be misleading if taken at face value and without cross-referencing between the different components. In addition, the process of cross-referencing can prove to be very challenging to the ordinary practitioner in the field, who is usually under pressure to provide quick answers to issues in fluid conflict situations.
- c) When conducting a SWOT mapping exercise is important to clearly distinguish whether one is discussing reconciliation at the micro-, meso- or macro-level, and whether the given context is local, national, regional or international.

4.2 Timetable

Luc Huyse (Project Senior Advisor) outlined a proposal for how the documentation and final production of the case studies should be undertaken.

- a) As a first step the case study checklist will be revised by the IDEA project team to reflect the discussions and suggestions resulting from the workshop, and a revised ‘annotated’ checklist will be circulated to case study authors in early October. Authors should then apply the annotated checklist to their individual case studies and **return completed versions of the same to Mark Salter at IDEA by the first week of December 2006**. The completed version should contain an abstract of each case study section as proposed in the annotated checklist. It should clearly indicate the sources of information on which the abstracts and later the reports will draw e.g. interviews, literature, government sources etc.
- b) As mentioned previously the Burundi case study is exceptional in that the TJM in question has not been applied to ongoing conflict in the country, even though it has been used in local dispute resolution. For this reason, a brief historical background of the Burundi conflict up to the signing of the 2003

Arusha Peace Agreement will constitute sufficient background to the case study.

- c) The final reports should be *30-40 pp.* in length, with the bulk of the report based on a SWOT analysis of the TJMs in focus. Authors should exercise prudence regarding the length of each section so that a balanced overall analysis is produced. They should also take note of the following dates and timelines:
- 1 November 2006: submit suggested definitions of basic concepts (traditional justice and reconciliation)
 - 8 December 2006: submit completed annotated check-list
 - 23 January 2007: submit first draft of completed country case studies. (In between these dates there will be communication exchanges between IDEA project staff and country authors).
 - The proposal to have the draft reports ready by the end of January 2007 is made on the basis of the fact that the reports are only one part of the project, fitting into the larger framework of the implementation timetable outlined in the overall project document.
 - The final project report will be launched by IDEA and the Belgian Ministry of Foreign Affairs at dates to be decided, but most probably in October-December 2007. Time is thus fairly short given the substantial editorial work required to produce a multi-author document.
 - From preliminary discussions with a number of relevant stakeholders it would appear that there is considerable donor interest with regard to TJMs for the purposes of informing policy formulation. For this reason the modalities of working out the final synthesis of the country reports and/or the subsequent generation of policy recommendations will be undertaken in close consultation with the case study authors.
 - Country report format. IDEA does not produce standard academic reports, so extensive footnoting, for example, is not expected. A good example of a sample report format is provided in the IDEA Handbook *Reconciliation After Violent Conflict*, which among other things has two chapters devoted specifically to justice-related issues.¹ A copy of the Handbook will be sent to all the researchers upon request. Those who can use additional copies can send their requests to IDEA.
 - In projects of this nature questions of **neutrality, impartiality and objectivity** are always paramount. What is important in this case is for the

¹ The full text of the IDEA Reconciliation Handbook is available at:
www.idea.int/publications/reconciliation/index.cfm

researchers to clearly indicate the sources of their information. Presentation of personal perceptions and/or interpretations is acceptable, but it is important to maintain balance by also voicing competing and/or alternative views of the issues in focus.

5.0 Conclusion

To enrich comparative sharing of experiences, two cases - the South African TRC experience and Burma's attempts to deal with the issue of reconciliation were also presented during the workshop. Parallels were drawn between these experiences and those in the project focus countries. From discussions at the workshop it would appear that the South African and Burmese cases have a number of important aspects in common with the case study countries. An important difference with the Burmese case, however, centres on the fact that promoting reconciliation in current political Burmese circumstances involves a strong persuasive/'convincing' component specifically aimed at the military leadership, whose language and behaviour remains strongly divorced from that of ordinary civilians.

Keeping to the challenge offered at the beginning of the workshop - endeavouring to ask questions rather than finding answers - concluding plenary discussions affirmed the importance of continuing to grapple with critical questions, including the following. Are TJMs, like other traditional forms of governance, best viewed as outdated, self-serving case- and time-specific instruments of local governance? Are they another in a series of 'politically correct' notions embraced by practitioners for reasons of self-interest? Are they meant to replace the functions of government? If the political status quo were to change as a result of their adoption, how would all the potential losers and winners be dealt with, and by whom? Are traditional reconciliation and justice-directed structures sufficiently flexible and innovative enough to cope with fast-changing contemporary conflicts?

The project facilitators noted the difficult challenges they had faced getting the project process to this point. In particular, the identification of appropriate case-studies countries and individual researchers has in some instances proved challenging. There was, however, broad confidence that the project was on the right track and that the final outputs would meet stakeholder expectations. As noted elsewhere, it was evident from the workshop proceedings that more attention in particular needs to be given to questions of scaling-up, diversity, multi-dimensional and regional conflict with respect to the role and functioning of TJMs.

Finally, a vote of thanks was extended to all those who had made the workshop possible, in particular the Belgian Ministry of Foreign Affairs for funding the project, the IDEA project team and the IDEA regional office in Pretoria for planning and organizing the event.

Annex 1

List of Pretoria Workshop Participants

No.	Organisation	Name	Surname	Work Title
1	University of Sierra Leone	Joe A.D	Alie	Head, Dept. of History & African Studies
2	Consultant	Klaas	de Jonge	Project Lead Researcher
3	Centre For The Study of Violence & Reconciliation (CSV)	Carnita	Ernest	Project Manager, Transitional Justice Programme
4	Safer Africa	Slu	Hlongwa	Director, Governance & Development Programme
5	University of Leuven	Luc	Huyse	Project Senior Advisor
6	University of Leiden, Netherlands	Victor	Igreja	Researcher
7	South Africa Institute of International Affairs	Ayesha	Kajee	Research Coordinator
8	Irish School of Ecumenics	John	Kimani	Research Student
9	Consultant	Jean-Paul	Kimonyo	Political Scientist
10	Northern Uganda Peace Initiative (NUPI)	James Ojera	Latigo	Director
11	Australian National University	Toe Zaw	Latt	Researcher
12	Institute for Security Studies (ISS)	Antoinette	Louw	Senior Research Fellow
13	Department of Foreign Affairs	PD	Montwedi	Director, Civil And Political Rights
14	Freelance	Gregory	Mthembu-Salter	Consultant
15	Centre for Democratic Empowerment (CEDE)	Ezekiel	Pajibo	Director
16	Embassy of Belgium	Bart	Pennewaet	H.E Ambassador of Belgium (Deputy)
17	International IDEA	Joram	Rukambe	Programme Officer
18	International IDEA	Mark	Salter	Senior Programme Officer
19	Vahu Development Institute	Tin Maung	Than	Consultant and Doctoral Student
20	CSV	Nahla	Valji	Project Manager, Tran-

				sitional Justice Programme
21	Nairobi Peace Initiative (NPI)	George	Wachira	Senior Researcher
22	ONUB (National Council of the Bashingantahe)	Assumpta	Naniwe	Programme Officer

Annex 2

Workshop Programme

Reconciliation and Traditional Justice: Learning from African Experiences

Burgers Park Hotel, Pretoria, 26-27 September 2006

Monday 25th September

P.M. Arrival at *Burgers Park Hotel*, Pretoria (International + Cape Town participants) Dinner, Burgers Park Hotel (informal)

Tuesday 26th September

- 08:30 **Arrival & Registration** (Tea & Coffee)
- 09:00 **Welcome & Introduction**
- Joram Rukambe, Africa Programme, IDEA
 - HE Bart Pennewaet, Acting Ambassador of Belgium to South Africa
 - Mark Salter, Democracy-Building & Conflict Management (DCM) Programme, IDEA
- 09.15 **The Role of Traditional Justice Mechanisms in Societies Emerging from Conflict: an Introduction**
- Luc Huyse, Senior Project Advisor
- 09:30 **Reconciliation and Traditional Justice in Africa: Experiences and Perspectives From Around The Continent**
Moderator: Mark Salter
- **Liberia** – Ezekiel Pajibo, Centre For Democratic Empowerment (CEDE), Monrovia
 - **Sierra Leone** – Joe AD Alie, History & African Studies Dept, Fourah Bay College, University of Sierra Leone
- 11.00 Coffee Break
- 11.15 **Reconciliation and Traditional Justice in Africa: Experiences and Perspectives From Around The Continent (continued)**
Moderator: Luc Huyse
- **Rwanda** – Jean-Paul Kimonyo, Political Scientist, Kigali
 - **Burundi** – t.b.c
- 12:45 Lunch

- 14:00 **Reconciliation and Traditional Justice in Africa: Experiences and Perspectives From Around The Continent (continued)**
Moderator: Klaas De Jonghe, Project Lead Researcher
- **Uganda** – James Latigo, North Uganda Peace Initiative, Gulu
 - **Mozambique** – Victor Igreja, Leiden University
 - **South Africa** – Carnita Ernest, Centre For The Study of Violence And Reconciliation (CSVR), Cape Town
- 16.00 Coffee Break
- 16:15 **Commentary & Reflections on the Country Presentations**
- Klaas De Jonghe, Project Lead Researcher
 - Luc Huyse, IDEA Project Adviser
- 17:00 **Conclusions**
- 19:00 Reception at the **Burgers Park Hotel**

Tuesday 27th September (For project contributors & advisors)

- 09.00 **Plenary - Review of Day 1**
- 09.30 ***Reconciliation and Traditional Justice: Learning from African Experiences***
Project Checklist as a Tool for Analysis – Discussion (*See project background Paper*)
Moderator: Luc Huyse
- 11.00 Coffee Break
- 11.15 **Developing a Preliminary SWOT Analysis of Traditional Justice Mechanisms**
- Klaas De Jonghe
- Moderator: Mark Salter
- 12.45 Lunch
- 14.00 **Modalities of Case Study Production**
- Timing - steps, first draft, exchange of drafts
 - Length of paper, presentation of sources, other editorial questions e.g. neutrality, objectivity etc.
 - Developing a common approach to case study information content (basic bibliography, conclusions etc)
 - Other practical issues
- 16.00 **Concluding Remarks**
- PM Excursion + dinner for remaining participants**

Annex 3

Reconciliation and Traditional Justice: Learning From African Experiences

Country Case Studies Annotated Checklist

Part 1. The Conflict

1. Descriptive chronology

2. Causes of the conflict

3. Degree of internationalization

4. **If ongoing: actual situation** (peace agreement in the making?)

5. **If ended: nature of the transition**

a) Military victory, negotiated settlement, other?

b) Locally driven or partly internationalized?

c) Current balance of power between former warring parties/groups/regions?

Part 2. Traditional Justice and Reconciliation Mechanisms (TJRM) in their 'original' form / before the conflict

1. **Background and description** (If a plurality of ethnic/religious/regional mechanisms is covered: provide a brief overview. If focus is on a selection: present arguments for doing so)

2. The **'career'** of the chosen TJRM (re rituals, actors, stakeholders, degree of politicisation...)

Part 3. TJRMs today

1. Impact of the conflict on TJRMs

2. If explicitly used as dimension of dealing with grave HR crimes

a) Whose initiative (top-down/bottom-up; role of international community)?

b) Relationship to other transitional justice policies & instruments (TRC, tribunal, amnesty legislation...)

c) Main actors and stakeholders (local/national/international)

d) Degree of inclusion (gender, youth dimensions)

e) Changes in comparison to TJRM in its 'original' format

2. If not (yet) used: is there a debate on potential/eventual use? What are the key arguments involved (for and/or against)

Part 4. 'SWOT' Analysis

1. Strengths

a) List of strengths (Provide 1. View(s) of key actors/stakeholders 2. View of author)

b) How can these strengths be exploited/increased with respect to dealing with the legacy of violent conflict? (1. View(s) of key actors/stakeholders. 2. View of author)

2. Weaknesses

a) list of weaknesses (1. View(s) of key actors/stakeholders. 2. View of author)

b) how can these weaknesses be countered?

3. Opportunities

a) list of opportunities (1. View(s) of key actors/stakeholders. 2. View of author)

b) how can these opportunities be exploited?

4. Threats

a) list of threats (1. View(s) of key actors/stakeholders. 2. View of author)

b) how can the threats be countered?

Chapter 5. Preliminary Conclusions

1. Summary of findings

2. Recommendations (if any) to: local/national/international stakeholders