



Extracted from *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*

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CHAPTER 7

CHAPTER 7

Conclusions and recommendations

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Section 1 of this chapter pulls together the information as to where on the scale of judgement traditional justice practices have to be placed. The second section then moves towards a cautious analysis of their strengths and weaknesses, and the chapter ends with a list of recommendations for national and international stakeholders.

1. The two faces of tradition-based practices

An assessment has to start with the question of what the goals and objectives of a particular institution are. Chapter 1 identifies two sets of goals in the case of traditional justice practices. The healing of the survivors, social harmony and the prevention of new violence are general ambitions. Accountability, reconciliation, truth telling and reparation are the instrumental objectives that pave the way towards broader targets, thereby establishing a framework for the building of sustainable and effective democratic processes and institutions. Do indigenous mechanisms achieve these goals in times of transition from civil war or genocide? The question then is how to identify the strengths and weaknesses that ultimately determine the outcome.

A Penal Reform International report on informal justice systems in Sub-Saharan Africa lists several strong points of such arrangements:

They are accessible to local and rural people in that their proceedings are carried out in the local language, within walking distance, with simple procedures which do not require the services of a lawyer, and without the delays associated with the formal system.

In most cases, the type of justice they offer—based on reconciliation, reparation, 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...

They help 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.

The fact that they employ non-custodial sentences effectively reduces prison overcrowding, may allow prison budget allocations to be diverted towards social development purposes, permits the offender to continue to contribute to the economy and to pay reparation to the victim, and prevents the economic and social dislocation of the family (Penal Reform International 2002, by kind permission).

This catalogue of strengths offers references to factors that sustain the domestic credibility of traditional practices, for example, easy access and an appropriate type of dispute resolution in close-knit communities. It also points to aspects that increase their effectiveness—the simplicity of the procedures, the reduction of delays, and low cost. The problem with this list is that it presents the model, not the reality. It is, moreover, not focused on a post-conflict context. This section, therefore, starts with a description of obstacles, handicaps and shortcomings in the war-torn countries that are part of our project.

The healing of the survivors, social harmony and the prevention of new violence are general ambitions. Accountability, reconciliation, truth telling and reparation are the instrumental objectives that pave the way towards these broader targets, thereby establishing a framework for the building of sustainable and effective democratic processes and institutions. Do indigenous mechanisms achieve these goals in times of transition from civil war or genocide?

By looking first at the weaknesses, not the strengths, we may avoid unfounded expectations.

1.1. Obstacles and shortcomings

Reparation, our case study authors write, is an important dimension of most indigenous justice and reconciliation systems. The perpetrator or his clan has to pay damages to the victim or his community. But the nature of the conflict in these countries has been such that victims often do not know who is responsible for what happened to them. In such a situation rituals will be difficult to perform. In addition, even if victim and perpetrator are both identifiable, payment of the reparation will often be impossible given the total impoverishment the war has brought to them.

The example shows that problems exist in two critical areas: traditional mechanisms have a limited range of action and effect; and process conditions are tricky.

1.1.1. Limited range

In their chapter on Mozambique (chapter 3), Victor Igreja and Beatrice Dias-Lambranca observe that the *gamba* spirit ceremony is a regional phenomenon, that Christian members of the community despise it and that it carries a bias against women. The

authors thus identify three factors that determine the social space in which this ritual is applicable—ethnicity, religion and gender.

Ethnicity

The Ubushingantahe in Burundi and the Gacaca in Rwanda cover all national ethnic groups. Tradition-based mechanisms in Mozambique, Sierra Leone and northern Uganda, on the other hand, are culture-specific and are, consequently, almost inflexible. James Latigo writes in chapter 4 on the Acholi practices in northern Uganda that ‘It is often difficult for people who do not belong or subscribe to the particular culture to respond positively to the traditional justice processes. There is very little leeway and no possibility of changing or bending the rules hitherto prescribed to suit particular circumstances’. The *mato oput* rite, for example, is in all probability not available as a justice and reconciliation technique to be applied in the case of crimes committed between the Acholi leaders of the Lord’s Resistance Army (LRA) and the survivors of their raids in the neighbouring Teso and Lango districts. There are even cultural differences between the different Acholi communities. The range of indigenous mechanisms is thus significantly restricted in ethnically diverse countries where each group has developed its own complex systems of dispute resolution. In the case of Sierra Leone, Joe Alie in chapter 5 notes that over the years ethnic mixing has taken place in the Mende region so that the existing traditional practices may not be suitable for handling disputes between Mende and non-Mende people.

Religion

In his anthropological description of the case of Amelia in central Mozambique (see chapter 3), Victor Igreja demonstrates that applying the *gamba* spirit approach is impossible because her father, who is a Christian, refuses to participate. Igreja writes: ‘the problem of the Christian religious groups is that they neither encourage discourse and practices that revisit the violent past nor demand any form of responsibility of people involved in war-related conflict... Christian religious groups in Gorongosa rely entirely on unilateral forgiveness since God is considered to be the most important figure in the resolution of conflicts’. In northern Uganda, too, some Christian believers reject traditional practices outright, although new techniques have emerged that tend to hybridize with Christian religious beliefs and rituals.

Gender

Tradition-based systems of dispute resolution are usually male-dominated. The most critical assessment comes from Victor Igreja. The gender bias in the content of *gamba* is very apparent: ‘the women killed during the Mozambican civil war are unable to return as spirits to the realm of the living to claim justice. Only the spirits of men can do this. In this sense, although *magamba* spirits break with the silence of the past, structurally the justice they offer helps to reinforce patriarchal power in a country that is struggling for gender equality’. In Burundi women are not allowed to become members of the Ubushingantahe *à titre individuel*. They can only participate in the deliberations as the wife or the widow of a member. The justice system in Sierra Leone is also heavily tilted against women, especially in husband–wife relationships.

Recently changes have been introduced. In Sierra Leone some provision is made for female representation in dispute settlement cases. Joe Alie notes that certain truth-seeking mechanisms are actually headed by women. According to Assumpta Naniwe-Kaburahe in her case study on Burundi (chapter 6), efforts to increase the participation of women are being held up by the conservative reflexes of men. Bert Ingelaere (see chapter 2) concludes that women have taken up an important role in the Gacaca proceedings in Rwanda. This court system, however, remains ‘biased against women because of its inadequacy to fully address sexual crimes. Provisions have been made to allow women to testify on sexual crimes, for example, through in camera sessions. But the embedding of the Gacaca in a local face-to-face community makes it difficult to tackle these crimes’.

Other shortcomings

Traditional justice mechanisms tend to exclude young people. They are viewed as immature or as not sufficiently socialized into the local mores. Joe Alie’s view is that the over-reliance on elders is causing this type of exclusion.

Another source of exclusion is of a political nature—the tendency to protect certain crimes or certain perpetrators from the accountability and reparation dimensions of indigenous practices. The Rwandan Gacaca tribunals lack the authority to deal with the violence the Batutsi-dominated Rwanda Patriotic Front committed against the Bahutu. In northern Uganda, middle- and high-level commanders of the LRA have been beyond the scope of *mato oput* ceremonies. So are most members of the Ugandan Army.

Traditional mechanisms have a limited range of action and effect in terms of ethnicity, religious group, and societal groups. Certain crimes or certain perpetrators may be protected from the accountability and reparation dimensions of indigenous practices. Some of these conflicts have crossed national borders or have been fuelled by neighbouring countries.

Finally, some of these conflicts have crossed national borders or have been fuelled by neighbouring countries. This also limits the radius of action of the instruments we discuss here. As James Latigo writes about the *mato oput* ceremony, a fundamental weakness of its application as a remedy is that ‘conceptually, it wrongly projects the LRA insurgency as a local Acholi affair. In reality this war had inherent national and international dimensions’. The dynamics of

the conflict and its legacy, just as in Sierra Leone, go far beyond the territorial and personal reach of domestic tradition-based mechanisms.

1.1.2. Difficult process conditions

Two questions lead this part of our evaluation. First, are these indigenous tools able to deal with war crimes, genocide and crimes against humanity? Second, do they have the capacity to restore years and sometimes decades of material and social destruction of their biotope?

The scale of the wrongdoing

Traditional justice systems are designed to deal with relatively small numbers of cases of wrongdoing. Erin Baines, a researcher working on informal justice mechanisms in northern Ugandan communities, cites ‘a 2005 study on traditional justice and reintegration in which dozens of elders across Acholiland almost universally expressed the opinion that there was little sense in pursuing *mato oput* on a case-by-case basis as too many people had been killed and it was therefore difficult to trace who had killed whom and which clans to engage’ (Baines 2007: 105). The authors of the present book are not opposed to the introduction of a tradition-based approach to justice and reconciliation after transition—quite the contrary. But they also share the doubts of the interviewees in Acholiland. The Acholi traditional justice system, writes James Latigo, was in its original form ‘not conceptualized as a method for adjudicating over war crimes and crimes against humanity, because in pre-colonial Acholiland these never occurred. Hence it is not well suited to being applied as the sole reconciliation measure to the LRA architects of terror’. And Joe Alie concludes that these mechanisms can only complement the efforts of national and international criminal justice systems.

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A wounded biotope

The case studies describe the devastating effects of genocide, civil war and oppression on the form and substance, status and potential of tradition-based instruments in their respective societies. The scale and degree of violence and repression vary, but all countries share the experience of having their traditions deeply injured. Material conditions and political constraints are highly unfavourable. In addition, the social fabric has broken down, greatly damaging the natural biotope of traditional practices.

Material obstacles

Large numbers of the victimized population and of returned perpetrators have lived or still live in refugee camps—environments that are too artificial for the effective use of cleansing, reintegration and reconciliation ceremonies. The dislocation of families is another handicap. In Sierra Leone, mass migration of young people to the cities makes the traditional practices less effective. In addition, urban settings are not the natural biotope of ritualistic-communal procedures, as the experience with Gacaca courts in Kigali demonstrates. Moreover, the resources that are needed to fulfil the reparation dimension of these rites are lacking because of extreme poverty.

Political constraints

Joe Alie notes that the top-down approaches to peace building adopted by the Sierra Leonean Government and international agencies alike have rendered tradition-based mechanisms dysfunctional. The chapter on Rwanda argues that, although local authorities are not overtly active in the Gacaca process, ‘they form the framework within which the Gacaca functions. In Hutu perceptions this often means that the combination of the

Gacaca, with its reference to the pre-colonial past, and a power structure that is occupied by a politico-military movement dominated by members of the Tutsi minority is perceived as a return to the feudal period when Hutu servants were subordinate to Tutsi lords in all domains of life’.

Erosion of social capital

Civil war and genocide have brought in their wake mutual mistrust in small-scale communities, and this may limit the willingness to be reconciled. Taboos have been

disregarded and sacred places defiled. The legitimacy of traditional leaders has been greatly harmed, particularly in their relations with the younger generations. The spontaneous socialization of young people has almost disappeared, especially in the case of abducted children. How can healers and elders successfully perform rituals if their authority is disputed?

Genocide, civil war and oppression may have had a devastating effect on the substance, status and potential of tradition-based instruments. They bring in their wake mutual mistrust. The social fabric and the spontaneous socialization of young people have broken down, and the legitimacy of traditional healers and elders has been greatly harmed.

1.2. Strengths

This chapter started with a brief overview of the strong points of tradition-based practices. The section on obstacles and shortcomings, however, brought in doubts and queries about their actual or potential performance in countries that have been plagued by civil war and genocide. We now turn to a closer scrutiny of this rather bleak picture and list the positive effects these tools can have in the context of dealing with a legacy of grave human rights violations.

1.2.1. Accountability

Accountability is one of the instrumental objectives of most transitional justice policies. Systematic prosecutions are the most direct way to establish guilt and punishment. Chapter 1 argues that this strategy is highly questionable in contexts where regime change is an extremely delicate and/or complex operation. Full-scale trials may endanger a fragile peace or even make it impossible to put an end to a violent conflict—as is currently the case in northern Uganda. However, a blanket amnesty or an imposed silence is not an acceptable policy choice. It lacks legitimacy if it involves explicit impunity. Nor will a culture of denial (the Mozambican implicit preference) lead to the repairing of broken relationships or heal the victims. There is a growing belief that non-state mechanisms may act as an (often interim) alternative to trials. They are less threatening to the forces that dread prosecutions. They have, in addition, a dimension of acknowledgement of

responsibility. Their proximity to the victims and survivors is a further asset, since it becomes possible for people to see that partial justice has been done—in distinct contrast to the procedures and outcomes of far-away criminal courts. Bert Ingelaere notes that in Rwanda formal tribunals are ‘both physically and psychologically remote institutions’ for the ordinary peasant.

Systematic prosecutions are a highly questionable strategy in contexts where regime change is an extremely delicate and/or complex operation. Non-state mechanisms have a dimension of acknowledgement of responsibility. There is a growing belief that they thus may act as an interim alternative to trials. Their proximity to the victims and survivors is a further asset.

1.2.2. *Revealing the truth*

Formal truth commissions may not be the most appropriate option in societies where the public revealing of the truth is not strongly rooted in the local culture. The case studies on Burundi, Rwanda and Sierra Leone indicate that this is a problem there. Precisely because they are rooted in established local values and traditions, ritualistic-communal practices may be better suited to creating a collective atmosphere that opens the heart and the mind and delivers parts of the truth.

1.2.3. *Reconciliation*

Victor Igreja’s chapter on the *gamba* spirit ceremony in central Mozambique is a strong demonstration of the reconciliation such a practice can bring about. The *bashingantabe* in Burundi are considered to have the same potential, although they have not yet been operational in the context of dealing with a very painful legacy. Cleansing and reintegration rituals, particularly if they deal with ex-combatants and returning abducted children, have succeeded here and there in restoring family and clan relations. Serious doubts exist, however, with regard to the reconciliation capacity of the Gacaca proceedings in Rwanda. According to Bert Ingelaere’s case study, the Gacaca courts are mimicking the ancient institution but with reduced potential to achieve real reconciliation.

The *gamba* spirit practice creates social spaces where the past can be worked through. This healing aspect is not specific to the particular ceremony Victor Igreja describes. Other tradition-based mechanisms too open up such curative spaces. In addition, access is not confined to victims. Many more survivors, perpetrators included, are involved in these ritualistic scenarios.

Tradition-based mechanisms can produce reconciliation and restore family and clan relations. Their healing elements open curative spaces. Perpetrators as well as victims are involved in these ritualistic scenarios.

1.2.4. *The restoration of broken communal relations*

After a devastating conflict this is an extremely intricate undertaking. The authors of the country studies on Burundi and Mozambique argue convincingly that local mechanisms have the capacity to renew damaged social capital. Another added value lies in the

creation of situations where a natural, spontaneous socialization of people as to norms about good and bad may arise. Finally, instruments like the *Ubushingantahe* are in principle able to deal with the often forgotten fallout of civil war, such as property conflicts when refugees return and an increase in marital violence.

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It is much more problematic to judge whether these tools are well enough equipped to prevent the *recurrence of grave human rights violations*. In Gorongosa, central Mozambique, violence at the level of communities has remained absent. According to Victor Igreja this

is the product of the rituals he discusses in his chapter. Elsewhere, however, all the cases are too recent for an assessment of their medium- and long-term achievements to be possible.

With the possible exception of the case of Mozambique, all the cases of traditional justice mechanisms being used are too recent for an assessment of their medium- and long-term achievements to be possible.

2. A cautious analysis of strengths and weaknesses

The case studies presented in this book have brought realism to the ongoing discussion on the role of tradition-based practices in post-conflict societies. Our authors see strengths and weaknesses. Section 1 of this chapter has summarized their arguments. The following is an attempt to arrive at a set of what unavoidably must be called cautious conclusions.

Our analysis will use two yardsticks in weighing the actual and potential performance of the mechanisms in focus. The first is *effectiveness*—their impact in terms of the desired effects. The other is *legitimacy*—their degree of credibility, domestically and internationally.

2.1. *Partial effectiveness*

The effectiveness of a social institution depends to a great extent on how far it can influence individual behaviour and the future of a society. The question, therefore, is

whether the reach of tradition-based instruments is wide enough to produce sufficient healing, social repair and durable peace after violent conflict. Several circumstances limit the scope of traditional tools of justice. They are culture-specific and, as a consequence, almost always limited to the ethnic, religious and regional communities in which they are applied. In the case of northern Uganda, for example, the Acholi have succeeded in using their own cultural heritage to cope with the legacy of widespread bloodshed. But war crimes have often been committed between Acholi and Langi, and between people of the north and of the south of the country. In those cases some of the victims or perpetrators are out of reach of the Acholi *mato oput* ceremony. A similar result is to be expected where a conflict has acquired an international dimension. In addition, forms of intended exclusion of stakeholders reduce the radius of action. Women and young people may be marginalized. Moreover, tradition-based practices are not immune from political manipulation, with the result that certain categories of offenders (e.g. middle- and top-level military or rebel commanders) are sometimes shielded from the accountability and reparation dimensions of non-state mechanisms.

Traditional justice mechanisms are culture-specific and almost always limited to the ethnic, religious and regional communities in which they are applied. Moreover, they are not immune from political manipulation, with the result that certain categories of offenders are sometimes shielded from their accountability and reparation dimensions.

They will also be less effective if the process conditions are unfavourable. The case studies have demonstrated convincingly how war, genocide and oppression have a devastating effect on the capacities of traditional leaders to perform justice and reconciliation rituals. This development also casts doubts on their ability to adapt the original design of the mechanisms to the intricate task of dealing with mass human rights violations.

Judging the potential and/or actual performance of these instruments also requires that we pay sufficient attention to some broader aspects of their workings. What do they achieve at the micro level (individual victims and perpetrators), the meso level (clans, communities) and the macro level (national, regional and international)? In many cases we do not even have the most basic data that we would need to deal with this question. There is also the problem of their long-term impact. This is a very difficult issue, as most cases are too recent to be assessed on that particular point—the case of Mozambique perhaps being an exception.

For all that, the preceding chapters also include examples of the relative effectiveness of traditional mechanisms. Some of the rituals, such as the cleansing ceremonies in Sierra Leone and northern Uganda, seem to be successful in reintegrating and reconciling surviving victims and ex-combatants, particularly former child soldiers. In Mozambique, in spite of the government's explicit neglect of the need for a transitional justice policy, 'war survivors living in the former epicentres of the civil war in Gorongosa have neither resorted to violent revenge ... nor gone along with the official authorities, who urged survivors to "forgive and forget". Instead, inspired by their own cultural wisdom, the

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survivors in Gorongosa managed to develop their own socio-cultural mechanisms to create healing and attain justice and reconciliation in the aftermath of the civil war' (chapter 3). The Gacaca proceedings in Rwanda are speeding up the backlog of genocide-related cases. More importantly, traditional mechanisms can act as interim instruments in cases where an official transitional justice policy is absent, delayed or crippled by political constraints.

According to the Burundi case study, members of the Ubushingantahe were active after the gruesome incidents between Bahutu and Batutsi in 1993. In Rwanda, Gacaca meetings were held immediately after the genocide ended, years before the government determined its policy. Finally, tools such as the *gamba* practice in Mozambique have shown that they are able to deal with the often forgotten effects of civil war, such as property conflicts when refugees return and the increase in marital violence.

2.2. Partial legitimacy

In Rwanda, presence at the meetings of the Gacaca at the local level is compulsory for all adult inhabitants. Chapter 2 notes that, after fatigue set in, 'Fines and coercion have come to replace voluntary participation'. Force and intimidation are indeed techniques that are often used to increase the effectiveness of a social institution. Patronage—buying

The legitimacy of traditional justice mechanisms—their credibility in the eyes of the population and the trust they enjoy—is a much stronger source of compliance than the use of force and intimidation.

The authority of traditional leaders has suffered from the general fallout of civil war and oppression, as well as from colonialism, migration to the cities, and manoeuvring by the national political establishment.

conformity through the personalized allocation of goods and services—is a 'softer' alternative. However, legitimacy—the quality of being credible, justified and worthy of trust—is a much stronger source of compliance. Legitimacy not only supports the effectiveness of institutions such as tradition-based practices; it also guarantees their survival.

Their degree of credibility, domestically and internationally, is the second benchmark in our evaluation.

2.2.1. At the local level

All the country studies present a mixed picture of the position of informal justice and reconciliation mechanisms in terms of their legitimacy. In Gorongosa, central Mozambique, '*Gamba* is part of the development of a well-established local tradition of

settling accounts with histories of individual and collective violence' (chapter 3). Its credibility is high. But the authors of chapter 3 add that from a political perspective it 'is not a response to the failure of the state institutions to provide accountability measures as part of transitional justice process in the aftermath of the civil war'. Bert Ingelaere writes that ordinary Rwandans prefer the Gacaca courts over the national courts and the International Criminal Tribunal for Rwanda (ICTR) to deal with the genocide crimes. However, most Bahutu no longer see the Gacaca institution as conforming to standards of equity.

The Northern Uganda Peace Initiative (NUPI), a network of associations, has strongly supported the use of *mato oput* and cleansing ceremonies. The argument is that survivors of the civil war trust these practices to a high degree. Other local non-governmental organizations (NGOs) in the region disagree. They refer to surveys carried out in the camps for displaced persons the findings of which suggest that the legitimacy of local techniques is only partial, as they do not fill people's need for accountability. Assumpta Naniwe-Kaburahe is convinced that the majority of the population in Burundi see the Ubushingantahe as a credible instrument of dispute resolution, even in the context of dealing with crimes committed during the country's civil war; but there is a clear aversion towards it in most contemporary political circles in the country. In Sierra Leone, reintegration and cleansing ceremonies, particularly if addressed to former child soldiers, are viewed as reliable, but at the same time great doubt exists as to their role in handling more complex issues of the legacy of the war.

This ambiguity in the local vision is also intimately linked to the broader problem of the damaged authority of traditional leaders. They suffered from the general fallout of civil war and oppression. Their position has also been endangered by colonialism, migration to the cities and manoeuvring by the national political establishment.

2.2.2. *The international community*

Existing lists of the weaknesses of informal justice mechanisms have often been written from the Western perspective of consideration for the rule of law. The general perception is that the rules associated with them are very often imprecise and unwritten and that procedural safeguards are insufficient. This is the procedural aspect of the legitimacy gap that the international community, both in its state and in its non-state form, has identified as seriously problematic. In addition, many actors on the international field are convinced that these tools do not respect the duty under international law to prosecute genocide, war crimes and gross violations of human rights.

The spirited debate over this second problem is still unresolved. Some participants argue that a post-conflict society may refrain from the duty to prosecute if certain strict conditions are met. Blanket amnesty is not acceptable. All alternative strategies must thus have an accountability dimension. Perpetrators should confess and express regret. This must guarantee the unveiling of the truth and favour reconciliation. Reparation for

The international community, both in its state and in its non-state form, has identified a serious legitimacy gap. Many actors on the international stage are convinced that traditional conflict resolution tools do not respect the duty under international law to prosecute genocide, war crimes and gross violations of human rights.

victims must be part of the transaction. And, finally, survivors should be involved in the decision to resort to non-prosecutorial instruments. In this view the legitimacy of tradition-based practices depends on the extent to which these conditions are met. The information brought together in section 1 of this chapter points to the occurrence of elements of accountability, truth telling, reparation and reconciliation.

Other international stakeholders, however, admit no exceptions to the international obligation to prosecute. Large NGOs such as Human Rights Watch and Amnesty International are the most outspoken upholders of this position.

The discussion has recently focused, as could be expected, on the northern Ugandan peace process and the intervention of the International Criminal Court (ICC). Some of those in favour of conditional amnesty, through local rituals, for the LRA leaders refer to article 53(1c),(2b) of the Rome Statute of the ICC. According to them this article creates an opportunity to accept local practices as an alternative. The problem is that this interpretation is based on the notion of ‘interests of justice’, an extremely technical and diffuse concept.

A recent conference on ‘Building a Future on Peace and Justice’ (Nuremberg, June 2007) has rightly advanced the idea that legitimacy is not only problematic in the case of tradition-based mechanisms. The conference report remarks that for too long ‘the International Criminal Tribunal for the former Yugoslavia considered the issue of legitimacy only vis-à-vis the international community and not with respect to the local constituency’. It also notes that the ICC ‘must close the legitimacy gap that may exist in respect of affected populations’ (*Building a Future on Peace and Justice* 2007: 6, 5).

2.3. Summary

Do indigenous conflict resolution tools have an added value in times of transition? The answer is a cautious ‘yes’. They are not sufficiently effective, and their legitimacy locally and internationally is not assured. The case studies have, however, demonstrated that tradition-based practices have the potential to produce a dividend in terms of the much-needed post-conflict accountability, truth telling and reconciliation that is not negligible. Consequently, positive effects may be expected with regard to the more general transitional justice goals of healing and social repair.

Nowhere in the real world has challenging state-based models of justice after transition been more discussed than in the northern Ugandan context of today. James Latigo, the author of our case study (chapter 4), has convincingly summarized the possible role of

traditional conflict resolution instruments. ‘Neither glorifying [them] as the only cure nor relegating them to the realm of the devilish is helpful to people seeking assistance in their suffering. It is only prudent to acknowledge the positive potential of traditional rituals and beliefs, not as contradictory to or competing with other approaches but as complementary to them. To ignore or discard traditional ways that have been seen to work in the past makes no sense. On the other hand, they cannot provide the cure for all ills’.

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In 2005, a local network of NGOs (the Gulu District NGO Forum), the cultural institution of the Acholi (Ker Kwaro Acholi) and a Canadian research institute (the Liu Institute for Global Issues) joined forces to sum up the current debate. Their report concludes that a double false dichotomy has been created—local versus international approaches, and justice versus peace. Such a juxtaposition is misleading because traditional practices are being adapted to the Western vision of fair justice and ‘in some instances, cleansing ceremonies and other rituals are already setting the foundation for justice’ (Baines et al. 2005: 72). Removing them from the transitional justice toolkit is thus not an option.

Erin Baines, who has closely observed the many dilemmas that arise in northern Uganda, writes: ‘The Juba talks are thus not only a historic opportunity to achieve peace in the country; they also provide a unique opportunity to begin to resolve how local approaches to justice and reconciliation can better inform and shape international approaches. This might involve adapting aspects of local justice that meet international standards, but will also require that international strategies be transformed to fit local sociocultural and economic realities’ (Baines 2007: 114). This view reminds us of the many challenges that await if local and international stakeholders want in earnest to adopt and adapt tradition-based practices in their dealing with the legacy of civil war, genocide and oppression. It is in that context that part 3 of this chapter presents a very tentative list of recommendations.

Traditional practices are being adapted to the Western vision of fair justice, but many challenges await if local and international stakeholders want in earnest to adopt and adapt tradition-based practices in their dealing with the legacy of civil war, genocide and oppression.

3. Policy recommendations*

So far, this chapter has been predominantly descriptive. However, this book also aims to present ways in which the performance of tradition-based practices in the context of post-conflict societies can be improved. The policy recommendations that follow

underscore that aspiration. Their range is limited as they are based on five case studies which cover one part of one single continent. We hope, nonetheless, that they will facilitate decision making in the area of justice during and after political transition.

Social engineering in this field is an intricate operation. It should be aimed at consolidating and, where practicable, increasing the actual strengths of indigenous justice and reconciliation practices. It must try to exploit existing opportunities, such as the growing interest in these tools. Answers must be sought to the problem of how to overcome their present shortcomings and weaknesses to the greatest degree possible. In addition, almost all post-conflict countries combine traditional instruments with other strategies for dealing with the legacy of civil war and genocide. This in turn is a source of difficult questions. How can and should these strategies interrelate? In particular, how can interpersonal and community-based practices live side by side with state-organized and/or internationally sponsored forms of retributive justice and truth telling?

In short, the challenge of integrating traditional justice mechanisms into broader reconciliation and transitional justice strategies requires imagination, wide consultations, consensus building and capacity building, technical support, research and time. Our list of recommendations is conceived as one step in that complex process.

3.1. General rules

1. In the aftermath of regime change or civil war, do not limit the approach adopted and actions undertaken to ‘hard reconstruction’ (economic stability, disarmament and demobilization, security sector reform and so on), but give sufficient attention to the range of ‘soft reconstruction’ measures available (restorative justice through informal practices, survivor-oriented programmes, reconciliation, the restoration of local traditional authority).
2. When adopting or promoting tradition-based mechanisms and practices as part of a national transitional justice strategy, be aware that they should ideally serve as a complement to official judicial structures as opposed to being brought under state control.
3. Develop and deploy initiatives that reflect the wider trend of conceiving ‘dealing with the past’ as an intrinsic and unavoidable part of any peace negotiation process.
4. Be aware that transitional justice instruments and broader governance and democratization challenges are intimately interlocked.
5. Be attentive to the political, economic, cultural and international contingencies that play a role in decision making on transitional justice in general, and tradition-based practices in particular.

*This section co-authored by Mark Salter

6. Develop and implement political, legal, social, economic and cultural reforms that tackle the root causes of conflicts that provoke extreme violence or have done so in the past.
7. Devote sufficient time and energy to a careful, contextualized assessment of how best to blend the different state and non-state justice and reconciliation strategies available. Understand and utilize all chosen approaches in ways that complement each other synergistically, rather than work against each other.
8. ‘Understand the times’, that is, make a full and nuanced reading of the forces that exert an influence on both the overall transition agenda and specific transitional justice policy choices.
9. Accept the need for interim measures if formal justice and reconciliation policies are impossible to plan and implement immediately after a transition. In contexts where they are available, support the role of tradition-based mechanisms as an indispensable short-term alternative.
10. Be conscious at the same time of the importance of measures designed for long-term impact.
11. Make local ownership of policies and strategies the rule.
12. Give priority to the interests and perspectives of the most vulnerable population groups (children, internally displaced persons and refugees).
13. Give female war victims and survivors complementary opportunities that can give them both voice and agency in overall post-conflict policy formulation.
14. Establish a political agenda that is informed by local and international socio-cultural knowledge to address the gender bias present in many tradition-based practices.

3.2. To local stakeholders

15. Launch initiatives designed to enhance the procedural fairness of traditional dispute and conflict mechanisms.
16. Engage in efforts to sensitize the African Commission, the African Court on Human and Peoples’ Rights and other relevant regional bodies to the need to recognize and upgrade the role of indigenous conflict management techniques.
17. Intensify efforts to enhance awareness and understanding of the role of traditional justice and reconciliation mechanisms among international agencies in general, and human rights NGOs in particular. In this context, emphasis should be placed on the

degree of truth, accountability and reparation they are capable of delivering, and their comparative effectiveness and legitimacy vis-à-vis classical 'formal' (criminal) justice instruments.

18. Increase wide consultations with constituencies (displaced persons' camps and urban settings included) on the choice of transitional justice policies in general, and the use of tradition-based practices in particular.

19. Create social spaces where victims and perpetrators can come together to address their war-related grievances and conflicts.

20. Endeavour to safeguard the role that traditional mechanisms play in the settlement of 'ordinary' disputes not directly connected to the legacy of violent conflict, and ensure that their efficacy is not undermined by radically adapting them for transitional justice purposes without appropriate prior local consultation.

21. Develop an outreach strategy that aims to help restore the authority and integrity that traditional leaders and/or traditional justice and reconciliation mechanisms may have lost among their local communities during the course of the conflict.

22. As refugees and internally displaced persons prepare to return to their original homesteads, pursue the revival of the core tenets of traditional justice and reconciliation mechanisms (e.g. social education received in the home and in the community through teachings surrounding the rituals involved).

23. Be attentive to the fact that survivors often bring their unresolved civil war-related conflicts (e.g. property disputes, marital violence) to informal traditional courts. Develop training programmes for lay judges, traditional leaders and healers on basic principles of transitional justice. Engage the international community in providing funding and technical assistance for these programmes.

3.3. To international stakeholders

3.3.1. General rules

24. Respect the following 'rules of engagement': be aware of the specific political, cultural and historical forces at work in a transitional society; accept that a process of post-conflict recovery must be locally 'owned' in the first instance; and be sensitive to such issues as the appropriate timing and tempo of external interventions intended to support such processes.

25. Sustain education and outreach programmes that increase both local and international understanding of the full range of transitional justice strategies available.

26. Be aware of the overarching need for inter-agency and inter-organizational coordination in post-conflict programming. The absence of a clear structure or framework for coordinating programmes and actions undertaken on the ground can at best complicate their impact, at worst critically undermine it.

27. Learn more about the range of traditional mechanisms and practices available in specific post-conflict contexts. This knowledge can serve to facilitate a contextually sensitized application of the norms and standards of international humanitarian and criminal law.

28. When facilitating a justice reform agenda, pay sufficient attention to local non-state, indigenous institutions. Facilitate the production of an audit of the informal justice sector.

29. Direct capacity-building programmes in the area of transitional justice in general, and the potential role of traditional mechanisms and practices in particular, towards the establishment of South–South networking initiatives and reciprocal exchanges of expertise.

30. Promote external monitoring of tradition-based practices that is based on peer review.

3.3.2. To the United Nations and other international institutions

31. Restructure internationally supported programmes of justice sector reform in post-conflict countries, for example, those initiated by the United Nations Development Programme (UNDP), the United Nations High Commissioner for Human Rights (UNHCHR) and the World Bank, in ways that effectively integrate the informal justice sector. Apply the same approach to audits of the justice sector.

32. Consider the establishment of an international panel of experts tasked with clarifying (a) in general, how traditional justice and reconciliation mechanisms can be better recognized under international law insofar as they contribute to implementation of the right to the truth, the duty to prosecute and the right to reparation; and (b) more particularly, how the notion of ‘interests of justice’ as defined in the ICC Statute can accommodate this important contribution to the international pursuit of truth, justice and reconciliation.

3.3.3. To donor countries and international NGOs

33. Collect information regarding the actual and potential impact of traditional justice and reconciliation mechanisms that will enable both a minimal cost–benefit analysis and funding decisions based on criteria of comparative effectiveness and legitimacy. Further

research in this area is much needed and should receive increased donor support in the future.

34. Provide financial and logistical support to the efforts of post-conflict countries to increase the actual strengths of indigenous justice and reconciliation practices and to overcome their present shortcomings and weaknesses.

3.4. Finally

35. Contexts and local situations vary. ‘Translate’ these recommendations by reading them through the lenses of the particular case in focus, also keeping in mind criteria such as the current phase of the conflict (ongoing or ended); the degree of internationalization of the conflict; the nature of the legacy of violence; the type of transition; and the degree of legitimacy of tradition-based justice and reconciliation practices.

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