



***Traditional Justice And Reconciliation After Violent Conflict:  
Learning From African Experiences***

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**Conclusions and Recommendations**

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- **Introduction**

- The heart of the report ***Reconciliation and Traditional Justice After Violent Conflict*** is a series of case studies – of Uganda, Sierra Leone, Burundi, Rwanda, Mozambique and Liberia - using an agreed common methodology of assessment and approach.
- These countries were selected on the basis of the fact that all have recently experienced violent conflict, and are in different ways attempting to address its many legacies.
- Based on the findings of the country case studies the report outlines a series of **policy-directed conclusions and recommendations**. The recommendations are addressed to a variety of audiences notably: national stakeholders, external donor agencies and the international community at large, the United Nations in particular.

- **Conclusions**

- **First**, IDEA's work over the last ten years has deepened its conviction that to be truly sustainable, democracy needs to take root and flourish in the fertile soil of local knowledge, perspectives, resources and traditions. Informed by basic, universal principles – free, fair and regular competitive elections etc – but based on local resources, knowledge, understanding etc.

- **Traditional justice mechanisms and processes constitute an important aspect of home-grown governance resources.** As such they deserve to be given greater recognition and support in both nationally directed and internationally supported efforts to promote peace with justice on the continent and beyond.
- This can take a number of forms:
  - First, at the **national level**, governments in post-conflict countries should give greater recognition to the potential role of TJMs in the design and implementation of transitional justice and reconciliation policies.
  - **Concretely**. This can mean **factoring them into** the consultative processes underpinning the establishment of a Truth and Reconciliation Commission (TRC), as is currently being attempted by the **Liberian TRC**, and should be attempted with respect to the traditional institution of the *bashingantahe* in connection with ongoing negotiations between the Burundian government and the UN regarding the establishment of a Burundian TRC
- **Second**, in line with this general perspective is a growing, more specific conviction that **appropriately understood, used and applied, traditional justice mechanisms are potentially important tools of, and for, peace building and social healing in the aftermath of violent conflict within a society.**
  - Without concerted efforts to promote peace building, reconciliation and healing in the aftermath of protracted violence, **there can be no real democracy**: no political and social platform for the construction [in some cases reconstruction] of democratic institutions, processes and structures that will prove sustainable in the long term.
- **Third**, there appears to be **a risk of the debate concerning the relationship between peace and justice (re)surfacing in the form of conflict between the international human rights and peace building communities:**
  - The **outcome** of such a **polarization** is illustrated in **Uganda** in connection with the **Juba Peace Talks** between the Ugandan Government and the leadership of the Lord's Resistance Army (LRA).
  - A **conclusion** indicated in the concluding chapter is that what should be sought is **complimentarity based on an appreciation of the respective strengths, weaknesses and roles of differing institutions and principles.**

- The report suggests that **traditional justice mechanisms are not a simple, straightforward alternative to international humanitarian law and its contingent norms and institutions.** The Charles Taylors of this world, the instigators of mass crimes and atrocities both can and should be the target of prosecution by the International Criminal Court (ICC).
- Understood appropriately, however, **traditional justice provides a potentially vital homegrown resource** for local- and national-level promotion of peace and justice throughout the African continent.

- **Recommendations**

What follows are simply highlights – read the report for more detail.

### **General Rules**

- In the aftermath of regime change or civil war, do not limit the approach adopted and actions undertaken to ‘hard reconstruction’, **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).
- 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.**
- 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.
- Make **local ownership of policies and strategies the rule.**
- Give priority to the interests and perspectives of the **most vulnerable population groups** (children, internally displaced persons and refugees).

### ***To local stakeholders***

- 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.

- Increase broad 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.
- 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.

### *To international stakeholders*

#### **General rules**

- 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.
- 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.
- 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.
- 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.
- 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.

### *To the United Nations and other international institutions*

- **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.

***To donor countries and international NGOs***

- 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 future.
- 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.

***And finally . . . .***

- **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.

Thank you for your attention.

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