



Traditional justice and reconciliation after violent conflict: Learning from African experiences

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There is no part of Africa that is not afflicted by civil wars, violent upheavals, abject poverty, institutionalised corruption or mismanagement of resources. There have, however, been few systematic attempts to analyse and assess the role and impact of traditional mechanisms in situations of conflict resolution and in post-conflict settings. The question may indeed be asked: Where has the approach of the ‘Baobab Tree’ gone, which used to be a consensual instrument for conflict resolution and a peace-building mechanism after conflict? The possibility remains, however, that even with the given pollution of traditional values and customs by the forces of corruption, traditional justice mechanisms may still offer a way of

restoring a sense of accountability and transparency, and of linking justice to democratic development.

Traditional justice and reconciliation after violent conflict attempts to show how fundamental drawbacks and weaknesses may be avoided when using African traditional approaches in conflict-torn Africa. This is a publication serving both as a general knowledge resource and as a practitioner's guide for all those involved and interested in seeking to employ traditional justice mechanisms to establish a state of peaceful coexistence in conflict areas. It brings into the limelight an effective, but often disregarded or ignored, African traditional judiciary system of justice.

The 203-pages publication, divided into seven chapters, and containing useful boxes and tables, is a well-researched analytical treatise that delves into the annals of conflict and post-conflict situations in Rwanda, Mozambique, Uganda, Sierra Leone, and Burundi. It was produced by a team of seasoned university dons, academics, experts in law and members of civil society. From their different vantage points they present a cross-cutting analysis on how traditional mechanisms can efficiently and effectively complement conventional judicial systems, and can provide a real potential for promoting justice, reconciliation and a culture of democracy – all of which are currently lacking in most countries.

It goes without saying that traditional mechanisms for justice and reconciliation had elements of democratic culture, but these were destroyed by the invading forces of western colonial rule which were geared towards civilising the uncivilised within the parameters of western values. As indicated by its title, this book propagates a return to crucial values that formed the essence of approaches to getting the parties concerned to deliberate amicably over issues separating their various viewpoints, to settling disagreements, and to co-habiting peacefully afterwards. Confidence-building mechanisms indeed remain vital for maintaining stability, peace and trust in post-conflict situations.

The book is divided into three main parts. The first part undertakes a thorough examination of the emergence of traditional techniques in

peacekeeping, transitional justice and reconciliation policies. Arguments concerning traditional justice, as debated by political leaders, members of civil society and the academics, are discussed. By far the most decisive question is how to balance the demands of justice made by the many political contestants. A second crucial question is how to establish and uphold peace and political stability. Essentially, what is vital is that prosecutions should avoid unbridled private spirals of revenge, as when victims take justice into their hands or vigilantes perform summary executions.

The second part establishes the difficulties of terminology and methodology in investigating the actual performance of tradition-based instruments when the approach of choosing between prosecuting and forgiving and forgetting has been abandoned. The South African Truth and Reconciliation Commission was a creative mix of formal and informal procedures and of international norms and domestically designed techniques. The Gacaca initiative in Rwanda ran into a multitude of operational problems with regard to conflicts of interest and forms of procedure.

The third part presents a comparative analysis of such practices in five African countries:

- The Gacaca courts in Rwanda
- The Magamba spirit of restorative justice in Mozambique
- The tradition-based practices in the Acholi region of Northern Uganda
- The tradition-based practices of the Kpaa Mende in Sierra Leone
- The institution of Bashingantahe in Burundi

The five countries have a legacy of extremely violent conflict and represent a diversity of types of conflict. These countries were chosen in consultation with the main sponsor of the project – the Belgian Ministry of Foreign Affairs.

The ambition of the book, as pointed out by the editors, is to develop insights, based on case studies by local authors, to enlighten the debate and heighten awareness among the various parties, local and international, of

the range of policy instruments and contextual resources available in the pursuit of sustainable peace in post-conflict societies. With the results of empirical studies of traditional justice mechanisms, the most important shift in perception and evaluation is the now commonly accepted insight that traditional techniques have been altered in form and substance by the impact of colonisation, modernisation and civil war.

Analysis of the case studies exhibits the commitment to instrumental objectives such as reconciliation, accountability, truth-telling, legitimacy and reparation, and emphasises the role of civil society in restoring and rebuilding hope and confidence in conflict-ridden communities. Most of the countries studied combined traditional justice and reconciliation instruments with other strategies for dealing with the legacy of civil war or genocide. Questions as the following are discussed. How can interpersonal and community-based practices of truth-telling live side by side with state-organised and/or internationally sponsored forms of retributive justice? Why can African traditional justice and reconciliation processes and methods not be given wider recognition in the international community justice system?

Conclusions as the following were drawn:

- The surfacing of the truth is the basis of the entire transitional justice framework in post-genocide Burundi.
- The Gacaca courts are Rwanda's main traditional justice instrument.
- The Magamba spirit initially causes suffering, but then the suffering is transformed into a healing power.
- The institution of Bashingantahe has three essential missions – mediation, arbitration and reconciliation.
- Truth-telling in Sierra Leone is an integral part of the justice system in indigenous societies.
- The Truth and Reconciliation Commission fulfilled an important role in South Africa's post-apartheid recovery process.

African traditional institutions, whether political, economic or social, have never been inert. They respond to changes resulting from several factors and forces. The word 'traditional' implies a dynamic process and should be put to work for the common good. The ultimate goal of a traditional justice system in most African communities is reconciliation – to forget and forgive and move on. Unfortunately, colonial rule had an adverse effect on the traditional mechanisms of justice and reconciliation. All criminal offences were henceforth decided by new courts and emphasis was placed on litigation. The appointment of court members/chairpersons seems to have been politically influenced, and therefore thwarted the confidence of the people in the traditional system they believed in.

The importance of *Traditional justice and reconciliation after violent conflict*, apart from the five case studies, can also be seen in two recent conflict resolutions on the continent: the Bakassi Peninsula conflict between Nigeria and Cameroon and the post-elections conflict in Kenya, where the African traditional system of brotherly dialogue, consensus and understanding has prevailed. The African traditional culture and value system has much to offer to the world – a sense of direction in conflict resolution and in peace-building mechanisms – even though Africa remains a region where conflicts are caused by external factors, issues over natural resources and the wrong use of power in the development process. This publication definitely addresses pertinent issues in the ongoing democratic transformation and nation-building processes in Africa.

It appears to be a ground breaking book that provides a penetrating commentary on the pathways for traditional justice in combination with modern legal instruments in situations of conflict resolution and post-conflict confidence building. By emphasising the cardinal values of reconciliation, accountability, truth-telling, reparation, legitimacy and the role of civil society, it gives scientific support to the practice and value of the Baobab Tree method as a significant instrument for post-conflict communities to sustain peace, trust and reconciliation and to rebuild their tragic past in a positive, progressive and humane manner.

Traditional justice and reconciliation after violent conflict highlights the strengths and weaknesses of both traditional and modern systems of justice and advances policy recommendations on a wide variety of areas, particularly on indigenous justice, consensus and reconciliation practices. The strength of the book lies in the recommendations of implementing latent opportunities embedded in the features of traditional mechanisms of justice for settling differences and building trust and confidence in post-war situations. It is a well researched and well written book for academics, students, policy-makers, as well as for people in all walks of life.