

RECENCIE – REVIEW – COMPTE RENDU

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

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In this book an attempt is made to find out what – African – tradition-based approaches in peacemaking can contribute to transitional justice and reconciliation policies. The publication consists of various contributions: an introductory and concluding chapter, both written by Luc Huyse, a worldwide expert on transitional justice, and five case studies dealing with traditional justice mechanisms in different African contexts.

In his introduction Luc Huyse gives an overview of post-WWII transitional justice mechanisms, where the emphasis on retributive justice has gradually shifted to a concern for restorative justice. In between these two models (prosecution on the basis of a trial vs. reconciliation on the basis of a more community-oriented process) there exists a whole range of transitional justice policies in which ingredients of both extremes are combined – all of which adapted to particular national experiences and cultures. In addition, in a lot of transitional justice processes, also the role of traditional mechanisms is taken into account nowadays. In order to avoid ethnocentrism, local authors have been engaged for this project, in which five African countries (Rwanda, Mozambique, Uganda, Sierra Leone and Burundi) are compared regarding the indigenous instruments they employ in their programmes of transitional justice. In the final part of this chapter, Huyse talks about reconciliation, accountability, truth telling and reparation as the instrumental objectives of transitional justice policies. He also hints at a few typical attributes of informal justice systems in sub-Sahara Africa, such as the communal dimension of these mechanisms, the fact that civil society is often an important stakeholder and the great diversity and adaptability of the various initiatives. When designing a policy of transitional justice, combining various strategies (traditional, state-organised, internationally sponsored) is usually a tremendous challenge, especially since a great number of political and cultural actors have to be taken into account. The case studies in this book want to throw light on the way in which this challenge has been dealt with in various African countries, in the aftermath of a violent and traumatic past.

The first case study talks about the Gacaca courts in Rwanda. Bert Ingelaere first gives an extensive overview of the Rwandan conflict, after which he explains the difference between the 'old' Gacaca – a 'traditional dispute settlement mechanism' – and the 'new' Gacaca – a 'invented tradition, modelled through legal and social engineering' (p.32-33). A Gacaca was originally a gathering where offenders were brought before wise men. The primary aim was the restoration of social harmony within the lineage. In the years 1995-1996 the UNHCHR (United Nations High Commissioner for Human Rights) suggested that Gacaca could play a role in dealing with genocide-related crimes and nowadays the Gacaca courts are Rwanda's main transitional justice instrument. In addition, also the International Criminal Tribunal (ICT) for Rwanda and a National Unity and Reconciliation Commission were set up, the latter being an indication that also restorative justice started to gain prominence. The chapter is concluded with an evaluation of the strengths and weaknesses of the Gacaca courts, whereby the main strength seems to be that ordinary Rwandans prefer Gacaca over the national courts and the ICT to deal with genocide crimes. Some of the weaknesses are that Gacaca presents an unpopular form of participatory justice and that usually no truth is revealed in a Gacaca process. Further adaptation and inclusion of transitional justice mechanisms seems to be paramount, although time is running out.

In the following case study, Victor Igreja and Beatrice Dias-Lambranca discuss the role of magamba spirits in post-civil war Gorongosa, Mozambique. After a long-lasting civil war, a peace agreement was signed in 1992. Unfortunately, though, this agreement was founded upon 'cultures of denial', thus totally disregarding the demands of the victims (p. 66). It is in this context, and more particularly in the region of Gorongosa, that restorative justice by magamba spirits and healers started to play a crucial role. The idea is that victims can be possessed by magamba spirits. These spirits cause suffering until the past is engaged with, the wrongdoing is acknowledged and the damage from the past is repaired. Thereafter the suffering can be transformed into a healing power. The underlying idea is that the magamba spirits create social spaces where survivors and perpetrators can get together to address their war-related conflicts. Central in this are testimonies of collective truths of victimization and responsibility, where after families from both sides are able to achieve reconciliation. Despite some negative aspects, such as gender bias and possible manipulation by political leaders, it is clear that the magamba spirits and healers are making a unique contribution to post-war reconstruction in Mozambique.

The conflict situation in Northern Uganda, as described by James Ojera Latigo, is of an extreme complexity, both on the level of its origins, and with regard to the degree of internationalisation. The Ugandan government has made several attempts to end the conflict, but initiatives such as the Amnesty Act (2000) and the involvement of the International Criminal Court (2003) have rather been counterproductive – and a stumbling block in the peace talks. Since alternative mechanisms had to be found, the peace talks of 2007 provided for the application of traditional justice processes. Amongst these processes there is the reconciliation ceremony called *mato oput* among the Acholi, involving mediation between two rivalling clans, or the rite of 'stepping on the egg', in order to re-

introduce rebel returnees into their communities. Establishing reconciliation, accountability and forgiveness always lie at the basis of these mechanisms. It is now crucial, according to the authors, to 'actively revitalize the Acholi traditional mechanisms of restorative justice' (p. 111), which contain opportunities as well as threats, and to reconcile them with the retributive approach.

In the fourth case study, the conflict in Sierra Leone is dealt with. Joe Alie describes how the country was plunged into anarchy from 1991 onwards, what the causes of the conflict were and how a final peace agreement was signed in July 1999. In this peace agreement provision was made for a Truth and Reconciliation Commission, but since the violation of human rights continued after 1999, a Special Court was established by the UN Security Council in 2002. In addition to these two institutions, also traditional mechanisms have been used. The ultimate goal of these mechanisms, such as the reintegration and reunification ceremonies existing among the Kpaa Mende, is always reconciliation. In the case of Sierra Leone, as the author points out, indigenous mechanisms have been very useful in peace building. However, 'these tools can only complement the efforts of formal criminal justice systems, since only the latter are capable of dealing with [...] war crimes and crimes against humanity' (p. 145).

The final mechanism of traditional justice described in this book is the institution of *bashingantahe* in Burundi. Assumpta Naniwe-Kaburahe explains that after a bloody conflict that lasted for many years, the 2000 Arusha Agreement provided for the establishment of a truth and reconciliation commission, an international judicial commission of inquiry and an international criminal tribunal. However, since major challenges are still facing the justice sector, also informal justice systems are reverted to, such as the *bashingantahe*. The institution of the *bashingantahe* goes back to the 17th century; it consisted of authoritative and independent elders who were to control the power of the king – mediation, reconciliation and arbitration were its basic missions. After independence the *bashingantahe* evolved and it lost some of its prerogatives. From 1999 onwards, though, the institution was revived with the support from the government, civil society and the international community. It is now acknowledged that, despite its weaknesses, such as conservatism and political manipulation, the institution constitutes a unifying factor and that 'it can play its role in the establishment of the rule of law in Burundi' (p. 163).

In the final chapter Luc Huyse lists some conclusions and he gives recommendations regarding traditional justice systems. He points out that indigenous justice mechanisms have a limited range of action and effect (with regard to ethnicity, gender, religion) and that process conditions are often tricky – can they actually deal with war crimes or crimes against humanity, can they restore decades of destruction and despair? In addition, they often only have a partial effectiveness and legitimacy. Nevertheless, traditional justice processes also have a number of positive effects, such as establishing accountability and reconciliation, revealing the truth and uniting communities. This means, as demonstrated by the case studies, that these indigenous tools of conflict resolution definitely have a potential of healing and social repair. In conclusion, Huyse gives a few policy recommendations, both to local and to international stakeholders. The message

underlying these recommendations is that in order to integrate traditional justice mechanisms into more formal strategies, imagination, consensus building, technical support, research and time are indispensable.

This book provides a highly original contribution to the already existing publications on transitional justice. The role of indigenous practices has long been disregarded, while they obviously seem to play a crucial role in the everyday lives of many civilians. The five case studies give an overview of traditional justice mechanisms across the African continent. This overview is so detailed and so well contextualized, that it is evidence of in-depth research endeavours. The variety of country studies and traditional processes is then brought together and reflected upon in order to draw general conclusions useful for national and international agencies working on conflict resolution. Hence, since the book provides an impressive combination of local knowledge and international applicability, it is definitely fit for a wide and diversified audience – academics, professionals and laymen. The clear language and the attractive lay-out only add to its appeal.

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