

**2<sup>nd</sup> International Women for Peace Conference**  
**6 March 2009**

**Traditional and informal justice: A tool  
for accountability, truth and  
reconciliation?**

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# Overview

- I. Key terms and definitions
- II. Which perspective: **International** stakeholders or **local** community?
- III. **Strengths** and **challenges** in using traditional justice in post-conflict settings
- IV. Can **traditional justice** foster access to justice for women?

# Definitions

traditional,  
customary, indigenous, informal, non-state, local,  
community, popular, participatory

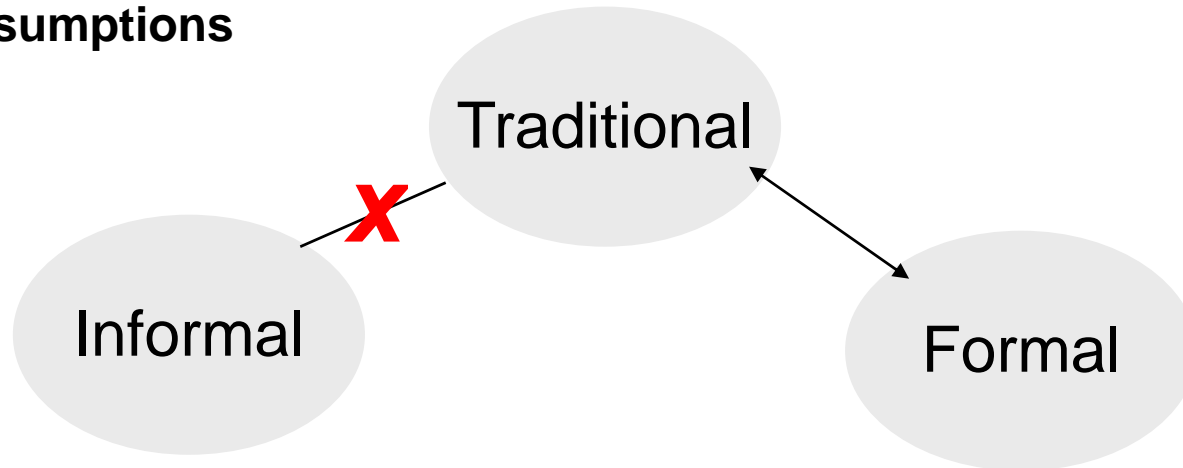
**Informal justice systems:** dispute resolution mechanisms falling outside the scope of the formal justice system” ie. outside of the state-administered justice system (Peace Building Initiative 2008)

**Formal justice systems:** involve civil and criminal justice and include formal state-based justice institutions and procedures- police, prosecutors, courts, and custodial measures (Wojkowska 2006, 9)



# Refining the definitions

## Removing assumptions



Some "traditional" justice mechanisms in post-conflict settings are "formal" eg. Gacaca Courts in Rwanda;

An "informal" justice system is **not necessarily** "traditional": eg. Rondas Campesinas, or Night Watch Patrols in Peru in 1970s-80s;

**Traditional justice** in post-conflict settings encompasses a wide array of social goals including accountability, truth-telling, reparation, and reconciliation (Huyse and Salter 2008).



# Which perspective: international stakeholders or local community?

## 1. The UN Perspective

"...due regard must be given to **indigenous** and **informal** traditions for **administering justice** or **settling disputes**, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition. Where these are **ignored** or **overridden**, the result can be the **exclusion** of large sectors of society from accessible justice."

(United Nations Security Council 2004, The Rule of law and Transitional Justice in Conflict and Post-Conflict Societies, ¶ 36)



# Which perspective:...

## 2. Critics of the ICC

- Support for traditional justice often derives from concerns that the ICC is a distant and alien institution (Waddell and Clark 2007, 7).
- More support for formal accountability than assumed eg. Study by ICTJ and the Human Rights Center at Berkeley revealed that 76% of residents interviewed in the camps for Internally Displaced Persons (IDPs in northern Uganda wanted those responsible for gross human rights abuses to be held accountable by formal means.



# Which perspective:...

## 3. “Traditional justice for them, formal justice for us”

- Cannot assume that conflict-affected persons are naturally inclined toward informal mechanisms of justice;
- Need to avoid romanticising traditional justice.

### **Who decides what justice mechanism will be used?**

“Stakeholders”: victims (men and women), perpetrators, local communities, nation state, rule of law, international community



# Strengths of using traditional justice

## Access to justice

Immediacy

Geographical  
Proximity

Use of Local  
Languages

Cultural  
Relevance



# Strengths of using traditional justice

## Post-conflict communal life

Victims and perpetrators frequently come from the **same community**: difficulties to co-exist after war;

Transformation necessary may be **beyond** the scope of **formal justice**

ie. requires **holistic** and **locally-relevant approaches** that include accountability, truth-telling, reparations, and reconciliation.



# Strengths of using traditional justice

## Post-conflict communal life

Formal trials, which aim to apportion responsibility, may be unable to deal with the complexities **of conflict**, such as children being abducted and turned into child soldiers

Over **20,000 children** abducted by LRA in northern Uganda and forced into fighting and sexual slavery:  
“Victims and perpetrators are often the same person”  
(Liu Institute for Global Issues, 2005, ii).



# Challenges in using traditional justice in post-conflict settings

## War's profound effects on society and community fabric

Cultural knowledge and social practices may no longer be transmitted to youth and children

eg. Elder in a study of Acholi rituals in northern Uganda: 'these children don't know how to be Acholi'.  
(Liu Institute for Global Issues 2005)



# Challenges in using traditional justice in post-conflict settings

## War's profound effects on society and community fabric

Some traditional community leaders may no longer command respect and authority because of perceived complicity in the war

In Rwanda, where community elders were elected to be cell judges of the Gacaca courts, known as Inyangamugayo (“those who detest dishonesty” in Kinyarwanda), some were later forced to resign because they were accused of genocide (Rettig 2008, 31).



# Challenges in using traditional justice in post-conflict settings

## Fostering popular ownership

- Local ownership and engagement a crucial element in the success or failure of transitional justice
- In Rwanda, population was often **unmotivated to attend** trials (Penal Reform International 2005)

In Rwanda, attendance of *Gacaca* hearings was initially voluntary, but became mandatory under the 2004 revisions to *Gacaca* law, with threats of fines for non-attendance



# A hybrid model that fosters access to justice for women

## 1. Giving women victims a voice

Example: Acholi rituals in northern Uganda:

- ◆ Women are not involved in local decision-making, arbitration or negotiations in the *mato oput* process

Example: Post-civil war Gorongosa, Central Mozambique

- ◆ Mozambican peace agreement put an end to the civil war, but precluded any legal or political process for addressing gross violations of human (Igreja 2008).
- ◆ Survivors in Gorongosa used a cultural mechanism for healing and to attain justice and reconciliation: Emergence of the *magamba* spirits of dead soldiers who return to the realm of living to fight for justice;
- ◆ Gender bias: Only the spirits of men can return.

## Issues and lessons learnt

Can traditional justice be modified to give women a voice?  
Will these modified systems be legitimate among local populations?

# A hybrid model that fosters access to justice for women

## 2. Addressing crimes of rape or sexual torture

Example: Acholi rituals in northern Uganda

- ◆ Acholi women are valued almost exclusively because of their fertility. Women who were raped in the bush were accused of not being able to have children: they are stripped of their womanhood and social status as wives or mothers. (Interviews with Madi women, Ocen 2007).

### **Issues and lessons learnt**

Are traditional and informal systems appropriate for crimes of this nature?

# A hybrid model that fosters access to justice for women

## 3. Making dual/hybrid systems work for women

Example: Gacaca courts in Rwanda

Amendment to Gacaca Law in 2008 widened jurisdiction of Gacaca courts to category one crimes of rape or sexual torture (initially had been referred to the military tribunals and ordinary courts):

“This situation will pose many problems concerning protection of victims, gender bias and stigmatisation, as the gacaca judges are drawn from the community” (FRIDE 2008, 6).

“But the embedding of the Gacaca in a local face-to-face community makes it difficult to tackle these crimes.” (Huyse 2008, 52)

### Issues and lessons learnt

How can we create dual regimes that (a) have a clear division of responsibility, (b) can manage the caseload and (c) maintain standards of justice?

# A hybrid model that fosters access to justice for women

## 4. Guaranteeing human rights standards

Example: Customary tribunals in Afghanistan (jirgas, shuras)

Eg. Customary tribunals in Afghanistan (jirgas, shuras) applying practices such as exchanging “two fair and virgin girls” between the families of the victim and perpetrator amongst Pashtun tribes (“poar”, or blood money).

### Issues and lessons learnt

Does the use of traditional justice reinforce gender discrimination?

Do the process and outcome meet basic human rights standards?

Consider also the rights of the accused.

Can traditional justice be instilled with a respect and awareness of human rights standards?

# Conclusions

- “Recognize the **differential impact of conflict** and rule of law deficits on **women and children** and the need to ensure gender sensitivity in restoration of rule of law and transitional justice, as well as the need to ensure the full participation of women...”  
(United Nations Security Council 2004, The Rule of law and Transitional Justice in Conflict and Post-Conflict Societies, ¶ 64(g))
- Do **not assume** what is desired or ideal for healing at the **local level**;
- A **gender-sensitive** approach is essential to determine when a traditional justice model is inappropriate to deal with particular harms perpetrated against women;
- Consider **all stakeholders** when determining what hybrid model is appropriate.



# Thank you

## Questions or comments?

