

POLICY PAPER

APRIL 2025

BEYOND RHETORIC:

INTEGRATING AFRICAN TRADITIONAL JUSTICE MECHANISMS INTO TRANSITIONAL JUSTICE PROCESSES

TADESSE SIMIE METEKIA



Implemented by
giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH



CSVR
Centre for the Study of
Violence and Reconciliation
Working towards peaceful, equal and
violence-free societies since 1999

Introduction

Traditional justice mechanisms are increasingly being recognised as vital components of rule-of-law and peace-building efforts across Africa. Countries such as Nigeria, Kenya, Ethiopia, Namibia, Sierra Leone, Tanzania, Zambia and South Sudan have granted formal recognition to these mechanisms by reconstituting them into customary courts that operate alongside formal judicial systems. These courts exercise jurisdiction over personal, family and land disputes, applying customary-law and traditional procedures to deliver justice that is tailored to local contexts.

Beyond their formalised role in customary court systems, traditional justice mechanisms have demonstrated significant capacity to resolve large-scale disputes, including intra- and inter-ethnic conflicts and communal violence. Their deep-rooted legitimacy and the widespread trust in them among local populations have made them a natural recourse during periods of societal transformation. The African Union Transitional Justice Policy (AUTJP) acknowledges this potential and underscores the importance of integrating traditional justice mechanisms into transitional justice processes to foster culturally resonant and inclusive outcomes.¹

Despite this recognition, the practical integration of traditional justice mechanisms within transitional justice processes remains fraught with challenges and under-explored complexities. Whereas the AUTJP provides a framework that affirms their value and scholars often cite *Ubuntu*, South Africa's traditional justice philosophy, and *Gacaca*, Rwanda's community-based courts, as pioneering examples, there is limited clarity on the diverse forms these mechanisms might take in their interaction with either general notions or specific elements of transitional justice. The emerging national transitional justice frameworks

that call for the inclusion of traditional justice mechanisms have yet to articulate specific actionable pathways for making this integration happen.

This policy paper seeks to move beyond theoretical rhetoric to offer concrete insights into effectively using traditional justice mechanisms in transitional justice, in line with the provisions of AUTJP.² By exploring examples of their application, it highlights their complementary potential alongside formal justice systems. In addition, the paper raises key challenges often cited as barriers to the broader recognition of traditional justice mechanisms, including reconciling traditional norms with international human rights standards, ensuring inclusivity and gender sensitivity, and navigating the interplay between traditional and formal systems without undermining the legitimacy of either.

Ultimately, this policy paper advocates a hybrid approach to transitional justice, one in which formal and traditional mechanisms operate in a complementary manner, at both a national and an international level. Such an approach offers a context-sensitive, culturally grounded and community-driven pathway to justice that bridges the divide between retributive and restorative justice while taking into account the nuanced conceptions of justice held by diverse African communities.

Traditional justice and the African Union Transitional Justice Policy

In its peace-building efforts, the African Union has a long history of engaging with African traditional justice mechanisms. Its 2006 Policy on Post-Conflict Reconstruction and Development explicitly calls for leveraging traditional mechanisms of reconciliation and justice to support transitional and post-conflict

1 African Union Transitional Justice Policy (2019), https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf.

2 Methodologically, this paper draws on key informant interviews conducted with practice-oriented subject-matter experts. In addition, the study includes a comprehensive analysis of the relevant legal and policy frameworks at the national, continental and international levels, and a systematic desk review of the pertinent academic and grey literature. The draft version of the paper was subjected to a validation process through a workshop attended by more than 80 experts from across the African continent. Feedback from this workshop was instrumental in refining the analysis and recommendations. Furthermore, written inputs submitted by several experts – both prior to and following the validation workshop – were carefully reviewed and integrated into the final version of the paper.

processes.³ The AUTJP builds on this foundation by linking traditional justice mechanisms inextricably to transitional justice processes, at the same time expanding their scope and relevance.

Unlike any other regional or international instrument, the AUTJP firmly and explicitly embeds traditional justice mechanisms in the broader definition of transitional justice, constructing the concept on both traditional and formal notions of justice. While emphasising their importance, it also recognises their limitations and complementary roles.

Under the AUTJP, traditional justice mechanisms encompass a range of community-based adjudicative and restorative practices, including traditional structures such as clan and customary courts, community-based dialogue platforms and culturally embedded practices, including rituals. Employed widely across the African continent, these mechanisms are characterised by integral elements such as recognition by perpetrators of their role in causing harm, acknowledgement of the pain and losses suffered by victims and survivors, expressions of remorse, forgiveness-seeking and the provision of reparations, both symbolic and material. These practices aim to restore relationships and promote communal healing.

The AUTJP advocates integrating traditional and formal mechanisms into transitional justice to meet several key objectives, including justice, peace, accountability, social cohesion, reconciliation and healing. Paragraphs 32 and 52 of the policy underscore the importance of designing transitional justice processes that prioritise the use of national and local traditional judicial and non-judicial capacities before turning to external sources. In doing so, Member States are expected to identify, recognise, respect, support and promote traditional

dispute-resolution mechanisms while ensuring their adaptation and use alongside formal systems.

Beyond urging Member States to incorporate traditional justice mechanisms into their transitional justice processes and provide technical and political support for their implementation, the AUTJP aspires to embed them in international norms and standards. This effort aims to reshape the predominantly retributivist conception of international justice by complementing it with mechanisms for promoting sustainable peace, justice and reconciliation.

National transitional justice initiatives incorporating traditional justice mechanisms

A number of early transitional justice processes in Africa included traditional justice mechanisms in different modalities. The often-cited examples are *Ubuntu* and *Gacaca*. Commonly portrayed as 'I am because you are', *Ubuntu* was the basis of the law which established the Truth and Reconciliation Commission in South Africa.⁴ *Gacaca*, an adapted version of pre-colonial community dispute-resolution mechanisms,⁵ dealt with 1,958,634 genocide-related cases in Rwanda.⁶

Many early transitional justice processes did not borrow from or fully integrate traditional justice mechanisms. For instance, Ethiopia's post-1991 transitional justice process, which emphasised criminal accountability over any other mode of justice, is known for directly rejecting traditional justice mechanisms.⁷ Other processes had only limited interaction with traditional justice mechanisms. The Gambian Truth, Reconciliation and Reparations Commission (TRRC), for example, did not have a well-thought-out framework to involve traditional mechanisms. To a certain

3 African Union Policy on Post-Conflict Reconstruction and Development (2006), <https://www.peaceau.org/uploads/pcrd-policy-framwork-eng.pdf>.

4 See Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa), para 4.

5 B Ingelaere, 'The Gacaca Courts in Rwanda' in L Huyse & M Salter (2008). *Traditional justice and reconciliation after violent conflict: learning from African experiences*. International IDEA.

6 Ministry of Justice, Republic of Rwanda, 'Rwanda's Experience with Transitional Justice: The Case of Gacaca Courts,' presentation (2020), https://www.minijust.gov.rw/fileadmin/SPEECHES-2019/20.02.20_TRANSITIONAL_JUSTICE_ppt_for_students.pdf.

7 See Tadesse S Metekia, *Prosecution of Core Crimes in Ethiopia: Domestic Practice vis-à-vis International Standards* (Leiden: Brill, 2021), 112–115.

extent, the TRRC's Reconciliation Unit and Women's Affairs Unit collaborated on outreach activities with *Kenyeleng*, traditional women's associations.⁸

However, recent transitional justice processes in Africa have increasingly incorporated traditional justice mechanisms into their frameworks, recognising their cultural relevance and role in complementing formal systems. In South Sudan, Chapter 5 of the 2018 Revitalised Agreement mandates the Commission for Truth, Reconciliation and Healing to draw on traditional practices where appropriate.⁹ Similarly, Somalia's National Framework on Reconciliation highlights traditional justice mechanisms, including *Xeer* (customary law), as being integral to responding to past conflicts and fostering reconciliation.¹⁰ Uganda's 2019 Transitional Justice Policy stipulates the use of traditional justice mechanisms, which were also made part of the 2007 Juba Peace Agreement.¹¹ Most recently, Ethiopia's 2024 Transitional Justice Policy makes repeated reference to traditional justice mechanisms.¹² While the Democratic Republic of the Congo's scientific committee on transitional justice has proposed the inclusion of traditional justice mechanisms in the national framework,¹³ some regions have already decided to incorporate the possibility of deciding on rites and ceremonies of reconciliation in accordance with local custom.¹⁴

Yet, to date, no country has developed comprehensive and clear guidelines on the way traditional justice mechanisms can effectively complement formal justice systems. Existing policies and implementing laws acknowledge the need for such guidelines.

For instance, South Sudan's 2024 Commission for Truth, Reconciliation and Healing Act mandates the commission to develop standard operating procedures for functioning traditional justice mechanisms. The Ministry of Justice in Ethiopia is expected to embark on a similar task, as outlined in the country's transitional justice implementation roadmap.

While recognising the value of traditional justice, the AUTJP and the African Union have not provided clear standardised and adaptable guidelines that Member States can refer to when integrating traditional justice mechanisms into their transitional justice processes. This policy paper seeks to highlight two main ways of combining traditional justice mechanisms with formal justice systems.

Dual integration method

Existing state practices suggest that traditional justice mechanisms can be used in transitional justice processes from two distinct perspectives: general and specific. The general (overarching) perspective involves the symbolic integration of traditional justice mechanisms to frame or justify the broader rationale behind transitional justice – why a society should deal with its abusive past. The specific (pillar-based) perspective, meanwhile, focuses on the practical application of traditional justice mechanisms in operationalising the particular pillars of transitional justice. This dual approach underscores the versatility of traditional justice mechanisms, both as a conceptual foundation for transitional justice and as a practical tool for implementing its distinct components effectively.

8 Interview, Baba Jallow, former Executive Secretary of the TRRC, 17 January 2025.

9 Agatha Ndonga, *Some Level of Peace: Addressing Intercommunal Violence through Customary Justice in South Sudan* (New York: International Center for Transitional Justice, 2024).

10 Farhia Mohamud, *Enabling Popular Participation in Transitional Justice in Somalia* (Johannesburg: Centre for the Study of Violence and Reconciliation and Somali Public Agenda, 2024), <https://www.csvr.org.za/enabling-popular-participation-in-transitional-justice-in-somalia>.

11 See Uganda Law Reform Commission, 'Formulation of the National Transitional Justice Policy', <https://ulrc.go.ug/projects/formulation-of-the-national-transitional-justice-policy>; 'Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement Juba', Sudan (2007), <https://ucdpged.uu.se/peaceagreements/fulltext/Uga%2020070629.pdf>.

12 Transitional Justice Policy of the Federal Democratic Republic of Ethiopia (2024), https://transitionaljusticeeth.org/?jet_download=4fe46f77aea58a983f7b9d2f2fcd8038ac8e7636 (unofficial translation).

13 Interview, Mutoy Mubiala, Associate Professor of International Human Rights Law, University of Kinshasa, 14 January 2025.

14 See Edict No 006/KC/2021 on the creation, organisation and functioning of the Provincial Commission for Truth, Justice and Reconciliation in the province of Kasai Central in the Democratic Republic of the Congo.

Overarching perspective

Traditional values and norms are invoked to garner public support and legitimacy for the transitional justice process. *Ubuntu* is one key example that emphasises the shared cultural and moral foundations that societies can rely on to foster a collective understanding of the importance of truth, accountability and reconciliation.¹⁵

Traditional justice mechanisms espouse a culturally coherent approach and a unifying philosophy to peace-building, on that could enhance the legitimacy of the process by encouraging public and survivor participation. In The Gambia, where traditional justice mechanisms have not been officially adopted to justify or support the transitional justice process, the limited interaction with *Kenyeleng* groups helped to sensitise communities to the work of the TRRC and mobilise rural women into attending women's listening circles to share their stories.¹⁶ In that process, the *Kenyeleng* were encouraged to sing about the virtues of peace and reconciliation among communities.¹⁷

Leveraging traditional justice mechanisms to establish shared values that bind multiple societies is a complex endeavour, particularly in contexts where communities use multiple and diverse dispute-resolution mechanisms. In that sense, it is crucial to recognise that the traditional practices commonly known to outsiders do not represent the entirety of a country's cultural and justice traditions. For example, while *Mato Oput* is often highlighted as a traditional justice practice in Uganda, it is specific to the Acholi people. It does not encompass the diverse mechanisms used by other Ugandan communities.¹⁸ For this reason,

promoting and implementing a specific traditional process or philosophy that belongs to just a single community can lead to a sense of exclusion among communities and survivors whose practices are not chosen, undermining the inclusivity and legitimacy of a transitional justice process.

In such cases, a practical approach could be to identify and promote the traditional values or philosophies that are common to various traditional justice mechanisms. Many of these mechanisms share fundamental principles, including acknowledgement of harm, admission of wrongdoing, apology, seeking forgiveness, and granting forgiveness. Emphasising these shared elements can help to create a unifying narrative, that could serve as a foundation or slogan to justify and support a transitional justice process.

In a decentralised process or where transitional justice is implemented only in specific regions, traditional justice philosophies specific to a community could be integrated to enhance local legitimacy and relevance. When available, intra-ethnic traditional dispute-resolution mechanisms could be used, especially in those situations that involve two or more neighbouring communities. The overarching guiding principle should be inclusivity and ownership by the affected communities to guarantee that the process is culturally resonant and non-discriminatory.

Alternatively, some argue that, given the absence of a hierarchy of knowledge among different ethnic groups, traditional justice mechanisms could be applied irrespective of the ethnic group from which they originate. Here, the essential prerequisite is that all parties must agree on the specific modalities of the traditional justice approach they intend to adopt.¹⁹

-
- 15 Truth and Reconciliation Commission, *Report of the Truth and Reconciliation Commission: Volume 1* (1998), 126–127.
- 16 The listening circles were initiatives of the Women in Leadership and Liberation (WILL), a local CSO. For details see Women in Leadership and Liberation, *TRRC Shadow Report: Perspectives of Women, Girls and Marginalized Communities on SGBV Sexual and Gender Based Violence* (2022), <https://static1.squarespace.com/static/62c44114c25e000c67a8cf6d/t/62fa709b5b9fd05149c6abe6/1660580003049/WILL+TRRC+Shadow+Report+on+SGBV.pdf>.
- 17 Interview, Baba Jallow, former Executive Secretary of the Truth, Reconciliation and Reparations Commission, The Gambia, 17 January 2025.
- 18 Interview, Sarah Kihika Kasande, Head of Office of the International Center for Transitional Justice Uganda, 20 January 2025.
- 19 Deborah Oyella, written comments on the first draft of this policy paper, 27 February 2025.

Pillar-based perspective

Beyond providing a philosophical foundation for society's quest to reckon with its past and, therefore, increasing public buy-in to the process, traditional justice mechanisms could also contribute to the implementation of specific transitional justice pillars such as truth-seeking, reparations, accountability and institutional reform – the indicative elements of transitional justice in the AUTJP – plus mental health and psychosocial support. The role they play and the form they take may vary from pillar to pillar, as indicated below.

Truth-seeking

Traditional justice is fundamentally linked to truth-seeking in transitional justice, emphasising truth-telling, apology and forgiveness as its core principles. One of the most well-known examples is the *Gacaca* courts in Rwanda, which dealt with a vast number of offences committed during the genocide within a restorative justice framework rather than a purely retributive one. The *Gacaca* process prioritised uncovering the truth, fostering communal reintegration and promoting reconciliation, which illustrated the ways in which traditional justice mechanisms can serve as complementary approaches within broader transitional justice frameworks.

A defining feature of traditional justice is its strong emphasis on truth-telling and acknowledging wrongdoing as essential prerequisites to reconciliation. Many African societies, such as the Kom people of Cameroon and the Oromo of Ethiopia, incorporate oath-taking rituals as powerful and effective mechanisms to ensure that individuals truthfully acknowledge their actions and uphold communal integrity. These customary practices reinforce accountability and strengthen the social fabric by emphasising moral responsibility and collective healing.

Unlike retributive justice, which primarily focuses on individual criminal responsibility regardless of motive, traditional justice mechanisms are deeply concerned with uncovering the truth by examining the root causes of violence that led to gross human rights violations. This investigative approach ensures that justice extends beyond punitive measures to redress systemic grievances and promote long-term reconciliation.²⁰

In traditional justice processes, truth-seeking is not merely about fact-finding: it serves a broader reconciliation objective. This often includes expressing remorse, offering a genuine apology and seeking forgiveness from victims. While truth-seeking mechanisms in transitional justice generally incorporate these elements, there are variations in implementation. For example, in South Africa's Truth and Reconciliation Commission, apology was not a legal requirement for granting amnesty.²¹ This deviation from the traditional justice process 'remains one of the most controversial aspects of the South African amnesty process, particularly in relation to how survivors experienced the process.'²² In post-1991 Ethiopia, in contrast, perpetrators' perceived lack of remorse and apology was discussed as a possible motivation not to pursue a traditional justice-based reconciliation process, as opposed to prosecution.²³

Reparations

Traditional justice mechanisms are widely recognised as being integral to the reparations process, ensuring that victims and survivors receive compensation in culturally meaningful and socially restorative ways. Unlike state-driven reparations, which often emphasise monetary compensation or institutional redress, traditional justice mechanisms focus on symbolic (including apology) and participatory reparations that emphasise healing, reconciliation and the restoration of communal harmony. These mechanisms underscore the principle that reparations should bridge the

20 Interview, Agatha Ndonga, Head of Programme of the International Center for Transitional Justice (ICTJ), Kenya, 17 January 2025.

21 See RA Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001), 24.

22 Therese Abrahamsen and Hugo van der Merwe, *Reconciliation through Amnesty? Amnesty Applicants' Views of the South African Truth and Reconciliation Commission* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2005).

23 Metekia, *Prosecution of Core Crimes in Ethiopia*, 112–115.

divide between victim and perpetrator, fostering reconciliation rather than financial restitution.

A defining feature of traditional reparations is the direct involvement of both the perpetrators and the broader community. This collective responsibility strengthens communal bonds and ensures that justice is not perceived as a distant, bureaucratic process but rather as an active lived experience within the affected society. For instance, in many African traditions, a perpetrator may be required to rebuild a house they previously destroyed or cultivate farmland on behalf of a victim who has lost a family member, such as a son, who would otherwise have provided for them. These acts of restorative justice not only compensate the victim in a tangible manner but also reinforce the perpetrator's accountability and active participation in rebuilding the community's social fabric.

Traditional reparations extend beyond the individual offender. The offender's community may, as is the case in South Sudan, participate in redressing the victims to acknowledge the harm suffered. This signifies a collective commitment to reconciliation and a shared responsibility to end impunity and guarantee non-recurrence.²⁴ Similarly, in Somali communities in Somalia and Ethiopia, the *Xeer* customary law requires the offender's clan to take the injured victim into their homes and providing them with care.²⁵

However, reparations should not be seen as standalone processes; they are integral to broader truth-seeking and reconciliation efforts. Therefore, any attempt to integrate traditional reparations into transitional justice processes is more likely to succeed if they are incorporated as a key component of truth-seeking and reconciliation initiatives from the outset. Early integration of traditional reparations can enhance

their effectiveness, rather than resorting to them only after state-led reparation initiatives have failed and public expectations have been raised. Instead, *traditional and state-led reparation mechanisms should be designed to complement each other.*

Accountability

While traditional justice processes and criminal accountability for gross human rights violations are often viewed as distinct, traditional justice mechanisms can be relevant even in criminal prosecutions involving those most responsible for serious crimes.

Two cases illustrate this point. The first is the Dergue case in Ethiopia, where the defendants in *Prosecutor v Mengistu et al*, a case regarding genocide against political groups, requested that the Federal High Court in Addis Ababa facilitate a mechanism that would allow them to apologise to the public for their crimes.²⁶ The second is the *Dominic Ongwen* trial for crimes against humanity and war crimes heard at the International Criminal Court (ICC). There the defence counsel requested that the ICC consider referring the convict to a traditional justice process in northern Uganda instead of imposing a prison sentence.²⁷

In Ethiopia, the Federal High Court rejected the request, stating that facilitating an apology was beyond its mandate.²⁸ Similarly, at the ICC, the request was denied based on the principle of *nulla poena sine lege* (no punishment without law), as the Rome Statute provides an exhaustive list of penalties, leaving no room for traditional justice mechanisms either as a substitute for or in addition to imprisonment.²⁹

However, whereas Ethiopia's Federal High Court considered willingness to apologise to be a mitigating

24 Ndonga, *Some Level of Peace*.

25 Ali Moussa Iye, panel discussion presentation, 'The Oromo Gadaa and the Somali Xeer: Exploring their similarities and Contribution to the Rebuilding of an African Endogenous Political Philosophy', Addis Ababa, 25 February 2025.

26 Federal High Court of Ethiopia, *HSPO v Colonel Mengistu Hailemariam et al* (Sentencing Judgment), 10 January 2007, File No 1/87, 1–4.

27 International Criminal Court, *Prosecutor v Dominic Ongwen*, Trial Chamber IX (Sentencing Decision), ICC-02/04-01/15, 6 May 2021, paras 25–27. ((Author: do these paragraphs apply to this inserted citation?))

28 See, Metekia, *Prosecution of Core Crimes in Ethiopia*, 122.

29 International Criminal Court, *Prosecutor v Dominic Ongwen*, Trial Chamber IX (Sentencing Decision), ICC-02/04-01/15, 6 May 2021, paras 25–27.

factor in the *Dergue* case³⁰ the ICC did not regard willingness to go through a traditional justice process a mitigating factor in the *Ongwen* case. Conversely, it could be argued that the international criminal justice system has tried to integrate restorative justice principles into its jurisprudence. For instance, both the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, in some cases, framed ‘reconciliation’ as being justification for punishment. However, this was mentioned largely in the abstract because an analysis of the case law does not provide a clear indication of the way in which this rationale substantively influenced sentencing determinations.³¹

These cases highlight the complex relationship between traditional and formal justice systems in the realm of criminal accountability. As noted above, calls for integrating traditional justice mechanisms into formal accountability processes primarily centre on the principles of complementarity and legal pluralism. The objective is not to supplant or dismantle the formal justice system but to enhance and complement it. This approach is rooted in the recognition that there is no definitive philosophical justification against using both traditional and formal conceptions of justice in tandem.

One key issue that underscores the potential role of traditional justice mechanisms in criminal trials is the perpetrator’s apology. Apology, a central element of traditional justice processes, can be incorporated into criminal accountability in several ways: voluntarily at various stages of the proceedings or, as seen in some national legal systems, through court orders as a secondary penalty alongside imprisonment. The challenge, however, lies in ensuring that the apology is both genuine and delivered in a culturally meaningful way that resonates with victims and survivors. This is where traditional justice mechanisms can play a crucial role in facilitating an apology process – whether initiated at the perpetrator’s

request or as an order of the court – that aligns with the values and expectations of affected communities.

The power of a genuine apology in criminal justice should not be underestimated. It demonstrates remorse, which is often considered a mitigating factor in sentencing. Moreover, it bridges restorative and retributive justice, in the process fostering reconciliation and facilitating post-conflict reintegration. In Rwanda, for example, admission of guilt and public apology positively affected a convict’s acceptance into their community. Community members often take note of those who apologise at some stage during their trial.³² Traditional mechanisms could build on this by facilitating reintegration between victims and perpetrators after the latter’s release from prison.

Accordingly, traditional justice mechanisms could contribute to the prosecution process at three levels:

1. *During the trial process*, when a defendant seeks an opportunity to apologise to victims or the public. In this case, the court may consider willingness to apologise as a sign of remorse sufficient to mitigate a sentence.
2. *As part of punishment*, when the court orders the convict to apologise to victims as an additional penalty alongside imprisonment.
3. *During post-sentence reintegration* to ensure that convicts can successfully reintegrate into their communities through culturally appropriate reconciliation processes.

Institutional reform

At first glance, traditional justice mechanisms may appear peripheral to institutional reform, particularly in transitional justice contexts where reforms are often centred on security sector transformation, including the vetting and lustration of officials.

30 Metekia, *Prosecution of Core Crimes in Ethiopia*, 398, 417.

31 See International Criminal Tribunal for Rwanda, *Prosecutor v Kamuhanda*, Trial Chamber (Judgment), 22 January 2004, ICTR-95-54A-T, para 754; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Momir Nikolić*, Trial Chamber (Judgment), 2 December 2003, IT-02-60/1-S, para 93.

32 Interview, Michael Butera, Chief Technical Advisor, Rwanda Ministry of Justice, 21 January 2025.

However, traditional justice institutions and leaders can contribute meaningfully by highlighting the ways in which weaknesses in the security sector have historically affected their communities, mainly through discriminatory practices. Their insights can inform reforms aimed at mitigating the recurrence of violence and systemic injustices.³³ Furthermore, traditional leaders could also serve as members of vetting boards or commissions, providing community perspectives on accountability and trust-building.

Beyond security-sector reform, traditional justice mechanisms play a crucial role in fostering sustainable peace by dealing with the structural injustices that contribute to conflict. The widespread social legitimacy of such mechanisms enables them to complement formal institutional reforms. Their role in shaping legal system reform appears to be straightforward.

In many contexts, overly formalised and centralised legal systems struggle to provide accessible and timely justice to communities, particularly those in rural and marginalised areas. Traditional justice mechanisms, with their emphasis on mediation, consensus-building and restorative practices, can serve as complementary avenues for dispute resolution. By formally recognising and integrating these mechanisms, judicial reforms can enhance access to justice and reduce case backlogs, ensuring that the formal and informal justice systems operate in a mutually reinforcing manner.

In addition, traditional justice mechanisms have been instrumental in facilitating land administration reforms, particularly in those contexts where land disputes have fuelled large-scale human rights violations and communal violence. In several countries, including Nigeria, Uganda and Ethiopia, traditional mechanisms are being considered as alternative solutions to resolving land conflicts, which are often deeply tied to historical grievances and discriminatory land-tenure systems. By incorporating customary land governance practices into formal land management reforms, states can develop context-sensitive approaches

that are widely accepted by local communities, in this way reducing tensions and preventing future conflict over land ownership and usage.

Furthermore, traditional justice mechanisms have served as catalysts in shaping formal judicial structures by introducing restorative justice principles into mainstream legal systems. A notable example is Rwanda's *Gacaca* courts, which, despite their limitations, have influenced broader justice-sector reforms. The experience with *Gacaca* contributed to the incorporation of court-annexed mediation and plea bargaining within Rwanda's formal legal framework.³⁴

Similarly, the justice-sector transformation plans in Kenya (2012–2016) and Ethiopia (2021–2024), although they were developed outside the transitional justice framework, have already emphasised the role of traditional justice mechanisms and their formal recognition as key pillars in legal system reform. These cases highlight the potential of traditional justice approaches to complement and strengthen formal judicial structures in post-conflict societies, particularly in contexts where the formal justice system often loses credibility.

Mental health and psychosocial support

The psychological consequences of violent conflict – ranging from acute trauma and bereavement to long-term mental health challenges – have profound and enduring effects on individuals and communities. These emotional and psychological burdens often impair survivors' ability to engage meaningfully in transitional justice processes, including truth-telling, reparations and accountability initiatives. Yet mental health and psychosocial support (MHPSS) is not explicitly recognised as a standalone pillar in most transitional justice frameworks. Notably, the AUTJP does not distinctly articulate the role of MHPSS within its foundational pillars. Nonetheless, there is increasing recognition of its importance in both academic and policy-oriented discourse and

33 Interview, Sarah Kihika Kasande, Head of Office of the International Center for Transitional Justice, Uganda, 20 January 2025.

34 Interview, Michael Butera, Chief Technical Advisor, Rwanda Ministry of Justice, 21 January 2025.

that it has to be mainstreamed across transitional justice pillars.³⁵ Some recent national transitional justice policies, such as Ethiopia's and Uganda's, have incorporated MHPSS under the reparations pillar.

Arguably, MHPSS warrants recognition as a standalone pillar of transitional justice, given its dual and complementary roles within the field. First, it serves as a remedy by providing victims with the tools and support necessary to cope with the psychological aftermath of violence and displacement. Second, it plays an enabling role by preparing survivors to engage actively and constructively in transitional justice mechanisms. In this sense, psychosocial recovery is both an outcome of transitional justice and a prerequisite for meaningful participation, contributing to the restoration of agency and voice for affected populations.

MHPSS typically emphasise clinical and therapeutic interventions. While these are undoubtedly important, they are not always trauma-informed in a way that captures the broader, long-term and collective impacts of violence. Such approaches often conceptualise trauma as a discrete event, overlooking its extended effects on communities and the social fabric.³⁶ Moreover, clinical MHPSS services are frequently inadequate in terms of their cultural relevance or accessibility – especially in rural or resource-limited post-conflict environments. In these settings, community-based and culturally rooted approaches to trauma recovery present valuable alternatives. These strategies are often integrated into customary dispute resolution systems and traditional justice processes, rendering them more familiar and acceptable to local populations.

When informed by a basic understanding of trauma prevalence and by symptom recognition, and guided by empathy – as is the case in Somaliland and Nigeria,

for instance³⁷ – traditional justice mechanisms can serve as important avenues for psychosocial support. Community-centred MHPSS exists in many societies. Community elders, spiritual leaders and other respected figures often provide informal counselling and moral guidance rooted in shared cultural values and lived experience. Their involvement can help individuals to navigate the emotional complexities of trauma and begin the process of psychological recovery.

Traditional justice systems, deeply rooted as they are in cultural norms and collective identities, offer affected populations a sense of continuity, meaning and belonging. In many African societies, practices such as story-telling, ritual enactments and communal ceremonies serve not only as outlets for grief but also as mechanisms for restoring social cohesion and fostering resilience. These practices reaffirm shared histories and communal values, enabling survivors to integrate their experiences into broader cultural narratives of survival and regeneration.

Moreover, the emphasis of traditional justice mechanisms on reconciliation and restoration – rather than on retribution – aligns with key principles of psychosocial healing. Facilitating dialogue and rebuilding relationships between victims and perpetrators can be instrumental in breaking cycles of violence and re-establishing trust in fractured communities. These mechanisms may also deal with the structural drivers of conflict such as social exclusion, marginalisation and economic inequality, in the process supporting both individual and collective recovery.

Certain forms of harm are deliberately inflicted by perpetrators with the intention of targeting not only individual victims but the broader communities

35 Virginie Ladisch and Shayna Lewis, 'The Search for People's Well-Being: Mainstreaming a Psycho Social Approach in Transitional Justice' ICTJ Research Report, September 2024.

36 Interview, Gugu Shabalala, MHPSS Expert, Centre for the Study of Violence and Reconciliation (CSV), South Africa, 25 March 2025.

37 See Interpeace, 'Somaliland: Traditional elders embrace Mental Health and Psychosocial Support (MHPSS)' (7 November 2023), <https://www.interpeace.org/resource/somaliland-traditional-elders-embrace-mental-health-and-psychosocial-support-mhpss/#:~:text=Amina%2C%20once%20shrouded%20in%20isolation,also%20for%20regions%20far%20beyond;Africa%20Transitional%20Justice%20Legacy%20Fund,%20Rebuilding%20Lives%20through%20Psychosocial%20Support%20in%20Northeast%20Nigeria%2013%20February%202025,https://atjlf.org/rebuilding-lives-through-psychosocial-support-in-northeast-nigeria/#:~:text=Kishimi%20Foundation's%20impact%2C%20however%2C%20extends,for%20sustainable%20mental%20health%20services.>

to which they belong. In such cases, clinical and individualistic approaches to psychosocial healing are often insufficient,³⁸ and so traditional justice systems often emerge as the primary – if not the only – accessible and trusted avenues for dealing with collective trauma. These systems activate and rely upon existing social networks – such as kinship structures, peer support systems, religious and spiritual practices, and relationships with the natural environment. Through these culturally resonant practices, traditional justice mechanisms foster emotional healing, strengthen social bonds and build community resilience.

Cultural expressions – such as local songs, collective singing and oral traditions – are particularly significant in healing trauma. Evidence from communities such as Abyei, which borders on South Sudan and the Sudan, indicates that these forms of expression enable individuals to process their experiences within a shared cultural framework, facilitating catharsis and collective empathy.³⁹ Ceremonial rituals often function as symbolic acts of release and renewal, offering communal spaces for mourning and emotional recovery. Faith-based coping mechanisms, including prayer and religious gatherings, also reinforce hope and social solidarity, contributing to both spiritual and psychosocial healing.

However, while traditional mechanisms offer considerable potential, reliance on them for MHPSS must be approached with caution, particularly regarding gender sensitivity. Many customary and community-based systems are shaped by patriarchal norms and may deal with gender-specific trauma inadequately, especially in cases of sexual and gender-based violence. In some contexts, traditional mechanisms may fail to create safe spaces, may stigmatise survivors, may minimise the harm endured or even exclude women and girls from meaningful participation in healing and justice processes.

African traditional justice mechanisms and international norms and standards

As noted above, the AUTJP envisages attaining a broader reach for traditional justice mechanisms. It encourages activities aimed at ‘integrating generic African practices into international norms and standards that would enhance international commitment to end impunity and promote peace, justice and reconciliation.’⁴⁰ This is a call to reform not only the national but also the relevant international system tasked with responding to large-scale atrocities.

In many African countries, the recognition and use of traditional justice mechanisms reflect a broader struggle against the enduring legacy of colonialism. Colonial rule often dismantled indigenous norms and values, replacing them with European legal standards and procedures. This colonial impact extends even to Ethiopia, the only African nation never to have been formally colonised. There, the modernisation of the legal system during the 1950s and 1960s, spearheaded by European jurists commissioned by Emperor Haile Selassie, led to the exclusion of customary laws from the formal legal framework. In some countries such as Uganda, for instance, traditional practices were even outlawed at the time of independence, where the incoming rulers considered them to be a threat to the consolidation of power.⁴¹ As a result, traditional justice mechanisms were relegated to informal domains until recently, when initiatives to recognise or rejuvenate them as customary courts became popular.

From this perspective, the continued exclusion of traditional African justice processes, norms and values from international norms and standards can be considered a perpetuation of colonial legacies. This exclusion becomes particularly problematic when traditional mechanisms align with – or are

38 Interview, Moses Chrispus Okello, peace and security expert, Institute for Security Studies (ISS), Addis Ababa, 26 March 2025.

39 See Global Partnership for the Prevention of Armed Conflict (GPPAC), ‘Courage in Crisis: What is women’s role in trauma healing and peace in Abyei’, 3 March 2025, <https://gppac.net/news/courage-crisis-what-womens-role-trauma-healing-and-peace-abyei>.

40 African Union Transitional Justice Policy, para 57(iv).

41 Joanna R Quinn, ‘Customary Responses,’ in *The Oxford Handbook on Atrocity Crimes*, Nyseth Nzitatira et al eds (Oxford: Oxford University Press, 2022).

not inherently incompatible with – international norms and standards. In such cases, the international justice system must recognise the essence of the matter: the goal is not to replace the formalised Western justice system but to enable traditional mechanisms to complement it. By doing so, justice processes can be made more accessible, legitimate and culturally resonant, particularly in communities from which both perpetrators and victims originate.

This issue is particularly evident in discussions about the ICC, and the role of traditional justice mechanisms has surfaced prominently in debates related to the *Ongwen* case. Although the *Ongwen* sentencing decision might reflect the provisions of the Rome Statute and the adherence of formal criminal law to the legality principle, the strict adherence of international mechanisms to formalised international procedures usually overlooks the culturally embedded and restorative justice approaches inherent in many traditions in Africa and elsewhere.

This debate underscores the need for a more inclusive and pluralist international legal framework that respects and incorporates traditional justice mechanisms, mainly when they are consistent with international human rights norms and standards. By doing so, the international community could move towards a more culturally sensitive and context-specific approach to justice, addressing historical inequities and acknowledging the legitimacy of African traditions in resolving conflicts and fostering reconciliation when it concerns Africa. This incorporation, however, should be pursued with nuance, applying specifically to countries and communities that actively practise traditional justice mechanisms without imposing these approaches on contexts where such norms and values are not prevalent.

Beyond the political dimensions of this issue – which are significant, given that international criminal justice often intersects with political considerations – this discussion also highlights the importance of making justice processes familiar and acceptable to the local communities they aim to serve. In many cases, international justice mechanisms, such as the ICC, are perceived as being geographically distant and procedurally foreign, with judges and

experts often lacking the cultural and contextual connections to the affected communities. This disconnection can hinder the legitimacy and effectiveness of such mechanisms in the eyes of victims, perpetrators and the broader community.

Notably, the ICC is not alone in its lack of provisions for incorporating traditional justice mechanisms. Several special or hybrid courts, including those established in Africa, similarly lack the necessary rules and procedures to integrate these mechanisms effectively. Recent examples include the Special Tribunal for The Gambia and the draft statutes for Ethiopia's Special Bench, which do not include provisions for recognising or applying traditional norms, values or customary laws in their proceedings. This omission extends to critical areas such as determining punishment and facilitating post-sentence reintegration. Moreover, these statutes fail to establish any framework governing their possible relationship or interaction with traditional justice institutions.

Arguably, the inclusion of traditional mechanisms could strengthen significantly the deterrent effect of international criminal accountability. By ensuring that justice processes are heard, understood and embraced by the community – key strengths of traditional mechanisms – international criminal accountability processes might have a better chance of deterring future atrocities. Such a hybrid approach that harmonises traditional justice mechanisms with international standards of prosecution – an approach which needs to be materialised either through judicial activism or amendments to founding documents such as the Rome Statute – has the potential to bridge the gap between global accountability norms and local community expectations. This could render justice not only more effective but also more sustainable in post-conflict societies.

Challenges to integration: fundamental shortcomings

Integrating traditional justice mechanisms into transitional justice frameworks presents several fundamental challenges. These include aligning traditional justice norms with international human rights standards, ensuring inclusivity and gender

sensitivity, taking political co-optation and corruption within traditional leadership into account and balancing the coexistence of traditional and formal justice systems without undermining the legitimacy of either. Responding to these challenges would ensure that traditional justice mechanisms contribute meaningfully to reconciliation, accountability and community healing.

Proliferation of titled traditional leadership

In contexts characterised by clan-based structures, a key challenge to traditional justice mechanisms is that an increasing number of individuals or groups claim leadership status within a clan, which results in competition for legitimacy among traditional leaders. The proliferation of titled traditional leaders dilutes their authority and creates internal disputes over jurisdiction, which undermines the effectiveness of these mechanisms in peace-building and conflict resolution. This lack of a unified leadership structure weakens community trust and confidence in traditional justice processes. In Somalia, for instance, this erosion of traditional leadership, often due to factors such as war or political manipulation, has contributed to a growing disconnection between youths and elder leaders, which has diminished the cultural relevance and efficacy of traditional dispute-resolution systems.⁴²

Exclusion of certain social groups

Numerous traditional justice mechanisms (although there are some exceptions) are deeply embedded in patriarchal structures, often excluding women, youths, persons with disabilities, marginalised groups and other underrepresented communities. In many societies, peace-building and conflict resolution are viewed as the domain of men, traditional elders or dominant clans, leaving

significant portions of the population without a voice in transitional justice processes.⁴³ Without there being deliberate efforts in place to ensure gender-sensitive and inclusive practices, traditional justice mechanisms risk reinforcing structural inequalities rather than overcoming them.

Incompatibility with contemporary human rights standards

Many traditional elders and justice practitioners operate outside contemporary human rights frameworks, making compliance with international human rights principles inconsistent or inadequate. Some traditional justice mechanisms fail to uphold fair trial rights, to protect victims from re-victimisation or to ensure equal treatment for all individuals, particularly women and marginalised groups.

Most customary processes are marred by practices involving corporal punishment, discriminatory customary laws or the exclusion of victims' voices that often conflict with internationally recognised human rights norms. Ensuring that traditional justice mechanisms operate within a human rights-compliant framework is essential to preventing further injustices being carried out under the guise of customary law – an issue that was among the shortcomings of the *Gacaca* process in Rwanda.⁴⁴

Political co-optation and corruption of traditional elders

In some contexts, corruption has politically co-opted traditional justice mechanisms or undermined them, reducing their credibility and effectiveness. Government actors, armed groups and local elites have sometimes manipulated traditional elders and justice mechanisms to serve their

42 See, for instance, Hassan Mohamed, *The Limitations of Xeer and Community-based Reconciliation in Jowhar* (Uppsala: Life and Peace Institute, 2024).

43 A few exceptions where women play a leading role in traditional justice may include the *Siiqqee* institution in Ethiopia's Oromo community and the abovementioned *Kenyeleeng* groups in The Gambia. See Debela Fituma, 'Women's Position in Indigenous Peacebuilding Processes: The Role of Siiqqee Institution in the Oromoo Gadaa System,' *Gadaa Journal* 3, No 2 (2020): 39–49.

44 P Clark (2010). *The Gacaca courts, Post-genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge: Cambridge University Press); J Nowotny (2020). 'The limits of post-genocide justice in Rwanda: assessing gacaca from the perspective of survivors,' *Contemporary Justice Review (CJR)*, 23 No 4, 401–429.

political interests rather than community well-being. Some traditional elders, instead of acting as neutral mediators, have favoured powerful actors, perpetuated impunity or imposed biased rulings based on personal or political affiliations.

The commercialisation of customary justice, where financial incentives rather than justice considerations influence decisions, erodes trust in these mechanisms further. Dealing with this issue requires enhancing transparency, strengthening community oversight and ensuring that traditional leaders remain accountable to their communities rather than to political actors. As a result, it becomes necessary first to establish a fundamental understanding of traditional institutions and the roles they played prior to the colonial era, and to understand the extent to which they have been transformed within the new political and institutional contexts.⁴⁵

Lack of clear guidelines or frameworks for integration

Many transitional justice policies and frameworks reference traditional justice mechanisms abstractly without providing concrete guidelines or legal frameworks for their integration. Without clear procedural rules, the formal justice system will probably impede the practical application of traditional mechanisms, limiting their ability to function effectively within a broader transitional justice framework. Developing comprehensive guidelines that outline the ways in which traditional justice mechanisms are able to complement rather than conflict with formal legal processes is essential to their successful implementation.

Recommendations: Ensuring hybridity at national and international levels

Traditional justice mechanisms represent a hybrid approach to transitional justice, one in which formal and customary systems complement rather than oppose one another. This hybrid

model should be reflected in national transitional justice processes to ensure that formal judicial mechanisms and traditional justice practices reinforce one another in order to achieve accountability, reconciliation and social healing. Instead of treating them as separate or competing frameworks, national legal systems should integrate traditional mechanisms in ways that uphold due process, human rights and cultural legitimacy.

Similarly, the international criminal justice system should adopt a context-sensitive approach, recognising the value of traditional justice mechanisms case by case. At a minimum, where a country has longstanding and widely accepted traditional justice mechanisms, international legal frameworks should consider and accommodate these practices in ways that align with international legal standards. This accommodation could include acknowledging traditional justice processes in sentencing, reconciliation efforts and post-conviction reintegration. Such an approach would enhance the legitimacy and effectiveness of international justice interventions and ensure that justice is meaningful, accessible and resonant in the affected communities.

For national transitional justice processes

To ensure the successful implementation of a hybrid process, governments should:

- adopt legal and policy frameworks that specify context-specific ways of recognising the role of traditional justice mechanisms;
- provide continuous capacity-building training for traditional actors and elders to ensure human rights compliance in traditional justice mechanisms;
- safeguard traditional institutions from political interference and ensure their impartiality in transitional justice processes to ensure the independence and neutrality of such institutions.

⁴⁵ John Gbodi Ikubaje, written comments on the first draft of this paper, 27 February 2025.

For the international criminal justice system

International and regional tribunals and courts should:

- adopt a framework that enables such institutions to explore the ways in which traditional justice could contribute to the global fight against impunity;
- support comparative research and knowledge-sharing on successfully integrating traditional and formal justice systems in post-conflict societies.

For the African Union

In addition to supporting Member States in formally recognising and integrating traditional justice mechanisms into domestic transitional justice systems, the African Union should:

- Develop traditional justice integration guidelines or a model law that states how traditional justice mechanisms can complement formal transitional justice processes while ensuring compliance with international human rights standards.
- advocate international justice reform by engaging with international justice institutions, including the ICC, to push for context-sensitive recognition and application of traditional justice in criminal accountability by overcoming legal impediments;
- establish an AU Working Group on Traditional Justice in Transitional Justice to study best practices, liaise with national governments and international institutions and propose policy reforms for integrating customary justice systems into transitional justice frameworks both domestically and internationally.

About the author

Dr Tadesse Simie Metekia is a senior researcher at the Institute for Security Studies, focusing on the rule of law and transitional justice. He also serves as the board chairperson for the African Center for Transitions Studies. His expertise includes transnational and international crimes, transitional justice, and conflict and peace studies. Currently, Dr. Metekia is a visiting fellow at Harvard University and a member of the Transitional Justice Evaluation Tools. Recently, he played a key role in establishing Ethiopia's first transitional justice consortium of civil society organisations, the Transitional Justice Consortium Ethiopia.

© 2025 Centre for the Study of Violence and Reconciliation

The opinions expressed in this publication do not necessarily reflect those of GIZ, the African Union or the Centre for the Study of Violence and Reconciliation.

