

Policy & Practice Brief

Knowledge for durable peace

ISSUE
012
October
2011

The Abunzi Mediation in Rwanda: Opportunities for Engaging with Traditional Institutions of Conflict Resolution

By Dr Martha Mutisi

This Policy & Practice Brief analyses the role of traditional institutions for conflict resolution, paying special attention to their relevance in post-conflict societies. Using Rwanda's abunzi mediation system as an example, the brief considers traditional African mechanisms for conflict resolution as unique, context-specific, and responsive to the justice needs of societies emerging from conflict. The brief draws attention to synergies between the modern and the traditional by highlighting how traditional institutions have sometimes complemented the state, which is often too overwhelmed and under-resourced to be able to offer timely and effective justice. The abunzi mediation is part of the Rwandan justice system, whose restorative approach helps people to address their conflicts without resorting to litigation and other retributive approaches. While acknowledging these benefits, the brief also highlights some challenges of the abunzi system, and particularly cautions against too much state oversight in community-driven conflict resolution processes. For true local ownership of justice, the brief advocates diminished state interference in the affairs and processes of the abunzi. The brief further makes recommendations on how to enhance the functionality and relevance of abunzi to the present day realities of the post-conflict state of Rwanda.

Creative Commons



Rwanda – Land of a Thousand Hills.

Introduction

Despite evidence that demonstrates their practical relevance, traditional institutions of conflict resolution have still not been adequately addressed by scholarly and policy research. There has been a slow pace in the uptake of lessons from these institutions. Nonetheless, the relevance of traditional methods and institutions of conflict resolution is now

slowly gaining an audience among policy makers and practitioners of conflict resolution. For instance, in 2004, the United Nations Economic Commission for Africa (UNECA) organised a forum which discussed governance in Africa, including the role of traditional systems of governance in the modern. The hosting of this conference attests to the initial steps at the

ACCORD
THE AFRICAN CENTRE FOR THE CONSTRUCTIVE RESOLUTION OF DISPUTES

This Policy & Practice Brief forms part of ACCORD's knowledge production work to inform peacemaking, peacekeeping and peacebuilding.

regional level towards acknowledging the increasing reality of synergy between the traditional and the modern.¹

Known by various names, such as ‘endogenous mechanisms’ or ‘indigenous approaches’, traditional institutions of conflict resolution essentially exist within a particular cultural context. For the purpose of this brief, traditional institutions of conflict resolution are defined as those that ‘have been practiced for an extended period and have evolved within African societies, rather than being the product of external importation’.² In essence, these institutions are rooted in the culture and history of societies, and are ingrained in the socio-political and economic environment of particular communities. They are usually built around the concepts of mediation, compensation, restitution and restoration. Although such institutions developed in pre-modern times, and have been practised in that context over a considerable period of time, they are also dynamic. Traditional institutions of conflict resolution have interacted with exogenous and modern institutions, resulting in the processes of assimilation, acculturation, transformation and adaptation, hence their description by Boege as ‘hybrid political orders’.³ In addition, traditional institutions do not claim universal applicability but are context-specific, with their approaches varying considerably from community to community. Furthermore, traditional institutions are founded upon customary practices; hence their attendant norms and values are often transmitted from generation to generation, while being ‘lived’ through everyday experiences.

Just like many state-mandated institutions in Rwanda, the abunzi are opening spaces for ordinary citizens to participate in public processes, such as justice delivery and governance reform

Traditional conflict resolution mechanisms make use of local actors and institutions with authority to manage or resolve conflict. Scholars of conflict resolution, including Zartman⁴ and Lederach⁵, underscore the necessity of indigenous conflict resolution mechanisms because of their responsiveness to local realities. Zartman labels these approaches ‘African conflict medicine’⁶, stressing that such mechanisms help to heal societies afflicted by conflict. Traditional mechanisms are rooted in symbolism and ritual which not only ensures that the whole community participates in them, but also ultimately emphasises the notion of local ownership. Rituals, such as eating, drinking, singing and dancing together, as well as exchanging solemn vows and promises, signify the coming together of conflict parties, their constituencies and the community at large.

The place of traditional institutions in the modern state: the abunzi mediators of Rwanda

The practical relevance of traditional institutions in governance and conflict resolution cannot be understated. In many countries, traditional institutions, such as the *dare*⁷ in Zimbabwe, *abunzi*⁸ and the *gacaca*⁹ courts of Rwanda, and the *bashingantahe*¹⁰ in Burundi, continue to play tremendous roles in conflict resolution. These institutions have presided over cases such as land disputes, civil disputes and, in some instances, criminal cases. In countries like Rwanda, these traditional institutions of dispute resolution are fully recognised under the law, while in other countries such methods exist extra-judicially.

The nature of conflict is such that it is pervasive and ubiquitous, implying that in some instances, it has come to involve non-state actors. In the same way, the transformation and resolution of conflict has to strive to overcome a state-centric perspective by involving other players and institutions. This is because the state is not the only actor in social reality but is one of a number of socio-political orders that provide governance and regulate processes of conflict management. Boege labels these other systems of governance ‘outposts of the state’.¹¹ Indeed, traditional institutions, which existed before colonialism, were the legitimate ‘state institutions’ then. With the advent and end of colonialism, such institutions have continued to fill the vacuum in the justice and local governance sector.

The *abunzi* mediation in Rwanda is an illustrative example of the synergies between the state and the local processes of conflict resolution. Literally translated, the word *abunzi* means ‘those who reconcile’. The *abunzi* are local mediators in Rwanda, who are mandated by the state as the conciliatory approach to resolve disputes, ensuring mutually acceptable solutions to the conflict. The *abunzi* mediators are chosen on the basis of their integrity, and they handle local cases of civil and criminal nature. Currently, more than 30 000 *abunzi* mediators operate in Rwanda at the cell level. In 2006, the Rwandan government passed the Organic Law (No. 31/2006)¹² which recognises the role of *abunzi* or local mediators in conflict resolution. The *abunzi* system was popularised in the post-2000 era by the Rwandan government as a way of decentralising justice, making it affordable and accessible. The resuscitation of the *abunzi* is part of the Rwandan government’s repertoire of initiatives designed to make justice and governance available to citizens at every level. The *abunzi* exist alongside other decentralised forms of governance in Rwanda, including the *gacaca* courts. By involving these other ‘political orders’¹³ in governance and conflict transformation processes, governments in Africa would essentially be opening

up democratic spaces for various actors to exercise their agency in a constructive manner.

Before seeking justice in local courts, mediation by the *abunzi* is obligatory for local level disputes, criminal cases and civil cases, whose property value is below 3 million Rwandese francs.¹⁴ Like their counterpart institution of *gacaca* courts, which has tried more than 1 million cases of genocide, the *abunzi* system is inspired by Rwandan traditional dispute resolution systems that encourage local capacity in the resolution of conflicts. In a way, *abunzi* can be seen as a hybrid between state-sponsored justice and traditional methods of conflict resolution, as it helps to address the challenges of an overburdened modern court system.

In some cases, the apparently traditional institutions have become so diluted and translated into the language of the state that they have changed their character to become retributive and litigated in approach

Traditional institutions will continue to play a role in local governance, conflict resolution and justice for various reasons. One major reason is that the state-building enterprises in Africa have not yet succeeded in increasing robust states capable of providing public goods to all areas; hence the state will need to devolve responsibilities to local communities. This does not mean that the state has completely lost its status as a point of reference in governance and security, but the reality underscores the notion that traditional institutions have a complimentary role in the face of the diminishing influence of the state. Responding to the overburdened modern court system in Rwanda, the *abunzi* system of mediation has helped to address the question of access to justice by ordinary Rwandans, who might not be able to afford to participate in the litigation justice environment.

Traditional conflict resolution institutions often aim for the restoration of broken relationships. The punishment of perpetrators is not their priority. The 2006 Organic Law in Rwanda actually prohibits *abunzi* mediators from giving punitive sentences. Besides resolving the conflict, a vital aspect of the traditional mechanisms of conflict resolution in African societies is their capacity to involve members of society and to build a sense of community. Usually the resolution of conflict by traditional institutions is done in the presence of family, clan or community members, allowing for the construction and renewal of the notion of belonging and communality. *Abunzi* mediation sessions are open to family members of the disputants, as well as members of the public.

During *abunzi* sessions and meetings, there is often a great deal of evocation of the notion of ‘oneness’ or the concept of *abanyarwanda* (Rwandan-ness), as opposed to being Hutu, Tutsi or Twa. When compared with the retributive system of the modern courts, the *abunzi* mediation processes tend to reflect values and principles of decentralisation of power, communal participation and consensus-based decision-making. However, not everyone agrees with this notion of *abanyarwanda*. Doughty argues that decentralised legal forums, like the *abunzi*, have a tendency to dramatise and politicise concepts, such as restoration and reconciliation, while neglecting issues of dissent and ultimately ‘sweeping ethnicity under the carpet’.¹⁵ While the symbolism of community ownership in the *abunzi* processes is undoubted, what cannot be ascertained is how far such processes have gone in facilitating actual social cohesion, healing and reconciliation among conflict parties and disparate groups.

Another value of traditional institutions of governance and conflict resolution is their potential to contribute to Africa’s democratisation process. Just like many state-mandated institutions in Rwanda, the *abunzi* are opening spaces for ordinary citizens to participate in public processes, such as justice delivery and governance reform. For example, the *abunzi* system is instructed by the Rwandan constitution to ensure that at least 30% of the mediators are women. The Rwandan constitution requires that women fill 30% of policy making positions in the public service, and the *abunzi* is one such institution.¹⁶ One oft-cited challenge of endogenous methods of conflict resolution is the inadequate participation of women in the discourses and decisions happening at the traditional level. Women’s participation in traditional power structures remains limited, with many women being confined to the roles of subtle advisers or petitioners. However, the *abunzi* institution has presented opportunities where women can re-emphasise their relevance in community processes. The quest for consensus and restoration by the *abunzi* system has enabled women’s active participation and subsequent ability to challenge notions of vertical hierarchy that are found in some traditional institutions.

Challenges to the *abunzi* mediation system

Despite their utility, certain challenges may prevent the complete application of traditional institutions of conflict resolution in African societies. Undoubtedly, these traditional African institutions have limitations that necessitate reforms, particularly in their convergence with modern political systems and their involvement of various actors on the socio-political stage. One challenge is that in some instances, traditional institutions are politicised and instrumentalised by elites for a variety of reasons. The strong linkages with

the state, in particular, the legalisation of the *abunzi*, could be perceived as both an opportunity and a challenge. Too much state involvement in the determination of the jurisdiction, mandate and conduct of the *abunzi* dilutes the *abunzi* institution's independence, posing the danger of state-centrism in so-called local initiatives. Indeed, the *abunzi* institution in its current form is a somewhat adulterated version of community-based justice in the sense that it is top-down mediation.

The politicisation of the *abunzi* can be paralleled to the manipulation of similar forms of traditional justice in countries like Nigeria, South Africa, and Zimbabwe. In some cases, the apparently traditional institutions have become so diluted and translated into the language of the state that they have changed their character to become retributive and litigated in approach. Traditional methods of conflict resolution are not as purely restorative as they are often portrayed. The *abunzi* system demonstrates a level of ambivalence when it comes to the pursuance of restorative and retributive approaches to justice. In Rwanda, even though the *abunzi* institution pre-dates colonialism, its current form and approach to justice is modelled along the Alternative Dispute Resolution (ADR) jurisprudence. Such legalised mediation is not unique to Rwanda, for other countries, including the United States of America, also practise ADR.

While the symbolism of community ownership in the abunzi processes is undoubted, what cannot be ascertained is how far such processes have gone in facilitating actual social cohesion, healing and reconciliation among conflict parties and disparate groups

Although Rwanda's Organic Law prohibits the use of punitive sentences by *abunzi* mediators, there are elements of obligation and coercion in the process. The *abunzi* mediators admit that their hearings gain compliance mostly because of a combination of conciliation and state-backed threats. *Abunzi* mediators can request the services of the police when witnesses and parties fail to cooperate with the mediation process. Doughty describes this as 'voluntary-yet-mandatory control'.¹⁷ This scenario could be due to the fact that the *abunzi* is a traditional system of conflict resolution, which was simply transplanted into the formal legal system, but is nevertheless expected to exhibit a conciliatory approach. The combination of adversarial and restorative processes has sometimes led to the increased complexity of the *abunzi*, and the attendant challenges of classifying this system of conflict resolution.

Traditional institutions are part of the evolving modern civilisation and should no longer be perceived as simply isolated rituals occurring in remote villages

Lastly, traditional institutions may not be able to handle every type of violent conflict on the African continent because 'their applicability is confined to specific conditions'.¹⁸ When they were conceived during the pre-colonial era, they were usually designed to resolve small-scale familial, clan or community disputes, such as boundary disputes, land conflicts and petty theft. However, contemporary conflicts in Africa are often fought between disparate groups separated by language, religion, geography and political ideology. The place of traditional mechanisms in such instances can be limited in this respect. Furthermore, in the *abunzi* case, it would be imprudent to have a community-driven mediation process handling sensitive cases, such as sexual violence and other heinous crimes.¹⁹

Conclusion

As this brief has demonstrated, through the *abunzi* mediators of Rwanda, traditional institutions are part of the evolving modern civilisation and should no longer be perceived as simply isolated rituals occurring in remote villages. Traditional institutions have become a part of the modern post-conflict state, hence the notion of 'hybrid political orders'. As Africa continues to develop and strengthen its political institutions for conflict resolution, the place of traditional institutions attracts the attention of practitioners and policy makers. There are emerging synergies between traditional and modern institutions of conflict resolution. Therefore, it is important not only to give due recognition to such institutions but also to facilitate increased collaboration between them. Nonetheless, the emerging recognition of traditional institutions should not dissuade the analysis and consideration of their limitations.

Recommendations

For governments and policy makers

- Create mechanisms for interaction that would encourage synergies between modern systems and endogenous methods of conflict resolution.
- Facilitate codification of traditional laws and institutions to enable a clear definition of the roles, mandates, and boundaries of such institutions.

For civil society, think tanks and academic institutes

- Raise scholarly and practical awareness about traditional institutions of conflict resolution through research, documentation, debate and training.

- Facilitate increased collaboration between traditional and modern institutions through exchange missions, training and joint initiatives.
- Mainstream the themes of indigenosity and local capacity in conflict intervention initiatives.

For regional organisations and the African Union

- Support member states in integrating modern and traditional institutions so that they can effectively serve citizens, as well as promote peace and security.
- Provide platforms at sub-regional, continental and international levels to enhance the representation and participation of traditional institutions and their representatives in global processes. Initiatives such as the South African Development Community (SADC) Traditional Leaders' Council should be promoted by other regional and actors.

Endnotes

- 1 UNECA organised its Fourth African Development Forum (ADF IV) under the theme *Governance for a Progressing Africa*. The forum brought together key stakeholders as a means of stimulating debate and building consensus, identifying key and new areas for policy research and advocacy.
- 2 Zartman, I.W. 2000. Conclusions: Changes in the New Order and the Place for the Old. In: Zartman, I.W. ed. *Traditional cures for modern conflicts. African Conflict "medicine"*. Boulder, CO, Lynne Rienner. pp 219–230.
- 3 Boege, V. 2006. *Traditional approaches to conflict transformation: potentials and limits*. Berghof Centre for Constructive Conflict Management.
- 4 Zartman, I.W. 1999. Introduction: African traditional conflict "medicine". In: Zartman, W.I. ed. *Traditional cures for modern conflicts. African Conflict "medicine"*. Boulder, CO, Lynne Rienner. pp. 1–11.
- 5 Lederach, J.P. 1997. *Building peace: sustainable reconciliation in divided societies*. Washington, DC, United States Institute of Peace Press.
- 6 Lederach, J.P. 2005. *The moral imagination: the art and soul of building peace*. Oxford, Oxford University Press.
- 7 Zartman, I.W. 1999. Ibid.
- 8 *Dare* is a local court in Zimbabwe, which comprises the village head and a council of advisors and community members. It is a conflict resolution institution found among the Shona people. Criminal and civil cases are tried in the presence of local community members and the village head, in consultation with the council advisors, gives a ruling. According to the

Zimbabwe constitution, a *dare* can refer a case to the modern court if the case contents prove to be beyond its jurisdiction.

- 9 The *abunzi* is a mediation committee located at the cell level in Rwanda. The *abunzi* is one of the institutions that seek to resolve disputes locally. *abunzi* mediators are mandated by statutory law to resolve disputes via mediation.
- 10 *Gacaca* is a local court in Rwanda which is made up of locally elected judges called *inyangamugayo* who are chosen on the basis of their integrity. Although they existed in pre-colonial times, *gacaca* courts were reincarnated in post-genocide Rwanda and mandated by the state to try cases of crimes committed during the 1994 genocide.
- 11 *Bashingantahe* is a traditional institution in Burundi, comprising a body of local people vested with social, political and judicial power to resolve conflicts.
- 12 Boege, V. Ibid. p.1.
- 13 The Organic Law on the Organisation, Jurisdiction, Competence and Functioning of the Mediation Committee was enacted on 14 August 2006 (Organic Law No 31/2006). The law was reviewed in 2010, leading to (Organic Law No 02/2010/OL of 09/06/2010) on the Organisation, Jurisdiction, Competence and Functioning of the Mediation Committee. For details see Official Gazette No. 24 Bis of 14/06/2010 http://www.primature.gov.rw/index2.php?option=com_docman&task=doc_view&gid=1080&Itemid=95
- 14 Boege, V. Ibid.
- 15 According to the Organic Law of 2006 and 2010, the formal courts will not consider a local dispute unless the *abunzi* has first considered and ruled on the dispute.
- 16 Doughty, K.C. 2011. Contesting community: legalized reconciliation efforts in the aftermath of genocide in Rwanda. *Publicity accessible Penn dissertations*. Paper 333. Available from: <<http://repository.upenn.edu/edissertations/333>>.
- 17 In 2003, the newly adopted Constitution of the Republic of Rwanda established a 30% quota for women's participation in all decision-making organs of the public sector. According to the Rwandan Constitution, Article 9 [4], the State of Rwanda commits itself that women are granted at least 30 % of posts in "decision making organs." This affects state-mandated institutions such as the *abunzi* and *gacaca* courts. The present Constitution of the Republic of Rwanda was adopted by Rwandan Citizens in the Referendum of 26 May 2003 and promulgated in June 2003. For details, see the Constitution of the Republic of Rwanda http://www.mhc.gov.rw/fileadmin/templates/PdfDocuments/Laws/Constitution_of_the_Republic_of_Rwanda.pdf
- 18 Ibid.
- 19 Boege, V. Ibid.
- 20 For further reading see: Thomson, S. and Nagy, R. 2010. Law, power and justice: what legalism fails to address in the functioning of Rwanda's *gacaca* courts. *The International Journal of Transitional Justice*, 5 (1), pp. 11–30; Zorbas, E. 2004. Reconciliation in post-genocide Rwanda. *African Journal of Legal Studies*, 1 (1), pp. 30–52.

The Author Dr Martha Mutisi is a Senior Researcher in the Knowledge Production Department (KPD) at ACCORD. In this role, Dr Mutisi identifies and implements practice-oriented research and provides technical and substantive expertise to strengthen ACCORD's knowledge production, management and intervention. A Fulbright Scholar and recipient of the Harry Frank Guggenheim Fellowship for Young African Scholars and the French Drucie Cumbie Fellowship for Conflict Resolution, Dr Mutisi holds a PhD in Conflict Analysis and Resolution from the School for Conflict Analysis and Resolution (S-CAR) at George Mason University, USA. Her research interests include: peace processes and institutions, gender and development, transitional processes, democratisation and governance. She has authored book chapters and journal articles covering these themes.

ACCORD is a non-governmental, non-aligned conflict resolution institution based in Durban, South Africa. Produced by ACCORD, the Policy & Practice Briefs are managed and coordinated by ACCORD's Knowledge Production Department (KPD). The role of KPD is to establish ACCORD as a positive and constructive learning organisation that enhances theory, policy and practice in the field of conflict management. The department's activities and outputs are aimed at promoting effective and sustainable peacemaking, peacekeeping and peacebuilding in Africa and beyond. All ACCORD publications, including research reports, the *Conflict Trends* magazine and the *African Journal on Conflict Resolution* can be downloaded at no charge from our website.

Policy & Practice Briefs aim to provide succinct, rigorous and accessible recommendations to policy makers and practitioners and to stimulate informed and relevant debate to promote dialogue as a way to peacefully resolve conflict. Each issue draws on field research or the outcomes of thematic events, with analysis underpinned by rigorous research, academic theory and methods.

Copyright © 2011 ACCORD. Short extracts from this publication may be reproduced unaltered without authorisation on condition that the source is indicated. For rights of reproduction or translation, application should be made to ACCORD. Views expressed in this publication are the responsibility of the individual author(s) and not of ACCORD.



Private Bag X018 Umhlanga Rocks 4320 South Africa, Tel: +27 (0)31 502 3908, Fax: +27 (0)31 502 4160, Email: info@accord.org.za
www.accord.org.za