



Extracted from *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*

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CHAPTER 5

CHAPTER 5

Reconciliation and traditional justice: tradition-based practices of the Kpaa Mende in Sierra Leone

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1. The conflict

1.1. Descriptive chronology

In March 1991 Sierra Leone was plunged into anarchy when an insurgency force calling itself the Revolutionary United Front (RUF) invaded the country from three directions on the Sierra Leone–Liberian border. The first group entered Bomaru (in Kailahun district) on 23 March and was led by Foday Sankoh, a cashiered officer of the Sierra Leone Army (SLA). The second group entered the same district from Koindu four days later. A third force entered from the south-east and occupied Zimmi, a strategic town in Pujehun district, on 28 March. The rebels soon overran the Kailahun district, where they maintained a strong base throughout the period of the conflict. There was little government presence in these districts, following years under an inept and over-centralized All People's Congress (APC) administration. Kailahun and Pujehun had been hotbeds of opposition to APC rule.

The rebels consisted of three distinct groups of fighters: those who had received military training in Libya; Sierra Leonean dissidents based in Liberia; and hard core National Patriotic Front of Liberia (NPFL) combatants who included Liberian and Burkinabe mercenaries. The invading force numbered about 100. Their aim was to overthrow the one-party government of President Joseph Saidu Momoh, which the rebel leadership described as corrupt, tribalistic and lacking a popular mandate. They indicated that their goal was to establish a dictatorship of the proletariat in which ordinary citizens would be actively involved in all the decision-making processes. Moreover, the RUF would vigorously promote socio-economic development including rural regeneration. Initially, some marginalized young people and the rural poor, including teachers, were attracted by the RUF rhetoric and joined the movement.

The RUF invasion took the government and the military by surprise, even though the NPFL rebel leader, Charles Taylor, had indicated months before that he would attack Sierra Leone, where the Economic Community of West African States (ECOWAS) peacekeeping force, the ECOWAS Monitoring Group (ECOMOG) deployed to Liberia, had established a base. It was from Sierra Leone that ECOMOG jets attacked rebel bases in Liberia. The SLA was ill-prepared for battle and demoralized, but it had to engage the insurgents. The officers tried to make up for what the force lacked in morale, training and equipment with massive and indiscriminate recruitment of men. The result was an influx of recruits who lacked the requisite qualifications and discipline, and some of whom were drug addicts, convicted criminals, fortune seekers and early school-leavers. This group of misfits and criminal elements was to dominate the army, with disastrous consequences.

While the APC government was trying to contain the rebel onslaught and at the same time devise dubious means to stay in power indefinitely, a group of young SLA officers from the war front in the Eastern Region stormed Freetown, the capital, in the early hours of the morning of 29 April 1992, to protest against poor conditions on the battlefield. By midday, what had started as a mutiny had developed into a fully blown coup. President Momoh was flown to Conakry, Guinea, by ECOMOG soldiers. The army officers then set up the National Provisional Ruling Council (NPRC) with Captain Valentine Strasser as chairman. The NPRC vowed to end the war quickly and return the country to constitutional rule. Initially, the NPRC was enormously popular, especially among young people.

During 1992 and 1993 the fortunes of the rebel RUF fluctuated. The new military regime in Freetown appealed to traditional hunters, some of whom had formed themselves into civil defence units at the start of the war, to help them prosecute the rebels, since they knew their terrain very well. However, the cooperation between the government soldiers and the civil defence units was short-lived, as the latter began to discern an unholy alliance between some army soldiers and the rebels. Civilians called these soldiers-cum-rebels 'sobels'. By 1994 the RUF had occupied the major diamond mining areas and the proceeds from the sale of diamonds were used to fuel the conflict.

The situation in the army was also becoming critical, with many soldiers defecting. Those who remained in the force did so for personal gain. Captain Strasser was forced to approach the United Nations (UN) for assistance. In April 1995, the RUF rebels were only miles away from Freetown. The RUF was estimated by some to have an overall strength of 3,000–4,000 with a hard core of only 500–600 fighters.

Democratic elections were held in Sierra Leone in February and March 1996. They saw the Sierra Leone People's Party (SLPP), which had ruled from 1961 to 1967 but was defeated by the opposition APC party in 1967, back at the helm of government. President Alhaji Ahmad Tejan Kabbah of the SLPP held peace talks with the rebels and a peace agreement, the Abidjan Peace Accord, was signed on 30 November 1996. It was short-lived.

Another military coup on 25 May 1997 briefly disrupted the democratic process. The government of President Kabbah and several agencies were forced to flee to Guinea. The junta, which called itself the Armed Forces Revolutionary Council (AFRC) under the leadership of a Major Johnny Paul Koroma (who was awaiting trial for an alleged coup attempt), invited the RUF rebels to help them administer the country. The period of AFRC rule (25 March 1997–February 1998) was characterized by extreme lawlessness and mayhem. It also saw unprecedented civil disobedience against the regime.

ECOMOG troops, together with the Civil Defence Forces (CDF) and loyal soldiers and police officers, successfully drove the AFRC junta out of Freetown in February 1998. President Kabbah's government was restored a month later. The rebels retreated to the countryside where they continued to wreak havoc.

The RUF and its allies again appeared at the gates of Freetown on 6 January 1999, catching both the government and ECOMOG off guard. Using women and children as human shields, some RUF and AFRC fighters were able to bypass ECOMOG troops and join comrades who had already infiltrated the city. In the fighting that ensued, an estimated 5,000 people died, including cabinet ministers, journalists and lawyers who were specifically targeted. Before the rebels were ejected from Freetown, large parts of the city were burned down and about 3,000 children abducted as the rebels retreated.

In spite of these latest atrocities—or because of them—the government, in concert with civil society groups and the international community, held peace talks with the rebels, and on 7 July 1999 the Lomé Peace Agreement was signed. Following the signing of the agreement, ECOMOG troops were gradually replaced by UN troops, who helped to keep the peace. On 18 January 2002, President Kabbah formally declared the civil conflict over.

1.2. The causes of the conflict

Sierra Leone, a small country on the West African coast measuring 27,000 square miles and with a population of roughly 5 million, has had a rather chequered history since it regained independence from the British in 1961. At independence, the country seemed to hold great promise; the educational, political, administrative, judicial and other institutions critical to the well-being of the state were functioning relatively well. There was a high degree of ethnic, political and religious tolerance and Sierra Leone was the envy of other countries in the sub-region. However, as in many other independent African countries, the euphoria that greeted the birth of the new nation, with its accompanying high hopes and great expectations, soon turned to despair and despondence largely as a result of the actions (and inaction) of the political leadership. The RUF rebel onslaught had been preceded by a long period of political, economic and social decline as well as a prolonged history of social injustice. The reasons for the country's slide into chaos and anarchy were therefore many and varied.

The first was maladministration. Under the APC (1968–92) the gains of the early years of independence were systematically eroded by bad governance and reckless economic management characterized by indiscriminate plunder of the country's resources to service patron–client relationships. The APC leadership, moreover, developed dictatorial tendencies and liberally used the language of violence as an instrument of political competition.

The state machinery was also over-centralized. This began in 1971 and reached its zenith in 1978 with the declaration of a one-party system of government. Over-centralization led to the systematic crumbling of the fabric of the state, resulting in near state collapse, which was marked by the loss of control over the political and economic space. The weakening of the state through over-centralization helped to open the way for some foreign countries, including Burkina Faso, Côte d'Ivoire, Liberia and Libya, to encroach on Sierra Leone's sovereignty by involving themselves in its politics directly and by hosting dissident groups who played politics from neighbouring sanctuaries. In addition, the concentration of power in the capital, Freetown, led to the neglect of or truncated development in the rural areas and created the conditions for the disempowerment of the rural population in particular. The system exacerbated corruption, nepotism and other ills detrimental to the well-being of the state. There was a complete absence of transparency and accountability in the public administration system. The judiciary too was compromised. An over-centralized, inefficient and bankrupt one-party system rewarded sycophancy and punished hard work, patriotism and independent thought. The effects were disastrous.

The second was poor economic policies and a declining economy. The government failed to translate the country's rich endowment of mineral and marine resources, as well as its considerable areas of arable land, into improved welfare for the majority of the population. The 1970s and 1980s were characterized by fiscal constraints and declining output. The annual inflation rate increased from about 5 per cent in 1970 to 13 per cent in 1980 to over 85 per cent in 1985. There were also frequent shortages of much-needed imported commodities, such as petroleum and rice. These problems were compounded by the oil shocks of the 1970s and 1980s, which had a telling effect on the economy. By the 1980s, Sierra Leone's human development and social indicators, including life expectancy, literacy, primary school enrolment, child mortality rates and maternal death rates, were among the worst in the world. Not surprisingly, the country was ranked 126 out of 130 in 1990 on the United Nations Development Programme (UNDP) Human Development Index, a year before the start of the civil conflict.

The third factor was weak access to justice. The corruption and politicization of important state institutions such as the judiciary and the traditional court system led to abuse of power by judges, lawyers and local court officials. In the provincial areas especially, young men suffered at the hands of corrupt and high-handed local authorities. Some of these aggrieved young men were later to return to their communities during the civil conflict to exact revenge on their former oppressors.

Fourth, young people became alienated. Over the years poor educational facilities, inadequate and inappropriate curricula and programmes, and lack of employment opportunities for young people helped to marginalize them and turn them into a rebellious group. Many became socialized in a climate of violence, drugs and criminality, and it was among this ready pool of alienated young people that many of the rebel leaders recruited their first crop of fighters. Young men were at the centre of the Sierra Leone crisis, for they sustained the rebel groups as well as the government soldiers and civilian militia forces.

Finally, there were lapses in state security. Since the 1970s there had been a continuing and dramatic decline in national security resulting from the politicization of the military and the police, the creation of security organizations with personal or political allegiances, and systemic corruption. These seriously undermined the national security apparatus.

From the above, it can be seen that there were a great many structural and other forms of violence existing in Sierra Leone before the civil conflict began. Rebel leaders capitalized on the people's suffering to pose as liberators.

1.3. Degree of internationalization

The civil crisis became heavily internationalized due to the involvement of neighbouring 'rogue states', many of whose interests were purely economic—namely, access to Sierra Leone's resources, particularly its diamonds. It has been argued, and with justification, that without the support of foreign states the war would probably not have become so protracted and bloody. Burkina Faso, Côte d'Ivoire, Liberia and Libya were notorious for fuelling the conflict. Libya provided bases and military training for the insurgents, while Burkina Faso provided many fighters to bolster the rebel ranks.

The government, in turn, used foreign troops. They included anti-Taylor fighters from Liberia, the Gurkhas from Nepal and the South African security company Executive Outcomes. Working closely with segments of the Sierra Leone Army, these foreign fighters achieved some successes. For instance, within a few months of its arrival in 1995, Executive Outcomes was able to secure Freetown and the Kono diamond fields and to retake the bauxite and rutile mines in southern Sierra Leone.

The rebel outfit that invaded Freetown on 6 January 1999 also included many mercenaries. They had, again, received logistic and other critical support from President Charles Taylor of Liberia. It is reported that the invading force comprised several nationalities, including over 3,000 Liberians of Taylor's NPFL, 300–500 Ukrainians as well as by Burkinabes, Libyans, South Africans, Israelis and Taiwanese (Abraham 2000).

Throughout the conflict ECOWAS was heavily engaged in finding a peaceful solution. With the assistance of the UN, the Organization of African Unity (now the African

Union), the Commonwealth and other bodies, it helped to broker the two peace agreements—the 1996 Abidjan Peace Accord and the July 1999 Lomé Peace Agreement.

Between May 1997 and February 1998, ECOWAS leaders made several attempts to reason with the coup plotters and their RUF allies to return the country to constitutional rule. One such effort was the Conakry Agreement, brokered by ECOWAS and the AFRC on 23 October 1997. The key provisions were an end to all hostilities, the resumption of humanitarian aid and the reinstatement of the ousted government of President Kabbah by 22 April 1998. Representatives of the Kabbah government were only observers at the talks. Despite the peace plan, fighting continued, with the civil defence forces, and particularly the Kamajor militia, making life difficult for the junta, particularly in the south-east of the country. ECOMOG troops successfully drove the rebels from Freetown following the 6 January 1999 invasion.

1.4. *The nature of the transition*

Several key actors were involved in the transition from war to peace. They included international agencies (governmental and non-governmental) and their local counterparts. Following the January 1999 invasion of Freetown the UN, ECOWAS and some Western countries, principally the United Kingdom (UK) and the USA, and local civil society organizations supported the Kabbah government in its efforts to make peace with the rebels. The Togolese capital, Lomé, was chosen as the venue for peace talks between the RUF and the Sierra Leonean Government as the Togolese president, Gnassingbé Eyadema, was the chairman of ECOWAS.

After long and often tortuous deliberations, President Kabbah and RUF leader Foday Sankoh, flanked by the presidents of Burkina Faso, Liberia, Nigeria and Togo, finally signed the Lomé Peace Agreement on 7 July 1999. The agreement was a significant improvement on the 1996 Abidjan accord. It dealt with issues relating to the cessation of hostilities; governance (e.g. the transformation of the RUF into a political party and enabling its members to hold public office); pardon and amnesty for former combatants; truth and reconciliation; post-conflict military and security issues (e.g. the transformation of ECOMOG and a new mandate for the United Nations Observer Mission in Sierra Leone (UNOMSIL)); security guarantees for peace monitors; disarmament, demobilization and reintegration (DDR); the restructuring of the Sierra Leone Armed Forces; and humanitarian, human rights and socio-economic issues. The general feeling was that the agreement offered the best hope for achieving peace. The rebels benefited immensely. They and their leader Foday Sankoh were pardoned for all their misdeeds committed since they took up arms in 1991. However, the UN special representative (Francis Okelo) remarked that the UN's interpretation was that the amnesty and pardon did not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law (Lord 2000: 83).

As part of the peace agreement, some RUF leaders and renegade soldiers were given ministerial and other key positions in the government. For example, RUF leader Foday Sankoh was appointed chairman of a commission for the management of strategic resources, including diamonds. The RUF was to become a political party and expected to contest national elections.

1.4.1. Keeping the peace

Following the signing of the peace agreement, in October 1999 the UN Security Council established a 6,000-member UN Mission in Sierra Leone (UNAMSIL) under chapter VII of the UN Charter, to replace ECOMOG. By December, UNAMSIL troops from Bangladesh, India, Jordan, Kenya and Zambia had begun to arrive, and in February 2000 the Security Council agreed to increase their number to 11,000. The DDR programme began but moved at a snail's pace. In May 2000, in the same week as the last ECOMOG contingents left Sierra Leone, the RUF surrounded, disarmed and abducted some 500 UNAMSIL troops, killing several in the process.

The UN Security Council then appointed a Panel of Experts to look into the connection between the illicit diamond trade and the RUF's access to weapons. A rump faction of the AFRC known as the 'West Side Boys' kidnapped a number of British soldiers, holding them for ransom. A dramatic British rescue operation on 25 August 2000 released the prisoners and put an end to the West Side Boys. The rescue mission also demonstrated British resolve to stay in Sierra Leone as a back-up force to both UNAMSIL and the new Sierra Leonean Army, which the UK now began to recruit, train and equip in earnest.

Throughout 2001 the peace process continued to make significant progress. The RUF again reaffirmed its commitment to the peace process. Nigerian President Olusegun Obasanjo promised to offer scholarships to RUF members who wanted to study, and asked the Sierra Leonean Government to help the RUF convert itself into a political party. On 18 January 2002 President Kabbah officially declared that the conflict was over, with the symbolic burning of some 3,000 weapons at Freetown International Airport in Lungi. At the ceremony, the special representative of the UN secretary general, Ambassador Oluyemi Adeniji, said that the day marked a new beginning in the lives of over 46,000 ex-combatants. A few months later, presidential and parliamentary elections were held throughout the country. The RUF, which had now converted itself into a political party under the new name Revolutionary United Front Party (RUFPP), did badly, getting only 2 per cent of the votes cast, securing two seats in Parliament under the proportional representation system. No RUFPP person was appointed minister after the post-conflict elections.

2. Transitional justice

Sierra Leone's civil conflict had been characterized by unspeakable brutality. International war crimes of the worst type were routinely and systematically committed against Sierra Leoneans of all ages and the suffering inflicted upon the civilian population was profound. While all sides committed human rights violations, the rebel forces were responsible for the overwhelming majority of them. It is also significant that Sierra Leoneans had suffered a great deal of structural violence prior to the start of the civil conflict in 1991. Given these stark realities, the end of the war posed new challenges, the most immediate being the question of whether to punish those who had brought mayhem on the people, or to forgive them.

Sierra Leone is in the unique position of experimenting with two types of transitional justice systems in parallel—the Truth and Reconciliation Commission, set up to establish the truth about the conflict and promote healing and reconciliation; and the Special Court, established to try those who 'bear the greatest responsibility' for serious violations of international humanitarian law and Sierra Leonean law during the war.

The Lomé Peace Agreement had made provision for a transitional justice system, the Truth and Reconciliation Commission (TRC), as part of the peace-building process. Subsequent events, however, necessitated the creation of another system, the Special Court. The government also established the Anti-Corruption Commission as part of its overall good governance programme.

2.1. *The Truth and Reconciliation Commission*

The Sierra Leonean Parliament enacted the Truth and Reconciliation Commission Act, 2000 on 22 February 2000. The objectives of the commission were:

- to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from its beginning in 1991 to the signing of the Lomé Peace Agreement in 1999;
- to address the problem of impunity, to respond to the needs of the victims;
- to promote healing and reconciliation; and
- to prevent a repetition of the violations and abuses suffered (Truth and Reconciliation Commission Act, 2000).

The act also gives the commission the right to 'seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation' (Truth and Reconciliation Commission Act, 2000, para. 7.2).

The TRC became fully operational in mid-2002 and completed its work in 2004. During this period, it collected over 8,000 statements from victims, perpetrators and others working for a week each in the country's 12 provincial district headquarter towns—Kabala,

Makeni, Magburaka, Port Loko and Kambia (Northern Province); Bo, Moyamba, Bonthe and Pujehun (Southern Province); and Kenema, Koidu and Kailahun (Eastern Province), as well as in Freetown (Western Area). Thus, large areas of the country were left uncovered. The TRC's inability to cover the entire country was due mainly to funding constraints.

The commission involved traditional, civil society and religious elders in its truth-seeking and reconciliation sessions (including traditional rites of forgiveness), especially in the provincial areas. It did not encourage local rituals of cursing but it did, in concert with the local elders, establish monuments or memorials, particularly at mass grave sites in the districts, and supported traditional reconciliation ceremonies such as the pouring of libations and cleansing rituals.

The district hearings often failed to elicit detailed, truthful confessions from former combatants, largely because of time constraints. Nevertheless, the TRC and local communities considered vague expressions of regret sufficient as long as former combatants displayed humility towards the community during the hearings. The commission performed general reconciliation ceremonies where the perpetrators accepted their wrongdoings and asked for forgiveness, and the victims were also encouraged to accept and to gradually work towards forgiveness and reconciliation. Tim Kelsall, a lecturer in African politics who observed hearings of this commission, notes that the addition of a carefully staged reconciliation ceremony to the proceedings was extremely significant (Kelsall 2005: 363).

If the TRC's recommendations, as outlined in its final report, submitted to the Sierra Leonean Government in October 2004, are fully implemented, they would without doubt act as catalyst for the social and legal reform required to address impunity and establish a culture of respect for human rights in Sierra Leone, as well as helping the social regeneration of battered communities.

One important development in the consolidation of peace took place in August 2006 when the Sierra Leonean Government appointed the National Commission for Social Action (NaCSA) the implementing agency for the reparations. NaCSA, which started as a government ministry in 1996, is the main government body responsible for the reconstruction and rehabilitation of war-torn Sierra Leone. It has begun to receive grants from the government and international institutions to help pay the reparations.

2.2. The Sierra Leone Special Court

The establishment of a Special Court was the result of certain negative developments after the 1999 Lomé Peace Agreement. Segments of the RUF had continued flagrantly to violate the rights of citizens, in complete contravention of the provisions of the peace agreement. Some human rights groups therefore felt that such criminal offences must be punishable under Sierra Leonean law. The single most deadly violation that forced the

government to initiate legal proceedings against the RUF occurred on 8 May 2000 when Foday Sankoh's boys fired at peaceful protesters, killing at least 20. The Sierra Leonean Government consequently approached the UN and requested the setting up of a Special Court. Pursuant to UN Security Council Resolution 1315 of 14 August 2002, the Special Court was established to try persons who 'bear the greatest responsibility' for serious violations of international humanitarian law and Sierra Leonean law committed during the war.

The Special Court has made some arrests since March 2003. Notable among the detainees have been Sam Hinga Norman, who was the leader of the pro-government Kamajor militia (a former deputy defence minister and, until his arrest, internal affairs minister), Foday Sankoh and Issa Sesay of the RUF, Kamajor high priest Aliu Kundorwa, and some former AFRC leaders. Foday Sankoh and Sam Hinga Norman have since died in prison. Former junta leader Johnny Paul Koroma and former Liberian President Charles Taylor were also indicted, but only the latter is in detention at The Hague, the Netherlands. It was feared that trying Taylor in Sierra Leone could have a destabilizing effect.

Sierra Leoneans seem to be divided over the ability of the Special Court to deliver, although it has sentenced three former AFRC leaders to long prison terms and the CDF leaders to shorter prison terms. Already the indictments it has made have been surrounded by controversy. Some opponents of the court think that the huge amounts of money spent on it could better be used to improve the lives of war victims and other vulnerable people. They also point out that sentencing the few people the court has in its custody will not be enough to deal with the culture of impunity in Sierra Leone. Only time will tell.

Sierra Leone has thus found itself in the unique position of experimenting with two types of transitional justice systems in parallel, the TRC and the Special Court. At one point there was some tension between the two because they were pursuing different types of justice. The Special Court seemed to be interested mainly in retributive justice. In spite of this tension, however, the two institutions have complemented each other.

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Addressing the twin issues of justice and reconciliation through the TRC and Special Court is necessary, but not sufficient. Of greater import, if peace is to be consolidated, is addressing the causes of the war, which lie in a combination of bad governance, the denial of fundamental rights, economic mismanagement and social exclusion.

Addressing the twin issues of justice and reconciliation through the TRC and Special Court is necessary, but not sufficient. Of greater import, if peace is to be consolidated, is addressing the causes of the war, which by popular consensus lie in a combination of bad governance, the denial of fundamental rights, economic mismanagement and social exclusion in the context of any peace-building initiatives.

3. Traditional justice and reconciliation mechanisms

3.1. Background and description

The term ‘traditional’ with its Eurocentric connotations often tends to suggest profoundly internalized normative structures, patterns followed from ‘time out of mind’ in static economic and social circumstances. It must be borne in mind that African institutions, whether political, economic or social, have never been inert. They respond to changes resulting from several factors and forces. Thus, some would prefer the use of the word ‘indigenous’ rather than ‘traditional’. The word ‘traditional’ as used in this chapter implies a dynamic process.

‘Justice’ here means seeking or establishing the truth without fear or favour, after allowing each party an opportunity to express themselves. It also denotes impartiality and fairness. It must be pointed out that truth telling, as is shown below in the case of the Mende, is an integral part of the justice system in indigenous societies.

‘Reconciliation’ is the act of reuniting groups or parties who have been fractured as a result of conflict. It may also involve the granting of some form of reparation to the aggrieved party. In the traditional context, justice and reconciliation are generally inseparable.

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3.2. The features of and main actors in tradition-based practices

Traditional justice mechanisms have certain key features. They are generally male-dominated, although in the case of Sierra Leone some provision is made for female representation. Some truth-seeking mechanisms are actually headed by women. There is no place in them for young people, who are considered immature and not yet versed in the ways of the community. These tools are community-centred, open and transparent. Belief in the supernatural (God, priests and priestesses, and ancestors) is quite strong and people credited with special gifts—diviners, ‘medicine men’ and the like—play a crucial role in the judicial processes. The mechanisms also involve rituals such as cleansing ceremonies, songs and dance.

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There are several actors. The principal actors include the chiefdom administrations, local courts, tribal headmen, community and religious leaders, and diviners. A formalized type of chiefdom administration in Sierra Leone (then called the Native Administration) came into effect in 1937. Each chiefdom unit is divided into sections, towns and villages, headed by section chiefs, town chiefs and village chiefs, respectively. The overall administrative leader of the chiefdom is the paramount chief and he/she is assisted by a council. The paramount chief and his/her subordinates are responsible for justice and law and order, and are custodians of the traditions and customs of the people in their domains. They are elected for life, although they could be deposed by the head of state for serious misconduct. Until 1963 the paramount chief and the sub-chiefs presided over court cases. Thereafter their jurisdiction was limited to minor civil cases. These cases are usually settled in the chief's *barray* (compound).

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The Local Court Act of 1963 created local courts headed by court chairmen. These courts are the most formalized structure of the customary justice system in the provincial areas. The vast majority of Sierra

Leoneans (up to 80 per cent) fall under the jurisdiction of customary laws. Court chairmen are generally considered to be knowledgeable in customary civil cases. They are assisted by a panel of elders, clerks and other minor functionaries and are usually appointed for an initial period of three years; the minister of local government has the authority to remove them. No lawyers are present in the local courts although they are supervised by a customary law officer who is a trained lawyer. The customary law officer also trains court chairmen.

There are tribal headmen in most cities and towns. They became an integral part of local administration in the then Colony of Sierra Leone (now Western Area) following the enactment of the Tribal Administration (Colony) Ordinance of 1924. Some of their powers and duties were judicial (the administration of justice among members of their ethnic group) as well as social and administrative. Subsequent ordinances attempted to deprive them of the judicial functions as many were found wanting, but tribal headmen have continued to adjudicate in minor civil cases.

A new development in the judicial process is the emergence of certain lay people (called paralegals) who work with the poor and other disadvantaged groups to find solutions to problems. These paralegals have achieved outstanding success through their engagement with chiefs, the police and other law enforcement officials at the community level. Their interventions consist of advocacy and community education efforts. Most are very knowledgeable about customary law and institutions (Wojkowska 2006: 35).

3.3. *The Kpaa Mende as a case study*

Sierra Leone is a multi-ethnic country where some 18 ethnic groups reside. However, two major groups dominate—the Temne and the Mende. The Temne live mainly in most parts of the northern and western regions, and the Mende in the southern and eastern regions. They account for 29 per cent and 31 per cent, respectively, of the population. All the communities mix freely and there are no barriers to where people should reside.

Pettersson (2004), however, suggests that a certain tension appears to exist between the Temne and Mende which should be acknowledged. The Mende dominate the SLPP, while the Temne make up the majority of the members of the APC. The civil war was initiated by RUF leader Foday Sankoh (a ‘northerner’ and a Temne), although the first fighting took place in the heartland of Mende territory (Eastern Province). Many Mende therefore perceive the war as an invasion by the Temne from the north of the country. Meanwhile, the Temne often see the war as a south-eastern plot initiated by Sankoh as a paid agent, with the purpose of destabilizing the APC government.

It is reported that the RUF initially displayed palm fronds as a symbol of their ‘revolution’. The palm frond has political significance among the Mende. The palm tree is the emblem of the SLPP. The RUF probably hoped that displaying palm fronds in a traditionally SLPP stronghold would attract people to their cause.

These ethnic divisions and interpretations of the war clearly have consequences for the reconciliation process.

Over the years each ethnic group has developed complex social systems, which include the administration of justice. Because of the diverse nature of the justice and reconciliation mechanisms of the different communities, and because of time and other constraints, it was not feasible to conduct field research among all of them. Consequently, only one group—the Mende—was targeted, and even among them only one subgroup (the Kpaa Mende) was studied in greater detail for the purposes of this book. Other Mende subgroups are the Sewama or Middle Mende, the Wanjama Mende and the Koo (Upper) Mende. The Kpaa Mende are the most populous subgroup and, more importantly, they have tried as far as possible to preserve many of their customs, even in the face of modernization and other challenges. They have a powerful secret society that unites them all, the Wonde. There is also a high degree of ‘nationalism’ among this group.

Kpaa Mende cultural life is controlled by certain codes of behaviour and their activities are sustained by religious beliefs. Fundamental to the cultural beliefs of the Kpaa Mende (and indeed the other subgroups) is the belief that the human being is a spiritual entity. Belief in the supernatural is therefore quite strong among them. Three main strands can be discerned in the concept of the supernatural. The first is the belief in a supreme being,

the creator of the universe, the ultimate source of power, controller of the forces of nature, and the upholder of truth and justice. He is referred to as Ngewo. The second is the veneration of the ancestors and the third is a belief in natural divinities.

3.3.1. *Transgression and justice*

The Kpaa Mende have developed complex ways of dealing with crime and punishment. There are basically two interrelated ways of seeking justice—*restorative* and *retributive*. The form of justice used in a particular case may be determined by the gravity of the crime or the object of the punishment. Generally, tradition-based practices among the Kpaa Mende aim to repair and restore (restorative justice), even though some punishment could be meted out during the process. Restorative justice is largely dependent on an acknowledgement by the wrongdoers of their crime or action, an apology to the person who has been injured, and a genuine expression of remorse. It may also require assisting the victim to cope with their plight, for example, the payment of reparation.

A series of regulations control Kpaa Mende social life. These injunctions fall into two main groups—those relating to the family and those affecting the community as a whole. The human being is an individual but also part of a wider community. Thus his individual action may affect the well-being of the entire community. This is illustrated, for example, in the laws regulating sexual conduct, licit or illicit. Incestuous sexual relations are forbidden. The Humoi society, which is headed by a woman, regulates sexual conduct. The law on incest (*simongama*) forbids sexual intercourse with one's sister, the sister of one's wife and so on. It also forbids a brother to sit on his sister's bed and vice versa. Moreover, a man is not allowed to shake hands with the mother of any woman with whom he has had sexual dealings.

At the community level, it is illegal to have sexual intercourse with a girl under the age of puberty (or one who has not been initiated into the female secret society, the Bondo (Sande)), or with a person in the bush at any time, or with a pregnant woman (other than one's wife) or nursing mother. Such infractions (defilement) could lead to various kinds of illness and also affect the economic fortunes of the community.

A major wrongdoing such as having sexual intercourse in the bush requires a very complex cleansing ceremony, because such violations affect the community as a whole. The Kpaa Mende are a predominantly farming community. Their connection with the farmland is more than economic; it also has spiritual undertones. It is believed that sexual relations in the bush could annoy the ancestral spirits and consequently lead to poor harvests. The offenders and the bush where the deed was performed must undergo a rite of purification by the Humoi priestess.

Chiefs and other community elders generally adjudicate in civil cases such as land grabbing, seduction, '*woman palava*' (a situation where a man has illicit sexual dealings with a married woman and the woman later confesses or is forced to confess the act to

her husband), and criminal offences such as arson, theft and violation of community sanctions. In civil cases the plaintiff and defender are encouraged to advance their cases together with their witnesses (if any) before the chiefs can take a final decision. Generally, some compensation is paid to the aggrieved party.

The justice system is heavily tilted against women, especially in husband–wife relationships, and against young people. It is not considered in the best interest of the family to wrong a husband even if his guilt is clearly evident. Instead, the elders would attempt to say soothing words to the wife and later privately rebuke the husband for his misdeeds. While this may look like an injustice to the woman, there is an important social element here. The main interest is to hold the marriage together, not to create a situation where the woman will ‘win the war but lose the peace’.

Criminal offences require a range of punishments, ranging from public reproach and the payment of reparation to cleansing ceremonies. Where an alleged offender denies his guilt, the services of diviners, medicine men and other supernatural agencies are sought to help identify the culprit.

3.3.2. *The diviner and the medicine man*

The diviner is believed to be invested with supernatural powers and wields considerable influence in the community. He commands great respect because he is the only person capable of providing answers to situations beyond the powers of ordinary humans. He can invoke his oracular powers to identify a wrongdoer. If the person continues to deny his or her guilt, other methods can be resorted to, such as swearing (*sondu* in Mende) or a curse. It is important, however, to note that, although the oath or curse may be sworn on inanimate objects, as the example below shows, Ngewo (God) is the ultimate medium of the curse.

One of the most potent ‘medicines’ for swearing is the ‘thunder-medicine’ (*ngele gbaa*). The potency of the *ngele gbaa* derives from its origin, for it is supposed to have been sliced off from heaven by lightning. The *ngele gbaa*—a small axe (meteorite) dug from the ground together with an assortment of other small metal objects—is wrapped in a hamper of leaves and its owner is held in awe by the community.

Box 8: The procedure of an ngele gbaa curse among the Kpaa Mende of Sierra Leone

If a theft has taken place and no one has confessed to it, the aggrieved person will 'beg the ground' from the chief and elders for a nominal fee and state his intention to curse the thief on the ngele gbaa. When the chief gives his consent, the ngele gbaa-moi (owner of the ngele gbaa) is sent for, most often from a nearby settlement.

A few days before he arrives, the town crier publicly informs the whole community of the reasons for the swearing of the intended curse, the kinds of 'medicine' that will be used and the place where the swearing will take place. He then invites everyone to attend the ceremony. To achieve maximum impact, the town crier narrates the efficacy of the 'medicine', including the number of people it has killed or who have confessed on their deathbeds. When the ngele gbaa-moi arrives, the town crier informs the whole community of his presence. All this is meant to give the thief or anyone who has knowledge of the theft a last chance to make a confession.

Before the swearing takes place, the ngele gbaa-moi places his medicine on the ground and leans it against the stump of a tree. The chief then asks the aggrieved person why he intends to utter the curse. He may say: 'I am going to curse the person who stole my goats; may the ngele gbaa kill him instantly and burn his house'. Sometimes the curse may be extended to anyone who aided and abetted the thief, or has some knowledge about the theft.

If no one answers, the ngele gbaa-moi can continue. He then places poma magbei (*Neuboldia laevis*) leaves, which are ordinarily used to drive flies away from corpses, near the ngele gbaa. This is to symbolize the impending death of the thief and any accomplices. Then the offender pronounces the dreaded words: 'O God, come down and let me give you your chicken. I am uttering these words against the person who stole my goats. You "medicine" lying here [referring to the ngele gbaa], may you hold every part of this body: his hands, legs, heart. Let him not escape; strike him dead and may you also burn his house'. The ngele gbaa-moi will then answer 'Ngewo jahun' ('by the permission of God').

A curse sworn on the *ngele gbaa* generally affects not only the culprit but also other members of his household, because if lightning strikes a house innocent people may be killed. For this reason, anyone who has information about the theft could come out and confess before the curse is sworn. If the thief confesses at the right time, he will be required to compensate the aggrieved person, including payment of all expenses previously paid to the *ngele gbaa*. The thief will also be publicly rebuked and ostracized before being accepted back into the community.

Powerful medicines like the *ngele gbaa* deter criminals because they threaten them and their accomplices and families with severe punishments, including death. However, provision is also made for curses or oaths to be revoked. If an offender falls ill or confesses his guilt, the curse may be lifted, usually in a public cleansing ceremony (Harris and Sawyerr 1968).

3.3.3. Reconciliation

The ultimate goal of the traditional justice system among the Kpaa Mende (and indeed among most African communities) is reconciliation. This is, for example, vividly portrayed in their Wonde ceremonies. During a ceremonial dance, done in a circle, a battle scene is enacted. The initial single group of dancers breaks into two concentric circles, representing the parties to the conflict. Later the peacemakers arrive. These are men dressed as women making characteristically feminine movements and gestures (symbolizing the important role of women in peacemaking). They come between the combatants and eventually all the dancers form a single circle again. The values reinforced in this ceremony reflect indigenous beliefs about complementarity and the importance of all segments of society in efforts to re-establish harmony and restore continuity (Alie and Gaima 2000).

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3.3.4. External influences

The imposition of British colonial rule in Sierra Leone in the late 19th century had an adverse effect on the traditional mechanisms of justice and reconciliation. British colonialists reorganized the judicial system to suit their own ends. To this end, they established three types of court in the Sierra Leone hinterland—the Court of Native Chiefs, the Court of the (European) District Commissioner and native chiefs, and the Court of the District Commissioner. All criminal offences were henceforth decided by the district commissioner’s court, while the chiefs decided minor civil cases affecting their local subjects. More importantly, emphasis was now placed on litigation. In addition, court fines and fees became an important mechanism for generating revenue for the local administration. Not surprisingly, miscarriages of justice slowly crept into the fabric of the justice system. The appointment of court chairmen also seems to have been politically influenced.

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4. Tradition-based practices today

Although these practices play a major role in conflict resolution among the Kpaa Mende, they have been subjected to severe stresses, especially in contemporary times.

4.1. The impact of the conflict

The civil conflict brought untold disaster to all segments of Sierra Leonean society. It occasioned unprecedented mass movements of people. Thousands, particularly those in rural communities, were forced to abandon their settlements and seek shelter either in camps for displaced people or in the major towns, with adverse consequences for the indigenous social networks and institutions.

The impact of the conflict in Sierra Leone on the traditional justice system was incalculable. The institutions were methodically destroyed and the elders who were critical to the effective functioning of these mechanisms lost their prestige and relevance.

Traditional leaders, who were the repositories of society's culture and traditions, were specifically targeted by the rebels since they were perceived as part of the corrupt and decadent system that the insurgents wanted to get rid of. Sacred places such as those where secret societies

met in the bush and shrines were routinely defiled and their ceremonial objects destroyed. The impact of the conflict was incalculable, since these elders and institutions, which were methodically destroyed, were critical to the effective functioning of these mechanisms. They consequently lost their prestige and relevance.

4.2. Traditional practices and grave human rights crimes

During the civil conflict the warring factions, and particularly the rebels, systematically committed heinous transgressions, including war crimes and crimes against humanity, such as sexual violence, sexual slavery and enforced prostitution, amputations, indiscriminate killings and torture. Naturally, the victims would demand justice and if possible some reparation. But what kind of justice would they want—retributive or restorative? Which of these forms has the potential to build the peace and which has the potential to disrupt it?

There are certain realities that must be faced. For example, those people whose limbs were amputated or women who were raped have to live with the scars forever. Although retributive justice may have the potential to act as a deterrent, it could at the same time create more societal problems as both the victims and the perpetrators may be living in the same neighbourhood. Restorative justice, on the other hand, aims to repair and create social harmony within the battered communities. Whatever the case, the justice that the victims desire would come at a high price, especially when one considers that in certain cases members of the same family fought for different warring factions, and many children were involved in the atrocities.

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The TRC has actively encouraged reconciliation at the level of the family, the home community, the community where the individual has settled after the conflict, and the local church or peer groups, 'more specifically during the reconciliation ceremonies at the end of each of its district hearings. Many of these ceremonies focused on reconciliation between ex-combatants and the communities they currently live in. Others focused on the reunification of abducted children with their families and communities, or on the reunification of a "bush wife" with her family, or that of a chief with the community that he or she had abandoned during the war' (Sierra Leone Truth and Reconciliation Commission 2004, vol. 3b, chapter 7, section 21). The final report of the TRC also notes that many aspects of traditional dispute resolution, 'such as mediation, purification, token appeasement and the willingness to show remorse, are in harmony with the objectives of the TRC policy and have been sustained by the Commission during its hearings and beyond' (Sierra Leone Truth and Reconciliation Commission 2004, vol. 3b, chapter 7, section 36). A study by the non-governmental organization (NGO) Manifesto '99, submitted to the office of the United Nations High Commissioner for Human Rights in preparation for the TRC, argues that the 'strong traditional belief in swearing, cleansing and purification should be considered seriously by the TRC. In essence where the truth cannot easily come out voluntarily, these practices should be appealed to as a way of enhancing the truth and reconciliation process' (cited in Sierra Leone Truth and Reconciliation Commission 2004: 25).

The conflict had a particularly telling effect on children. They were at the centre of the crisis, for they sustained the rebel group as well as the civil defence forces. Young children were deprived of their childhood and forced to take on adult responsibilities, including combat roles, in contravention not only of the 1989 Convention on the Rights of the Child but also of traditional social norms. Boys as young as ten years were attracted to the rebel forces through their rhetoric; others were forcefully conscripted, drugged and brainwashed. These under-age boys killed, maimed and committed gross human rights violations. The young girls became sex slaves, cooks and porters. Many were brutally gang-raped and sexually mutilated. Some girls also committed acts of terror. Gender-based violence was the norm during the crisis. Children were thus exposed to experiences that were at variance with the social and cultural norms of Sierra Leonean society. These terrible experiences left them completely traumatized. It is estimated that 40 per cent of the approximately 20,000 rebel fighters were children between the ages of seven and 17. About 50 per cent of all the fighters during the conflict were under 18 years of age.

The conflict had a particularly telling effect on children, and the reintegration of these children into their former communities was a major challenge.

The reintegration of these children into their former communities was a major challenge. Fortunately, Sierra Leoneans generally have immense capacity to forgive, especially children. Reintegration and reunification ceremonies were used all over the country. In the northern provincial town of Makeni, for example, an NGO, Caritas Makeni,

successfully reintegrated ex-child soldiers into their families through a combination of the methods described below.

When Caritas Makeni reunified child ex-combatants with their families, the latter sought to ‘change the hearts’ of their children through a combination of care, support and ritual action. Usually, the eldest member of the family prayed over a cup of water and rubbed it over the child’s body (especially the head, feet, and chest), asking God and the ancestors to give the child a ‘cool heart,’ a state of reconciliation and stability in which the child is settled in the home, has a proper relationship with family and community and is not troubled by nightmares and bad memories ... Some parents then drank the consecrated water that had washed their child. The consecrated water now becomes the new physical bond between parent and child ... some parents also offered kola nuts ... Some parents, in addition, followed this up with liquid Quranic slate water ... Others again made a ‘fol sara’ to thank the ancestors and God, either dedicating a chicken and caring for it thereafter, or slaughtering and cooking it with rice as an offering to poor people, or to a Muslim ritual specialist to eat (Shaw 2002: 6-7).

Child protection agencies such as the United Nations Children’s Fund (UNICEF), with support from the government of Sierra Leone, also used indigenous reconciliation mechanisms and resources in Mendeland. The emphasis was on rehabilitation, reintegration and fostering respect for the rights of others. In parts of Kpaa Mende territory, the parents of former child combatants dressed in rags and took to the streets as community members followed, singing and dancing. For reconciliation to be successful, meaningful and long-lasting, it has to be done at the community level and by the people of the community themselves.

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4.3. Civil society initiatives

Civil society groups, including community, women’s and religious organizations, all ably complemented the efforts of the international community to bring peace to Sierra Leone. The Inter-Religious Council (IRC), formed in Sierra Leone in 1997, regularly engaged the RUF rebels and the government. They even met rebel leader Foday Sankoh in his prison cell in April 1999 before the start of the peace talks in Lomé. Some of their members took great risks to venture into the bush to appeal to the rebels to release the children in their custody. The women of Sierra Leone were no less involved, and many of them paid dearly with their lives as they attempted to meet with the rebels.

The role of civil society in the reconciliation process was commendable. The TRC, during its final stage, invited the IRC, in recognition of the latter’s familiarity with traditional methods of reconciliation, to initiate joint reconciliation activities in the districts and to set up structures that would continue operating beyond the life of the TRC. Together the TRC and the IRC trained IRC district coordinators and organized reconciliation workshops in all the 12 provincial districts. These were followed by the setting up of

reconciliation support committees in the districts with representatives in the chiefdoms who would encourage, identify and fund local reconciliation activities conducted by the communities.

5. An assessment of traditional justice and reconciliation mechanisms in Sierra Leone

Tradition-based practices seek to bring social harmony to their communities, and to this end they use various methods and strategies, some of which have been discussed above. Here we examine the major strengths, weaknesses, opportunities and threats with specific reference to the Mende of Sierra Leone.

5.1. Strengths

1. Tradition-based justice and reconciliation mechanisms are *transparent and open*, and *the possibility of a miscarriage of justice is therefore greatly reduced*. Thus, many community people have great faith in the system—hence the high level of community participation.
2. They are *cheap and affordable*; anyone can seek justice irrespective of social class or financial status.
3. Decisions are generally arrived at after a lengthy process of *consultation and debate*, thus giving each aggrieved party ample opportunity to state their case.
4. Where *punishment* is meted out, this *is done with the view that it could act as a deterrent*, especially for crimes that affect the entire community.
5. Their ultimate goal in Mende culture is to *foster social harmony*, as is evidenced, for example, in the Wonde dance and ritual mentioned above.

These strengths are very important and must be exploited in any post-conflict community regeneration efforts, even though the Mende truth and justice systems have not been able to deal adequately with the crimes committed during the war. The social system of the Mende, and indeed all other ethnic groups in the country, was completely destroyed.

The Mende truth and justice systems have not been able to deal adequately with the crimes committed during the war. The social system of the Mende, and indeed of all other ethnic groups in the country, was completely destroyed. The traditional justice mechanisms were not resilient enough to withstand the pressures of the war.

5.2. Weaknesses

1. The Mende *practices are applicable only to their communities* and, since there has been a great deal of mixing of the groups over the years (e.g. through intermarriage), they may not be suitable in settling disputes arising between Mende and non-Mende people within the community.
2. The *over-reliance on elders* for the settling of disputes and other problems could be disadvantageous to other groups, for example, young people. Moreover, currently, there appears to be an acute shortage of elders who are fully knowledgeable about the ways of their communities. In the long run these *practices may disappear completely*.
3. The justice mechanism appears to be *inflexible* and often archaic methods are used to address emerging issues.
4. The *use of the supernatural* in settling disputes among the Mende is problematic.
5. *The traditional justice mechanisms were not resilient enough to withstand the pressures of the war.*

Traditional justice and reconciliation instruments must take changing conditions into account and make provision accordingly for wider participation and inclusion, especially for women and young people. It may be difficult to reconstitute these tools to enable them to deal adequately with war crimes and crimes against humanity.

5.3. Opportunities

1. The conflict has generated a great deal of external interest, particularly among NGOs, in carrying out detailed studies as well as utilizing the traditional conflict management tools in community reconciliation efforts.
2. Many agencies seem willing to use these mechanisms in the reintegration of child combatants into their communities, as is indicated above.

5.4. Threats

1. Although there appears to be some interest in the potential of the Mende practices to settle communities and reconcile warring parties, *some people still view these mechanisms as backward and primitive*. This was probably the main reason why the Sierra Leone TRC did not make much use of such systems.
2. *Top-down approaches* to peace building from government and international agencies are making these mechanisms dysfunctional.

3. The *dislocation of families and the mass migration of young people* into urban centres contribute to making them less effective.

Tradition-based practices have been used effectively to reintegrate child soldiers in Sierra Leone, but they can only complement the efforts of formal criminal justice systems, since only they are capable of dealing with complex issues such as war crimes and crimes against humanity.

6. Conclusions

The deadly conflict which engulfed Sierra Leone from 1991 to 2002, and which was preceded by several years of political and social exclusion, economic mismanagement and organized corruption, was an unprecedented human disaster. It has left in its wake many difficult challenges, not least for the application of justice. The internationalization of the war, the involvement of external actors and players in the search for peace, and the nature and magnitude of the crimes committed during the war partly necessitated the use of 'top-down' peace-building strategies.

The war has again underlined the Sierra Leoneans' capacity for forgiveness and reconciliation. Sierra Leoneans are fully aware that they cannot turn the clock back. What has been done cannot be undone. This is more forcefully expressed in the Mende saying '*Kpande yia, ii yia*' ('When a gun is fired, it is fired'). In other words, one must look to the future.

The end of the conflict was followed by the setting up of transitional justice mechanisms, including the Truth and Reconciliation Commission and the Special Court. Although the TRC made use of traditional rulers in its truth-seeking and reconciliation processes, it largely eschewed local rituals of cursing, cleansing and purification, which may have limited its ability to induce confessions and effect reconciliation.

A multi-sectoral review and reform of the legal and judicial sector is well under way, and has the potential to consolidate peace in Sierra Leone. One must not, however, lose sight of the fact that what took decades to collapse cannot be rebuilt overnight.

Societal resources such as indigenous accountability mechanisms are very useful in peace building, especially after a violent conflict. They have the potential to facilitate the reintegration and healing process, since the community members can easily associate with them. Thus tradition-based practices have been used effectively to reintegrate child soldiers in Sierra Leone. That said, these tools can only complement the efforts of formal criminal justice systems, since only the latter are capable of dealing with complex issues such as war crimes and crimes against humanity.

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