

# Preface and Acknowledgments

This volume is the outgrowth of a joint project among the United States Institute of Peace, the Fletcher School of Law and Diplomacy at Tufts University, and the Centre for Humanitarian Dialogue in Geneva. That project has sought to fill a critical gap in peacebuilding studies by exploring how efforts to promote the rule of law in conflict-affected societies can take into account the diverse range of customary justice systems that coexist with formal state legal institutions.

From its outset, the project has recognized the primary dilemma cited by many international justice actors. On the one hand, customary justice systems are far more accessible than formal institutions to the local population. On the other hand, customary systems tend to be inaccessible—both practically and culturally—to outsiders, who generally lack the skills as well as the legitimacy to engage with them.

The project has sought to deepen knowledge of how customary justice systems might further—or obstruct—the goals of stability and rule of law in the immediate post-conflict period. It has specifically set out to tackle the difficulties that arise from clashing conceptions of justice and how these play out in the fragile and devastated terrain of societies emerging from mass violence. And it has tried to lay out concrete guidance to national and international policymakers and practitioners on how to address these complexities in justice reform initiatives.

The project has taken a case study approach that emphasizes original empirical analysis. Countries selected for examination shared certain common features: they possessed extensive customary justice systems, they had suffered a period of internal violent conflict, and they had experienced significant external interventions intended to promote justice reform.<sup>1</sup> The

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1. The Centre for Humanitarian Dialogue commissioned and separately published two case studies as part of the research for this project. Traci Dexter and Philippe Ntahombaye, “The Role of Informal Justice Systems in Fostering the Rule of Law in Post-Conflict Situations: The Case of Burundi” (HD report, Jul. 2005), [www.hdcentre.org/files/Burundi%20report.pdf](http://www.hdcentre.org/files/Burundi%20report.pdf) (accessed Jan. 20, 2011); Andre Le Sage, “Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives” (HD report, Jul. 2005) [www.hdcentre.org/files/Somalia%20report.pdf](http://www.hdcentre.org/files/Somalia%20report.pdf) (accessed Jan. 20, 2011).

selection of cases has also sought some geographic and ethnographic diversity, as well as a range of conflict and peacebuilding scenarios. This has enabled the project to investigate the accuracy of commonly held assumptions, account for the specific impact of the conflict and its social upheaval, and ground the findings in actual experience. In the cases of Afghanistan, Mozambique, East Timor, and Liberia, more specific studies, consultations, and focus groups supplement the initial field research to gain deeper insights into current realities.

Another distinguishing characteristic of this project is its broad interdisciplinary approach to the study of justice systems. Moving beyond the narrow lens of legal analysis, the cases examine the larger historical, political, and social factors that shape the character and role of customary justice systems and their place in the overall justice sector. To achieve this multidisciplinary perspective, the project has drawn on a working group of experts from the fields of justice reform, human rights, peacekeeping, development, anthropology, history, and political science. The project commissioned case studies from authors directly involved in the justice reform efforts in their country of study. In five cases—Afghanistan, East Timor, Guatemala, Liberia, and Mozambique—lawyers were teamed with social scientists in an effort to overcome the all-too-common compartmentalization of analysis. In four cases—Afghanistan, Guatemala, Liberia, and Southern Sudan—one or more authors are natives of the country they write about.

Before the authors began work, the working group prepared a concept paper as a guide and to enable better comparative analysis across the cases. The paper grouped a series of research questions into three primary categories of analysis. The first category was designed to elicit a detailed understanding of the customary justice system: its social logic, its substantive content, and the nature and structure of its authorities. This section sought to balance a description of the customary system's idealized paradigm with an analysis of how it operates in reality. It prompted authors to explore the dynamics of power, politics, and social change and the impact of the conflict on the effectiveness and legitimacy of customary justice.

The second category dealt with the status and capacity of the formal justice system. Although the questions probed into details of the institutional and personnel structures of the state system, the project ultimately narrowed its focus to the most relevant question: how well can the formal system resolve disputes to the satisfaction of the population? Analysis of the capacity, accessibility, social relevance, and legitimacy of the state courts and justice institutions was deemed critical to assessing the potential role of the customary system. A key contribution of this volume is the comparative evaluation of the various components of the formal system with those

of the customary system. This approach focuses on practical and realistic means of improving justice under existing circumstances.

The third category of questions concerned structural relationships between the customary and formal systems. The purpose of this line of inquiry was to scrutinize the various legal and practical models of integration that emerged from the case studies and to consider the lessons they offer for other contexts. Questions thus called for information on legal mechanisms regulating the issues of jurisdiction, appeal, and oversight and on ad hoc modes of interaction. Recognizing that interaction between the systems is not simply a question of law, this section invited the authors to explore the historical and political factors that shaped this relationship over time. Finally, the authors were asked to discuss the current dynamics surrounding the question of integration, taking into account the roles of international actors, national policymakers, and key local constituencies.

The working group reconvened to review early drafts of the case studies, draw comparisons and lessons for policymakers, and identify areas needing further research and analysis. As the drafts were then revised, the authors and the project as a whole benefited significantly from a number of related initiatives. Beginning in 2006, the United States Institute of Peace (USIP) became actively engaged in operational and policy work on the role of customary justice in Afghanistan and Southern Sudan. The Afghanistan work, which is ongoing, has included facilitating a series of regional meetings between justice actors from the state and nonstate systems, conducting a national conference, and advising on developing national policy on nonstate justice. In partnership with local organizations, USIP is also conducting a number of pilot projects aimed at facilitating improved integration of the state and nonstate systems at the local level. In Southern Sudan, work has centered on focused field research and study of ascertainment policies, conducted in partnership with the Rift Valley Institute. Building on the original case study on Liberia, USIP launched a major field research project there in 2007, in collaboration with the George Washington University. This work led to ongoing involvement in the policy dialogue concerning access to justice and the future of the customary justice system. In November 2009, USIP partnered with George Washington University and the World Bank to organize a conference that brought together leading institutions, practitioners, policymakers, and academics to take stock of the state of knowledge on the role of customary justice in post-conflict justice strategies. These experiences have both drawn on and fed back into the related case studies and the concluding chapter of this volume.

The directors of the project are grateful to the many individuals and organizations that have contributed in one way or another to this volume.

Louis Aucoin and Neil Kritz deserve great credit for their foresight in bringing this issue to the attention of the community of rule-of-law practitioners and policymakers. Louis spearheaded the conceptualization of the project, including assembling the working group, developing the concept paper, and selecting cases. Susanna Pfohl Campbell and Jan Hessbruegge of the Fletcher School of Law and Diplomacy provided exceptional assistance in this endeavor. Deborah Isser subsequently took over as director of the project and editor of the volume.

The working group that guided the conception and realization of this project comprises a distinguished cast of experts and scholars, including Achieng Akumu, Graham Day, Andrea Goodman, Linn Hammergren, Hurst Hannum, Neil Kritz, Rick Messick, Jeswald Salacuse, and Peter Uvin. Together with the authors, this group ensured intellectual rigor as well as practical applicability of the conclusions and recommendations. The partnership between USIP, the Fletcher School of Law and Diplomacy, and the Centre for Humanitarian Dialogue was an effective means of pooling knowledge and resources. Antonia Potter and Tina Thorne, then of the Centre for Humanitarian Dialogue, provided much-appreciated collaboration and support.

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And finally, the chapter authors have displayed remarkable dedication, patience, and a constant willingness to revise and update over the long life of this project. To the extent that this book achieves its goal of deepening our knowledge of the interplay of customary and formal justice systems, the lion's share of the credit belongs to these marvelous authors.