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Indigenous Mechanisms of Transitional Justice as Complementary Instruments to State Justice Systems: Cases of *mato oput* in Uganda, *bashingantahe* Councils in Burundi and Navajos' Custom of *naat'aani*

Abstract: Transitional justice is resorted to within the framework of transition from armed conflict to peace and from authoritarian regimes to the democratic ones. To reach the aims of transitional justice and to better integrate the needs and perspectives of the indigenous peoples that very often are victims of serious human rights violations in the transitional context, as well as the colonisation context, indigenous instruments of justice may be utilised. As such they may be treated as complementary to other transitional justice mechanisms. The article aims to find a new perspective on the complementary role of the indigenous justice and the State justice systems within the framework of transitional justice as well as to take into account the indigenous peoples' needs and customs. The overall aim of the paper is to answer the question whether it is desirable for such indigenous justice instruments to complement the State justice systems through a better integration of the needs and customs of indigenous peoples. In the concluding remarks, a model of complementarity model of transitional justice that includes indigenous instruments will be proposed.

Keywords*: transitional justice: indigenous justice; traditional justice; mato oput; bashingantahe councils; Navajos' naat'aani*

Introduction

The term 'transitional justice' emerged in the 1990's. Transitional justice is exercised within the framework of transition from armed conflict to peace and from authoritarian regimes to the democratic ones to hold the perpetrators of serious human rights and international humanitarian law violations accountable and to contribute to the reconciliation of divided communities. Societies in transition have two alternatives with regard to human rights violations and international crimes: retributive justice (criminal trials before national, international or hybrid criminal courts or tribunals) or restorative justice (including indigenous mechanisms of dispute resolution) combined with amnesties, truth and reconciliation commissions[1], and compensation programmes for victims (Huyse, 2003, p. 108). It involves complex strategies that must take into account consequences of the past events but must also be forward-looking to prevent armed conflicts from recurring. According to Marcin Komosa, author of the only Polish monograph on truth and reconciliation commissions, transitional justice is a framework of settling the past human rights violations as an element of broader political transformation. Hence, it is a combination of judicial and extrajudicial strategies, such as those mentioned above, together with commemorating the victims and security sector and police reforms to prevent security and police apparatus from violating human rights in the future (2014, p. 31). Judicial and non-judicial processes are interlinked, and one does not replace the other (Study by the Expert Mechanism, 2013, para. 84); they are somewhat complementary. In each of these options revealing the truth about past crimes is a necessary step to build sustainable peace and reconciliation (Mullenbach, 2006, p. 57–59; Peace First, Justice Later, 2005, p. 11).

In this context and to complement State-justice systems, indigenous (or as alternatively termed traditional or customary) instruments of justice may be utilised to reach the aims of transitional justice. As such they may also be treated as complementary to other transitional justice mechanisms enumerated above. Indigenous justice mechanisms may also be used to confront the legacy of the colonisation of indigenous peoples. As stated in the *Study by the Expert Mechanism on the Rights of Indigenous Peoples. Access to justice in the promotion and protection of the rights of indigenous peoples*, transitional justice, in the case of indigenous peoples

[1] Such as for example South African Truth and Reconciliation Commission (1995), Truth Commission for El Salvador (1992–1993), Guatemala's Historical Clarification Commission (1997–1999), Truth and Reconciliation Commission for Sierra Leone (2002–2004), Commission for Reception, Truth and Reconciliation in East Timor (2002–2005) Truth and Reconciliation Commission for Liberia (2006–2009): Study by the Expert Mechanism (2013), paras. 84, 87–88, 98.

> includes human rights violations arising in situations of conflict, where indigenous peoples often figure prominently among victimized populations, as well as grievances associated with indigenous peoples' loss of sovereignty, lands, territories and resources and breaches of treaties, agreements and other constructive arrangements between indigenous peoples and States, as well as their collective experiences of colonization (2013, para. 79)

indicating to a specific form of transition that includes the one to confront the legacy of colonisation.

The rights of indigenous peoples to maintain and strengthen their distinct legal political, social and cultural institutions and to maintain and develop their own juridical system (however, in accordance with human rights standards)[2] and obligations of States, in this regard, have been reiterated in the above mentioned *Study by the Expert Mechanism on the Rights of Indigenous Peoples.* It was stressed that transitional justice 'should be adapted to ensure cultural appropriateness and consistency with customary legal practices and concepts concerning justice and conflict resolution' (para. 85). The *Study* rightly claims that the indigenous justice instrument will enrich the transitional justice procedures. Primarily when the subject of transitional justice refers to the genocide, crimes against humanity or war crimes committed against the indigenous peoples, their customary practices should be included (para. 85). In the *report of the UN Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* of 2004, there is also a significant statement that

> due regard must be given to indigenous and informal traditions for administering justice or settling disputes to help them to continue their often vital role and to do so in conformity with both international standards and local tradition (para. 36).

The article will concentrate on the issue of transitional justice and indigenous mechanisms, in this regard. It aims to find a new perspective on the complementary role of the indigenous justice and the State justice systems in the framework of transitional justice as well as more fully take into account the indigenous peoples' needs and customs. Transitional justice may also help to deal with the negative legacy of colonising of those peoples. I will begin with the notion of indigenous transitional

[2] Arts. 5, 34–35 of the UN Declaration on the Rights of Indigenous Peoples (2007). Analogous provisions are included in the ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries (1989).

justice and then will continue with the examples of *mato oput* in Uganda, *bashingantahe* councils in Burundi and the Navajos' custom of *naat'aani*. These examples will allow indicating specific features, as well as strengths and weaknesses of those mechanisms. The above-mentioned examples fit into the notion of legal pluralism which may be defined as a coexistence of State and non-State forms of adjudication (Huyse, 2008b, p. 8). The overall aim of the paper is to answer the question whether it is desirable for such indigenous justice instruments to complement the State justice systems and better integrate the needs and customs of indigenous peoples. In the concluding remarks, a complementarity model of transitional justice that includes indigenous instruments will be proposed.

The Notion of Indigenous Transitional Justice

Indigenous communities have since time immemorial governed themselves in their ways, different from the Western approach. They have their practices, customs, institutions, including justice systems. Indigenous peoples maintained their own social and political order that governed their relationships, also with other nations, and social control that was sufficient to keep the society together. However, the rights, customs, traditions, and institutions of indigenous peoples have been violated and they discriminated, marginalised and at times even persecuted. Some or even many of those instruments were preserved although they naturally evolved through the interactions with the European and colonial States' culture and as a result were modified, partly also, to meet the new challenges and circumstances (Fletcher, 2007, p. 94; Final Report of the Truth and Reconciliation Commission of Canada. Canada's Residential Schools: Reconciliation, 2015, p. 45; Nhlapo, 1994–1995, p. 53). Very often indigenous justice systems were dismissed as primitive, but by some, they were praised as the centuries-old expression of the collective communal wisdom (Connolly, 2005–2006, p. 245). Indigenous justice system may be defined as 'an accumulation of historical practices, locally defined and applied by the whole community, guided by a distinct world vision and holistically organised (rather than atomised into isolated subject areas)'. It may also be defined as 'non-state justice systems which have existed, although not without change since pre-colonial times and are found in rural areas' (Penal Reform International, 2001, p. 11; Connelly, 2005–2006, p. 241; Huyse, 2008b, p. 8).

Indigenous legal instruments may also be used, within the framework of transitional justice, to heal the relations with indigenous peoples. Indigenous justice mechanisms may be exercised in the transitional justice framework especially when human rights violations affected the indigenous communities. For example, in the case

of Canada the Truth and Reconciliation Commission, in its Final Report, concluded that totality of policies towards indigenous peoples, including the residential schools (which amounted to cultural genocide), forced sterilizations of indigenous women and killings comprised not only cultural but also physical genocide (Summary of the Final Report of the Final Report of the Truth and Reconciliation Commission of Canada, 2015, pp. 1–5; Palmater, 2017). Canadian Truth and Reconciliation report fit into the above mentioned specific notion of transition where the legacy of colonialism is confronted.

The best known indigenous or traditional justice instrument is *Gacaca* in Rwanda. *Gacaca* is a centuries-old African tradition inherent in the indigenous culture. *Gacaca* means courts on the grass as they were held outdoors (Clark, 2007, p. 779). It is still one of the distinct features of *Gacaca* that hearings are conducted in the common places, and the level of public participation is high (even though at some point it was enforced under the threat of punishment). Keeping in mind the very well researched nature of *gacaca* and the vast literature on this issue, more attention will be devoted to other less known examples of indigenous justice mechanisms mentioned in the title of this paper[3].

One of those indigenous justice mechanisms, that may be used in the transitional justice framework is that of Burundian *bashingantahe* councils that are based on the *ubushingantahe* concept, the latter term meaning 'the traditional authority structure by which Burundian society sought to resolve local conflicts and disputes' (Scheye, 2011, p. 16; Ingelaere & Kohlhagen, 2012, pp. 48–51). The latter requires 'a set of personal virtues, including a sense of equity and justice, a concern for truth, a righteous self-esteem. A hard-working character, [in other words] integrity' Nindorera, 2003, p. 1). *Bashingantahe* councils have their roots in the pre-colonial Burundi. They may be described as 'sophisticated and hierarchical system of judges, of men chosen for their knowledge of customs and their integrity, who exercise the polyvalent and extraordinary power of judge, notary, and ombudsman' (Nindorera, 2003, p. 12). The judges in a way combine legislative and executive powers (they are notables with judicial, moral and political authority) (Nindorera, 2003, p. 12; Ingeleare & Kohlhagen, 2012, p. 43). Their main task is to prevent conflicts and mediate between people in conflicts. Their tasks are threefold: mediation, reconciliation and arbitration. Any decision of *bashingantahe* council is made after hearing the parties to the dispute and establishing the truth. All the decisions are made in the shared feeling of reconciliation and arbitration. Hence, this mechanism fits into the restorative justice rather than retributive

[3] For more details on *gacaca* courts see: Clark (2007); Daly (2001–2002); Ingelaere (2008); Penal Reform International (2001); Huyse (2003); Connolly (2005–2006).

justice (Nindorera, 2003, p. 16; Nanive-Kaburahe, 2008, p. 156). Here, the parties to the dispute also encompass the victims and the accused in a criminal case since indigenous justice does not distinguish between civil and criminal cases and respective procedures applicable (Penal Reform International, 2001, p. 12). Despite the *Arusha Accords* of 2000 attempts to revitalise the *bashingantahe* councils by including them in a judicial system, in 2005 the government of Burundi finally eliminated them from the judicial system. Their jurisdiction and prerogatives were systematically degraded. The status of *bashingantahe* councils today is that of a non-State actors whose role is to be an 'instrument of peace and social cohesion' (Scheye, 2011, p. 17; Ingelaere & Kohlhagen, 2012, pp. 40–41, 46) and their role in achieving that may still be termed as 'fundamental' (Ingelaere & Kohlhagen, 2012, p. 46).

An indigenous mechanism of transitional justice also debated in the literature is that of *mato oput* in northern Uganda. *Mato oput* is indigenous Acholi justice instrument, that is based on forgiveness and reconciliation, and as such of restorative nature. The Acholi people believe that there exists the world of 'living-dead' and 'divine spirits' (Tom, 2006). *Mato oput* literally means 'drinking the bitter herb' and, in a nutshell, it is a clan- and family-centered ceremony aimed at reconciliation, that is conducted in the following phases: acknowledgment of the wrong done and of responsibility for that, compensation by the wrongdoer and in the end sharing a drink symbolizing peace between the offender and the victims (Afako, 2002, p. 67).

As Patrick Tom describes:

> *Mato Oput* is both a process and ritual ceremony that aims at restoring relationships between clans that would have been affected by either an intentional murder or accidental killing. It helps to bring together the two conflicting parties with the aim of promoting forgiveness and restoration, rather than revenge. The Acholi conduct the *Mato Oput* ceremony because they believe that after the ceremony the "hearts of the offender and the offended will be free from holding any grudge between them." […] the common characteristics include, the slaughtering of a sheep (provided by the offender) and a goat (provided by the victim's relatives), the two animals are cut into halves and then exchanged by the two clans, and "the drinking of the bitter herb Oput by both clans to wash away bitterness." The drinking of the bitter herb means that the two conflicting parties accept "the bitterness of the past and promise never to taste such bitterness again." The payment of compensation follows the ceremony. The victim or his/her family is compensated for the harm done, for example, in the form of cows or cash (Tom, 2006; Latigo, 2008, p. 106).

Mato oput is popular among the Acholi people as the majority of them are aware of the fact, that very often perpetrators of the crimes in Uganda that fought, for example, for the Lord's Resistance Army, were forcibly abducted and forced to participate in combat and commit heinous international crimes. In this case, perpetrators were, at the same time, victims which especially pertains to the child soldiers (Afako, 2002, p. 64). Barney Afako (2002), writing about the underlying reasons for resort to *mato oput*, points out to the circumstances such as complexities of the armed conflict in Uganda, the massive amount of victims and the lack of formal/State justice system capable of dealing with violence committed in the course of the conflict which

> [c]ombined with a profound weariness with the war and the suffering it has caused, […] create[d] a moral empathy with the perpetrators and an acknowledgement that the formal justice system is not sufficiently nuanced to make the necessary distinctions between legal and moral guilt (p. 67)[4].

It is worth stressing that in its original shape *mato oput* was not designed to adjudicate over war crimes or crimes against humanity but over intentional or accidental killings of individuals (Latigo, 2008, p. 114; Naniwe-Kaburahe, 2008, p. 185). However, with extending its scope of application, it could be able to meet the new challenges. Examples of *mato oput* in Uganda, as well as bashingantahe councils in Burundi, present the opportunity to rediscover and revitalise the indigenous transitional justice instruments. Such a revival or modernisation combining traditional features with some modern positive elements constitute a condition for the preservation of indigenous justice mechanisms (Naniwe-Kaburahe, 2008, p. 173).

Among the indigenous justice instruments, I would like to present the last one, this time from North America. These are the Navajos' customs. Navajos do not believe in coercion and prefer reconciliatory process aimed at retaining control of a situation by themselves and resolving their problems by themselves (Yazzie, 1996–1997, p. 120). For Navajos, a dispute 'is a situation where people are not in good relations with each other. […] Navajo justice methods utilise relationships, talking things out, teaching, and consensus to adjust the interaction of parties' (Yazzie, 1996–1997, p. 123). Disputes are resolved in a circle where everyone may talk about a problem in an equal manner. If someone crosses the line, there is an institution of naat'aanii who serves as a kind of a teacher (naat'aanii's role is to give an opinion on the proper outcome of the whole process). Decisions are made after discussions and by consensus, and they are followed by reparation paid to the victim. It is fixed in the discussions between

[4] See also: *Peace First, Justice Later* (2005, p. 24); Latigo (2008, pp. 112–114).

the injured party and an offender as it is to respond to the needs of the latter. All this process is called hozhooji nahasdlii which means 'we are now in good relations' (Yazzie, 1996–1997, pp. 122–124). As indicated by Hope Among, Navajo 'peace-making circles [including the ones with naat'aani as their leader] have remarkably similar attributes to some traditional justice processes within communities in Uganda [which includes *mato oput*] (2013, p. 448)'.

As the above examples show, indigenous justice mechanisms are capable of performing different tasks within transitional justice framework. They may be used to deal with conflicts at the group, community, and regional level as well as with serious violations of human rights, including genocide or crimes against humanity, and may serve various functions such as adjudication, arbitration, mediation, reconciliation and compensation. What is characteristic for indigenous justice is the blurring of boundaries between restorative and retributive justice (Peace First, Justice Later, 2005, p. 38). Despite being mostly similar, the above mentioned indigenous justice mechanisms from Africa and North America also differ in few points. First of all, the Navajo customs do not require animal sacrifice like *mato oput*. Moreover, a Navajo instrument of naat'aanii is recognised by the State whereas the prerogatives of *bashingantahe* councils have been systematically degraded and today they are an informal justice mechanism of an important role among the indigenous communities. Concerning *mato oput*, its use was encouraged in the Agreement on Accountability and Reconciliation between the Government of Uganda and the Lord's Resistance Army (art. 3.1, Juba, Sudan, 29 June 2007). One could also add that their potential or actual scope of application was also different as the Navajo's justice instruments are preferably used to confront the legacy of colonisation then crimes against humanity or genocide as is the case of *mato oput* or *bashingantahe* councils.

As has been shown, by the above-given examples, the characteristic features of the indigenous justice include:

- Disputes are resolved by political, hereditary or spiritual entities that act as arbitrators or mediators and are appointed by and from within the indigenous community and not by the State organs;
- State justice systems are hierarchical: an entity with power and authority makes the decisions by established legal rules and in conformity with specific procedure. In indigenous justice systems, on the other hand, the parties to a dispute or a case are in an equal position. This system is rather horizontal, based on and aimed at preserving the social relationships and cultural values (Peace First, Justice Later, 2005, p. 38).
- Disputes and crimes are treated as a community issue which means that they pertain to the whole community and cannot be considered only at a bilateral

level. They are very often treated differently, compared to the Western justice systems as 'a misbehaviour which requires teaching or illness which requires healing' (Peace First, Justice Later, 2005, p. 12; Huyse, 2008b, p. 14).
- Decisions are made after discussions, consultations and establishing the truth;
- There is a high degree of public participation;
- The indigenous justice instruments aim to bring back peace and harmony to the individual and social relationships and not only to punish the perpetrators.
- The process is – as a rule – voluntary. However the decisions are usually enforced by social pressure (Penal Reform International, 2001, p. 33). Their enforcement is strengthened by the rituals and ceremonies aimed at reintegration and reconciliation which may be regarded as complementary elements of the traditional justice system (Latigo, 2008, p. 117–118).
- The indigenous process is informal; there are usually no positive written rules and no legal assistance. The rules of procedure are flexible (McAuliffe, 2013, pp. 49–50; Connolly, 2005–2006, pp. 241–242).

Strengths and Weaknesses of Indigenous Justice Mechanisms

A standard feature of all indigenous peoples is their understanding of justice. They believe that justice aims to restore peace and harmony within the community by achieving reconciliation of the perpetrator of harm with the victim and the whole community. According to the Western approach, justice is aimed at controlling actions that violate legal rules and are considered harmful to the society (Laforme, 2005, p. 4). The aim of Western justice is to in a way validate the broken rules and to repair the broken human and social relationships. The emphasis is placed on the breached legal norm rather than the welfare of the victim and individual as well as social relations. In the indigenous justice systems, victims are at the centre of decision making, and final solution cannot be settled unless the victim, as well as the offender, agrees to it. In the formal justice systems victim is usually only a witness in the criminal case (Penal Reform International, 2001, p. 23). Keeping in mind the above-examined examples and considerations one may attempt to point to the strengths and weaknesses of resorting to the indigenous justice mechanisms in the context of transitional justice.

Among the strengths of resorting to indigenous justice mechanisms, one may list a high level of public participation which is sometimes regarded as a weakness when treated as a form of mob justice or justice administered by the traumatised and divided population (Clark, 2007, pp. 795–796, 808). As Erin Daly rightly claims concerning

gacaca courts, 'Rwandans of all stations […] literally [defined] justice for the post-genocide society rather than [had] it defined for and imposed on them' (2001–2002, p. 376). It, in turn, is linked to another strength of communal ownership, meaning that resort to the traditional instruments allows the community to have this sense of real influence on doing justice (Connolly, 2005–2006, p. 243). The participatory and communal character of such proceedings also contributes to the education of the whole community (Connolly, 2005–2006, p. 244). Indigenous justice instruments also help to discover the truth, and as a consequence, the survivors or the relatives of the deceased victims can handle their emotions of anger and loss and to understand what happened, in the end contributing to reconciliation (Clark, 2007, 797). Apart from the establishment of the truth, reconciliation, retribution, and compensation indigenous transitional justice instruments have also such benefits as strengthening the communities and empowering the populations as well as the promotion of the democratic values (Daly, 2001–2002, p. 376). Indigenous justice mechanisms may contribute to reconciliation and communal stability as the perpetrators – after revealing the truth, acknowledging their crimes, expressing remorse and apology and compensating the victim – may return to the community and their own families. It also prevents the families of the perpetrator from falling apart. On the other hand, as Padraig McAuliffe warns, search for communal stability may favour the interests of the community over the interests of the victims who have to live with their perpetrators as their neighbours (2013, p. 69). Indigenous justice systems may also benefit from a higher degree of legitimacy as they reflect the norms and values recognised for ages by the communities affected by the atrocities that are being confronted in the transitional justice framework (Connelly, 2005–2006, p. 244; Scheye, 2011, p. 18). Resort to indigenous justice is relatively cheap because the elders as mediators taking part in indigenous processes are not paid, there is no need for the expensive services of the lawyers. Such instruments are more accessible than others because of their proximity, informality, flexibility and lower costs which are also linked to the above mentioned public participation (McAuliffe, 2013, p. 52). Such indigenous justice proceedings are accessible even in highly rural areas, and they are conducted in local languages (Connolly, 2005–2006, p. 243) which additionally contributes to their openness and accessibility. Sometimes they are the only justice system that is available, especially in rural areas. Their healing potential should also not be easily dismissed. According to indigenous or traditional justice logic justice is done when everyone benefits and the wrongdoer, the victim(s) and the community at large can reconcile and live in social cohesion.

Concerning the weaknesses, one should remember that lists of such weaknesses are usually construed from the Western point of view on the rule of law, and it

is impossible to describe and sometimes understand indigenous (customary) legal systems by using Western concepts (Bunikowski & Dillon, 2017, p. 42). Despite my Western origins, this article constitutes an attempt to put my Western attitude aside and understand indigenous justice better.

Keeping this in mind the most common and harshest critiques of indigenous justice instruments argue that such mechanisms are regarded as a form of 'mob justice' where the rights of the accused are sacrificed at the altar of quick and cheap prosecution of the perpetrators (Clark, 2007, p. 767). There are also accusations that they may violate individual rights such as fair trial guarantees or the rights of the women. For example, the first charge is connected to the fact that during such proceedings there is no assistance of the lawyers as well as the elders serving as mediators are not lawyers or judges. It is supposed to reflect the popular character of those mechanisms. However, the right to appeal to the formal State system is one of the possible forms of oversight about the decisions of the indigenous mechanisms, the other being some form of incorporation or recognition of the indigenous justice systems into the official State justice system (Connolly, 2005–2006, pp. 246, 248). However, a better solution is to allow for an appeal to a higher institution but within the indigenous justice system. The decisive voice should be that of victims and broader indigenous communities, and all the channels of justice could be open for them. It is worth indicating that for example 'in East Timor 69% of people would use local justice and 13% the formal system for theft, while 91% recognise the formal system as the appropriate mechanism for murder trials' (McAuliffe, 2013, p. 72). In Burundi, 73% of those interviewed gave a positive evaluation of the work already done by *bashingantahe* (Naniwe-Kaburahe, 2008, p. 168).

Moreover, as Brynna Connolly rightly notes,

> [n]umerous justice systems [also State systems] suffer from many of the same problems of gender or ethnic bias of which the [non-State justice systems] are accused. [Naturally, there are differences between State and non-State justice systems but] these differences are of degree rather than kind (2005–2006, p. 257)[5].

The crucial question is whether the strengths outweigh the weaknesses or the other way round? The answer will be given below in the concluding remarks.

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[5] On the other hand there contrary opinions expressed pointing to the fairness of the indigenous justice instruments: Penal Reform International (2001, p. 139); Ingelaere & Kohlhagen (2012, p. 51).

Concluding Remarks

Transitional justice instruments serve or should serve the truth, give voice and dignity back to the victims, ensure that those responsible will be tried and punished, bring back the rule of law, compensate for the harm done to the victims, contribute to the creation of the foundations for development and reconciliation and inspire a public debate on the past abuses and steps that need be taken in order to prevent such abuses in the future (Matyasik & Domagała, 2012, p. 59). Crucial to reconciliation is the establishment of the facts and revealing the truth. Without it, without reckoning with the past, reconciliation is impossible.

The desirable future model of transitional justice should include indigenous practices contributing to creating a complementarity model that combines different justice systems. Such a model fits into the growing trend that advocates for legal pluralism mentioned above in the introduction. This legal pluralism means that 'two or more legal systems coexist in the same social field' (Clark, 2007, p. 765). By the trend of legal pluralism transitional justice must be constructed holistically and integrally, embracing State-justice systems, indigenous justice systems as well as various political, social and other instruments and all this to strengthen the possibilities of achieving the intended aims. As the above examples from Africa and North America show, the use of indigenous justice mechanisms is increasingly popular and not only for the standard dispute resolution but in the framework of transitional justice as a response to serious human rights violations. It also seems that the strengths of indigenous justice instruments outweigh the weaknesses.

The goals of the transitional justice may be multiple and not only limited to punishing the perpetrators although it might be difficult to imagine successful transitional justice without some form of responsibility of the perpetrators. The proposed model of transitional justice offers a complementary perspective combining the popular participation with the mediating role of the State or non-State judges. Depending on the will of the population, especially taking into account the voices and needs of the victims, such a complementary transitional justice model may have the retributive, deterrent and restorative outcome. The dominant outcome will vary.

For all the above reasons, mainly taking into account the strengths of indigenous legal practices, such practices need to be rediscovered, revitalised and recognised. Indigenous justice systems are bottom-up alternatives to formal justice frequently regarded as imposed by the colonisers. Western and indigenous justice should be seen as complementing each other. For a complementary and holistic model to work efficiently, it is indispensable to overcome the sense of resistance to non-State forms of justice that – to certain extent – are and have to be outside the State control.

On the other hand, those that opt for or support a legal-pluralist model need 'to overcome an aversion to state influence on indigenous justice' (McAuliffe, 2013, p. 54. Those two systems may borrow from each other that what at the moment is needed and helpful. It, in turn, reflects and contributes to the constant evolution of the indigenous justice systems. Despite the need for the indigenous justice system to remain largely independent, it does not mean that they do not deserve governmental support, quite contrary – as part of the cultural heritage of humankind they need to be preserved as much as possible (Penal Reform International, 2001, p. 147). In the complementarity model, the indigenous justice system must be adjusted where there is such a need and respect international human rights because only in this way fair and stable legal system and social order may be preserved. However, when regarding the mutual relations between Western forms of justice and human rights on one hand and indigenous justice on the other, one must remember about the autonomy of indigenous peoples and their right to self-determination which should be treated as an overarching right, an important interpretative principle and an instrument shaping the perspective towards indigenous peoples. It could lead to less formalistic and more modified implementation of, for example, fair trial guarantees without undermining the indigenous laws. In other words, patronising need to be avoided. One must remember that indigenous sovereignty existed long before the colonial or dominant authorities and societies took power. As Padraig McAuliffe argues, in the transitional context human rights concerns could be ameliorated to some extent (2013, p. 79). In other words, "in that fusion, a clear commitment to human rights […] must be matched by a demonstrated commitment to cultural diversity as well" (Nhlapo, 1994–1995, p. 63).

On the basis of the above given arguments, and answering the question posed in the introduction, I argue that it is clearly desirable to complement State justice systems with indigenous justice systems and better integrate the indigenous legal customs and institutions into the State justice system remembering that the right to self-determination and self-governance takes the prominent place in the UN Declaration on the Rights of Indigenous Peoples (Arts. 3 and 5). It in turn means that probably some parts of indigenous justice systems should be outside the control of the State. Moreover, as brilliantly noted by Brendan Tobin, "it is ironic that traditional restorative justice systems considered to conflict with human rights may demonstrate a greater capacity for forgiveness and peace that is found in western states espousing a human rights ethos" (Tobin, 2014, p. xx).

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