Under the Acacia: Mediation and the dilemma of inclusion
Tim Murithi and Paula Murphy Ives[1]

My life was spent…planting trees in communities around my country…tiny seeds take root and with good soil, sunshine, water and loving care, they take root and grow to change the landscape and make Africa a more beautiful place.

Wangari Maathai, 2004
Nobel Prize Laureate, Kenyan National[2]

Introduction

Fostering peace through mediation involves a number of complex and important challenges. A key aspect of any mediation process is the inclusion of primary and secondary actors. This paper will examine indigenous approaches to mediation and assess how they address the issue of inclusion. It will discuss examples of indigenous mediation from the Tiv community in Nigeria, the *guurti* system in Somaliland and the application of *ubuntu*[3] to mediation and reconciliation found predominantly in Southern Africa. It will argue that official mediation processes limit the number of interlocutors in order to protect a process and encourage expediency, but as a result, undermine their own legitimacy. In contrast, indigenous processes are more inclusive, but tend to be slow in bringing about agreement. In its final section, the paper proposes a possible "hybrid approach', which might incorporate elements from indigenous and official processes to create greater thresholds of inclusion while maintaining important efficiencies.

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2   Wangari Maathai, *Unbowed* New York: Random House, 2006.
3   For more on the concept of ubuntu in mediation and indigenous approaches see Tim Murithi, 'Practical Peacemaking Wisdom from Africa: Reflections on Ubuntu', *Journal of Pan-African Studies* Volume 1, Number 4, 2006.

Mediation in context

Article 33 of Chapter VI of the UN Charter of 1945 states that: "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement."[4] Mediation is *a form of third party intervention that seeks to assist two or more disputing parties to find a mutually acceptable settlement*.[5] Mediation can best be viewed as a dynamic and ongoing process that begins with a pre-mediation process and continues up to the post-mediation implementation and monitoring phase. The underlying principle of the mediation process is to find a resolution to a dispute that is agreed by all parties.

The post-Cold War era witnessed some of the most destructive conflicts in Africa's history. The Rwandan genocide of 1994 left an indelible scar on the conscience of the continent and the world. The brutal violence in Sierra Leone, Liberia and the DRC and ongoing conflicts in the Darfur region of Sudan, Côte d'ivoire and Somalia illustrate that there is an ongoing need to establish more effective peacemaking processes on the continent. Although mediation efforts have led to negotiated peace agreements in Mozambique, the DRC, the South Sudan, Sierra Leone and Liberia, improving our ability to respond and prevent armed conflict through dialogue remains a clear priority.

On this basis, it is also necessary to inquire as to what is the most effective approach to mediation. In particular, the issue of inclusion can be utilised as a prism through which to assess mediation processes. What follows is a definition and comparison of indigenous and official mediation approaches.

Indigenous mediation:
- Relies on local, community-based processes, usually involving an Elder, a Council of Elders, a Chief, a King or traditional leadership structures;
- Draws upon local cultural assumptions, norms and values as well as traditional notions of justice and community-based political dialogue;
- It is also known as 'traditional', community-based dispute resolution and is often held in village squares or under the shade of an acacia tree.

Official mediation:
- Relies on contemporary diplomatic processes. It usually involves governments or intergovernmental organisations functioning under the aegis of state or international legitimacy;

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4   United Nations, *Charter of the United Nations and Statute of the International Court of Justice* (New York: United Nations, 1945).

5   See Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (San Francisco: Jossey-Bass, 2003); Morton Deutsch and Peter Coleman (eds.), *The Handbook of Conflict Resolution: Theory and Practice* (San Francisco: Jossey-Bass, 2000); and R. Fisher, *International Mediation: A Working Guide* (New York: International Peace Academy, 1978).

● Brings in external political and cultural assumptions about conflict, borders, justice and democracy; limits participation in order to reduce complexity;

● It can also be known as 'classic', technical mediation, shuttle or 'hotel diplomacy'.

A distinguishing feature of each approach is their treatment of inclusion. Where indigenous approaches tend towards the inclusion of all parties and indeed the entire community, official mediation is more exclusive and promotes dialogue between armed resistance movements and the highest level of government. Interestingly, both approaches share one thing in common, namely, the limited role that women play in the mediation process. Given the incidence of gender-based violence, rape, and the exploitation of children in armed conflict, there is a case to be made for main-streaming gender equality at all levels of mediation and negotiation.[6]

Indigenous Process and inclusion

This section provides an overview of selected indigenous mediation mechanisms from communities in Southern Africa, Nigeria and Somalia. It highlights their strengths in supporting local governance, constructing consensus and initiating processes of reconciliation. It also points out that a reliance on indigenous approaches can limit the flexibility of a process due to the adherence of cultural norms some of which may not be gender sensitive. Nonetheless, incorporating the insights and best practices of indigenous processes into official mediation, to create a hybrid mediation process, can improve the efficacy of peacemaking.

Ubuntu and mediation

Given the diversity of Africa with over 5,000 different ethnic groups in 53 countries, understanding different belief systems and value judgements is essential. The concept of *ubuntu* is one such system of belief that underpins several African societies, including the Xhosa, Zulu, Swazi, and Ndebele, which have and continue to conduct and manage their political affairs in a communal setting or "under the acacia" to borrow a metaphor.

Ubuntu acknowledges the interconnectedness of humanity at all times. In Xhosa, *Ubuntu ungamntu ngabanye abantu*, "a person is a person through other people" or in Zulu, *Umuntu ngumuntu ngabanye;* I am human because I belong, I participate, I share. This has a profound effect upon perceptions of how conflict should be resolved through mediation. Through inclusive community-wide mediation and reconciliation forums known as a *lekgotla,* a Council of Elders or the King himself mediates using this notion of *ubuntu* to highlight the importance of peacemaking through the principles of reciprocity, inclusivity and a sense of shared destiny between peoples. In *ubuntu* societies, the entire society is typically involved at various levels in trying to find a solution to a problem, which is viewed as

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6 Amnesty International's 2006 Report notes that the exact figure of rape in armed conflict is unknown. USAID reported between 1998 med 2003 in South Kivu and Goma provinces alone, over 51,000 rapes were confirmed. On women in mediation see A. Potter, "We the Women", Geneva: Centre for Humanitarian Dialogue, 2005. See www.hdcentre.org

threatening the social cohesion of the community. Any member of the society has the right to question victims, perpetrators and witnesses as well as to put suggestions to the Council of Elders on possible ways forward. The Council of Elders in its capacity as an intermediary has an investigative function and it also plays an advisory role to the King. By listening to the views of the members of the society, the Council of Elders advises on solutions which may promote peace and reconciliation between the aggrieved parties and thus maintain the overall objective of sustaining the unity and cohesion of the community.[7]

Contemporary applications of Ubuntu

Further research needs to be undertaken to document the application of *ubuntu* to mediation, particularly in the rural communities in southern Africa. There is a rich oral history of this tradition, but a dearth of documentary record. According to Nomonde Masina, the Xhosa community in South Africa, particularly in the rural areas, has maintained a strong bond with its traditions and continues to practice peacemaking predicated on the principle of ubuntu particularly with reference to family and marriage disputes, theft, damage to property, murder and conflict.[8] *Ubuntu* approaches emphasize a link between mediation and reconciliation, rather than viewing them as separate phases of conflict resolution.

Speaking from his own experience as Chairman of the South African Truth and Reconciliation Commission, Archbishop Desmond Tutu reflects in his book *No Future Without Forgiveness* that he drew upon both his Christian values as well as his cultural values to guide him in his functions. In particular, he highlights that he constantly referred to the notion of *ubuntu* when he was guiding and advising witnesses, victims and perpetrators during the Commission hearings.[9] The guiding principle of *ubuntu* was the notion that parties need to be reconciled in order to re-build or maintain social trust and cohesion. We continue to observe how individuals and sections of society in the Republic of South Africa, epitomized by Nelson Mandela and Tutu, have drawn upon these aspects of their cultural values and attitudes to enable the country to move beyond its violent past. The South African Truth and Reconciliation Commission, which has as many critics as it has supporters, also relied on the willingness of victims to recognize the humanity of the perpetrators, and there are documented cases of victims forgiving particular perpetrators.[10] Tutu himself would always advise victims – if they felt themselves able to do so – to forgive. His guiding principle was that without forgiveness predicated on the notion of *ubuntu*, which he always took the opportunity to explain, there could be no future for the new republic.

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7 For more on the five stages of conflict resolution based on ubuntu see Desmond Tutu, *No Future Without Forgiveness* London: Rider, 1999 and Tim Murithi, "African Approaches to Building Peace and Social Solidarity", *African Journal on Conflict Resolution*, Vol.6, No.2, 2006, pp.9-35.

8 Nomonde Masina, 'Xhosa Practices of *Ubuntu* for South Africa' in William Zartman, ed., Traditional Cures for Modern Conflicts: African Conflict "Medicine", (London: Lynne Rienner, 2000).

9 Desmond Tutu, *No Future Without Forgiveness*, (London:

10 Charles Villa-Vicencio and Wilhelm Verwoerd, *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*. (Cape Town: University of Cape Town Press, 2000).

It is clear that different groups and individual within South Africa have drawn from their own cultures, family values and religious backgrounds when dealing with the process of transition. An analysis of all the different cultural backgrounds and belief systems and the way in which they informed the peace process is beyond the scope of this paper. However, we cannot discount the fact that *ubuntu*, an African way of viewing the world, informed the attitudes of a significant number of ethnic groups and individuals, some of whom were involved in "mediating" between groups and guiding the nation through its troubled phase.

The *Jir* in Nigeria and the *Guurti* in Somaliland

Selected indigenous conflict resolution mechanisms

Early mechanisms of indigenous conflict resolution mechanisms in pre-colonial Africa had a significant degree of success in maintaining order and ensuring the peaceful coexistence of groups.[11] Derry Yakubu observes that in most African societies "the resolution of conflict was guided by the principle of consensus, collective responsibility and communal solidarity. This meant that communities were collectively responsible for the harmony and discord caused by their members".[12] For the Tiv people of Nigeria, the discursive assembly was made possible by the convening of the *jir* or the "dispute mediation session" in the communal square. The leaders of the communities in dispute sat in a semi–circle facing the audience, which also sat in a semi-circle to complete a full circle, with the disputants located within the circle. Rather than legal or political codes or laws, the Tiv relied on cultural norms, values and the communal moral conscience to inform the mediation of conflict.

The Tiv approach to conflict resolution had five key elements including: i) a commitment to maintaining order and ensuring the peaceful coexistence of groups; ii) a desire to ensure that the community remained a cohesive unit; iii) the leadership was not there to decide over a particular issue, but to encourage the disputing parties to reconcile between themselves; iv) the whole process was consensual and every member of the community was free to participate and contribute to the settlement process; and finally, v) the emphasis was placed on all sides gaining from the process based on the belief that a settlement or resolution could not follow unless the dispute mediation session (*jir*) had been satisfactorily concluded.

Contemporary applications of the Jir Approach

In 1994, Martin Dent an academic-practitioner was involved in overseeing a consensual mediation process among the segmented Tiv peoples of south-eastern Nigeria. Dent was a former colonial district officer in Tivland Nigeria in the 1950's, who be-friended the Tiv peoples. This relationship contributed to his

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11 D. M. Yakubu, "Conflict Resolution in Traditional African Societies and Present Day Realities: The Tiv Experience", Paper presented at a seminar organised by the Centre for Nigerian Cultural Studies, Ahmadu Bello University, Zaria, July 1995.

12 This discussion on the Tiv has been drawn from work by Yakubu, "The Tiv Experience", pp. 4–13.

dismissal by the British head of the Civil Service in northern Nigeria for what was considered a lack of "loyalty" to the British Empire when responding to a series of riots in the area.[13]

In 1994, protracted communal clashes had been taking place between the Kusuv community and the Ikurav-Tiev community over their boundaries along the Kungwa Jov River. Both sides had been systematically sending raiding parties to carry out killings and to destroy property and houses across the river.

Dent was familiar with the Tiv mediation process and was invited in 1994 to mediate this dispute. Dent met the leaders of both communities and realised that both sides favoured an effort to find a resolution. The central authorities had been relatively inactive in dealing with the dispute. By invoking and referring to indigenous Tiv traditions, Dent brought together fifty community members from both sides in the traditional council chamber in what was effectively the jir (dispute mediation session). During the process, he encouraged the discussion to focus on the "causes" of the conflict. As the session progressed, Dent proposed a solution which would recognise the Kungwa Jov River as a boundary, but at the same time would provide the Ikurav-Tiev with some land beyond the river.

Initially, both communities had entrenched positions and at one point in time no progress was being made culminating in an impasse. Dent persisted and urged both groups to forget about the past and focus on a new future for their mutual benefit. Since the parties were predisposed towards finding a solution, the inclusive nature of his arguments to all the parties contributed to finding an agreement. The impasse was broken as "more and more speakers asked for a declaration of peace to end the ruinous quarrel that had caused so much bloodshed".[14] The leaders of the two groups agreed to end hostilities and signed a peace treaty. The momentum for peace was underway at this stage and Dent, anxious to make sure that they consolidated the peace-making process, sought the backing of the governmental authorities (the state commission of inquiry and boundary settlements) so as to work towards a final settlement.[15]

The Guurti and mediation in Somaliland

In northern Somalia, also known as Somaliland, people rely upon their traditional clan Elders as "the repositories of moral authority and catalysts for societal harmony with regards to dispute resolution and the socio-economic distribution of resources".[16] Rules of self-governance within units are adapted and based upon the principles of inclusion, consensus and kinship among the elders and society. According to Haron Yusuf and Robin Le Mare "two key elements of the kinship are blood ties and a concept known as Xeer

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13 This discussion is taken from Martin Dent, "Practical Peacekeeping", Unpublished paper, Keele University, England, 1994, p. 2-4.
14 Dent, "Practical Peacekeeping", p.6.
15 For his efforts Martin Dent was honoured by the Tiv Traditional Council with a chieftancy title *A-Sor-tar-U-Tiv*, which literally means Peacemaker of Tivland in 1994.
16 See Murithi, 2003.

(pronounced "hair"), which is essentially an unwritten but loosely accepted code of conduct".[17] The *Xeer* govern relations among members of different clan units regarding the sharing of common pool resources such as grazing land and water resources. *Xeer* emphasises "the values of *interdependence and inclusiveness* and forms the basis for social contracts or covenants between lineage groups".[18] This concept also, defines obligations, rights, and collective responsibilities (including sanctions) of the group. Within this contract members are pledged to support each other. *Xeer* does not eliminate strife, but provides accepted and workable ways of dealing with disputes and conflicts.

According to Yusuf and Le Mare "when disputes arise over matters such as grazing rights, water, or other resources, or political influence, they are arbitrated by what is known as a *Shir* – council of elders". The *Shir* "deals with relations between groups, in war and peacetime, and lays down the laws and principles by which members act". When the *Shir* of different clans meet, they form an inter-clan mediating council known as the *Guurti*. The *Shir* and *Guurti* act as mediators and operate in open assembly, not secretly. The *Guurti* can mediate between Somalis and sanction, monitor and reinforce the adherence to the *Xeer*. In this regard, this indigenous institution maintains clan coexistence and social order by managing disputes when they arise.

Contemporary applications of the Indigenous Somali Mediation System

Following the collapse of the Somali state in 1991, the breakaway territory of northern Somalia or Somaliland, with its capital in Hergesia, utilised indigenous mechanisms to make peace. In contrast, south Somalia, with its capital in Mogadishu, was then and remains now wrought by violent conflict. In 1991, Somaliland's elders organised inter-clan reconciliation conferences, which were followed by meetings at the district and regional levels. In January 1993, a conference held in a town called Erigavo produced a peace charter which ended hostilities in several parts of Somaliland and recognised individuals' rights to move, trade, and pursue their aspirations within the clans' boundaries. This was effectively a peace agreement that stipulated the return of property, land, and other resources occupied, stolen, or looted during the war. Conflict resolution committees were set up to keep the peace and interpret the charter. In effect, these committees operationalised a monitoring system that maintained the peace in the region, despite the tension in the less stable neighbouring regions.

The Erigavo conference led to the Borama peace conference held between January and May 1993 brought together more than 150 *Guurti* members from all of Somaliland's clans, plus hundreds of delegates and observers from inside and outside the country. As a result of the mediation by the *Guurti*, Somaliland managed to achieve:

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17 Haroon Yusuf and Robin Le Mare, "Clan Elders as Conflict Mediators: Somaliland", in Paul van Tongeren, Malin Brenk, Marte Hellema and Juliette Verhoeven, (eds) *People Building Peace II: Successful Stories of Civil Society*, (London: Lynne Rienner, 2005), pp. 459 emphasis added.

18 All citations on Somaliland drawn from Yusuf and Le Mare, "Clan Elders as Conflict Mediators: Somaliland", p.460–5.

- The peaceful transfer of power from the armed factions to a president, Mohamed Egal, whose was elected by the council of elders and assembly in May 1993;
- A Peace Charter that established a national security framework;
- A National Charter that established a bicameral legislature, creating for the first time an Assembly of Elders – or National *Guurti* – as a non-elected upper house;
- An elected lower house.

In the intervening years, despite difficulties in implementing the provisions in the Peace Charter, using indigenous mechanisms, Somaliland managed to maintain a relatively high degree of peace. Today, a relatively peaceful Somaliland has applied for membership of the African Union and has requested the UN to grant it special status as it had previously done for Kosovo, Palestine and Timor Leste. [19]

Strengths and weaknesses of indigenous processes

Based on the discussions above the key strength of indigenous mediation processes is that they are familiar to the communities where they are utilised and appeal to local cultural norms and leadership structures. Therefore, the outcomes they produce are more likely to be internalised by the parties. Indigenous processes are inclusive, promote public participation and seek consensus in addressing the root causes of conflict.[20] In this regard, they ensure the local ownership of peace processes. Also, indigenous processes are cost effective because they rely on a community's own internal resources rather than on the infusion of funds from external actors. This can also protect a process from external pressures. Furthermore, indigenous approaches emphasise the nexus between mediation and reconciliation rather than viewing them as separate and distinct processes. Finally, indigenous approaches emphasize the importance of a sustained and continuous mediation effort. For example, the Boroma conference mediation took place over five months. This is in contrast to other processes which are intermittent and periodical often due to the high costs involved of maintaining parties at a particular venue.

Paradoxically, the duration of indigenous peacemaking can be viewed as a weakness, because depending on the willingness of parties to achieve consensus, such processes can become indefinite. Where indigenous processes are inclusive and consensual, for a variety of reasons, they often *do not encourage expediency*. However, an inclusive process is more likely to have widespread legitimacy and acceptance. Ideally, a mediation process with a small number of interlocutors is more likely to lead to an agreed outcome and to facilitate relationships of trust which are critical to agreement. However, such a narrow process can also bring the legitimacy of the process into question, if powerful actors are left out. There

19 Mohamud Jama, *Somalia and Somaliland: Strategies for Dialogue and Consensus on Governance and Democratic Transition*, (Oslo: UNDP Governance Centre, 2003).
20 On the merits of cultural norms and collective wisdom see the work of Thomas Schelling and Kenneth Arrow in, James Surowiecki, *The Wisdom of Crowds* (New York: Anchor Books, 2005).

is a trade-off to be considered when addressing the issue of inclusion or exclusion in mediation. In addition, indigenous approaches rely on traditional norms that have been developed over centuries. While indigenous processes contain a range of progressive values, some of their practices are patriarchal and therefore not gender sensitive. This has the effect of undermining the role of women in mediation and peacemaking processes.

Indigenous or official:

Towards a hybrid approach?

This review of indigenous processes points to a number of strengths and limitations in terms of their effectiveness. It suggests that it may be worthwhile to think in terms of a 'hybrid approach' that might take best practices from each to promote higher thresholds of inclusion, while maintaining efficient mediation processes. A hybrid approach may therefore be described as follows:

Hybrid process:

- Relies upon a combination of official and indigenous elements – for example the AU Panel of the Wise is an official structure of the organisation, but utilises cultural norms about the role of the "wise" or elders in mediating disputes;
- Encourages parallel forums and interactive problem-solving workshops with key opinion leaders and civil society at the regional, national or local levels to complement processes drawing upon cultural norms and values;
- Facilitates national talks which can be sequenced to complement an official mediation process and can also bring in community leaders and civil society into the process.

Comparative approaches:

	Indigenous	*Hybrid*	Official Mediation
Mediator	Elder or Council of Elders	Flexible	Envoy or Diplomat
Negotiators	Many constituents	Mixed	Usually limited to government and main armed group(s)
Process	Open/public	Mixed	Generally closed/formal
Time frame	Long process	Variable	Shorter time periods/use of artificial deadlines
Human rights	Collective rights often prevail	Balanced approach	Individual rights prevail
Justice	Traditional justice mechanisms; Restorative justice	Mixed Retributive justice	International norms;

In sum, a hybrid approach may build broader-based support for a process, while maintaining some of the strengths of formal diplomatic processes. In order to assess which issues or individuals to exclude or include, it is helpful to conduct a

formal or informal conflict analysis or mapping exercise.[21] This can identify important secondary actors, spoilers as well as key drivers and assess how they can be flexibly removed or brought in at different times to reframe the situation or change the mediation dynamic.[22] Inclusion can be direct, indirect, consultative, arms length/secondary actor contact, through the media, public protest or social movement. A hybrid approach may create a more intricate, yet flexible mediation space wherein the central objective is to end immediate violence and build sustainable peace.

Concluding remarks

A review of indigenous processes demonstrates their strengths in capitalising upon local and regional cultural norms, integrating community leaders, constructing consensus and emphasising the link between mediation and reconciliation. Also, if strengthened at the local level and supported by democratic processes, indigenous mediation processes may play a greater role in preventive diplomacy and peacemaking. However, in certain cases, formal and diplomatic mediation processes are better able to protect themselves from spoilers and external pressures, and to get agreement in a shorter time-frame.

Three general comments can be drawn from the above discussion:

- Indigenous processes are able to construct consensus, facilitate inclusion and integrate judicial norms recognised and respected by the community;
- Universal applicability of indigenous mechanisms is not possible. Also, these mechanisms are limited in their ability to end violence quickly and address complex crises including regionalised war or genocide;
- A 'hybrid approach' drawing upon elements of both indigenous and official processes might allow for greater inclusion, while keeping mediation processes efficient and effective in the short and long term.

To conclude, there are no easy answers to the question of inclusion in mediation processes. A focus on inclusion underscores the importance of ensuring that various interests have been articulated and considered in order for agreements to be sustainable. This review of a selection of indigenous processes has pointed to their inherent strengths and limitations. Further inquiry into the respective effectiveness of various indigenous and official processes would improve our understanding of peacemaking. A possible 'hybrid approach' may help foster inclusion, while maintaining the advantages of diplomatic initiatives. Ultimately, a mediator must rely on his or her judgement, experience; counsel and analysis, bearing in mind that including or excluding particular individuals, interests or issues can unlock the door to peace or be fatal to a process.

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21 See among others Diana Chigas, "Enhancing Practice in Conflict Analysis and Strategy Development", CDA Collaborative Learning Projects: www.cdainc.com.

22 On the role of reframing in conflict resolution, Paula Murphy Ives, "Negotiating Global Change" L. Crump and I.W. Zartman eds., *International Negotiation*, Vol. 8, No. 1, 2003, pp. 43-78.