

Peaceful Coexistence?

‘Traditional’ and ‘Non-traditional’ Conflict Resolution Mechanisms

Janel B. Galvanek & Katrin Planta

Research Report

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List of Abbreviations

ADC	Autonomous District Councils
ADR	alternative dispute resolution
CBO	community-based organization
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia –Ejército del Pueblo (Armed Revolutionary Forces of Colombia - People's Army)
IDP	internally-displaced persons
ILO	International Labour Organisation
NA	native administration
NGO	non-governmental organization
NRC	Norwegian Refugee Council
TBO	trial by ordeal
UN	United Nations
USAID	United States Agency for International Development

Executive Summary

This report is the final analytical report of a comparative research project generously funded by the German Foundation for Peace Research and implemented by the Berghof Foundation. The project analyzes the forms of coexistence between ‘traditional’ (indigenous, local, community-based) and ‘non-traditional’ (imported, liberal, state-based, Western) approaches to conflict resolution, and is based on field research in Colombia, Liberia and Northeast India. Its central line of inquiry examines whether the coexistence of traditional and non-traditional mechanisms of conflict resolution leads to tension and competition between these mechanisms, thereby potentially furthering conflict, or whether the coexistence leads to more (or better) conflict resolution options for the population, thereby promoting conflict settlement processes and outcomes. We conclude that both situations can be true under specific conditions. For instance, coexistence can have a positive effect if the options for conflict resolution are well understood and managed, if responsibilities and competencies of the mechanisms are clear, and if actors treat each other respectfully and do not struggle over power. However, if this is not the case, coexistence can indeed lead to tension and further conflict.

The debate about whether peacebuilding should be designed primarily as state building implemented from above or as a transformative process from below is not new. Clearly, peacebuilding approaches primarily based on the Western agenda of ‘liberal peace’ do not necessarily provide the best solutions for conflict resolution and sustained peacebuilding, particularly in societies that have parallel, informal systems of governance. Thus traditional mechanisms of conflict resolution have received much attention over the last years as alternatives to international peacebuilding and state-based justice approaches. Yet this attention has focused mainly on the characteristics and processes of such individual traditional mechanisms. This research report goes beyond this narrow focus and investigates not only the principles, characteristics, and methods of these informal and customary systems of conflict resolution, but also how these systems coexist and interact with more non-traditional approaches, including both state-based mechanisms and those of third-parties. The report also examines how this coexistence between mechanisms affects the conflict resolution processes and outcomes of communities and individuals.

This report analyzes and compares findings generated from field research conducted in Liberia (Monrovia and Bong County), Northeast India (Meghalaya) and Columbia (La Guajira) and gives an overview of the context in each of those regions. The terminology of ‘traditional’ and ‘non-traditional’ is examined in detail, including the common features of traditional systems worldwide and the limitations that such systems have in addressing conflict. This is followed by a discussion of the concept of hybridity and its relation to this project as well as an illustration of how communities and individuals choose between the various mechanisms of conflict resolution at their disposal. The report then identifies the various forms of coexistence between conflict resolution mechanisms that were evident in the three case study countries and links these identified forms to other, similar contexts of coexistence. The specific factors that shape the forms of coexistence between mechanisms are then expounded upon and their significance weighed. Lastly, conclusions are drawn with regard to the impact of coexistence on overall conflict settlement processes and outcomes, and recommendations are given to promote peaceful and cooperative coexistence between mechanisms for conflict resolution.

1 Introduction

The purpose of this report is to present the findings and recommendations that came out of a 24-month comparative research project on the coexistence and interaction of ‘traditional’ and ‘non-traditional’ conflict resolution mechanisms. Under the heading “Peaceful Coexistence? ‘Traditional’ and ‘Non-traditional’ Conflict Resolution Mechanisms”, the project analyses the patterns of coexistence between ‘traditional’ (indigenous, local, community-based) and ‘non-traditional’ (imported, liberal, state-based, Western) approaches to conflict resolution based on field research in Colombia, Liberia and Northeast India. The main question of the research project is whether the coexistence of traditional and non-traditional mechanisms of conflict resolution leads to tension and competition between these mechanisms, thereby potentially furthering conflict, or whether the coexistence leads to more (or better) conflict resolution options for the population, thereby promoting conflict settlement processes.

We will begin by outlining the research focus and key concepts used within the research project and will then provide a short overview of the past and current research and discourses on traditional and non-traditional conflict resolution mechanisms, thereby demonstrating the particular relevance of our research for the field of conflict resolution and peacebuilding. We will briefly outline the research design for this study and provide more detailed information on the chosen case studies. The next section will set the context in which this study is situated – a context in which international or state-based approaches to peacebuilding play an increasingly important but not unchallenged role in solving violent conflicts – followed by definitions of key terminology and concepts used in the project. The following section will provide the reader with an analysis of the forms of and factors for coexistence between traditional and non-traditional mechanisms of conflict resolution within our three cases and the impact this coexistence has on conflict settlement processes. Finally, we will draw a number of conclusions from our case studies and give concrete recommendations for enhancing peaceful coexistence.

1.1 Background and Rationale

The debate about whether peacebuilding should be designed primarily as state building implemented from ‘above’ or as a transformative process involving the entire society from ‘below’ is not new (Lederach 1997, Fisher and Zimina 2009). The importance of local actors and “local peace constituencies” has been acknowledged in the conflict resolution and peacebuilding fields since the mid-1990s. Similarly, international development organizations began in the first decade of the 21st century to focus on “local ownership”, whereby local actors should be integrated into the design and decision-making processes of development projects (Reich 2006, 5-6). Clearly, ‘top-down’ peacebuilding approaches based on the Western agenda of ‘liberal peace’ may not provide the best solutions for conflict resolution and sustained peacebuilding, particularly in societies which have parallel systems of governance or whose societal structures differ substantially from Western statehood (see, for example, Richmond 2011a and 2011b). Many societies are organized more traditionally according to clans, ethnicities or tribes, which have their own conflict resolution mechanisms through which they manage and resolve conflict, maintain harmony within society, and establish and maintain security for their population. Western approaches to conflict resolution have also been criticized for not being legitimate and effective in many contexts. In fact, while peacebuilding has become accepted as the “most comprehensive label for working towards sustainable and just peace” (Ropers 2013, 2), international peacebuilding interventions have largely failed to produce the expected results both in terms of providing security and stability and furthering democratization

(Chojnacki and Menzel 2011, Zürcher 2010). Partly as a result of this critique, researchers and practitioners have started to take a renewed interest in more traditional ways of resolving conflict.

Research into the mechanisms of traditional conflict resolution, which has many similarities with ‘alternative’ dispute resolution methods (such as arbitration, conciliation, mediation, and negotiation, see Barié 2008)¹, started in the framework of the “cultural turn” in the late 1980s and early 1990s (Avruch 1991, followed by Zartman 2000, see also Branch 2014), which argued in favor of taking local specificities more into account. Traditional mechanisms then became a focus of the peacebuilding field, most particularly related to issues such as mechanisms for post-war reconciliation, transitional justice, and dealing with the past (see Idea 2008, Branch 2014), culminating in a “renaissance of interest in indigenous, customary and traditional approaches to dispute resolution and reconciliation” (Mac Ginty and Richmond 2013, 777).² The “hype” (Huysse 2008, 1) of the positive potential of (adapted) traditional approaches in the framework of transitional justice and reconciliation policies – particularly after the success story of the Gacaca tribunals in Rwanda – was also reflected by the UN’s recognition of traditional mechanisms and their vital role in administering justice and settling disputes. In the 2004 Secretary General Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, the UN claimed 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” (United Nations 2004, 12). Over the years, a “rich scholarship embracing the use of traditional and alternative dispute resolution mechanisms in different cultural and religious contexts”, particularly in Sub-Saharan Africa³ and South-East Asia, has been developed (Horne 2014, 19). This may be partly due to the increasing recognition of the rights of ethnic minorities and indigenous people which began in the 1990s (see Van Cott 2000) and the emerging debate around legal pluralism. Working with traditional authorities also became appealing to Western audiences as it allowed them to base their “legitimacy on claims to represent and work with authentic African identity and difference, treat Africans with dignity as Africans and avoid imposing Western ideas and models” (Branch 2014, 614).

The normative assumption, at least with regard to administering justice, is that “community- driven or ‘bottom-up’ justice programmes using traditional methods are more legitimate, more participatory, and therefore better at promoting reconciliation and development than programmes designed and administered by external actors” (Horne 2014, 18). For example, one state official in Colombia asserted when talking about the conflict resolution system of the Wayuu indigenous group:

“The normative system of the Wayuu is a much more superior system compared to the ‘occidental’ system. It is based on reconciliation and dialogue and differs fundamentally from the occidental system of justice administration that is based on the figure of the ‘judge’. ... within the normative system of the Wayuu, it is the conflict parties themselves who decide on the solution to their conflict and obviously, if a solution is based on my own decision, I am much more inclined to accept the solution. ... In addition, the system is quick and leaves less room for revenge. Many cases are resolved through a win-win solution.” (Interview: Riochacha, 30.6.15)

However, there are a number of flaws evident in the study of traditional justice, and more broadly, traditional

1 The recognition of the limitations of formal justice systems led to the introduction and growth of “alternative dispute resolution” methods as a means to tackle conflicts.

2 In practice however, it is important to note that the effort to integrate ‘traditional approaches’ into the state-building enterprise is not new. One interesting example in this respect is the Nyaya Panchayat– a village-based institution of dispute resolution in ancient India. The Nyaya Panchayat lost much of its authority in the medieval era but attempts were made to revive it during the colonial and post-independence regimes. The traditional system was meant to both alleviate the state-based justice system and “facilitate speedy access to justice at the grassroots level”. For more information, see Upadhyaya and Sharan Upadhyaya, 2016.

3 According to Branch (2014, 614), the cultural turn is grounded “in the idea that in certain parts of the world, the most important, authentic identities are cultural identities, particularly traditional, customary or tribal identities.... The West has long conceived of Africa in tribal terms, thus it comes as small surprise that Africa finds itself at the cutting edge of this multifaceted turn toward cultural intervention.”

conflict resolution mechanisms. Traditional approaches to conflict resolution tend to be lumped together, regardless of geographical location, structure (tribal-based, etc.) or function (mediation, delivering justice, etc.). Furthermore, much of the emerging literature on local and/or traditional approaches has tended to mystify or “romanticize” these approaches as being more “authentic”, “effective” and “home-grown” (see Huyse 2008, 6), while overlooking their limitations. Researchers and practitioners in the field of conflict resolution must be careful to avoid such romanticization, particularly because traditional institutions and mechanisms may be based on hierarchical or patriarchal systems which are inherently exclusive. Systems which exclude the voices of women or youth – while perhaps successful in decades and centuries past in keeping the social peace and resolving disputes both within one’s community and with one’s neighbors – may no longer have the authority in the 21st century to act as the undisputed voice of a community. For instance, in northern Uganda among the Acholi people, the internationally-supported and funded revival of traditional justice, or what Branch refers to as “ethnojustice”, has had the perverse effect of reinforcing the forms of domination and inequality in society that partially led to the conflict in the first place, by allowing male elders to re-assert their power under the guise of tradition and rebuilding an authentic order (Branch 2014, 622-623).

Working with traditional approaches to conflict resolution brings other challenges as well. Traditional approaches are not always homogeneous, as neighboring communities may have entirely different traditional methods of resolving disputes. Moreover, due to the passage of time, violent conflict, and outside influences such as colonialism and modernization, traditional mechanisms have changed and transformed.⁴ Due to the impact of conflict, traditional relations in the community may have become influenced by militaristic hierarchies, and local actors working at the grassroots level may not be as autonomous as would be assumed. Indeed, such actors may be disempowered and lack capacity for sustained peace activities, as they too are susceptible to the effects of violent conflict and may be co-opted or controlled by militias, criminal groups, clan-based politics, the state or external actors.

Another challenge arises when traditional approaches to conflict resolution are taken by external actors and placed into the framework of Western concepts, becoming “conquered” and usurped in the process”, thereby changing their inherent character (Boege 2011, 434), or when traditional approaches are instrumentalized by Western intervention to legitimize their own activities. This ‘hijacking’ of traditional mechanisms can be carried out by international peacebuilding actors or state institutions. For instance in Liberia, the Truth and Reconciliation Commission recommended “the modification and use of the Palava Hut traditional conflict resolution and transitional justice mechanism, to redress, atone for, heal, and resolve community conflicts left in the wake of the civil war” (Ministry of Internal Affairs 2012, 17). The government’s “Strategic Roadmap for National Healing, Peacebuilding and Reconciliation”, a comprehensive document designed with the input from various civil society actors, repeatedly refers to “palava hut methodologies” and “palava hut processes”, without giving any explanation of what this actually entails or whether the government envisions the same methodologies and processes of palava hut that traditional communities envision. Mutisi (2012, 9) highlights that while “traditional institutions are rooted in the culture and history of African societies, the modern state exerts a large amount of influence on these institutions.... In some cases the traditional institutions are politicized and have become instruments of propagating state ideology.” With regard to external intervention, Ramsbotham et al. (2005, 229) argue that while local actors involved in conflict resolution have authentic roots in the community, they are nevertheless “compelled to speak the language of peacebuilding as defined by powerful donors”, leading the authors to the conclusion that the “local level is [not] inevitably a quintessentially pure locus for peaceful activities and values”.

Finally, a last challenge relates to the process of knowledge production, as our own epistemologies and philosophies of knowledge are often a hindrance to our understanding of alternative means of legitimacy, power and dispute resolution. This is true as well for the field of conflict resolution, which is primarily based

4 See, for example, Graham, Brigg and Walker 2011, 75; Huyse 2008, 7; and Galvanek 2016, 16.

on Western assumptions about peace and conflict, developed mainly in North American and European think-tanks and universities (see Avruch 1991; Walker 2004; and Mac Ginty 2011, 4-5). Herman Schmid argued in 1968 that “peace research has adopted a system perspective and a value orientation which is identical with those of the existing international institutions and lies very close to those for the rich and powerful nations” (cited in Mac Ginty and Richmond 2013, 766). Walker has claimed that “the discipline of conflict resolution perpetuates ontological violence, the suppression and silencing of Indigenous ways of conceptualizing and experiencing the world... Western problem-solving models of conflict resolution are promoted as appropriate for all cultures” and “have assumed hegemony in the fields of conflict resolution and mediation” (Walker 2004, 527). Two trends have emerged from the recognition of these challenges and limitations. The acknowledgement of the limitations of traditional conflict resolution, while recognizing their potential capacity for peace, has resulted in normative approaches “gradually giving way to more realistic, empirically based assessments of the potential role of traditional mechanisms” (Huyse 2008, 7). Simultaneously, there has been much discussion of the concept of hybridity in peacebuilding, which we will discuss in more depth in Section 3.3.

1.2 Research Focus

While the above is evidence of a rich academic field on traditional approaches *individually*, it also highlights the lack of research into the coexistence and interaction of traditional mechanisms with non-traditional conflict resolution mechanisms. Often, traditional approaches have been researched and analyzed as if they take place in a bell-jar, independent of broader socio-political processes. Our project addresses this research gap. We not only investigate the principles, characteristics, and methods of traditional and non-traditional conflict resolution mechanisms, but also the different forms of coexistence that exist between the two approaches, which can demonstrate the benefits of potential cooperation.

The project therefore puts a clear emphasis on the relational aspect, the interphase between traditional and non-traditional approaches. Our research investigates how traditional, community-based conflict resolution mechanisms – with all their potential advantages, yet also their limitations – coexist and interact with non-traditional mechanisms (sometimes, but not always, state-based, and often Western influenced) and what impacts the various forms of coexistence have on the process and outcomes of conflict settlement.

The notion of coexistence in the field of ecology traditionally refers to different species coexisting with each other in the same habitat. Coexistence in this context will always be competitive in some sense, simply because animals are forced to compete with each other over resources such as food, habitat, etc., although this competition can have varying degrees). How this inherent competition gets resolved thus differs quite a bit.⁵ In terms of social orders, coexistence can be defined either minimally, meaning simply existing together at the same time, in the sense of Van Cott’s “simultaneous existence of distinct normative systems” (Van Cott 2000, 209) or maximally and ideally, meaning living peacefully together as a matter of policy. For this project, we have chosen the minimal definition of the word, as we feel that coexistence need not always be peaceful. Coexistence can entail an entire spectrum of relations, from positive interdependency to mutual deference to antagonism. Coexistence should not presuppose cooperation. Indeed, the choice to coexist may be made pragmatically in the sense that both approaches are accepted and considered legitimate by certain population groups and the advocates of both approaches understand the need to coexist. The choice to coexist peacefully may be made based on the free will of the parties in question, or due to various pressures of one side on the other. The form of coexistence between the two approaches can thus impact on the various modes of interaction.

⁵ Valuable comment from Dr. Max Wolf, Evolutionary Biologist, Group Leader, Leibniz-Institute of Freshwater Ecology and Inland Fisheries, Berlin.

Mutisi (2012, 9) states that an understanding of the interactions between traditional and modern conflict resolution mechanisms “could be central in the promotion of sustainable peace.” While there has been research carried out into the impact of Western and state-based approaches on traditional mechanisms, little is known about the impact and influence of traditional structures on state mechanisms or other non-traditional forms of conflict resolution. Our focus therefore is to understand the coexistence and mutual impact of *both mechanisms on each other and on the conflict settlement process* of the communities involved. To this end, the project addresses three broad research questions:

- 1) How are traditional and non-traditional conflict resolution mechanisms constructed and how do they function in a particular context?
- 2) What forms of coexistence can be observed between the two approaches?
- 3) What effects do the various forms of coexistence have on the conflict settlement process and outcomes?

The answers to these questions not only help to further the academic debate, but also produce insights relevant to the research-praxis nexus. Sentongo and Bartoli (2012, 36) state that “...state and traditional systems can work together cooperatively, complementing one another”. The question that remains unanswered, however, is *how* this cooperation should be carried out (or is, indeed, already being carried out). The originality of this study lies not only in the examination of the way that traditional mechanisms function and coexist with non-traditional mechanisms, but also in its potential to provide guidance for positive and cooperative interaction among the two. This cooperative interaction could ideally have positive effects on the conflict settlement process of the affected communities, as well as lead to a strengthening of the ongoing peacebuilding processes in crisis-ridden or post-conflict countries. Furthermore, our analysis could be highly beneficial not only for peace practitioners working on the ground among traditional societies, but could also have a potential impact on the common theoretical models for peacebuilding and conflict transformation.

1.3 Research Methodology

Being a young and theoretically-underdeveloped academic discipline, conflict resolution has borrowed many concepts from neighboring disciplines such as sociology, psychology, cultural studies, political science and international relations. As a result, research on violent conflict and (post-war) peacebuilding not only differs according to its research questions and scope of analysis, but also greatly differs in its theoretical approaches, scientific vocabulary and methodological procedures. Classical political science approaches to the study of war are often based on utilitarian-rationalist theory and work with macro-quantitative methodology (Schlichte 2011). While these approaches have been the accepted and dominant paradigm for a long time, they have also been criticized for exaggerated rationalism, disregard for context, and neglect of the meso-level of analysis. These approaches have been challenged by research based on an ideographic approach that calls for qualitative methods, including field research (ibid., 4-5). This research builds on these arguments and combines theory-guided desk research with empirical findings generated through field research in three countries, allowing for “the collection of data in a natural setting sensitive to the people and places under study” (Creswell 2007, 36).

Based on our analytical framework outlined below, this project employs an empirical and comparative approach in order to investigate the factors that shape different forms of coexistence and the impact of these different forms on conflict settlement processes/outcomes through in-depth case study research. Starting with a thorough literature review⁶, we identified a set of variables that have been found to be important for shaping various forms of coexistence, including context, relational factors, structural factors and individual factors of each mechanism.

⁶ While much literature exists on traditional mechanisms, the core literature on coexistence is thin, with little systematic analysis, and mostly deals with examples from the African continent.

For each case, we traced the evolution of the forms of coexistence over time, analyzing how these different factors influenced the forms of coexistence. In her research on mechanisms and structures of preventing conflict in post-war communities, Neumann (2013, 23) observed that while the core issues (content of conflict) remained the same, the practices through which conflicts are handled (form of conflict) have transformed over time. We have therefore looked at the overall coexistence of these different mechanisms of conflict resolution today and investigated the process of how these different mechanisms came to be the way that they are currently. We then tested two contradictory assumptions about how different forms of coexistence can potentially affect the conflict settlement processes of the community involved:

- a. The coexistence of traditional and non-traditional mechanisms of conflict resolution leads to tension and competition between these mechanisms, thereby potentially furthering conflict.
- b. The coexistence of traditional and non-traditional mechanisms leads to more (or better) options for the population, thereby promoting conflict settlement processes.

This project examines cases of conflict resolution in Colombia, Liberia and Northeast India in order to establish *under what conditions* and *due to which factors* either assumption A or assumption B prove to be true. Sequenced field research in the three different sites served to test and further improve our analytical framework throughout the research process. Three case study reports were produced which provide in-depth illustration and analysis of the particularities of each case. The following sections briefly outline the case study selection, provides brief background information on the case studies, and outlines the data collection procedures and instruments.

1.3.1 Case Study Selection

The primary intent of our research was not to compare and contrast traditional mechanisms between countries, but to examine the various forms that the coexistence of these mechanisms with non-traditional approaches to conflict resolution can take. To this end, our selected case studies – Colombia, Liberia and Meghalaya state in Northeast India – have a number of similarities. All three countries have traditional and/or indigenous population groups⁷, many of which live in rural settings. These communities are often alienated to a certain extent from the central state authorities, partly due to geographical reasons but also due to weak state structures. In this environment of a strong center-periphery divide, traditional systems of conflict resolution are often better able to survive intact. Furthermore, all three cases represent multiethnic societies. As each community and ethnicity can have different mechanisms and institutions of conflict resolution, the peaceful accommodation of these different mechanisms is all the more important in order for society to function.

Another similarity between cases is colonial rule, which contributed to the sidelining of existing traditional approaches with the importation of Western state models and new administrative structures (see, for instance, Chapman and Kagaha 2009, 4). British colonial regimes such as in India often implemented a dual system of governance in which English common law was applied in areas directly under colonial rule, while customary law was permitted in areas ruled “indirectly”, thereby formalizing customary law systems (Robins 2009, 1). While Liberia was never colonized in the classic sense by a European country as Colombia and India were, the indigenous population of Liberia was governed by the settler population in Monrovia (freed slaves from the United States and their descendants) through a “colonial style of indirect rule” (Ellis 1999, 40) from the mid-19th until the end of the 20th century – a “black imperialism” which had strikingly similarities to the colonial methods used by the French and British (Akpan 1973, 227 and 232).

Finally, in all three cases, conflicts around land (distribution and exploitation) are an important

⁷ Although Colombia, Liberia and Northeast India all have indigenous populations, there is a dramatic variation in terms of numeric representation of indigenous communities in contrast to the overall population of the country. For instance, in Colombia the indigenous population makes up only 2.7% of the overall population, while approximately 95% of the population in Liberia is considered indigenous.

feature of the relationship between traditional communities and other actors, including the state, (international) business corporations, and other social groups. In Colombia, unfair land distribution has been a root cause of the country's decades-long civil war, and agrarian reforms were the first agenda item in the negotiations between the government and the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia* – FARC). In the Northeast Indian state of Meghalaya, various issues concerning tribal land, including reallocation practices and the redrawing of maps⁸ have been identified as key drivers of conflict. In Liberia, land has been a contentious issue going back to the attempt of the settler population in Monrovia to exert more control over the native 'Hinterland'. Land among the native tribes was considered community owned, while only "civilized" Liberian (i.e. settlers) were allowed to privately own land. This kept the natives from being able to invest long-term in the agricultural sector, key to Liberia's economy, which added to the natives' marginalization (Neumann 2013, 191-192).

Starting from this setting of similarities and in order to both maximize comparison and better understand the range of factors that can affect the forms of coexistence and their impact, the selected cases have variety in terms of geographical setting, conflict phases, and degree of international intervention. So far, studies on traditional mechanisms of conflict resolution have been mostly based upon single case studies, most specifically examined from a regional perspective (e.g. Zartman 2000, International Idea 2008, Mutisi and Sansculotte-Greenidge 2012), and there are only a few studies that take a cross-regional approach (see, for instance, Neumann 2013). We have enlarged this picture and taken several examples from a broader range of regions. The case study countries also find themselves in dramatically different phases of armed conflict. Liberia is a post-conflict country, with long-running and extensive international peace-support assistance. In Colombia, a peace process has just been concluded with FARC to end the country's long-standing armed conflict. The various conflicts in India's northeast region have been ongoing for decades, many with ongoing peace efforts and war taking place simultaneously. The degree of international intervention also varies dramatically. In Colombia and India the international intervention is significantly lower than in Liberia. UN peacekeeping troops have been active in Liberia since 2003, as well as numerous international development and peacebuilding actors. In India, the national government is determined to carry out its own conflict management initiatives, with little interest and much skepticism of international involvement. Governmental policies of the Indian state "do not encourage international interventions – direct or indirect – in any conflict resolution process" (Sahni 2002, 40). In Colombia, by contrast, international involvement in the form of support for the peace process has been welcomed as long as it does not challenge the Colombian government as the key driver of the process.

At the same time, however, we found these three cases to share a remarkable number of similarities, including:

- ≡ The failure of the state to provide sufficient access to justice/conflict resolution.
 - ≡ Simultaneous processes of both traditional decline ('deculturalisation', due to modernization and war) and revival and resistance, for instance the creation of new or improved traditional formats/structures.
 - ≡ An uneasy coexistence between state and traditional structures, yet also the mutual need for coexistence (e.g. legitimate traditional system can alleviate overburdened/ill-functioning justice system, while traditional systems need support due to limitations of resources, scope and context).
 - ≡ The importance of formal attempts to regulate coexistence (e.g. through legal frameworks such as laws, constitution) thereby creating an enabling and/or controlling environment.
 - ≡ The crucial role of individual actors involved in the conflict resolution processes in shaping coexistence.
- Furthermore, while the individual and/or local conflicts that we examined in detail during our field research may not be related to the meta-conflict at the national and/or regional level per se, the conflict resolution mechanisms used to resolve these individual and/or local conflicts may be useful and beneficial in helping

⁸ The Hindu 2015. "Land swap: can a deal be clinched?" March 26, 2015. <http://www.thehindu.com/todays-paper/tp-opinion/land-swap-can-a-deal-be-clinched/article7033418.ece>

to resolve the overarching (violent) conflict. For instance, Autesserre (2010, 9-13) argues that the settlement of disputes at a local level ultimately supports the larger national peace agenda, because settling them at the local level prevents their escalation into national level conflicts.

Colombia Case Study:

Interdependency and Interference - The Wayuu’s Normative System and State-based Conflict Resolution

The Colombia case study centered on the coexistence between the indigenous system of conflict resolution of Colombia’s most populous indigenous community, the Wayuu, and state-based intervention to solve conflicts within La Guajira department. Field research in Colombia was conducted in June and July 2015 in the capital city Bogotá and in various sites of La Guajira.

The Wayuu’s approach to conflict resolution consists of a system of compensation payments that are negotiated on a case-by-case basis through the mediation efforts of the traditional *Pütchipü’üi* (in Wayuunaiki) or *palabrero* (in Spanish), a term that can be translated as “(s)he who carries the word” or literally “the legs that carry the word”. The figure of the *palabrero* has its mythical foundation in the bird ‘Utta’ and designates somebody who is an authentic specialist for resolving conflict. In 2004, the Wayuu’s conflict resolution approach headed by the institution of the *palabrero* was declared a good of national cultural interest by the Colombian Ministry for Culture, and in 2010 it was admitted to the UNESCO list of immaterial world cultural heritage. Today, this traditional system – based on customary law with a strong oral tradition and the principles of collective responsibility, reciprocity and redistribution – is protected through the Colombian Constitutional Framework of 1991, but also complemented and challenged by a broad range of state-based instruments.

State-based mechanisms relevant for this research include the ordinary justice system, including alternative dispute resolution (ADR) mechanisms and specialized services to improve access to justice for marginalised communities, such as local ‘justice houses’ (Casas de Justicia); the activities of law enforcement institutions such as the national police under the Ministry of Defence; land property registers; ministerial/ executive interventions (mainly through the Ministry of Interior’s ‘Conflict Unit’); and ombudsmen offices. In addition, there are also institutionalized dialogue platforms between the government and indigenous communities set up to discuss and resolve conflicts both on a national and regional level, such as the National Concertation Roundtable between the government and the indigenous people (Mesa Permanente de Concertación Nacional entre el Gobierno y los Pueblos Indígenas) or the Dialogue and Concertation Roundtable of the Wayuu (Mesa de Diálogo y Concertación para el Pueblo Wayuu).

While the Wayuu conflict resolution system is strongly rooted in Wayuu culture and is still applied today, it also faces a number of challenges related to the general decline of traditional values and authorities due to the process of ‘deculturalisation’, the emergence of new leaderships, and the conditions of structural violence within Wayuu territory. As a result of this situation, the *Junta Mayor Autónoma de Palabrereros Wayuu*, an organisation founded in 2008 to preserve the cultural heritage of the Wayuu, including their ancient conflict resolution mechanisms, warns against the gradual loss of the ancestral notion of social order among the Wayuu and the replacement of their traditional compensation system by Western modes of justice administration (see Junta Mayor Autónoma de Palabrereros Wayuu 2009).

From a historical perspective, the coexistence between the Wayuu conflict resolution system and the state-based approaches to resolve conflict has evolved from a fairly independent parallel existence, to pragmatic ad-hoc arrangements, and then to an (imperfect) institutionalization of coexistence. In this last setting, requested and mutually-accepted intervention and complementarity between indigenous and state institutions alternate with undue interference from both sides as well as processes of integration and co-option of indigenous practices by the state and third parties.

Despite the relatively strong legal institutionalization of the practice of coexistence, conflict resolution pluralism in La Guajira is not without conflict. Challenges relate to a lack of clearly defined legal competencies



© Katrin Planta. Intervention of a palabrero. La Guajira, Colombia.

between indigenous and state-based conflict resolution mechanisms and undue interference of one mechanism in the sphere of the other. More problematic than the challenges arising from coexistence, however, are the inherent weaknesses of both approaches individually, including the general inability of the Colombian authorities to adequately protect the population from the aggression of violent actors in the context of an internal armed conflict and the declining authority of traditional conflict resolution actors.

Hence, the case study comes to the conclusion that coexistence per se is an accepted principle in both the indigenous and non-indigenous community. Neither state nor indigenous representatives deny the right of the other conflict resolution mechanism to exist, but what was rather judged problematic is the discrepancy between the legal protection of coexistence in theory and its implementation in practice. Recommendations to enhance peaceful coexistence include a clearer division of tasks, capacity building for staff within the justice sector, the establishment of institutional roadmaps to provide stronger orientation on the different steps and entities in conflict resolution processes, and enhancing the knowledge of the indigenous population through education regarding existing conflict resolution mechanisms. It is also essential to improve the structural and general living conditions of the Wayuu, in order to allow them to live according to their traditions in the first place. From a more critical perspective, however, it can be argued that the challenges of not only formulating but also implementing mutually-beneficial coexistence arrangements relate to the underlying tension between the neoliberal practices of an elite-driven, state apparatus on the one hand and its constitutional obligations of protecting ethnic minorities on the other hand. Resolving these tensions would require much more than finding better coexistence arrangements for conflict resolution, but would mean fundamentally changing the state's engagement with indigenous communities at all levels, including local, regional and national.

India Case Study:

Traditional Institutions of Dispute Resolution - Experiences from Khasi and Garo Hills in Meghalaya

The Indian case study presents findings on the coexistence between traditional institutions, non-traditional institutions, and hybrid institutions in the state of Meghalaya in Northeast India. Field research was conducted in both Garo and Khasi Hills of Meghalaya in June 2015.

The traditional institutions in Meghalaya include the institution of the *Dorbar* in the Khasi and Jaintia Hills, a governance arrangement consisting of three levels. In the Garo Hills, villages are grouped into an *A'king*, which is administered by a person with the title of *Nokma*. These traditional institutions have undergone many transitions over the past decades during and after colonial rule. British protectionist policies in Northeast India protected the indigenous (tribal) populations of the Hill areas of Meghalaya, accorded the traditional institutions respect and allowed these institutions to function. Yet the British also established hybrid institutions, such as the Autonomous District Councils (ADC), to act as a type of facilitator between the colonial regime and the traditional institutions and to supervise their activities. These hybrid institutions have limited the authority of the traditional institutions over the years and have contributed to their loss of legitimacy. Such governance transitions as well as the gradual modernization of the state of Meghalaya have both greatly affected the role of traditional institutions in society and their coexistence with the state.

The state of Meghalaya, although considered relatively peaceful until recently, is currently characterized by tensions between the Garo and Khasi/Jaintia tribes and their associated armed insurgency groups, as well as the often violent dynamic between the indigenous tribal population of Meghalaya and ‘outsiders’, who are mainly Muslim migrants from Bangladesh or other areas of India. The role of land is central to much of the conflict that is taking place in the state, both between the tribes and with ‘outsiders’, and historically it has been the traditional institutions that have played an essential role in managing land. Yet due to waning legitimacy, a lack of will on the part of the traditional institutions to become involved in resolving armed violence, and the tendency of the state to sideline the traditional institutions when negotiating with insurgents, the traditional institutions have lost much of their authority in dealing with issues of land and this is where the coexistence between the traditional, hybrid and non-traditional governance structures is the most visible.

There is significant tension between these structures and institutions in the state, which can be traced to overlapping jurisdictions, power struggles and a high level of distrust of the respective institutions and their competencies. Yet because all layers of governance in the state are influenced and managed by indigenous elites (as the majority of the population is indigenous and the non-indigenous population enjoys little rights to hold public office), the citizens of Meghalaya perceive the institutions more as a continuum, rather than as being in direct confrontation with each other. One can also cautiously speak of a resurgence of the traditional institutions and an interest on the part of the communities in utilizing the traditional authorities and their expertise and procedures to help resolve their disputes. Nevertheless, the problems of overlapping powers and spheres of influence remain.

Thus the coexistence of conflict resolution mechanisms in Meghalaya is hindered by mistrust, competing interests among the various institutions, an overlap in the responsibilities of the respective institutions and even a lack of understanding about what these responsibilities and roles are for each institution. Coexistence could be dramatically improved by implementing a more trustful relationship and sensitive approach, as well as better communication and coordination, between the institutions. There is a need to streamline traditional practices, eliminate discrepancies and overlaps in jurisdiction, and accord more recognition to the traditional authorities.

Liberian Case Study:**Pragmatism and Mistrust - The Interaction of Dispute Resolution Mechanisms in Liberia**

The Liberia case study investigated the coexistence between the myriad of conflict resolution mechanisms present in Liberia, which include the traditional system of chiefs and elders, state-based mechanisms such as the formal justice system and the Peacebuilding Office, and various third-party initiatives, including the work of many different NGOs. Field research in Liberia was conducted in September 2015 in both Monrovia and various sites in Bong County.

The traditional system of conflict resolution in Liberia was instrumentalized and co-opted by the central government throughout the years of authoritarian rule over the indigenous 'Hinterland'. It also underwent dramatic changes as a result of 14 years of civil war, during which the entire system was dismantled and many of the knowledgeable and experienced chiefs and elders passed away. Yet in spite of these challenging circumstances, the system remains substantially intact and highly legitimate in the eyes of the majority of Liberian citizens, particularly in rural areas, who regularly approach the chiefs and elders in order to have disputes resolved. The traditional system is based on a generally strict hierarchy of chiefs, and conflicts are resolved through a mixture of mediation and arbitration – a procedure that varies and is highly dependent on the individual chief and elders involved in each conflict resolution process. Decisions and resolutions are reached at a slower pace, allowing the conflict parties to reflect and ideally to reach consensus. The ultimate goal of the traditional process is social reconciliation and the restoration of harmony, which should allow community members to live peacefully with each other (again).

Non-traditional mechanisms for conflict resolution include the formal justice system and the Liberian National Police, which have both made significant progress since the end of the war in 2003 in terms of building capacity and implementing reform. Nevertheless, the formal system struggles to establish its legitimacy among the people, as it is considered corrupt, ineffective and much too expensive to be a viable choice for many Liberians. Many citizens use the formal justice system only as a last resort, or if they are privileged enough to be able to afford the system and feel that they can thus outmanoeuvre the other party to the conflict. Yet the system is mainly viewed as largely inaccessible to most citizens and based on a different value system, namely retributive justice and individual rights, which is unfamiliar to the majority of people.

There are also countless third-party actors in the country that are involved in resolving various types of conflicts and which act as a viable alternative to both the traditional and formal systems. These third-party actors include urban community chairmen and chairladies (who are not connected to the traditional system of chiefs), national and international NGOs that offer mediation services and sustainable dialogue projects, community-based organizations, and autonomous governmental bodies, such as the Land Commission, which offers free mediation services at its local offices of Land Coordination Centers. The services of these third-party actors has added significantly to the complexity of the many options that Liberians have at their disposal to have their conflicts resolved, but their initiative and dedication has led to countless disputes being resolved through mediation and alternative dispute resolution, including violent land disputes. These third-party actors have also greatly increased the multiplicity of ways in which the mechanisms for conflict resolution coexist and interact with each other and contribute considerably to the interactive dynamic observed between mechanisms.

Much of the coexistence between the various conflict resolution mechanisms in Liberia is carried out on an ad-hoc and interpersonal level, having little formal institutionalization, and being highly dependent on the personal relations between specific actors. That being said, there seems to be a set of unwritten rules which the actors involved in these systems (are expected to) follow, including a procedure of case referral between mechanisms and an adherence to conflict resolution design. This coexistence can thus be characterized first and foremost by pragmatism, in the sense of working efficiently and with the common objective of bringing peace. Nonetheless, much of the coexistence is also marked by mistrust, whereby the mechanisms do not trust or do not sufficiently value the work that the others are doing. There is specifically a lack of respect for the traditional system and its values and principles.

The interaction and even cooperation of conflict resolution mechanisms in Liberia is happening on a

massive scale, as a simple result of the needs on the ground, yet this cooperation could be significantly improved in order to make it more respectful and therefore more beneficial in the long run for both local communities and for the overall peacebuilding process in the country. While Liberia has been at peace for 13 years and is beginning a new phase of its post-conflict journey without the assistance of UN peacekeeping forces, it is nevertheless still experiencing a significant amount of small-scale disputes, which have the potential to derail the peace if left unattended. It is therefore highly beneficial that the many actors involved in the various mechanisms to resolve conflict understand the danger of leaving conflict unresolved, and acknowledge the importance of working together in order to resolve it.



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1.3.2 Data Gathering and Analysis Methods

Data gathering during desk research consisted of a literature review (secondary sources) and an analysis of primary sources such as NGO and governmental reports or documents (press releases, web-site contents, etc.) issued by key conflict stakeholders. Data gathered through desk research was then complemented by empirical data gathering in the field. Field research in all three countries was conducted for approximately three weeks in each of the cases under scrutiny. Researchers conducted semi-qualitative/problem-centered interviews on the basis of a jointly elaborated set of research questions with a range of selected interview partners. In addition, field research also included focus group discussions, participant observation, archival and bibliographical research in public/private libraries and the on-site collection of relevant documents. Interview partners were identified according to the following criteria:

1. Traditional authorities/community members who are knowledgeable about their community's (traditional) approach to conflict resolution and its interaction with non-traditional resolution methods;
2. National and local governmental representatives involved in conflict management;
3. Conflict parties and stakeholders directly involved in conflict;

4. Resource persons, such as academic experts or NGO staff members, who provided orientation on traditional conflict resolution mechanisms in the particular region in general;
5. Resource persons who can talk generally about the specificities of conflict, including conflict stakeholders, academic experts or NGO staff members.

In total, more than 90 interviews and seven focus group discussions were conducted, and several mediation processes and conflict interventions were observed. Interviews were transcribed selectively and then analyzed according to a set of pre-established categories.

Despite the richness of the gathered material in all three case studies, a few caveats are worth highlighting. Firstly, there may be a certain bias with regard to the community voices included in the research. Partly for logistical reasons, many interviews in Colombia, Liberia and India were held in communities relatively close to urban centers where the population has more opportunity to interact with state institutions. Perceptions of traditional decline or certain knowledge about non-traditional forms of conflict resolution might have differed when talking to informants from more remote areas, where the population lives more isolated and with little access to basic state services. Secondly, it should be mentioned that the field research in all cases was carried out by non-indigenous researchers, whose own interpretations of traditional practices might not always capture and adequately reflect the lived reality of the community.

In response to these caveats, certain strategies were used to enhance data validity. For instance, data triangulation was ensured both through desk research as well as interviews conducted with academic experts, governmental representatives, local authorities, and community members. Moreover, an important aspect of the field research was a discussion on terminologies and concepts; the specific meaning of important words was a regular part of interviews. In the Colombian context, for instance, many interviewees referred to Western concepts they thought the interviewer would be more familiar with in order to explain the Wayuu's cultural practices. For instance, the term *palabrero* was frequently translated as 'lawyer' which is, according to the *palabrer*os themselves, an entirely different concept. It remains unclear whether the different conceptualizations can be explained by the interviewee's effort of 'cultural mediation' or whether they reflect the misunderstanding of Wayuu community members themselves of their own system of conflict resolution. In Liberia, the concept of 'justice' is complex and significantly more holistic than simply the administering of punishment, which is often how it is perceived in Western countries and in international law. Justice in Liberia can be something as simple as resolving a property dispute with a family member or neighbor, or having access to regular earnings in order to be able to feed one's family. Specifically, the concept of 'justice' is often used interchangeably with the concept of 'conflict resolution' in the sense of bringing justice to conflict parties by resolving a conflict between individuals or communities.

2 Research Context

This chapter sets the scene in which our research took place: the evolution of international peacebuilding intervention norms and premises and the effects these have on the resolution of local conflict. While the first section outlines the concept of peacebuilding under the (dominant) liberal peace paradigm, a second section then expands this narrow understanding of peacebuilding and highlights how the term is used for this study. The following chapters then provide information about how the terms ‘traditional’ and ‘non-traditional’ are understood in the framework of this project, and the limitations of using both terms. We will then offer a comparative analysis of traditional and non-traditional conflict resolution mechanisms and examine in more detail the concept of hybridity.

2.1 Peacebuilding under the “Liberal Peace” Paradigm

The concept of peacebuilding, introduced for the first time by Johan Galtung in his 1976 essay, “Three Approaches to Peace: Peacekeeping, Peacemaking, and Peacebuilding” has evolved over time into a synonym for major international intervention in the realm of conflict prevention and resolution. The emerging post-Cold War era and the unblocking of the Security Council in the 1990s occurred simultaneously with a number of intra-state conflicts that caught the world’s attention. After the crisis in the Balkans, the genocide in Rwanda highlighted the international community’s inability to prevent, or at least react to, mass murder, opening the door for an increase in international intervention. In this context, the triangle of peacemaking, peacekeeping and peacebuilding was adopted by the international community as a response towards violent intra-state conflict and its consequences. Since its appearance in the United Nations Secretary General Boutros-Ghali’s “An Agenda for Peace” (1992), the concept of peacebuilding has been associated with activities aimed at strengthening peace in order to avoid a relapse into conflict. Peacebuilding is “a complex, long-term process of creating the necessary conditions for sustainable peace. Peacebuilding measures address core issues that affect the functioning of society and the state, and seek to enhance the capacity of the State to effectively and legitimately carry out its core functions”.

In an international environment where the “responsibility to protect” (ICISS 2001) has been propagated, peacebuilding has become a major intervention strategy of the international community. Its scope has evolved from a minimal focus on negative peace and short-term international interventions (i.e. support for elections), to a maximalist agenda of building democratic governance, strengthening the rule of law, liberalizing the market, supporting civil society and protecting human rights.⁹ In the context of its maximalist agenda, peacebuilding has often been conflated with the concept of state building, resulting in the theory of ‘liberal peace’. The proponents of this theory include states, various international organisations and international financial institutions. According to Richmond (2011a, 58), “Western-led peacebuilding is a state-building project, focused on reinforcing institutions rather than communities and society.” As a result of this state building project recently taking on neoliberal characteristics, there has been “a shift from international assistance and redistribution projects towards the promotion of free markets, investment, and self-help as the basis for peace and economic development” (ibid.).

⁹ With regard to the elements of peacebuilding, scholars usually highlights four crucial areas of intervention, including a political (e.g. civil administration and institution building, democracy and rule of law, free and fair elections, constitutional reform, human rights), economic (e.g. economic rehabilitation, rebuilding of infrastructure, transformation of war to peace economies), psycho-social (rehabilitation of refugees and victims, reconciliation projects, dealing with the past and transitional justice) and a security dimension (security sector reform, justice reform and crime control, small arms control, DDR and conversion control) (Schneekener 2005). Against the broad range of intervention areas, peacebuilding has not remained restricted to the field of conflict resolution or prevention, but has also entered and become mainstreamed in the broader field of international development cooperation.

Liberal peace has been emphasized and implemented in almost all post-conflict and crisis-ridden states. The discourse of ‘universal norms’ of good governance, democracy and a free-market economy, etc. has directly influenced and become a substantial part of any peacebuilding and state building approach. Such an approach has become essential for fragile and post-conflict governments in order to secure funding and support from both financial institutions and Western governments. To contradict these norms is therefore to risk the (re-)building of the state and any ongoing peace process.

Liberal peace, however, has attracted a great deal of critique, most significantly because it acts as a “mechanism for the transmission of Western-specific ideas and practices”, as well as due to its promoters’ conviction of the practice’s superiority and subsequent dismissal (or co-option) of alternative forms of peace-making (Mac Ginty 2008, 144). An understanding of peacebuilding as externally driven whereby the international community intervenes – metaphorically – like a doctor for the sick or conflict-affected society (Daxner et al. 2010) is being questioned more and more. Furthermore, even the critique of liberal peace is being criticized for being too superficial: the dominant current approaches to peacebuilding merely question the modalities of liberal reforms – such as their timing (e.g. the ‘institutionalization before liberalization’ thesis of Paris 2004) – while the underlying assumptions of externally-imposed liberal peacebuilding agendas remain largely unchallenged. It is precisely this blind acceptance of the legitimacy of liberal peacebuilding based on “good intentions” that fails to consider the self-interest and geostrategic (security) considerations of Western donor states when engaging in peacebuilding.

Thus even when well-intended, many Western-designed approaches to conflict resolution and peacebuilding (often with state building at their core) have failed due to both a lack of legitimacy in the communities in which the approaches are being applied and their lack of (measurable) effectiveness. With reference to the issue of effectiveness, researchers have even questioned whether peacebuilding is measurable at all, highlighting that as of today, no solid empirical knowledge is available to test whether peacebuilding really makes the difference it is claiming to make (Menzel 2008; Schneckener 2005). Partly as a counter-concept to the internationally-led peacebuilding described here, researchers as well as practitioners are therefore increasingly turning to alternative peacebuilding concepts, such as multi-track approaches as developed by Jean Paul Lederach in the late 1990s and traditional and customary approaches.

2.2 Resolving Conflict in the Shadow of Liberal Peace

Peacebuilding, however, is not just liberal peace. Peacebuilding will be understood in this project as a long-term and multifaceted endeavor that seeks to improve relations between the conflict parties and encourage overall constructive changes in attitudes, and may involve activities connected with economic development, social justice, reconciliation and humanitarian support. Peacebuilding as a process uses various conflict resolution mechanisms and approaches. Each culture and community has its own mechanisms for resolving conflict and building peace, which can include different institutions and methods at the same time. Conflict resolution “focuses on the deep-rooted causes of conflict, including structural, behavioural and above all, attitudinal aspects” and will be understood here as a way to help parties “explore, analyze, question and reframe their positions and interests as a way of transcending conflict” (Berghof Glossary 2011, 18). While a narrow understanding of conflict resolution focuses on mechanisms under the heading of “alternative dispute resolution methods” such as arbitration, conciliation, mediation or negotiation, for our project we will apply a broader concept of conflict resolution that can also include (traditional) justice mechanisms, institutional procedures (development of specific policies, legislation, lobbying) as well as collective non-violent action or civil resistance (see McCarthy 1990, Dudouet 2014).

While much attention has been given to the influence of state building and peacebuilding processes, little attention has been paid to the fact that the very approaches and mechanisms that external and/or state actors promote and emphasize for peacebuilding may contradict or compete with those of the

more traditional forms of conflict resolution already in place. In many societies around the world, conflict resolution mechanisms based on indigenous beliefs and authorities have significant influence and power among local communities. Particularly in states experiencing violent conflict and/or lacking responsive and reliable governments, these mechanisms may be completely independent of the central state and may carry out tasks that the state cannot (see, for instance, Barfield 2006, 3). While conflict is ongoing, these traditional mechanisms may function unhindered and may indeed offer the only reliable option for local populations. Once a conflict has come to an end, however, state-based (and often internationally-supported and funded) mechanisms may attempt to exert their (new or re-established) power and influence over the communities in question and their mechanisms for resolving conflict.

In other contexts, states may actively try to collaborate with traditional or indigenous mechanisms in order to respond to increasing demands, for example, for minority rights or in order to increase the legitimacy of their institutions. According to Van Cott (2000, 208), “improving the representation and participation of excluded groups and codifying fundamental rights is a strategy employed by Latin American states in the 1990s for consolidating the fragile legitimacy and legality of democratic institutions.” In a similar vein, Horowitz points out that states often feel the need to make legal systems more “authentic” by revitalizing traditional practices, as they are considered more legitimate by the local population and exist partially due to the vacuum of state authority (see Van Cott, 2000, 210).

As we can see, the interaction between traditional and non-traditional conflict resolution mechanisms in the shadow of liberal peace can follow highly diverse patterns. Traditional mechanisms may interact only very little with non-traditional mechanisms, and the level of interaction can greatly depend on the geographical region and the distance from the seat of government. When they do interact, the non-traditional conflict resolution mechanisms may find themselves in an uneasy coexistence with, or in the worst case, direct competition with traditional mechanisms. In still other cases, however, the coexistence of the two mechanisms may be entirely peaceful (see, for instance, Barfield 2006).

3 Defining ‘Traditional’ and ‘Non-traditional’ in Colombia, Liberia and India

In the framework of this project we use the terms ‘traditional’ and ‘non-traditional’, which we prefer over other, similar terminologies. Many studies have examined the norms and values, or worldviews, which underlie both traditional and non-traditional conflict resolution mechanisms (see Walker 2004) which enables us to examine the many similarities that specifically traditional mechanisms have and to differentiate them from non-traditional mechanisms. For instance, Walker claims that indigenous approaches tend to be “holistic, interconnected and cyclical in nature”, while the dominant Western approaches tend to be “atomistic, individualistic, and linear in nature” (2004, 532).

That being said, a number of caveats need to be clarified from the start. First of all, the terms traditional and non-traditional are used here to facilitate analysis and help differentiate between different types of mechanisms. Under no circumstances do we understand these concepts as a dichotomy. Mac Ginty (2008, 151) specifically cautions against “regarding traditional and Western peace-making as discrete conceptual categories”. With regard to different conflict resolution mechanisms, reality demonstrates that mixed forms, overlaps, mutual influence or even fusion between the two are the norm rather than the exception, as most cultures continuously borrow and adapt practices from cultures with which they have contact (Van Cott 2000, 218; see also Boege 2004, 15 and Mac Ginty 2011, 1). This has been confirmed in reference to Darfur where the “new *Judiyya* will undoubtedly be a hybrid, defying purists of traditional customs and disappointing those who aspire to an adulterated modern judicial system” (El-Tom 2012, 111). The research findings from Meghalaya also support this perspective. Interview partners overwhelmingly wanted to retain the traditional institutions in some or other form, and they didn’t perceive traditional institutions and non-traditional institutions “in a binary relation” but rather saw the traditional institutions, hybrid institutions, and non-traditional institutions in a continuum (Upadhyaya and Sharan Upadhyaya 2016, 26-27).

Secondly, we understand ‘traditional’ and ‘non-traditional’ as evolving concepts. Rather than being static notions, they are flexible and can change over time as communities constantly adopt their social practices to changing contexts and new needs. The two notions should not be understood as occurring successively, in chronological order, but rather designate social differences (Boege 2014, 19). Furthermore, not only are the two concepts continually evolving, but the relationship between the two is constantly evolving as well. Sansculotte-Greenidge and Fantaye (2012, 97) point this out in reference to the relationship between traditional institutions and the formal state apparatus in the Afar National Regional State in Ethiopia, stating that the relationship “will continue to be the site of negotiation and manoeuvre.” Moreover, Van Cott (2000, 213) argues that the articulation between indigenous and state law has actually “been negotiated and renegotiated in practice since colonial times in response to changing political conditions.”

Moreover, the intent of our analysis is not to portray one or the other mechanism as better, or more effective for conflict resolution in general. On the contrary, we feel that both traditional and non-traditional mechanisms have their advantages and disadvantages, with great variation within each category. For instance, what may be an advantage for one traditional conflict resolution mechanism in one context may be a disadvantage in a different context. We will make every effort to remain objective and impartial when describing the conflict resolution mechanisms and reserve our analysis and critique for the forms of coexistence between the two types and their effect on the conflict settlement process. In spite of these caveats, which demonstrate how

difficult it is to attach specific labels to forms of conflict resolution, we nevertheless believe that for analytical purposes, it makes sense to offer an ideal-type definition of the terms ‘traditional’ and ‘non-traditional’.

3.1 Traditional conflict resolution mechanisms

Traditional peace-making approaches are, according to Mac Ginty (2008, 145-146), considered to be based on “long-established practice and local custom”. One important and distinguishing factor here is that traditional mechanisms are locally-inspired, or as Boege (2011, 437) points out, “context-specific”, rather than having universal applicability, which many non-traditional forms claim to have. Another factor is the considerable longevity that traditional mechanisms have in the community. Zartman (2000, 7) argues that traditional mechanisms “have been practiced for an extended period and have evolved within ... societies rather than being the product of external importation.” Similarly, Horne (2014, 19, referencing Bowen 1986, 545) defines tradition as “locally (re)constituted” and refers to “customary and indigenous rules, laws, and procedures that enjoy legitimacy partially due to their longevity and historical situating in the community.” Mac Ginty (2011, 54-55) goes into much more detail and lists five essential features of “local, customary and traditional peacemaking”: respected community figures with moral authority; a public dimension to practices, which add transparency to decision-making processes; public airing of grievances or story-telling elements; an emphasis on relationships rather than agreements or deadlines; and a reliance on locally-derived resources for peacebuilding practices.

According to Boege (2004, 25), the core difference between traditional and non-traditional approaches lies in the different way of organizing social order in the two different systems. States establish a formal and codified order to regulate social life, which contrasts with the overarching importance of personal relations in regulating social life in non-traditional or “pre-modern” societies. Similarly, Zartman (2002, 90) argues that “African traditional conflict management techniques depend to a large extent on the existence of a community of relationships and values to which they can refer and which provide the context for their operations. Relationships are a precondition for the effective operation of the modes of conflict management as practiced traditionally in Africa – arbitration, mediation, and negotiation”. As result, traditional methods usually focus on forms of inter-community conflict and are successful due to the community support they enjoy (ibid., 919). Boege (2004, 90) also strengthens this argument, highlighting that the decisive factor for choosing traditional conflict resolution mechanisms is the duration and strength of relationships between conflict actors, e.g. their belonging (or not) to the same family or community. “A common view of the world and a shared acknowledgement of customary institutions” are thus key to making traditional conflict resolution mechanisms applicable (Boege 2011, 442).

A number of other terms overlap with the concept of traditional, including indigenous, local, community-based, non-state, custom-based, ritualistic-communal, and informal. Mac Ginty (2008, 149) points out that the terms ‘traditional’ and ‘indigenous’ are not interchangeable, although overlap does exist. While ‘traditional’ denotes a practice or norm that “has a heritage of considerable duration”, ‘indigenous’ “suggests that an activity or norm is locally inspired”. In this sense, all indigenous mechanisms need not be traditional (Mac Ginty 2011, 49). For the purpose of our study, however, we will understand indigenous conflict resolution mechanisms as part of the category of traditional approaches.¹⁰ Hence, we will understand traditional as a comprehensive umbrella term for those conflict resolution mechanisms that combine the characteristics:

¹⁰ The term indigenous will be understood according to the working definition of “indigenous communities, peoples and nations” suggested by the UN Special Rapporteur José Martínez Cobo in his report on the Prevention of Discrimination and Protection of Minorities that reads as follows: “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems” (see UN 2004).

- ≡ Considerable longevity; historical evolution within a society
- ≡ Locally inspired and locally driven
- ≡ Custom-based; informal & open to community; process-oriented
- ≡ Non-state, pre-state and/or autonomous of the state
- ≡ Centrality of relationships and key persons

Sources of traditional conflict mechanisms can be related to ethnicity, tribe, culture, or religion. Most societies worldwide exhibit some aspects of traditional conflict resolution mechanisms. However, multi-ethnic states in Asia, Africa, and Latin America that succeeded colonial rule are most likely to “continue to recognise some scope for customary law”, as many post-colonial and/or multi-ethnic states make efforts to “accommodate the claims of sub-state groups in order to reduce inter-ethnic conflict” or to “extend the rule of law and state authority into peripheral areas” (Van Cott 2000, 210). A few examples of such traditional approaches include:

- ≡ Customary justice approaches based on community practices and values
- ≡ Community dialogue formats and forums
- ≡ Deliberations and traditional mediation practices¹¹ by recognized authorities such as a “Council of Elders”, “Wise-Men Councils”, or designated individuals
- ≡ Spiritual and/or religious (cleansing) rituals and ceremonies¹²
- ≡ Collective mobilization/action (such as the indigenous “minga” in Colombia)
- ≡ Diplomatic approaches to deal with (potential) conflicts with other communities

With regard to the advantages of traditional mechanisms, Boege (2011, 444-449) asserts that they are generally more process-oriented, considered more legitimate by the communities on the ground, focus more on the psycho-social dimension of conflict and its transformation, and provide for more inclusion and participation than externally-imposed approaches. Furthermore, they are less cost-intensive, as they draw only from the resources of the community involved (Murithi 2008, 27-28). As a result, Murithi argues that “the outcomes they produce are more likely to be internalized by the parties (ibid., 27). Indeed, in our field research, particularly in the Liberian and Colombian cases, it was confirmed that one specific strength of the traditional system is that it is considered highly legitimate:

“So the legitimacy around that, no one can beat that. No system can beat that. You can conduct as many studies as you want and you will find that the local indigenous people respect their chiefs, especially when it comes to conflict resolution. They respect them a lot.” (Interview: Monrovia, 3.9.15)

In a substantial report by the United State Institute for Peace on the access to justice in Liberia, Isser et al. (2009, 25) found that while there may be some question of the legitimacy of the individuals occupying

¹¹ We use the term “traditional mediation practices” instead of just referring to “mediation” to highlight that many mediation principles as known and applied in the Western world can significantly differ from traditional practices. For instance the emphasis in Western mediation textbooks on the need for a “neutral” or “outsider” mediator who has no stake in the conflict’s outcome is not valid for all traditional mediation approaches. As outlined by Walker, indigenous mediation processes tend to select facilitators who are well known to the participants and who are well versed in community beliefs, values, and history, rather than facilitators perceived to be impartial (Walker 2004, 537). In addition, the Western emphasis on mediation “techniques” instead of emotional and relational aspects of a mediation process have been criticized for not being in line with traditional approaches (for a more detailed discussion, see Victorian Aboriginal Legal Service Co-operative Ltd. NN, 4 and Walker 2004).

¹² According to Boege (2011, 442), “[w]hen solutions have been achieved, they are sealed in highly ritual forms. Ceremonies are of great symbolic and practical importance. They are a means of conflict transformation in their own right. When it is publically stated in a ceremony that a specific violent conflict is over, it is over exactly because of the public ceremony.” Examples include: wealth exchange, cleansing and purification rituals, prayers and sacrificing to God, customary rituals such as breaking spears and arrows, and drinking and eating together. Similarly, Laing Gahr (2013, 5) highlights that the First Nation conflict resolution mechanisms in Canada, such as the Tsalagi Talking Circles, include various elements such as songs, prayers, stories, and dialogues as well as “long, unbroken silences that would be unsettling in many western negotiation models.”

certain leadership positions, there is no indication that this implies that the traditional institution *itself* is considered in any way illegitimate. This legitimacy leads to a high respect for the resolutions and agreements that are reached within the system. People are committed to agreements that are based on their tradition and culture. Once an agreement is reached, the chances are very high that it will be implemented, allowing people to “be in peace” and not have to worry about acts of revenge. Another advantage of the traditional system uncovered during field research is the shared knowledge that communities have of the system – it is generally well understood by the communities that use it. This differs greatly, for instance, from the lack of knowledge that Wayuu communities have about their rights within the framework of the ordinary justice system as citizens of the Colombian state, which can be partly traced to the absence of the state in La Guajira.

A further advantage that was brought to light during field research is the speed and effectiveness with which traditional mechanisms can resolve conflict. Specifically in Colombia, the Wayuu traditional system leaves less room for acts of revenge to occur and is better at preventing the escalation of conflict than the ordinary justice system. A *palabrero* working at the Indigenous House proudly explained that a conflict that would take a year within the ordinary justice system would be resolved at the Indigenous House “within an hour” (Interview: Riohacha, 6.7.15). In Liberia as well there is a dramatic difference between the amount of time that the formal justice system requires when addressing a conflict and that of the traditional system. The formal system in Liberia is regularly criticized as being much too time-consuming to be effective; significant delays in hearing cases leads to the impression that nothing is being done to resolve their cases and that the formal system is not interested in helping citizens achieve justice. Another strength of the traditional system specifically in the Wayuu areas of Colombia is the system’s flexibility and adaptation to individual cases. The Wayuu system is based on oral tradition whereby decisions cannot be generated from a systematized, written source of knowledge. The decisions are rather guided by previous experiences with conflict cases that the *palabrero* and the community are knowledgeable about. Therefore, the system is more flexible and allows greater leverage for case-based decisions.

In light of this information, the following section critically discusses a number of caveats in defining the concept of ‘traditional’. Section 3.1.2 will then provide a short analysis of the features of traditional conflict resolution mechanisms, and their common advantages and limitations, replete with examples from the project’s case studies.

3.1.1 Conceptual caveats to defining ‘traditional’

Although it is clear that traditional mechanisms in many parts of the world share common features, there are a number of inherent problems with defining the concept of ‘traditional’ conflict resolution mechanisms and which make it challenging to create an ideal-type. These problems include the vast variety of the ‘traditional’, the decline of traditional systems and the related loss of legitimacy and influence, the questionable authenticity of traditional institutions and approaches, the effect that violence and conflict have on traditional systems, and the common mystification of traditional institutions and processes.

Variety of Traditional

In the academic discourse, traditional approaches are often lumped together and assumed to be similar and comparable. But a multi-ethnic society may have different traditional approaches to solving conflict, composed of various and multifaceted mechanisms. These mechanisms may not be accommodating and at times may even be contradictory. One cannot and should not assume that traditional approaches are homogenous. Even within a single country, there might be manifold traditional systems that function according to different rules and principles. For instance in Colombia, the more than 102 indigenous peoples display different traditions

of indigenous conflict resolution that varies considerably. In Northeast India, an area comprised of seven ethnically and linguistically diverse states, there are 47 constitutionally-recognized indigenous tribes, each with their own traditions and institutions of governance. In the state of Meghalaya, the focal point of the project's research in India, the Garo tribe and the Khasi/Jaintia tribes have different institutions with different names, functions and responsibilities (see Upadhyaya and Sharan Upadhyaya 2016).

In his discussion of the pitfalls of what he calls “ethnojustice”, Branch (2014, 618) argues for an understanding of traditions of justice as “plural, contrasting and contested”. Even within a certain community there may not be homogenous knowledge about traditions. Although it is generally assumed that people in the same community know the same traditions, research on traditional disaster responses has found that local knowledge is not homogenous – it is neither shared by the whole community, nor can it be separated from outside knowledge (Baart 2013, 2). Branch (2014, 618) contends that Western perspectives see traditional conflict resolution or justice administration often as a “single, coherent, positive system that is consensually and spontaneously adhered to by all members of that culture”, which creates a “myth of unanimism” (term proposed by Hountondji 1996).

Decline of the Traditional; Loss of Legitimacy

In a globalized world in which colonization, urbanization and the spread of educational opportunities are ever more tangible, traditional institutions are exposed to new challenges. While some institutions and mechanisms face a decline of authority and legitimacy and are even threatened with extinction, others manage to adapt to the new circumstances. However, this adaptation comes at a cost. As outlined by Huyse (2008, 8) “[c]olonizing authorities and processes of modernization, civil war or genocide have had deeply disturbing effects on the original institutions so, strictly speaking, they are no longer traditional”.

With regard to indigenous communities in Colombia, Van Cott (2000, 212) notes that they are not free from internal contestation of values and norms, which is further heightened by growing urbanization, displacement due to violence and migration, growing contacts among different indigenous groups, and the growing influence of Protestant faiths in once hegemonic Catholic communities. This situation was also described in detail during field research in Colombia's La Guajira department. Here, various resource persons referred to the “process of deculturalisation” due to migration, evangelization, mixed marriages, the emergence of new (and urbanized) leaders, and the increasing operation of multinational companies within indigenous territory. These factors all help to explain the increasing frictions within the community as to the value of the traditional social order, including the traditional approach to conflict resolution. Against this background, the *Junta Mayor Autónoma de Palabrerros Wayuu* (2009, 50, own translation) draws a skeptical balance:

“The traditional work of the [Palabrero] still functions effectively in the resolution of diverse conflicts that emerge within the Wayuu community, despite the fact that new problems have emerged as a result of multiple external factors and foreign actions in our ancestral territory. However, the institution of the [Palabrero] is seriously threatened by the strong interference of foreign cultural projects that impose themselves through the laws and the public policies of Colombia and Venezuela and which damage the validity of the tradition and forecast its disappearance in the cultural future of the Wayuu.”

In Meghalaya, the traditional systems have been greatly affected by both colonialism and modernization. The British, while respecting and even protecting the indigenous communities and their traditional institutions through the Sixth Schedule¹³, nevertheless established hybrid institutions such as the

¹³ The Sixth Schedule was a policy of the British colonial state created specifically for the tribal communities of the Northeast,

Autonomous District Councils (ADCs) to act as a facilitator between the traditional and state institutions, thereby greatly limiting the power of the traditional institutions (Upadhyaya and Sharan Upadhyaya 2016, 15-16). Yet also simply due to the passage of time and the increase of standard education in Meghalaya, some traditional leaders (the *Nokmas* in the Garo Hills) have lost much of their influence and power, especially those who were “not well versed with the powers and functions of the Nokma institution” (ibid., 20-21).

However, it’s important to point out the decline of traditional power structures may not necessarily be negative in all cases. Branch (2014) warns that simply ‘reviving’ traditional systems can reinforce unjust power structures in society. More specifically, a process of decline may allow room for including new voices into the traditional structure, including youth and women. In Liberia, the traditional system since the war ended in 2003 has undergone quite a transformation, particularly the more visible role that women play in the system and their ability to make their voices heard. Such a transformation happened most likely as a result of both the war itself, which led to the death of many traditional leaders, as well as the extensive post-war international peacebuilding support that has emphasized the empowerment and involvement of women in all sectors of society. This focus on hearing women’s voices and involving them in decision-making processes has had a dramatic effect on the traditional system in which women are able to speak up as never before. Today there are female paramount chiefs, and it is much more acceptable for traditional women to speak out in a room full of men, and even to contradict those same men in the framework of a discussion. The traditional women themselves feel that their voices and opinions are much more respected today than they were even ten years ago. Much of this accomplishment has been due to the work of specific NGOs such as the Carter Center, which have advocated greatly on the part of traditional women, through both training and capacity-building projects to educate them about their rights, but also through emphasizing to male leaders the necessity and benefits of involving women in governance and conflict resolution processes.

Authenticity of the Traditional

Traditions are not always old. What is considered traditional today may actually be much altered due to the influence of various external influences. Thirty years ago, sociologists Hobsbawm and Ranger (1983) coined the term “invented traditions”, with Hobsbawm (1983, 1) explaining that “[t]raditions which appear or claim to be old are often quite recent in origin and sometimes invented. In the Latin American context, for instance, indigenous communities have incorporated many aspects of Spanish colonial rule into their “traditional” justice and governance systems. However, they would regard them now as an authentic part of their own culture.

In the case of Liberia, the government co-opted the traditional system to such an extent over the years that it is practically impossible to know how the original system functioned before the arrival of the settlers. A system of indirect rule turned tribal leaders into chiefs and the Hinterland Regulations of 1948 laid out the expected structure and responsibilities of the tribal system. Lubkemann et al. (2011, 17) argue that the Hinterland Regulations institutionalized a state-sponsored traditional justice system which was different than both the formal statutory system and the original system used by the indigenous population. This leads us to the conclusion that even “invented tradition” can present a powerful narrative (Boege 2004, 54), confirmed by Van Cott’s argument (2000, 212) that although “the antiquity of customary law is often invoked to legitimise it, the authenticity of these new structures and norms comes not from their age, but rather from their autonomous adoption in the absence of effective access to state justice”.

which on the one hand recognized their uniqueness and preserved their cultures and societies, but on the other hand, led to the exclusion of the communities from the benefits of development and modernization (see Galvanek 2013, 34).

Effect of Violent Conflict and Structural Violence

Traditional institutions and systems are often overwhelmed and overburdened when confronted with the realities of violent conflict or structural violence, to the extent that it may lead to a complete breakdown of the traditional system. If they do withstand the conflict intact, and continue to provide conflict resolution for the communities in question, they will inevitably undergo some form of modification and alteration in order to be able to adapt to the changed circumstances. As outlined by Chapman and Kagaha (2009, 2) in the case of Uganda, rising levels of armed violence have shifted local power structures as youths gain access to arms, and elders find their autonomy and status under pressure as they compete with elected local government officials.

The brutal civil war in Liberia certainly had a significant impact on the traditional system in Liberia. Although the traditional system today remains strong and legitimate throughout the country, particularly in rural settings, it has undergone a dramatic transformation due to the years of violent civil war. This was primarily due to the massive population displacement that the country experienced during the war. Community members were forced to flee their homes and live either as refugees in neighboring countries or as internally-displaced persons (IDPs) in mainly urban settings throughout the country. As a result, they left behind their traditional community structures and often lacked any similar structures in their new settings. Furthermore, many traditional leaders died during the 14-year civil war, and displaced communities were unable to carry out the usual protocol for replacing them. Moreover, the regime of Charles Taylor chose to dissolve the customary chief system and install his own handpicked “chiefs”, generally young and armed men who were loyal to him.

However, not only open violent conflict, but also latent situations of structural violence in peripheral regions of a state can harm traditional conflict resolution systems. In Colombia, the Wayuu’s notorious situation of poverty and lack of the most basic resources is a good example. Data from the National Planning Department (*Departamento Nacional de Planeación*) suggests that the level of poverty in La Guajira (64.9%) is double the national average (37.2%). According to the same data, 37.4% of the Guajira population lives in extreme poverty (cited in Caicedo Delgado 2011, 29-30). As a result of the lack of the most basic resources for survival, many traditional authorities are no longer able to promote organisational processes, including offering the necessary space for traditional conflict resolution to take place, thereby further weakening their authority within the community.

Mystification of the Traditional

It is important to remain cautious of the potential “mystification” of traditional mechanisms by their implementing authorities and communities. As noted by Van Cott (2000, 212), “[i]ndigenous leaders paint a picture of coherent, widely understood and uncontested norms and procedures that have been passed down for generations”. These systems are portrayed as operating autonomously from the state, maintaining a cultural purity, and promoting and protecting a harmonious way of life for indigenous people. However, as Van Cott points out, this is not the reality of most indigenous customary law, but rather an idealized vision. Many traditional communities and their leaders promulgate their own traditions as ideal and best, even though they may not be accepted by the entire community. This promulgation of ideal and ‘pure’ traditions may be done out of a sense of conviction or pride, but may also be done in order to protect them from perceived threats, such as the domination of state-based forms or decreased interest in such forms among the youth. Few traditional systems, however, are entirely self-contained or culturally pure, as their adherents often advocate.

Specifically in the case of the Acholi in Northern Uganda, Branch (2014, 620-621) outlines that it is not adequate to portray pre-colonial times as a harmonious period of a “pure, essential cultural identity and set of practices” and contrast it with an “impure colonial and post-colonial society that has been contaminated by Western ideas and practices”. Such a view falls short not only because it fails to recognize

the very invention of the “Acholi tribe” by the British colonizers, but it also ignores the fact that the pre-colonial history of the area was deeply marked by violent conflict, including “destructive foreign incursion, slave raiding and internecine warfare” and that “internal plurality, conflict and contestation have always characterized Acholi society” (2014, 628).

3.1.2 Common features of ‘traditional’ conflict resolution

Reconciliatory and Restorative Approach/Collective Responsibility

From the perspective of traditional mechanisms, “[r]econciliation is necessary for the restoration of social harmony” (Boege 2011, 439; see also Barié 2008, 113). Traditional forms of conflict resolution very often have at their center the goal of reconciliation between the conflict parties, whether families, communities or society in general. The central objective of traditional justice mechanisms is not to punish individuals for wrongdoing, which is commonplace in Western, punitive approaches to justice, but rather to restore damaged relationships and establish a more peaceful way forward. In cases in which sanctions or reparations are imposed, these are often not only imposed on the individual “offender” (as would be the case in Western-style jurisdiction) but on the unit of society of which he or she is a member, e.g. the whole family or clan, emphasizing collective responsibility and duties. Findings from Colombia show that the indigenous approach highlights the collective responsibility for wrongdoings and hence the responsibility of the collective to compensate any damage done.¹⁴ This preventive function of collective compensation helps to avoid recidivism; by affecting the whole family rather than just the perpetrator, it elevates the social pressure to abide by the rules. Also in Meghalaya in Northeast India the research confirmed that an individual’s clan, or *ma-chong*, would be considered the offender when a crime was committed, rather than just the individual: “This acted as a deterrent for would be offenders as any offence made would invariably involve the whole *ma-chong*. Thus it was not the individual but the collective which was the unit in the [traditional] system of justice” (Upadhyaya and Sharan Upadhyaya 2016, 20).

Holistic Approach

Emphasizing harmony within the collective as the ultimate goal of conflict resolution, traditional mechanisms view conflict (and its resolution) holistically. According to Boege (2011, 441) “[t]raditional approaches cannot be compartmentalized into ‘political’, ‘juridical’, or other; rather they are holistic, comprising also social, economic, cultural and religious-spiritual dimensions”. Such a holistic approach means that conflict resolution not only concerns the direct parties to a conflict (or, in legal language, the victim and perpetrator) but also the whole community. Furthermore, conflict resolution can extend to the natural surroundings of human beings as well: nature and the natural world are understood as active agents in conflict resolution and are therefore more valued and respected. There is a strong linkage between humans and their natural surroundings which has been described as a relationship of “care and responsibility” (Walker 2004).

¹⁴ Compensation payments, for example, are never paid by an “individual perpetrator” to an “individual victim” but it’s rather the offender’s family that compensates the victim’s family. From a Western perspective, the range of damages for which a compensation payment can be claimed seems enormous and highlights once more the centrality of compensation payments as an element of social order. An interesting case is the suffering of a mother during childbirth. In that case, her family (as a collective) must be compensated for her suffering by the father’s family (Polo Acuña 2012, 95). The responsibility to ‘share’ with the collective is also expressed in a traditional Wayuu saying: “A rich Wayuu who does not share his wealth is like a cactus in the desert: alone and without shadow” (see Planta 2016, 22 and 25).

In the Liberian setting, it was widely agreed upon in all interviews that the overall objective of the traditional system after a dispute has occurred is that of social reconciliation and the restoration of harmony. The objective is:

“to bring people back to where they were before there was conflict. It’s not done halfway. It’s a holistic approach. You are healing the people and reuniting the circle that was broken by the conflict.” (Interview: Monrovia, 4.9.15)

This is of particular relevance when community members live with a high level of interdependency and rely on each other for their survival and well-being, especially in places well beyond the reach of governmental services. Restoring and ensuring community harmony is essential, and unaddressed conflict can be detrimental to the community.

The Wayuu approach to conflict resolution in La Guajira is closely interwoven with other spheres of community life. Not only is the compensation system closely interlinked and interdependent with the economy of the Wayuu society, there is also an important link between conflict resolution and the promotion of cultural identity: interviews confirmed that those who are in the driving seat of defending the traditional conflict resolution approach, namely the *palabrer*os, understand themselves as overall guardians of the culture and traditions of the Wayuu nation:

“To maintain the normative system as long as possible is one of the tasks of the Junta and this is also why it is important to keep on teaching our language. And for us, the challenge lies in defending the idea that when a conflict involves a Wayuu, it needs to be resolved through our own justice system, in our own language, and within our territory.” (Interview with *palabrer*o: Riohacha 30.6.15)

This shows how deeply conflict resolution is linked to identity and cannot be regarded simply as a way of technical law enforcement. On the contrary, inadequate state intervention was even perceived as a threat to cultural identity. Conflict resolution is also intrinsically linked to governance, as was highlighted by the link interviewees drew between the autonomous administration of justice in their territory and the overall capacity of self-governance:

“Many Wayuu think that the non-Wayuu [the ordinary justice system] will solve their problems. This is what the Junta is saying: if you run to a judge or to the inspector to have them solve your problem, you lose your autonomy. We have to solve our problems ourselves, demonstrating our capacity to govern ourselves, to solve our problems ourselves.” (Interview with *palabrer*o: Riohacha, 30.6.15)

Non-linear Time Dimension and Process-oriented

Many traditional conflict resolution mechanisms start from a circular (or spiral) conception of time that takes into account past, present and future – contrary to the Western, present-centered conception of time that does not easily acknowledge how needs can change over time (Walker 2004). As highlighted by Australia’s National Alternative Dispute Resolution Advisory Council (2006, 11), indigenous concepts of time may contradict Western case management practices, as disputes involving indigenous people “may evolve over a very long time and past events may be part and parcel of current problems”. Moreover, traditional mechanisms focus more on the process itself than its end-result (e.g. a negotiated agreement), which may appear “slow” to the eyes of Western observers (Menkhaus 2000, 198).¹⁵ In Liberia, the process of solving

¹⁵ However, this depends very much on the type of dispute and settlement mechanism. As Barié (2008, 113) highlights for the

conflict involves a search for the truth, by identifying the root causes of a conflict and the underlying issues and social factors that inform a dispute (Isser et al. 2009, 26). This is often done through a thorough description of the history of the two individuals who are having the dispute and their families, including information about how they migrated to their current homes, how long they have known each other and how their relationship has evolved (Galvanek 2016, 19). Understanding such background information is considered essential to understanding the current dispute and therefore being able to resolve it amicably.

In many traditional societies, the societal laws and rules that are accepted by the community are those which have been given to each generation through oral histories, often in the form of stories or tales. Very little of this traditional knowledge is written down, yet most members of a given society know and understand the collective rules. The various processes for conflict resolution are part of these traditional and oral histories, and are usually carried out with the support of the community in question, even if the process is confusing or unclear to an outsider. One advantage of this oral tradition resides in the flexibility of traditional approaches to adapt impromptu to new situations, because the approaches are not bound to written law (Barié 2008, 113). In non-traditional societies, by contrast, laws and rules are generally written down, and this applies to the processes of conflict resolution as well. In Colombia for instance, one interviewed *palabrero* emphasized that the Wayuu system is based on an oral tradition, in which “you can’t refer to a text book” (Interview: Riohacha, 30.06.2015). As a result, concerns were often raised as to whether ordinary justice staff can understand and tackle conflicts within the Wayuu community:

“In general, all problems among Wayuu should be resolved through the normative system of the Wayuu. Because a judge, as much as he might have studied, doesn’t have the capacity to understand and solve the problem. Because there are other factors that play a role such as spirituality. The conflict resolution process needs to take into account the spirituality of the people ... as well as their experience, because our system is based on an oral tradition, nothing is written down. And a judge has no access to this. He will just look at the law and treat the Wayuu as any other Colombian citizen.” (Interview with *palabrero*: Riohacha, 30.06.15)

Limits of Traditional Approaches with Regard to Scope

Although a wide range of conflicts and disputes can often be successfully addressed and resolved through traditional mechanisms for conflict resolution, including, in certain contexts, serious crimes, there often seems to be an upper limit to the type of violent conflict that such mechanisms can handle. Many traditional mechanisms have evolved among populations over the centuries for dealing with day-to-day conflict within or between communities during times of relative peace, or before large-scale armed conflict. This is the case, for instance, with the *Judiyya* in the Darfur region of Sudan (see El-Tom 2012, 111). But the realities of modern, large-scale violent conflict can pose a huge challenge for these traditional mechanisms and may overwhelm and burden them. As noted by Carl (2003, online article), “[i]ndigenous or traditional capacities for dispute resolution or conflict handling are not always commensurate with the demands of contemporary conflicts. [They] are often unable to mitigate the wrecking effects of regional and international influences”, such as political or military interventions, or regional and global trade. Therefore, large-scale armed conflict involving various actors and high-powered weapons is simply beyond the scope of what they were designed for.

In the Colombian case, the Wayuu conflict resolution mechanism can handle a wide range of conflicts, including murder, and there have even been instances in which indigenous conflict resolution has been applied to disputes between indigenous and non-indigenous communities. The system manages violence

case of Bolivia, one advantage of indigenous conflict resolution mechanisms is that they are often much quicker in resolving disputes than official jurisprudence.

through a code of conduct, e.g. existing ‘rules of war’ which regulate, for instance, that women cannot be targets of violence. Moreover, the documentation of conflict cases at the Indigenous House in Riohacha also included cases involving both Wayuu and non-Wayuu individuals and corporations, demonstrating that the normative system can and has been used to solve conflicts involving non-indigenous conflict parties who might readily accept the indigenous compensation system as a manner of pragmatically and quickly solving disputes, thereby complementing what the state has to offer in terms of justice administration and dispute resolution. Nevertheless, there are limits to the Wayuu conflict resolution approach specifically in cases of illegal armed actors. The intrusion of powerful, armed actors unwilling to “submit to the rules of the game” puts the entire Wayuu system of conflict resolution under pressure and “increases the state’s responsibility to intervene”. This is in spite of the fact that the Wayuu system can otherwise attend to quite serious conflicts when they occur within the community (Planta 2016, 29).

In the case of Meghalaya, our research uncovered the very same dynamic. Northeast India often experiences violent clashes between the indigenous population and the non-indigenous communities that have migrated to the region in search of employment, and the state of Meghalaya is no exception. When violence broke out in the Garo Hills, the traditional institutions of the indigenous tribes lacked both the experience and competence to deal with the serious level of violence and were also fearful of the violence themselves. The Indian government perceived this inaction as the failure of traditional institutions to keep law and order in the region and led to the harsh intervention from state-based agencies to quell the violence (Upadhyaya and Sharan Upadhyaya 2016, 9). It has also led to the state being suspicious of the loyalties of the traditional institutions, in the sense that the state-based agencies fear the complicity of the traditional institutions with the insurgents. Therefore, the ultimate authority when it comes to mediation with the insurgents remains the central government; the traditional institutions are excluded from peace negotiations (*ibid.*, 17).

Another limitation of the traditional mechanisms, specifically observed in Liberia, is when the traditional leaders speak for their communities when confronted with land concessions by multinational companies. In such scenarios, the leaders are expected to defend their communities’ interests, thereby becoming an integral part of the conflict, rather than a neutral mediator. This is specifically the case when the community has not been consulted sufficiently about the concession and the government is perceived as being aligned more with the company’s interest rather than those of its citizens (Galvanek 2016, 75-76). Isser et al. (2009, 46) confirmed this dynamic in Liberia by acknowledging that the customary authorities are “generally ineffective in disputes that involve parties who are not members of the community”.

The Limited Inclusion of Women and Youth

In many cases, traditional conflict resolution mechanisms have been found to have an exclusionist character, particularly with regard to gender and age. For instance, Mutisi (2012, 148) highlights that one weakness of traditional institutions is the “limited space which exists for women to play leadership roles and to effectively benefit from the utilisation of traditional institutions”. In Liberia, as in many other traditional societies, it is the elders who hold power and influence over traditional communities. Young, unmarried men (and women) are generally excluded from decision-making processes. This exclusion of the youth was one of the factors that led to the war in Liberia as the warlords exploited the frustration and grievances of young men.

It is therefore important to also reflect on the negative consequences that a revitalization of ‘traditional’ authorities can have on the ground. Branch (2014, 616) argues that the “internal logic of ethnojustice insulates gender and age-based structures of domination from challenge and can thus consolidate a patriarchal, gerontocratic social order”, allowing “older men to assert their power under the guise of tradition and to dismiss challenges to that power as non-traditional and non-authentic” (*ibid.*, 622). Such concerns were also raised in the case of Meghalaya, where research found a “general scepticism about how

fair and just these [traditional institutions] could be at the grassroots village level given the traditional dominance of upper caste groups over the less privileged lower caste people” (Upadhyaya and Sharan Upadhyaya 2016, 6). Furthermore, youth of the Khasi tribe have criticized their traditional institutions for being patriarchal and not allowing women to take part in decision-making. They question how justice can be delivered without consulting half of the population (ibid., 18).

In Colombia, various interviewees criticized the lack of equal-opportunity-participation for some segments of the Wayuu population in conflict resolution, especially for women and youth. However, interviewees also referred to changes that are taking place within the Wayuu society, which are linked to the emergence of ‘new leaderships’, especially among younger people with higher education, language skills etc. who question the traditional authorities and position themselves as leaders of their community. Furthermore, women representatives confirmed that women were becoming more self-assertive and active in conflict resolution processes, yet making it clear that all cultural adjustments should be steered from within the Wayuu society (Planta 2016, 28):

“We Wayuu women have received a lot of criticism from our peers because we think that cultures are dynamic and there are cultural practices that go against individual rights. But if you start to be critical and talk about things that need to be revised, for instance the way in which the traditional system handles rape cases, you are attacked. In our culture, men hold socio-political power positions and women are silenced. The contribution of women within the families and the community must be recognized. Within the Wayuu culture, people say that women are very relevant and important, even men say that, but in reality there is a serious lack of recognition of women in the political arena and in decision-making processes. We cannot talk about political participation if women do not even get this space within their family. But for many people it is difficult to hear and accept this self-criticism towards our own culture. However, we don’t want to change the traditional system per se. But we just want the important space of women to be recognized.” (Interview with women’s representative: Barrancas, 04.07.2015)

However, particularly with regard to gender exclusion, readers should be warranted against hasty conclusions. Roles for women and men are usually more clearly separated in traditional societies, with women usually not taking part in ‘real politics’. Therefore, women might at first sight seem to be excluded from conflict resolution processes. However, they often fulfill important complementary roles, which may be deemed by Western observers as ‘decoration’, but may not be judged as such by their own communities. In Liberia, women leaders are highly respected and play an essential role in solving conflicts. Each community in Liberia has a women’s leader and a youth leader, as well as a chief. The women’s leaders act as advisors to the (female or male) chiefs, and they attend to most of the conflicts in communities which primarily involve women. In fact, male chiefs often choose not to become involved in disputes involving only women and expect the women leadership to resolve such issues. So although it is somewhat uncommon for women to be chiefs in Liberia, each community has a women’s leader who is active and influential in the community. That being said, this level of influence and respect that women have in the community may also to some extent be a new development and part of the transformation that the traditional system has recently undergone, as mentioned above.

Throughout the field research in Colombia it was demonstrated that “women and men have different, complementing roles in conflicts and their resolution” (Planta 2016, 28). Men are in charge of fighting, while women enjoy an ‘immunity’ that allows them to pass through ‘enemy territory’, for instance to retrieve wounded or dead community members or to engage in economic activities. Thus it may be a strategic decision to have women participate less visibly in conflict resolution processes in order to preserve their ‘neutral’ role (see Planta 2016, 27). However, it is difficult to judge in how far such explanations also serve as an “excuse” to keep women away from decision-making spaces.

As a result, a careful case-by-case analysis is required to fully understand the degree of inclusion of

traditional conflict resolution mechanisms (Boege 2011, 448, 449). Furthermore, the known limitations of traditional conflict resolution mechanisms (often patriarchal, with a lack of legal representation, lack of appeal process, etc.) might be considered by the communities who use them as being acceptable in exchange for the level of peace and reconciliation that they can bring to the communities. As Mac Ginty (2008, 156) argues, the Western concept of human rights “relies heavily on the legal status of the individual, as opposed to the extended family, kin group, community or language group”. And it is exactly these concepts that have more resonance in non-Western societies.

Traditional Mechanisms as Partial Source of Conflict

Violence is often seen as emerging from the collapse of traditional structures and values and the ensuing loss of authority among traditional leaders. Thus the loss of the traditional is a cause of the violence (Branch 2014, 613-614). Crucially, however, this perspective completely overlooks the fact that some of these traditional systems may have actually led to the conflict in the first place. Carl (2003, 4) argues that some traditional approaches to conflict resolution may “reinforce undemocratic patron-client relationships, and may have contributed to the conflict”. This was partially the case in Liberia, as mentioned in the section above, as young men felt excluded from power structures and decision-making processes. Rural youth in particular felt “ill-treated with regard to land and marriage prospects by the customary sector”, which led to resentment and certainly contributed to the war (Unruh 2007, 73). Furthermore, researchers and peace practitioners working with traditional mechanisms for conflict resolution fail to recognize that traditional and indigenous capacities for conflict management have failed to prevent conflict from becoming violent in the first place (Mac Ginty 2008, 150; Carl 2003, 4). In other cases, the evocation of traditions and culture (and the perceived threat of their elimination) has been instrumentalized in the framework of ethnical or religious particularities (an “us” against “them” mentality). In this sense, evoking culture or tradition can be understood and criticized as an element of modern war, as the evocation of these traditions has been used to legitimize conflict.

Lack of Compliance with Human Rights Standards

With respect to some of the more conservative traditional systems, there can sometimes be a significant gap between their practices and customs and those of universally (or Western-) accepted standards of due process or human rights standards. For instance, community panchayats in India are often blamed for inhumane and controversial practices, such as encouraging or sanctioning the honor killings of couples or women who have relationships outside their caste. The Indian Supreme Court has declared such practices illegal and directed the government to put a halt to them (Upadhyaya and Sharan Upadhyaya 2016, 6-7). In Colombia in turn, only “truly intolerable” attempts against the “most precious goods of mankind” put a limit on the autonomy of indigenous law (Ruling T-349 of 1996, own translation¹⁶). More concretely, the law establishes three fundamental constitutional rights as boundaries for the indigenous jurisdiction, namely 1) the right to life; 2) the prohibition of torture, slavery, cruel, inhuman or humiliating treatment; and 3) the right to due trial (Martínez and Hernández 2005, 88), thereby providing otherwise for a wide range of autonomy (see Planta 2016, 16).

In Liberia, the notorious practice of trial by ordeal (TBO) or ‘sassywood’ used by the traditional authorities to assign guilt or prove innocence has also been designated as harmful and backwards and has been banned in its entirety by the Liberian government. Indeed, some versions of sassywood can be extremely dangerous and even fatal, and contradict the principles of due process and corporal punishment.

¹⁶ Ruling of the Colombian Constitutional Court. Available here: <http://www.corteconstitucional.gov.co/relatoria/1996/T-349-96.htm>

For instance, one form of the method is when an accused person is forced to undertake an activity that would be harmful under normal circumstances, such as ingesting poison or having a hot cutlass laid upon his leg. If the person is guilty of that which he is accused, he will be harmed by this activity. If the person is innocent, the “supernatural power of the ritual will protect the innocent from harm” (Isser et al. 2009, 58). This form of TBO has come under fire for obvious reasons. However, there are various other forms of TBO that are not physically harmful in any way and according to many traditional leaders serve very specific purposes, such as keeping crime to a minimum and encouraging people to be truthful when a crime has been committed or when a dispute is being resolved. For example, the accused or people giving testimony are asked to ingest food or drink that under normal circumstances would be harmless, but according to ritual, will harm a person who has committed a crime or is not being truthful. In this case it is the power of suggestion that proves to be highly effective. Many people in Liberia believe deeply in the supernatural, and the mere suggestion that they could be harmed by eating perfectly healthy food if they are lying often leads them to tell the truth. Conversely, those who are innocent should have no fear of the food or drink, as they have done no wrong. Indeed, it has been pointed out that this methodology differs very little than having people take an oath on the Bible during formal court proceedings (ibid.). Both forms of TBO – the legitimately harmful and that which encourages truth-telling – have been banned by the Government of Liberia. According to Isser et al. (2009, 64), traditional leaders and their communities believe that this blanket prohibition of all forms of TBO has significantly decreased the effectiveness of the customary system, as it has removed a method for them to ascertain the truth in particularly difficult cases. For this reason, many voices in Liberia are calling for the blanket ban to be lifted and a more nuanced approach be developed which separates the harmful forms of TBO from those which merely seek to determine the truth.¹⁷

3.2 Non-traditional conflict resolution mechanisms

Analogous to the term ‘traditional’, the term ‘non-traditional’ is associated with various concepts used in the fields of conflict resolution and peacebuilding. These terms include modern, liberal, top-down, law-based, state-based, imported, exogenous, and internationally-sponsored/funded. As these concepts can vary tremendously, and there can be enormous overlap between the terms depending on the context, we have grouped them together under the term ‘non-traditional’ for the purposes of this research. Not all non-traditional mechanisms for conflict resolution are state-based and not all are top-down, but they nevertheless clearly diverge from the characteristics of traditional mechanisms listed above. One of the main characteristics of non-traditional conflict resolution mechanisms is the fact that they are anchored in a system of international and ‘universal’ norms and values – principles by which all levels of society, from individuals to states, are expected to abide. Much of the discourse on these norms and principles has been developed in and therefore imported from Western countries, most importantly the discourse on universal human rights, but also discourses on corruption, good governance and the role of civil society. That being said, as we will see in the section below, non-traditional mechanisms often have traits or features of traditional mechanisms.

The most prevalent category under the umbrella term ‘non-traditional’ are those mechanisms that are state-based, which means developed and implemented by national institutions on various levels of a state and regulated through official legislation. These include not only the formal justice system, but can also refer to non-judiciary mechanisms charged with solving conflicts, for instance special bodies established to deal with conflict issues (e.g. Ministry for Peace, High Commissioner for Peace, High Peace Council)¹⁸.

¹⁷ For a detailed discussion of the different forms of TBO and their uses, replete with direct quotes from Liberian chiefs on this topic, see Isser et al. 2009, 57-65.

¹⁸ For a broader discussion of the concept of peace infrastructures or infrastructures for peace (I4P), see Barbara Unger, Stina Lundström, Katrin Planta and Beatrix Austin (eds.). *Peace Infrastructures – Assessing Concept and Practice*. Berghof Handbook

‘Non-traditional’ mechanisms can also be the establishment of or support for formal or informal fora that help to explore and resolve existing or emerging conflicts (e.g. intercultural/interreligious dialogue platforms), or policies designed to mitigate conflicts (redistribution politics, power sharing arrangements, or natural resource co-management schemes).

However, non-traditional mechanisms for conflict resolution should certainly not be equated only with state-based. Forms of non-traditional conflict resolution mechanisms also encompass the activities of third-party actors, such as (inter)national or local organisations, private foundations or NGOs. Examples of non-traditional conflict resolution mechanisms that can be organized by both (international) non-governmental organizations as well as states are large-scale international peace conferences (usually with international funding), or more intimate and local dialogues or peace education initiatives. Such initiatives are often heavily based on Western ideas and concepts of conflict resolution, as the donors for such initiatives are principally foreign states and international organizations. In the recent past, some mechanisms used in this way have made an effort to incorporate features of traditional conflict resolution (such as the involvement of tribal elders) but much of this incorporation is carried out in a process of cherry-picking: the traditional features are chosen according to the compatibility with the Western ideals on which the mechanisms are ultimately based. Those features that don’t ‘fit’ are then discarded. Despite good intentions to make the mechanism more legitimate on the ground, such cherry-picking cannot always save a conflict resolution mechanism from being perceived by the local communities as external and imported. One notable case in this sense is the *loya jirga* organized in Afghanistan following the overthrow of the Taliban in 2001. Mac Ginty (2011, 62-63) points out that the seemingly traditional gathering of elders was organized by NATO and therefore differed substantially from a traditional *loya jirga*. Mac Ginty argues that this wasn’t merely the co-option of an indigenous practice, but amounted to rather “the bastardisation of an indigenous practice to the extent that it is difficult to apply the label ‘indigenous’ to it.”

Another example of non-traditional conflict resolution mechanisms are those applied by local civil society organizations which are predominantly influenced by non-traditional conflict resolution methods. According to Merkel and Lauth (1998, 7), civil society can be understood as an “arena of voluntary, uncoerced collective actions around shared interests, purposes and values” that serves as an intermediate between state and family and operates autonomously from the state (see Fischer 2011, 288). Civil society fulfils several fundamental roles in peacebuilding, including protection, monitoring and accountability, advocacy and public communication, socialization of a culture of peace, conflict sensitive social cohesion, intermediation and facilitation, and service delivery. It includes various actors such as NGOs, associations, religious entities, business groups, and grassroots organizations such as youth or women groups (Pfaffenholz and Spurk 2006). However, although local civil society is local in the sense that it is grounded in the community, it does not necessarily build its conflict resolution initiatives around traditional mechanisms. Instead, it may to a considerable extent incorporate or even be based on imported conflict resolution models – this is partly due to a situation whereby local actors are often not capable of acting independently from donor regulations and international programming and where many capacity-building initiatives are ultimately based on Western conflict resolution models (see Grabe 2014 for a discussion of the complex relationship between local peacebuilding initiatives and the international development and donor community). This leads to a situation in which local civil society actors may be fully embedded in society, yet their mechanisms and modes of action are highly influenced by Western and international thought concerning conflict resolution. Such civil society actors often use dialogue and mediation formats, as well as collective and non-violent action, to resolve conflict. All of these mechanisms could be considered local, but not necessarily locally *inspired*, which is a characteristic of traditional mechanisms.

The Liberian case demonstrates this dynamic well, since there are numerous national NGOs,

Dialogue Series No. 10. Berlin: Berghof Foundation, and Giessmann, Hans J. 2016. Embedded Peace. Infrastructures for Peace: Approaches and Lessons Learned. United Nations Development Programme. Available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/conflict-prevention/infrastructures-for-peace--approaches-and-lessons-learned.html>

international NGOs and community-based organizations (CBOs) active in the country, many of which are at the forefront of resolving conflict. These different organizations have played an active and vital role since the end of the war in resolving land conflict between ethnic groups, supporting actors in the customary system in their resolution of conflict, carrying out sustainable dialogue processes between communities who were at odds as a result of the war, and offering cost-free mediation services to rural and urban citizens.¹⁹ It would be hard to overstate the importance of such third-party initiatives in a post-conflict environment in which the formal justice system is only slowly rebuilding itself and is not yet in a position to offer justice for all citizens. Many Liberians turn to such organizations with their disputes because they feel that NGOs are neutral and trustworthy, but also because their services are generally of no cost. This is a huge advantage for citizens who not only cannot afford the formal justice system, but also struggle to be able to pay the minimal ‘fees’ or gifts that are expected in the framework of the customary system.

Many of the NGOs observed in Liberia receive their funding from international donors, which indicates that much of their work and the methodology they use can be classified as non-traditional. For instance, many of the organizations use the methodology of Alternative Dispute Resolution (ADR) which has its origins several decades ago in the movement in the United States to settle cases outside of the formal court system. Furthermore, all of the organizations make every effort to ensure that women and youth are involved in their programming, and they encourage their partners in the customary system to ensure their participation in the traditional system as well. That being said, many of these organizations also work with principles and methods of conflict resolution that are familiar to the Liberian people and would seem perhaps a bit foreign to Western societies. These principles and methods are often based upon the customary Liberian way of resolving disputes. Examples can include using an open and public element – the presence of the entire community when a dispute between two individuals is being discussed – or the tradition of sharing a drink or meal with the adversary in a conflict to both mark the end of the dispute and as a type of promise to uphold the decision which has been reached. Adversely, in a Western setting such disputes would typically be resolved behind closed doors and a written agreement would be signed. In this sense, the NGOs of Liberia can be considered quite an interesting hybrid.

One last example of non-traditional forms of conflict resolution are those which Neumann (2013, 78) refers to as “imported”. From her perspective, “imported” refers not only to the liberal approaches discussed above, but also those approaches that had an impact on the local level in the time before liberal approaches began to influence local practices. Specifically in Liberia and the Philippines, these approaches are associated with Islam, which was brought to both regions by Islamic traders in the centuries before colonialism. Such Islamic approaches cannot be labeled liberal or modern, yet they are not traditional either. Thus she categorizes them as imported, while this project lists them as another form of ‘non-traditional’ conflict resolution.

All of the mechanisms described above demonstrate the *broad variety* of ‘non-traditional’ mechanisms for conflict resolution, even among strictly state-based mechanisms. Not all of these mechanisms are employed simultaneously, of course, nor are they used by all states. Some mechanisms may also be more dominant in particular cases. Nevertheless, it is clear that non-traditional actors have at their disposal all manner of options for resolving disputes and conflicts. Therefore, this broad variety makes the task of establishing an ideal-type of ‘non-traditional’ conflict resolution mechanism rather challenging.

It is also important to mention that the various forms of non-traditional conflict resolution vary dramatically in their level of legitimacy, depending on context. For example, in terms of state-based approaches, not all states are equally able to fulfil criteria for sustainable conflict resolution. Simply

¹⁹ Specific NGOs and CBOs that were investigated and/or consulted with during field research in Liberia and who play an active role in the field of conflict resolution include the Carter Center, Platform for Dialogue and Peace, Center for Peace and Justice Studies, the Community Justice Initiative in Logan Town, Parley Liberia, Foundation for International Dignity, Development Education Network-Liberia, Justice and Peace Commission, Search for Common Ground, International Alert, and Norwegian Refugee Council. For more detailed information about the work of Liberian organizations in the field of conflict resolution, see Galvanek 2016, 29-34 and 44-46.

because a state is implementing conflict resolution based on “universal” human rights standards does not necessarily mean that said state is complying with such standards. Many autocratic states hide behind the discourse of universal values, for instance, by passing legislation that complies with international standards, while continuing to violate human rights on the ground. Moreover, other states may implement small features of these standards (for instance, a quota of women members of a peace conference) in order to gain international approval, while largely disregarding them. In failed or failing states, there may be a serious lack of capacity to carry out conflict resolution activities, specifically in areas which are suffering from violent conflict and/or are isolated from the state. This lack of capacity, often coupled with high levels of corruption within a state, can lead to a lack of legitimacy among the affected population. Other reasons for a lack of legitimacy on the part of non-traditional mechanisms can include the perception of conflict resolution being carried out by outsiders who do not have a proper understanding of the conflict or cultural setting (whether state or international actors), and a sense of coercion on the part of the population to comply with the mechanisms.



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3.3 Hybridity

The concept of hybridity, predominantly discussed in the realm of culture and society, has been developed and refined in recent years in the context of international peacebuilding. More specifically, an analysis has begun of the hybridized peace that occurs in various (post-)conflict settings as the international proponents of liberal peace come in contact with the local forms of peacemaking on the ground (see, for instance, Mac Ginty 2008, 2010 and 2011; Richmond 2010 & 2011b). As discussed above, the shortfalls and limitations of the liberal peace model in (post-)conflict societies has redirected attention to the various local, traditional and indigenous alternatives to peacebuilding and conflict resolution that exist in such contexts and which often collide with liberal forms of peacebuilding. The juxtaposition of these two approaches has led to various forms of complex interaction and ‘hybridity’.

Neumann (2013, 73) argues that hybridity is most prevalent between local approaches to handling conflict (informal, contextual and based on custom) and national approaches (highly formalized, claim

universality, and based on the liberal democratic ideal). On the one hand, liberal peace actors have recognized that they have to “forge relationships with customary actors and elders, negotiate tradition, and traditional sites of power” (Richmond 2011b, 133) in order to ensure the approval, implementation and ultimate success of liberal peace interventions. In some post-war contexts, international actors have actively reconstituted indigenous practices and have implemented them at the community level (Horne 2014, 18). On the other hand, local and traditional actors on the ground have rarely rejected outright peacebuilding practices that have been designed according to liberal norms and principles. Instead they have accepted certain features, while resisting others, resulting in a complex and creative process of modification and adaptation (see Mac Ginty 2011 and Galvanek 2013). Invariably, these encounters and interaction between liberal/non-traditional and local/traditional peacebuilding have modified both systems. Ideally, this hybridity should result in a “post-liberal peace”, which should be “more locally resonant” (Richmond 2011b, 125). But this is certainly not a given. While hybrid forms of peace could potentially be a combination of the most effective elements of all the different approaches and strands that interact (Bernhard 2013, 16), these local-liberal hybrid forms of peace could also represent a combination of very negative political practices (Richmond 2010, 689). Furthermore, the process of hybridization is not devoid of power relations. “Since hybridisation can happen by imposing new ideas in a coercive way, it is not necessarily and always a process led by equality between the involved actors” but can rather be “forceful adaptation” (Bernhard 2013, 15-16). Mac Ginty (2008, 158) even goes so far as to argue that “the strength of the liberal peace-making model and its sponsors suggests that the relationship will be one of co-optation rather than a co-existence of equals.”

In the framework of this research project, working with the concept of hybridity can be challenging because every mechanism for conflict resolution can be considered hybridized to some extent. Due to a constantly evolving society as a result of modernization, colonialism, globalization and other influences, it is practically impossible to label anything as purely traditional. Neumann (2013, 72) points out that practices that are labelled pure, local, liberal, traditional or modern are themselves hybrid. Mac Ginty (2011, 90) argues that the “persuasive nature of hybridisation means that there are few (if any) pristine, hermetically sealed entities and values. Instead, all entities, practices and values are the product of social negotiation”. Even liberal peacebuilding itself a hybrid mix of practices, such as the reconciliation process in Timor Leste that was “all peacemaking and peacebuilding schemes – a hybrid that drew on multiple sources of practice” (Mac Ginty 2010, 404). Sansculotte-Greenidge and Fantaye (2012, 95) have uncovered similar dynamics in the Afar region of Ethiopia, where a number of clan and sub-clan elders have been elected into the legislative body of the regional state, and chiefs of clans and sub-clans hold government positions in all levels of local administration. Moreover, the members of the peace committees in the region are officially picked by the state, although they are invariably elders or clan chiefs. According to the authors (*ibid.*, 96) this presents a fusion of modern and traditional peacebuilding mechanisms. Fusion here refers to a blurring of the lines between traditional and administrative authority. For instance the methodologies used by the members of the peace committees draw “more from the traditional sphere in terms of relying on compensation payments and reconciliation” (*ibid.*, 94).

Our findings confirm this extensive hybridity in all three of our case studies, albeit due to differing sets of circumstances and to significantly different degrees. In the state of Meghalaya in Northeast India, British colonial policies played a critical role in both ensuring the survival of traditional institutions of the indigenous population, but also their adaptation to more modern practice, for instance with the creation of hybrid institutions such as the Autonomous District Councils. In Liberia, the indigenous system of governance and justice that was in existence even 100 years ago has been instrumentalized and co-opted by the various regimes of the Liberian government over the years, and it is therefore difficult to say what the truly original indigenous system looked like. Thus in Liberia the traditional system of conflict resolution, although still highly respected and considered traditional, certainly has many aspects that are not indigenous. In La Guajira, Colombia, the indigenous Wayuu people have managed to retain their traditional and highly distinct system of justice throughout the generations of colonialism and

modernization. Nevertheless, indigenous conflict resolution actors – the *palabrerros* – are being co-opted on some occasions by state or private entities to serve as “cultural mediators”. While this can lead in the best case to improved communication between conflict parties, it can in the worst case lower the legitimacy of the *palabrerros*, because they are perceived by their community as instruments of third parties. Thus Mac Ginty’s argument (2011, 74) that “hybridity occurs in all social environments, and the millennia-old processes of colonisation and globalisation have meant that human societies have much experience of hybridising” applies as well to our research findings.

That being said, Neumann (2013, 73) argues that “if we accept everything as being hybrid, concepts such as internal and external ... risk losing their explanatory value”. For this reason, there is a necessity in the framework of this research to distinguish to whatever extent possible between traditional and non-traditional forms of conflict resolution. We have made a clear distinction between the two, while at the same time noting the various caveats, overlaps and hybrid constellations that exist between them. Understanding the concept of hybridity can help us to move away from the often oversimplified dichotomy between traditional and non-traditional, which risks “projecting oversimplified notions of human societies” (Mac Ginty 2010, 397) and helps us better understand the complexity of environments in which traditional and non-traditional mechanisms interact.

In certain contexts, a hybrid system of conflict resolution can potentially be more beneficial and just for the affected population. For example, combining state-sponsored justice and traditional methods of conflict resolution into a hybrid system can have very practical outcomes: decentralizing justice, making it affordable and accessible, allowing people to address their conflicts without resorting to litigation, and helping reduce a formal backlog of cases (Mutisi 2012, 42). In the specific context of local vs. liberal peacebuilding approaches, Mac Ginty (2010, 408) argues that it is the pragmatic interface between the most effective elements of both where we can observe hybridity. In essence, if the main difficulty with hybridity is overcome – ensuring that the process of hybridization is performed in a just manner (Bernhard 2013, 17) – this can result in a positive hybrid form of conflict resolution.



© Katrin Planta. A mural of a Wayuu woman. La Guajira, Colombia.

3.4 Choosing between Mechanisms for Conflict Resolution

One element under examination in this study is the question of which factors determine the conflict resolution approach chosen by the conflict parties. As discussed above, there is at times an upward limit on what types of conflict traditional mechanisms can and are allowed to deal with, such as when armed actors or multinational companies are involved. In Liberia, the traditional system is also prohibited from resolving cases of major crime, such as rape, murder or armed assault. If such a case is brought before the chiefs, they are obliged to turn it over to the Liberian National Police. Therefore, in cases such as these, the choice of which mechanism to use seems fairly straight-forward.

Furthermore, it has been argued that traditional conflict resolution mechanisms are best suited to deal with conflicts that are strongly connected to the values and culture of the affected community, what Lazarev (2016) refers to as “normative attachment”. Jones points out that in the case of the Maori in New Zealand, “Maori dispute resolution processes will be preferred when addressing issues that relate closely to the cultural identity of the group” (Jones 2011, 115). This has been observed as well in our case studies. In Liberia, many people mentioned that “traditional matters” are only handled through the traditional system of resolving conflict, and those involved in such disputes would never consider taking them to the formal system of courts or to the police. Traditional matters in Liberia can refer to cultural offenses or cases of accused witchcraft, for instance.

However, in many other cases, the best forum to choose in order to resolve a dispute is not as black and white, and is highly dependent on the individual contextual factors in each case. The location of the conflict, the individuals or families involved and their level of income, the nature and scope of the conflict, the knowledge that conflict parties have about the different options for having the conflict resolved (what we refer to as “conflict resolution literacy” described below), the implementation capacity of the different approaches²⁰, and the personal relations between both the conflict parties and the actors involved in the different approaches to conflict resolution (i.e. magistrates, police, traditional elders, etc.) can all affect the forum that is ultimately chosen for the conflict’s resolution.

Considering all of these different factors, it can be a great challenge to explain why people opt for one or the other mechanism. Lazarev (2016, 2, 5-6) argues that there are “normative explanations” as well as “instrumental motivations” for the choices that individuals ultimately make. In the normative explanation, people opt for the approach which they identify with or feel a sense of personal obligation to (as argued above), while instrumental motivations, on the other hand, can include deciding which approach will have the most favorable outcome or which approach has the better enforcement advantages. Lazarov’s instrumental motivations are thus comparable to the concept of “forum-shopping”, which allows people to use whatever option is best for them and to be more flexible in their choice of conflict resolution approach.

According to the findings of our field research, citizens clearly have cultural preferences, specifically as members of a certain indigenous group, but they are also capable of analyzing their individual circumstances and making decisions that will lead to more beneficial outcomes instead of making only decisions which may be most culturally appropriate. For instance, in Colombia, the Wayuu often go to the *palabrero* first with their dispute. However, while a preference seems to be given to the indigenous normative framework, community members call on the state to provide answers to their problems if, for instance, attempts to resolve the conflict through the Wayuu normative system have failed or when there is a need for public witnesses to be present when important decisions are taken. However, there was some criticism in the Colombian case that “community members were strategically opting for the conflict resolution approach that best served their own personal interest, thereby undermining themselves the principle of ‘preferential competence’” (Planta 2016, 40).

²⁰ In customary mechanisms of conflict resolution, often social pressure is sufficient to ensure any decision’s implementation and the society itself acts as a guarantor of the decision. However, this isn’t always the case and may be less so in societies in which the traditional leadership is losing its influence. In the Meghalaya Hills, for instance, generally the “customary pressure ensures the obeisance of the concerned parties to *Dorbar*’s decisions” but there have also been cases in which the parties have “defied the *Dorbar* dictate and went to the district council court against it” (Upadhyaya and Sharan Upadhyaya 2016, 18).

Here it is important to understand ‘forum shopping’ not necessarily as an opportunistic practice in which people try to outmaneuver the other party, which is often how it is perceived, but rather as a relatively common practice in countries with dual legal systems. In Liberia, forum shopping allows people to weigh their various options and decide what is best for them, taking into consideration several factors including the potential costs and outcomes, as well as which option has the best potential for peacefully and sustainably resolving the conflict. Defining forum shopping only as opportunistic misses the other individual factors which may play a role in people’s decisions to use a certain approach (Galvanek 2016, 38). This may as well be the case in many other settings that have both formal and informal legal systems.

That being said, having sufficient options for conflict resolution and theoretically being able to forum shop between mechanisms does not necessarily translate into being able to (better) access these mechanisms. Many options, particularly within the formal legal system, may be too expensive and/or time-consuming for average citizens, and certain structural conditions and prejudices may keep options beyond the reach of certain citizens. Furthermore the low level of knowledge about the various mechanisms can also lead to a lack of access. When citizens do not have sufficient information or knowledge in order to make educated decisions, having more options can potentially lead to confusion. But if efforts are made to inform citizens about their options and how these options work, having a plethora of options may in the long run help people resolve their conflicts more satisfactorily. Thus the more information a population has about their options translates into higher “conflict resolution literacy” – understanding how the mechanisms work and which is most appropriate for each individual dispute. Nevertheless, even being highly knowledgeable about one’s options does not always mean improved access. In order for individuals to be able to choose *freely* between different mechanisms, it is essential that there is no form of discrimination and prejudice in the access to the mechanisms and that financially, all mechanisms are at the disposal of all citizens. It is also imperative that the different mechanisms function the way in which they are supposed to function, and not be affected, for instance, by corruption. How well the mechanisms interact with each other is critical, as this interaction and co-existence can dramatically affect how citizens access justice and resolve their conflicts.

4 Coexistence: Forms and Factors

4.1 Forms of coexistence

Within the field of peacebuilding and conflict resolution, there have been only a few studies which go beyond a mere description of traditional conflict resolution mechanisms and instead explore the different forms of coexistence between traditional and state institutions in (post-)conflict scenarios (see Barfield 2006, Bronkhorst 2012, El-Tom 2012, Mutisi 2012, Mutisi und Sansculotte-Greenidge 2012, Neumann 2013, Sentongo and Bartoli 2012). This section draws from both this existing academic literature on the topic of the coexistence between the two mechanisms as well as the substantial research findings that we uncovered in Colombia, India and Liberia. The section therefore aims at furthering the discussion of typologies of coexistence between traditional and non-traditional conflict resolution mechanisms.

In the existing literature, there is no uniform definition of the forms of coexistence. Different authors use different terminologies to describe what is essentially the same form of interaction. There is little in-depth explanation of what these terms imply, but rather examples are given for each term. Terms such as *fusion* and *blending* tend to designate similar constructions of hybrid coexistence, while *co-option* and *instrumentalization* denote a similar form of one mechanism attempting to exert power over the other. It is clear, however, that there is a spectrum of coexistence ranging from harmonious forms (such as *constructive cooperation* or *mutual accommodation*) on one side, to antagonistic forms characterized by asymmetry, inequality and/or tension on the other. The most comprehensive approach taken in terms of typologies of coexistence is that of Neumann (2013, 78). With regard to her field research in the Philippines and Liberia, she lists four different “forms of hybridity” between “local” and “imported” practices, namely *subordination* (one approach is inferior, but its continuity is not challenged); *convergence* (both approaches approximate each other); *selective integration* (certain elements of one are integrated into the other); and *fusion* (characteristics combined in equal ratio).

All of these approaches to defining coexistence are valid and highly useful to describe the coexistence in specific contexts. Yet throughout our research we have come to recognize that the task of identifying specific forms of coexistence has often much more to do with the actions and attitudes of the various actors involved, rather than with the mechanisms themselves per se. Thus much (although not all) of what we label ‘forms of coexistence’ can be defined as a ‘type of interaction’ between actors. In the sections below, we give examples of the various forms of coexistence and interaction that could be found in our particular cases studies, and relate these forms to findings in previous research. Building on these insights, we then discuss the factors that influence the forms of coexistence.

Institutionalization

Formal institutionalization is one form of coexistence that was clearly visible in all three of the project’s case studies. Whether the coexistence is incorporated into the formal legal system through laws or embedded into the constitution, or carried out within the frameworks of official agreements, the general parameters for coexistence are established through this institutionalization. With regard to the Colombia case study and the region of La Guajira, it is reasonable to argue that the peripheral geographic situation of the Wayuu’s homeland, their ‘belligerent’²¹ character and the hostile climate conditions that have made

21 The *Guajiros* were confronted with various religious and military pacification campaigns. All of these campaigns were unsuccessful, which may be why they may have been described as an ‘ungovernable’ people of warriors (see Polo Acuña 2012).

investments unattractive favoured the continuity and the survival of their distinct culture and traditions, including their political autonomy and the implementation of their own conflict resolution mechanisms. Throughout the 20th century, however, growing commercial relations, migration of indigenous populations to urban centres, and a stronger state presence multiplied the spaces of encounter between the indigenous and non-indigenous population (Guerra Curvelo 2002, 60). Thus an emerging legal framework began to mediate the interaction between both indigenous and state-based conflict resolution mechanisms, and ad-hoc arrangements tackling the growing conflict scenarios involving indigenous and non-indigenous people became institutionalised. This development culminated in the legal framework of the 1991 constitution, which marked an important turning point with regard to the recognition of the indigenous right to self-governance. The constitution defines the country as a multi-cultural and pluri-ethnic state, thereby laying the basis for the strengthened recognition and protection of ethnic minorities.²² In Article 246 the constitution even creates the special indigenous jurisdiction next to constitutional, ordinary and administrative branches of the justice system and establishes for all indigenous people²³ that:

“The authorities of the indigenous people can exercise their jurisdictional functions within their territorial area and conform to their own norms and procedures as long as they are not contrary to the Constitution and the laws of the Republic. The law will establish the forms of cooperation between this special jurisdiction and the national justice system.” (Colombian Constitution, Article 246, own translation)

However, crucially for this study, the cooperation mechanism that was meant to regulate the manifold encounters between the two systems has not yet materialized, thereby challenging the harmonious coexistence between indigenous and state-based approaches to conflict resolution (Planta 2016, 16). Additionally, the formal institutionalisation of coexistence and formal definition of responsibilities do not necessarily lead to harmonious forms of coexistence when actors do not abide by their foreseen roles, as we will see below when discussing ‘undue interference’.

In Liberia, the great majority of coexistence between traditional and non-traditional mechanisms for conflict resolution is not institutionalized. However, several examples of institutionalization do exist. For instance, in the framework of their *Access to Justice* program, the Carter Center has Memorandums of Understanding with the Ministry of Internal Affairs, the Ministry of Justice, the National Council of Chiefs and Elders, and the Liberian National Bar Association. The Carter Center also has formalized cooperation in the form of trainings with the magistrates on how to orientate themselves within a customary system, and has developed standardized forms for actors in the customary system on which information is documented about individual cases that the customary leaders resolve. The information is then compiled by the Carter Center, which improves the record-keeping on disputes resolved through the customary system (Galvanek 2016, 48-49). Another example of institutionalized cooperation is the formal interaction and cooperation of the Land Commission with various actors in the framework of the Land Conflict Resolution Project, a collaborative effort between USAID and other international partners such as the Carter Center and Norwegian Refugee Council.²⁴

One interesting example of the institutionalization of traditional forms of conflict resolution and justice is that of the northern regions of Somalia, namely Puntland and Somaliland. Since the disintegration

²² Other recognised ethnic minorities besides the indigenous population are the Roma and the Afro-Colombian population.

²³ The special indigenous jurisdiction does not refer to one homogenous indigenous justice system across the country but rather refers to a whole range of heterogeneous indigenous justice systems within Colombia (Mora Torres 2003, 159). See USAID 2010 for the accounts of various indigenous justice systems in Colombia and their differences with regard to the authorities that are responsible for conflict resolution, the organizational structure of the justice system, the scope of the system, its degree of independence from and collaboration with state-based conflict resolution mechanisms, and its internal strength and legitimacy within the community.

²⁴ For more information about the Land Conflict Resolution Project, please see Galvanek 2016, 44-45 and <http://www.tetrattech.com/en/projects/land-conflict-resolution-project-liberia>

of the Somali state in 1991, the traditional institutions in Somaliland have played a fundamental role in the functioning of the state, for instance by taking on administrative duties and raising local revenue, administering justice, and mediating disputes (Ibrahim and Terlinden 2010, 76). Over the next years, a political system was gradually developed in the self-declared state that has been described as a “[d]ynamic hybrid’ of western form and traditional substance” which is based upon clan-based power sharing, but also uses more modern procedures and institutions, such as a parliament and cabinet (ibid.). It could thus be considered a hybrid institution as well (see next section). Most interestingly, the powerful Upper House of Parliament, called the *Guurti*, is composed entirely of traditional and religious elders, thereby institutionalizing their political participation (ibid.). In Puntland, the roles of traditional leaders and structures are embedded into governance and officially incorporated into the legal system. For instance, elders have formal dispute resolution powers according to Puntland’s Constitution and the outcome of disputes resolved by traditional leaders are recorded at the Magistrate’s Court (Stanley et al. 2013, 19). Furthermore, an advisory council of clan elders and chiefs, the *Isimada*, has assisted in selecting members of parliament and short-listing candidates for president and vice-president of Puntland (ibid., 16).

Hybrid Institutions

In the cases of Liberia and La Guajira in Colombia, little evidence of hybrid institutions in the formal sense was uncovered, although, as stated above, we do consider hybridity in its various shapes and forms to be present in all three cases. Nevertheless, the stark separation of the formal Colombian justice/governance system and the normative system of the indigenous Wayuu leaves little room for hybrid institutions to develop. Similarly in Liberia, there was little evidence found of hybrid institutions. It could be argued that the County Peace Councils established by the Peacebuilding Office are hybrid due to the fact that traditional leaders may be members, but this is more of an example of selective integration of traditional elements in what is otherwise a more modern and state-based mechanism, and therefore not a hybrid organization.

In Meghalaya, however, specifically hybrid institutions were established during British colonial rule, such as the Autonomous District Councils (ADCs) in the Garo, Khasi and Jaintia Hills. The establishment of the ADCs was an outcome of the British lack of complete trust in the traditional institutions and their need for a facilitator between the traditional and non-traditional institutions (Upadhyaya and Sharan Upadhyaya 2016, 15). Yet while these hybrid institutions were expected to ease communication between the state and traditional authorities, they were also given supervisory duties over the traditional authorities such as the power to appoint and remove tribal chiefs and headmen, which dramatically reduced the position and status of the latter. There are also significant overlaps in jurisdiction between both the traditional institutions and the ADCs as well as between the ADCs and the state legislature, which is one reason that the two have an uneasy relationship (ibid., 16). In Meghalaya today, there are mixed feelings about the ADCs. On the one hand, they have been criticized as outdated because their duties overlap with and duplicate those of the normal district administrations of the state. Yet many other citizens in Meghalaya felt that the ADCs were doing much better work in terms of administering justice and resolving conflicts than the strictly traditional institutions, and blamed any lack of performance of the ADCs on their financial constraints and disempowerment by the government (ibid.).

Selective Integration/Co-optation

In La Guajira, Colombia we observed the selected integration of useful or functional institutions and actors of one mechanism into the other as they enhance the legitimacy of the intervention and increase pressure on the conflict parties to come to an agreement. One case in point is the integration of *palabrer*

as advisors in conflict resolution processes involving public institutions or private companies. *Palabrerros* accompany public functionaries to bridge both cultural and language difficulties. But for the indigenous population, their presence also enhances the trust in the process, which makes state-based processes more attractive. For instance, the local Justice House in Riohacha collaborates with *palabrerros*, as they bring in a “cultural weight” and respect for the spoken word to the process (Planta 2016, 41).

However, the negative perspective of this integration of *palabrerros* into conflict resolution processes with public institutions or companies is one in which the legitimacy of the *palabrerros* could be undermined with the Wayuu community in the long run, because they are seen to be ‘contracted’ by the state. The Junta Mayor Autónoma de Palabrerros Wayuu argued that the Justice House using the services of the *palabrerros* was not necessarily protecting the Wayuu normative system, but rather co-opting it into national structures (Planta 2016, 41). These attempts to co-opt traditional institutions for the service of private or public interests resonate with the notion of instrumentalized hybridity introduced by Mac Ginty and Richmond (2015).

Similar co-optation is witnessed in many other cases as well, including in Rwanda, where the institution of *abunzi* has received much attention due to its role in administering justice in the wake of the Rwandan genocide. In pre-colonial times, Rwanda *abunzi* were members of the community who assisted in resolving disputes among fellow community members. The *abunzi* institution in its current form, however, is an “adulterated version” in the sense that the so-called ‘community-led processes’ are essentially top-down and controlled by the government (Mutisi 2012, 64). For instance, citizens are compelled to participate in *abunzi* due to the lack of credible alternatives for justice or because they are explicitly told about the danger of non-compliance (fines or incarceration). Mutisi argues that this makes the process coercive, with people choosing to participate in the mediation process not because they are convinced by the process, but rather because they are obliged to (ibid., 66). This obligation may also be due to the romantic and cultural narrative of the *abunzi* propagated by the Rwandan government, which can also be seen as strategic, in order to “protect the process from being criticized from not meeting international legal and human rights standards” (ibid., 69).

An example of an unsuccessful attempt at the co-optation of traditional approaches is the customary courts created by the government in Nigeria. Despite the “lofty ideals” behind their establishment, they have not been fully accepted or fully integrated by the people. The courts are conducted in the local Igbo language, but are still perceived as “an imposition by the government”. Therefore, other traditional institutions and associations remain dominant in the region (Elechi 1996, 344). A further example of co-optation is within the *judiyya* system in Sudan, a system of third-party mediation that resolves conflicts ranging from minor personal disputes to more serious conflicts between ethnic groups. Mediators are respected elders and traditional leaders. *Judiyya* is flexible in the sense that it can take different forms and operate on different levels, even the state level, and its features are to a large extent dependent on the approach of the individual mediators. While this system of resolving conflict often exists peacefully alongside the more formal legal system (with formal legal channels only being sought out if *judiyya* fails), in recent years there has been a trend to promote the use of peace conferences to resolve conflict. These conferences have been sponsored by the government, NGOs and international organizations such as the UN. This has led to the danger that the *judiyya* institution and its mediators could be co-opted by the government and that the system could suffer from a lack of legitimacy if seen as controlled by foreign actors (Bronkhorst 2012, 127-128, 131-132). A more troubling aspect of this coexistence is the government’s co-opting of the members of the native administration (NA). The NA is a type of self-administration to “manage the overlap between formal and traditional institutions and weak government capacity locally” (ibid., 135). The native administrators are primarily tribal leaders, but there has been an attempt to replace these native administrators with the politically faithful, which has effected the impartiality and legitimacy of the *judiyya* processes (ibid., 136).

Mutually Requested and Accepted Intervention

In spite of significant co-optation of traditional mechanisms of conflict resolution by non-traditional mechanisms, at other times the forms of coexistence and interaction can be carried out cooperatively, even if such arrangements tend to be ad hoc and not formalized. For instance, in the Darfur region of Sudan, the representatives of *Diya* (the traditional system of collective compensation for crimes) seek assistance from the local administration to execute their work, i.e. collecting money, which is an arduous and inefficient task. The local administration “recognizes and fully supports the *Diya* system as a legitimate course of conflict settlement” (El-Tom 2012, 107). In fact, the government at times resorts to *Diya* to resolve conflict involving intentional killings, thereby ignoring national justice codes, which state that the institution of *Diya* should be restricted to unintentional offenses (ibid., 108). In this case, there are expectations placed on the traditional system to solve more disputes than it is traditionally required to.

The field research in La Guajira uncovered different forms of state-based conflict resolution interventions in the framework of land conflicts. Next to the undue interference of public institutions disrespecting the ‘preferential competence’ of indigenous authorities, there are also necessary interventions to protect the population (e.g. in the case of displacement by armed actors) as well as state interventions that are requested by the population. From the indigenous perspective, the Wayuu conflict resolution approach is the first ‘address’ to go to when a conflict arises, but state institutions are regarded at times as a useful complement. According to Planta (2016, 39-40), indigenous community members increasingly ask public institutions to accompany or support conflict resolution processes. Documentation by the Departmental Indigenous Affairs Unit shows that community members request support when previously internal attempts to solve the conflict have failed or when there is a perceived need for external public witnesses to be present when important decisions are taken to act as a type of “guarantor” to the agreement. Public institutions can play the role of guarantors in cases of murder, crime, or robbery and are often invited to participate in the traditional process to ensure that the agreed upon compensation will be paid. Interestingly, public institutions have also been asked by the Wayuu community to intervene and ensure the community’s right to their own conflict resolution approach. The justice system and public institutions, such as the local Ombudsman Office, were thus seen as supporting the rights of the indigenous community and protecting the community’s right to be ‘judged’ according to their own normative framework (ibid., 40).

The situation in La Guajira is similar to the Afar region of Ethiopia, in which the state apparatus (in the form of the *woreda* and *kebele* administrations) plays a key role in the activities of traditional conflict resolution. It often specifically requests the involvement of the elders to mediate disputes and has even provided transport for the elders. While the case is being investigated or deliberated by the elders, the state police force will often ensure that fighting between the conflict parties, often in the form of revenge killings, does not occur. The police will even be used to guard the culprit’s clan or sub-clan during the so-called seclusion period while the case is deliberated by the elders (Sansculotte-Greenidge and Fataye 2012, 94). On the other hand, the authors also illustrate the complex relationship between the state and the traditional leaders. For instance, the elders in Chifra *woreda* “regard the state apparatus ... as a potential and actual source of support and as an ally” and “want to see formal budgetary support, transport and provision of office space from the state” (ibid., 95). They highlight that the process of co-opting and co-operation between traditional institutions and the formal state apparatus is already taking place: “This is a process bearing results where traditional institutions and mechanisms of conflict resolution play an invaluable role in conflict management, resolution and reconciliation at multiple levels: At the same time, traditional figures have been co-opted into or may even have captured the formal state apparatus to the extent where the distinction between the two has become blurred” (ibid., 96). Other authors make an even stronger argument, saying that the “Afar and their leaders have been able to localise the state structures and impose their will on them. The central government itself has had to acquiesce and accommodate itself to this state of affairs” (ibid. 96, citing Akmel 2010, 18-24).

Undue Interference

In the case of La Guajira, undue interference can be, for instance, when a community member is judged twice – once by their traditional authorities and then again by the ordinary justice system. Undue interference could also refer to public institutions unduly meddling in indigenous affairs, which can happen when the justice system attempts to solve a conflict between two Wayuu community members, even though the law clearly states that the Wayuu normative system of justice has jurisdiction and competencies to resolve the dispute (Planta 2016, 40-41). In spite of what the law says, judges in the region have a “restricted interpretation of indigenous rights and particularly of the normative system of the Wayuu” and simply ignore the preferential competence of the Special Indigenous Jurisdiction (*ibid.*). Undue interference can also refer to cases in which non-Wayuu community members are forced into accepting ad-hoc mediation and/or paying ensuing compensation payments in Wayuu territory. This can happen when traffic accidents take place within indigenous territory resulting in the death of livestock. Local state officials and justice functionaries are at times perceived as being hesitant to become involved with the Wayuu and their processes, which leads to the Wayuu indigenous system of justice and conflict resolution being applied to non-indigenous individuals (*ibid.*).

Interference was also uncovered in Meghalaya in terms of the deliberate disempowerment of traditional institutions and interference in their functioning. For instance, the Autonomous District Councils (ADCs) have been accused of interfering in the community nomination of the *Nokma* as well as intervening in issues concerning land acquisition by the government, which should officially be handled through the institution of the *Nokma*. Such activities disempower and thus weaken the traditional institutions (Upadhyaya and Sharan Upadhyaya 2016, 21). In one example given by respondents, the ADCs are required to receive approval from the traditional authorities for various procedures, specifically regarding land. Such approval needs to be written on specific stationary that the *Nokmas* are required to use. But the ADCs are responsible for issuing and numbering this stationary and regularly delay the issuing of the paper. When the *Nokmas* therefore write their approvals on other stationary, the documentation is disregarded by the ADCs for not being properly done (*ibid.*). Thus there seems to be a petty power struggle taking place between the *Nokmas* and the ADCs and a deliberate interference on the part of the ADCs into the work of the traditional institutions.

Adherence to Unwritten CR Design/ Case Referral

In Liberia, it is quite evident that there is an unwritten conflict resolution design, meaning that one is expected in both rural and urban settings to follow rather strict stages in conflict resolution, particularly when it comes to civil cases and minor crime. Cases are often ‘sent back’ when a conflict party jumps a stage in the hierarchy, for instance by going directly to the police rather than taking the case to the relevant chief or community chairman first. Often when the police first receive a case, they ask whether the chief, the community chairman, or community chairlady is aware of the case, and only if this is confirmed will they agree to accept the case (Galvanek 2016, 50). If not, the case is often referred back to them, except in cases of major crime. Such case referral and decisions on the ultimate forum for a case are prevalent not just among the police and community/customary leaders, but also between other actors in conflict resolution, including the courts (magistrates in particular) and NGO actors. For instance, a chief may refer a case to an NGO staff member or to the courts when he/she lacks the technical know-how to resolve the case, while magistrates often contact chiefs or NGOs when handling civil matters and refer the cases to them. In many of these cases, the ultimate outcome of the case will then be shared with the court and thus officially documented (*ibid.*, 49). This ad hoc system also applies to NGOs and other actors working in the field of mediation, for instance when NGO mediators, together with the disputants, withdraw cases from the courts in order to solve them through mediation. Moreover, urban community leaders often refer cases such as persistent non-

child support to the Ministry of Gender, Children and Social Protection if they are unable to resolve them. Disputes involving land are often referred to the Land Commission by either the courts or the customary or community leaders (ibid., 49-50). There is, of course, sometimes tension among actors over which forum is best for a case, which is often due to the jurisdictional ambiguity prevalent in Liberia and the fact that this referral of cases between forums is neither regulated nor standardized. Nevertheless, this system of conflict resolution hierarchy is socially accepted among Liberians and the ad-hoc case referral process generally works without any major problems. It seems to reflect an “understanding that one mechanism cannot possibly solve all conflict” and “involving other people and mechanisms, who can deal with the dispute more efficiently and more satisfactorily, will be better for the community” (ibid., 50).

Similarly, in the northern provinces of Afghanistan (Balkh, Kunduz, and Takhar), researchers have found various forms of cooperation between the informal (traditional) systems of dispute resolution (*shura* councils) and the formal legal system. Officials working in the formal system voiced universal acceptance of the informal system as legitimate and necessary. This acceptance is both an acknowledgement of the importance that the informal system had during the war, when no formal system existed, as well as a practical measure to limit the amount of cases that the formal system must handle. Officials in the formal system even delegate cases to the *shuras*, particularly those which lack written documents. Many of the decisions that are reached in the informal processes are then registered in the courts whereby they receive some formal recognition. Because both systems use Sharia Law as the foundation for their decision-making process, there is no perceived conflict between the principles of the two systems. That being said, there is no clear cut line between the two systems, and the cooperation differs between districts and is carried out on an ad-hoc basis (Barfield 2006).

Cooperative Pragmatism

In Liberia, many of the relationships between the national level and the local level are fraught with suspicion and mistrust. For instance, the central government often views civil society, including the many respected NGOs who work in the field of conflict resolution, as troublemakers and doesn't properly acknowledge the important work they do. This is in spite of the sometimes high level of cooperation between NGOs and the government. However, this dynamic often changes quite dramatically when considering the relations at the local level. For instance, while the Norwegian Refugee Council received a rather frosty acceptance from actors in Monrovia of their project to address unresolved land disputes, the government actors on the local level were grateful for the assistance of the NRC. These local actors were more receptive of the project because they were overwhelmed with the sheer number of land disputes and were pragmatic about the extra capacity that NRC was offering (Galvanek 2016, 54-55). This is a good example of how the needs on the ground and the pragmatic necessity of working together to resolve the sometimes overwhelming amount of disputes can transcend the differences that the government and civil society actors may have. The relationship may not always be perfect, but NGO staff members report that the government actors on the lower levels (district commissioners, magistrates, and other court officials) are very often appreciative of the work they are doing in resolving conflict and they cooperate well together (ibid., 55).

This pragmatic cooperation is somewhat reminiscent of Meghalaya, India, but here the indigenous tribal leaders are both traditional authorities *and* representatives of local and state governments; the indigenous community dominates the lower levels of government, as any involvement of non-indigenous in the political process is strictly limited. Therefore, the local and state levels are closely connected to traditional authorities, and the cooperation is thus generally strong. In comparison, the relations between the national level government and the traditional authorities are more distrustful. These close relations between the local, state and tribal elites has led to situations in which, for example, the state government has joined hands with local traditional institutions to oppose the actions of the Union government. Upadhyaya and Sharan Upadhyaya (2016, 10-11) point this out with regard to the demands for land reform by the central

government, which include the distribution of land for industrial development. Local governmental actors are more sensitive to the traditional institutions and to indigenous customary claims to land than the national level of governance, which is due to the dominance of tribal elite at the local level of governance.

Another interesting finding generated in this context is that the cooperative pragmatism that was evident in the relationships between mechanisms for conflict resolution at the local level in both Liberia and Meghalaya was not evident in the Colombia case of La Guajira. In Colombia by contrast, the national level of government is trusted by the Wayuu indigenous people much more than the local level of government, which is regarded as corrupt and is perceived as treating the indigenous population in a highly paternalistic way. There is thus a large variety in the forms of coexistence among mechanisms depending on the level of government, and throughout our case studies we have observed very different relational dynamics specifically with traditional actors on different levels of the state. Thus to speak of ‘the government’ as one entity greatly oversimplifies the situation and there should ideally be more analysis done on the variety of coexistence and interaction between traditional mechanisms and the different levels of the state.

4.2 Factors that Shape Coexistence

This section discusses the factors that can shape the form that coexistence takes. One objective of this project is to investigate which factors are the most significant in terms of defining the form of coexistence prevalent between conflict resolution mechanisms. These factors can be broadly clustered into the four (somewhat overlapping and certainly not exhaustive) categories below. These factors are not considered static, but rather constantly changing and evolving whereby they influence each other mutually.

1. Political and structural context: political system and historical relationship between mechanisms, institutional arrangements, laws, etc.
2. Compatibility and complementarity of mechanisms: degree of convergence of values, underlying foundations, etc.
3. Conflict situation (conflict type, degree of escalation, etc.) and external intervention
4. Individual characteristics of each mechanism: strengths and weaknesses, legitimacy, constituency support, etc.

Political and Structural Context

One of the most critical factors uncovered during the project’s research in India, Colombia and Liberia that affects the coexistence between traditional and non-traditional is the historical relationship between traditional and non-traditional authorities, and how this can affect the structural context in which these mechanisms coexist. Various authors have mentioned the importance of opportunities for power devolution and/or sharing within the political system in order to allow traditional conflict resolution mechanisms to function peacefully alongside non-traditional mechanisms. A comparative case study of five African countries finds that there is a “considerable diversity in the reception of traditional mechanisms” between the political elites of a country ranging from “clear aversion” to “passive tolerance” to “official recognition” (Huyse 2008, 21). Hence, one important factor is the reception of traditional mechanisms by state-based political elites, which can range from genuine support for traditional systems, to the severe restriction of or even demonization of traditional mechanisms. Sentongo and Bartoli (2012) recount the situation between the Buganda Kingdom and the Ugandan nation in which the successive governments of Uganda have throughout the years emphasized state-based processes of conflict resolution over traditional methods. The government has essentially attempted to substitute traditional mechanisms with its own, as it considers them more legitimate. In Uganda, there is “palpable tension between cultural institutions and the state,

ethnicity and citizenship, customary construct and civil traditions”, which can “develop into enduring rivalries and destructive hostilities ... with state and traditional actors competing for space and influence in ways that elude collaboration” (ibid., 14).

Bronkhorst (2012, 139) talks of the need for an “enabling environment” for traditional mechanisms. Referring to the case of *judiyya* in Sudan, he argues that “while government might seem distinct from *Judiyya*, it forms an essential part of the mechanism by creating an enabling or disabling environment within which the mediation mechanism and *ajaweed* function.” In the Afar National Regional State in Ethiopia, the devolution of power that came with the establishment of a federal system specifically opened up a “space which allowed traditional institutions and the traditional system of conflict resolution to be reinvigorated” (Sansculotte-Greenidge and Fantaye 2012, 89). This also holds true for the case of Bougainville in Papua New Guinea where “the conflict occurred during a time of statelessness in Bougainville” during which “space was opened for a renaissance of non-state customary institutions and processes” (Boege and Garasu 2011, 163). In the case of Afghanistan, this enabling environment could be created by a “more convincing” constitution, in order to be able to “tune the dissonance of differing religious streams, traditions, local circumstances, and customary laws into harmony” (Daxner 2009, 20).

Specific institutional arrangements, often directly related to how enabling an environment is for traditional structures, can also help or hamper peaceful coexistence between mechanisms. In many cases, the cooperation or integration between traditional and non-traditional mechanisms is carried out on an informal or *ad hoc* basis. There are no set rules or regulations concerning how the two mechanisms function with or parallel to each other. There is instead societal and communal understandings of ‘how things work’ and an acceptance of the unwritten rules of engagement. Such a lack of formal institutionalization can potentially place disproportionate weight on the relationships between traditional and non-traditional authorities. Without written regulations that are properly implemented, cooperative coexistence may be at the mercy of individual personalities and relations. Only in some cases is the cooperation and coordination between the two systems institutionalized. One case in point is that of the *Gacca* system in Rwanda, in the context of transitional justice after the Rwandan genocide. Because the *Gacca* courts were reviewed positively after their completion, the government of Rwanda institutionalized traditional methods of conflict resolution into its legal system, thereby recognizing the role of *abunzi*, or local mediators. The rationale behind this institutionalization was to “ensure that communities remained empowered to address their problems before resorting to the formal court system” (Mutisi 2012, 46). Such institutionalization cannot guarantee peaceful coexistence between mechanisms, of course, but it can significantly limit the competition and tension between the mechanisms and lead to both a more transparent division between mechanisms and a clearer choice for individuals and communities.

In Liberia, there has been substantial historical tension between the state and the traditional system of chiefs and elders. The Hinterland Regulations, passed by the Liberian government in 1948, laid out the structure and responsibilities that the tribal government was expected to follow and has been characterized by Lubkemann et. al. (2011, 200) as an “archaic blueprint for nineteenth-century colonial-style rule” which institutionalized a state-sponsored traditional justice system. Thus, while it could be argued that an enabling environment was created in which the indigenous system of justice and conflict resolution was permitted to function, this enabling environment was essentially based on hierarchy and bigotry, and the responsibilities and jurisdiction of the traditional authorities were significantly decreased. The Liberian government in Monrovia clearly places itself at the top of the hierarchy, although it struggles to gain legitimacy among much of the population, especially in terms of providing justice for Liberian citizens. Furthermore, there is a tangible sense of disrespect for the traditional systems from the side of the government. According to many individuals interviewed within the framework of this project, the government tends to be domineering and uncooperative in their actions with the traditional system. The customary actors show respect to the government, but feel they do not receive the same respectful treatment in return. The perception is that the government doesn’t take the traditional system seriously and is slowing attempting to take their power and authority from them (Galvanek 2016, 53). Complicating this situation

is the fact that Liberia has very few formal arrangements that regulate the coexistence and interaction between mechanisms. Thus it is both the lack of such arrangements and the confusion surrounding what little arrangements there are which define the coexistence. This leads to an ad hoc situation in which an “informal, societal understanding” prevails about how things work (ibid., 57-58). This demonstrates that institutionalization does not necessarily need to be formal if people understand how the system works. In fact, many people in Liberia are perfectly happy with the system of coexistence and how it currently works. Nevertheless, if the coexistence isn’t formally institutionalized, it can easily lend itself to being abused. Thus many individuals in Liberia highly recommend more institutionalization of the cooperation between mechanisms, specifically between the state and the customary mechanisms, as they recognize that the existing confusion, for instance around overlapping jurisdictions, is “neither sustainable nor conducive to successful dispute resolution” (ibid., 58).

In Colombia, thanks to mainly geography and climate conditions, the Wayuu in La Guajira were able to uphold their socio-political organization and cultural particularities in relative independence from the rest of the country, which allowed them to also maintain their distinct system of conflict resolution. And while the ongoing process of deculturalisation and a context of structural violence has weakened the Wayuu community, the Constitution of 1991 and a broader consensus in Colombian society that indigenous cultures should be preserved and protected has provided them with a new tool of ‘self-defense’ against national interference (Planta 2016, 42). Thus the set-up of a constitutional framework that institutionalizes the interaction between both indigenous and state-based conflict resolution mechanisms can be regarded as an important, though imperfect, step in preserving a legally enabling environment for indigenous conflict resolution. Yet while the constitutional framework has established a binding framework for indigenous conflict resolution autonomy, there are also various problems in its implementation, e.g. “the lack of a proper coordination law, the interference of state institutions into indigenous affairs, [and] the lack of knowledge about indigenous justice mechanisms” (ibid., 43). This applies the other way around as well, as many of the *palabrer*os don’t have sufficient knowledge about the state’s legal framework and are themselves unaware of the specific rights conferred to indigenous justice through the Special Indigenous Jurisdiction (ibid., 29). Hence, the Colombian case demonstrates that while a legally-enabling environment and specific rules for coexistence may be beneficial for coexistence, it must be combined with both political will and the technical capacity on the part of the state and indigenous authorities.

In India in turn, the British colonial regime had a policy of protecting the tribal populations in Northeast India from outside influence – a policy which was continued by the Indian government after independence through the Sixth Schedule to the Indian Constitution. The Sixth Schedule “reaffirmed the imperatives of traditional governance and stipulated special provisions to meet the unique political and administrative autonomy of Tribal Areas” (Upadhyaya and Sharan Upadhyaya 2016, 14). While it has been argued that such policies segregated the tribal communities from mainstream culture and denied them development and modernization, such policies are credited with preserving indigenous traditions and institutions of governance. Because they had a separate identity and jurisdiction, they were able to survive and coexist with the more modern state governance institutions and have thus maintained much of their influence in the Hills of Meghalaya throughout the decades (ibid.). That being said, the traditional and state institutions in Meghalaya suffer from an overlap in jurisdiction that can lead to open confrontation between the mechanisms and confusion for communities. According to Upadhyaya and Sharan Upadhyaya (2016, 25) this overlap ultimately disadvantages the traditional system, as it erodes the credentials and competence of the traditional institutions.

Compatibility and Complementarity of Mechanisms

The degree of congruence between traditional and non-traditional mechanisms with regards to their values, basic principles and purpose can have a dramatic effect on the forms of coexistence between mechanisms.

One may expect that a commonality of underlying principles and values between traditional and non-traditional forms of conflict resolution would make cooperation between the two much more likely. This is seen, for example, in northern Afghanistan in which both the informal and formal legal system use Sharia law as their basis for decision-making (see Barfield 2006). However, when considering mechanisms of justice, traditional and non-traditional mechanisms often do not share the same purpose. While state law “seeks to punish the guilty, customary law generally seeks if possible to reconcile parties in order to conserve the harmony of the group” (Van Cott 2000, 214). This can be seen for instance in cases of rape or assault in which the customary system, rather than punishing the perpetrator individually, has his family take responsibility for his actions by paying a fine or even by having the man marry the woman whom he raped. In extreme cases such as this, customary law may breach accepted international principles. Strong diversion in purpose might thus lead to an antagonistic coexistence.

In Liberia, the principles and purposes of the traditional system of conflict resolution and the formal justice system are markedly different. The latter is generally ordered according to the concepts of retributive justice and individual rights, while the former is grounded in the principles of restorative justice and social reconciliation. Many of the objectives of the formal system therefore clash with the ideals and principles with which the majority of Liberian citizens are comfortable (Galvanek 2016, 23). This seems to imply that the coexistence between the two systems would be less cooperative and difficult to harmonize, which is indeed the case. However, in Liberia there are various other actors that work within the space between state and customary, such as the numerous NGOs involved in the realm of conflict resolution, and they often act as a bridge between the formal and traditional systems. For instance, these middle-ground actors can help bring the concerns of the traditional actors to the level of the state, which may otherwise go unheard. Furthermore, these bridge builders have a wide array of principles and values, some of which they share with the formal system, such as gender equality and modern methodologies for conflict resolution, and some of which they share with the traditional system, such as the role of mediation in resolving conflict or having a public element to the resolution process. This sharing of values enables them to relate to both systems and interact and coexist cooperatively.

In Colombia, the indigenous and state-based approaches to justice also differ considerably in terms of underlying principles, objectives, and procedures. While this could potentially lead to considerable conflict, the special protection of the autonomy of indigenous peoples and the fact that indigenous justice is applied to only a small minority (2.7% of the population), might make indigenous justice autonomy less threatening to the state and hence allow for greater independence and acceptance of its particularities. While the process of institutionalisation has spurred a stronger coordination and selective integration between indigenous and state-based conflict resolution institutions and actors (such as the Justice Houses, Indigenous Houses, and the inclusion of *palabrer*os), it has not resulted in a rapprochement of processes or norms.

In the state of Meghalaya, one can witness a rather unique set of circumstances in that the indigenous ethnic population dominates all levels of governance in the state – the traditional institutions, the hybrid institutions (ADCs) as well as the state government. This would seem to imply that a high level of convergence between the values and principles of the different systems exists, yet this isn’t necessarily the case. The relationship between the state actors and the traditional actors is often fraught with disrespect and a lack of consultation (ibid., 23), and as noted above, a significant amount of interference. Nevertheless, Upadhyaya and Sharacn Upadhyaya (2016, 7) argue that the traditional institutions are perceived as “useful supplements to the state-based conflict resolution process, especially in places with a long lineage” of traditional governance.

Conflict Situation and External Intervention

The existing literature on the topic of the coexistence of traditional and non-traditional mechanisms for conflict resolution sheds little light on how conflict dynamics (type of conflict, degree of escalation, conflict

phase) impact on coexistence. Instead, studies focus solely on traditional mechanisms, for instance documenting the revival of traditional mechanisms in the aftermath of armed conflict (see Branch 2014). Our research in Liberia, Colombia and India has also highlighted the potential limitations of traditional mechanisms in addressing large-scale violence. Yet there have until now been few academic insights that help understand how these dynamics might affect the coexistence between both mechanisms.

From the field work carried out in Meghalaya, we have found that traditional institutions are being sidelined in the current situation of armed insurgency in the state, primarily because the traditional actors are suspected by the state of having ties with the insurgents. They are thus not taken into confidence by the state and are excluded from any mediation between the insurgents and the government (Upadhyaya and Sharan Upadhyaya 2016, 17). This exclusion by the state in resolving conflict in the traditional actors' home has a negative effect on the overall credibility of the traditional system, and it also ignores the potential contribution that traditional institutions could make to conflict resolution, particularly in facilitating the reconciliation process for surrendered militants, as militants often have respect for elders from their villages (ibid., 17, 22). Thus in Meghalaya, the situation of armed conflict has a rather negative effect on the coexistence between the state and traditional mechanisms for conflict resolution, as it has led to the state ignoring and excluding the traditional actors.

In the post-conflict situation of Liberia, however, we see a different dynamic, as the coexistence between traditional and non-traditional has been dramatically reshaped since before the war, and we can argue that this reshaping has benefited the traditional mechanisms in the sense that they are more recognized and respected by the state than before. This reshaping is based upon an acknowledgement of the root causes of the war and "a significant re-evaluation of social dynamics in Liberia in terms of the Monrovia (political and economic) elite and the overwhelming majority of underprivileged and impoverished Liberians" (Galvanek 2016, 59). Few, if any, Liberians truly feel that war is a solution to the myriad of problems that the country faces, and there is a general understanding that the dynamics that existed during the war between the Monrovia elites and the rest of the county's inhabitants cannot and should not be continued. This understanding has thus led to a change in discourse and a number of reforms in the country since 2005 and has led to more respect and mutual accommodation between the traditional and non-traditional systems.

Turning to Colombia, the Wayuu society has been affected both by structural violence linked to its marginalised and peripheral geographic location and by violence in the framework of Colombia's internal armed conflict, including illegal trafficking of goods, the intrusion of armed actors, the corruption of state institutions and the centrality of conflicts over land (CNRR 2010, 41). This situation of violence has affected the coexistence of mechanisms for conflict resolution in various ways. First of all, La Guajira is one of the most impoverished and marginalised departments of Colombia. According to the *Junta Mayor Autónoma de Palabreritos Wayuu* (2009, 61) the most affected population group next to children are the elderly, and this includes many traditional authorities. As a result of the lack of the most basic resources for survival, many traditional authorities are no longer able to promote the organisational processes necessary for traditional conflict resolution to be applied. Secondly, in the context of ongoing internal war in Colombia, the indigenous system was judged incapable of dealing with atrocities committed by external armed actors that brutally violate Wayuu codes of conduct. Indigenous communities claimed that the state should take over more responsibility for solving conflicts which involve armed third actors in order to protect the indigenous population. Such a scenario could potentially lead to the strengthening of state intervention over indigenous conflict resolution. On the other hand, however, the poor role of the state in addressing violence against the indigenous population is striking, leading to the question of whether the state is at all capable of providing justice for victims of these violations (Planta 2016, 43).

Another factor that effects the form that coexistence takes between mechanisms for conflict resolution is the type and degree of external intervention in the country, specifically as it relates to conflict. One premise of this project is the idea that imported conflict resolution mechanisms are not necessarily the most useful in many societies, particularly those which are traditionally organized. Such an understanding takes

a critical stance towards externally-imposed intervention. Critical research on the cultural imposition of Western conflict resolution models has highlighted that international intervention – even if well-intended – has led to a distortion of traditional approaches. For example, Ron Kraybill (1996, 22 cited in Walker 2004, 546) describes this proselytization of Western conflict resolution stating that, “[w]here religions send missionaries, conflict resolution organisations send trainers”. However, with the ever growing interest in recognizing traditional mechanisms, including from external interveners, the picture is becoming more complex. Mehler, for instance, argues that disproportionate support for traditional methods could increase competition with state-based conflict resolution methods, which could ultimately weaken the state (Mehler 2002, 53 cited in Boege 2004, 196).

As described above, there are a plethora of national and international NGOs active in Liberia which play a substantial role in resolving conflicts around land, supporting sustainable dialogue projects, and offering mediation services. As noted before, the approaches these organizations use in their activities can resemble elements of traditional forms of dispute resolution, such as having a public element to the process and carrying out a ceremony after a conflict has been resolved. Nevertheless, these NGOs are also externally funded and use programming methodology which would not be considered traditional to Liberia. Since the signing of the Accra Comprehensive Peace Agreement in 2003, Liberia has been home to extensive international peace-support and development assistance and it is therefore almost unimaginable how the coexistence between traditional and non-traditional forms of conflict resolution would look without the presence of this external intervention. Specifically, these (internationally funded) NGOs work very closely with actors from the traditional systems and act as bridge builders between the traditional systems and the state, dramatically easing the lines of communication between the two mechanisms. Furthermore, Liberians generally think very highly of NGOs and trust and respect them, which leads to cooperative interaction between NGO actors and others. Thus, this level of external intervention has been fundamental in affecting the coexistence between the traditional and non-traditional.

In direct contrast is the almost complete lack of international intervention in Meghalaya. This is a direct policy of the Indian government and can be observed in other areas of the Northeast and in India as a whole. The Indian government does not encourage the involvement of international actors, particularly in any processes of conflict resolution or peacebuilding (Galvanek 2013, 33). Thus there is no potential for third-party external actors to act as a positive bridge builder between the traditional and state institutions and to potentially improve the cooperation and collaboration between the two.

For the Colombian case, it is interesting to highlight more generally the role of external/international norms and discourses on indigenous autonomy as a driver that led to the system of indigenous conflict resolution becoming protected. The drafting of the 1991 constitution took place in the framework of a pluralist paradigm, which gained ground in the last decade of the 20th century and occurred in the context of the adoption of Convention 169 by the International Labour Organisation (ILO), the strengthening of movements for the rights of indigenous people, and constitutional reforms in various Latin American countries (Yrigoyen Fajardo 2004, 33). This context has contributed to both a renewed interest of indigenous communities in studying and applying their ancient mechanisms of social control (Guerra Curvelo 2002, 32; Martinez and Hernandez 2005) as well as to a general understanding in Colombia that indigenous autonomy is a national good that must be protected. In that context, international donors have shown an interest in supporting indigenous conflict resolution mechanisms. It still remains to be seen whether such initiatives only focus on the strengthening of indigenous conflict resolution or also lead to an improvement of the relationship between the different mechanisms as is the case in Liberia.

Individual Characteristics of the Mechanisms

The individual characteristics (e.g. legitimacy/constituency support, actors involved, capacity) as well as the strengths and weaknesses of each mechanism for conflict resolution can have a large impact on

the nature of the coexistence between the two mechanisms. Considering how many mechanisms we have examined in our three case study regions alone, and how even the same type of mechanism (e.g. traditional systems) can have widely differing characteristics depending on the actors involved, these individual characteristics can lead to countless forms of coexistence. Clearly the legitimacy of a certain conflict resolution mechanism and its constituency support play an immense role in its ability to resolve conflicts both within the community and between various conflict stakeholders. If a mechanism is seen as illegitimate by any conflict party, the chances of resolution decrease, as there is less social and/or legal pressure to comply with whatever decisions have been made with regard to the conflict. As stated above, many traditional mechanisms are facing a decline in authority and legitimacy. Such a decrease in legitimacy, and as a result, of constituency support, can lead to mechanisms being unable to mitigate violence. As Neumann highlights in the case of Liberia, the wars disrupted community and leadership structures, weakening the social positions of the chiefs and overstraining their capacities. Their decreased status and inability to protect their communities led many youth to join the combatants (Neumann 2012, 206). In today's Liberia, it is the formal justice system that is suffering from a crisis of legitimacy due to inefficiency and corruption, rather than the traditional system. It may seem that this would lead to an improved relationship of the state with the traditional actors, as the state should realize the influence that the traditional system has and want to collaborate with the traditional actors in order to harness their influence. To some extent this is the case. But simultaneously, it also seems that the state is overbearing in its relationship with the traditional actors almost because it is aware of its weak position with regard to its legitimacy and wants to demonstrate its power and authority. This then leads to very tense coexistence. The various NGOs active in the field of conflict resolution, for their part, are generally considered trustworthy and competent and enjoy a high level of legitimacy in the country. This is perhaps one of the reasons that both the state and the traditional system are willing to partner and work with these organizations, who in general have a good working relationship with both.

One of the starkest findings that we have from this project is the essential role that single individuals and personal relations between individuals play in the coexistence and interaction between mechanisms of conflict resolution. For instance, even if there is no institutionalized cooperation between mechanisms or if there is tension and antagonism between mechanisms, a cooperative and respectful approach of key individuals within these mechanisms can change the dynamic entirely. In the case of Meghalaya, Upadhyaya and Sharan Upadhyaya (2016, 25) argue that the cooperation between traditional institutions and non-traditional institutions is “mostly driven by personal relationships between individuals and leaders belonging to both sectors” and collaboration on issues of solving conflict often happens informally. This is also one of the main findings in Liberia. Much of the collaboration between the state, the traditional authorities and the various third-party actors is carried out on a highly individual, ad-hoc basis. This means that much of the interaction between mechanisms is decided by individual people, rather than rules or regulations, and can thus change depending on the context and the people involved. For instance, in individual districts in Liberia, the governance structure is headed by a district commissioner (appointed by the government) and a paramount chief (appointed or elected by the people), who both have great responsibility for the districts, including resolving various issues of conflict. If the personal relationship between these two individuals is respectful and collaborative, the overall coexistence of state and traditional systems in the district benefits from this collaborative relationship. However, if these two individuals struggle to relate to each other, the relationship between the traditional actors in the district and the government can be tense and generally problematic.

In terms of capacity, Mutisi (2012, 147) speaks of the “withdrawn” state as having “limited capacities for providing development and security”. This vacuum, therefore, is filled by traditional institutions of governance. If the state's institutions do not have the capacity to undertake conflict management at all levels, the population will use other mechanisms. This variable can lead to a pragmatic coexistence, if the arrangement is accepted and approved of by the government, but it also could lead to antagonism or even outright conflict. In Colombia, both the ordinary justice system and the indigenous Wayuu system

suffer from a certain lack of capacity. The Wayuu system of conflict resolution has been weakened due to many different factors including urbanization, the intrusion of business actors onto Wayuu territory, mixed marriages, new leadership, and the indigenous community’s increasing use of state services. Yet the ordinary justice system has yet to prove its efficiency to respond to conflicts on indigenous territory.

In Meghalaya, the weakness of the traditional institutions is apparent with regard to their inability (or unwillingness) to prevent or speak up against violence towards non-indigenous migrants. Although they solve small-scale disputes, they have neither the experience nor competence to deal with this higher level of violence. This inability to stop the violence leads the state to maintain that such violence demonstrates a failure of the traditional institutions to maintain law and order (Upadhyaya and Sharan Upadhyaya 2016, 9). In terms of dealing with the armed conflict in the state, the traditional institutions have even less capacity to help resolve the conflict, as the state completely side-lines them in order to deal directly with the militants. This complete dismissal of the traditional institutions in dealing with these conflicts which directly affect their constituencies weakens them even further.

5 Conclusions and Recommendations

In the available literature on the topic of the co-existence of traditional and non-traditional mechanisms for conflict resolution, there is no clear conceptualization of the impact that this coexistence can have. Sentongo and Bartoli (2012, 13) assert that the tension rising out of the existence of various conflict resolution systems at the same time “might create conditions for collaboration and complementarity” which can “enrich the collective discourse and open up new possibilities for enduring peace at both the state and the communal levels.” Similarly, Boege (2004, 19) states that coexistence will lead in certain contexts to more options for the population. He argues that that societies which have at their disposal different conflict resolution mechanisms develop more competencies in conflict resolution, as individuals and communities learn to use and live with two approaches for solving conflict, which ultimately leads to better conflict settlement results (*ibid.*). Going even further, research by the Liaison Office in Afghanistan on the Commission on Conflict Mediation, a hybrid mechanism created to address land disputes, argues that “collaboration between traditional and modern systems enhances the transparency and accountability of both systems” (TLO 2009). However, other authors have stressed the ambivalent consequences of coexistence, arguing that the coexistence of different conflict resolution mechanisms can be destructive and develop into rivalries. Tension and competition between different mechanisms would then potentially further conflict (see Sentongo and Bartoli 2012).

We began this project with two contradictory assumptions for the impact of coexistence on conflict settlement outcomes. Either the coexistence of traditional and non-traditional conflict resolution mechanisms will lead to tension and competition between the mechanisms, ultimately furthering conflict, or the coexistence will lead to more (and better) options for the population, thereby promoting conflict settlement processes and outcomes. We also assumed that the impact of coexistence on these processes and outcomes depends on the very form this coexistence takes. After having carried out research in three diverse regions, examining the characteristics and processes of numerous and highly diverse mechanisms for conflict resolution, we can conclude that the coexistence of conflict resolution mechanisms can indeed trigger tension and competition, thereby hindering conflict settlement processes and outcomes and even exacerbating or creating new conflicts. This can happen if competencies and responsibilities are unclear – for instance, when there are overlaps in jurisdiction or ambiguous regulations or if the actors involved with the mechanisms are not trained properly about their tasks and responsibilities. Tension can also be triggered if individuals enter into power struggles with one another or are simply disrespectful and unkind to each other. As mentioned above, interpersonal relations play an enormous role in the interaction and coexistence between mechanisms; thus power struggles and a lack of respect can have an equally enormous impact on conflict settlement processes.

However, the coexistence of conflict resolution mechanisms can also under certain circumstances have positive effects on conflict settlement processes and outcomes, such as improving access to justice for citizens, offering more options for conflict resolution, and holding the mechanisms more accountable. Such effects can be achieved *if* the principles and regulations for coexistence (whether institutionalized or informal) are well understood – for instance, if the responsibilities of each mechanism are clear and there is little jurisdictional overlap. Another prerequisite for positive effects on conflict settlement is if the coexistence is respectfully managed by the diverse traditional and non-traditional entities involved, through respectful collaboration and/or recognition of the competencies of the other mechanisms, rather than power struggles. If these conditions are met, conflict stakeholders can often enjoy amenable coexistence between the mechanisms for conflict resolution that they interact with and this can lead to positive conflict settlement outcomes.

Although our field research was limited to certain regions in the countries of Colombia, India and

Liberia, we believe that many of the challenges to and opportunities for peaceful coexistence between mechanisms for conflict resolution are quite similar in other states with settings of legal pluralism. This has been demonstrated through desk research which demonstrates that other societies with active traditional systems are struggling to either harmonize the formal and informal systems or, at the very least, to find a realistic strategy for mutual accommodation. Furthermore, the interest shown in this and other related research projects – particularly from citizens of countries with systems of legal pluralism – shows that there is a willingness to learn from other cases worldwide. Therefore the following recommendations for policy makers, peace practitioners and communities apply not solely to our countries of investigation, but could also easily apply to others.

In order to promote peaceful and cooperative coexistence between mechanisms, the following recommendations are given:

1. Promote the “conflict resolution literacy” of all citizens

It would be greatly beneficial for citizens to have more information about the options that are at their disposal to solve their disputes. This applies to not only traditional authorities or persons working within formal justice systems, but rather to all community members. They should have more opportunity to learn – through awareness-raising campaigns or specific trainings – about the fundamentals of governance and the formal justice system, the application and functioning of traditional systems, and perhaps most importantly, how to navigate the different systems and what can realistically be expected of each system. The use of trained paralegals who are familiar with the formal system, yet can reach out to those individuals living in traditional areas could be highly beneficial for increasing this literacy. Such information could potentially be included in school curricula and youth programming in order to reach young people. Such information campaigns and trainings will not only increase community members’ knowledge about the distinct opportunities for conflict resolution, but can provide citizens with an expanded toolkit for solving conflicts peacefully in their own families and communities. If NGOs are working in this field of capacity-building, their work could be supported and potentially expanded to other regions and target groups.

2. Work with the structures and mechanisms already in place for conflict resolution, and enhance the capacities of actors involved in these mechanisms in order to allow them to better respond to citizens’ needs

It is extremely rare that a community has no form of governance or leadership structure. It is thus important to focus on the structures and mechanisms that are already in place, rather than attempting to establish new systems. The potential capacities of existing mechanisms should be acknowledged and supported, while the weaknesses of the mechanisms – for instance, autocratic tendencies or lack of inclusivity – can be addressed. Working with established systems in this way could increase their legitimacy and inclusivity and allow them to better meet the needs of their citizens. For instance, community and/or traditional leaders could be more recognized for their work with a small compensation or allocation of office materials. Public administration and justice sector staff, including judges, could be trained so that they are more aware of the indigenous legal frameworks. Furthermore, local communities should be recognized more for their informal and daily contribution to resolving conflict. Trotha (1986, 19) concludes that traditional societies demand continuous conflict resolution efforts from their members, in comparison to modern societies, in which the responsibility and the burden to manage conflicts is largely taken away from the individual and placed on the state (and its judicial system). Thus individuals and communities should be empowered – financially, logistically and/or strategically – to utilize these already-existing conflict resolution resources.

3. Clarify questions of jurisdiction; increase formal institutionalization; encourage legal reform

One of the most common difficulties arising with regard to the coexistence of mechanisms is overlap in jurisdiction and/or a lack of clarity about respective roles and responsibilities. This may be caused by contradictions in the law, a lack of understanding about one's position and tasks, or an intentional encroachment on or interference with other's jurisdictions. Such situations prohibit effective coordination between mechanisms for conflict resolution and can lead to tension and competition. One way to eliminate overlaps in jurisdiction and confusion over responsibilities is to encourage reform of the systems, if needed, and increase the formal institutionalization and documentation of the coexistence. Much of the interaction between mechanisms is ad-hoc due to a lack of regulations, which puts such interaction at the mercy of personal relations and can lead to confusion among the mechanisms and in communities. Such formal institutionalization will most likely necessitate extensive consultation with the state, traditional authorities and civil society representatives. Extensive regulation is not necessarily needed, but any existing regulation and institutionalization must be unambiguous, with the provision of clear guidance and good practices. Training for individuals working within the mechanisms to clarify their duties with regard to other mechanisms would also be helpful. Lastly, clearer lines of reporting and/or communication are needed between the state, traditional leaders and any relevant third-party actors.

4. Strengthen norms and practices that regulate interaction between mechanisms and actors, thereby improving cooperation and collaboration

Very much linked to the previous recommendation, it is important to create certain 'ground rules' for personal interaction and coexistence that are based on mutual respect. For instance, using "rightful entry" (speaking to the leader first) when entering a traditional community or making more effort to understand the local norms and culture can dramatically improve the relationship and cooperation between the state and the traditional authorities. Such practices can be particularly beneficial when there is a need for complementarity between mechanisms, such as when the state needs the assistance of the traditional authorities to resolve local conflicts or develop joint strategies. A sensitive approach of all actors based on courtesy, consultation, and respect will go a long way towards building a trustful relationship that is needed to ensure peaceful and collaborative coexistence.

5. Strengthen mediation options within all mechanisms, but particularly in the formal system

The concept and praxis of mediation is one approach to conflict resolution that actors within various mechanisms feel is an appropriate and successful method for resolving conflict. Many traditional authorities feel that mediation is an integral aspect of their conflict resolution process and many statutory officials are taking a growing interest in offering mediation services as an alternative to the formal justice system. Third-party actors, such as NGOs, also prefer to use mediation as a method of resolving disputes. This increase in mediation activity should be encouraged, as mediation could potentially be the "common denominator" between traditional and non-traditional mechanisms.²⁵ As mediation is often a method that citizens understand and feel comfortable with, offering mediation services, either within the formal justice system or as an alternative to it, could potentially lead to citizens having significantly better options for having their conflicts resolved.

²⁵ See Galvanek and Planta (2017) for detailed information about mediation as the common denominator in Colombia and Liberia.

6. Strengthen potential “bridge builders” or “facilitators” between conflict resolution actors

In various contexts there will most likely always be individuals, organizations or institutions which are able to “speak both languages” of the traditional and non-traditional. These could be, for instance, people who have grown up in the traditional system but have received an education in an urban setting in which the traditional system has less legitimacy and influence. They could also be organizations or institutions that work within the space between the state and the traditional system – they have a good working relationship with the state, yet have the ability to reach out into traditional societies in which the state may not have much legitimacy. These bridge builders often share values with both the traditional and state systems and can thus relate to both and earn the respect of both. The important work of these bridge builders should be acknowledged and supported, as they offer a rare line of communication between the different mechanisms and can assist in defusing tension, encouraging understanding, and increasing respectful cooperation. It is essential that the independence of these bridge-builders remains undisputed and respected and that there is no attempt to co-opt them into one of the mechanisms.

7. Carefully analyze the role of the different levels of state institutions and assess where the challenges to peaceful coexistence lie

When speaking of the state or the formal justice system, not all levels of state actors can be lumped together in terms of having the same type of relationship with traditional authorities. In some contexts, the local government and the traditional authorities may have a very respectful and pragmatic relationship, while the relationship of the traditional actors with the national government authorities can be significantly more troubled. In other contexts, the national government may, with perhaps the assistance of laws that enable customary systems, have a respectful rapport with the traditional actors and it is instead the interaction with the local authorities that is more problematic. In both cases it would be an over-simplification to speak of “state actors”, as they can have dramatically different approaches to interaction with the traditional authorities. Therefore, the specific sites of tension and competition need to be identified and addressed by the state, with the aim of improving communication and cooperation between the different levels of government, as well as with the traditional system.

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