

BOOK REVIEW

Deborah Isser (ed.), *Customary Justice and the Rule of Law in War-Torn Societies*. Washington DC: United States Institute of Peace Press, 2011. xiv + 386 pp.

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The book is an edited volume of inter-disciplinary case studies that analyze the plural legal systems in seven countries. Authors of this well-written edited volume examine in depth the dynamic of the justice sector in Mozambique (Stephen C. Lubkemann, Helene Maria Kyed and Jennifer Garvey), Guatemala (Jan Hessbruegge and Carlos Fredy Ochoa Garcia), East Timor (Tanja Copra, Christian Ranheim and Rod Nixon), Afghanistan (Thomas Barfield, Neamat Nojumi and Alexander Thier), Liberia (Stephen C. Lubkemann, Deborah Isser, and Philip A.Z. Banks), Iraq (Patricio Asfura-Heim) and Sudan (Francis M. Deng).

The case studies go beyond traditional legal analysis to include a broad historical perspective on the legal structure of each country. The inquiry mostly goes back to the colonial period, a view that is sometimes neglected in legal positivist academic reporting. Considering the nature of the cases, it proves beneficial to move beyond a myopic focus on common juridical analysis in war-torn societies. In such circumstances, the nation building effort is at risk if plural legal systems are perceived as a given rather than as a result of social construction. In addition, each case study scrutinizes customary law and its connection with formal law in the context of various legal and practical modes, giving the book a central cohesiveness. Analyzing customary justice this way allows the authors, who consist of reputable scholars and experienced practitioners, to investigate the ways that customary justice systems further the goals of the rule of law and stability in post-conflict societies.

In the case studies, formal and non-formal legal systems are (differently) connected for many diverse reasons. In Mozambique, the developing interaction between state-centered and customary justice systems relies on the historical post-colonial legacy that gave legitimacy to customary law; this shapes modern daily politics as well. The connection was made possible in Guatemala by a remarkable

acknowledgment of indigenous people of Mayan descent in the peace accords that ended the country's internal conflict of thirty-four years. Such an attempt brings a promise of legal pluralism in formal political practices, as is demonstrated by the codification of Mayan law in the constitutional amendment. In post-Taliban Afghanistan the formal justice system has limited reach and legitimacy, which creates a need for an accessible customary justice system. Similarly, alongside the globally celebrated flow of democratization in Liberia, customary institutions continue to function in small communities, where formal courts often do not even exist.

As these case studies observe, formal and customary justice systems coexist, and in their different ways not only provide the victims of post-conflict periods with access to justice, but also enable communities to adjust and adapt to the transitional situations. Both community-based authorities and local state officials in Guatemala are offered a *de facto* framework for action through practices that recognize the social legitimacy of customary justice systems. This *de facto* framework is marked by forms of collaboration that coexist side by side with forms of competition in different forms of collaboration. In Mozambique practicing customary law could fill the gap in the formal legal framework by setting *de facto* rules for articulation and jurisdiction. *Jirgas* and *shuras*, forms of non-formal dispute settlement mechanisms in Afghanistan, have also played a critical role in resolving certain kinds of crime. While in Iraq, tribal customary law could expand its task from resolving conflict to limiting the scale of conflicts.

Naturally, the existence of customary systems is not without contestation. Many different groups in society ultimately challenge the existence of customary systems. Such is the case with Mayan law, which is persistently contested by right wing or religious groups. In East Timor, the United Nations Transitional Administration sought to build a Western-style formal justice system with little regard for the socio-economic and capacity realities in the country. Yet local justice systems continue to adapt to native values that give meaning to sensitive crimes such as rape, or property issues such as land tenure. In the Sudan, the colonial legacy formally acknowledged religious and indigenous judicial systems that adjudicated personal matters, but this has been contested by demands to modernize the customary legal system, including the codification of customary law.

This edited book appeals for two reasons. First, the authors have carefully considered the caveats arising from the reach of customary law. Apart from the advantage of social adaptability and accessibility, the informal system still in many

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cases poses challenges with regard to gender discrimination. In the case of Afghanistan, customary justice may give individuals the power to seek their own justice, but also inhibits the community from punishing perpetrators who assert their right to revenge or defense of honor. Furthermore, customary systems are generally powerless in disputes or offences involving outsiders, government actors, or other powerful people, including those protected by militia commanders or criminal networks, as observed in the case of Liberia. Second, the authors offer a list of practical recommendations at the end of each chapter. While this pragmatic stance is tailored with respect to each case study, the recommendations offer rule of law practitioners evidence for informed policy and programming. A lesson learned from the case of East Timor is relevant in this regard, where a top down effort to initiate transnational justice failed to deal with conflicts arising at the inter-communal level, which in effect seriously threatened the stability of the country.

In the context where formal legal systems are in transition, the case studies in this book provide us with insights regarding the realities of actors and actions in practicing customary justice. Obviously, there is no such thing as 'one size fits all' to deal with the complexity of legal systems, especially in post-conflict societies. The victims and survivors in such societies have experienced conditions that demand sensitive and long-term solutions. As the concluding chapter of the book highlights, attempts to address the unique problem of post conflict situations, as well as navigating the changes in transitional societies, should be undertaken in coherence with a comprehensive understanding of current social and political contexts. This means observing the complexity that follows on the co-existence of formal and customary legal systems as well as the possibilities for creating a dialectical space, which in turn implies analyzing the long-term impact of the implementation of both legal systems to the changing perceptions of justice and to creating access to justice in society. Drawing on decades of experience, the authors in this book have delivered a sound examination of social practices of customary justice that can contribute to a better practice for the global effort to promote legal empowerment in an increasingly plural world.