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2010

MAKE PEACE HAPPEN

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ACCORD
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2010
MAKE PEACE HAPPEN

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Foreword

Jannie Malan

Whenever we think about conflict – whether conflict in general or a specific conflict – we soon become aware of various degrees of complexities. Even when it superficially seems as if a particular conflict started with a mere clash of interests or understandings, there may be a quite complicated context of backgrounds, cultures, approaches or perspectives. It is understandable, therefore, that we try to make our thinking less confusing and more manageable by, for instance, introducing convenient distinctions. One of the very obvious and therefore widely used classifications is the one which distinguishes between beginnings, escalation and resolution. Such a stage-related approach has led to the use of a set of terms and methods, of which the most well known are conflict prevention, management and resolution.

These, and other, distinctions can be useful when practitioners are around their planning tables and researchers are at their desks. In real life, however, things – including all the 'things' about conflicts – defy pigeonholing. Apparent beginnings of a problem can be the repercussions of a previous solution, as captured in the saying that today's solutions are tomorrow's problems. But on the other hand, satisfactory cases of resolution and reconciliation can become models for conflict prevention. So, whether we classify a situation or a finding as 'before', 'during' or 'after', it may contain intermingled elements of past, present and future.

The articles included in this issue provide meaningful examples of such interrelatedness and cross-fertilisation. They describe and assess ways of thinking and doing that have been used, and they share suggestions for future use. Some lessons, conclusions and recommendations are explicitly stated, but certain corollaries, implications or seed-thoughts may be discovered by observant, thinking and meditating readers.

The articles on Rwanda and Sudan focus on post-tragedy situations in which justice (punitive and/or curative) and recovery (economic, social and/or political) are pursued. They are 'after' papers with 'before' messages. The article on electoral violence is a retrospective one – containing explanations of prospective value. The Niger Delta article is about a promising new approach emerging during a tenaciously protracted conflict. And the two articles dealing with traditional approaches and strategies discuss ways in which wisdom and expertise accumulated in the past can be incorporated into current ways of handling conflict. Moreover, several of the time-proven elements warrant ongoing use in the foreseeable future.

Each of these articles should of course be read – and hopefully also be referred to in further study – with regard to the specific issue and situation described and discussed. Particular findings and suggestions may be applied in the same settings, or in comparable circumstances. But, in each of the articles something may also be found that contributes to an overall thrust of this issue. The message is very common-sensical, but one which deserves common application: Learn from the past, apply what you have learnt to improve the present, and, where feasible, disseminate the learnings for wider use in future.

Academics are often tempted to elevate themselves above the 'commonplace' level of the common-sensical and rather revel in the 'above-the-ordinary' realm of analyses and arguments, hypotheses and theories, methodologies and terminologies. But academics committed to accountability and relevance do manage to integrate theory and practice, and will never frown upon life-relatedness. So then, in addition to all we can learn from situations in particular countries (Rwanda, Sudan and Nigeria) and from African elections and traditions

(of applying justice and managing conflict), we can internalise a past-based and future-oriented readiness to respond to emerging or existing disputes.

We therefore trust that this issue will do its bit to equip ourselves, publishers and readers, better to be available as conflict preventers, managers and resolvers. Even when we are not called upon to intervene, our presence with an appropriate attitude may make an important difference. And this may happen in all potential or actual conflict situations – whether 'trivial' or crucial, 'simple' or complicated.

Finally, however, we may take our line of thought about 'after' and 'before' an important step further. After the Rwandan genocide and other gross atrocities the call 'Never again' was justifiably cried, and possibly did exert some mindset-changing influence. Of course we are hoping that there will never again be an occasion for screaming 'Never again', but as a preventive measure we may use opportunities for reminding fellow-humans and human groupings about this clarion call. We may also follow one of the French versions, as used in Rwanda, which simply says 'Not ever' – not even once!

Performative functions of genocide trials in Rwanda: Reconciliation through restorative justice?

An examination of the convergence of trauma, memory and performance through legal responses to genocide in Rwanda

'It's always present in me. How can I forget?'
Gloriose Batamuriza

Carla De Ycaza*

Abstract

This article explores the various legal responses to the genocide in Rwanda through the lenses of trauma, memory and performance, and addresses the question of whether trials as performance and methods of legal recourse including international courts, national prosecutions and traditionally adapted mechanisms of transitional justice such as the gacaca courts are effective in reconciling trauma and establishing collective memory. This piece argues that of the available methods of legal redress in post-genocide Rwanda, the gacaca courts are most effective in performing the function of reconciling trauma and establishing collective memory.

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Introduction

In the aftermath of mass atrocity, it is necessary and important for those affected to address the trauma of the victims, and to create a history of memory,[1] refusing to let denial or the act of forgetting occur. There are many ways to go about doing this. One such way is through legal recourse. Trials are an attempt to transfer the desire of individual victims to seek revenge to the state and official bodies (Minow 1998). Trials also demand accountability and the acknowledgement of wrongs committed. But are trials and legal recourse sufficient for reconciling the trauma inflicted by the perpetrators of mass violence?

Despite the available legal instruments for holding perpetrators of genocide accountable for their actions, such as the International Criminal Tribunals in the former Yugoslavia and Rwanda, and the International Criminal Court, genocide still occurs today and has often gone unpunished. The international community has repeatedly failed to respond effectively to genocide, as is evidenced by the case of Rwanda,[2] and continues to fail to provide effective remedy today, for instance with the situation in Darfur, despite the evolution of international law and the legally binding genocide convention. What methods of effective remedy can then be provided for victims of genocide?

It is crucial for the process of addressing trauma and developing collective memory to begin the process of reconciliation and rebuilding the country after genocide.[3] By creating independent judiciary bodies, training new judges and police forces, establishing a constitution, and restoring other failed state structures, the state can maintain law and order based on a legitimate system while seeking reparations for victims of the trauma. Legal reparations must also occur in order to begin the process of reconciliation between the genocidaires and victims of genocide (De Feyter 2005:53–82).

1 See Levy and Sznaider 2002 for an in-depth discussion of creating cosmopolitan historical memory.

2 See Jones 2001.

3 See Van der Kolk and Van der Hart 1991.

One of the most effective methods of reconciling the trauma of genocide victims in Rwanda is through the gacaca system, an adaptation of a method of traditional justice previously used in Rwanda. Other options for legal recourse for Rwanda include the International Criminal Tribunal for Rwanda (ICTR), national courts abroad, and classical domestic courts in Rwanda. The embodied practice of performance is present in each of these systems, as each one performs a different function in addressing individual or collective trauma and constructing memory for victims of the genocide. This article argues that gacaca trials as a performative function of transitional justice are the most effective of the available legal responses in determining the collective memory of society and reconciling the trauma of the Rwandan genocide.

Trials as performance

According to Richard Schechner, quoting Erving Goffman, performance can be defined as 'all the activity of a given participant on a given occasion which serves to influence in any way any of the other participants' (Schechner 2002:23). The people who contribute to the various other performances are the 'audience, observers or co-participants'. Additionally, the 'pre-established pattern of action which is unfolded during a performance and which may be presented or played through on other occasions may be called a "part" or a "routine"'. Performance takes place in 'action, interaction and relation' between people. What is performance also depends on how people receive it, whether they conceive of it as performance (Schechner 2002:31). This can be contrasted with an action *as* performance. Schechner references Barbara Kirshenblatt-Gimblett's theory that 'to perform is to do, to behave and to show' (Schechner 2002:32). Therefore, an action can be described as performance if it does something, behaves in a certain function and shows something. Trials are one such example, with courtroom procedure as the routine and interaction between the actors, or judges, lawyers, witnesses and accused, as performance.

The function of performance, according to Schechner, is to entertain; to make something that is beautiful; to mark or change identity; to make or foster community; to heal; to teach, persuade or convince; and to deal with the sacred and/or the demonic. Trials as performance here can embody at least several of

these functions, including changing the identity of a community from a past oppressive regime to a more liberal society. The gacaca trials make and foster community by involving all members of society in the legal process. Trials can heal by offering closure to victims in allowing them to face the perpetrators of criminal violence through justice, and by allowing for witness testimony, which can often be cathartic (Teitel 2007). Trials can perform a didactic function, as well, in teaching lessons by providing a record of historical collective memory of the past, staged as collective pedagogy on a public stage. Teitel argues that a trial can provide a shared political knowledge of the past, discrediting the previous political regime while creating lasting records of past state tyranny for future generations to study. Through the construction of a collective narrative, trials tell the story and provide the account of the traumatic events that occurred.[4] Trials are the archive of hard evidence and the repertoire of testimony as the restoration of order in society (Taylor 2007). Trials can also be persuasive or convincing in terms of exposing the wrongs that were done to maintain order in society, establishing an agreed upon truth in times of controversy in post-conflict society.

Trials play an important role in the transition from the past oppressive regime to a liberal society. More literally, as performance in terms of doing an action serving a function, trials involve live practice and embodied testimony, traditionally with the questioning of witnesses by lawyers before a judge. Trials allow for the contextualisation of an individual's trauma within a greater historical narrative, as Caruth (1996:64–66) explains: 'The trauma consists not only in having confronted death but in having survived, precisely, without knowing it… [this] brings into prominent view a larger conception of historical experience….[and] of a survival exceeding the grasp of the one who survives, engag[ing] a notion of history exceeding individual bounds'. Trials also allow for both victims and perpetrators to remember the trauma and violence, and to tell the truth about what happened through testimony – the importance of which is explained by Herman (1997:1): 'Remembering and telling the truth about terrible events are prerequisites for both the restoration of the social order and for the healing of individual victims'. Herman also discusses what Martha Minow explains are the

4 See Felman 2002 for an in-depth discussion of the interaction of law and trauma.

fundamental stages of recovery, which trials, especially the gacaca system, help to facilitate: 'The fundamental stages of recovery [from trauma] are establishing safety, reconstructing the trauma story and restoring the connection between survivors and their community' (Minow 1998:3).[5] Trials help establish safety by holding individual perpetrators accountable for their actions, separating them from the new established government. Trials allow for the reconstruction of the trauma story through the construction of a collective narrative through testimony and the provision of a historical record of the trauma. The gacaca trials in particular allow for the restoration of a connection between survivors and their community through the mechanism of community restorative justice, allowing for all members of the community to take part in the reconciliation and justice process.

One can analyse the Rwandan gacaca trials for genocide specifically as performance. As performance, the gacaca trials take place on a public inclusive stage, involving all members of the community in different roles, with the actors and audience including both perpetrators and victims, in a communal setting on the grass, under the trees in local fora. Prisoners are brought before tribunals composed of people of integrity within the community, as elected by the inhabitants of cells, sectors, communes and prefectures (Uvin no date:2). Members of the entire community are present and act as a 'general assembly', discussing the alleged acts, providing testimony and counter-testimony, argument and counter-argument.

In his video testimony and interview, Mr. Abraham Rwamfizi, a Rwandan man accused of committing genocide, referred to the gacaca proceedings as a 'presentation'. The woman whose husband Rwamfizi killed, Ms. Faissa Mukabazimya, referred to it also as a 'presentation' (Aghion 2004). In a videotaped speech to the community at a pre-gacaca meeting, Mr. Jean Marie Mbarushimana, General Prosecutor of the Rwandan gacaca courts, explained the role of the community in the gacaca judicial process: 'You will be both prosecutor and lawyer…You will be judges' (Aghion 2002). That is to say, the people in the community who were victims of the genocide will be trying their

5 See also Herman 1997.

neighbours, the genocidaires, for these crimes, participating in the performance as actors, playing multiple roles. This recalls Hannah Arendt's description of the Eichmann trial in *Eichmann in Jerusalem* as being theatrical, performed on the courtroom stage with participants in the trial as actors (Arendt 1992:4). The role of the gacaca trial process is to establish a narrative of collective memory of the community regarding the trauma of the genocide, involving as many actors within the community as possible, each playing their own role in the justice process.

In his text *Cities of the Dead*, Joseph Roach brings up several interesting and relevant points regarding the convergence of trauma and memory with performance. He discusses the embodiment of memory in and through performance. He states 'The social processes of memory and forgetting, familiarly known as culture, may be carried out by a variety of performance events…to perform in this sense means to bring forth, to make manifest, and to transmit. To perform also means, though often more secretly, to reinvent…this approach necessarily requires movement across conventional disciplinary categories and sometimes against their grain' (Roach 1996:xi–xii). This is particularly interesting to consider in the discussion of trials as performance, since the memory of the trauma of the genocide in Rwanda is being carried out through the performance of the trial, in whichever form, though some more effective than others, bringing forth testimony, transmitting the trauma of the victims through testimony to create a collective narrative of memory of the events that transpired.[6] Certain trial processes help to reinvent the system and the country more effectively than others, particularly the gacaca trials, which do require a movement away from the established international and national criminal trial processes in Rwanda towards something that is seemingly against their grain, but more in line with traditional local justice in the country, which does allow for greater reinvention and rebirth of society.

Roach asks the questions of whose history and whose memory when discussing the performance and transmission of memory (Roach 1996:7). This is particularly important to consider when evaluating legal trial systems, since

6 See Connerton 1989 for a discussion on the function of collective memory.

whose history and memory are being transmitted through the performance of the trial is what determines the trial's effectiveness in achieving the full functions of the performance previously discussed. Schechner also asks, at the end of his introduction on performance studies, several questions to evaluate the effectiveness of the performance of events: 'How is an event deployed in space and disclosed in time? What special clothes or objects are put to use? What roles are played and how are these different, if at all, from who the performers usually are? How are the events controlled, distributed, received, and evaluated?' (Schechner 2002:42). These questions can be used to evaluate the various methods of legal recourse in post-genocide Rwanda as performance, including the gacaca process previously discussed.

Evaluating the performative value and functions of various methods of legal recourse

In the aftermath of the Rwandan genocide, many cases have been brought against perpetrators of the Rwandan genocide in various fora, including local Rwandan courts, the international criminal tribunal and third party courts.[7] So far, one of the best methods of reconciling the trauma of genocide victims and documenting collective memory is the gacaca system. By examining the various methods of legal response to genocide in Rwanda, and the success and failure of the gacaca system in Rwanda for trying crimes of genocide, one must conclude that although there are significant setbacks with the gacaca system, of the current available transitional justice mechanisms present, it most effectively performs the function of reconciling and rebuilding the country in post-genocide Rwanda.

The International Criminal Tribunal for Rwanda (ICTR)

On November 8, 1994, the Security Council adopted Resolution 955 to establish the International Criminal Tribunal for Rwanda in order to prosecute those responsible for genocide and other violations of international law. The purpose of the ICTR was not only to bring peace and reconciliation to Rwanda, but also

7 See Gourevitch 1998 for more regarding the genocide itself.

to ensure that violations of international peace and security would be 'halted and effectively redressed' (Stover and Weinstein 2004:52). Originally, the UN scheduled the ICTR to operate on short-term allocations, which deterred many from taking job posts. Posts took a long time to fill, and many prosecutorial positions were filled with academics and members of human rights organisations not familiar with criminal prosecutions (Stover and Weinstein 2004:52). Investigators also were new to this magnitude of crime, and many knew little or nothing about Rwanda's background and culture. Additionally, basic supplies were scarce due to the lack of appropriate representation of the ICTR on the UN Security Council and the UN Secretariat. This lack of supplies led to poorly presented evidence, in addition to otherwise weak prosecution efforts and strategy, as well as poorly trained judges (Stover and Weinstein 2004:53). Although the ICTR has established accountability for the genocide and crimes against many Rwandans by government officials, military officers, political leaders and the administration, there are many problems with the performance and function of the system, as one can see. There is little room for reconciliation in this type of tribunal, as most Rwandans are not directly affected by the trials in the ICTR.

Many believe that the Court is more focused on developing international law than on the potential impact it could have within Rwandan society. The ICTR, unlike the localised grassroots-based gacaca courts, is seen by many Rwandans as a means of developing international law, due to the fact that the court has adopted a primarily western legal approach, and takes place remotely in Tanzania, away from the affected population in Rwanda. According to Longman and Des Forges, trials should be integrated into a broader program of social reconstruction: 'People tend to see [the ICTR] as an activity of the international community conducted primarily for its own benefit, with little relevance to processes of reconciliation in Rwanda' (Stover and Weinstein 2004:63).

The space in which the ICTR takes place, an international stage in Arusha, is one which is far removed from the Rwandan society itself, thus not affecting a change in community identity, nor making or fostering community in Rwanda, since most Rwandans are not aware of the bulk of the proceedings of the court. It can heal by bringing perpetrators to justice, however it is not

particularly constructive in healing the community as a whole, as it does not have a direct effect in building a collective narrative of the memory of the trauma of the victims, but rather functions more as a political teaching tool for the international community to develop case law and set precedent. The local actors from Rwanda involved in the genocide either as victims or perpetrators are now called upon to play a greater role of defining precedent for international law.[8] Events in the ICTR are controlled by the international community, and are received negatively in Rwanda, based on various video testimonies and reports given. In this sense, when asked whose memory and whose history, it is clear that the history and memory recorded by the ICTR is one of the international community, not the victims of the trauma, thus making it less effective as a form of reconciliation and construction of a collective memory of the trauma.

Classical Rwandan domestic courts

National courts are the primary forum for criminal prosecutions for genocide, due to their close relationship to the events, victims, perpetrators and witnesses. International law recognises this state jurisdiction; however, in the past, trials at the domestic level have been rare, due to the frequent destruction of judicial systems in post-conflict societies. National courts are not always most effective in trying genocidaires, due to problems of capacity, political will, politicisation, prosecutorial bias, corruption of judges, and the intimidation of witnesses, all due to the state of transition. Trials are most effective if they are carried out in a regime that is regarded as legitimate (Stover and Weinstein 2004:63).

Although Rwanda is a signatory of the Genocide Convention, it had not incorporated genocide as a crime into its law until August of 1996. Special courts in Rwanda were then created in order to try perpetrators of the genocide. By 2002, over 5 000 had been tried, including many sentenced to death or life imprisonment. The government continued to detain over 100 000 without charge in overcrowded prisons (Stover and Weinstein 2004:65). At current speeds, it would probably take more than a century to finish the trials for all those currently imprisoned in Rwandan jails (Stover and Weinstein 2004:64).

8 See Magnarella 2000 for more on the criticisms and interactions between local courts and opinions and the ICTR.

It is socially, economically, and politically very costly for Rwanda's government and society. Little is being done to help rebuild the Rwandan judicial system itself and most of the international aid is going to fund international legal projects, such as the ICTR, instead.

In this sense, the classic domestic Rwandan courts are failing to perform the function of changing the political identity of the country, since they are still biased politically. These courts cannot make or foster community, as they are extremely backed up, detaining many individuals who have not been tried and are potentially innocent, creating greater animosity between the accused and their accusers, and allowing for a greater divide in society (Aghion 2002 and 2004). These courts therefore also cannot heal the victims or promote reconciliation effectively.

National courts abroad

In addition to the local judicial response by the gacaca and international legal action by the ICTR, third party trials have occurred abroad to hold individuals accountable for their actions in the Rwandan genocide. One such prosecution occurred in 1999 in Switzerland, and a Rwandan official guilty of violating the Geneva Conventions and laws of war, was sentenced to life imprisonment. This official could not be tried for his crimes of genocide, since there is no domestic genocide law in Switzerland (Stover and Weinstein 2004:67). In 2001, another trial occurred in Belgium, in which two nuns, a physics professor and a businessman were prosecuted for complicity in genocide and crimes against humanity. These individuals could be tried, since genocide is a part of Belgian domestic penal code.

The doctrine of universal jurisdiction allows national courts to try the most severe crimes against humanity, including genocide, despite whether the crimes are committed in the national territory or by government leaders of other states. These third party national prosecutions occur infrequently, and universal jurisdiction is still a developing legal concept; however they still provide effective remedy in certain situations. Similarly, the Alien Tort Statute, although a tool of civil litigation and not criminal prosecution, performs a function of transitional

justice by addressing the trauma and memory of survivors by allowing for victims to obtain reparations from perpetrators in a national court outside of Rwanda, in the United States.

ATS litigation

The Alien Tort Statute (ATS) was enacted by the founding fathers in the Judiciary Act of 1789, conferring original jurisdiction on federal courts when an alien brings suit for a tort that was committed in violation of international law or a treaty of the United States. The ATS was meant to apply to crimes so grievous that the international community would want to adjudicate and eliminate them. The ATS is narrowly tailored to apply only to a small spectrum of cases, such as genocide.

In a 1996 ATS case regarding genocide in Rwanda, *Mushikiwabo* v. *Barayagwiza*, defendant Jean Bosco Barayagwiza was one who played a key role in the torture and massacre of thousands of Rwanda's Tutsi minority and moderate members of the Hutu majority. Barayagwiza was a leader of the Rwandan Hutu political party ('the CDR'). The CDR had its own militia, which carried out a plan to exterminate Rwanda's Tutsi population, in conjunction with Rwandan government forces. Plaintiffs' relatives were massacred as a result of the campaign of genocide planned by the defendant and co-conspirators. The plaintiffs were subsequently awarded $500 000 per relative for pain and suffering, $1 000 000 per relative for punitive damages, and $5 000 000 for each plaintiff.

The ATS allows for reparations for genocide, but still is not an effective tool in achieving reconciliation throughout Rwandan society for victims of mass trauma. It is extremely narrow in scope and is not effective in terms of creating a narrative of collective memory,[9] as it deals with individual torts in a foreign country and does not affect the general population, but does offer some hope for those seeking monetary compensation, though oftentimes defendants are unable to pay the amount awarded to the victims.

Since cases involving universal jurisdiction, like the Swiss and Belgian cases, are very rare, it is difficult to determine their true performative value and

9 See De Greiff 2006:51–503 on justice, law and reparations.

function, as there are few cases to use as evidence. These courts have similar problems to those of the ICTR, as they are international actors attempting to right the wrongs inflicted on Rwandan victims without offering true healing or rebuilding of Rwandan society. The ATS is sometimes effective in terms of obtaining reparations and monetary compensation; however it does not mark or change identity; make or foster community; or heal. It does offer a didactic function through precedent, showing that genocidaires can be held liable for their actions; however, the statute is so narrowly tailored that even this does not always occur, as oftentimes cases are thrown out for various technical reasons. This still is not the most effective means of reconciling trauma in post-genocide Rwanda through the construction of collective memory.

Gacaca courts

Gacaca courts are a grassroots legal mechanism adopted by the Rwandan government to respond to the legacies of the country's 1994 genocide. National-level discussions in the 1990s determined that citizen participation in the justice process would be critical for the manifestation of the truth about the genocide and the creation of a conducive environment for reconciliation (Stover and Weinstein 2004:69). Gacaca is modelled after a traditional Rwandan dispute resolution mechanism to involve a large part of the population as either judges or witnesses. One woman, Annonciata Mukanyonga, believes that gacaca is 'where the truth will come out' (Aghion 2004).[10] Interviewee Welars Muyango believes that through gacaca, the genocidaires 'must be made an example of so that my children and those of others understand that killing is a bad and reprehensible thing'. The aim of gacaca is to speed up the trials and empty the prisons, and to involve the community, including the victims, in establishing the truth in order to promote reconciliation (Uvin no date:2). The mission of the gacaca process is to disclose the truth on the events surrounding the 1994 genocide; to speed up genocide trials; to eradicate the culture of impunity; to reconcile and strengthen unity among Rwandans; and to prove the Rwandan society's capacity to solve its own problems (National Service of Gacaca Jurisdictions 2006).

10 Interview with Annonciata Mukanyonga.

Gacaca was originally implemented gradually in each of Rwanda's 12 provinces, then expanded to each of the country's districts in November 2002. The courts classify the prisoners, using the legal categories established in the original 1996 law, then decide on the appropriate penalty, applying penalty ranges from the new gacaca law. Those prisoners who confess and ask for forgiveness receive dramatic reductions in penalties. Part of the penalties is transferred into public service to rebuild the community destroyed by the genocide.

A high value is placed on the community's participation in electing judges and deciding the guilt or innocence of the accused. Lawyers are excluded to give the people a greater sense of community ownership over the process, which contributes to the formation of a collective memory and narrative, as well as to the resolving of both individual and collective trauma. The reparation of damaged properties is to be done by the convicted persons either through restitution of the property looted whenever possible, repayment for the ransacked property, or carrying out work worth the property to be repaired. There is an interesting distinction in the performative function of these gacaca trials compared to the international and domestic criminal trials, since the actors and audience in gacaca are both the perpetrators and the victims, participating in a communal setting on a public inclusive stage. This facilitates truth, justice and reconciliation in the community.

There are also, however, many criticisms of the gacaca process, despite its positive aspects in terms of community restorative justice.[11] There is no separation between prosecutor and judge, no legal counsel, no legally reasoned verdict, strong pressure toward self-incrimination, and a high potential for major divergences in punishment (Uvin no date:3). Limits to the process of inquiry have impeded the gathering of accurate records. Small populations of survivors are often left to testify in local villages, leaving these few victims susceptible to further violence by perpetrators. The idea of truth telling is relative and not the theoretical judicial truth obtained by inquiry of third party witnesses (Amnesty International 2002). During the local gacaca trials

11 See Harrell 2003:83–96 for specific examples of gacaca as communitarian restorative justice.

in Rwanda, Amnesty International documented the severe overcrowding of detention facilities, the unsanitary conditions, degrading treatment and deaths due to physical abuse, malnutrition and preventable disease in the prisons. Amnesty argues that despite efforts from UN agencies, foreign governments and NGOs to help Rwanda with these local genocide trials, there was a lack of adequate training for jurists involved in the trials, a lack of defence counsel and witnesses for most defendants, lack of time and facilities for the defendants to prepare a defence, lack of impartiality and competence of the judicial officials and a poor courtroom environment, contrary to the International Covenant on Civil and Political Rights (Amnesty International 2002). Therefore, Amnesty International believes that gacaca jurisdiction is not effective.

Some issues raised by Amnesty's investigative report on the gacaca genocide trials in Rwanda include whether the gacaca detention is justifiable, whether these local courts should be used despite their inherent biases and problems of objectivity, and who should conduct the trials. In Constance Morrill's 2001 interviews with incarcerated youth regarding the gacaca process, Candide, an interviewee, stated '[J]ustice will be done. But corruption will absolutely play a part in the Gacaca' (Morrill 2004:79). There has been no conclusion drawn yet regarding these matters.

The gacaca courts allow for the trial as an event to be performed in a public, inclusive space within the community, usually outside on the grass under the trees. Prisoners are recognised by their pink prison uniforms. Community members play the role of the prosecutor, lawyer, judge and witness, as they are allowed to give testimony and render judgment.[12] Generally speaking, although gacaca has many problems as a system, events are received positively within the community, as the process fosters reconciliation and community building (Aghion 2002). In her 2004 documentary on gacaca, Aghion staged a reconciliation meeting between members of the community, in which one elderly gentleman quoted: 'In Rwanda, we say the family that does not speak dies…when things are revealed, we can turn to the future' (Aghion 2002).

12 See Laub 1992 for a discussion on the importance of bearing witness and truth telling in the psychological healing process of trauma.

One empirical study of trauma and reconciliation in Rwanda states: 'An important finding was the significantly greater support for gacaca trials compared with other judicial responses. There are two possible interrelated explanations for this finding. People may have a more positive attitude toward gacaca because they may feel more informed and involved with the process' (Pham, Weinstein and Longman 2004:610). Another study states: 'Most (82%) of the respondents believe that the acceptance to pay compensation to genocide victims' families is an indication of the desire for reconciliation on the part of the perpetrators of genocide. More than nine out of ten respondents (95.0%) agree that, to ensure long lasting peace, genocide perpetrators must ask for forgiveness from genocide victims' families. Almost the same percentage (94.3%) agrees that in order to have sustainable peace, genocide survivors must be prepared to forgive the perpetrators' (Babalola, Karambizi, Sow and Ruzibuka 2003:26).

Gacaca courts allow for the change in identity of perpetrators of genocide by offering forgiveness by the victims, allowing them reintegration into society and construction of a new political all-encompassing identity, with perpetrators and victims living side by side as neighbours, rather than as enemies. In this sense, the gacaca trials also foster community, by allowing all members of the local communities to take part in the performance of the trial. This also allows the victims and perpetrators to heal, to reconcile their trauma, to forgive and be forgiven, and to start fresh.[13] The trials also teach by disclosing the truth of the events that occurred, offering a collective narrative of the memory of the trauma. Therefore, when asked whose history and whose memory, one can respond that this process does offer a collective history and memory of the community, since both sides offer their story and document it in the proceedings.[14]

13 See Culbertson 1995 for more on truth telling as part of the process of healing trauma and memory after conflict.

14 One caveat to note is that gacaca trials can be seen as victor's justice, since no one from the Rwandan Patriotic Front has yet been convicted. This article argues, however, that the community gacaca justice forum performs the most effective function of the available flawed options in terms of reconciliation of trauma and creation of collective historical memory by bringing together victims and perpetrators in an informal justice setting to address these issues of trauma and memory.

Conclusions

In light of the failures of the international and domestic courts in dealing with genocide in Rwanda, the gacaca system offers the most effective means of reconciliation for victims of the trauma of genocide and the construction of a collective memory in post-genocide Rwanda. By analysing the performative function of trials in Rwanda, one can conclude that trials offer many positive results in terms of addressing the trauma within a post-conflict society and constructing a collective memory for the victims by hearing both sides of the conflict and rendering judgment on the guilt or innocence of individuals, in order to eliminate the idea of collective guilt of a society, and to help the perpetrators take responsibility for their actions. Trials are a sign of a commitment to redress harms with the application of pre-existing norms. They indicate the administration by a formal system committed to fairness and to opportunities for individuals to be heard in accusation and in defence. There is a 'presumption of innocence, litigation under the adversary system, and the ideal of a government by laws, rather than by persons' (Aghion 2002). Trials imply a belief that massive crimes can be treated as punishable criminal offences by individual perpetrators. Trials transfer the individuals' desire for revenge to the state or official bodies by demanding accountability and punishment. Traditional trials offer a form of closure, but not always reconciliation between the perpetrators and victims. Reconciliation is not the general goal of traditional criminal trials, except in an abstract sense (Aghion 2002). Therefore, combining localised trials with reparations allows for greater healing, one of the functions of trials as performance.

Reparations allow for the restitution of property, repayment for pain/suffering/punitive damages and the recognition by the perpetrators that they have done wrong towards the victims and can begin to repay them for their losses.[15] Reparations help heal the wounds of a society and bring together both sides of the conflict by agreeing that wrongs were done and should be acknowledged and reconciled. Once reparations are offered, a society can begin to transform the institutions that made these mass atrocities possible (Minow 1998:91–117).

15 See Barkan 2000:262–282, 308–350 for a more thorough discussion on restitution.

Reparations are not only about paying money to the victims, but rather about making repairs to mend the psychological, cultural, social and other wounds inflicted by the trauma on both sides of the conflict. Reparations can bring about a change in the way history is constructed.[16]

In the aftermath of mass violence and genocide, however, according to Peter Uvin (no date:2), 'full, formal justice and complete adherence to human rights standards is [sic] (almost) unattainable'. Trials bring significantly high political, economic, administrative, and social costs. Full justice for the perpetrators of past abuse may incite revenge. The expense to the state of imprisoning and judging tens of thousands of persons according to full standards of criminal law, as well as the cost to the families of the prisoners, is substantial. There is also a need for a large number of competent, unbiased, and well-paid police forces, prosecutors, investigators, judges, etc., which is unlikely to exist in countries with weak educational and administrative systems. Many trials focus on the past, rather than the future, and simplify the conflict by only focusing on the sins of the political losers rather than on the dynamics of the whole system. Often it is not the leaders but the followers who end up being judged, as was originally the case in the Rwandan courts, making the trials not victim-centred but state-centred and politically driven (Uvin no date:2).

In examining the evidence provided in witness testimonies and written accounts, one can conclude that the performative function of the gacaca trials is the most effective of the available legal responses to genocide in Rwanda for determining the collective memory of society and reconciling the trauma inflicted on the victims of the genocide. The gacaca system allows for the change in identity of the community by integrating victims and perpetrators into the justice process, promoting unity and rebirth. The process fosters community by bringing the people of the local villages together in the judicial process of accountability to create a collective narrative of the trauma experienced by the members of the community. This allows the process of healing to begin. Additionally, by promoting accountability and establishing a collective narrative of the trauma and memory of the genocide, the gacaca process offers a didactic or teaching

16 See Barkan and Karn 2006:50–115 on reparations.

function. However, as Longman and Des Forges suggest, trials should also be integrated into a broader program of social reconstruction, utilising various forms of transitional justice in order to achieve reconciliation for the community affected by genocide and other forms of mass violence (Stover and Weinstein 2004:63). As suggested by the International Center for Transitional Justice (2009), a combination of trials, truth-telling commissions and community-based initiatives, reparations for victims, institutional reform and vetting of corrupt government officials, social reconstruction of schools, parks, etc., local traditional conflict resolution mechanisms, and the construction of memorials/museums/sites of memory can best contribute to the rebuilding of society and the reconciliation between victims and perpetrators to achieve peace in a post-conflict society.

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Dealing with the past: The youth and post-war recovery in southern Sudan

*Shastry Njeru**

Abstract

The role of young people in times of conflict and their potential within post-conflict recovery are phenomenal. If efforts are not made to reintegrate the youth and access their potential in Southern Sudan, post-conflict recovery will have limited success. Disarmament, Demobilisation and Reintegration (DDR) programmes are the primary instruments that external actors can apply to induce spoilers of peace into the peace process or to reduce their threat to micro-level dynamism and to promote creative life strategies of war-affected individuals who are primary stake-holders in the nation-building process. By providing for the educational, vocational and other social needs of young ex-combatants and enabling them to gain skills and competences that facilitate their economic and social integration, the youths may be brought to a point where they find the alternative of returning to combat unattractive. In meeting the needs of the youths, it is important not to homogenise them as either security threats or passive victims needing special sympathy, but as complex and heterogeneous

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individuals with multiple skills, aspirations and limitations of their own. Effective DDR programming must factor in the wartime history of individuals. Dealing with the past strategies in southern Sudan should acknowledge and build on the youths' potential as the starting point.

1. Introduction: Post-war frustrations

The challenges are many, including massive destruction by war and slow reconstruction after the Comprehensive Peace Agreement. There are limited educational opportunities and insecurity is growing again (Atari et al. 2010) in most parts of Southern Sudan. The insecurity is attributed to the people's frustration due to unemployment and irregular payment of government employees. Instances of cattle raiding and tribal conflicts have increased and have caused about 2 000 deaths and the displacement of about 250 000 people (Atari et al. 2010:11). There are demands for the Government of Southern Sudan to improve the situation through the creation of new livelihood options to supplement traditional livelihood models.

In many cities people are waiting for the 'benefits of peace' from a government that is institutionally underdeveloped. The problems of 'liability of newness, lack of capacity, limited investment in basic infrastructure, including schools and allegations of corruption' (Atari et al. 2010:11) are writ large. People are frustrated by what they perceive to be limited and slow change. The growing demands from many returnees and ex-combatants show that technical, vocational and entrepreneurial capacity is needed for development and reconstruction, as well as skills for the economy to be competitive and to grow. Such agitation is a sign that southern Sudan needs to control the situation before it gets out of hand.

2. The long war and the long-term damage it has done

War and peace benefit from the youth in many ways. In peacetime the youth provide the reservoir of any country's energy to grapple with its present circumstances and future challenges. The youth forms the basis for the continuous reproduction and the productive potential of any society. A country without youth may be threatened with extinction. Likewise, the youth provides

the mainstay of the fighting personnel in any nation in times of war. Children, as young as nine years, can be considered old enough to fight in some countries. Peters et al. (2003) notice the prevalence of young people both as fighters and victims of war. Young people are considered daring and having energy, but also account for heavy casualties of war because of battle-related wounds, malnutrition and disease.

The escalation of the war in the southern Sudan made the area ungovernable and caused it to be a fishing ground for rebel movements that all formed part of the Great Lakes problem. The Sudanese People's Liberation Movement and Army controlled the area, the Lord's Resistance Army for Uganda operated from the forests in the southern tip of the territory, and various Democratic Republic of the Congo militias crossed into the southern Sudan without much restraint. Splinter groups of armed non-state actors also operated in southern Sudan. All of them harvested children and youths and committed various atrocities using these young people.

It is alleged that rebel movements in Africa employ terror tactics to recruit children into their armies (Peters et al. 2003). Children are also violently abducted or pulled from their classrooms by armed people, leaving them with memories that will remain etched on their minds forever. Some children were forced to join the military because of the dire circumstances – with few alternatives – in which they found themselves at home. Poverty, lack of food, the need for power and protection, and the lack of opportunities for vocational training and education often forced children into soldiering. It was violent recruitment/abduction, the need to revenge, a need for shelter and/or community, or simply lies that have led them into participating in the war (Edwards 2008) and swelling the ranks of the belligerents. Whatever the method used, children ended up armed with lethal weapons and perpetrating violence because once recruited or abducted, children are expected to behave as adults. With the aid of drugs and heated feelings of rage and hate, children committed untold acts of terror and violence[1] even in their own communities. It is also alleged that their commanders routinely abused these children in an effort to harden them. There seems to have

1 See the movie 'Blood Diamonds' directed by Edward Zwick.

been a deliberate policy to de-humanise the children and turn them into killing machines (Honwana 2002).

It has been argued that the prevalence of violence in Africa is due to 'youth crisis' or 'youth bulges' (Heinsohn 2009). In comparison with other continents, Africa has the youngest population. Youth constitutes a major percentage of the continent's population which it cannot absorb in its schools and places of work. In some places these institutions are inadequate or non-existent. Africa has excess youths without access to schooling or gainful employment, ready to heed the call to bear arms for spurious ideological or ethnic reasons. Such youths are easily off-loaded on any viable militia or government for use in violence.

58% of the population in southern Sudan is under the age of 18 years (Watchlist 2003). In the most vulnerable areas of southern Sudan – Bahr el Gazal, Eastern Equatoria, Western Equatoria, and Upper Nile – about 2,6 million children are under the age of 18 (Watchlist 2003). Lack of job opportunities and education has increased disaffection and violence in these areas. Pursuant of the 'greed and violence' school (Collier 2004), the presence of such large numbers of uneducated young people and/or the prevalence of lootable natural resources like diamonds, have/has been a better predictor of civil war than the ethnic argument or ideological reason. Africa is endowed with both.

Some 'peaceful countries' experience episodes of violence, and in some cases this violence claims more lives than a known civil war. Eastern Nigeria has experienced violent confrontation between criminals, vigilantes and state authorities comparable to the 'warlord violence in Liberia' (Reno 1988). Still, the lives annually lost by murder in South Africa are more than what civil war in Sierra Leone claimed in a single year (Peters at al 2003). With regard to South Africa, Marks (2001) acknowledges the deep involvement of the former anti-apartheid activists in vigilante groups and gangsters, but is quick to diffuse the links between the youth's involvement in fighting apartheid and the later criminal behaviour. However, the mobilisation of the youth to meet the requirements of the armies and criminal gangs is undisputed. In Zimbabwe, the youth militia (Green Bombers) recruited by the ZANU-PF party have been at the forefront of gross violations of human rights.

The Comprehensive Peace Agreement (CPA) of 2005 between the government and rebel movements in Sudan presented an opportunity for a lasting peace after 22 years of war in southern Sudan. More than 100 000 youths and children were involved in the war directly or indirectly. A relapse into civil war is likely if the needs of youths are not addressed. For a very long time wars have been viewed as the art of statecraft by the belligerents in Sudan. They base their perspective on the empirical fact that states in Europe have evolved as a result of war, and on the opinion that war can be liberating. Southern Sudan rebel movements held beliefs that they were fighting to liberate themselves from the Arab domination. In all the cases of warfare, whether it is legitimate war of self-defence or unprovoked wars, the burden of fighting is borne by the youths. Likewise, the burden of peace must weigh heavily on their shoulders as well.

Children and youths have fought in most of the wars waged on African soil. There are accounts of children fighting wars in the Democratic Republic of the Congo, Liberia, and Sierra Leone, children committing the bulk of the genocide in Rwanda and some committing war crimes in northern Uganda and in Mozambique. There are also reports about the extent to which the Sudanese Peoples' Liberation Army (SPLA) recruited children and youths. Most of these would have been abducted or press-ganged into the armies (Marks 2001). These children committed many unimaginable atrocities during the times of war. Some of the children are severely traumatised because of what they did. At the instructions of their adult superiors, some executed comrades who had become war-weary and attempted to desert and/or suspected sell-outs. This process, considered as initiation into brutality or as protracting war, has often affected their DDR, making reunion between children and their parents or societies after the war a most difficult process.

For the 22 years that southern Sudan has been at war, normal life of children was systematically disrupted. War violates every right of the child. It completely disrupts their infrastructure of social support and networks. It is estimated that altogether about 77 million children were affected by a natural disaster or war each year between 1991 and 2000 world wide, and about 75 million were from developing countries (Jabry 2002). War systemically alters the trajectories of hundreds of thousands of young lives. Without the guidance and nurturing

elements of adult supervision, many children are left to the most difficult task of fending for themselves (Edwards 2008). In most war cases, children are left abandoned or orphaned, with all the difficulties of finding their own means of survival. In extreme cases children are traumatised as a result of the violence surrounding them. The killing, death, disappearance, detention or flight of parents and caregivers results in hundreds of thousands of child-headed households and tens of thousands of street-children, orphans and child-headed households, some headed by children as young as eight years of age (Mazurana and Carlson 2006).

The nature and methods of armed conflict mean that the fighting takes place in civilians' communities, villages, fields and homes, thus sharply increasing children's risk of harm (Mazurana and Carlson 2006). During the war some children are coerced into performing horrendous acts, often in their own communities, in order to survive. Drug trafficking, grave digging, executions, transporting equipment can be forced upon defenceless children. A girl-child, because of her biological disposition, is subjected to severe humiliation and abuse (InterAction Task Force 2002). It is widely noted that prostitution increases during the times of war, and that the presence of international peacekeepers actually leads to the involvement of more prostitutes (Hilgate 2004). Sexual exploitation is devastating for children as it leads to pregnancy, diseases and trauma. Society, on the other hand, ostracises young mothers impregnated by armed people or peacekeepers for giving birth to 'UN children'. This secondary stigmatisation is enduring since it is continually reinforced by the society that holds particular values about chastity and marriage.

Once recruited, girl soldiers are disproportionately ill-treated. They are subjected to gender-based and sexual violence, and are forced into marrying commanders. The Lord's Resistance Army of Northern Uganda is known for this problem. Children subjected to these violations of human rights endure various reproductive health problems like sexually transmitted diseases, early pregnancies, unhealthy child deliveries, and the trauma associated with multiple rapes. They carry these social problems alone into their post-conflict life. The end of the war often does not bring them better hopes, but only the disdain of the society.

When the war is over, the memories of the past cling to the minds of the children, haunting them on a daily basis. It is the children who remain icons of the disaster. Pot bellied children with limbs like sticks roam the streets, teen prostitutes lurk in the dark corners of the capital cities, and children clamber over the rubble of destroyed towns trying to salvage something. Without proper therapy, the nuances of the violent past continue to replay in front of the children well after the war. Long-term effects of war on children have been documented. Levy and Sidel (2009) account for the 'long term hostility, functional disability, anxiety, problems with relationships, somatisation (hysteria) and Post-Traumatic Stress Disorder (PTSD)' in children. Loss of motivation has been documented also as an effect in some grown-up children. According to Marshall (2004), 'women and children account for almost 80% of the casualties of conflict and war, as well as 80% of the 40 million people in world who are now refugees from their homes'.

Given this account of the life of the young people during war, this paper argues that serious care has to be taken during the DDR in order to transform the lives of children who were soldiers or were directly affected by the war. Children will remain children despite their chequered history which is replete with crime and murder. Rehabilitating them will benefit the greatest part of the society of which they are part. Therefore post-conflict recovery should concentrate on protecting the child soldier/victim/survivor for the following reasons among other things:

1. The adult society is culpable for recruiting the child into crime and murder associated with the wars that the youth did not understand. In most cases these children did not choose the life of a rebel. They were either abducted, gang pressed or cheated into enlisting.

2. Because the future lies with the children, it makes good investment sense to commit resources to their rehabilitation and transformation.

3. Concerted youth programmes will assist children in unlearning the war life and help them to see more value in civilian life than in war life.

4. Commitment to transforming the lives of the youths will cultivate in them a commitment to the lives of others – the brother's keeper principle. All children can be trained in this commitment.

A commitment to transforming the lives of children in southern Sudan is like the proverbial hammering of a sword into a ploughshare. There were about 100 000 children in southern Sudan who were directly or indirectly affected by the war in the 22 years of the conflict's history (Deng 2003). It is further estimated that about 39 000 children, less than 18 years of age, have been conscripted into the army over the years in southern Sudan and that a similar number was abducted by the government-led militias for forced labour or slavery. Some of the children served in the rebel forces as soldiers, slaves and porters, or as wives. In the streets of Khartoum and the scattered refugee camps there were children and youths who were dislocated from their parents, the so-called 'lost boys' of Sudan. Some of the children ended up in prostitution and petty crime. But the majority of them were in refugee camps. Some of the children were in camps in neighbouring countries where they have sought refuge during the years of strife.

3. Dealing with the past to create a future – especially for the youth

No approach to dealing with the past would be complete without taking the context of the process into account. The end of any conflict represents a complete turn-around in perspective. Ideally, the structural and underlying causes of the conflict must be eliminated, solid and efficient institutions must emerge, and they must serve the entire population. Recognisable and legitimate formal structures must be built up to allow the opinions and interests of the various actors in society to find expression without the use of violence. The culture of conflict, the 'metaconflict', must give way to a culture of negotiation; the culture of distrust toward institutions must yield to one of confidence. Transitional justice is often the path of choice in dealing with the past since the end of the Cold War.

Dealing with the past is closely bound up with the potential contribution of the past to the necessary and fragile reconstruction of an entire society. In dealing with the past, the choices are often dictated by complex power balances between the belligerents themselves, between the belligerents and 'civil alliances for peace', and between all these involved parties and external actors. These power

balances depend on the strategic importance given to the conflict or to the region concerned, and to whether there was a total or partial regime collapse. Dealing with the past must help transform the culture of conflict, both materially and conceptually. On the one hand, through its modalities, the process should avert any repetition of violent events, and especially of the human rights violations that occurred during the conflict. It should also aim at repairing the social and material damage caused and at setting up the institutional mechanisms for good governance, particularly in the legal field, based on the observance of human rights and democratic rules. On the other hand, it must also help transform the normative and functional culture of violence into a democratic culture of peace and civil conflict management. Dealing with the past plays a crucial role in depolarising the society. The process should foster a sense of national belonging or unity and should contribute to building structures and relations based on trust. This brings us directly to the subject of the reconciliation process and national healing.

Thus, dealing with the past in the framework of conflict transformation encompasses a range of activities to promote peace and strengthen human security. Activities should have a clearly forward-looking orientation, and should work to bring about a reconciled and democratic society that is capable of managing its conflicts peacefully. Good examples are:

- Improving the knowledge about and the observance of human rights, international humanitarian law, and the fight against impunity;
- Building up the skills and action capabilities of non-state actors that can contribute to civil peace promotion;
- Enhancing the media and educational vehicles for peace promotion (Massard 2004:10).

Post-war reconstruction is a broad, deliberate and comprehensive programme of rebuilding lives and institutions to restore them to their pre-war levels or better. The major objective of post-war reconstruction is not to make people forget about their war but to learn from it. In a post-war recovery programme, societies divided by war will take time to reflect about the war and its negative

effects as a starting point for a new, productive and reconciled life. As such this period should ensure that all war institutions and symbolisms are destroyed and new ways of life are learnt.

Post-war reconstruction programmes should be implemented in a way which recognises that the greatest victims of the war were children and young people. Actually, children have been 'targeted as a matter of strategy' (Massard 2004:11). The nature of the war brings about that children suffer concurrently with their relatives. When the war effort demands contributions from citizens in the form of call-ups or increased taxation, the children and the youth become the collateral. As the war intensifies the children miss school because their schools were destroyed or their teachers were killed or fled. The children suffer malnutrition because the food stores were looted, or farms were bombed or mined to such an extent that they ceased to be arable to produce food. Diseases that could have been controlled through immunisation claim or cripple some children because the hospitals were looted of drugs and essentials; and in most cases the medical staff was driven out or killed. Increasingly, public places like schools, hospitals, markets and even refugee camps become battlefields. As a result some children are orphaned early in life because their parents got killed for holding a different political view or belonging to a wrong religion or skin colour. Therefore, addressing such challenges affecting the youths and children in a post-conflict society must be a national priority.

4. Helping to transform the lives of young ex-combatants – by providing in their needs

4.1 Educational needs – especially in rural areas

UNICEF (United Nations International Children's Emergency Fund) reported that one in fifty children in southern Sudan completes primary education. 'After 21 years of war, southern Sudan ranks as the worst place in the world for many key indicators of women and children's well-being, including its rates of chronic malnutrition, primary school completion, immunisation and antenatal care' (Moszynski 2004:13). The education system in Sudan has not been spared by the long civil war that has characteristically led to the exclusion

and political vulnerability of southern Sudan (Deng 2003). It is not surprising that the education system has been a key tool used by the northern ruling elite for perpetuating socio-economic and political marginalisation of the majority rural communities and southern Sudanese in particular. Yet it is in southern Sudan where the Nile-based civilisation flourished (Nubia, Kush and Fanj), pre-dating Arabic and Christian presence in Sudan (Deng 2003). The Arabic and the British rulers did not recognise this civilisation and eventually marginalised it. This has motivated the civil war.

The British left a legacy of underdevelopment during their years of administration of the Condominium (1898–1955). Lesch (1998) argued that the British rulers entrusted Christian missionaries to provide moral guidance, which they perceived to be a greater need in the south than economic development. Additionally, 'they sealed off' southern Sudan from the slavery of the north through the Closed District Order in 1922 (Deng 2003). A new language policy was introduced which banished the speaking or learning of Arabic in the southern Sudan with the intention of linking the territory with British East Africa. These British policies did not foster economic and social development in the south but widened the already substantial gap with the north (Deng 2003). The limited number of missionary schools did not meet the education needs in the south and as late as the 1940s, government schools in the south included only a few elementary schools, two intermediate schools, one teacher training centre, one commercial school and one senior secondary school (Deng 1995:86).

Table 1: British colonial legacy: Level of access to education by 1960

Number of education facilities (streams, schools and universities)

Level of Education	North	South	Total
Intermediate Streams (Boys)	194	20 (9%)	214
Intermediate Streams (Girls)	55	1 (2%)	56
Secondary School Streams (Boys)	49	2 (4%)	51
Secondary School Streams (Girls)	14	0 (0%)	14
Commercial Secondary Schools	2	1 (33%)	3
Technical Secondary Schools	3	0 (0%)	3
Universities	4	0 (0%)	4
Khartoum University students	1156	60 (5%)	1216

Source: Oduho and Deng 1963

The legacy of unequal access to education was deepened in the post-independence era with the north commanding a far greater share of education facilities than the southern Sudan. The table below highlights the case of inequality.

Table 2: Level of access to education during the inter-war period, 1972–83

Number of education facilities and population of students

Level of Education	North	South	Total
Primary Pupils (in 000)	1 349 (90%)	143 (10%)	1 492
Primary Schools	5 343 (87%)	809 (13%)	6 152
Primary Teachers	39 188 (92%)	3 432 (8%)	42 620
Pupil Teacher Ratio	34	42	
Intermediate Schools	1 378 (93%)	96 (7%)	1 474
Secondary Schools	199 (93%)	15 (7%)	214
Universities Admissions in 1983	3 499 (99%)	29 (1%)	3 528

Source: Yongo-Bure 1993

Deng (2003:6) writes concerning this conspicuous inequality:

> With population of 20 million during the inter-war period, the primary school enrolment rate was about 40 per cent in the north but less than 12 per cent in the south. Also while pupils' teacher ratio was about 34 in the north, it was 42 in the south. In comparison to its size of population, the inequality in the level of access to education at all levels was significant and striking and clearly indicates that the central government did not exert effort to narrow such inequality between north and south during the brief period of relative peace.

Only one in 50 children completes primary education in the south, which is thought to be 'the lowest rate in the world', and only one in four adults (one

in 10 women) are literate (Moszynski 2004). Yongo-Bure suggested that it is this inequality that prompted rebellion of the southern Sudan. These profound horizontal inequalities generated a sense of frustration and feeling of injustice and exclusion that eventually led people in the south to resort again to armed struggle in 1982 (Yongo-Bure 1993).

Education in southern Sudan suffered heavily during the period of complex emergency. By 1993 there was very limited support to education in southern Sudan. After the emergency the situation has not improved either. Most of the schools remain 'bush schools' with no permanent buildings of brick under tin. The 'bush schools' are community initiatives to replace about 800 schools destroyed by war. The syllabi have not been improved or coordinated, with many schools adopting Kenyan or Ugandan curricula (Deng 2003). This introduces a lot of ideological inconsistencies for both the children and the country since the 'spirit' of a society is perpetuated in its education system. Southern Sudan has no such starting point.

Teachers in southern Sudan are poorly trained with only 7 per cent having received college training, while the rest either have some in-service training (48 per cent) or are completely untrained (45 per cent) (UNICEF/Open Learning System 2002:4). Female teachers constitute only 7 per cent of all the teachers. Besides the acute shortage of trained teachers, the schools are poorly equipped with teaching facilities and teacher's guidebooks (Deng 2003).

Schools are the most valued possessions of the youth. The collapse of the educational structures has often fuelled violence in some parts of Africa. For the youth, formal education and job opportunities are the key to a good life, although there is no direct correlation between having education and a good job or a successful life (Peters et al. 2003). In a post-war setting, different categories of young people can be distinguished on the basis of their academic history. These range from young people with very little or no education, to young people who dropped out of primary or secondary school either before the war or as a result of it, to young people who were able to finish their education (Peters et al. 2003).

The long years spent in waging war force many young people to miss out a lot. In most cases school systems were destroyed, teachers got killed and some fled. Children with no educational future often find joining the military groups their only option. In post-conflict recovery programmes it is important to develop specially designed catch-up programmes to meet the special needs of those affected by the war. Most importantly, there is a need to develop curricula that are of a problem-solving nature. Mass schools may not be the best as these may end up mass-producing educated youths who cannot be absorbed in the nascent industry. In fact it is the curricula that need to be relevant to the youth in the post-conflict situations.

To attract many youths back into schools entails a lot of sacrifice. School life needs a certain discipline which some of the children cannot stand due to their independent life as combatants or street children. Very few children, particularly those who lost their parents or guardians, will be willing to part with the few monetary resources they may have. The government and local authorities need to initiate waivers of school fees to the youths until they are well entrenched into the school systems to continue on their own. While the problem of who will meet the cost of their education becomes even more pressing in the era of reduced official donor support, the schools need to be rebuilt, books and provisions are needed for schools to function properly and salaries for teachers need to be paid to keep them in class. The overall danger is that the children or youths will certainly drop out of school when the opportunity for free education comes to an end, and will then find refuge in the willing arms of a viable militia group. The post-conflict recovery programmes can therefore not afford to neglect the crucial component of the future of the country – the youths and children.

Many schools are looted and destroyed during wars, and need to be rebuilt. Money to rebuild destroyed schools or put up new ones altogether may be limited. Qualified teachers may not be too keen to teach in the remote areas where there are no provisions comparable to schools in urban areas and where security is weak. There is need to provide special incentives for teachers to prefer rural life more. School authorities need to provide good water, sanitation and accommodation for the teachers to stay. More attention should be given to schools in rural areas. Some regions are so poor that children and youth

will not (or cannot) attend school unless food is provided. Supplementary feeding programmes may be the best solution to keep the hungry children motivated, focused and looking forward to come to school the following day. These challenges affect the resumption of an education system after having been disrupted by civil wars. Notwithstanding all challenges, governments and donors need to support revamping the education system that can cater for the girl child's educational needs as well as for the youths whose educational backgrounds are diverse and have been affected by the conflict.

4.2 Vocational needs in rural and urban situations

Vocational training programmes provide functional skills of survival for many people who cannot be absorbed in formal school life, be it by age or by fate. There are youths who had joined the war when they were very young and grew to become adults fighting the war. The basic skill they have is firing a gun. These youths may also be married to their fellow combatants and have children to look after. The time may not be available for one to consider uninterrupted classroom education, and therefore vocational education must provide the necessary bridge with the working world. Vocational training offers shorter cycles that are easier for young people who have financial responsibilities of their family to attend to. Some of the ex-soldiers may just need to re-sharpen their skills, which were made obsolete by years in war. Others have been thrown into prostitution by war circumstances and a lack of skills. To lure these out of their vices, fully funded and relevant vocational training is needed in southern Sudan.

Richards et al. (1997) calculated that even without war, the growth in white-collar jobs and jobs in the formal sector would not be enough to absorb all school graduates. In the post-war situations in most African countries, the only realistic option is self-employment in either a trade or a craft, particularly in the rural service sector. However, vocational training that trains a bunch of mechanics may not be the correct thing to do since after training the graduates will have to go back to their village where there are no cars to repair. The training has to be functional. There is need to provide skills needed in rural reconstruction, such as blacksmithing, sun-baked mud-brick manufacture, or improved food

processing (such as cassava milling), wood carving, stone craft, alongside the other skills like engineering or architecture that are needed in cities and towns.

Young people either have to be apprenticed to local artisans or trained in new skills. Non-governmental organisations (NGOs) are needed to experiment with forming rural reconstruction teams: e.g. training young ex-combatants to make spot improvements to rural roads, to build minor bridges and repair damaged culverts. These building brigades need to assist in repairing schools, hospitals and other institutions destroyed by war. But if ex-combatants are to continue with minor rural construction activities after contracts with donors have expired, they need not only technical skills, but also training in how to run a micro-business (Deng 2003). This process imparts technical and business skills to the youths and also inculcates the responsibility to account for the past destruction through active reconstruction of the national and local infrastructure.

The conflict in southern Sudan has badly affected agriculture. Farms have been abandoned, burnt down or looted (Deng 2003). The period after the war has been characterised by serious shortages in seed, fertilisers and extension services. The country has been importing food. Slash-and-burn agriculture is practised in the region and most of the fields are overgrown with vegetation. A lot of labour is needed and the youths may provide this necessity. However, farming life is not their first preference (Deng 2003). But agriculture is the single sector that can absorb most of these poorly educated youths because of the low skills requirement and low cost labour availability.

To prop up rural development and agriculture, a land reform programme may be necessary for southern Sudan. The government needs to make land available to the youths for resettlement. Proper title deeds that can be *collateralled* must be given on land so that these youths may use them to secure credit from financial institutions. To enable the youths to stay on the land, an integrated system of business and agriculture need to be supported so that business will buy the farm produce and supply the necessary inputs. Rural enterprise must attract the youths with the prospect of bettering their life, and the youths may find the prospect of being involved in the entire value chain attractive.

Prolonged conflict in southern Sudan drove many people from rural areas into near permanent squatter camps in towns. When the war came to an end, many people longed to go back home. In most cases, young people were not willing to go where they had no attachment with anyone, where homes had been destroyed, or where there was no running water or electricity. The youths who have stayed long in urban streets are reluctant to give all their energy to labour intensive semi-subsistence agriculture. It seems that former child combatants, even more than other groups of young people, hope to make their living in the city. This is partly due to the fact that some are afraid to return home to face their abusers or those they tormented during the war. This trauma is too great to carry. They would prefer to roam the streets and be 'free'.

Juba city and other towns in southern Sudan are developing. If the lease of stability were maintained, Juba would soon become a metropolis with vast attractions. It is crucial that urbanisation programmes taking place after the war balance rural needs and the growth of urban settlements. To satisfy the rural needs, the concept of growth points in rural areas needs to be tried as a way of balancing rural development and urban pull after the war. These growth points will reduce the draining of rural areas of its brightest minds that find alternative life in the cities around the country.

4.3 Social needs – especially in urban settings

The major vices that have destroyed the potential of the youths are violence, drug abuse, youth gangs, and prostitution. These are also the legacies of the violent past and the pastime for the unemployed. The youths often get on the drugs to temporarily overcome memories of the past. Drugs often lead to the sense of machismo and sexual carelessness, and cause the contracting of sexually transmitted diseases and HIV. It also leads to domestic violence and broken homes. Very few relatives may be willing to take in a demobilised violent youth with a record of violence and murder. More youths may find themselves with nowhere to go if this is not addressed. Violence is generally motivated by the ready availability of weapons of choice and arms caches, which some of the ex-combatants know about. In the post-war situation, it is often difficult to control the handling of weapons that end up in criminal hands. Stricter control

of the movement and acquisition of small arms and light weapons needs to be legislated for.

It seems that youths who were actually in combat and have become inured to it, also have the capacity to place the experience in a specific 'wartime limbo' (cf. Henriques 2002). Research on township violence in South Africa refutes the idea that there is any direct carry-over from the anti-apartheid struggle (Marks 2001). While the South African situation may be different, the weapons of war left behind in the Mozambican war have filtered into criminal syndicates in South Africa where they have been used to heist money transporting vehicles and commit other robberies. Unoccupied young Sudanese cannot escape what the youths in the industrial economy of South Africa have failed to escape. It can be worse considering the litany of weapons of choice sold at a give away price, e.g. at a price of a chicken one can get a functioning AK47 and a full magazine.

Deng (2003) argues that all efforts must be made to eliminate the marginalisation of the youths. The southern Sudan needs to realise that the youthful population outnumbers the adult population. Therefore, the youths are the biggest stakeholder or constituency in the affairs and direction the country will take. If marginalisation continues, so does the risk that the youths might one day be dissatisfied and re-recruited by militia organisers. It seems that any post-war increase in prostitution among girls and young women reflects the difficult situation many of them were in during war (in refugee camps, for instance, where they were preyed upon by soldiers and humanitarian workers). An increased number of marginalised youths become vulnerable to gang recruitment, prostitution and human trafficking where they are wasted and even killed. Designing correct policies that value the life of the youths can avert this.

Africa is a continent severely affected by the HIV and AIDS pandemic. The HIV/AIDS condition is generally sexually transmitted, and is thus associated with the more sexually active part of the population. It is a condition biased towards younger people, though symptomatic AIDS may emerge a decade or more after infection (i.e. in young middle age). In Africa the spread of HIV/AIDS seems to be exacerbated, especially by the mobility and irregular sexual liaisons caused by war. The presence of militia combatants and peacekeeping forces may be

regarded as vectors pointing in the directions where the infection is spreading (Peters et al. 2003). Data on HIV infection rates among militia forces in Africa are sparse, but there is every reason to suspect that in rebel groups where abductions and rape of young females are widespread, infection is high. In 2001, the World Health Organisation estimated that about 30 000 under the age of 15 years in southern Sudan were HIV positive and that 62 000 children had lost a parent to AIDS (Watchlist 2003). Intervention strategies deliberately targeting the children and youths need to be designed otherwise an entire generation, the backbone of a new country, can be wiped away.

NGOs and government departments should work together to stem the spread of the deficiency among the youths. The youths need to feel secure. However, they also need to be fully aware of the dangers of HIV and AIDS. First, awareness programmes have to be started targeting the youths and children. Secondly, problems of stigmatisation have to be overcome through concerted education and peer education. Thirdly, voluntary testing and counselling have to be promoted among the youths and school children. Where incidences of infection are reported, appropriate therapy and support have to follow to allow the victim to live positively. Where necessary, medical support should be made available to the sick in time to save their lives and at an affordable cost. Antiretroviral treatment prolongs life. Deliberate therapeutic interventions need to be instituted to deal with the mental health of those traumatised by war. Government and NGOs need to pool resources and skills to identify urban children who are violated and provide them with necessary treatment. A healthy youth will guarantee a healthy southern Sudan.

5. Conclusion

Southern Sudan has had twenty-two years of civil war. The war is over and reconstruction is overdue. Many returnees and ex-combatants are frustrated by lack of opportunities. Insecurity has increased as a result of tribal wars and cattle raids. On the menu of this transitioning society are many programmes: military and police reform, institutional development, security, government and the statecraft, health, demobilisation, and the list is obviously long. Practitioners and policy makers often get lost in this list on the post-conflict recovery

menu and lose sight of the children and youths who just but yesterday were the firebrands of their resistance or war. Ignoring them is throwing away the baby with the bath water. Post-conflict recovery has no deep foundation if it is not built on the youth. The democratic future of southern Sudan lies in the acknowledgement of the youths as direct victims of two decades of war and the legitimate beneficiaries of the peace. In light of the deep pockets of resources the future of southern Sudan needs, the youths have to be considered seriously as stakeholders in the quest for a durable peace in Sudan. If left out, southern Sudan will rumble again into the league of failed states in Africa. Through appropriate education, vocational training, agricultural programmes, urban policies, HIV and AIDS training, the youths will underwrite the future of southern Sudan. As the sage says, 'The life of the parent is in the blood of its children', so is southern Sudan. These are some of the ways this country can effectively deal with its past.

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Explaining electoral violence in Africa's 'new' democracies*

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Abstract

The electoral process in many of Africa's 'new' democracies has been characterised by violence. However, recent manifestations of electoral violence have assumed an unprecedented magnitude and changing form and character, with negative implications for democratic stability and consolidation. This paper analyses electoral violence in Africa, with emphasis on its manifestations, causes, implications and possible solutions. The paper argues that rising electoral violence in Africa is closely connected with the neo-patrimonial character of the African state, the nature of contestation for power, the weak institutionalisation of democratic architectures, including political parties and electoral management bodies (EMBs), and the fascinating political economy of

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electoral violence. This is complicated by the absence/paucity of democrats, with democratic mindset, to play the game of politics according to established rules. Worse still, avenues for democratic redress, including the judiciary and civil society, are also deeply implicated in the deepening contradictions of the state. The result is the deinstitutionalisation of the people in the democratisation process. Electoral violence is thus a major source of democratic instability with palpable threats of deconsolidation. These contradictions will have to be redressed to tame the monster.

Introduction

The electoral process in Africa's 'new' democracies – the fledgling democratic re-experiments under the so-called 'third wave' of democratisation – has, with few exceptions, been characterised by violence. Though violence has been a long-standing feature of the democratisation process in Africa, its recent manifestations have assumed an unprecedented magnitude and a changing form and character, as this paper will illustrate. This has tended to put the democratisation process on the line in many African states, threatening the prospects of democratic stability and consolidation. Most recent examples include disputed and violent elections in Kenya, Nigeria and Zimbabwe, where the attendant search for redress through official and unofficial responses has, altogether, been largely trapped in deepening contradictions.[1]

What is it about the democratisation process in Africa that makes it easily susceptible to violence? In what forms does the violence manifest? What are its implications for the democratisation process? Are there adequate institutional

1 For example, the resort to the election petition tribunals and courts, in the Nigerian case, has raised more questions than answers. So many obstacles, including the huge cost of seeking electoral justice, the near impossible conditions of the 'burden of proof' imposed on the litigant, the undue protraction of litigation, and the seeming lack of independence of the judiciary, have served to limit the reach of electoral justice. In Kenya and Zimbabwe, the struggle for power sharing between the highly 'illegitimate' governments and the oppositions has not been able to bring stability to the countries. Rather, it tends to portray the opposition in negative light as those only interested in power sharing, not minding the implications. Else, why should an opposition, which claimed to have won an election, be prepared to share power with the 'electoral robber', which dispossessed them of their 'victory' in the first instance?

frameworks for mediating and managing electoral violence in Africa? What can be done to arrest the spate of electoral violence in Africa?

This paper seeks to critically engage these questions, with a view to providing tentative answers to them, with illustrations predominantly from Kenya, Nigeria and Zimbabwe. These cases are fairly representative of the continent, with Kenya located in East Africa, Nigeria in the West and Zimbabwe in the Southern African region. Besides, while Nigeria experienced protracted military rule before democratising in 1999, both Kenya and Zimbabwe did not. It is, therefore, baffling to see these countries radiate similar political tendencies in their democratisation process, despite these divergent geographical and historical factors.

The paper argues that rising electoral violence in Africa, including its changing form and character, may not be unconnected with the neo-patrimonial character of the African state, the nature of contestation for power, the shadows of military cum authoritarian overhangs over the democratisation process, and the weak institutionalisation of democratic architectures, including the economic foundations of the democratisation process, political parties and electoral management bodies (EMBs). The situation is complicated by the absence/paucity of democrats who really have a democratic mindset, and can play the game of politics according to established standards and rules, leading to the deinstitutionalisation of the people in the democratisation process. Electoral violence is thus a major source of democratic instability with palpable threats of deconsolidation. Unfortunately, avenues for democratic redress, especially by the judiciary, as well as official responses to the problem, are deeply implicated in the contradictions of the state. These contradictions will have to be addressed to tame the monster which electoral violence has become. Finally, the paper suggests plausible electoral reform directions in this regard.

Democratisation, elections and electoral violence

The relationship between democratisation, elections and electoral violence is a complex one. This complexity may not be all that surprising, however, given the prevailing assumption that democracy and peace are, ideally,

mutually reinforcing,[2] with elections serving as the connecting cord between them. Elections do not only allow for political competition, participation and legitimacy, but also permit peaceful change of power, thereby making it possible to assign accountability to those who govern. This is why it is often argued that 'elections facilitate communication between the government and the governed, and also have symbolic purposes by giving voice to the public' (Höglund 2006:4). As such, a democratic society is, expectedly, a non-violent and orderly society. This partly explains why elections have become part of the international peace-building strategy, which strongly links peace to democratic development (Höglund 2006:5).

However, democratisation, depending on its form and character, does have security implications that may serve to promote or retard violence. This is as a result of the capacity of democratisation to impact seriously on the distributive and redistributive systems of the state, which elections instrumentalise (Omotola 2008c). The challenges of the democratisation process are, therefore, daunting at all stages, including the transitional contexts, the contents of the transition and the question of consolidation at the post-transition stage. Bayo Adekanye (2001:8–9), a leading Nigerian political comparativist, captures these complexities in a way worthy of copious quotation:

> While the majority can agree about the horrible nature of the conditions prevailing within that initial stage of things and from which society is to transit,… and about the desirability of transiting, the question of who presides over that transition process and what methods to employ for achieving it can provoke considerable disagreements. Also, the issue of defining the *terminus ad quem,* including what contents to add to get the set goals as well as its objectives, may prove difficult, and can generate its own disagreements among the relevant political actors or parties. Nor is the post-transition stage free of such. In fact, the disagreements here can be much sharper and more intense; the issues raised here can be fundamental tending as they do to cast doubt on the wisdom of the earlier decision to be part of the process, if not about its continuity. I am talking about issues

2 Paris 2004. See also Gleditsch and Ward 2000.

> like 'who bore the brunt of the struggle leading to the transition, and who came to 'own' the transition process and product as such?' Or better: 'whose transition, organized by what groups or parties, towards which ends and in whose interests?'

The above quotation raises fundamental questions the answers to which are central to the direction of democratisation, both as a positive and a negative reinforcement of non-violence. The answers to these questions can, directly or impliedly, be found in elections as integral components of the democratisation process. By implication, the form and character of elections vis-à-vis political competition, participation and legitimacy, are integral to determining the ownership, contents, methods, and product of the democratisation process. As Ted Gurr rightly argues, 'the process of transition creates threatening uncertainties for some groups and opens up a range of transitory political opportunities for ethnic entrepreneurs' (Gurr 2000:68).

As a people-driven enterprise, democratisation retains its meaning, essence, substance and relevance provided it accords the people, irrespective of ideological and/or identity affiliations, adequate recognition in shaping and reshaping issues of governance of their own affairs. The electoral process offers the widest and best avenue to do this, given the premium it places on popular participation. It then follows that the electoral process must be of high integrity, measured in terms of its degree of adherence to the electoral laws, openness, transparency, accountability, competition and participation. Any attempt to pervert the electoral process against these virtues may serve to engender electoral violence (Laakso 2007).

As a concept, electoral violence basically has to do with 'all forms of organized acts or threats – physical, psychological, and structural – aimed at intimidating, harming, blackmailing a political stakeholder before, during and after an election with a view to determining, delaying, or otherwise influencing an electoral process' (Albert 2007:133). The import of this is that electoral violence is multi-dimensional, having physical, psychological and structural dimensions. The physical elements include assassination of political opponents, arson, looting, shooting, kidnapping and hostage taking, forceful disruption of campaign

rallies, armed raids on voting and collating centres, including snatching of ballot papers and boxes at gun point. The psychological dimension relates to official and unofficial actions that create fear in the people, which may be a product of physical violence. These include threats to opposition forces by security agents or through phone calls and text messages. The structural dimension of electoral violence seems much more pronounced, being a product of structural imbalance, including coercion of citizens by government to register or vote, unequal opportunities for political parties and candidates, abuse of power of incumbency, falsification of election results, as well as the politicisation of security and electoral officials (Nwolise 2007).

It is also evident that electoral violence, like an election itself, is not restricted to election day alone. It can happen before, during and after the elections. Pre-election violence may include acts or threats against electoral stakeholders during voters' registration or electioneering campaigns. Election day violence includes the snatching of ballot papers or boxes, assaults on opposition agents or parties, and harassment or intimidation by security agents. In the aftermath of an election, electoral violence may take the form of violent protests against electoral rigging, whether real or imagined, and of the state's deploying its apparatus of force in response to the protest, thereby further fuelling the violence.

Electoral violence is a form, perhaps the most deadly form, of electoral fraud, which has been defined as 'clandestine efforts to shape election results' (Lehoucq 2003:233). This can be perpetrated both by the incumbent power holder to avoid defeat and by opposition elements seeking to wrest political power from the governing party. In most cases, electoral violence is targeted at electoral stakeholders such as voters, candidates, party agents, election workers, media and monitors; electoral information such as registration data, vote results, ballots; campaign materials, for example, vehicles and public address systems; electoral facilities such as polling and counting stations; and electoral events, including campaign rallies (Höglund 2006:8).

Given the fact that electoral violence can be employed by both the ruling and opposition forces, coupled with the wide array of its likely targets as enunciated above, electoral violence no doubt constitutes a major source of democratic

instability. Indeed, it can pose itself as a fundamental threat to the prospects of democratic consolidation. Democracy can be said to be consolidated when it can avoid democratic breakdown and erosion by 'eliminating, neutralizing, or converting disloyal players' (Schedler 1998:96), and moving a step further towards completing and deepening democracy, measured by high 'expectations of regime continuity' (Schedler 1998:103). These demand three core elements, namely the structural, behavioural and attitudinal foundations of democratisation (Schedler 2001).

The structural elements emphasise issues of socio-economic prosperity where poverty is kept to the barest minimum and institutional parameters such as periodic, competitive, free and fair elections, a multiparty system and the rule of law. The behavioural foundations relate to the proven capacity of 'democrats' to roll back anti-democratic challenges. This demands that 'no major political actors violate basic democratic rules anymore' (Schedler 2001:72), by having recourse to electoral violence, the rejection of elections or the transgression of authority, thereby putting democracy at risk. The attitudinal foundations, however, encompass what Andreas Schedler called the basic 'normative, strategic and cognitive' elements required to sustain democracy. The normative elements include democratic legitimacy, defined as the genuine, non-instrumental, intrinsic support for democracy by political elites as well as citizens. The strategic elements entail the ability to mediate in and transform the usual conflicting relationship between democrats and anti-democrats in a consensual way, so that all can work in the interests of the democracy project (Schedler 2001:75–80).

Assessed against the background of the foregoing, the foundation of the democratisation process in much of Africa, suffers serious defects, or, as argued elsewhere, 'is still far off the mark' (Omotola 2008c:276). Structurally, poverty is still largely a continent-wide problem, with very few exceptions. This makes the people easily susceptible to negative manipulation, especially during elections. While elections are now being held periodically, they are everything but truly competitive, free and fair. Electoral processes are severely compromised, which partly explains why elections are still being boycotted and/or the results are being rejected outright by opposition elements, creating deep-seated legitimacy crises for governments. In most parts of Africa, support for democracy by the political

elites as well as by the citizens is hardly genuine, but certainly instrumental. Indeed, this tendency marks one of the faulty foundations of democratisation in Africa, where democracy is presented as the way out of Africa's multi-faceted problems, including political, economic and social dislocations (Bratton and Van de Walle 1997; Omotola 2008b). The situation seems worse for the political elite, whose main reason for embracing the democratisation process seems to be the opportunity it offers them to consolidate their hold onto power and further accumulation of wealth (Omotola 2006b). Worse still, major political actors hardly operate within the limits of constitutional provisions, as they employ extra-constitutional mechanisms to pursue their selfish interests, including the struggle for power elongation and abuse of power of incumbency to frustrate opposition forces.[3] This tendency tends to hinder consensus building between the government and the opposition, and to cause a sort of political nightmare in Africa. The perversion of these core foundations of democracy, as subsequent analyses will demonstrate, lies at the root of electoral violence in Africa.

Contextual issues: From hope to despair

The problem of electoral violence in Africa cannot be fully understood without situating it within the political history of the continent. The colonial African state offers a useful point of entry. For, it was under it that some form of electoral politics was introduced to Africa. This was particularly the case in British colonies with the introduction of the elective principle in 1922. Although electoral politics during this period was to a very large extent non-violent, the democratic substance of the elective principle was too limited with income and residential qualifications and could therefore be a potential basis for violence. Possibly as a result of its narrow political base, political discourses about democracy and good governance were essentially elite-driven, while the people occupied a very marginal space, if any (Ake 2000:33–36).

It was, therefore, hardly surprising that electoral violence reared its ugly head shortly after the attainment of political independence by most African States in

3 For the Nigerian example, see Omotola 2006a. (The entire issue of the journal in which this article appeared was devoted to the politics of tenure elongation by ex-President Obasanjo, with several illuminating entries.)

the decade of the 1960s. This was partly so because the promise of independence, as 'extravagantly' articulated by the nationalists in what Peter Ekeh called the 'anti-colonial ideologies of legitimating' (Ekeh 1995), did not show any sign of effective take off, let alone being consolidated. Rather than transform the colonial state, including its narrow democratic base to accommodate popular nationalist aspirations for the new state, the new elite of power in Africa opted to inherit the colonial state into the independent state (Ake 2000:33; Mbaku and Saxena 2004). The attempt to contain attendant popular discontent and protests by the state, including the recourse to a one-party state, represents further closure of the democratic space.

As the state began assuming a more central position over power and other resources, forces of identity, particularly ethnicity and religion, became appealing. Sooner rather than later, these forces became the main drivers of politics. The Nigerian experience is particularly illustrative of this tendency. Beginning from the 1964–65 general elections, violence has been a major feature of electoral politics in the country. The election presented the National Council of Nigerian Citizens (NCNC) and its allies the opportunity to challenge and possibly neutralise the stronghold of the Northern Peoples Congress (NPC). The NPC had dominated politics at the federal level since independence in 1960 and saw the 1964 election as another chance to consolidate its position. The NPC also sought to extend its tentacles to other regions, particularly the west, where it had found a willing (and capable?) ally in Chief S.L. Akintola's Nigerian National Democratic Party (NNDP). For the Action Group (AG), however, the 1964 election was an opportunity to prove that it was still very much on the ground in the region by regaining its lost paradise. By implication, every actor in the election had serious points to prove, which contributed to the volatility of the political environment. The attendant violence, including arson, looting, killing, wanton destruction of properties and the total collapse of public order especially in the western region, was unprecedented and contributed in no small measure to the collapse of the first republic (Osaghae 1998; Akinwumi 2004).

The electoral process during the second republic in Nigeria (1979–1983) was also highly laced with violence, especially during the second election of 1983. The structure of politics, despite the alteration in the structure of the federation from

three (later four) regions of the first republic, to nineteen states, was still largely driven by ethno-religious forces, where each party maintained its stronghold in a given regional/ethnic domain. The National Party of Nigeria (NPN), obviously NPC's successor, controlled the federal government between 1979 and 1983. In the 1983 elections, it wanted to extend its reach to other regions, either by hook or by crook. The attempt to achieve this underscored the massive rigging of the 1983 elections, which resulted in an unprecedented outbreak of violence in the south-west, where the Unity Party of Nigeria (UPN), AG'S successor, held sway. In the then Oyo and Ondo States, two UPN states declared for the NPN, the attendant violence was unprecedented, so that a writer simply described it as 'the house of war' (Barbarinsa 2002). It was so fierce that Ondo state was returned to UPN shortly afterwards. As it turned out, however, this was a belated response and it was not enough to stop the military from seizing power on 31 December 1983 – predominantly, but not only, on account of the violence and attendant contradictions.

The Nigerian experience represents just one among several others in Africa. In East Africa – Kenya, Tanzania and Uganda – electoral violence has been a major feature of politics in the post-independence era. Specifically in Kenya, the attainment of independence on 12 December 1963, with the Kenya African National Union (KANU) forming the first post-independence government has, until recently, failed to provide for pluralist competitive politics. Rather, KANU initiated a constitutional engineering process that gave rise to a new constitution in 1969, which transferred all constitutional powers to the presidency and completely erased the political checks and balances inherent in the independence constitution of 1963. While elections have been held regularly, it has been a one-party show, which was why many have seen Kenya as both a *de facto* and a *de jure* single-party state.[4] Attendant electoral violence has manifested in the form of assassinations, attempted assassinations, confinement, battering, arson, looting, political thuggery, destruction and damage of property, among others. The trend has not been different in Tanzania and Zimbabwe (Laakso 2007:230–249).

4 See, for example, Friedrich Ebert Stiftung and Centre for Conflict Research 2001:18.

Recent trends and predisposing factors

Africa's 'new' democracies have been seriously violated in many ways (Aremu and Omotola 2007; Mentan 2007; Edi 2007). One outstanding area of violation of central concern to this paper is the deepening crisis of electoral governance partly reflected in the phenomenon of electoral violence. Recent manifestations of electoral violence include physical, psychological and structural dimensions, all with the central motive of influencing the electoral process in favour of the perpetrators of the violence. The timing also reveals that this violence cuts across all stages of the electoral process – before, during and after the elections. In most instances, the main actors have been the state, represented by the ruling party, security agents and electoral officials, and opposition forces. Their activities include various forms of violence earlier identified and directed at various electoral targets as already noted.

Physical dimensions of electoral violence in Kenya, Nigeria and Zimbabwe include political assassinations, riots, assaults, arson, looting, bombing and hijacking of electoral materials at gun point. In Nigeria, for example, the issue of political assassination has been a major issue since 1999. Some of those that have been assassinated include top party chieftains, candidates aspiring to elective offices of high stake and those already in elected/appointed political offices. Notable figures here include Funsho Williams, a gubernatorial aspirant under the Peoples Democratic Party (PDP) in Lagos State (July 2006), and Dr Ayo Daramola, also a PDP gubernatorial candidate in Ekiti State (August 2006). There were also reported and verified cases of bomb explosions in the homes of aspiring candidates. For example, the home of Senator Patric Osakwe in Delta State was bombed on 24 November 2006, so also those of Nduli Elumelu and Theodora Giwa-Amu, both aspirants into the House of Representatives, also in Delta State. These were all before the elections.

The conduct of the election itself witnessed many more cases of physical violence – most notably the open display and use of dangerous weapons such as guns, axes and cutlasses to perpetrate electoral fraud. In the process, many innocent people were killed. In the aftermath of the elections, and especially after the announcement of results, physical violence broke out in many parts

of the country but was much more pronounced in the south-west. This is understandable, given that the region traditionally exhibits a form of radical and opposition politics, which was typified by the late chief Obafemi Awolowo and is currently alluded to as 'Awoism'. But a combination of the use of power of incumbency and the wrong strategy of the then dominant party in the region, the Alliance for Democracy (AD), and especially its ill-defined coalition with the PDP in the 2003 presidential election, occasioned the near eclipse of the party. The 2007 elections, therefore, presented an opportunity to revert to the old order, which the Action Congress (AC) seriously worked for. But this was not to be so – as a result of the abuse of power of incumbency to alter the people's will. The violent response was spontaneous, including the burning of houses, killing, looting and general breakdown of law and order in Ondo, Ekiti, Osun and Oyo states as the most volatile.

These physical dimensions of violence also manifested in recent Kenyan and Zimbabwean elections. Most notable ones include battering, assassinations, arson, destruction, looting and damage of properties, torture, unlawful arrest and detention, rape and disruption of public meetings and campaign rallies.

At the psychological level, the situation does not seem better. The most glaring manifestation of this strand of electoral violence in Nigeria was the infamous declaration by President Obasanjo that for him and the PDP, the 2007 election was 'a do or die' affair (Omotola 2007). This statement, more than anything else, seemed to bolster the resolve of the PDP to go any length to win at all costs, to create fear in the mind of the opposition and electorate, and make them more circumspect about their roles during the elections. The resultant criminalisation of politics through violence further served to heighten fear in the populace. This tendency was replicated at lower levels of state governance. In Oyo State, for example, Alhaji Lamidi Adedibu, generally regarded as the strongman of Ibadan politics until his death recently, shortly after the 2007 elections, boasted on many occasions that only those that were on his side could win elections. In Kwara State, Dr Olusola Saraki, the political 'godfather' of the state, simply declared that there was no vacancy in the government house, and insisted that his son, Dr Bukola Saraki, must be retuned for a second term. These were subtle threats

that created fear in most aspiring gubernatorial candidates, and caused them to withdraw/defer their aspirations.

Structurally, violence manifested in the form of systemic disequilibrium predicated upon double standards. In Nigeria, for example, all the parties were not given equal access to the state-owned media, particularly the Nigerian Television Authority (NTA) and Federal Radio Corporation of Nigeria (FRCN). Moreover, the anti-corruption agencies of the state, particularly the Economic and Financial Crime Commission (EFCC), were being used as a political weapon by the ruling party to harass, intimidate and frustrate the opposition out of politics. A notable case in point was the ordeals of Alhaji Atiku Abubakar, the AC presidential candidate, who was hurriedly indicted for corruption without a fair hearing by the EFCC, which formed the basis of his purported disqualification from contesting the election. The overall ineffective governance of the elections, which included the late arrival and shortage of electoral materials and officials, falsification and announcement of false results and the massive disenfranchisement of the people that were the hallmarks of the 2007 elections in Nigeria, represent other dimensions of structural violence.[5] Some of these features manifested in Kenya and Zimbabwe through the closure of the campaign offices or premises of opposition parties, economic repression, sabotage, eviction and displacement.[6]

How then do we explain the prevalence of electoral violence in Africa's new democracies? The first thesis we want to propose is that the context of the democratisation process has important ramifications for recent electoral violence. Here one is tempted to suggest that there is a political culture of violence in most parts of Africa. This culture of violence in their most recent manifestations seems to be a product of what I call military cum authoritarian overhang shadowing the democratisation process. Nigeria, for example was under the strong grip of the military for an uninterrupted sixteen years prior to 1999. In the process, 'military politicians' built and consolidated their military industrial complexes that saw them dominating some of the commanding

5 See Adebayo and Omotola 2007.

6 See, for example, Friedrich Ebert Stiftung and Centre for Conflict Research 2001:4.

heights of the national economy. Their stupendous wealth seems to confer an advantage on them over and above their civilian counterparts in the new struggle for power (Adekanye 2000). The attendant dominance of the retired officials at all levels, without a corresponding reorientation of values and sufficient time lag to adjust to civil life, meant they came into the democratic job with a military ethos and mindset.

While Kenya and Zimbabwe did not go through the pains of military rule, both also had a history of a culture of violence beginning with the anti-colonial struggle. Beyond this, Kenya is particularly notorious for its unofficial one-party rule under the hegemony of KANU, with little or no space for opposition until recently when the 'third wave' compelled the re-introduction of multi-partyism. Also in Zimbabwe, the situation seems worse with Robert Mugabe in power for close to three decades now. The consolidation of power in both settings had largely been predicated on the use of force. Consequently, the prevalence of electoral violence in Africa's new democracies may be a product of a culture of violence inherited from the departing military cum authoritarian regimes, whose main actors, coincidentally, remain dominant in the current dispensation.

Closely related to the above is the form and character of the state and the nature of contestation for power (Osaghae 1989). Essentially, the African state is a law and order state, predicated upon the use of force to enforce its decisions. Moreover, the state in Africa it totalistic, having dominion over the society in every facet of life. Capturing political power therefore translates to capturing all other things. This situation is not helped by the resurgence and gradual consolidation of neo-presidentialism, where the president almost approximates the state. The increasing centralisation of power in the presidents at the national level and political leaders at other levels of governance tends to heighten political stakes. The result is the unhealthy rivalry and competition for power, since political power has become the main key to all other sources of power. Thus the resort to violence. Nothing illustrates this better than the abuse of power of incumbency in an effort to remain in power at all costs, and if all else fail, to impose a surrogate that will continue to defer to the 'good' judgment of the benefactor. This was the case with Obasanjo's Nigeria with respect to the third term agenda that sought to elongate his tenure beyond constitutional limits of

two terms of four years each. When it failed, he imposed Umaru Yar'Adua, a development at the root of the violent nature of the 2007 elections.

The weakness of the economic foundation of democracy provides another lens through which we can x-ray electoral violence in Africa. Democracy requires some level of economic development, particularly with respect to income and poverty levels. When the poverty level is higher than a standard threshold at $2 a day for the poverty line and $1 for absolute poverty, democracy may be at risk. Unfortunately, poverty remains a continent-wide problem, and Nigeria seems to face the greatest challenge here, despite its increasing oil revenue. It is disgusting that in 2002, Nigeria was one of the 21 poorest countries in the world. In 2003, a staggering 70% of the population were said to be living below the poverty line. In 2008, official statistics claim some reduction to about 60%, a contestable claim given prevailing realities, including rising inflation and unemployment. The depth of the crisis is evident in the fact that 'if Nigeria succeeds in just preventing the worsening of poverty, a tall task given current trends, it would still have some 170 million poor people in 2015' (Okonjo-Iweala et al. 2003:7). Estimates indicate that Nigeria would require an annual GDP growth rate of 7 to 8% in order to halve the number of people living in poverty by 2015. Despite the 2004/5 GDP growth rate of 6.9% noted in Nigeria, the poverty problem remains far worse than that in either South Africa or Egypt. World Bank data show that in 2003, 70.8% of Nigerians were living on less than $1 per day, whereas for Egypt in 1999 this figure was 3.1% and for South Africa in 2000, 10.7%. In the same years, 92.4% of Nigerians, 43.9% of Egyptians, and 34.1% of South Africans were living on less than $2 per day (World Bank 2007). Situations like these tend to make people easily susceptible to diverse forms of negative mobilisation at the slightest inducement, including electoral violence.

The weak institutionalisation of some key architectures of democratic politics also helps to explain electoral violence in Africa. Some of the most notable institutional architectures of democracy are political parties, EMBs (electoral management bodies) and the judiciary. Ideally, political parties are to be erected on a specific political ideology that will serve as its organising and mobilisational anchorage. In the absence of one, other tools of mobilisation, particularly forces of identity such as ethnicity and religion, become appealing. Given the ease of

manipulation and transformation of these forces, they stand the risk of falling prey to corruption and violence. The glaring ideological barrenness of most parties under Africa's new democracies and the attendant decadence of political parties, which manifest in the gross absence of internal party democracy and the heavy reliance on negative mobilisation to win elections, underlie electoral violence in Africa.[7] Here, Nigeria presents a good case study where the parties had to rely on unconventional means to mobilise and win elections at all costs.

The situation with the EMBs seems worse. This is because effective electoral governance requires the impartiality, independence, efficiency, professionalism and transparency of the EMB to avoid mutual suspicion and mistrust among political actors. These issues can be determined by the mode of composition of the EMBs, their funding and motivation. In Nigeria, the EMB, by name the Independent National Electoral Commission (INEC), is constituted by the president, does not have an independent source of funding and therefore depends on the presidency, and has political affiliations. The electoral law requires that members should have the same qualifications for membership as members of the House of Representatives. One of these conditions is that one must be a member of a political party. Since Nigeria does not allow for independent candidacy, it then follows that members of INEC must be members of political parties. For these and related reasons, the independence and neutrality of INEC are compromised *ab initio*. INEC, like its counterparts in most other African states, especially Kenya and Zimbabwe, appears like a mere appendage of the presidency, which wields overbearing influences over it. This makes it easy to manipulate EMBs to serve the interests of the incumbents to the disadvantage of opposition parties. In Nigeria, for example, INEC attempted to illegally disqualify Abubakar Atiku from contesting the 2007 election at the instance of the presidency. It took the intervention of a landmark Supreme Court judgment a couple of days before the election to reverse the decision. In several states, including Kogi and Adamawa states, INEC succeeded in disqualifying some

7 One of the most authoritative accounts of political parties and the democratisation process in Africa I have read is Basedau et al. 2007. Two of the chapters particularly by Andreas Mehler and Liisa Laakso speak directly to issues of political violence and electoral violence respectively.

opposition candidates, getting those elections nullified by the court, and calling for a re-run.

Issues such as the political instrumentalisation of EMBs by the incumbent power holders feature prominently in the rejection of election results and eventual outbreak of violence in most parts of Africa. This point was made very loudly in Nigeria, Kenya and Zimbabwe, where opposition parties rejected the results of 2007 elections, alleging manipulation of the EMB by the ruling party.[8]

The contradictions of electoral justice in Africa represent another factor responsible for electoral violence in Africa. In most African states, the electoral laws spell out the procedures and conditions of seeking electoral redress in courts. In Nigeria, for example, the burden of proof lies with the litigant, and a major requirement is that it must be proved beyond any reasonable doubt that the alleged irregularity was 'substantial' to warrant nullification of the elections. These are near impossible conditions for obvious reasons. For one thing, the cost of electoral prosecution is no child's play, so that those outside government may not be able to afford it. For another, the declared winner of the contested election is already sworn-in, with full paraphernalia of office while the legal tussle lasts. This already tilts the electoral justice landscape in favour of the winner, who not only has access to state resources, but also takes full advantage of them to prosecute a personal case. In such circumstances, the huge cost and the burden of proof constitute limitations to the litigants. So also the problem of corruption which has reared its ugly head in the judiciary, and manifests in the allegations of graft against some judges. A notable case with regard to electoral justice was the one relating to the chairman of the Osun state election petition tribunal where he and other members of the panels were reportedly exchanging calls and text messages while the case was going on. Nigerians are still expecting the outcome of the judicial investigation of the matter. By implication, the political economy of electoral fraud and violence in Africa tends to be more rewarding than that of electoral justice. This tendency provides some incentive to play along, given that securing electoral justice in the face of these challenges seems an impossible mission.

8 For the Nigerian experience, see Ijim-Agbo 2007.

How, for example, do we explain the fact that out of the 1250 tribunal cases (Aiyede 2007:50) that arose from the 2007 general elections in Nigeria, extremely few have been successful. For instance, in the presidential election, there were eight cases, none of which was successful. In the governorship election, there were 105 cases across the 36 states of the federation. Of all these, only one, that of Comrade Adams Oshiomole of the AC in Edo State has been successful in the final appellate court. Unfortunately, the failure of others was not for want of compelling evidence, but due to the impossibility to prove that the fraud was substantial to alter the result. Reports of local and international monitoring teams attest to the monumental fraud and violence that characterised the 2007 elections in Nigeria. President Yar'Adua, the chief beneficiary of the outcome, admitted this reality (Adebayo and Omotola 2007:206–212).

Even in situations where protracted violence compels the 'winner' to agree to negotiate power sharing agreements with the opposition, the incentive to engage in electoral fraud and violence abounds. The mere proposal, let alone the acceptance of going into power-sharing with a robber who came to power through stolen mandates, portends ominous dangers for the future of electoral politics in Africa. It may send the wrong signal that the opposition groups are nothing but selfish power-mongers who will accept any kind of power brokerage at the elite level, without actually fighting for the overall benefit of the populace. This tendency represents another incentive to be involved in electoral fraud and violence.

Consequences of electoral violence

Electoral violence has had some dire consequences in Africa's new democracies. First, there are security implications for the continent in general, and affected countries in particular. Some notable security implications include the collapse of public order, the large numbers of internally displaced persons (IDPs), the flow of refugees, and further militarisation of the state and society. For example, in the aftermath of electoral violence in the 2007 Nigerian elections, there was a collapse of public order in some volatile states of the south-west. The attempt to restore sanity led to the massive deployment of the military and mobile policemen, who subjected the people to various threats, harassment,

intimidation, extortion, torture and rape. The situation in Kenya was worse where a total of more than 300 000 people were internally displaced as a result of post-electoral violence (Kenya Red Cross Society 2008). The regional breakdown is as follows:

Table 1: Regional breakdown of IDPs Camps and total IDPs in Kenya

Region	IDPs Camps	Total IDPs
North Rift	**53**	67 220
South Rift	**154**	154 892
Nyanza	**58**	27 067
Western	**19**	19 941
Central	**7**	22 449
Nairobi and environs	**5**	10 074
Coast	**0**	0
Total	**296**	301 643

Source: Kenya Red Cross Society 2008.

Apart from the security challenges in managing such a large population of IDPs, several other complications with security implications have reportedly set in. For example, the congestion in most of these IDPs Camps has given rise to other challenges such as post-traumatic stress, contagious diseases such as Tuberculosis, and sexually transmitted diseases such as HIV/AIDS. These constitute acute security problems from a health perspective.

Electoral violence also accounts for a deep-seated legitimacy crisis across the continent. In Nigeria, Kenya and Zimbabwe, the constitutionality of the new governments is being seriously challenged, not only by opposition forces, but also by the people. Some of the famous ways of protest include peaceful and violent ones – peaceful demonstration and litigation in electoral courts, and violent outbreaks resulting in killing, arson, looting, destruction of properties and the resultant imposition of curfew, and the militarisation of the state and society. These serve as a potent source of diverting government attention away from governance and towards consolidating its illegal/contested capture of power and managing the resulting conflicts. In Nigeria, as in Kenya and Zimbabwe, there

are still ongoing judicial proceedings and or violent protests challenging the legitimacy of the government more than a year after the elections.

Moreover, electoral violence hampers effective political competition and participation. Since might became right, as in the Hobbesian view of nature, only those with adequate coercive cover became main players. As such, the democratisation process is gradually facilitating the de-institutionalisation of the people to become mere clients, onlookers and/or consumers, instead of acting as the primary stakeholders of democracy. The attendant culture of political apathy represents a major threat to democratic consolidation.

Finally, electoral violence in Africa has important foreign policy ramifications. Ideally, every civilised nation aspires to the values and virtues of the post-Cold War order, where the issue of being a good international citizen features prominently. Good international citizenship requires conducting free and fair elections to be internationally recognised. The inability to do these in most African states has been a sore point in their external relations, most notably leading to an external image crisis. In the aftermaths of recent Kenyan, Nigerian and Zimbabwean elections, the international community has raised critical eyebrows about these countries. This has ramifications for economic diplomacy, as Africa is being seen as incapable of conducting credible elections. The resultant violence scares potential investors away, as much as it retards other forms of assistance.

Conclusion

The electoral process in much of Africa has been marred by electoral fraud and violence in diverse ways. This paper has reflected on these ways, accounted for them as well as teased out their implications for democratic consolidation. It has been revealed that electoral violence, irrespective of diverse motives, actors, targets and forms, has been counter-productive in Africa's new democracies. Both in the short and the long run, violence threatens the democratic foundations of competition, participation and legitimacy. It also brings about the marginalisation of the people in politics. The paper identifies some of the predisposing factors of electoral violence – the traditional context where issues

of military cum authoritarian overhang of previous regimes and a prevailing culture of political violence feature prominently; the nature of the African state and its politics; the weak economic foundations of the democratisation process, including pervasive poverty; and the weak institutionalisation of democratic architectures, particularly political parties, EMBs and the judiciary.

The foregoing revelation has both research and policy implications. At the policy level, official and unofficial interventions should be geared towards redressing the conditions that make the shallow rootedness of democratic infrastructures possible. So far, this is not yet the case. In Nigeria, some of the main steps taken so far include an attempt to reform the electoral process through constituting an electoral reform panel and providing an election petition tribunal. In Kenya and Zimbabwe, engagement has leaned more on power brokerage between the ruling party and opposition party. In both instances, the desired result is still far from crystallising (Omotola 2008a). This is because these interventions do not speak directly to the heart of the problem. If anything, it has only been palliative. For example, it is not yet clear how electoral reform will alter the prevailing culture of impunity among the political class – with little or no regard for the rule of law – or how power sharing will reflect the popular wishes of the electorate in Kenya and Zimbabwe. Their failure is exemplified by recurrent post-election violence in these countries. At the level of research, more focus should be on the political economy of electoral violence, including its democratic pay-offs over and above compliance with the electoral laws. This may help to lay bare the historical, political and economic undercurrents of electoral violence in Africa.

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From defiance to engagement: An evaluation of Shell's approach to conflict resolution in the Niger Delta

*'Dejo Olowu**

Abstract

In the course of the lengthy era of military rule in Nigeria, the Shell Petroleum Development Company of Nigeria Ltd (Shell) enjoyed robust protection from the State, a scenario that largely left the unrelenting demands of the Niger Delta peoples unheeded. Over the last decade, however, Shell has gradually become responsive to the inevitable need of getting involved in State and non-State initiatives for finding sustainable peace in the Niger Delta region. At formal and informal levels, these initiatives are becoming evident although challenges remain. This essay proceeds from the premise that the Niger Delta conflict is not interminable. Extrapolating from the various efforts made by Shell towards resolving its conflicts with the peoples of the Niger Delta, this essay accentuates some of the missing links between top-down efforts and bottom-up initiatives

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in building sustainable peace in the region. Drawing from learned experiences of Shell's successes and failures as well as of Nigeria's power relations and institutional architecture, this essay contends that while compensatory gestures could play a major role in the resolution of conflicts, that approach alone cannot guarantee conflict resolution and reconciliation in the Niger Delta. The overarching outcome of this evaluation is an attempt at identifying the entry points of concerted conflict resolution strategies, with practical focus on the short-, medium- and long-term attainment of peace.

Introduction

Although conflicts and conflict resolution techniques have intrigued scholars since the ancient times of Thucydides, circa 460–395 BC (Klare 2001; Halsall 2010; Kemos 2010), scholarly interest in the environmental factors responsible for many volatile conflicts, particularly in Africa, is a relatively incipient endeavour (Dawson 2006:97; Butera and Leroy 2008).

In general, conflict describes a state of disagreement, disparity or incongruity between two or more individuals or groups engaged in the allocation or deployment of scarce goods or other resources. Logically, therefore, conflict is all about gaining a relative advantage or control in the struggle over who gets what, when, and how (Franke 2007:11). Many notable writers have posited that conflict is an intrinsic component of social relations and, as an expression of the multiplicity of interests, values, and beliefs, it could become the unavoidable determinant of development, underdevelopment, social change or social stagnation (Coser 1956:8; Omoluabi 2001:2; Olowu 2001:122–123). In some instances, non-violent disagreements spiral – and differing individuals or social groups resort to material violence in pursuit of their goals. Of course, the distribution of natural resources and the redistribution of revenues from their extraction are, as my discussion would indicate, also characterised by high conflict potential.

For upwards of the last two decades, hardly has any other topic pertaining to Nigeria generated more interest among international commentators and observers than the crisis in the Niger Delta region of the country. The recent

out-of-court settlement agreed to by the Shell Petroleum Development Company (SPDC) with the families of the nine Ogoni activists executed in 1995 to the tune of US$15.5m (GB£9.6m) has further heightened interest in the intentions of the transnational conglomerate and the future of peace in that region. This resort to a pecuniary approach within the overall framework of Shell's engagement with conflict resolution underpins the thrust of this essay.

Bearing in mind the overwhelming wealth of scholarly and popular literature that has been generated in relation to the Niger Delta crisis, it will serve no useful purpose to revisit the existing volumes of works. The focus of this essay is therefore rather on the significance of the transition from Shell's defiant attitude towards the profound crises in the Niger Delta to its novel active engagement with the dynamic challenges of reconciliation.

While the current rapprochement of Shell with the Ogoni people of the Niger Delta may offer an opportunity for the troubled communities to bury the hatchet and begin the work of healing old wounds, there is no mistaking the reality that more needs to be done to demilitarise the region and to restore tranquillity and development.

Shell in the Niger Delta: A panoramic survey

Although empirical works indicate that the efforts at oil prospecting in Nigeria commenced before the 1914 amalgamation of the Northern and Southern Protectorates of Nigeria, it was not until 1937, when the Royal Dutch conglomerate, Shell D'Arcy, got involved in the quest for crude oil, that exploration activities took shape in Nigeria, exclusively in the Niger Delta region (Abe and Ayodele 1986:84).

Since Shell first discovered crude oil at Oloibiri in the Niger Delta region in June 1956, it has held the largest oil exploration rights from the Nigerian government to date. In celebration of the golden jubilee of its oil export business from Nigerian shores, Shell Companies in Nigeria (2010) issued the following official statement:

> In 2008, Shell and Nigeria celebrated 50 years of oil exports from the country. The first commercial export – in 1958 – was from Shell's Oloibiri field. Shell is Nigeria's oldest energy company, and has a long term and continuing commitment to the country, its people and the economy. Today Shell companies in Nigeria produce oil and gas from land and swamps in the Niger Delta and from deep-water reserves some 120 kilometres off the coast. They also operate Nigeria's largest liquefied natural gas (LNG) plant, which exports all over the world. SPDC is the largest private-sector oil and gas company in Nigeria. It is the operator of a joint venture between the government-owned Nigerian National Petroleum Corporation – NNPC (55%), Shell (30%), Elf Petroleum Nigeria Limited – a subsidiary of Total (10%), and Agip (5%). SPDC's operations in the Niger Delta are spread over 30,000 square kilometres. They include a network of more than 6,000 kilometres of flowlines and pipelines, 90 oil fields, 1,000 producing wells, 72 flowstations, 10 gas plants and two major oil export terminals at Bonny and Forcados. Although the company's operations are spread throughout the region, its footprint impacts directly in only a tiny fraction of the Niger Delta. The company is capable of producing an average of 1 million barrels of oil equivalent per day (boe/d). In 2008 production from Shell-run operations averaged over 850,000 boe/d.

While Shell is not the only transnational oil conglomerate operating in Nigeria, it is the longest and largest holder of state oil exploration concessions in the country. Despite the volatile changes in Nigerian regimes, nothing has changed the equation between the Nigerian State and Shell, the giant oil company. Little wonder that Shell has become the face of all other oil companies in Nigeria and has often had to bear allegations for wrongdoing occasioned by all the oil companies (Bisina 2001:99; Okonta and Douglas 2001:1401–1446; Olukoya 2001).

Apart from Shell, other transnational oil companies in the Niger Delta, including ChevronTexaco, Elf, Total, ExxonMobil, Agip, and Amoco, among others, were attracted to the region by the exceptionally premium Nigerian crude oil, because it needs less refining than oil from other fields. According to one account, there

are eighteen transnational oil companies operating in Nigeria and accounting for about 99 percent of crude oil production in Nigeria (Evuleocha 2005). These companies have collectively transformed the entire Niger Delta region into the goose that lays the golden eggs of the modern State of Nigeria (Okonta and Douglas 2001:77–79). However, while so much wealth is derived from the bowel of the region, the scourge of poverty in the region is grim with people lacking basic needs for human survival, and the environment is wilfully and constantly degraded by oil companies. This was, and remains, the foundation of the intractable struggle over resources in the Niger Delta till date (Osaghae 2003; Aaron 2005). Cyril Obi (2006:13–14) captures the lopsidedness of wealth and woes in the region as follows:

> Since the end of the Nigerian civil war in 1970, the struggle for resource control in the Niger Delta has been largely defined by the political economy of oil. This is because oil or petroleum has since the 1970s accounted for over 80 per cent of the revenues of the federal government, and 95 per cent of Nigeria's external earnings. Oil is therefore the fiscal basis of the Nigerian State. It is also paradoxically both a factor of unity among the competing factions of the Nigerian power elite, and a source of intense division and competition as a result of the extreme passions linked to the struggles over oil, and the inequities in the distribution of the oil surplus. In relation to the latter point, since over 70 per cent of the oil produced in Nigeria comes from the Niger Delta, the ethnic minorities of the region – alienated from the oil proceeds, feel ripped off by a homogenizing (but distant) nation-state project that feeds fat on their oil wealth, leaving them impoverished and their environment severely degraded. Therefore, their protests is [sic] against the injustice of belonging to a nation-state, Nigeria, which denies them their rights as citizens – the right to control and fully enjoy the oil wealth produced from under their lands and waters. It is this that explicates how the hegemonic nation-state project has literally come under fire in the Niger Delta. The quest of the oil minorities to control 'their' oil is thus underlined by the demand for the restructuring or decentralization of the presently over-centralized Nigerian federation.

It must be mentioned that the Niger Delta of Nigeria is one of the world's largest wetlands, covering an area of approximately 70 000 square kilometres. It comprises a number of characteristic ecological zones ranging from the sandy coastal ridge barriers, brackish or saline mangroves, fresh water permanent and seasonal swamp forest, to lowland rain forest. This area is also completely enmeshed among a number of tributaries to the main River Niger, forming along its course, streams, rivulets and canals. The tides of the Atlantic Ocean and the flood waters of the River Niger are the most influential variables in determining the hydrology of the Niger Delta. According to Shell's official position, the area is highly sensitive to changes in water quality (e.g. salinity and pollution) and quantity (e.g. flooding) (Shell Petroleum Development Company of Nigeria Limited [SPDC] 1999:5).

The population of the Niger Delta is estimated to be between seven and twelve million people, most of whom are heterogeneous. They are the Izons (Ijaws), Isokos, Urhobos, Itsekiris, Ilajes, Ogonis, Andonis, Ibibios, Orons, Efiks, Anangs, Bekwaras, Ejaghams, Ekpeyes, Ikwerres, and many other splinter groups, spawning the eight littoral states of Nigeria (Bisina 2001; Nwajiaku 2005; Long 2007). These people depend for the most part on fishing and small-scale subsistence farming for their livelihood.

The Niger Delta is also very richly endowed with oil and gas deposits. However, unsustainable industrial activities such as chemical, manufacturing, and the oil and gas industries, especially the last, have combined to exacerbate the stress on the already fragile natural environment. A first time visitor to the Niger Delta region will need no further evidence of the roots of the conflict in the region as vast tell-tale signs abound: severe damage to the flora and fauna of the area; marked underdevelopment; abject poverty; naked squalor; lack and neglect of basic infrastructural facilities like potable water, passable roads, and equipped hospitals. An otherwise arable land, vast farmlands have been turned into unproductive resources. The same level of wanton damage to land has been done to marine life, leading to dwindling resources for peoples whose livelihood depend on fishing. This situation is further compounded by the unwillingness of the Federal Government of Nigeria and its foreign joint venture partners to

sincerely integrate environmental concerns into national development projects (Aka 2003:230–235).

As would be expected, the perennial failure of successive regimes in Nigeria, whether civilian or military, to translate the enormous taxes and royalties accruing from the resources lifted from the Niger Delta region into wealth generation and empowerment for the local populations soon manifested in growing resentment, restiveness, and sometimes often violent agitation among the various peoples of the Niger Delta (Aka 2003; Ecumenical Council for Corporate Responsibility [ECCR] 2010). It soon became obvious that Shell, the alter ego of transnational oil corporations operating in the Niger Delta had formed a symbiotic relationship with the Nigerian State (Donpedro and Naagbaton 1999; Frynas 2001; Olukoya 2001; Ibeanu 2002). This relationship had almost become sacrosanct.

It was in this sort of scenario that multifarious civil groups sprang up all over the Niger Delta region in the 1990s, vigorously demanding, *inter alia*, an end to the menace of dehumanisation, despoilment, destitution, devastation, and dispossession in the region (Ikelegbe 2001:440; Worika 2001:5).

Analysis of conflict and responses in the Niger Delta

From its otherwise docile position, Shell became increasingly disposed towards active response to the agitations of civil society groups in the Niger Delta, often with the overt connivance of the Nigerian State. Although in the period between 1970 and 1989, the local communities of the Niger Delta had merely articulated their grievances through incongruent and *ad hoc* protests often resulting in the blockade of access routes to oil installations, the 1990s witnessed more concerted unrests in the Niger Delta in unprecedented fashion. According to Ikelegbe (2001:438), civil society and youth groups had emerged 'as a mobilization platform of popular struggle.'

With the anti-Shell protests becoming more sporadic, pronounced and coordinated across the Niger Delta, the stage had been prepared for the collaborative agenda of the giant oil company and the Nigeria State to be fully uncovered. In an environment in which any and all protests against Shell's

injurious oil exploration activities in the Niger Delta were confronted with massive state armed response channelled towards the singular objective of repressing all dissent, the deaths, rapes, arrests, detentions and other wanton recklessness by agents of the state became the natural consequences of the patrimonial alliance between the State and Shell. By 1995, it was no longer in doubt that Shell had shelved its toga of passivity for one of active reliance on the use of brutal intimidation and repression by state forces to quell opposition to its business interests in the Niger Delta (Human Rights Watch 1999a:154–156; Ibeanu 2000:21; Obi 2001:179; Groves 2008:11–15). The relentless spate of violence and repression unleashed on the hapless peoples of the Niger Delta in the 1990s has been documented in numerous works and it serves no useful purpose revisiting the litany of records (Greenpeace International 1994; Human Rights Watch 1999b; Essential Action and Global Exchange 2000; Aaron 2005; Ikelegbe 2005).

In cause-and-effect fashion, the Nigerian state-sponsored agenda of brutal repression of opposition to the activities of transnational oil conglomerates only strengthened the growth of agitations and protests among Niger Delta communities. In quick succession, several organised and well-coordinated civil society groups with varying degrees of demands and approaches to the struggle against Shell and other conglomerates had emerged in the Niger Delta. Prominent among these were the Movement for the Survival of Ogoni Peoples (MOSOP), led by the indefatigable Kenule Saro Wiwa; the Movement for the Survival of the Ijaw (Izon) Ethnic Nationality in the Niger Delta (MOSIEND); the Movement for the Reparation of Ogbia (Oloibiri) (MORETO); Chikoko Movement; the Ijaw Youth Council (IYC); the Urhobo Foundation, and many more. These various organisations had adopted well-articulated demands often laced with a tinge of threats, against the oil companies and the patrimonial state. While MOSOP adopted the 'Ogoni Bill of Rights' in 1990, MORETO came up with the 'Charter of Demands of the Ogbia People' in 1992, MOSIEND launched the 'Izon People's Charter' in 1997, and the IYC launched its 'Kaiama Declaration' in 1998. The Ikwerre and Oron peoples also proclaimed their 'Ikwerre Rescue Charter' and 'Oron Bill of Rights', respectively, in 1999, just

as the Urhobo Foundation published its 'Urhobo Bill of Rights' in 2002 (Pegg 2000:706; Bisina 2001:95–96; Osaghae 2003:96–98).

The new Niger Delta People's Volunteer Force (NDPVF) and the Movement for the Emancipation of the Niger Delta (MEND) later emerged as groups generally impatient with the non-violent approaches of the groups listed above. These two later groups adopted guerrilla tactics of negotiation, including kidnapping of employees of the transnational oil companies, bunkering of oil pipelines, seizure of oil rigs and installations, interruption of oil production processes, armed confrontation with state security forces, and general militarised operations (Bentley et al. 2010; ECCR 2010).

It was against this backdrop that the Nigerian State arrested environmental rights activist and MOSOP leader, Kenule Saro Wiwa, on charges of conspiracy and murder of four Ogoni chiefs. Despite the massive protestations of local and international media in opposition to the sham criminal proceedings against Saro Wiwa and eight others as well as pleas from eminent institutions and personalities, the Nigerian military junta did not hesitate to execute the nine activists in the most gruesome manner, in November 1995. The consequences of these stage-managed killings were grave for the corporate image of Shell and will remain long-lasting.

With the introduction of democratic experimentation in 1999, the popular expectations had been that tranquillity would return to the Niger Delta region after the long and repressive years of military regime. The Obasanjo administration had swiftly set up the Human Rights Violations Investigation Commission, popularly called the 'Oputa Panel', to investigate human rights violations committed in the Federal Republic of Nigeria, between 1966 and 28 May 1999. The Niger Delta communities had made very extensive presentations to the Commission. The seven-person Commission was headed by a respected Justice of the Supreme Court of Nigeria, Chukwudifu Oputa, and sat for three years, three weeks and six days. Despite the Commission's work being so meticulous and intense, the Nigerian federal government never released the report and findings of the Commission, till date. Whatever is available from the Commission's report has been through the effort of underground activists

and researchers. In this regard, the efforts of the US-based Nigerian Democratic Movement and the Nigeria-based Civil Society Forum to publish the full report of the Oputa Panel must be commended. It is noteworthy that since January 2005 when these non-governmental organisations published the report, there has been no official denial of its accuracy or authenticity.

Apart from being highly critical of all Nigeria's military governments and holding them accountable for numerous acts of gross violations of human rights, including those that occurred in the Niger Delta, it is significant, for our purposes, to note that with regard to the Niger Delta, the Oputa Panel recommended, *inter alia*, that the federal government closely monitors the social, political and environmental conditions in the region 'with the local communities playing a central role in the execution and evaluation' of development projects (National Democratic Movement 2005:65). As corollary to this, the Oputa Panel also recommended broad consultations with the civil society about Nigeria's constitutional structure, improved human rights education, a moratorium on the creation of further states and local governments to curb corruption, and the fragmentation of the political system (National Democratic Movement 2005: 64–65; United States Institute of Peace 2010).

The Obasanjo administration subsequently introduced the Niger Delta Development Commission (NDDC) Bill into the National Assembly which was eventually passed into law despite some political imbroglio in 2000. The NDDC Act debuted with a mission to right the wrongs of the past and to facilitate the swift, equal and sustainable development of the Niger Delta into a region that is prosperous, stable, regenerative and peaceful. Specifically, section 7 of the NDDC Act of 2000 conferred the following functions and powers on the NDDC:

> 7.(1) The Commission shall –
>
> a. formulate policies and guidelines for the development of the Niger Delta area,
>
> b. conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development

of the Niger Delta area in the field of transportation including roads, jetties and waterways, health, education, employment, industrialisation, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications;

c. cause the Niger Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development,

d. prepare master plans and schemes designed to promote the physical development of the Niger Delta area and the estimates of the costs of implementing such master plans and schemes;

e. implement all the measures approved for the development of the Niger Delta area by the Federal Government and the member States of the Commission;

f. identify factors inhibiting the development of the Niger Delta area and assist the member States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger Delta area,

g. assess and report on any project being funded or carried out in the Niger Delta area by oil and gas producing companies and any other company including non-governmental organisations and ensure that funds released for such projects are properly utilised;

h. tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger Delta area and advise the Federal Government and the member States on the prevention and control of oil spillages, gas flaring and environmental pollution,

i. liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control,

j. execute such other works and perform such other functions which in the opinion of the Commission are required for the sustainable development of the Niger Delta area and its peoples.

Despite the wide-ranging powers conferred on the NDDC, however, the 'Nigerian factor' was soon to catch up with this body as it became embroiled in personality clashes; political imbroglio; corruption among its top echelons; and nepotism, among other vices (Quaker-Dokubo 2000b:20–23; Omotola 2007:73; Aghalino 2009:57). The expectations that greeted the Obasanjo administration and its NDDC Act intervention were soon dashed.

It should be remembered that prior to the enactment of the NDDC Act, the Nigerian Army had descended on the sleepy town of Odi, in Bayelsa State, in November 1999, killing scores of civilians and destroying vast amounts of landed and personal assets in retaliation for the murder of 12 policemen by a local gang (Ikelegbe 2001:461–462). Despite on-and-off attempts at establishing peace agreements and truce thereafter, sporadic killings and kidnappings of foreign oil workers as well as government's reprisal attacks continued throughout the Obasanjo administration. A viable 'political solution' to the Niger Delta crisis has become elusive ever after.

So palpable was the failure of the Obasanjo administration that the United Nations Development Program (UNDP) (2006:9) described the region as 'suffering from administrative neglect, crumbling social infrastructure and services, high unemployment, social deprivation, abject poverty, filth and squalor, and endemic conflict'.

The slow-paced Yar'Adua administration that succeeded Obasanjo in 2007 has not evolved any cogent policy or framework that marks a shift from its predecessor. In a move that was calculated to be the master stroke of solutions, President Umar Yar'Adua in 2009 announced a blanket amnesty for all Niger Delta militants who were up in arms against the Nigerian federation, and

of course, its collaborator oil companies. The amnesty offer came with the announcement of cash and food rewards.[1] While the amnesty offer was hailed by some as an indication of genuine government commitment to finding a solution to the crisis ravaging the Niger Delta, the unanswered question is whether amnesty alone can avail a cure for all the ills ravaging the area. It is particularly worrisome that the Nigerian government has refused to apply the international standards of decommissioning as have been witnessed in peace processes in other climes (Okolo 2009).

All in all, it has become apparent that from an onset of hard core hostility and repression, the Nigerian State has transformed into engaging the Niger Delta issue with some level of responsiveness even if such an attitude is marred by insincerity, warped planning and skewed policy action. Notwithstanding, it is safe to posit that the change of attitude by the patrimonial State went some way in re-shaping the attitude of Shell as well in the course of time.

Shell's rapprochement towards conflict resolution: A critique of strategies

While the degree of Shell's culpability in the execution of Kenule Saro Wiwa and eight others in 1995 need not becloud our discussion, it is worthy to mention that Shell embarked on an internal review of its projects and policies in the Niger Delta region after 1999. Since that time, Shell has conducted annual reviews of its community development projects and has, since 2002, been publishing its remittances to the Federal Government of Nigeria to promote transparency and accountability. Shell has openly committed itself to the elimination of gas flaring and to the effective mopping up of oil spillages. Furthermore, as a supporter of the United Nations (UN) Global Compact, Shell is contributing to UN discussions on business and human rights and permits external review of its annual Sustainability Reports (Chen 2007:21–23; Shell 2008:20–21).

1 Mail and Guardian Online. Amnesty deal in Niger-Delta. 16 August 2009. Available from: <http://www.mg.co.za/article/2009-08-16-amnesty-deal-in-niger-delta> [Accessed 28 February 2010].

In a marked departure from Shell's attitude in the Nigerian military years, the company has committed itself to the Voluntary Principles on Security and Human Rights. In its 2008 Sustainability Report, for instance, Shell (2008:8) averred that its

> Business Principles include support for fundamental human rights. We review the human rights risks faced by our projects and operations in high-risk countries. Where we identify risks, we systematically develop action plans so that we avoid violating the rights highlighted. Our Shell-wide security standards define how we protect our people and assets, while respecting the rights of others, including local communities. These standards set strict guidelines on the use of force and armed security, and incorporate the Voluntary Principles on Security and Human Rights, which are a guide for companies in extractive industries and the energy sector.

Without doubt, Shell's current disposition towards engagement with the Niger Delta communities through the provision of healthcare facilities and services; the construction of schools and training facilities for youths and farmers; and the promotion of small-scale businesses in the Niger Delta area is commendable and yielding positive results even if paltry (Groves 2008; Chen 2007; Shell 2009).

One of the vexatious issues in the Niger Delta conflict involves the remediation of environmental damage occasioned by oil exploration activities in the region. In response to the gale of accusations against Shell, the company has repeatedly expressed its commitment to reducing the environmental and social impacts from producing oil and gas as part of its contribution to sustainable development. Currently on its website, Shell says:

> We have researched and adopted a technique for cleaning up oil spills that we believe to be the most effective for the soil and climate conditions in the equatorial heat of the Niger Delta. We add nutrients that stimulate the natural microbes in the soil. These feed on the oil and break it down. In 2008, we continued our programme to clean up and remediate oil spills that happened before 2005 – completing seven more sites. By year-end we had completed 68 of the 74 outstanding pre-2005 spill sites...Wherever possible,

> local communities take part in the remedial work on paid contracts and in a number of successful projects, local youths have been employed in the cleanup process. On the whole, our investigations show that complex soil and water pollution problems are not present, but in some cases, we have found difficulty in assessing the condition of sites, because the local community prevents access. It is in nobody's interest to leave these sites as they are. We have intensified our efforts at negotiation with local communities so that we can gain access, clean up and remediate the land. We are also looking at involving local communities in monitoring facilities (Shell 2010b).[2]

While Shell thus frantically pursues aggressive image-laundering through print and electronic media, vigorous campaigns backed by empirical and statistical data by civil society groups and the affected communities continue to showcase Shell's claims as grossly inadequate, misdirected, narrow, and self-serving. The new-fangled Community Development Programme designed by Shell for the Niger Delta area has recently been condemned as demonstrating 'the usual lack of community consultation, top-down approach, failed projects, sporadic crises and questionably close ties to locations of company operations. Most projects appear to be less a response to priorities of communities than guided by the company's logic of providing access to locations and comfort for its staff' (Pyagbara 2010:25).

It is apparent that all of Shell's efforts still lack the basic linkage with the ordinary peoples of the Niger Delta. As Ereba and Dumpe (2010:32–35) recently established following field studies in several parts of the Niger Delta, there is a gross deficiency of transparent and credible public participation in the environmental impact assessment processes which inform Shell's activities in the region.

Even as Shell fervently continues to broadcast its commitment to human rights and sustainable development towards stability in the Niger Delta by publishing

2 Assertions similar to the above are commonplace on Shell's websites. See, for example, Shell 2010c; Sunmonu 2010.

reports detailing its operational standards and policies, corporate citizenship ideal, and its embrace of independent assessors and civil society groups, it is so that transforming management systems and developing competencies conducive to peace and solutions in the Niger Delta require considerable training, new types of recruitment, penalty and incentive systems similar to those recently recommended by the Ecumenical Council for Corporate Responsibility (ECCR 2010:5–8). The difficulties encountered by Shell in translating its corporate discourse and commitment to resolve the issues of conflict and social and environmental justice involving the Niger Delta peoples into an effective strategy at the local level can, to some extent, be explained by the following factors:

- indications that its surveillance contracts are heavily focused on its own corporate security as opposed to human security in the region;
- acceptance of corruption regarding oil spills and environmental impact assessments (EIAs);
- its failure to stop gas flaring despite all posturing and grandstanding; and
- the systemic problems of its continued use of old and rusty oil pipelines as well as heavy maximisation of oil production such that occasion intolerable risks to human beings and the environment (Ite 2004; Omeje 2006; Groves 2008; Omonisini et al. 2010; Stakeholder Democracy Network 2010).

Although Shell endeavours to deflect criticisms against its staggering tax and royalty payoffs to the Federal Government of Nigeria in contrast to the millions of Niger Delta peoples living in abject poverty and naked squalor, even as recently as in its rejoinder to the ECCR Report in February 2010 (ECCR 2010:8),[3] there is a pressing need to craft a statutory method of vesting the exploration and appropriation of the resources in the Niger Delta in the communities comprising the Niger Delta themselves rather than the culture of patronage now entrenched through Shell's arbitrary donations, settlements, and funding to self-appointed elites, clandestine representatives, and bogus youth

3 The ECCR reports that 'ECCR provided Shell with this report in draft form and invited it to comment. In response, SPDC stated its view that the report is not a sufficiently complete or balanced assessment – because 'the primary and overriding authority and responsibility' for what takes place in the Niger-Delta 'rests with the state.' (ECCR 2010: 8).

and community 'leaders'. This is at the heart of local demands and there can be no wishing such an arrangement away. For now, representative powers are being siphoned away from the ordinary people. These powers could be used to constitute institutionalised forms of popular participation that the participatory development movement is striving for. Without the mediation of representative authority, what prevails is a plurality of institutions that has become a formula for elite capture.

Finally, on this segment, the compensatory strategy adopted by Shell in making extra-judicial, self-help monetary awards to respective Niger Delta communities has opened the company to a further spate of criticisms. Although section 77 of the Nigerian Petroleum Act mandates an exploiter of oil resources to pay an owner of land 'such sums as may be a fair and reasonable compensation for any disturbance of the surface rights of such owner or occupier and for any damage done to the surface of the land upon which his prospecting or mining is being or has been carried on and shall in addition pay to the owner of any crops, economic trees, buildings or works damaged, removed or destroyed by him or by any agent or servant of his compensation for such damage, removal or destruction', the statute is silent about the yardsticks of assessing the damage *vis-à-vis* the amount to be paid. This gap has left the assessment of compensatory awards to the whims of Shell (Akpan 2010; Pyagbara 2010:24). Amnesty International has also criticised Shell's approach to compensation as 'neither transparent nor fair, leaving people to obtain what they can by negotiation' (Amnesty International 2009:71).

Similarly, while Shell labelled the US$15.5m (GB£9.7m) it agreed to pay to the families of Kenule Saro Wiwa and the other eight Ogoni activists to stop the case instituted against Royal Dutch Shell as 'humanitarian gesture' (Shell 2009; Wuerth 2009), the gesture smacks of corporate hypocrisy and culpability in Nigeria's legendary culture of institutionalised corruption and appeasement. What more? Since the advancement of the extra-judicial largesse, Shell has not known stability beyond what predated the 'humanitarian gesture'. The payment has not ended the violent struggle between other Nigerian communities and oil companies, and the campaign of attacks on oil installations and kidnappings of oil workers continues unabatedly. There is no gainsaying the fact that the

strategy is diversionary and discriminatory and simply promotes the post-modern Nigerian ethos of aggrandisement and profligacy.

Building peace and stability in the Niger Delta: Facing the future

That divergent interests are at the centre of conflicts is a proposition with sound acceptance (Burton 1998). If conflicts are indeed all about divergent interests, it only follows that any sincere attempt at resolving them must consciously balance competing interests and not assume they will be resolved through patrimonial approaches as the compensatory system adopted by Shell, as the leading face of the transnational oil corporations in Nigeria, would suggest. The pathway to conflict resolution, reconciliation and stability in the Niger Delta is manifold and only some dimensions often overlooked are underscored at this juncture.

One critical step towards sustainable conflict resolution and stability in the Niger Delta region is to squarely place the fiscal federalism question into the discourses. All the charters of aspirations and demands drawn up by all the Niger Delta nationalities make this a primary item of purpose. Shell must therefore insist that the Nigerian federal government tackle this question headlong. Despite all the rhetoric contained in the various statutes on the issue of natural resources, the federal government has not really wanted to devolve any real power to the lower tiers of government. To secure this end, the aspirations of the various ethnic nationalities as contained in their Bills of Rights, Declarations and Charters of Demand must become central tools in collaborative peace-building ventures to be spearheaded by the Nigerian government, and incorporating transnational oil companies operating in Nigeria as well as every oil-producing community in the Niger Delta.

Furthermore, in forging credible pathways to peace and stability in the Niger Delta, a need arises for radical legislative interventions that would expunge all provisions in the Land Use Act of 1978, and all statutes relating to oil and mineral resources which vest absolute control of lands and resources in lands in the Federal Government of Nigeria. It is for this reason regrettable that the more recent Minerals and Mining Act of 2007 also retained the provision that

has perennially infuriated Niger Delta communities, and once again represented a missed opportunity at conflict resolution.

In the same vein, Community Development Agreements (CDAs) should be incorporated into the Petroleum Industry Bill currently before the Nigerian National Assembly, to ensure development of the oil-producing communities. These CDAs should be prerequisites for the issuance of licenses to transnational oil companies as contained in section 116 of the Mineral and Mining Act of 2007.

On the part of Shell, as the alter ego of all transnational oil companies in Nigeria, this conglomerate must assume leadership by revisiting its General Business Principles of 1976 and establishing renewed and verifiable compliance with these voluntary goals. Beyond lip-service and posturing, Shell must begin to actively integrate economic, environmental and social considerations into its decision-making processes in a transparent and sincere way.

Any effort at resolving the conflict in the Niger Delta cannot shy away from the question of ethnic and national identities – as the twin questions of ethnicity and identity form the very essence of agitations (Aka 2003; Quaker-Dokubo 2000a; Osaghae 2003; Worika 2001). With the vast heterogeneity of the communities in the Niger Delta, multiple and conflicting identities present competing incentives to resist the approach adopted by Shell towards the Ogonis. What more? Assuaging the grievances of the Ogonis would appear to have assumed some air of primacy even prior to Shell's recent 'humanitarian gesture'. In the complaint brought before the African Commission on Human and Peoples' Rights (African Commission) against the government of Nigeria by Social and Economic Rights Action Centre (SERAC), a Nigerian non-governmental organisation (NGO), and the Centre for Economic and Social Rights (CESR), a US-based NGO, in March 1996, the complainants had alleged, *inter alia*, that the Nigerian government together with its oil company, the Nigerian National Petroleum Company (NNPC), acting in concert with the transnational oil conglomerate, Shell, had through protracted oil exploration activities degraded the environment and caused huge health problems for the Ogoni people without care or concern for the affected people in violation of several provisions of the African Charter on Human and Peoples' Rights (African Charter) (SERAC and CESR 1996). It

was however queer how the entire African Commission was led into confusing the Niger Delta with 'Ogoniland'. The African Commission apparently failed to note that in all the correspondence from the Nigerian government during the proceedings, the government consistently referred to 'the Niger Delta' (Olowu 2005:41). Just as the African Commission was culpable in abdicating the necessity of defining or analysing the status of the 'Ogoni communities' within the Nigerian federal context to determine their qualification as 'peoples' under the African Charter, so were the two NGOs that brought the communication equally indictable for subterfuge activism. Beyond merely listing article 21 as one of the rights allegedly violated, the communication presenters neither raised a head of argument particularising the violation nor canvassed oral arguments to establish that the 'Ogoni communities' were so distinct and particularly affected as to be entitled to the 'exclusive interest' emphasised in article 21(1) of the African Charter.

The conflict in the Niger Delta region has become oversimplified into an Ogoni conflict. Nothing can be further from the realities than this. International scholarship has also persistently and unfortunately laboured under this unmistakable misconception and misrepresentation.[4]

In his analysis of oil politics in Nigeria, Watts emphasised the role of both States and transnational oil companies in reinforcing social identities. To Watts (2005:54),

> the presence and activities of the oil companies…constitute a challenge to customary forms of community authority, inter-ethnic relations, and local state institutions principally through the property and land disputes that are engendered, via forms of popular mobilization and agitation. These political struggles are animated by the desire to gain access to (i) company rents and compensation revenues, and (ii) federal petrorevenues by capturing rents, (often fraudulently) through the creation of new regional and/or local state institutions.

4 As a pointer, virtually all scholarly literature on *SERAC's Case* use 'Ogoni' in the shortened title of the case. Indeed, the petition exclusively alleged violations of the rights of the 'Ogoni communities' and not that of the millions of other peoples in the Niger Delta area.

For purposes of records and further empirical studies, the 'Ogonis' constitute a mere fraction of the Niger Delta region of Nigeria which traverses some eight coastal states of the Nigerian federation. Without mincing words, therefore, Shell's outreach to the Ogonis via the out-of-court settlement in the Saro Wiwa et al. court case represents a drop in a mighty ocean of conflicts and rather than assuage emotive feelings, the 'humanitarian gesture' might only have deepened the sentiments of animosity, hostility and alienation long felt by the numerous competing peoples, clans, nationalities and groups in the Niger Delta who had suffered human and pecuniary losses in the past.

To this end, joint negotiation forums consisting of genuine community representatives, ordinary peasants, skilled professionals and knowledgeable government officials must aggregate equitable, all-inclusive frameworks of determining and appropriating community projects, with transparent tender mechanisms and risk management systems.

The conflict in the Niger Delta continues to challenge the Nigerian government, the transnational oil companies, the ethnic nationalities and the international community. While the international community may have deferred to the Nigerian government's assertion that the Niger Delta crisis is an internal affair, the global community nonetheless also has a stake in resolving this protracted conflict. The international community is therefore not without a responsibility in this solution-seeking venture. The industrial States of the West should impose an embargo on all military aid to Nigerian armed forces and military equipment trade with Nigeria until all human rights violations in the Niger Delta are prosecuted and redressed or, at least, until the recommendations of the Oputa Panel of 2002, as already highlighted, are revisited and implemented.

Conclusion

Suggestions towards conflict resolution and peace in the Niger Delta have been as varied as the number of authors. This essay has explored various dimensions to the Niger Delta conflict, raising particular concerns about the compensatory approach adopted by Shell to its resolution and reconciliation.

While the compensatory approach has its definite short-term advantages, this essay considered the resolution of the multifaceted and protracted conflicts in the Niger Delta as demanding holistic approaches. The essay has identified matters that should be paramount in institutionalising legal and policy pathways to resolving the Niger Delta conflict as it is one crisis that cannot be resolved outside the larger Nigerian question.

Far from being an *ex cathedra* pronouncement on all the dynamics that should inform the attainment of tranquillity and stability in the Niger Delta, this essay would have served its purpose if it stimulates further intellectual enquiry.

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Indigenous legal tradition as a supplement to African transitional justice initiatives

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Abstract

This article interrogates the role of indigenous legal tradition (ILT) in contemporary African transitional justice initiatives. It departs from the assumption that most African cultures put emphasis on communality and the interdependence of the members of a community. Indigenous legal traditions, which include mechanisms for acknowledgement, truth telling, accountability, healing and reparations, continue to assume a prominent role in the lives of African societies and individuals. However, little attention has been given to the role of African indigenous legal tradition in terms of its contribution to post-conflict transformation. Several African societies have deeply rooted social and communal values of conflict resolution which can serve as a reservoir of wisdom in future transitional justice initiatives. In furtherance of the main theme,

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the article discusses an example of ILT from Eritrea, and calls for a continued engagement and critical assessment of these values in promoting peace and justice in Africa.

1. Introduction

Several African countries suffer from previous cycles of conflict, and such conflict and post-conflict scenarios have been very common attributes of the African continent. Examples of ongoing conflicts or repressive regimes are more prevalent in Africa than in other continents. Embedded in complex processes of transformation are the most overwhelming challenges to African countries. One such challenge manifests itself in the form of transitional justice[1] and deals with transformation options societies may adopt in a post-conflict or post-dictatorship scenario. Post-conflict societies face challenges of immense magnitude in their transitional period which include, inter alia, securing stability, achieving reconciliation, promoting justice and maintaining a smooth process of transformation.

The options of post-conflict justice vary depending upon the prerogatives of societies – the prevailing domestic, social, political and economic realities. That unconditional blanket amnesty is no longer acceptable has become a consensus between proponents and opponents of amnesty. The most controversial debate, however, remains the one about the choice between prosecution and amnesties administered by truth and reconciliation commissions (TRCs) (Schabas 2004:1–2). However, this does not mean that transitional justice is just a matter of either prosecutions or TRCs, as it covers a whole range of options. With the refinement of norms of international law, the development of international criminal tribunals and the first ever permanent International Criminal Court (ICC), criminal prosecution is assuming a central place in the toolbox of transitional justice. However, there are concerns that strict adherence to international criminal law may undermine the capacity of local and indigenous responses to

1 The article adopts the definition of transitional justice as 'the study of the choices made and the quality of justice rendered' when states transit from conflict or repression to democracy (Siegel 1998:433).

the complex transitional and transformative needs of a society emerging from a deeply divided past (Du Plessis and Coutsoudis 2005:337).

By their nature, prosecutions have a very limited role in fulfilling the diverse needs of post-conflict transitions. The challenges of massive atrocities cannot be addressed merely by retributive justice mechanisms. This is so because 'the gap between the formal existence of an international human rights regime and the implementation of its provisions on the ground is large across the globe' (Coleman 2003:ii). As a result, the issue of enforcement of human rights standards in a post-conflict scenario has continued to be one of the most contentious issues among transitional justice scholars. The assessment of such drawbacks necessitates consideration of other forms of accountability.

In spite of the radical move of international opinion towards prosecution, TRCs as innovative institutions are attracting a wide range of attention among transitional justice scholars. TRCs have emerged as popular mechanisms within the toolbox of transitional justice and their indispensable contribution towards security and justice is growing noticeably (Schabas 2004:12). However, scholars suggest that when imposed as imported institutions, TRCs may not always prove supportive in the context of the complex realities of societies emerging from an atrocious past (Shaw 2005:1–2). In this regard, indigenous legal tradition (ILT)[2] as a major component of transitional justice is also regarded as growing in importance.

In an African context of transitional justice, the exigency is evident and some of the questions to be asked are: Is the role of ILT adequately recognised in contemporary African transitional justice initiatives? How could specific peculiarities of culture and tradition play a role in transforming post-conflict societies?[3] Acknowledging the huge knowledge gap on the potential role of ILT in transitional justice, researchers are now giving this particular issue the attention it requires. The work to be done in this regard is still tremendous, and this paper

2 As will be seen later, ILT is understood in the current context as a legal tradition based on indigenous knowledge and belief systems of communities. The term is at times interchangeably used with customary law.

3 One latest contribution in this regard is Schotsmans 2009.

intends to contribute modestly to the ongoing debate. Taking as example some relevant aspects of ILT in Eritrea that could possibly inform any transitional justice efforts in the future, the paper argues in favour of promoting the role of ILT in African transitional justice initiatives. In so doing, it departs from the increasing call to make ILT only one form of transitional justice in Africa. Its main contribution to existing academic literature is that it sheds some light on aspects of ILT in Eritrea, a country which is hardly discussed in the context of transitional justice,[4] in spite of the dire situation of human rights violations in the country. In so doing, the paper consolidates and develops further the analysis of ILT concisely presented in a previous work of this author (Mekonnen 2009:214, 236, 252). Although essentially a theoretical work, the paper also offers analysis of practice in some post-conflict societies based on ground level empirical research conducted in those societies by some transitional justice researchers.

2. Conceptualising ILT

A discussion on African ILT requires clarification on the parameters of reference and the framework of analysis. The starting point is African philosophy, the broader branches of which also incorporate cultural and legal aspects of the African society. Although the debate on the very meaning of African philosophy remains largely unsettled, Cornell and Van Marle suggest that there is some degree of awareness that allows ontological investigation into African indigenous knowledge systems (IKS). This has been pursued, according to the authors, through a genealogy of the social and historical origins of African IKS. This includes a genealogy of the anthropological methods used to articulate what the authors call, borrowing the description of Mudimbe, 'African gnosis' (Cornell and Van Marle 2005:197; Mudimbe 1988:186).[5] This characterisation is true both at the theoretical and the practical level, which means that any investigation into IKS may also include the study of how African rituals, practices and social

4 For a general discussion of Eritrea as a forthcoming model of transitional justice, see Mekonnen 2009.

5 Cornell and Van Marle, citing Mudimbe, assert that gnosis 'means seeking to know, inquiry, methods of knowing, investigation, and even acquaintance with someone'. The authors do not use IKS in their discussion of African philosophy. Instead, they use 'indigenous system', which in the context of their discussion is not different from IKS.

encounters are experienced within specific cultural contexts. Therefore, an investigation of African ILT in the current context may also mean an examination of one aspect of African IKS. According to Nel (2005:7):

> IKS may be defined as a systemic reference to the knowledge and practices of indigenous communities constitutive of their meaning and belief systems, as well as the substantive dimension of their practices and customs. Accordingly, IKS is about the knowledge, practices, values and ways of knowing and sharing in terms of which communities have survived for centuries. IKS is not only the knowledge and practices of culture, custom, agriculture, medicine, bio-diversity, ethno-numeracy, customary law, and so on, but also the rationality of these cultural practices and rites that effected social cohesion, creativity and artistry of dance and music, technologies of fashioning clothing and beadwork, and, last but not least, of a diffused spirituality that unites cosmos and being in a holistic manner.[6]

As far as transitional justice discourse is concerned, IKS also encompasses a system of knowledge related to social and political structures of society, identities, legal practices and jurisprudence, traditional governance and decision processes, conflict resolution and other related concepts (USF 2007; Nel 2005:4–6, 9).[7] In this regard, Emeagwali describes IKS as 'a source of healing of therapeutic import in the context of unhealthy imbalances' caused by continued cycles of injustice (Emeagwali 2003). Therefore, to make IKS responsive to contemporary African problems would mean to enhance the role of ILT in the context of transitional justice.

A most known aspect of African IKS is *ubuntu*, which according to Cornell and Van Marle, is a fundamental African philosophy which appears in most African

6 See also the definition of IKS adopted by the University of the Free State (2007) according to which IKS was defined as the knowledge system distinctive from 'the international knowledge systems generated through universities, government research centres and private industry, sometimes incorrectly called the Western Knowledge System'.

7 Nel also discusses the role of IKS in post-conflict societies and the better alternatives IKS offer towards the realisation of a new humanity and civility. For further discussions of IKS in the context of African contemporary problems, see Castiano 2005:v.

languages either literally as 'ubuntu' or something very close to it. The underlying assumption of *ubuntu* is that 'individual rights cannot be meaningfully exercised in isolation of broader community rights' (Cornell and Van Marle 2005:220). There is no better example than the experience of South Africa in terms of the appropriate usage of *ubuntu* in a purely transitional justice context. In fact, this is one of the best lessons the South African model of transitional justice offers. As a typical traditional African concept denoting 'humanity to others' (Nabudere 2004:10), the role of *ubuntu* in the South African experience was explicitly recognised in the post-amble of the country's Interim Constitution which urged focus on the future, rather than on the past 'on the basis that there is a need for understanding, but not for vengeance, a need for reparation, but not for retaliation, a need for *ubuntu* but not for victimisation'. The concept is perhaps best illustrated by the following remarks of the South African Constitutional Court, as given in *S v Makwanyane and Another*:[8]

> The concept is of some relevance to the values we need to uphold. It is a culture which places some emphasis on communality and on the interdependence of the members of a community. It recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community such person happens to be part of. It also entails the converse, however. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of the community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all.

8 1995 (3) SA 391 (CC), para 224. Similarly, Gibson (2002:543) quotes Tutu's words on ubuntu as follows: 'Ubuntu says I am human because you are human. If I undermine your humanity I dehumanise myself. You must do what you can to maintain this great harmony, which is perpetually undermined by resentment, anger, desire for vengeance. That's why African jurisprudence is restorative rather than retributive'. However, the author notes that there are some critics who argue that in the context of some African transitional justice experiences, the use of *ubuntu* has been only superficial.

Long before the advent of transitional justice as a popular academic discourse, Cobbah (1987:320) has also articulated the rightful place of the concept of *ubuntu* in African ILTs and its relation with human rights as follows:

> For the African, a philosophy of existence can be summed up as: 'I am because we are, and because we are therefore I am'. A comparison of African and Western social organisation clearly reveals the cohesiveness of African society and the importance of kinship to the African lifestyle. Whereas Westerners are able to carry out family life in the form of the nuclear family and often in isolation from other kin, Africans do not have the concept of a nuclear family and operate within a broader arena of the extended family.
>
> Within the organisation of African social life one can discern various organising principles. As a people, Africans emphasise groupness, sameness, and commonality. Rather than the survival of the fittest and control over nature, the African worldview is tempered with the general guiding principle of the survival of the entire community and a sense of co-operation, interdependence, and collective responsibility.

The analysis of Cobbah is essentially based on the experience of the Akan community in Ghana. Nonetheless, there are corresponding similarities of the same value system in many African cultures. As a result of such an understanding, he concludes that most African cultures place emphasis on communality and on the interdependence of the members of a community. ILTs, which may also include mechanisms for acknowledgement, truth-telling, accountability, healing and reparation, continue to assume a prominent role in the lives of societies and individuals. This is a very important factor to consider when discussing transitional justice issues in an African context. In relation to the experience in Sierra Leone, for example, Shaw argues that a transitional justice approach which ignores the fundamental facets of societal values jeopardises social recovery (Shaw 2005:1–2; Shaw 2007; Mallinder 2007). Likewise, the former chairperson of the Historical Clarification Commission of Guatemala asserts that as outcomes of a deliberate policy of compromise or results of a stalemate in a political power play, transitional justice mechanisms must be crafted according to the specificities of

the national situation and the objectives of the particular country (Tomuschat 2001). This factor is inherently intermingled with due recognition that must be given to ILT. A foundational edifice based on purely foreign standards can seriously undermine the overall effort of transitional justice. In this regard, particular attention must be paid to ideas concerning the conciliatory and therapeutic efficacy of truth-telling as weighted against established societal values (Shaw 2005:2). Having said the above about the conceptual framework of African ILT, we will now consider the relationship between restorative justice and ILT.

3. Restorative justice as an essential element of ILT

As noted above, *ubuntu* represents one crucial aspect of African philosophy and legal theory. According to Cornell and Van Marle, its underlying assumption denotes an interactive ethic by which humanity is essentially defined by the interaction of community members towards each other. This represents an 'understanding that our humanness is shaped in our interactions with one another and within a force field created and sustained by those interactions' (Cornell and Van Marle 2005:322). Thus, the pursuit of human dignity in the African philosophy is more concerned with vindication of the communal wellbeing and restoration of broken relationships rather than with the right of any individual against the world (Cobbah 1987:322). The humanist and collective emphasis in *ubuntu*, argue Cornell and Van Marle (2005:220), has striking similarities with the theory of restorative justice. In fact, Gilman asserts that restorative justice has its roots in community origins and its theoretical foundation is deeply rooted in many ancient cultures (Gilman 2008).[9] In elaborating this, Tutu, as cited by Minow (1998:81), opines:

9 Similarly, the Centre for Restorative Justice (2008) holds that 'restorative justice is an old idea with a new name' and 'its roots can be found in [communal] healing traditions and the non-retaliatory responses to violence endorsed by many faith communities' as well as in social, theological and philosophical movements. Accordingly, restorative justice strives 'to embody the values and principles that are akin to and informed by holistic peace and justice-making processes in many … communities'.

> The African understanding is far more restorative – not so much to punish as to redress or restore a balance that has been knocked askew. The justice we hope for is restorative of the dignity of the people.

McEvoy and Eriksson explain the central element of restorative justice as the facilitation of dialogue and reconciliation among victims, offenders, and community. The goals of restorative justice are also explained as something which includes: 'the acceptance of responsibility by offenders, reparation of harm, strengthening the connections of victims and offenders to their community, and the promotion of more stable and peaceful communities' (McEvoy and Eriksson 2006:321).[10] Furthermore, quoting Dignan (1999:2), Findlay and Henham (2005:xxii) suggest that the philosophy upon which restorative justice is based can best be summarised in terms of three principles:

> Responsibility – to engage with offenders to try to bring home the consequences of their actions and an appreciation of the impact they have had on the victim(s) of their offences.
>
> Restoration – to encourage and facilitate the provision of appropriate forms of reparation by offenders towards either their direct victims … or the wider community.
>
> Reintegration – to seek reconciliation between victim and offender where this can be achieved and, even in cases where this is not possible, to strive to reintegrate both victims and offenders within the community as a whole following the commission of an offence.[11]

10 See also the definition of local justice offered by Waldorf (2006:9–10), which has striking similarities with the essential elements of restorative justice discussed in the current debate. According to Waldorf, the essential elements of local justice are: focus on groups rather than on individuals; compromise and community harmony; emphasis on restitution over other forms of sanctioning; accessibility and informality of procedures; and public participation.

11 Compare this with the five key points of restorative justice developed by Gilman (2008). One of the observations of Gilman is that: 'Active community participation is essential to creating safe and healthy communities. The community as a whole, not the justice system in isolation, has the ability and resources to effectively respond to the harms of crime and to ultimately restore victims and integrate offenders into the community as healthy, whole contributing members of society'.

The authors further contend that the underlying rationale for restorative justice focuses on the establishment of truth rather than individual liability. Envisaged as a transformative mechanism, restorative justice links together notions of morality, law and behaviour around the pursuit of 'truth'. This purposive social function resonates with the universal appeal for constructive engagement, a formulation also supported by Gilman (2008), one of the most articulate proponents of restorative justice (Findlay and Henham 2005:xv, xxiii, xxiv). Gilman (2008) argues that restorative justice has a future focus, a focus on outcomes with three key groups who must meaningfully add their respective contribution to the reparation of harm. These groups are: the direct victims, the wider, impacted community and the offender (Gilman 2008).[12]

Based on the experience of Northern Ireland, McEvoy and Eriksson highlight that the needs of political transition, such as reintegration and reconstruction, strongly resonate with the objectives of restorative justice. Indeed, central to the broader objectives of transitional justice is societal healing and recovery at a national level, something intrinsic to the theory of restorative justice. One of the possible ways by which restorative justice can be applied in the context of political transition is through community-based processes of healing and reconciliation (McEvoy and Eriksson 2006:321). When there are well established value systems of restorative justice the challenge could be less demanding. It is believed that African ILT provides readily available value systems of restorative justice whose contribution to transitional justice is the subject of ongoing debate. It is true that in most cases these value systems remain untested in the context of transitional justice. However, they provide a reservoir of wisdom which can serve as a good

12 Gilman (2008) further argues that outcomes for victims should focus on: 'being given the opportunity to be acknowledged and heard; having input regarding resolution to the offence; having the harms done to them meaningfully addressed; meaningful support services for healing and closure'. Outcomes for the community should focus on: 'creating safe and healthy communities; active and extensive partnerships with the justice system that lead to the integration of victims and offenders into the community as positive, contributing members'. And lastly, outcomes for offenders should focus on: 'being accountable for the harms done; taking an active role in determining how to make amends to victims and the community; integration into the community as positive and productive citizens'.

source in future transitional justice initiatives. The following example from Eritrea, although not yet tested in a transitional justice context, is illustrative.

Up to this date, the most important source of law relevant to restorative justice in Eritrea is ILT. The basis of law in much of rural Eritrea, which constitutes 80% of the total population, remains customary law. Eritrean customary laws are greatly influenced by deeply rooted communal values and as such restorative justice is a central element in that system.

In a typical Eritrean highland legal tradition, one way by which restorative justice manifests itself is in the case of homicide. In such cases, the customary laws focus on the victim of the crime. Restitution and reconciliation are important factors as they are considered crucial in restoring the harm done to a victim. Regularly, a transgression involving homicide is resolved by the payment of blood money, called *gar nebsi* (*ጋር ንብሲ*), by the wrongdoer to the family or relatives of the deceased (Russell 1958:103). *Gar nebsi* can be paid in the form of money, cattle or other items, or a combination of all. In such cases, the kinship of the wrongdoer takes collective responsibility and restores the harm done to the victim accordingly. Intermarriage between family members or relatives of the wronged and the wrongdoer is also an important and common practice in dispute resolution mechanisms involving homicide. Although a rare practice, the family or relatives of the deceased may at times unilaterally resort to a vengeful retaliatory act which includes the killing of any close member of the wrongdoer's family or relatives. A pertinent example of an indigenous healing and reconciliation ritual can be observed from the following provision of the customary law of Adkeme Mlgha'e:

> One who kills shall stand and submit himself in front of the family of the deceased, and shall say 'finish me', holding a knife, wearing unworthy garments and with a rope on his neck. Afterwards, seven elders and priests with their cross shall ask for forgiveness. Firstly, his soul shall be forgiven, and then shall follow reconciliation. Guarantors shall secure the reconciliation. When reconciliation is done, the wrongdoer shall pay blood money. The blood money shall be paid on an agreed date. If the blood money is to be paid in the form of land, the elders shall oversee the implementation. If the family of the wrongdoer and the wronged are not related, they shall then

> give each other a boy and a girl. Those who shall give a girl are the family of the wrongdoer.[13]

A striking element is that imprisonment is not seen as an option. In fact, there are no clearly defined rules in the Eritrean customary laws prescribing imprisonment or criminal punishment as a punitive method, even in the case of serious offences such as murder. There are some vague references in Chapters 8 and 9 of the customary law of *Loggo Chiwa* about punitive measures that could be taken by a king in the case of murder.[14] However, these are not sufficient enough to be regarded as providing for criminal punishment in the modern sense of the concept.

The concept of restorative justice is also deeply ingrained in several proverbial expressions of the Tigrinya language, a major vernacular in the Eritrean highlands with a de facto official status since Eritrea's independence in 1991. Tigrinya proverbial expressions are apparent reflections of the Eritrean highland customary laws. The nearly comprehensive work of Liqe Mezemran Moges Ouqbegiorgis (1969) on Tigrinya maxims offers pertinent examples of proverbial expressions with deeply rooted conceptions of restorative justice. The following samples are most instructive.[15]

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13 The original Tigrinya text reads as follows: '**ነፍሲ ዝቐተለ ወፌ ተገዲው ገመድ ኣብ ክሳዱ ጌሩ ካራ ኣንጠልጢሉ፡ እኔኹ ሓለፍኩ ኢሉ፡ ኣብ ቅድሚ ስድራ እቲ ዝሞተ ደው ይበል። ብድሕሪ'ዚ 7 ሽማግለን ካህናትን ምስ መስቀሎምን ንምሕረት ይለምኑ። ቅድም ብነፍሲ ይመሓር፡ ድሕሪኡ ድማ ዕርቂ የቐሙ ዋሕሳት ዕርቂ ውን ይትከሉ። ዕርቂ ምስ ቆመ ጋር ነፍሲ፡ ፈርግን ቅርሽን ይኽፈል። ጋር ነፍሲ ብቆጻራ መዓልቲ እዩ ዝኽፈል። እቶም ዝኽፈሉ ድማ ከም ቆጻራኦም ይኽፈሉ። ብመሬት እንተኾነ ዝኽፈል እቲ ጋር ነፍሲ እቶም 7 ሽማግለ እዮም ዘወሃህብዎም። እቶም እተቓተሉ ሰባት ንኖት እንተኾይኖም ኣብ ርእሲ ጋር ነፍሲ ንልን ወድን እዮም ዝወሃቡ። ንል ክህቡ ዝግብኦም ግን ቀተልቲ እዮም።**' [Author's translation] (Adkeme Mlgha'e: 51–52). Compare this with the Ugandan traditional healing mechanisms of *mato oput, nyouo tong gweno and gomo tong* as discussed by Quinn (2006:398). However, the Eritrean proverb tends to discriminate on the basis of gender.

14 Examples of other provisions dealing with murder are Chapter 13 of the customary law of Hgi Engan'a Sr'at Atsmi Harmaz (**ሕጊ እንጋንኣ ስርዓት ዓጽሚ ሓርማዝ**) and Chapter 20 of the customary of law of Adghena Tegheleba.

15 Compare these proverbial expressions with the customary law of the Thembu people in Eastern Cape, South Africa, as discussed by Kgosimore (2002:71). The author argues that Thembu people 'attain justice through practicing a philosophy of healing and reconciliation by placing the victim, the offender and the community at the heart of the justice'. See also Nsereko (1992:21).

A) **ዕርቂ ደም መድረቂ፡ ባእሲ ደም መተርከሲ** (*erqi dem medreqi, baesi dem meterkesi*): Reconciliation cures a wound, retribution fuels a dispute.

B) **ይበድሉኻ ኣይትበድሎም፡ ይቕተሉኻ ኣይትቕተሎም** (*ybedluka aytbedlom, yqteluka aytqtelom*): It is better to be harmed than to do harm to others.

C) **ናይ ጎቦ ንፋስ ይውሰዶ፡ ናይ ሩባ ውሕጅ ይውሰዶ** (*nay gobo nfas ywsedo, nay ruba whj ywsedo*): That which is on the mountain should be gone with the wind and that which is in the riverbed should be washed away by the waters.

D) **ዕሩቕ ኣይምድር፡ ቆራይ ኣይስድር** (*eruq aymdr qoray aysdr*): As a lame cannot walk, a reconciled cannot also squabble. This proverb has, however, an apparent bias against people with a disability.

These and other important aspects of ILT were oppressed during colonialism by a European worldview of retributive justice which is largely offender focused.[16] In the post-independence era, little has been done to advance their usefulness in human rights protection and post-conflict reconstruction. In this regard a golden opportunity was missed in the period between 1991 and 1993 when the provisional government failed to adopt a comprehensive transitional justice agenda fitting to post-independence challenges of the country (Mekonnen 2009:51). As a potential reservoir of wisdom, the heritage of ILT is not yet fully appreciated and explored in Eritrea.

It is evident that the four essential elements of transitional justice, namely truth, accountability, reparation and reconciliation,[17] also make the epicentre of most

16 Eritrea inherited all of its codes of laws from Ethiopia in 1991, with minor amendments. The Ethiopian Penal Code of 1957, which is drafted by the Swiss jurist, Jean Graven, is one good example. The Ethiopian Codes of Criminal Procedure and Civil Procedure are also drafted by the same jurist, while the 1960 Ethiopian Civil Code is drafted by the French jurist, René David. See Russell (1961). All of the above codes together with the Ethiopian Commercial Code and Maritime Code were adopted by Eritrea in 1991 as transitional codes and are still operational, albeit ineffectively as far as the protection of human rights is concerned.

17 See for example, Parmentier's (2003:207–208) TARR, an acronymic-innovative model on the four essential issues of transitional justice which denotes: truth, accountability, reconciliation, and reparation. See also Huyse (2008:11); Vandeginste (2009:25).

ILTs. For example, in the Eritrean customary law of Adkeme Mlgha'e, both truth and accountability are embedded in the relevant provision of the law by the fact that the law obliges the wrongdoer to 'stand and submit himself in front of the family of the deceased', to an extent that the wrongdoer is even required to metaphorically plead the family of the victim to 'finish him off'. This is one clear example of ILT that represents established local values and traditions which are better suited 'to creating a collective atmosphere that opens the heart and the mind' and deliver the truth about the past (Huyse 2008:187). If explored purposefully, these values can have the potential of restoring broken community relations and damaged social capital.

Truth-telling and accountability in the customary law of Adkeme Mlgha'e are supplemented by an official request for forgiveness that should be submitted not by the wrongdoer but rather by his representatives who shall be seven elders and priests with their cross. This denotes at the same time a deeply rooted practice and symbolic ritual of reconciliation, which is the third important element of transitional justice. The fourth key issue of transitional justice, reparation, could be done in the form of payment of blood money but it can also be implemented by intermarriage between the families of the victim and the wrongdoer. This way, the law essentially captures four of the essential elements of transitional justice, as represented in Parmentier's (2003:207–2008) innovative model of TARR (truth, accountability, reparation and reconciliation). The example from Eritrea shows that restorative justice is a very essential element of ILT in Africa.

4. When does ILT play a role?

It must be noted that ILT may not be taken as a complete replacement to formal transitional justice approaches such as TRCs. The role of ILT, as discussed in this work, is recognised mainly as a complementary one. In most cases formal transitional justice mechanisms such as TRCs operate during the first few years after a conflict has come to an end. Reflecting on her fieldwork in Sierra Leone, Schotsmans notes that the initial period of transition is usually characterised by a high level of uncertainty on the part of witnesses or victims who often seem to be reluctant to publicly testify about what happened in the past. However, with the mere lapse of time and the consolidation of democratic transition,

people may feel more secure and are naturally encouraged to publicly share their experiences about the past. By this time, a TRC may have already closed its offices and compiled its final report. Yet, the need for truth-telling, healing and social recovery may stand as a crucial element in the transitional process. At such a time, what could have not been accomplished by TRCs or other formal transitional justice mechanisms can be supplemented by traditional truth-telling and reconciliation mechanisms. Therefore, the major role of ILT would be that of filling up any gaps that have not been filled by formal justice mechanisms (Schotsmans 2009).

Apart from accomplishing whatever objectives that have not been attained by formal justice mechanisms, the usefulness of ILT is evident from the following advantages discussed by Ingelaere. According to him, the strength of traditional justice mechanisms lies in the fact that they function in line with the socio-cultural habitat of the population in their daily activities (Ingelaere 2008:53). At community level, perceptions about classical justice mechanisms, particularly criminal prosecutions, portray such initiatives as Western ways of doing justice. This view is evident in the Rwandan experience which perceives the International Criminal Tribunal for Rwanda (ICTR) as 'highly inefficient, time-consuming, expensive, and not adapted to Rwandan custom' (Ingelaere 2008:45). While the role of criminal prosecutions in ensuring accountability is beyond contention, pervasive perceptions that revolve around such initiatives are also equally important in terms of long-term objectives of healing and social recovery. These perceptions point to a certain degree of a transitional justice gap that must be filled by other subsidiary or complementary methods. In this regard, the efficacy of home-grown traditions derived from the socio-cultural fabric of conflict-torn communities needs to be assessed against the usefulness of imported practices which are at times seen as alien impositions (Ingelaere 2008:32).

A strategy based on ILT also enhances the capacity of local communities to take ownership over justice initiatives and to develop the required self-confidence for partnership with the state apparatus which is widely seen as oppressive machinery given a violent past that divides societies across several lines (McEvoy and Eriksson 2006:322). As argued earlier, the basis of ILT is restorative justice which helps in building a strong sense of grassroots community ownership.

After violent conflict, there is a great deal of scepticism towards the entire state apparatus because of the fact that in almost all cases state organs are the leading role players in the perpetration of atrocities. As a result, the role of a state in a post-conflict scenario cannot be easily divorced from its role in the violent past. In such a context, it is argued:

> [I]t makes sense that communities themselves should take primary ownership over the establishment of programmes, deciding what type of intervention might be suitable, who is going to be involved, which values will guide their work and devise their own benchmarks as part of a broader 'legitimation process'. Those with the greatest stake in justice reconstruction – often those who have been on the receiving end of violence and criminality ... should themselves be direct participants in the process as innovators, planners and implementers. Community participation in decision-making processes regarding the rebuilding of a society adds transparency, accountability, legitimacy, and, importantly minimises the risk of renewed conflict. Top-down initiatives need to be accompanied by culturally appropriate grassroots programmes … (McEvoy and Eriksson 2006:322–323).

The above argument derives from an understanding of the authors that community-based restorative justice programmes are uniquely suited for embedding a bottom-up culture of human rights. In many transitional justice initiatives, experience has shown that top-down approaches to conflict resolution are often not enough to resolve deeply entrenched legacies of a violent past. Transparent, inclusive and consensual practices of restorative justice are catalyst factors for the empowerment of local communities and the promotion of grassroots ownership of justice. Such approaches can 'add legitimacy to a vital transformation of deeply ingrained cultures of violence, which in turn reduces the risk of renewed conflict' (McEvoy and Eriksson 2006:331–332). By mainstreaming the transformation process beyond the confines of state structures, a deep sense of ownership can be created among the communities which are most affected by violations. This kind of 'sensible and sensitive approach to local circumstances' promotes grassroots human rights entrenchment, an essential template for

societies in transition. The ultimate end result would be transforming cultures of violence with robust actions at the grassroots level as opposed to a narrowly defined objective of ensuring individual criminal liability of offenders (McEvoy and Eriksson 2006:331–332).

As noted by Vandeginste, the debate on the efficacy of ILT in transitional justice initiatives is part of the growing concern 'about the local relevance of the increasingly globalised transitional justice field' (Vandeginste 2009:365). One such concern is expressed by Orentlicher (2007:18) who advises that 'there cannot be a one-size fits-all approach to transitional justice'. Simply put, in the face of an 'extraordinary range of national experiences and cultures' it is difficult to imagine the adoption of a universally relevant transitional justice formula. In this regard, Orentlicher is availing herself of a critical retrospection on some essential transitional justice elements she provided earlier in one of her influential contributions (Orentlicher 1991). Her retrospection calls for the expansion of the scope of the local variation in responding to past atrocities. Local in this sense may also mean traditional justice, as analogised by Waldorf (2006:9). There is indeed a growing need for local agency and the involvement of local communities in transitional justice initiatives. In this regard, exploring the potential of home-grown justice mechanisms as tools of social reconstruction means nothing more than localising transitional justice (Vandeginste 2009:366).

5. Limitations of ILT

There are, however, some inherent shortcomings of ILT that require attention for improvement. Informal conflict resolution mechanisms may require some degree of reform in order to make them more responsive to contemporary needs, particularly in the context of mass political atrocities. For example, in reference to the much debated ILT of Uganda, the *mato oput*, Rose and Ssekandi (2007:110) argue that this particular institution was not purposefully intended for mass political atrocities such as rape and wanton killing committed in armed conflicts. This calls for an adaptation of the institutions of ILT in the context of current needs. Similar concerns are raised by Huyse who argues that the efficacy of ILT would be less meaningful without the required reform that should make these institutions responsive to contemporary challenges (Huyse 2008:185). The

reform agenda can best serve its purposes if the limitations of restorative justice are supplemented by principles of distributive justice which are also deemed by many as more relevant in African societies.

Reform may also include the inclusion of women and younger people in the processes (Ingelaere 2008:48–49; Schotsmans 2009). However, as seen in the Rwandan experience, excessive interference in the structure and modus operandi of informal justice mechanisms may entail the risk of diluting the essence of such mechanisms. The commonest characteristic feature of traditional justice mechanisms is the restoration of harmonious relations by way of mostly symbolic and restorative measures that take the form of reparation for harm rather than punishment of offenders. With excessive government interference, this essential purpose might be replaced by a purely retributive impulse, thereby countering the fundamental edifice of traditional justice conceptions. Formalised justice may require a narrow legalistic approach, while traditional justice needs a culturally sensitive approach (Ingelaere 2008:53). As noted by Ingelaere (2008:51), this vital ingredient was not essentially captured in the new version of the gacaca courts of post-genocide Rwanda, which are different from the old gacaca courts in the sense that the new gacaca courts are state-sanctioned bodies in contrast to the tradition-sanctioned old gacaca courts.

As noted before, some archaic remedies of ILT may not be easily applicable in every transitional justice context. However, as much as possible from the process and rituals need to be incorporated into transitional justice initiatives in order to give symbolic effect to the underlying notion of restorative justice. One of the possible ways by which this can be done is in the public hearing of TRCs. Public hearings are important ingredients in the operation of TRCs as they are meant to advance national or community healing and reconciliation (Minow 1998: 71–72; Quinn and Freeman 2003:1145–1146; Buergenthal 1994:292, 321; OHCHR 2006:31). In order for the indigenous context to play a catalyst role, the modus operandi of TRCs could be designed in such a way that traditional leaders, elders and experts of customary laws are allowed to take part in the public hearings of TRCs. To allow this, public hearings could be organised at the local level, including villages and smaller communities, where deeply rooted indigenous healing and cleansing mechanisms can be utilised effectively. Another possibility

is the establishment of a council of traditional leaders and elders representing important aspects of ILT allowing them to serve with an advisory role to a given TRC. Some traditional leaders can also be nominated to serve in subcommittees of TRCs on a representative basis. This may help in introducing innovative indigenous approaches that enable societies to heal their wounds via long held traditions of dispute resolution and healing mechanisms. Schotmans advises that with the support of NGOs and donor funding, monitoring and evaluation mechanisms as well as guarantees or oversight mechanisms against abuses by traditional leaders can also be put in place effectively (Schotsmans 2009).

6. Conclusion

Processes of transformation involve many and diverse challenges due to the very precarious nature of transitions. In the African continent, where guns have continued to usurp the place of reason, transitional justice and transformation issues are some of the prominent preoccupations of the continent's policy makers and researchers. Apart from formal transitional justice mechanisms, such as prosecutions and TRCs, ILT as a major component of transitional justice is receiving growing importance among researchers and scholars. As a system of knowledge related to social and political structures of society, identities, legal practices and jurisprudence, traditional governance and decision processes, conflict resolution and other related concepts, ILT assumes a prominent role in the daily actions and interactions of African societies.

In those societies, ILT is seen as the most catalytic factor in dealing with the past and restructuring broken relationships. Most African cultures place emphasis on communality and on the interdependence of the members of a community. ILTs, which may also include mechanisms for acknowledgement, truth-telling, accountability, healing and reparation, continue to assume a prominent role in the lives of societies and individuals. With its strong emphasis on restorative justice, ILT aims at the pursuit of human dignity via vindication of the communal wellbeing and restoration of broken relationships rather than the right of any individual against the world. As such, ILT reinforces the four essential elements of transitional justice, namely truth, accountability, reparation and reconciliation. However, it is important to note that ILT may not be taken as

a complete replacement to formal transitional justice approaches such as TRCs. The role of ILT is recognised mainly as a complementary one. There are also some inherent shortcomings of ILT that require attention for improvement. Informal conflict resolution mechanisms may require some degree of reform in order to make them more responsive to contemporary needs, particularly in the context of mass political atrocities. The contribution of ILT may be best utilised through its incorporation in the public hearings of TRCs.

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Integrating the traditional and the modern conflict management strategies in Nigeria

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Abstract

The study examines the modalities for integrating traditional and modern conflict management strategies in Nigeria using an analysis of relevant documents as well as Black's Social Control Theory and Thomas-Kilmann's Model of Conflict Management. The successful amalgamation of diverse groups has radically shifted from being a platform for peaceful coexistence to an arena of violent conflicts due to the matrix of social inequality and the state attempts to undermine the power of traditional social control systems. The police and military have been used to suspend several violent conflicts in Nigeria, but they have been unable to build peace despite their coercive power. The social structure

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and deep-seated grievances that generate violence have not been addressed and the crowding out of traditional methods of social control from official policies has left room for escalation of violent conflicts. The most disturbing of these conflicts are ethno-religious and resource-control conflicts, which have both resulted in monumental destruction of peoples and properties and exposed different parts of Nigeria to crisis. It is argued that a policy-driven synergy of useful traditional and modern strategies for conflict management will result in lasting peace in Nigeria.

Introduction

Efficient and effective management of conflicts is fundamental to the development of any society, but the prevailing situations in Nigeria constitute a reversal of this reality. The Nigerian success story of amalgamation of diverse groups in 1914 has radically shifted from a platform for peaceful coexistence to an arena of violence and gradual disintegration. The popular explanations for this unexpected situation include colonialism, corruption and political instability. The matrix of social inequality and the state attempts to undermine the power of traditional social control systems are also potent factors, but there is inadequate research on this subject matter.

The spate of insecurity and threats to lives and properties in Nigeria has reached alarming proportions despite the increasing visibility of the Nigerian state mobile police and military in the management of internal conflicts (The US Department of State 2008; Erinosho 2007; Falola 1998). About 50 episodes of violent conflict, which culminated in the death of over 10 000 persons and internal displacement of over 300 000 people, were recorded in Nigeria between 1999 and 2003 (International Crisis Group 2009). The recent (28–29 November 2008) violent conflict in Jos (a city in the north-central) resulted in the death of over 380 persons and destruction of properties worth millions of naira (Adinoyi 2009; Balogun 2009; Eya 2009; USAID 2005). Considering the increase of violent conflicts and occasional state failure in the maintenance of peace and order in Nigeria, this study is anchored by the following questions: How has Nigerian society coped with its monumental profile of violent conflict? Why are extant conflict management strategies defective? What are the modalities for

integrating traditional and modern conflict management strategies in Nigeria? These questions are addressed through content analysis of relevant documents.

This study is situated within the confines of Black's Social Control Theory and Thomas-Kilmann's Model of Conflict Management to provide a robust foundation for the explanation of processes involved in peace-building in Nigeria. Black's theory proposes the conditions that predict the use of one of five forms of social control (self-help, avoidance, negotiation, settlement, and toleration) in the relationship between individuals, groups, and organisations, while Thomas-Kilmann's model explains strategic intentions that could be organised around the matrix of two factors (assertiveness and cooperativeness), which jointly produce five conflict management styles (avoidance, accommodation, competition, compromise and collaboration) (Volkema and Bergmann 1995; Borg 1992; Black 1990; Thomas 1992). The established complexity of violent conflicts in Nigeria requires a combination of approaches as proposed in this study. The combination is also needed for theoretical and methodological support in the proposed integration of traditional and modern conflict management strategies.

The above perspectives have been used extensively in American academic research, training seminars and development studies; however few studies have linked the intentions measured by the model with actual behaviours (Volkema and Bergmann 1995; Borg 1992). This study includes an attempt to contribute towards further development of the theories through an examination of their applicability to the management of Nigeria's protracted violent conflicts. Black's theory and Thomas-Kilmann's model are contemporary versions of the two-dimensional modes of conflict management introduced by Blake and Mouton in 1964 (Volkema and Bergmann 1995).

According to Thomas-Kilmann's model, assertiveness flows from concerns for self-interest, while cooperativeness is driven by concerns for the other party or the relationship (Thomas 1992). This assertion has opened up the stage for a discourse on conflict management strategies in Nigeria where self-interest remains paramount in the country's political economy. As defined by Black (1990:43), conflict management is 'the handling of grievances'. This definition is adopted for this study due to its simplicity and relative applicability. The

conditions under which each of Black's conflict management styles is likely to occur differ (Borg 1992).

The above mentioned dichotomy implies that self-help or avoidance may be preferred in some situations, while negotiation or settlement would be required in others, especially if toleration is not possible. In Nigeria, some of these strategies are more likely than others to be used in the context of 'order from above' at the expense of ethnic minorities or the less-privileged groups. The minorities and the less-privileged groups may also resort to alternative strategies in their relationships with the more powerful groups. Individuals and groups that share relatively equal status – like the Nigerian Muslims and Christians – may also adopt a different approach to conflict management. In this regard, existing strategies for the management of Nigeria's violent conflicts can be located within the classifications in Black's theory and Thomas-Kilmann's model.

The USAID's (2005) argument that the Nigerian government's capacities for managing conflicts are weak appears valid because the government has not fully considered the utility of every available strategy for conflict management. When conflicts erupt, the inability of the Nigerian mobile police to manage them usually prompts the Nigerian government to deploy the Nigerian military to the scene of violence where the military are usually mandated to 'shoot on sight.' This situation sometimes leads to serious human rights violations and escalation of violence (Ibeanu 2006). The state's imposition of curfew and use of propaganda to douse public tension are part of the Nigerian government's regular strategies for conflict management in Nigeria. In view of the perceived inability of the Nigerian security forces to safeguard human lives in Nigeria, a considerable number of people in the country have however subscribed to unofficial strategies (vigilante, militias, charms, prayers, communal solidarity, etc) in their attempts to manage Nigeria's violent conflicts.

The emerging strategies in the management of Nigeria's violent conflicts have a strong foundation in African traditional cultures. Contrary to general belief in western paradigms, every African community has capacities for promoting mutual understanding and peaceful coexistence (Lauer 2007). Uncritical

adoption of Western approaches to conflict management has adversely affected the stability and development of many African societies including Nigeria.

In light of the foregoing, this study focuses on the possibility of integrating both traditional and modern conflict management strategies for peace-building and development in Nigeria. The next sections deal with various issues around the subject mater of this study: factors influencing violent conflicts in Nigeria, official strategies for conflict management in Nigeria, traditional strategies for conflict management in Nigeria, shortcomings in Nigeria's conflict management strategies, integration of traditional and modern strategies for conflict management, and conclusion.

Factors fuelling violent conflicts in Nigeria

Several studies attribute Nigeria's violent conflicts to the failure of its political elite to accept democratic principles of accountability, equity, justice and the rule of law (Bamgbose 2009; Piiparinen 2007; Abubakar 2006; Adejumobi 2005). Also, most violent conflicts in Nigeria have been traced to contested bases of citizenship rights, greed, predatory rule, autocracy, and unresolved grievances. Prolonged military rule and centralisation of power around Nigeria's remarkable resources aid rent seeking, thereby making it a qualified case for a 'resource curse' thesis as shown in a previous study by Collier and Hoeffler (2005). Different forces such as colonialism, neo-colonialism, dictatorship, alienation, poverty, unemployment, illiteracy, infrastructural decay, ethnic rivalry and religious intolerance constitute the root causes of Nigeria's violent conflicts. These factors transcend the regular causes of violent conflicts in Africa: political history, population, resource insecurity and war economies. There is general agreement among scholars that a monolithic explanation of violent conflicts in Nigeria is inadequate (Guseh and Oritsejafor 2007; Ibeanu 2006; Meagher 2004; Falola 1998). The merger of ethnicity and religion has played out with involvement of southerners and northerners in violent conflicts, which cannot be divorced from the political economy of contemporary Nigeria. The holistic causative factors of violent conflict are worthy of recognition in the process of peace-building and

its sustainability. Instances of religion-driven violent conflict were described by Falola (1998:2–3) as shown in the following passage:

> Since the mid-seventies, politicians have urged their followers to vote along religious lines – Muslims are told to vote for Muslims, and Christians for Christians. In 1978, the National Party of Nigeria (NPN) told its followers in one of its strong Islamic northern constituencies that the two-fingered V-for-victory sign of the Unity Party of Nigeria (UPN) was a covert symbol of polytheism, an idea counter to fundamental Islamic doctrine. The NPN adopted one raised finger as their symbol, turning the universal (and universally secular) V sign into a religious issue … The gubernatorial elections in Lagos and Kaduna were deeply affected by religious issue, and the primary process for the 1993 election of a civilian president was complicated by conflicts between Muslim and Christian candidates. Many analysts date the beginning of Nigeria's religious crisis to 1978 (excluding the jihad of 1804)… two religious issues related to whether Nigeria would become a secular state or subscribe to al-Shari'a, the Islamic code of laws, disrupted the constitutional making process… Other religious inspired controversies during the 1970s included the rejection of the recitation of the national anthem and pledge by the Jehovah's Witnesses, … and the calls by Christian leaders for state-supported pilgrimage to Jerusalem (Muslims were already being sponsored in pilgrimages to Mecca) … In 1980, the Maitasine crisis claimed thousands of lives (the government conservatively estimated the death toll at just over four thousand) and caused millions of naira in property damage. On the last day of October 1982, eight large churches were burned in the prominent city of Kano … A major riot in Kaduna the same year claimed at least four hundred lives. In 1984, violence sparked by Muslims in Yola and Jimeta killed approximately seven hundred people (including policemen) and left nearly six thousand people homeless. The neighbouring town of Gombe was also besieged, resulting in the death of more than one hundred people … In March 1987, Christians in Kafanchan wantonly destroyed the property of local Muslims. Within three days, every one of the hundred churches in Zaria was burned and many Christians had been slaughtered.

Besides religion, poverty has become a major root cause of Nigeria's violent conflicts given the emerging flows from the economy of violence in the country. In different areas of Nigeria, the unemployed and underemployed youths have embarked on a range of violent activities in search for livelihoods. This situation has produced heroes in the context of political thuggery, assassination, militancy, and ethnic massacre. Some relatively impoverished youth have gravitated into religious fundamentalism with networks stretching across Africa and Saudi Arabia in the case of Islam, and to England and the United States in the case of Pentecostal Christianity (Meagher 2004; Falola 1998). The emerging disorder from communal violence can be understood in this context, which closely ties with the rise in corruption.

The Nigerian government's reactions, including the implementation of neoliberal policies, have attenuated the human capacities for development, thereby building the socio-psychological bases for violence. In the context of the structural adjustment programme and its concomitant trade liberalisation which resulted in dumping of foreign goods in the Nigerian markets, several thousands of local entrepreneurs abandoned their primary occupations following their inability to cover production costs. A crop of youth, who were rendered underemployed by the adverse effects of neoliberal reforms on their productive activities in Aba metamorphosed into the Bakassi Boys vigilante group in 1998; and some politicians hijacked the group in 2000 in their struggle against the Federal government.

The Bakassi Boys were involved in an ethnic riot in which 300 northern Nigerian migrants were slaughtered and in the abduction and assassination of political opponents prior to the 2003 elections (Meagher 2007). Their increasingly violent activities made them the subject of a Human Rights Watch Report in 2002. Other organisations including the Hisha in the north and the Oodua People's Congress (OPC) in the south-west also emerged and fuelled violence in the context of widespread frustrations. These militia groups do not represent a cultural propensity to violent conflicts, but reflect the impact of severe economic stress and state neglect on dynamic local institutions. People are perceived in terms of their ethnicity, religion and social class, and the citizenship question connects with these forces in conflict-prone areas.

Also, state promulgations, including the Petroleum Act of 1969 and the Land Use Decree of 1978, favoured the Nigerian government and multinational companies in the country and resulted in the restriction of communities' access to land. This situation and the chronic deprivation associated with it contribute to the rising spate of violence in Nigeria. Local elites in the oil-producing communities have reacted violently against the Nigerian government and oil companies through social movements and the use of ethnic-oriented militia tactics. Guseh and Oritsejafor (2007:140) explain the foundation of Nigeria's violent conflicts as follows:

> The country has experienced numerous military coups and counter coups and has survived a secessionist civil war. The attainment of political independence does not seem to have transformed the state because the indigenous elites that replaced the colonial administrators have failed to implement policies to move the country forward politically and economically. The indigenous elites inherited a state that was not designed to cater to the needs of the Nigerian people; yet these elites were content with the political structures designed by the colonialists.

Collier and Hoeffler (2005:632) mention other factors that fuel the proliferation of violent conflicts in Nigeria:

> Case studies as well as cross-country studies suggest that countries with an abundance of natural resources are more prone to violent conflict … in the Delta region of Nigeria, large-scale organized crime is 'bunkering' (i.e., stealing) oil from pipelines to the scale of around $1 billion per year, selling it in East Asia. There is obviously scope for this massive criminal activity to link with the political secessionists of the Delta region. Resources can motivate conflict, especially in the form of secessions. Secessionists not only claim ownership of the resources, they also claim that the national authorities are misusing the money – that it is being embezzled by distant elites. Perhaps the best defense against such secessionist pressures is to make the secessionists look greedy. To achieve this, national governments should probably link resource revenues to some basic social service such as primary education.

The resource curse thesis can be refuted in light of the models of resource-endowed peaceful countries including Norway, Denmark, Sweden, Canada, Australia, the United States of America and the United Kingdom (Cappelen and Mjøset 2009). Resource-endowed communities need not be prone to violence and underdevelopment. For instance, the relatively peaceful Norwegian society had relied on raw materials export and combined economic growth with an egalitarian distribution of income long before its discovery of petroleum. The logic of the resource curse can be dispelled in this way and a plausible argument can be built around lack of transformational leadership as a major determinant of violent conflict in resource-endowed settings. The question may not be about resource abundance but the quality of leadership in charge of the abundant resources. Kotlyar and Karakowsky (2006) examined the relationship between leadership styles and group conflict and their findings support the assertion that:

> … differences in leadership behaviors can trigger different levels of cognitive and affective conflict among group members. Behaviors reflective of the transformational style of leadership demonstrated the greatest capacity to motivate group members to constructively debate ideas. However, in contrast to transactional and external leader behaviors, transformational leadership behaviors also showed a greater capacity for igniting affective conflict among group members (Kotlyar and Karakowsky 2006:377).

Official strategies for conflict management in Nigeria

The Nigerian government's major official strategies for managing violent conflict include state creation and the use of the Nigerian mobile police, the Nigerian military, curfew, propaganda, judicial panel, compensations and punishment. These official strategies have however not yielded adequate results since the 1960s. Nigeria was originally administered as an amalgam of two protectorates before the establishment of new structures such as regions and geo-political zones and states (12 states in May 1967, 19 states in February 1976, 21 states in September 1987, 30 states in 1991 and 36 states in 1996). The outcome of states creation has been summarised by Otite (2000:vii) as follows:

> These new developments, which were responses to ethnic-sectional demands for new identities or consolidations of old ones, also created new bases for contested territorial and other claims, as well as competition for access or succession to high political and other offices. They were also responses to protests against perceived sectional marginalisation in respect of participation in, and the dividends derived from, the political and economic development of Nigeria under democratic process.

The Nigerian mobile police and the Nigerian military have been used to suspend many cases of conflicts in Nigeria. They have succeeded in restoring order in most cases of violent conflicts, but their intervention usually gets to the violence scene after colossal wastage of human lives and valuable properties. In view of their late responses, the coercive power of the state has been unable to stop preventable violence in Nigeria. Scholars (Thomas and Pondy 1977) have shown that time lag would affect the effectiveness of conflict management activities. Some documented evidence of the failure of the Nigerian mobile police and the Nigerian military in their endeavours to prevent violent conflicts and restore social order are summarised here. In May 1996, eight people lost their lives when the police clashed with a group of Muslim students. The following month, Muslim students at the Kaduna Polytechnic Institute clashed with the police over the hosting of a beauty contest, which they claimed debased Islam. The school had to be closed down to prevent a prolonged escalation of the conflict. Chances that the government could end religious violence with violence of its own became minimal when the federal government itself evidenced a bias for Islam by secretly joining the Organisation of the Islamic Conference in January 1986. The Christian reaction frightened the military government, and a government effort to defuse tension by means of the National Advisory Council on Religious Affairs was abortive. After 1986, religious violence occurred often and without notice, with most outbreaks ending in large-scale destruction and the activation of the army and police to quell riots and protests. In 1990, a group of civilian-supported southern Christian military officers decided to forcibly take over the government, claiming it was controlled by northern Muslims convinced of their 'birthright to dominate till eternity the political and economic privileges

of this great country'. In a radio address, the plotters of the coup announced the excision of five Islamic states – Kano, Borno, Katsina, Bauch and Sokoto – from the federation. They were unsuccessful, but it was widely speculated that had they achieved their goal, another civil war would have been unavoidable (Falola 1998:4–5).

Furthermore, the Nigerian mobile police forcefully dispersed a large crowd of Muslims at the National Theatre in Lagos in an attempt to avert a religious riot in the 1980s. After the death of six students in 1978 in a clash between Muslim and Christian students of the Ahmadu Bello University, Zaria, the Nigerian military was deployed to quell the crisis. The character of the Nigerian government as it is represented by the Nigerian mobile police and the Nigerian military reflects the assertiveness clause in Thomas-Kilmann's model. This character can however be expected, given the finding of researchers (Volkema and Bergmann 1995:5) that 'preferences for assertiveness are reflected in both strategic and tactical use of behaviours, whereas cooperativeness is associated with last-choice behaviours'. Nigeria is not the only country with a relatively autocratic government. A recent study by Ma (2007) showed that compromise and avoidance are the most preferred methods of conflict management in China, while accommodation and competition lead to more satisfaction during business negotiation. This finding shows that China also has a relatively autocratic government due to her traditional history of a unitary state under the control of a single party. The Chinese polity embodies an autocracy in the context of democratic communism, hence the co-existence between China's authoritarian national government and democratic governance in villages.

Following the death of over 380 people and destruction of property worth millions of naira in a recent (28–29 November 2008) case of violence in Jos, curfew was imposed on four districts of the city and the Nigerian soldiers were permitted to 'shoot on sight' in order to prevent escalation of violence (Balogun 2009). Flight schedules for Jos were cancelled and roads to the north were blocked. The state security agents subsequently arrested 26 suspected mercenaries with weapons, including 22 double barrel guns, eight cutlasses, army boots, tear gas, charms, and army uniforms (Adinoyi 2009). The suspects were referred to the state Criminal Investigation Department (CID) in Jos for further investigation.

In view of the failure of the state governor to embark on a timely necessary action, the Federal Government of Nigeria (FGN) set up a judicial panel chaired by Emmanuel Abisoye to investigate the Jos violence. The FGN panel was not constituted until several weeks after the outbreak of the conflict. However, the Plateau State Governor has challenged the FGN's panel through a court injunction, claiming that the FGN has no jurisdiction in managing the conflict in the state. In reprisal, the Governor established another judicial panel of inquiry chaired by Prince Bola Ajibola (Eya 2009). It can be recalled that the FGN suspended the former Governor of the state and declared a state of emergency in the state during the previous conflicts in Jos in 2001 and 2004 respectively. Presently, the emergence of two judicial panels on the same issue has generated controversies in the country and popular opinions are divided on it.

It is noted that a dominant Islamic organisation expressed dissatisfaction over the state-driven parallel judicial panel of inquiry claiming that it would honour the panel constituted by the FGN. In contrast, some Jos indigenes were said to have planned to disregard the FGN judicial panel due to its perceived bias in favour of the Hausa/Muslim community recalling Emmanuel Abisoye's involvement in the trial and elimination of some indigenes of the state during the case of late Col. Buka Suka Dimka in Nigeria's coup of 1976. The emerging controversy over the way and manner in which the Nigerian government is handling the recent conflict in Jos has set the stage for future conflict in the city. The likely continuity of violence in Jos and elsewhere in Nigeria can be traced to the principle of attribution, which remains attractive to the majority of the population. Attribution implies a process by which blames are shifted among parties to a conflict. This process is a fundamental element of conflict scenarios in Nigeria where shifting of blames has prolonged peace-building efforts. Thomas and Pondy (1977) examined the role of attributed intent within conflict episodes, and found that attributions cause hostility and retaliation between parties to a conflict. In light of attribution, which may affect perception of justice or injustice, individuals tend to perceive themselves as cooperative and reasonable, but attribute competitiveness and unreasonableness to the other party. This situation provides a basis for resurgence of violence and extension of peace-building initiatives in Nigeria.

Official strategies used in the south-south include concentrated military operations, establishment of commissions, establishment of a new ministry, and an amnesty offer. The Nigerian government established the Niger Delta Development Commission (NDDC) in 2000 to replace the military-driven Oil Mineral Producing Areas Development Commission (OMPADEC). The NDDC was restructured with a comprehensive master plan in 2007 and a new ministry (the Ministry for Niger Delta Affairs) was established in September 2008 for infrastructure development and community empowerment in the region. Violence remains unabated in the Niger Delta despite the above mentioned strategies, thereby confirming Piiparinen's (2007) report on persistence of the root causes of violence in the context of democratic rule with a disconnection between policies and practices.

The prevailing practices in the official strategies for conflict management in Nigeria partly fit Black's theory. Drawing on this theory, it has been argued that:

> … the status of nations within the world-system at a particular time is correlated with the primary strategy they use for conflict management and … the strategy used may affect the nations' subsequent rank (Borg 1992:262).

The above can be connected with Thomas-Kilmann's model, which is organised around two dimensions: assertiveness and cooperativeness. The former is an attempt to satisfy personal concerns, while the latter is an attempt to satisfy collective concerns (Thomas 1992). The two dimensions jointly result in five modes of conflict management: avoidance, accommodation, competition, compromise and collaboration. Both assertiveness and cooperativeness are low in avoidance, which usually result in failure to manage violent conflicts. Cooperation is higher than assertiveness in accommodation, which entails partial management of violent conflicts. Competition in which assertiveness is higher than cooperation involves the indiscriminate use of power by one group against another in the process of conflict management. Both assertiveness and cooperativeness are respectively intermediate and low in compromise and

collaboration – which usually yields concessions and desirable outcomes in conflict management.

In light of the above theoretical postulations, the Nigerian government's styles of conflict management include avoidance, accommodation and competition. In contrast, the general traditional strategies for conflict resolution largely conform to the principles of compromise and collaboration as can be seen in the following description.

> In the present research, a conceptualization similar to that of Blake and Mouton and Thomas was used to differentiate styles of handling interpersonal conflicts on two basic dimensions: concerns for self and for others…In superior-subordinate communication, subordinates frequently say what is acceptable rather than what they know is true. Therefore, an individual may use a more obliging style with superiors than with a subordinate or peer… Finally, a compromising approach is expected when both parties in a conflict situation have equal power (peers) (Rahim 1983:368–370).

Traditional strategies for conflict management in Nigeria

Several individuals and groups have embarked on new approaches to deal with unresolved grievances in Nigeria. A south-south social movement led by Isaac Adaka Boro in the 1960s preceded various organisations including the Movement for the Survival of the Ogoni People (MOSOP), which was established in 1990 in response to the Nigerian government's repression of the minorities. The Niger Delta People's Volunteer Force (NDPVF) and the Niger Delta Vigilantes (NDV) were established for the same purpose in 2003 and 2004, respectively. Similar organisations have been established across Nigeria: the Oodua People's Congress in the southwest, Hisha and Arewa People's Congress in the north and Egbesu Boys in the south-south. This situation finds expression in Anderson and Collins' (1998) observation that oppression generates resistance. They suggest that oppression could be resisted effectively through organised actions within a group and coalition building with other groups. Resistance from the grassroots

has been a fallout of the Nigerian government's failure to amicably resolve extant violent conflicts in the country. The emerging grassroots resistance is driven by traditional institutions.

Traditional institutions are the instruments of social organisation and they provide the foundation for social change (Hussain 2007; Ochoche 2002). The coexistence of traditional and modern social systems has a long history. Traditional methods of social control such as communal solidarity, traditional oaths, rewards, vigilantes, informal settlements, checks and balances, decentralisation, effective communication and good governance remain strong and have been informally used successfully for conflict management in many communities in Nigeria. Nwafo Nwanko and Nzelibe (1990) subscribe to the observation that African kingdoms are reputed for strict observance of the rule of law and the principle of natural justice.

Indeed, the tradition in most African cultures is that reigning monarchs have to go on self-exile, abdicate or commit suicide when found guilty of serious offences against the community. Knowing that power tends to corrupt, and absolute power corrupts absolutely, traditional social institutions have developed necessary in-built mechanisms for preventing power abuse. For instance, the Benin Kingdom displayed dexterity in conflict management through effective and efficient utilisation of its military strength, public administration, and traditional values including loyalty to the system, respect for chieftaincy, and communalism. This is a classical example of traditional modernism. The traditional values were successfully integrated with the then modern institutions of the military and public administration. A previous study by Nwafo Nwanko and Nzelibe (1990:259) provided evidence of the usefulness of some traditional strategies for conflict management in Africa as follows:

> Africans strongly believe in the concept of 'communalism.' This is because of their belief that the individual is not alone, but is included under the umbrella of the community. The individual is an amulet system which is instrumental in linking that person to one's environment on the basis of communication principles and conventions … Conflict management follows similar patterns in Africa. Emphasis is placed on internalised values.

> Value is placed on honesty, openness, empathy, community solidarity, and individual loyalty to the group, but not at the expense of recognised worth of the individual. Therefore, emphasis is placed on those communication patterns and behaviours which will promote the bond of strong and productive coexistence of groups in the community.

The above submission clearly demonstrates the relevance of several traditional methods of peace-building in Africa. These methods are still valid but have been relegated in official decisions. It is worthy of note that the Nigerian society has over the past several years equipped individuals with necessary peacemaking skills, but the Nigerian government has not fully recognised the usefulness of these skills in its peace-building efforts. Each Nigerian ethnic group has inbuilt support for peace. The Yoruba concept of '*omoluabi*', the Hausa concept of '*mutum-kirki*' and the Igbo concept of '*ezigbu-nwa*' introduce the relevance of ontological capacity for peace-building by cultured individuals. The three concepts signify individuals with exemplary behaviour. Such individuals may not participate in violence irrespective of their anger level.

There is general support for the use of traditional strategies to manage violence in Nigeria as indicated in Afrobarometer's (2002) survey involving 2 190 Nigerian men and women selected across 29 states within the six geo-political zones in August 2001. Nigerians prefer informal modes of conflict resolution. Considering preferences in the management of Nigeria's violent conflicts, most respondents offered up to three answers in their own words (n = 6305). Taken together, these indicate that Nigerians are twice as likely to prefer an informal community-based process rather than an official intervention by the state government or the federal agency (54 versus 26 percent of all responses). At the community level, people are most likely to turn to chiefs, headmen or elders to mediate disputes (17 percent of all responses), especially in the parts of the country where traditional leaders continue to perform customary functions. Thereafter, people request resolution from religious leaders (14 percent) such as a pastor in a Christian church or an imam in an Islamic brotherhood. Interestingly, few people seek help from civic or non-governmental organisations (1 percent). In the absence of organised channels, people commonly resort to self-help, insisting that 'the

people involved in the conflict' find a solution for themselves (8 percent) or they turn to 'family, friends and neighbors' (7 percent). In the extreme, they may even enlist the help of vigilante groups (2 percent). In practice, Nigerians see little use of government as an agent of conflict resolution. When they mention the central government at all, they call on its coercive agencies – the army and the police (16 percent of all responses) – rather than on its judicial branch (4 percent). Nor do they make use of local courts or local government administration (9 percent), perhaps because they do not expect fair or effective treatment. In keeping with their pride in Nigeria's status as an African superpower, even fewer Nigerians think that international agencies have a role in resolving internal conflicts. Predictably, rural dwellers strongly advocated for community-based solutions, while urban dwellers are more prone to turn to government. South-easterners put most faith in community organisations (62 percent) as compared to Lagosians, one third of whom would seek out an agency of a local, state, or federal government (36 percent). Expectedly, persons who express a religious identity tend to prefer religious leaders to resolve conflicts. More interestingly, persons who define themselves in terms of their region of origin (e.g. Westerner, Easterner) are especially likely to enlist the assistance of a vigilante group.

The survey by Afrobarometer (2002) resonates with Lauer's (2007:288) call for refutation of the notion that '[t]he global arena is dominated by the popular conviction that Africans require foreign direction in the socio-economic management of their own societies'. The relevance of Black's theory of social control and Thomas-Kilmann's model of conflict management also plays out in Afrobarometer's (2002) findings, which have several implications for security management, peace-building, and development in Nigeria. The need for a preventive diplomacy and a participatory approach to the management of Nigeria's violent conflicts can be understood in this light.

Integration of traditional and modern strategies for conflict management

Studies largely indicate that violent conflicts can be managed effectively by the disputants themselves or by third parties (Myerson 2009; Milner 2002;

Rahim 2000; Wall and Callister 1995). Recognition of this fact would result in de-escalation of violence if the affected parties are allowed to take appropriate actions. Taking appropriate action is a function of access to an integrated package for conflict management. There is a general capacity for people to manage violence, but distortion of their histories may render them weak and incapable of maintaining peace. The weak institutions, poverty, social inequalities, corruption, civil strife, violent conflicts and civil war are not original conditions but are rooted in specific historical contexts (Osaghae 2007). In view of the above, the realm of social integration is very important in the analysis of conflict management strategies.

An integration of useful complementary values will result in positive transformation in a society. The fundamental values that constitute a society can be connected in defining the elementary conditions under which the society can be regarded to have undergone transformation (Liu 2006:505). Some African countries like Ghana have legislative and judicial decentralisation programmes 'as a framework for integrating aspects of the existing conflict management methods and skills of the national government and the country's ethnic groups' (Fred-Mensah 1999:951).

The modalities for integrating the traditional and the modern conflict management strategies in Nigeria require the following mechanisms: proper identification and elimination of shortcomings in the extant conflict management strategies, resuscitation of useful traditional values that have been jettisoned, and the establishment of a national security policy based on a synergy of the revised traditional and modern strategies. Many traditional institutions with their concomitant beliefs and values have been jettisoned without adequate evaluation. Examples of such institutions include the guilds and the guards, which safeguarded the political economy of traditional societies.

General beliefs and values involving sacredness of truth, providence, proverbs, idioms, oral histories, oral narratives and altruism are important elements of the political economy of traditional societies. These beliefs and values are usually applied to ensure economic prosperity and political stability. They can still contribute towards peace-building in the contemporary Nigerian society

even if they are injected into the modern constitution. The Nigerian government and traditional institutions can jointly consider and approve the appointment of mediators for conflict management. Studies on peace agreements have shown the primacy of mediation in the outcome of conflict management (Svensson 2009). It is argued that:

> … neutral mediators, who are engaged primarily because of their interest to end the war, will have incentives to hasten the reaching of an agreement to the expense of its quality. By contrast, biased mediators, seeking to protect their protégés, will take care to ensure that there are stipulations in an agreement guaranteeing the interest of 'their' side or use their particular access and leverage to make their side agree to costly concessions. Biased mediation processes are therefore more likely than neutral mediation processes to lead to elaborated institutional arrangements that are generally considered conducive to democracy and durable peace, such as power sharing, third-party security guarantees, and justice provisions (Svensson 2009:446).

Mediation is a critical step in conflict management, and the neutrality of a mediator may be difficult due to the likely influence of a power differential among parties to a conflict. This difficulty can be averted as adoption of some traditional logics of spirituality can contribute towards the success of the process. Rittle (2008) suggested that concerns for spirituality should be a top priority in conflict management strategies, with the belief in the sense of culpability to align human actions with God's will and commands. Rittle's suggestion aligns with African ontological mythology, which remains a central concern for the majority of the population in Africa.

In most African societies, the traditional and the modern systems play complementary roles in ensuring peace and social cohesion. In a number of cases, during the early post-colonial administrations in Africa, traditional rulers formed one of the houses of parliament. Calls have been made for integrating traditional institutions such as the chieftaincy into modern constitution engineering in some cases. The official adoption of traditional measures of

conflict management will promote peace and development in Nigeria. The politics of conflict management is expected to connect with the predominant traditions of a society.

Conclusion

The study is motivated by the rising spate of violent conflicts in Nigeria and the urgent need for adequate measures in managing them. It has focused on modalities for an integration of modern and traditional measures for peace-building. The Nigerian government's endeavours at managing violent conflicts have not yielded good results as they largely remain coercive and dismissive of local concerns. Various measures such as police, the military, curfew, propaganda, judicial panel, compensations, creation of new structures, and an offer of amnesty to prevent escalation of violence in Nigeria are replete with lapses, although they have been institutionalised. Similarly, emerging alternative measures such as vigilantes, militias, and ethnic solidarity have resulted in mixed results, whereas the original traditional approaches to conflict management remain grossly repressed. A synergy of different strategies can help in mitigating the rising spate of violence in Nigeria. The coincidence between the establishment of the Ministry for Niger Delta Affairs and the Joint Task Force (JTF)-driven violent raid on militants in the south-south as well as the militants' revocation of the ceasefire constitute a contradiction and lack of integration in the extant conflict management strategies in Nigeria.

A general concern for peace, security, and development remains central in both the traditional and modern strategies for conflict management despite the divergent approaches therein. Limitations of the official conflict management strategies and state failure to recognise and harness useful traditional approaches to social control have made conflicts uncontrollable in Nigeria. It is therefore recommended that the strengths of both the traditional and modern strategies of conflict management are essential and should be integrated to promote peace and development. An innovative policy is needed in this direction. The proposed innovative peace policy would promote fruitful collaboration among stakeholders, transformational leadership and a combination of traditional and modern conflict management strategies to stimulate development in Nigeria.

The fact that traditional and modern values have coexisted for centuries and would continue to do so provides additional justification for the proposed integration.

Useful aspects of traditional social institutions must be utilised and integrated with the official security apparatus to ensure peace in the conflict-ridden contemporary Nigerian society. The key areas that must be addressed include the issues of land and social justice. These would promote security of lives and properties. The proportion of people that have been using traditional and modern means to eliminate their opponents over land disputes will be drastically reduced. A situation in which governments seize communal land and issue certificates of occupancy to the privileged few at exorbitant costs can undermine peacemaking efforts. Alternatively, governments can liaise with communities concerning the use of their lands for developmental purposes including the construction of infrastructures. If people perceive that the governments meet their needs they would be ready to serve the system and peace will reign. The question of resource control can also be addressed in this regard. Governance with sincerity and transparency will promote security. A genuine integration of modern and traditional conflict management strategies, excluding their pitfalls, would provide lasting solutions to avoidable conflicts in Nigeria. This will result in building democratic institutions of accountability, social inclusion, transparency in governance, and constructive development in Nigeria. Essentially, traditional communication infrastructure and ontological spirituality should be built into the synergised package for conflict management.

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