AFRICAN JOURNAL ON
CONFLICT RESOLUTION

Towards ending conflict and insecurity in the Niger Delta region:
A collective non-violent approach

Traditional natural resource conflict resolution *vis-à-vis* formal
legal systems in East Africa: The cases of Ethiopia and Kenya

'Vote not Fight': Examining music's role in fostering
non-violent elections in Nigeria

Withdrawal from the International Criminal Court:
Does Africa have an alternative?

African Union approaches to peacebuilding:
Efforts at shifting the continent towards decolonial peace

African Journal on Conflict Resolution

Volume 17, Number 1, 2017

The *African Journal on Conflict Resolution* is a peer-reviewed journal published by the African Centre for the Constructive Resolution of Disputes (ACCORD) for the multidisciplinary subject field of conflict resolution. There are two regular issues per year, and occasionally also a special issue on a particular theme. It appears on the list of journals accredited by the South African Department of Higher Education and Training. ACCORD is a non-governmental, non-aligned conflict resolution organisation based in Durban, South Africa. ACCORD is constituted as an education trust.

The journal seeks to publish articles and book reviews on subjects relating to conflict, its management and resolution, as well as peacemaking, peacekeeping and peacebuilding in Africa. It aims to be a conduit between theory and practice.

Views expressed in this journal are not necessarily those of ACCORD. While every attempt is made to ensure that the information published here is accurate, no responsibility is accepted for any loss or damage that may arise out of the reliance of any person upon any of the information this journal contains.

Articles and book reviews may be submitted by e-mail, as Microsoft Word attachments, to the Managing Editor of the Journal, Prof Jannie Malan, at both the following e-mail addresses: ajcr@accord.org.za; malanj@accord.org.za.

Articles should be of good academic quality, and should be between 6 000 and 8 000 words in length. An abstract of between 100 and 200 words, a list of six keywords for indexing purposes and a few lines about the author should be included. Book reviews should be between 1 000 and 1 500 words.

All references, according to the Harvard method, should be included. As far as possible, in-text references should include the page numbers of the sections of sources referred to. In the case of a direct quotation, the exact page number is absolutely necessary. For the purpose of adding extra details, comments or references which may distract attention from the argument in the text, footnotes may be used sparingly. For more information about the referencing system, please see the excerpt from ACCORD's Style Guide, which is available at <http://www.accord.org.za>

Readers may subscribe to receive e-mail alerts or copies of ACCORD's publications by sending an e-mail to publications@accord.org.za.

Lay-out by Keegan Thumberan.

Contents

Managing Editor

Prof Jannie Malan
Senior Researcher, ACCORD

Advisory Panel

Prof Kasaija Apuuli
Associate Professor, Department of Political Science
and Public Administration, Makerere University, Kampala

Dr Vasu Gounden
Founder and Executive Director, ACCORD, Durban

Ms Phyllis Johnson
Executive Director, Southern African Research and Documentation Centre, Harare

Prof Chris Landsberg
South African National Chair: African Diplomacy and Foreign Policy, Faculty of
Humanities, and Senior Associate in the School of Leadership,
University of Johannesburg, Johannesburg

Dr Shauna Mottiar
Senior Research Fellow, Centre for Civil Society, School of Development Studies,
University of KwaZulu-Natal, Durban

Prof Tim Murithi
Head of Programme: Justice and Reconciliation in Africa,
Institute for Justice and Reconciliation, Cape Town

Dr Angela Muvumba Sellström
Department of Peace and Conflict Research,
Uppsala University, Uppsala

Prof Nana Poku
Professor of Health Economics, and Executive Director of the Health Economics
and HIV/AIDS Research Division (HEARD), University of KwaZulu-Natal, Durban

Prof Jairam Reddy
Chairperson, Council of Durban University of Technology, Durban

Dr Alioune Sall
Executive Director, African Futures Institute, Pretoria

Dr Helen Scanlon
Convenor of Justice and Transformation Programme, Department of
Political Studies, University of Cape Town, Cape Town

Dr Meena Singh
Research Associate of the Common Security Forum, Cambridge

Foreword

Jannie Malan

Whenever we think about or discuss conflict, or train others for dealing with conflict, we unavoidably make use of terms which serve as convenient codes to communicate concepts, views or approaches. And as we communicate, we are inevitably busy selecting the most appropriate terms. In most cases we do this almost unconsciously. When speaking, we often make our choices of terms and words in split seconds, without even realising that we do it. When writing, we usually devote more time to decide on the most appropriate words or phrases to convey the meanings we wish to share.

The written texts in this issue prompted me to re-look at the semantics behind some of the familiar concepts in our field – especially the two well-known and commonly used sets with, respectively, 'conflict' and 'peace' as common components. More than fifty years ago, we first became used to 'conflict prevention, conflict management and conflict resolution'. More recently, the peace-oriented set, 'peacemaking, peacekeeping and peacebuilding', has gained currency, especially since the publication of the United Nations General-Secretary's Report, *An Agenda for Peace* (Boutros Ghali 1992:I–VI). When looking again at this landmark document, I found the first sentence in the section on 'post-conflict peacebuilding' very meaningful: 'Peacemaking and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people' (Boutros Ghali 1992:VI 55).

It was to the potentially great value of peacebuilding in a post-conflict context that the contents of these articles have turned my thoughts. I realised how much meaning can be communicated by the concept of 'post-conflict peacebuilding'. It duly emphasises that the objective of peacebuilding is nothing less than the consolidation of peace and the advancement of well-being among people. But at the same time it reminds us that the context of peacebuilding is a situation that was disrupted by conflict but was then restored by termination of the conflict. It may also remind us that the initial provocation for many, if not most, conflicts seems to be the disruption of the well-being of people through unfairness or plain injustice. Where that is indeed the case, 'justice-restoring' could very well serve as a synonym for 'conflict-resolution'.

With regard to 'post-conflict peacebuilding' then, the pertinent and important questions seem to be: How 'post' is the 'post-' in 'post-conflict'? If not, why not? Is an injustice problem perhaps still unresolved? My introductory suggestion to our readers, then, is to bear such questions in mind. Four of the articles – which arrived without any call for papers on a specific topic – are on 'post-', and one is on 'pre-', while the book review is on 'in-'.

Angela Ajodo-Adebanjoko's article has the goal of 'ending conflict' in its title. It shows how conflicts since early times were rooted 'in the protest against injustice', and how recent conflicts are driven by 'the quest for [just] resource control'. It emphasises that an experiment to solve the injustice problem by declaring amnesty only led to an 'uneasy' and short-lived peace. In Tsegai Ghebretekle's article we find the argument that formal litigation can bring natural resource conflicts to a legal settlement, but not to a social closure – for which traditional methods are usually more appropriate. In the article of Michelle Nel and Vukile Ezrom Sibiya, post-conflict cases where there is an urgent need for retributive justice are discussed. After serious international crimes such as genocide, crimes against humanity and war crimes, impunity cannot be tolerated and perpetrators have to be held accountable. In his article, Siphamandla Zondi explores reasons why the African Union's approaches to post-conflict peacebuilding have largely

had limited success. His finding is that the 'post-' in 'post-colonial' has not thus far been decisive enough, and that the independence of African states has not yet brought about a liberation from colonialism. Remnants of coloniality have stubbornly remained embedded in 'state, society and politics'. Then, since any 'post-conflict' situation can unexpectedly become the brewing ground for a next conflict, we have in Joseph Adebayo's article a very interesting and meaningful 'pre-conflict' perspective – the conflict-preventing power of art. Finally, the book review is on a publication that examined the in-conflict identities of people, and found that after the conflict, the question of national identity remained unresolved.

With sincere thanks to our authors and peer reviewers, we are sending out this issue, trusting that it will provide significant ideas about *ending* conflict and *preventing* conflict. And that it will encourage further exploring of *injustice* as caused by superiority-tainted identities (superior we/inferior they), identity-based interests of a dominating group or the inequality-inflicting hegemony of a ruling party, and of *justice* as contextually oriented to retribution and/or conciliation and/or conflict prevention.

In my concluding sentence, I just wish to emphasise the phrase 'comprehensive efforts' in *Agenda*, and the concept of 'collective approach' that can be read in or between the lines of this issue.

Source referred to

Boutros Ghali, Boutros 1992. *An Agenda for Peace.* Available from: <http://www.un-documents.net/a47-277.htm> [Accessed 14 June 2017].

Towards ending conflict and insecurity in the Niger Delta region: A collective non-violent approach

Angela Ajodo-Adebanjoko*

Abstract

Since independence in 1960, insecurity has been a feature of the Nigerian State as conflicts in different parts of the country have continued to make life insecure. In the Niger Delta, violence has been the bane of the region where conflicts have been occurring for over four decades. Beginning from the pre-colonial period, the region has witnessed a series of conflicts, which had their roots, initially in the protest against injustice, and in recent years in the quest for resource control. All efforts to resolve conflict in the region failed until 2009 when amnesty was declared by the Yar'adua/Jonathan administration and some form of uneasy peace prevailed. However, seven years down the line, there is renewed militancy in the region and effort is once again geared towards finding lasting peace. This article assesses the efforts made by the Federal Government of Nigeria to address conflicts in the region from the early 1960s to date. It is based on a literature study and on the author's knowledge of the issues in the Niger Delta. Findings from the work show that the Federal Government's approach to resolving conflict in the region has not been successful because it has not adequately addressed the issues that gave rise to the conflict, and because of its emphasis on the

---

* Dr Angela Ajodo-Adebanjoko is a Senior Lecturer in the Department of Political Science, Federal University Lafia, Nasarawa State, Nigeria. As member of several professional bodies, she is well published. Her research interests include: Gender studies, conflict and security studies, development studies and foreign policies.

use of force. The article therefore recommends a Collective Non-violent Conflict Management approach – involving a group of negotiators, both international and local, an international mediator, as well as all the parties to the conflict – as the means for resolving conflict in the region. There is no doubt that a viable resource conflict strategy based on an alternative framework of multilateral cooperation is necessary for resolving and preventing a recurrence of future conflict in the Niger Delta region.

Introduction

The Niger Delta region of Nigeria, located in the south-south zone of the country, is the region that produces oil – the lifeline of the Nigerian economy. Since 1956, when oil was discovered in commercial quantity in Oloibiri in present day Bayesa state, Hydrocarbon resources have been the engines for Nigeria's economy, as oil provides 95% of Nigeria's foreign exchange earnings and 80% of the government's budgetary revenues (Davis 2010:1–2). According to the Nigerian National Petroleum Company, Nigeria's oil production accounts for 8% of the Organisation of Petroleum Exporting Corporation's (OPEC) total daily production and 3% of the world's volume. However, the discovery of oil, which was expected to improve the lot of the communities where it is sourced, has become a curse rather than a blessing because of oil exploration activities and its attendant hazards, such as air and water pollution. This has led to the indigenous people demanding compensation as well as control of the oil wealth. This demand has led to a confrontation between activists and Multinational Oil Companies operating in the region as well as the Federal Government. The struggle which started as a peaceful protest metamorphosed into armed conflict after the killing of a renowned activist and playwright in the region, Ken Sara-Wiwa and eight other Ogoni men. The new wave of protests after this has included the abduction of foreign oil workers, bombing of oil installations and destruction of lives and property.

In 2009, the Federal Government interceded with an amnesty programme under former President Musa Yar'adua and his deputy, Goodluck Jonathan. The amnesty, which was proposed to last for five years, required that repentant militants surrendered their arms in return for unconditional national pardon. This exercise witnessed a total of 26 808 militants surrendering their arms and ammunition and being granted amnesty, which involved co-opting or integrating them into the society as well as training them (Ajodo-Adebanjoko 2016:1). While amnesty lasted, there was some reprieve as militants sheathed their swords. However, there has been recourse to arms in the region in recent times as new militant groups emerged in 2016 with various demands. While the new names that emerged this time differ from the past ones, there is no doubt that this was old wine in new bottles. The new militants are still insisting on resource control and bombing of oil installations, which is re-immersing the country in conflict once again. The Federal Government in its bid to check this has been returning fire for fire by constituting a military operation code-named operation 'Crocodile Smiles', which the militants and many analysts feel is not the answer to the problem of conflict in the region. This article is an attempt to assess the Federal Government's approach to tackling the new wave of militancy in the region. The study proposes a Collective Non-violent Conflict Management approach involving local and foreign negotiators, an international mediator and the parties to the conflict working together to find a lasting solution to the conflict. The choice of this approach is based on the fact that many of the strategies (violent and non-violent) adopted in the past to resolve conflict in the region have not achieved the purpose.

Conflicts and insecurity in the Niger Delta

The Niger Delta region of Nigeria comprises the nine states Abia, Akwa-Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers. About 31 million people live in the region which is renowned as one of the World's ten most important wetland and coastal marine ecosystems. The Niger Delta is rich with a diverse mosaic of ecological zones, five of which are the Mangrove Forest and Coastal Vegetation Zone, the Fresh Water Swamp

Forest Zone, the Lowland Rain Forest Zone, the Derived Savannah Zone and the Montane Zone. The Niger Delta is also the location of massive oil deposits, which have been extracted for decades by the government of Nigeria and by Multinational Oil Companies (MNOCs) (Ajodo-Adebanjoko and Ojua 2013:2). Since 1970, the country has earned at least $300 billion from energy development and in 2005 it made $450 billion. With about 40 million barrels of proven oil reserves, it currently produces 2.4 million barrels of oil per day, which constitutes about 90% of the government's revenue and 95% of the country's foreign exchange earnings (Ajodo 2002:6). Nigeria is West Africa's biggest producer of petroleum and the sixth largest supplier of oil in the world, thanks to oil from the Niger Delta. Oil wealth has been instrumental to Nigeria's emergence as a leading player in world and regional politics. Specifically, Nigeria has been playing a leading and dynamic role in African politics as a member of several regional organisations, such as the Africa Union (AU) and the Economic Community of West African States (ECOWAS), and an active role in global politics under the United Nations. With the oil boom in the early 1970s, Nigeria began to assert her influence around the globe and to date whatever influence Nigeria has, is credited to the discovery and exploration of oil.

However, the region which bears this economically important oil has been enmeshed in conflicts for more than four decades – owing to the negative impact of oil exploration. The region is a tale of poverty, squalor and gross underdevelopment in the midst of plenty, due to environmental degradation which has affected the people's agricultural means of livelihood. The effect of oil spills and gas flares has been death to aquatic lives and waste to farm lands. It is on record that more gas is flared in Nigeria than anywhere else in the World (Nore and Turner 1980). It is on record that the oil industry in the Niger Delta is one of the worst cases in the world of gas flaring. Nigeria is the second largest offending country, after Russia, in terms of the total volume of gas flared and the resulting emission of about 70 million tons of CO_2 a year, higher than the emissions in Norway (Worgu 2000). In the case of oil spills, Nigeria has the highest number of oil spills in the world; between 9 million and 13 million barrels of oil have been spilled in

the Niger Delta (although the Department of Petroleum Resources (DPR) puts the amount of petroleum spilled in the area between 1976 and 1996 at 1.8 million out of a total of 2.4 million) (Ajodo 2012). A UNDP report states that more than 6 800 spills were recorded in the area between 1976 and 2001 while the Nigeria National Petroleum Company (NNPC) places the quantity of petroleum spilled into the environment yearly at 2 300 cubic metres, with an average 300 industrial spills annually. The World Bank however believes that the amount of oil spills could be ten times higher than the officially released figures. Erosion, canalisation, intra- and inter-communal conflicts between host communities are also some effects of oil explorations in the region. This has led to protests by the indigenous people, leading in turn to full blown conflicts.

Conflicts in the Niger Delta have been occurring as far back as the pre-colonial period and the early 1960s when there were protests against the marginalisation of the region. In the early 1990s, there were also non-violent protests in Ogoniland to protest against the degradation of the environment by Oil companies. After these series of uprisings, a new wave of protests characterised by militancy began in 2003. Violence during this period grew out of the political campaigns in 2003. As they competed for office, politicians in Rivers State manipulated the Niger Delta Vigilantes (NDV), led by Ateke Tom, and the Niger Delta People's Volunteer Force (NDPVF), led by Alhaji Asari Dokubo, and used these groups to advance their aspirations, often rewarding gang members for acts of political violence and intimidation against their opponents (Bekoe 2005). This eventually witnessed the emergence of other militant groups, such as the Movement for the Emancipation of the Niger Delta (MEND), and the Niger Delta Liberation Front (NDLF) which unleashed mayhem on the region. This introduced militancy into the region which was characterised by armed attacks, bombing of oil installations and hostage taking, particularly of foreign oil workers – thereby ushering in a Hobbesian Niger Delta (Ibeanu 2006:9). For several years, the region was characterised by insecurity; and at the height of the crisis, the situation was dreaded by Nigerian citizens and foreigners alike. As a result, many people fled their communities and many foreign businesses were relocated to their home countries.

To address the state of insecurity in the region, the Federal Government in 2009 proposed an amnesty programme which witnessed a large number of militants surrendering their arms in return for training by the government. Under the programme, many repentant militants were trained within and outside the country and during the period, relative peace returned to the region. However, this has been short-lived as there has been the emergence of new militant groups such as the Niger Delta Avengers (NDA), the Red Egbesu Water Lions, Joint Niger Delta Liberation Force (JNDLF), Niger Delta Red Squad (NDRS) and the Adaka Boro Avengers in 2016. These new groups have continued from where the former militant groups left off with renewed bombing of oil installations and abduction of oil workers. Several lives have been lost including those of militants and security operatives, and insecurity has become the order of the day once again in the Niger Delta. Apart from death that has occurred as a result of confrontation with the militants, security operations have failed due to the risks involved. For instance, in 2016, about four members of the Operation Crocodile Smile died when their boat capsized while they were on patrol. There has also been destruction of property worth millions of naira. Militancy was indeed taking its toll on the Nigerian economy with the country losing over N1.8 billion daily due to attacks on oil installations by militants (Okinbaloye 2016). The government has responded to the attacks by matching force with force, a step which analysts have criticised as not helping to achieve the goal of enduring peace in the region.

Amnesty represented an opportunity to stabilise the region for constructive conflict resolution negotiations. It was not the first time that an amnesty initiative had been put forward to resolve the violence in the region, but this time it was an offer backed with solid proposals for the necessary disarmament, demobilisation and reintegration of the region's militants (Davis 2010). Despite this, however, the programme was not able to address regional violence, largely due to the lack of attention to the peculiar type of conflict in the Delta and the issues that gave rise to it. Thus, in order to fully appreciate the task of conflict resolution there, it is important to look at past attempts at conflict resolution in order to consider ideas for the future.

Theorising conflict in the Niger Delta region

Scholars are unanimous in their views that the end of the Cold War and economic globalisation in the 1990s have had a significant impact on warfare globally and that the search for appropriate theories to explain this has contributed to the growing debate on the importance of natural resources as drivers of violent conflicts (Kaldor 1999; Duffield 2001; De Soysa 2002:1; Berdal 2003). Empirical studies have also shown that natural resources underlie territorial struggles which have been the most prevalent form of conflict all through history (USIP 2007:11; Alao 2007:1). Extant literature on conflicts, particularly in Africa, suggests that an overwhelming percentage of these conflicts are resource-based (De Soysa 2002; Blench 2006). According to a recent United Nations report in Sylvester (2012), in the last sixty years at least 40% of civil wars on the African continent have been connected with natural resources. Even in the natural sciences, there is a consensus that competition over scarce natural resources is one of the key drivers of violent conflict within and across species (Bhattacharyya 2015). Similarly, studies by the World Bank (2003) and others have shown that countries whose wealth is largely dependent on the exportation of primary commodities (Nigeria, Sudan, Chechnya, Liberia, Indonesia and Angola for instance) are highly prone to civil violence, and that those with oil and natural gas are the most conflict prone (Bannon and Collier 2003:ix). Nigeria is the 12th largest producer of petroleum and its 8th largest exporter worldwide. Resource-related conflict in Nigeria revolves around oil with about 95% of violent conflict in Nigeria since 1997 being resource-related (Kishi 2014). Studies also found that the fight for resource control strengthens the segmentation around already existing ethnic or linguistic cleavages thereby escalating conflict (Gleditsch and Urdal 2002:286; Gurr and Harff 1994). Against this background, this work adopts a combination of eco-violence and psychological primordial theories.

Eco-violence, also known as environmental conflict, theory was developed by Homer-Dixon (1999:30) in his attempt to explain the causal relationship between natural resource endowment and the outbreak of violent conflict.

According to him,

> Decrease in the quality and quantity of renewable resources act singly or in various combinations to increase the scarcity, for certain population groups, of vegetation, farmland, water, forests etc. This scarcity of ecological resources can reduce economic productivity, both for the local groups experiencing the scarcity and for the larger regional and national economies. Consequently, the affected people may migrate or be expelled to new lands … while decreases in wealth can cause deprivation conflicts (Homer-Dixon 1999:30).

The central argument of the theory is that declining availability of renewable natural resources, which results in competition over scarce resources, engender violent conflict (Ajaero et al. 2015:471). This view was expressed by Annan (2006) when he stated that 'environmental degradation in forms such as desertification, resource depletion and demographic pressure exacerbates tensions and instability ...'. Michael (2001) also noted that:

> Competition over the control of valuable oil supplies and pipeline routes has emerged as a particularly acute source of conflict in the 21st century. With the demand for oil growing and many older sources of supply (such as those in the United States, Mexico, and China) in decline, the pressure on remaining supplies, notably those in the Persian Gulf area, the Caspian Sea basin, South America, and Africa, is growing ever more intense.

This is seen from competition in Africa over the revenue generated from scarce natural resources which has led to violent conflict in Angola, the Democratic Republic of the Congo, Rwanda, Sudan and Nigeria (Bhattacharyya 2015). The foregoing aptly describes the situation in the Niger Delta where oil exploration activities leading to environmental degradation such as shortage of farmlands, death of aquatic life, air and water pollution, oil poisoning causing respiratory ailments and destruction of mangrove forests, often without adequate compensation, have resulted in conflict. This was why the late environmentalist, Ken Saro-Wiwa, lamented that the people of the region faced extinction in what he described as an ecological war (Saro-Wiwa, cited in Na'Allah 1998).

Increasing frustration emanating from oil exploration has led to violent resistance which has culminated in conflict in the region between locals represented by militants and oil corporations operating in the region.

Psychological/primordial theorists, on the other hand, are of the view that humans have a deep-rooted psychological need to dichotomise and to establish enemies and allies, which leads to the formation of ethnic and national group identities and behaviours. How a group perceives itself and its relationship with those outside the group determines whether their relationship will be based on cooperation, competition or conflict. Usually those within the group are regarded as better than those outside, and this leads to 'me-you', 'we-they' 'insiders-outsiders' and 'minority-majority' sentiments. In the Niger Delta, conflicts are generated by grievances about natural resources (which border on demands for ownership of the resource concerned), the distribution of resource revenues and about environmental and social damage caused by extracting the resource. In Nigeria, the Federal Government is the one responsible for resource allocation and control, but conflict has arisen over the most appropriate revenue sharing formula with the Niger Delta people who demand that a special proportion be given to them due to their oil richness – just as it was done for the north when agricultural produce was the mainstay of the economy (Sheriff et al. 2014:75). This demand has however been refused by Nigerians in the rest of the country and by some of the leaders. The result was the above-mentioned primordial sentiments of group versus group, which led to the creation of ethno-nationalism-identities (Kasomo 2012:1; Alao 2007:159). We see this in the confrontation between foreign oil companies and local communities in the Niger Delta and between the Niger Delta people who view themselves as minorities being marginalised and oppressed and the 'majorities' in the other parts of the country that do not produce oil but reap the benefits of revenue allocation. Consequently, there have been violent agitations in the form of militancy and a call for secession by the Niger Delta buttressing the argument of Bannon and Collier (2003:5) that violent secessionist movements are statistically much more likely if a country has valuable natural resources, especially oil.

Efforts by the Nigerian government to address conflicts in the Niger Delta

Various efforts, beginning even before independence, have been made by the Federal Government to end the conflicts in the region. In 1957, the government established the Willink Commission to look into the problems of the minorities, and this Commission acknowledged the utter neglect of the region and, among other proposals, recommended the creation of the Niger Delta Development Board (NDDB). This Board could not achieve its aims for many reasons, one of which was the fact that its headquarters were located in Lagos, far from the problem area. With the creation of twelve states in 1967 and the establishment of the Niger Delta River Basin Authority (NDRBA), the NNDB became obsolete. In the second republic, a 1.5%Federation Account for the development of the Niger Delta region was set up for the oil producing areas, but because of the constraint of operating from its secretariat in Lagos it was not able to achieve its purpose.

In spite of recurrent failures, and in order to show its commitment to ending the crisis and ensuring the development of the area, the Federal Government established some other Commissions such as the Oil Mineral Producing Areas Development Commission (OMPADEC) which was in operation from 1992 to 1999. OMPADEC was set up by the Ibrahim Babangida Administration under the chairmanship of Chief Albert Horsefall. Like its predecessors, it failed to achieve its mandate owing to official profligacy, corruption, excessive political interference and lack of transparency. After this, the Niger Delta Environmental Survey was set up in 1995, followed by the Niger Delta Development Commission, established in 2000 by President Olusegun Obasanjo with a vision 'to offer a lasting solution to socio-economic difficulties of the Niger Delta Region' and a mission 'to facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful' (Niger Delta Development Commission 2000:103). The government also put in place

other mechanisms such as the Task Force on Pipeline Vandalisation (April 2000) operated by the Nigeria Police Force in collaboration with the NNPC (Niger Delta Development Commission 2001). Similar task forces were also set up by the navy, army and State Security Service (SSS) in various states of the Niger Delta. In Delta state, the government passed a law in August 2001 banning militant groups blamed for the disruption of oil activities in the state. The Special Security Committee on Oil Producing Areas was also set up by the Federal Government in November 2001 to address the prevailing situation in the oil producing areas. Other efforts include the convening of the first Niger Delta peace conference in Abuja in 2007, a Joint Task Force (JTF) in 2008, and a Technical Committee made up of stakeholders and the Niger Delta ministry in 2008.

Amnesty and post-amnesty era

Following criticisms of the military option, especially when it became obvious that the use of force by the JTF was aggravating rather than resolving the conflict, an amnesty programme was set up by the Federal Government on 25 May 2009 under the leadership of a former president, Umar Musa Yar'Adua. Amnesty was the Federal Government's effort towards bringing enduring peace, security, stability and development to the region. It involved granting of national and unconditional pardon to all armed militants in the Niger Delta region who in turn were to surrender their arms and ammunition, sign an undertaking not to return to the creeks and continue with the struggle and also sign the military re-unification forms. Amnesty followed the recommendations contained in the 2008 report by the Niger Delta Technical Committee (NDTC) initially established by the Federal Government, and chaired by MOSOP president Ledum Mitee, to assess initiatives taken in the region and provide for a comprehensive report and recommendations. The 45-member committee was inaugurated on 8 September 2008 to collate and review all past reports in the Niger Delta, appraise their recommendations and make other proposals that will help the Federal Government achieve sustainable development, peace,

human and environmental security in the Niger Delta Region (Mitee 2009). The amnesty programme included a disarmament, demobilisation and reintegration process.

The first stage of the programme led to 26 808 ex-combatants accepting the offer. Of them, 20 192 accepted the offer on or before 4th October 2009 and 6 616 during November 2009 (Ejovi and Ebie 2013). The second stage involved government setting up demobilisation camps for the demilitarisation and rehabilitation of the ex-militants; while the third stage involved government's engagement with the leadership of the combatants and ex-combatants, as well as non-combatant youths, for employment and socio-economic empowerment. This therefore brought an end to the spate of bombing and kidnappings in the region, and led to an increase in oil outputs. Despite this seeming success, amnesty was alleged to be riddled with cases of corruption which made it less effective than it should have been. As a result, five years after amnesty new militant groups emerged in the region, namely; the Niger Delta Avengers (NDA), The Joint Niger Delta Liberation Force (JNDLF), the Niger Delta Red Squad (NDRS), the Adaka Boro Avengers (ABA) and the Niger Delta Greenland Justice Mandate (NDGJM). In response, the Federal Government deployed 3 000 military personnel to the region with a plan to deploy 10 000 more by the year 2017 in addition to launching Operation Crocodile Smile aimed at restoring peace to the region (Utebor 2016). Criticisms have however followed the deployment of troops and particularly the use of force in the region. Critics are of the view that the new security measures will further worsen the security situation in the region and they therefore called for dialogue. In response to this call, the government proposed a $10 billion (N4 trillion) infrastructural rebirth investment programme for the region. Leaders and stakeholders from the region rejected this, however, on the grounds that they were not consulted before it was proposed (Omotayo 2016). In addition, the Federal Government in November 2016, convened a peace dialogue in which President Buhari met with leaders from the region in Abuja to discuss the way forward. At the meeting, leaders of the region led by Edwin Clark

presented a 16-point agenda to the Federal Government and although the president welcomed the requests in addition to stating that the reports of amnesty would be implemented, peace remains elusive. Some critics have attributed the rise in militancy to the failure of the 13% derivation principle and amnesty to produce development in the region. The result has been pressure and a call for 'resource control' or 'fiscal federalism' (Akintunde and Hile 2016).

Recommending the collective non-violent approach to conflict management in the Niger Delta

There is no gainsaying that many strategies have been put in place to resolve the ongoing imbroglio in the Niger Delta. However, these efforts have failed to have the desired effect of ushering in the needed peace. The failure of the various strategies is probably due to the fact that they lacked sufficient elements of democracy, accountability, equity and active public participation of all stakeholders (Ako 2011), which is why Abidde (2009) opined that 'peace cannot be dictated; it has to be a natural born child of a just and humane environment'. In view of this situation, this article proposes Collective Non-violent Conflict Management (CNCM) as an alternative approach. This approach is based on collective or cooperative problem solving to conflict management. CNCM is a multilateral non-violent and democratic approach to conflict resolution involving a team of negotiators, a mediator and parties to a dispute working together to find a lasting solution. It is an emerging phenomenon in international relations and combines the elements of non-violence such as dialogue, negotiation and mediation in resolving conflict, building trust and seeking a 'win-win' solution (Crocker et al. 2011:51). Non-violence as an ideology and a practice is not a new approach to conflict resolution but has been accepted for decades. It rejects the use of violence as a conflict resolution mechanism and serves as a potent force for resolving conflict and bringing about social change (Jaspreet 2012:7). CNCM as an approach is similar to the Collective Conflict Management (CCM) approach of Crocker and others (2011:51), which involves countries,

international and regional/sub-regional organisations, and, importantly, Non-governmental Organisations or private actors addressing potential or actual security threats in a concerted action to:

- control, diminish or end violence associated with conflict through combined peace operations and/or mediation, conflict prevention and avoidance;
- assist, where appropriate, with a negotiated settlement through peacebuilding, cross-border management and other cooperative efforts and measures;
- help address the political, economic and/or social issues that underlie the conflict; and/or
- provide political, diplomatic and economic guarantees or other long-term measures to improve local security conditions which involve international, regional/sub-regional and local actors and institutions supporting negotiation to end a conflict.

CNCM is a multilateral arrangement involving all parties in the conflict management process working together with parties to the conflict to find solutions to their problems. Negotiation is facilitated by a mediator acceptable to both parties. The mediator is a neutral person and a national of another country. The approach is voluntary, informal, improvised and adapted to the ad hoc situation; and because of the peculiarity and distinctiveness of each region, it is most effective when it occurs within regions (Crocker et al. 2011:51). Negotiations should preferably take place on neutral ground, for instance in a neighbouring country. In the case of the Niger Delta conflict, Ghana provides an appropriate location for negotiations.

The multilateral approach to conflict resolution has been found to be best suited for resolving natural resource conflicts in the 21st century (Mwanika 2010:7; Pynn 2011). Multilateral non-violent conflict resolution mechanisms have been successfully used in the Liberia peace process, the Philippines–Mindanao talks, the Afghanistan–Pakistan border dispute and the Horn of Africa Piracy (Crocker et al. 2011:46–49).

Characteristics of the collective non-violent approach

- It is usually undertaken by an ad-hoc arrangement or coalition that deals with specific security challenges and immediate conflict management needs in the situation concerned.
- It is a democratic problem-solving approach that gives parties to a conflict equal opportunity to participate in finding common solutions to their problems. It involves communicating face-to-face with one another, dialoguing, and negotiating, thereby building trust. This is very important in the Niger Delta case as the issue of lack of trust on both sides has impeded the process of dialogue.
- It is particularly effective when one or more key actors at the official or unofficial level are prepared to take the lead and mobilise partners who are willing to support a shared undertaking.
- It comprises peacebuilding and conflict transformation processes from their inception to their conclusion, including the implementation of formal peace settlements which has been lacking in the peace processes in the Niger Delta so far.

Challenges of the collective non-violent approach

- It needs a supportive environment as parties to the dispute must agree to the process and cooperate with the team otherwise it would not succeed. Because of the issue of sovereignty, a State may be reluctant to adopt an approach that may been seen as foreign interference in its domestic politics.
- It is expensive as it requires using a neutral location such as another country and paying members of the team of negotiators and the mediator.
- It requires members to have the right skills and resources for the success of the task at hand and as a result it needs long-term planning, training and mobilisation of resources which depend on availability of funds.
- It is ineffective where one or more key actors are not prepared to take the lead and mobilise partners for the task.

Conclusion

Five years after the declaration of amnesty, there has been a resurgence of militancy in the Niger Delta region. Although many claim it is in response to the government's anti-corruption stance, the new wave of militancy is worrisome as the region is once again back to the old days of violence and insecurity characterised by abductions and vandalism of oil and gas pipelines. Conflict in the region is adversely affecting the Nigerian economy at a time when the price of crude oil has plummeted and there are calls for diversification of the economy. Furthermore, insecurity in the region is compounding an already tense and insecure political climate in the country and this is further being heightened by the use of force by federal troops. The use of force has never been found to be a solution for problems such as those of the Niger Delta and therefore a multilateral non-violent approach is recommended. A cooperative approach to resource conflict management is not only necessary for avoiding conflict and addressing social and environmental crises, but it would also salvage significant financial resources and foster goodwill among parties to the dispute.

Sources

Abidde, O. Sabella 2009. Niger Delta amnesty: Peace cannot be dictated. *Pambazuka News*, issue 447. Available from: <http://pambazuka.org/en/category/features/58611> [Accessed 29 February 2016].

Ajaero, C.K., A.T. Mozie, I.C. Okeke, J.P. Okpanachi and C. Onyishi 2015. The drought-migration nexus: Implications for socio-ecological conflicts in Nigeria. *Mediterranean Journal of Social Sciences*, 6 (2), S1, pp. 470–478.

Ajodo, Angela 2012. Niger Delta crisis and Nigeria's external relations from 1992–1998: An assessment. Ph.D. thesis, University of Abuja.

Ajodo-Adebanjoko, Angela 2016. Assessing amnesty programme in the Niger Delta in the face of renewed militancy in the region. *Nasarawa Journal of Political Science*, 4 (1), pp. 150–168.

Ajodo-Adebanjoko, Angela and Takim Ojua 2013. An assessment of Niger-Delta crisis on Nigeria's external relations - From 1992–2008. *International Journal of Humanities and Social Science*, 3 (8), pp. 179–192.

Akintunde, Jide and Martins Hile 2016. Issues in resolving oil conflict in the Niger Delta. *Financial Nigeria*, 16 June 2016. Available from: <www.financialnigeria.com/issues-in-resolving-oil-conflict-in-the-niger-delta-blog-142> [Accessed 13 September 2016].

Ako, R. 2011. The struggle for resource control and violence in the Niger Delta. In: Obi, C. and S.A. Ristad eds. *Oil and insurgency in the Niger Delta: Managing the complex politics of petro-violence*. London/New York, 2 Ed Books.

Alao, Abiodun 2007. *Natural resources and conflict in Africa: The tragedy of endowment*. Rochester, NY, University of Rochester Press.

Annan, Kofi 2006. Progress report of the secretary general on the prevention of armed conflict. Agenda item 12, 16th Session of the General Assembly, A/60/891. Available from: <http://www.ipu.org/SPLZ-e/unga06/confl ict.pdf> [Accessed 29 January 2017].

Bannon, Ian and Paul Collier 2003. *Natural resources and violent conflict options and actions*. Washington, D.C., World Bank.

Bekoe, Dorina 2005. *Strategies for peace in the Niger Delta*. Peace Brief, United States Institute of Peace. Available from: <www.usip.org/publications/strategies-peace-in-the-niger-delta> [Accessed 13 September 2016].

Berdal, M. 2003. How 'new' are 'New Wars' global economic change and the study of civil war? *Global Governance*, 9 (4), pp. 477–502.

Bhattacharyya, Sambit 2015. Natural resources and conflict in Africa: Isolating facts from fiction. Available from: <blogs.csae.ox.ac.uk>2015/11>natural-r…> [Accessed 27 January 2017].

Blench, Roger 2004. *National resources conflict in North-Central Nigeria: A handbook and case studies*. Cambridge, Mallam Dendo Ltd.

Crocker, A. Chester, Fen O. Hampson and Pamela Aall 2011. *Collective conflict management: A new formula for global peace and security cooperation?* Available from: <http://glf.ywd.ca/site/global_leadership_foundation/assets/pdf/CROCKER_et_al_-_Collective_Conflict_Management.pdf > [Accessed 28 January 2017].

Davis, James 2010. Getting it right: Searching for the elusive solution in the Niger Delta. *Cornell International Affairs Review*, 4 (1). Available from: <www.inquiriesjournal.com/.../getting-it-right-searching-for-the-elusive-solution-in-the-niger-delta> [Accessed 13 September 2016].

De Soysa, Indra 2002. Paradise is a bazaar? Greed, creed, and governance in civil war, 1989–99. *Journal of Peace Research*, 39 (4), pp. 395–416.

Duffield, M. 2001. *Global governance and the new wars: The merging of development and security*. London, Zed Books.

Ejovi, Austine and C. Sunday Ebie 2013. Niger Delta: A critical appraisal of the amnesty programme and social political development in Nigeria. *Research on Humanities and Social Sciences*, 3 (22), pp. 130–137.

Gleditsch, Nils P. and Henrik Urdal 2002. Ecoviolence? Links between population growth, environmental scarcity and violent conflict. *Journal of International Affairs*, 56 (1), pp. 283–302.

Gurr, Ted R. and Barbara Harff 1994. *Ethnic conflict in world politics*. Boulder, CO, Westview.

Homer-Dixon, Thomas F. 1999. *Environment, scarcity, and violence.* Princeton, Princeton University Press.

Jaspreet, Ruby 2012. Principles of non-violence can be calming balm. In: National Foundation for Communal Harmony (NFCH) *Promoting principles of non-violence for conflict resolution.* New Delhi, NFCH. pp. 1–8.

Kaldor, Mary 1999. *New and old wars: Organized violence in a global era.* Cambridge, Polity Press.

Kasomo, D. 2012. An assessment of ethnic conflict and its challenges today. *African Journal of Political Science and International Relations*, 6 (1), pp. 1–7.

Kishi, Roudabeh 2014. Resource-related conflict in Africa. Available from: <www.crisis. acleddata.com/author/roudabeh> [Accessed 27 January 2017].

Klare, Michael T. 2001. Resource wars: The new landscape of global conflict. New York, Henry Holt and Company.

Mitee, Ledum 2009. The Niger Delta: A vision to Nigeria's development. Paper presented at the 15th All Nigerian Editors Entrance, Kaduna, Nigeria.

Mwanika, Philip Arthur Njuguna 2010. Natural resources conflict management processes and strategies in Africa. Institute for Security Studies (ISS) Paper 216. Pretoria, ISS. **A**vailable from: <www.makepeacehappen.net> [Accessed 27 January 2017].

Na'Allah, N. 1998. *Ogoni's agonies: Ken Saro Wiwa and the crisis in Nigeria.* Trenton, NJ, African World Press.

Niger Delta Development Commission (NDDC) 2000. *Niger Delta Regional Development Master plan.* Port Harcourt, NDDC.

Nore, P.C. and T. Turner 1980. *Oil and class struggle.* London, Zed Books.

Ibeanu, Okechukwu 2006. *Civil society and conflict management in the Niger Delta: Scoping gaps for policy and advocacy.* CLEEN Foundation Monograph Series No.2. Lagos, CLEEN Foundation.

Omotayo, Yusuf 2016. Army storm Bayelsa to stop declaration of Niger Delta Republic. *Leadership Newspaper*, Abuja, 1 August.

Pynn, Kyle 2011. Unilateral versus multilateral approaches to conflict resolution. Available from: <https://kylepynn.wordpress.com> [Accessed 31 January 2017].

Okinbaloye, Seun 2016. Politics Today: A look at ending militancy in Niger Delta. Channels Television News, Nigeria, 28 August, 10:28.

Sheriff, Ghali Ibrahim, Sadeeque Abba and Farouq Bibi 2014. Resource based conflicts and political instability in Africa: Major trends, challenges and prospects. *International Journal of Humanities, Social Sciences and Education*, 1 (9), pp. 71–78. Available from: <www.arcjournals.org> [Accessed 29 January 2017].

Sylvester, Bongani Maphosa 2012. Natural resources and conflict: Unlocking the economic dimension of peace-building in Africa. Policy Brief, Africa Institute of South Africa, Briefing No. 74.

United States Institute of Peace (USIP) 2007. Natural resources, conflict, and conflict resolution: A study guide on peace and conflict for independent learners and classroom instructors. Washington, D.C., USIP.

Utebor, Simon 2016. Army set to deploy 10,000 soldiers in Niger Delta. *The Punch*, 9 September. Available from: <punchng.com/army-deploy-10000-soldiers-ndelta/> [Accessed 6 September 2016].

Worgu, S. Owabukeruyele 2000. Hydrocarbon exploitation, environmental degradation. Paper presented January 2000 at Lund University, Sweden. Available from: <www.waado.org/Environment/PetrolPolution/EnvEconomics.htm> [Accessed 16 April 2000].

World Bank 2003. World development indicators 2002. CD-ROM. Washington, D.C., World Bank.

Traditional natural resource conflict resolution *vis-à-vis* formal legal systems in East Africa: The cases of Ethiopia and Kenya

Tsegai Berhane Ghebretekle*

Abstract

The article analyses how the formal legal systems in Ethiopia and Kenya marginalised and prevented traditional forms of resolving conflicts over natural resources. Both countries best illustrate two rapidly growing economies in transition. However, in Ethiopia and Kenya, conflicts over natural resource have to be understood in relation to their respective histories, politics and legal frameworks. Ethiopia maintained its freedom from colonial rule with the exception of a short-lived Italian occupation from 1936 to 1941. Nonetheless, like all other African nations, it has a colonial heritage self-imposed onto its legal systems through the process of codification. In contrast, Kenya was a British colony until its independence in 1963 and its colonial administrative structures had different impacts on its traditional institutions and systems dealing with resolving conflicts of natural resources. The political dimension of natural resource conflicts in these two countries is manifested in the low recognition given to the

---

*   Dr Tsegai Berhane Ghebretekle is a Post-Doctoral Research fellow at the Institute for Dispute Resolution in Africa (IDRA), University of South Africa. He has obtained his LL.B. at Addis Ababa University, Ethiopia, LL.M. at the University of Oslo, Norway, and Ph.D. at the University of Warwick, United Kingdom.

traditional institutions. The political motives and justifications for marginalising traditional dispute-resolving mechanisms in both countries are primarily based on the belief that providing a uniform and modern legal regime would promote socio-economic development and also serve as a precondition for effective nation building. The main argument in this article is that the formal mechanisms for resolving conflicts over natural resources in both countries – which adopted the Western-style systems – need to be complemented by traditional institutional practices. It highlights the need for synergy between the formal and traditional institutions. This synergy is characterised as a form of hybrid natural resource conflict resolution. The article attempts to explore the regime of traditional natural resource dispute resolution in Ethiopia and Kenya, and recommends a way forward.

Keywords: Ethiopia, Kenya**,** codification**,** customary law, formal legal system, natural resources, formal conflict resolution and traditional conflict resolution

1. Introduction

In common with most other regions in Africa, East Africa has witnessed many conflicts over its land and natural resources (ECA 2012: ix). As Fisher and others (2000:5) note, conflict is a 'relationship between two or more parties who have, or think they have incompatible goals'. The African Centre for the Constructive Resolution of Disputes (ACCORD 2002:4) defines conflict as

> ... a state of human interaction where there is disharmony or a perceived divergence of interests, needs or goals. There is a perception that interests, needs or goals cannot be achieved due to interference from the other person(s).

Conflict is likely to have several impacts, which may include harm to both humans and the natural resource base. It is a very complex and multi-dimensional social process (Woodhouse and Duffey 2000:21).

Conflict partly springs from the increasing demand on natural resources owing to

> population growth, but also as a result of the continued depletion of these resources in both quantity and quality due to degradation, overuse and over-harvesting, governance deficits, and external factors such as climate change and commercial pressure (ECA 2012:ix).

Even if the concept of natural resource is seldom specified, the World Bank Glossary defines natural resources as 'materials that occur in nature and are essential or useful to humans, such as water, air, land, forests, fish and wildlife, topsoil, and minerals' (World Bank 2016). Natural resources can be classified as either renewable or non-renewable. As per the United States Institute of Peace (USIP) (2007), renewable resources 'such as cropland, forests, and water can be replenished over time by natural processes and – if not overused – are indefinitely sustainable'. Non-renewable resources 'such as diamonds, minerals, and oil are found in finite quantities, and their value increases as supplies dwindle' (USIP 2007). In most cases, a nation's access to natural resources often determines its wealth and status in the world economic system.

With regard to the typology of conflict, one could say it is usually a confusing concept over which scholars in the field have not been able to reach consensus. However, it is categorised in many ways – taking the nature of conflicting parties, conflict issues or conflict causes as a parameter (Ramsbotham et al. 2005). Conflict resolution practitioners take into account all levels of conflict, including but not limited to family, criminal, civil, sexuality, gender, multinational and financial.

Conflict is part of life, and when it is wisely handled it could serve as an engine of progress. However cohesive a society might appear, it could be harbouring conflicts. We cannot expect a society with different interests and value systems to be immune from conflict. But the point is that, even if conflict is a common denominator to every society, it does not mean that all societies use similar ways of settling their conflicts. In their various societal, socio-economic and political contexts, societies indeed differ

in the modalities they use to resolve conflict. Still, in the formal or/and informal methods they make use of, there are some shared similarities.

Although there are different practices in the world with regard to the use and management of natural resources, it is clearly visible that natural resources is a source of conflict in society. In East Africa and elsewhere, when countries are endowed with natural resources and they are not wisely and properly managed, they turn out to be a curse rather than a blessing. In more recent times, however, some of these evil effects might be reversing as more local management is used.

East Africa is one of the regions on the African continent endowed with rich and diverse natural resources, with amazing potential for their sustainable development. Such development, however, is premised on the need to have in place sensible mechanisms for dealing with conflict, mechanisms which take into consideration the existing different traditional institutions in addition to the existing formal legal frameworks.

In Ethiopia and Kenya, natural resource conflicts need to be understood in relation to their respective histories, politics and legal frameworks. Historically, Ethiopia is usually cited as the one instance where the colonial power had minimal impact on its existing legal system. However, like all other African nations, it has a self-imposed colonial heritage in its legal systems through the process of modernisation. In contrast, Kenya was a British colony until its independence in 1963. The colonial administrative structures had different impacts on Africa's traditional institutions and systems dealing with natural resource conflict resolution.

In both countries, politics also plays a significant role in marginalising traditional conflict resolution mechanisms in the area of natural resources. The political motives and justifications for marginalising traditional dispute mechanisms in both countries are primarily based on the belief that providing a uniform and modern legal regime would be necessary for the socio-economic development and would serve as a precondition for effective nation building.

With regard to the legal frameworks of the two countries, in Kenya, the colonial legal system was developed on the presumption that the law of the colonial power was superior to the traditional native customs (Odhiambo 1996). The colonial power in Kenya justified their actions on the pretext that they were bringing the benefits of modern government, economics and culture to Kenya (Odhiambo 1996). The legal systems and institutions introduced during the colonial era became the formal legal structure. Nevertheless, the traditional systems still operated, both formally and informally. Even though Ethiopia had its own civilisation, ideologies and cultures, ways of thinking and acting, as well as its own indigenous institutions (Jembere 2012:10), it nevertheless accepted modernisation through the adoption of legislation which followed Western models. In its drive to modernise, Ethiopia pursued a far-reaching legal reform in a series of codifications. However, unlike Kenya, which was influenced by the Anglo-American legal system, Ethiopia's modernisation process was influenced by both continental European and Anglo-American legal systems.

The main argument in this article is that the formal mechanisms for resolving conflicts over natural resources in Ethiopia and Kenya – which adopted the Western-style systems – need to be complemented by traditional institutional practices. The article highlights the need for synergy between the formal and traditional institutions. The synergy is characterised as a form of *hybrid natural resource conflict resolution.*

It is argued that as East Africa continues to develop and strengthen its traditional institutions for resolving conflict over natural resources, this should attract the attention of government, practitioners and policy-makers, and they should realise that these institutions deserve a recognised place instead of being subsumed in the formal system. It highlights the need for synergy between traditional and modern institutions of natural resource conflict resolution. It contends that it is important not only to give due recognition to traditional institutions but also to facilitate increased collaboration with the formal institutions. However, the article cautions that the recognition of traditional institutions should not be a ground upon which to deter the analysis and consideration of their limitations.

The article also argues that the success of traditional dispute resolution over natural resources in Ethiopia and Kenya depends on the fact that natural resource related conflict is linked to the social setting and cultural aspects of the community concerned.

2. The formal legal system *vis-à-vis* traditional or informal systems

Before dealing with the impact of the formal legal system on the traditional/ informal natural resource conflict resolution in Ethiopia and Kenya, it would be appropriate first to put into perspective how the two concepts – formal legal system and traditional/informal systems – are defined in this article, reflecting the various strands of development each country and system have witnessed. Section 2.1 below defines the formal legal system. Section 2.2 defines the traditional/informal system. Section 2.3 deals with the analysis of the main issues associated with a hybrid system of dispute settlement aimed to combine the best of each system and achieve a synergy of interests between local communities and central government.

2.1 The formal legal system

The formal legal system in both Ethiopia and Kenya has been greatly influenced by the operation of a conventional (court system) mechanism of conflict resolution rooted in the Western legal tradition following common law and civil law systems. The strong underpinning by the rule of law has a tendency towards a more rigorous scrutinising and monitoring – whether internally or externally – for signs of partiality, entrenched inequalities or lack of due process (Macfarlane 2007:493). The formal system is most obviously visible through the introduction of written laws. It is centralised within the structure of the state system. It is also underpinned by a strong constitutional tradition and the operation of the constitution itself. All the processes and decisions are implemented through government and state institutions. It emphasises the determination of guilt and the executing of retributive punishment by physical or material penalties, often but not always without giving due regard to the re-incorporation of the offender into the community.

There is a strong tradition of rule-based decisions, but these are open to interpretation and formal remedy through further legal procedures and courts. Such a system gives pre-eminence to lawyers and legal opinions and is therefore often expensive and time consuming. It may exclude the poor and local communities, though this may not be fully intended in the design of the system. Pressure groups and non-governmental organisations (NGOs) may find it possible to obtain a voice but this is often difficult because of the costs involved. Some legal systems have given priority to NGOs as a means of re-balancing the system but this is often difficult to achieve.

As we can infer from the above paragraph, the formal legal system may find itself at odds with the traditional/informal system. However, the irony is that the traditional/informal system is persistently available in everyday life, and is able to deal with natural resource conflict resolution.

2.2 The traditional or informal system

Before dealing with the traditional/informal system let us first see what tradition means. The British philosopher H.B. Acton (1952/53:2) defines tradition as 'a belief or practice transmitted from one generation to another and accepted as authoritative, or deferred to, without argument'. The American sociologist Edward Shils (1981:12) defines it as 'anything which is transmitted or handed down from the past to the present'. While Samuel Fleischacker (1994:45) defines tradition as 'a set of customs passed down over the generations, and a set of beliefs and values endorsing those customs'.

However, considering the above definitions, this article argues that it is wrong to assume that tradition does not require justification. It is not always true that there is opposition between tradition and reason. Rather, tradition can be rationally examined by its followers. What is more, tradition is not completely authoritative and it is subject to criticism. If tradition were not subject to criticism and not subject to reason as defined above, the development of human culture would cease. The argument is not that tradition does not work; it is that it needs modernising.

As Kwame Gyekye (1997:263) notes, 'Tradition has reached to the point where it is because successive generations have criticised it and enhanced it at the same time'. Equally true is that tradition does not have objective authority; all its objectivity emanates from the evaluative activities of recipient generations (Gyekye 1997:263). Thus, as far as this article is concerned, it endorses the definition of tradition as it is given by Kwame Gyekye (1997:263):

> Any cultural product that was created or pursued by past generations and that, having been accepted and preserved, in whole or in part, by successive generations, has been maintained to the present. (Note that 'present' here means a certain, a particular present time, not necessarily our present, contemporary world).

Tradition is always a manifestation of power in society and is susceptible to change. It is a myth to think traditions are immune from change. Traditions evolve and get altered over time. Or, as Giddens (2000:58) puts it, traditions are invented and reinvented. This also implies the fact that there is no such thing as pure tradition in our world.

Giddens (2000:59) argues that it is simply wrong to suppose that for a given set of symbols or practices to be traditional, they must have existed for centuries. For him endurance over time is not the key defining feature of tradition. What is distinctive about tradition is that it defines a kind of truth (Giddens 2000:59). He further argues that traditions are always properties of groups, communities or collectivities. For him 'Individuals may follow traditions and customs, but traditions are not a quality of individual behaviour in the way habits are' (Giddens 2000:59).

'Traditions have their own guardians – wise men, priests, sages' (Giddens 2000:59). But the guardians are not the same as experts in the modern state structure. The guardians derive their position and power from the fact that they are capable of interpreting traditions' ritual truth. They translate the meanings of the holy texts or symbols involved in the communal rituals (Giddens 2000:60).

In the traditional or informal mechanism, unlike the formal legal system, all its processes and decisions do not come through the government apparatus; rather they are informally resolved through the norms and values of society. In this regard, Macfarlane (2007:492) notes that in all societies, it is common for people to look to shared substantive norms to resolve problems rather than to resort to legal norms. He further notes that traditional/informal systems tend to be perpetuated by traditions of oral history rather than by a codified and memorialised formal legal system. In every country, community or organisation, a system of informal dispute resolution – often based on community customs or familial relationships, or embedded in institutional practices – runs alongside the 'official' state sanction processes (Macfarlane 2007:487). Traditional mechanisms of conflict resolution institutions aim to restore peace and harmony between the disputing family members, neighbours, clan or local groups so that the former litigants can continue to live together in frequent interaction (Assefa and Pankhurst 2008:260). In traditional mechanisms of conflict resolution, the elders look for win-win solutions and in the final analysis their aim is repairing severed relations among the disputants.

The essence of this article is that it is imperative to include traditional/informal natural resource conflict resolution in Ethiopia and Kenya and that the act of the state to get rid of traditional practices altogether through the process of codification should not be accepted. Traditional natural resource conflict resolution mechanisms are needed, and will always persist, because, as Giddens (2000:64) correctly puts it, traditions 'give continuity and form to life'. But it should be underlined that traditions should be sustained not for the sake of sustaining them but since they can effectively be justified as a complement to formal codified ways of natural resource conflict resolution.

2.3 The complementarity of the formal and informal systems

Currently it looks as if there is a need to talk on the emerging synergies between traditional and modern institutions of dispute resolution. Therefore, it is important not only to give due recognition to such institutions but also to facilitate increased collaboration between them. Nonetheless, the emerging recognition of traditional institutions should

not deter us from the analysis and consideration of their limitations. One of the glaring limitations is violation of human rights. In this regard Fiseha (2013:123) notes:

> They are male dominated and women are largely excluded from the process. Besides, there are some cultures and practices that still allow discriminatory and harmful practices such as female genital mutilation, early marriage, polygamy, rape, abduction and exchange of women as a means for ending blood feud between groups.

However, it is unarguable that, when these limitations have been rectified, traditional legal institutions will continue to play a role in dispute resolution. One major reason, which is very pertinent in East Africa, is that the formal system of natural resource dispute resolution is not in a position to handle all natural resource related disputes by itself; hence the state will need to devolve responsibilities to local communities. Of course, at this juncture it must be clear that it does not mean the state has completely lost its status as a point of reference in dispute resolution, but the reality underscores the notion that traditional institutions should have a complementary role.

The second reason is that – in East Africa and elsewhere – traditional institutions of dispute resolution have the potential to contribute to the democratisation process. Just like many state-mandated institutions they open up spaces for ordinary citizens to participate in public processes such as natural resource dispute resolution and implementing environmental justice. The necessity is to find a system that takes account of local needs and addresses these.

In the sections that follow, the article deals with the impact of the formal legal system on the traditional or informal natural resource dispute resolution in both Ethiopia and Kenya. First, it starts from the practice in Ethiopia and then proceeds to Kenya.

3. The formal legal system and traditional/informal natural resource conflict resolution in Ethiopia

3.1 The formal legal system in Ethiopia

Historically, Ethiopia was the oldest independent state in Africa with a feudal land-holding system. With the collapse of Feudalism and its institutional arrangement in 1974, a revolutionary Marxist–Leninist military regime was institutionalised. Accordingly, there were radical land reforms oriented towards changing ownership patterns in favour of the poor and marginalised peasants and small landowners. With regard to the genesis of natural resource related laws and policies in Ethiopia, Pankhurst (2003:65) notes that government policies need to be seen in the context of shifting global ideologies. For instance, 'the Military Regime's intervention in natural resource management stemmed from an allegiance to socialist policies advocated by the Eastern Block' (Pankhurst 2003:65). Hence, the natural resource conflict resolution institutions introduced during the Marxist–Leninist regime were new and not based on traditional authority. The regime's ideological basis of devolving decision-making authority to the community level institutions was also very new to the people. Equally true is that 'Western aid after the 1985 famine and global views among donors about linkages between drought and deforestation prompted massive environmental rehabilitation initiatives through terracing and eucalyptus planting' (Pankhurst 2003:65). Yeraswork (2000:12) also notes that 'these conservation campaigns in effect reinforced state power and undermined community management by taking control of large tracts of local pasture and farmland'.

In Ethiopia the codification process was sought by simply importing foreign laws, little related to Ethiopian behaviour patterns and little understood by those affairs they were meant to affect. In the 1950s and 1960s Ethiopia attempted to copy different laws from different countries. The aim was to modernise society and the legal system. Singer (1970/71:308) quotes the vision of Emperor Haile Selassie:

> The necessity of resolutely pursuing Our programme of social advancement and integration in the larger world community ... make[s] inevitable

> the closer integration of the legal system of Ethiopia with those of other countries with whom We have cultural, commercial and maritime connections. To that end We have personally directed the search for the outstanding jurists of the continent of Europe to bring to Us the best that centuries of development in allied and compatible systems of law have to offer.

According to the Emperor's statement, the spirit of introducing different laws in the 1950s and 1960s was to integrate Ethiopian legal traditions and institutions with those of foreign systems of law and thereby achieve development. Different codes were enacted in Ethiopia which were predominantly drawn from European sources. For instance, a Penal Code was enacted in 1957, Maritime, Commercial and Civil Codes in 1960, a Criminal Procedure Code in 1961 and a Civil Procedure Code in 1965 (Beckstrom 1973:559). Before the introduction of these codes the law in Ethiopia was mostly dominated by customs, tradition and some legislation in the form of statutes and decrees. With regard to the law in the pre-codification period in Ethiopia, Beckstrom notes that:

> Until the 1950's the law of Ethiopia was a rather amorphous mix. There was some legislation in the form of statutes and decrees, primarily in the public law sphere, as well as a Penal Code that had been promulgated in 1930. But, taking Ethiopia as a geographical whole, by far the major de facto source of rules governing social relations was found in the customs and traditions of the various tribal, ethnic and religious groupings (Beckstrom 1973:559).

However, the transplantation of laws from different countries was not a successful project. This is because of the fact that the law was often imposed not as a result of a consensus and also because it failed to deliver democratic ideas or influences. It has clearly not brought the development and modernisation the government was looking for.

Beckstrom notes that 'Ethiopia is one of the world's least economically developed countries, with a low literacy rate and poor technical and administrative capabilities. Thus, one can theorise that the laws of more developed nations might not easily take root in Ethiopia' (Beckstrom 1973:559). Singer (1970/71:308) argues that 'the basic shortcoming of the

program [codification process] was the attempt to institutionalise legal values without first investigating the readiness of the various segments of Ethiopian society to accept a shift in power structure'. Clapham (1973:333) argues that 'it is in the inadequacies of state power as an instrument of development that much of the answer to the problem/puzzle of Ethiopian failure is to be found'.

The codification process of the 1950s and 1960s in Ethiopia was influenced by the belief that the law could be used as an instrument of change by imposing it from above without any visible public participation and without analysing the political, economic and social context. By then the theory of law as a means of social engineering was dominant. However, the failure could be explained in relation to the failure of law and development movement that was initiated in the United States.

Snyder (1982:373) notes that 'the movement was born as America's cold war foreign aid programs in the late 1950's'. Trubeck and Galanter (1974:1062) also note that '[the movement] adopted the basic tenets of modernisation, adhering to the notion that evolutionary progress would ultimately result in legal ideals and institutions similar to those in the West'. They labelled these legal ideals and institutional similarity as legal liberalism. They identified legal liberalism as a situation in which

> 1) society is made up of individuals who consent to the state for their own welfare; 2) the state exercises control over individuals through law, and it is constrained by law; 3) laws are designed to achieve social purposes and do not offer a special advantage to any individuals or groups within the society; 4) laws are applied equally to all citizens; 5) courts are the primary legal institutions with the responsibility for defining and applying the law; 6) adjudication is based upon a comprehensive body of authoritative rules and doctrines, and judicial decisions are not subject to outside influence; and 7) legal actors follow the restraining rules and most of the population has internalised the laws, and where there are violations of the rules enforcement action will guarantee conformity (Trubeck and Galanter 1974:1062).

However, Gardner (1980: xii and 401) labelled the movement as 'Legal Imperialism'.

Scholars such as Snyder (1982:373) note that the law and development movement did not succeed. He argues that its failure lies in its assumption that 'the answer to many problems in underdeveloped countries lay in the modernisation of legal and social structures according to an idealised version of United States history' (Snyder 1982:373). Marryman (1977:483) notes that 'the law and development movement has declined because it was, for the most part, an attempt to impose US ideas and attitudes on the third world'. Tamanaha (1995:486) notes that the crisis of the movement lies in its assumption that 'law can solve the many problems facing the developing countries'.

3.2 Impact of the formal legal system on traditional natural resource conflict resolution in Ethiopia

In Ethiopia, side by side with the formal natural resource conflict resolution mechanism, societies also have their own traditional ways of dealing with resolving conflict over natural resources. In many regions of Ethiopia, the traditional natural resource conflict resolutions are more influential, more accessible and stronger than those of the formal, imposed and command-and-control regulatory system.

The traditional dispute resolution mechanisms are practices employed to resolve conflicts and maintain peace and stability in the rural communities. In this regard Enyew (2014:137) notes that traditional dispute mechanisms in Ethiopia are

> [v]ibrant in rural areas where the formal legal system is unable to penetrate because of a lack of resources, infrastructure and legal personnel as well as a lack of legitimacy, for the modern law is seen as alien, imposed, and ignorant of the cultural realities on the ground.

Traditional practices are deeply rooted in different ethnic groups of Ethiopia and arise from age-old practices that have regulated the relationships of the peoples in the community (Regassa et al. 2008:58). They are associated with the cultural norms and beliefs of the peoples, and gain their legitimacy from the community values instead of the state (Jembere 1998:39). In other

words, the traditional dispute resolution mechanisms of Ethiopia function on the basis of local traditional practices or cultural norms. However, due to the multi-ethnic composition of the country, the traditional laws of Ethiopia are different from ethnic group to ethnic group and as a result they do not have uniform application all over the country.

In Ethiopia, traditional dispute resolution mechanisms are administered by elders. The elders' main target is to reconcile the conflicting parties and their respective families. They emphasise

> the restitution of victims and reintegration of offenders; and aim at restoring the previous peaceful relationship within the community as well as maintaining their future peaceful relationships by avoiding the culturally accepted practices of revenge (Enyew 2014:145).

Though traditional dispute resolution mechanisms continue to play a significant role, the laws of Ethiopia do not provide adequate breathing space for these practices (Assefa and Pankhurst 2008:5). This was manifested by the repeal provision of the Ethiopian Civil Code that abrogates the application of customary laws. This repeal provision (Civil Code of the Empire of Ethiopia 1960: Art. 3347(1)) reads:

> Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this code shall be replaced by this code and are hereby repealed.

This legal provision rendered all customary practices out of use – irrespective of whether they were consistent or inconsistent with the provisions of the Civil Code – by the mere fact that the Code covered and regulated such matters. This transplantation process was, thus, a drastic measure taken against customary dispute resolution mechanisms and made them lose formal legal recognition and standing. *De facto*, however, customary dispute resolution mechanisms remained functional on the ground, as the transplanted laws were unable to penetrate local communities and gain legitimacy.

In the aftermath of the Dergue regime, the coming to power of the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) has brought about a significant change in recognising the role of the traditional justice system. The government's introduction of the principles of ethnic federalism in the Federal Democratic Republic of Ethiopia (FDRE) Constitution (1994) has shifted the paradigm of relations between customary and state-designed legal systems. The enactment of this Constitution revived formal legal recognition of customary laws. One of the relevant constitutional recognitions is provided under Art. 34(5) of the Constitution, which reads:

> This Constitution shall not preclude the adjudication of disputes relating to *personal* and *family* laws in accordance with religious or customary laws with the consent of the parties to the dispute (emphasis added).

According to the above legal provision, customary dispute resolution mechanisms are legally authorised to regulate personal and family matters as long as the conflicting parties give their consent to that effect. In line with this legal recognition given to customary laws, the Constitution (Art. 78(5)) also authorises the House of People Representatives and State Councils to establish and to give official recognition to religious and customary courts. These provisions obviously show that the FDRE Constitution took some important steps towards recognising legal diversity or pluralism by recognising customary laws and their institutions. However, such recognition is still limited to civil (i.e. personal and family) matters. The Constitution does not rectify past mistakes and fails to extend the legal recognition to applying customary dispute resolution mechanisms in matters involving natural resources. This, despite the fact that they are still being used to resolve conflicts and serve as the main way of obtaining justice, especially in rural Ethiopia.

Hence, the Constitution limits the mandate of the customary dispute resolution institutions only to *private* and *family* disputes by specifically excluding their application to conflicts relating to natural resources. In the Ethiopian case, these natural resources are not *personal* or *family* issues; instead, they are public issues. For instance, Art. 40(3) of the Constitution clearly states: 'The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia'.

Nonetheless, with regard to this limitation certain interpretative arguments may arise. For instance, one could argue that the absence of express recognition in the Constitution of the application of customary laws to natural resource conflict resolution does not necessarily mean that they are totally excluded from application. One could argue that if that were the case, the Constitution would have provided expressly for that. In the light of a broader, holistic interpretation of the Constitution, it could be argued that a total exclusion of the application of customary laws to natural resource conflict matters would defeat the overall objectives of the Constitution to ensure lasting peace and to maintain community safety.

On the other hand, the *a contrario* interpretation of Art. 34(5) of the Constitution may be understood as implying an explicit prohibition of the application of customary dispute resolution mechanisms to natural resource conflict matters. However, the article seems to favour the first line of argument, which favours the broader, holistic interpretation. This is important as it helps to give formal legal status to applying customary laws in natural resource related conflicts.

In short, Ethiopia exhibits plural legal systems – both multi-layered state laws and customary laws, though formal recognition is not given in very clear terms to the use of customary dispute resolution mechanisms in natural resource conflict issues. However, how the House of Federation which is empowered to interpret the Constitution or the Supreme Court (especially the Cassation bench) will decide on such issues is something to be seen in the future.

4. The formal legal system and traditional/informal natural resource conflict resolution in Kenya

4.1 The formal legal system in Kenya

Now we turn to examine Kenya in a similar manner – by discussing the role of traditional law followed by an analysis of how it might be integrated into the modern legal system.

Kenya is a former British colony which gained its independence in 1963. Prior to colonisation, indigenous traditional laws and customs were used

to resolve conflicts and disputes. Among the traditional Kenyan people, conflict resolution was dependent on the people's ability to negotiate. Nonetheless, 'with the arrival of the colonialists, western notions of justice such as the application of the common law of England were introduced in Kenya' (Muigua 2010:39). The colonial system introduced the adversarial court system, which greatly eroded the traditional conflict resolution mechanisms in Kenya (Muigua 2010:39).

Muigua (2010:39) also notes that before the country was colonised communities in Kenya had their own conflict resolution mechanisms. Whenever a conflict arose, negotiations were conducted. The council of elders or elderly men and women could act as third parties in the resolution of the conflict (Muigua 2010:27). Disputants could be reconciled by the elders and close family relatives and advised on the need to co-exist harmoniously (Muigua 2010:27). The existence of traditional conflict resolution mechanisms such as negotiation, reconciliation, mediation and others, geared towards fostering peaceful co-existence among Kenyans (Muigua 2010:27), is sufficient evidence that these concepts are not new in the country; they are practices that have been in use for a very long period (Muigua 2010:27).

With regard to the effect of legal transformation in Kenya, Michael Ochieng Odhiambo (1996) notes that '[t]he British were directly involved in running the country, affecting traditional resource management systems and institutions'. He further notes that

> [s]ince independence, the country's historical issues related to natural resources have been dominant in shaping the country's structure, especially since the country has maintained the political structure inherited during the colonial period. Today, several resource management conflicts in Kenya have stemmed from the country's move to economic liberalization through free markets. Ownership policies specific to natural resources have progressively been moving towards privatization in order to compliment economic policies. This has resulted in private land tenure replacing communal tenure and weakening traditional practices (Muigua 2010:27).

4.2 Impact of the formal legal system on traditional natural resource conflict resolution in Kenya

In Kenya, traditional dispute resolution is recognised in Art. 159 of the 2010 Constitution. This recognition is based on the assumption that access to justice should be ensured for every citizen, whether it be in courts of law or in informal forums that avoid the procedural hurdles of formality in the court system. It could also be argued that, as indicated in Art. 11(1) of the same Constitution, this recognition is meant to recognise the diverse cultures of various communities as the foundation of nation building.

Art. 159(2)(c) of the 2010 Constitution mandates the courts to be

> guided by ... traditional dispute resolution mechanisms provided that they do not contravene the bill of rights; are not repugnant to justice and morality or result in outcomes that are repugnant to justice or morality; or are not inconsistent with the Constitution or any written law.

During the colonial period, the colonists regarded Kenyan customary law as inferior to written laws and therefore felt they had to place limitations on its application (Okoth-Ogendo 2003:107). After independence, statutes such as the Judicature Act (Cap. 8, Laws of Kenya) and the Magistrate Courts Act (Cap. 10, Laws of Kenya) were enacted to guide courts when determining customary law claims. That was the situation until the promulgation of the 2010 Constitution. For instance, the courts in Kenya have applied S3(2) of the Judicature Act to declare customary law repugnant to justice and morality. However, the challenge to the application of the repugnancy clause is that Kenyan laws do not define what justice and morality mean. In such a situation, judges have had wide discretion in determining what is repugnant to justice and morality. What is more, these two Acts set out the hierarchy of the laws and also determined the scope of traditional law.

With the Promulgation of the 2010 Constitution, the law-makers created an opportunity for exploring the use of traditional dispute resolution mechanisms (TDRMs) to manage conflicts over natural resources (Art. 159(2)(c)). One of the principles enshrined in the Constitution is the encouragement of communities to settle land disputes through local

community initiatives consistent with the Constitution (Art. 60(1)(g)). The implication of such provisions is that before a matter is referred for court adjudication, communities are required to make legitimate attempts to resolve the matter using the most appropriate mechanisms available to them. This is also reinforced by the fact that one of the functions of the National Land Commission is to encourage the application of traditional dispute resolution mechanisms in land conflicts (Art. 67(2)(f)). This is a significant provision considering that land conflicts form the bulk of natural resource conflicts reported in the country, and the land issue is an emotive one.

However, in Kenya, the existence and applicability of customary law have to be proved in court. For instance, the Court of Appeal of Kenya in the *Atemo v. Imujaro* case ([2003] KLR 435) decided that customary law has to be evidently proved in court for it to be regarded as law. Similarly, in *Ernest Kinyajui Kimani v. Muiru Gikanga and Another* ([1965] EA 735), the court held that where customary law was not notorious or written, the party relying on it must prove it in court. Compared to the other sources of law in Kenya – the Constitution, statutes, common law and equity, which the courts take judicial notice of – the existence and applicability of customary law have to be proved. From this one can argue that the fact that customary law has to be proved in court illustrates the low place it occupies in the juridical order. What is more, the existence of grounds such as repugnancy and subjection to other written laws provides fertile ground for the rejection of customary law.

In the Judicature Act, customary law is used only as a guide; while in the Constitution, the courts are to be guided by TDRM principles. No law requires the courts to apply customary law or TDRMs; they are to be used only as a guide. The implication is that the courts may refuse to apply them even in appropriate cases, since they are only a guide. Consequently, the judicial officers hearing a certain matter have absolute discretion in applying customary law within the formal justice system. However, the Constitution seems to clarify the juridical place of customary law at least by recognising it. This may contribute to greater recognition and the promotion of traditional justice systems by courts as a means of enhancing access to justice.

Nonetheless, Art. 159(3)(c) retains the hierarchical inferiority that existed prior to 2010 by introducing the repugnancy clause issue in relation to traditional justice mechanisms. By implication, traditional justice systems and customary law are still inferior to common law and principles of equity, of which courts do take judicial notice of under s 60 of the Evidence Act even though customary law has to be proved in court.

In addition, S3 of the Judicature Act also ranks the common law and principles of equity above customary law and in effect TDRMs. The only time customary law ranks over the common law is when the form has been codified into statutes – for instance, polygamy under s 3(5) of the Law of Succession Act. A challenge then arises due to the unwritten and uncodified nature of customary law. Inadequate codification of customary law principles into statutes ensures that customary law and TDRMs remain at the bottom of the legal totem pole.

Thirdly, Art. 159(3)(b) of the Constitution bars the application of TDRMs when they are repugnant to justice and morality. The Constitution and other statutes provide neither a definition nor do they clarify what justice and morality entail. Further, the courts have hitherto not interpreted justice and morality within the context of the challenged customs and TDRMs. Therefore, a judicial officer has leeway to determine what justice and morality are. More often than not, judicial officers use their own models of justice and morality or borrow from other areas and use them as standards to evaluate customary law or TDRMs. The position ignores the reality that different tribes, communities and ethnic groups have different customs. Using one custom as the means of evaluating the justice and morality of an unrelated custom amounts to subjugation.

5. Conclusion

In Ethiopia and Kenya, state and traditional systems can work together cooperatively, complementing one another. However, to realise this, a paradigm shift towards mutual respect and understanding of the formal and informal systems of natural resource conflict resolution is required.

To pave the way to this paradigm shift, it is advisable to consider focusing on synergy, on what each system could contribute to the constructive evolution of the other. If they cooperate and complement each other respectfully, they can strengthen one another through legitimacy, effectiveness, and capacity to support all citizens in resolving their conflicts. The connection between the traditional structures and state institutions in both countries can ensure sustainable conflict resolution. Ultimately, an effectively integrated state-local approach to natural resource conflict resolution can promote the larger agenda of peace and security in natural resource dispute resolution in both countries.

However, the comparative analysis of the legal frameworks of Ethiopia and Kenya shows that in both countries there is a tacit understanding in the sphere of government that the evolution of natural resource conflict resolution is from traditional systems to imported, formalised systems. What is more, the political situation in these countries has been oriented towards recognising government institutions to the neglect of traditional ones. In particular, the marginalisation of traditional conflict resolution mechanisms with respect to natural resources is evident. Moreover, the move towards the devolution of power in these two countries has often been limited to the decentralisation of executive authority.

In both countries there is a need to complement the formal justice system in managing natural resource conflicts with more informal mechanisms (traditional dispute resolution) as this would promote the spirit of the 2010 Kenyan and the 1995 Ethiopian constitutions. This complementarity also helps to promote Art. 48 of the Kenyan and Art 37 of the Ethiopian Constitution, both of which guarantee access to justice. Access to justice as enshrined in both Constitutions is to be realised where traditional processes and formal systems reinforce each other. However, although the Ethiopian and Kenyan Constitutions guarantee the right of access to justice and also go further to recognise traditional dispute resolution mechanisms, there are no elaborated legal or policy frameworks for their effective applications. The existing legal frameworks do not provide comprehensive guidelines

on linking traditional natural resource dispute resolution with the formal court process. This frustrates the utilisation of traditional natural resource dispute resolution in both countries.

Finally, without manipulating or politicising the traditional natural resource dispute resolution mechanisms, both countries should continue to embrace them. They merit being viewed as a key feature in natural resource dispute resolution in Africa.

Recommendations

- A task force to examine the role of traditional conflict resolution mechanisms in natural resources needs to be established in both countries. This task force should convene traditional leaders and other relevant stakeholders in order to map and understand the prevalence and use of TDRMs, as well as their intersection with the formal system.
- To institutionalise the complementarity of the formal and traditional conflict resolution in natural resources in Ethiopia and Kenya, both countries need to develop a clear legal and policy framework.
- The traditional conflict resolution mechanisms in natural resources need to be clearly recognised and their jurisdictions need to be clearly demarcated.
- An enforcement mechanism for the decisions of traditional dispute resolution mechanisms needs to be put in place.
- A mechanism for appeals from decisions of traditional dispute resolution mechanisms should be put in place.
- The relationship between the formal and traditional dispute resolution mechanisms also needs to be spelled out clearly.
- Traditions and customs in both countries need to be included in the formal education system. This helps to enhance respect for the culture in both countries.
- And in order to develop the jurisprudence of traditional dispute resolution in natural resource dispute resolution in both countries, their decisions need to be published and distributed.

Sources

ACCORD (African Centre for the Constructive Resolution of Disputes) 2002. *Transforming conflict*. Facilitator's reference manual. Durban, ACCORD.

Acton H.B. 1952/53. Tradition and some other forms of order. Proceedings of the Aristotelian Society, 53, pp. 1–28.

Assefa, Getachew and Alula Pankhurst 2008. Facing the challenges of customary dispute resolution: Conclusions and recommendations. In: Pankhurst, Alula and Getachew Assefa eds. *Grass-roots justice in Ethiopia: The contribution of customary dispute resolution*. Addis Ababa, Centre Francais d'Études Éthiopiennes. pp. 257–273.

Beckstrom, John H. 1973. Transplantation of legal systems: An early report on the reception of Western laws in Ethiopia. *American Journal of Comparative Law*, 21 (3), pp. 557ff.

Civil Code of the Empire of Ethiopia 1960. *Negarit Gazeta*, proclamation No. 161/1960.

Constitution of the Federal Democratic Republic of Ethiopia. 1994. *Federal Negarit Gazeta*, Proclamation No. 1/1994.

ECA (United Nations Economic Commission for Africa) 2012. Natural resource & conflict management – The case of land. Kigali, ECA.

Enyew, Endalew Lijalem 2014. Ethiopian customary dispute resolution mechanisms: Forms of restorative justice? *African Journal on Conflict Resolution*, 14 (1), pp. 125–154.

Fisher, Simon, Dekha Ibrahim Abdi, Jawed Ludin, Richard Smith, Steve Williams and Sue Williams 2000. *Working with conflict: Skills and strategies for action.* London, Zed Books.

Fiseha, Assefa 2013. Customary dispute resolution mechanisms and the rule of law: Areas of convergence, divergence and implications. In: Stebek, Elias N. and Muradu Abdo eds. *Law and development and legal pluralism in Ethiopia*. Addis Ababa, JLSRI (Justice and Legal Systems Research Institute) Publications.

Fleischacker Samuel 1994. *The ethics of culture*. Ithaca, Cornell University Press.

Gardner, A. James 1980. *Legal imperialism: American lawyers and foreign aid in Latin America*. Madison, University of Wisconsin Press.

Giddens, Anthony 2000. *Runaway world*. New York, Routledge.

Gyekye, Kwame 1997. *Tradition and modernity: Philosophical reflections on the African experience*. New York, Oxford University Press.

Jembere, Aberra 2012. *An introduction to the legal history of Ethiopia: 1434–1974*. Addis Ababa, Master Printing Press.

Macfarlane, Julie 2007. Working towards restorative justice in Ethiopia: Integrating traditional conflict resolution systems with the formal legal system. *Cardozo Journal of Conflict Resolution*, 8, pp. 487–509.

Muigua, Kariuki 2010. *Traditional dispute resolution mechanisms under Article 159 of the Constitution of Kenya*. Available from: <http://www.chuitech.com/kmco/attachments/article/111/Paper%FINAL.pdf> [Accessed 12 June 2016].

Odhiambo, Michael Ochieng 1996. Addressing natural resource conflicts through community forestry: The case of Eastern Africa. Paper prepared for E-mail Conference Addressing Natural Resource Conflicts through Community Forestry. January–March. Available from: <http://www.fao.org/docrep/005/AC696E/AC696E03.htm> [Accessed 4 June 2016].

Okoth-Ogendo, H.W.O. 2003. The tragic African commons: A century of expropriation, suppression and subversion. *University of Nairobi Law Journal*, 1, pp. 107–117.

Pankhurst, Alula 2003. Conflict management over contested natural resources: A case study of pasture, forest and irrigation in South Wello, Ethiopia. In: Castro, A. Peter and Erik Nielsen eds. *Natural resource conflict management case studies: An analysis of power, participation and protected areas*. Rome, Food and Agriculture Organisation.

Pankhurst, Alula and Getachew Assefa eds. 2008a. *Grass-roots justice in Ethiopia: The contribution of customary dispute resolution*. Addis Ababa, Centre Francais d'Études Éthiopiennes.

Pankhurst, Alula and Getachew Assefa 2008b. *Understanding customary dispute resolution in* Ethiopia.

Ramsbotham, Oliver, Tom Woodhouse and Hugh Miall 2005. *Contemporary conflict resolution: The prevention, management and transformation of deadly conflicts*. Cambridge, Polity Press.

Regassa, Tsegaye, Urgessa Genemo and Tena Yigezu 2008. *Restorative justice in Oromia: A baseline study*. Addis Ababa, Central Printing Press.

Shils, Edward 1981. *Tradition*. London, Faber and Faber.

Singer, J. Norman 1970/71. A traditional legal institution in modern legal setting: The Atbia Dagna of Ethiopia. *UCLA Law Review*, 18, pp. 308ff.

Snyder, G. Francis 1982. The failure of law and development, *Wisconsin Law Review*, 1982, pp. 373–396.

Tamanah, Brian Z. 1995. The lessons of Law-and-Development Studies, *American Journal of International Law*, 89 (2), pp. 470–486.

Trubeck, David M. and Marc Galanter 1974. Scholars in self-estrangement: Some reflections on the crisis in Law and Development Studies in the United States. *Wisconsin Law Review*, 1974, pp. 1062–1102.

USIP (United States Institute for Peace) 2007. *Natural resources, conflict, and conflict resolution – A Study Guide Series on Peace and Conflict for Independent Learners and Classroom Instructors*. Washington, D.C., USIP. Available from: <http://www.usip.org/sites/default/files/file/08sg.pdf> [Accessed 4 July 2016].

Woodhouse, T. and T. Duffey 2000. *Peace keeping and international conflict resolution*. Bradford, United Nations Institute for Training and Research, POCL.

World Bank 2016. *2016 Glossary*. Development Education Program, World Bank Group. Available from: <http://www.worldbank.org/depweb/english/modules/glossary.html> [Accessed 4 July 2016].

Yeraswork, A. 2000. *Twenty years to nowhere: Property rights, land management and conservation in Ethiopia*. Lawrenceville, NJ, Red Sea Press.

'Vote not Fight': Examining music's role in fostering non-violent elections in Nigeria

Joseph Olusegun Adebayo*

Abstract

African elections are unique in several respects; in ethno-religiously divided nations, elections are often decided on the basis of candidates' ethnic or religious affiliations rather than political ideologies. In Nigeria for example, campaigns differ greatly from what is obtainable in other countries. For example, music plays a huge role in the outcome of elections in Nigeria. It also significantly determines whether or not the elections will be violent or non-violent. This is because music evokes emotions and connects with people in a personal and intimate way. This study critically examines the two-edged nature of music's effect on society and offers some evidence to demonstrate that music can help in fostering peace in the society particularly as it concerns peaceful elections. Adopting an ethnographic research methodology, the article's argument draws on examples from Ghana, Kenya and Nigeria, countries where the medium of music was fittingly utilised to promote peaceful non-violent elections.

Keywords: elections, music, non-violence, peace, violence, Nigeria.

---

*   Dr Joseph Olusegun Adebayo is a National Research Foundation (NRF) Innovation Postdoctoral Fellow in African Studies at the University of Cape Town. His research interests include good governance and democracy in Africa, analyses of media (mis) representation of Africa, analyses of media framing of land reform and democracy in South Africa and the dynamics of African elections.

Background to study

Music is unquestionably one of the most mysterious and most intangible of all forms of art. It is a powerful medium through which life is expressed. Love and hate, friendship and enmity, joy and sadness, hope and despair etc. can all be expressed through the potent channel of music. Storr (1993:168) avers that music's influence on society, particularly in its ability to create a sense of communal collectivity, has been greatly underestimated. He opines that music offers a binding power that unifies people from all ages and in diverse corners of the earth, making it one of the most powerful tools for social mobilisation and sensitisation.

In Africa, music plays a vital role in mobilisation, sensitisation, socialisation and cultural transmission. It is a very potent medium through which oral traditions are transferred from one generation to another. When a baby is born in Africa, we sing; when an old man or woman dies, we sing; when the harvest is good, we sing; when the harvest is bad, we sing; when we want to mobilise for war, we sing; when we want to entreat for peace, we sing. There is a song for every occasion in Africa. To the African, music is not just a pastime, it is a ritual; it describes his true essence, a source of his 'humanness'. Steve Biko aptly describes music in the African context thus:

> Nothing dramatises the eagerness of the African to communicate with each other more than their love for song and rhythm. Music in the African culture features in all emotional states. When we go to work, we share the burdens and the pleasure of the work we are doing through music. This particular fact, strangely enough, has filtered through to the present day. Tourists always watch with amazement the synchrony of music and action as Africans working at a roadside used their picks and shovels with well-timed precision to the accompaniment of a background song. Battle songs were a feature of the long march to war in the olden days … in other words, with Africans, music and rhythms were not luxuries, but part and parcel of our way of communication (Biko 1978:41).

This article argues that music's huge influence has not been fully employed to promote peace and harmonious coexistence between Africa's diverse

people, particularly during election periods. Focusing on the impact music has on Nigeria's socio-political milieu, the argument is that music can play a huge role in the country's political transformation. A central point here is that Nigeria's music has experienced a huge followership over the last few decades, particularly amongst the nation's teeming youth. Considering that people under the age of 35 constitute about 65% of Nigeria's population (National Population Commission 2006), it becomes imperative to study the type of music they listen to, the content of such music and the impact it has on their political decisions. Thus, this study includes a focus on the interactions between music and political discourse in Nigeria and provides some empirical observations on how Nigerian tertiary students were affected by music.

Methodology

The researcher adopted ethnography as a research methodology. In order to observe and experience the behaviour of the selected students, the researcher visited and lived on the selected campuses as a participant observer over a period of six months (late 2014 to early 2015). The study population included 200 randomly selected students in tertiary institutions situated around Ilorin Metropolis in Kwara State, North Central Nigeria – the National Open University of Nigeria (NOUN), the Kwara State University (KWASU), the University of Ilorin (UNILORIN) and the Al-Hikma University. Although the study was not limited to young adults, the majority of respondents were youths who, it was discovered during the study, easily identified with current genres of music.

Participant observation, focus group discussions, and in-depth interviews were used as methods of data collection. Considering the complexity of the issues involved, it became pertinent to get immersed in the field setting for a reasonable time in order to feel the social dynamics that questionnaires and other data collection methods cannot capture. Wolcott (2005:57) is of the opinion that for ethnographic studies to be successful, it requires that a researcher gets personally immersed in the ongoing social activities of some individuals or groups involved in the research.

Describing the Sample

A total of 50 students were interviewed in each of the selected institutions. A total of 28 males and 22 females took part in the study at the National Open University of Nigeria (NOUN); 29 females and 21 males were sampled at the University of Ilorin; Kwara State University had 27 females and 23 male respondents; while 31 males and 19 female students made up the sample at Al-Hikma University. In total, 103 of the 200 respondents were male, while 97 were females. The gender distribution of the selected participants is presented in figure 1 below.
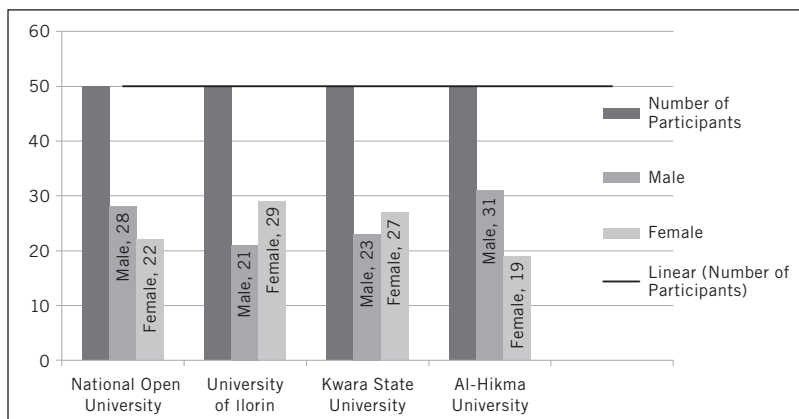

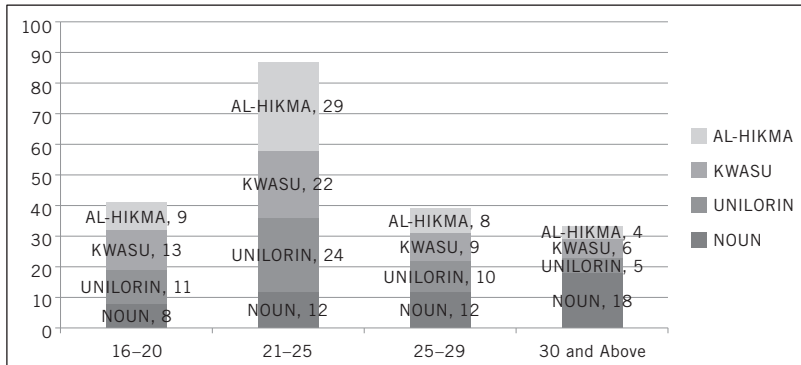**Figure 1: Gender distribution of selected research participants**

Figure 2: Age distribution of selected research participants

Figure 2 shows the age range of the sampled population – a very young, political active and vibrant age group. A total of 41 students (21%) out of the sampled population belonged to the age bracket 16–20, 86 students (43%) were within the age bracket 21–25, the age bracket 25–29 had 39 respondents (20%), while only 33 respondents (16%) were above the age of 30. The figure also shows that 18 of the 33 respondents above the age of 30 were from the National Open University of Nigeria (NOUN). This may not be unconnected with the fact that NOUN caters for older students who mostly combine work and study.

Music in pre-colonial Nigeria

Before 1914, what is today known as Nigeria never existed as a unit. It was a geographical area made up of people of dissimilar cultures and beliefs. The diversity of pre-colonial Nigeria originated in the different origins and cultures of the various ethnic groups, and these differences were also evident in their music. Pre-colonial music in Nigeria differed in style, theme, and lyrics according to the practices in each ethnic group. For example, Yoruba music in pre-colonial Nigeria was not motivated by monetary gains; it was mainly centred on folklore and spiritual deity worship (Atanda 1980:32). The instruments were not 'sophisticated' and modern, the musicians utilised basic and natural 'instruments' such as

whistling and clapping of hands. The talking drum, for example, was a significant musical instrument in pre-colonial Yoruba society, and it is still popular today.

Omojola (2010:33) thus remarks about the changing function of musical instruments in Yoruba culture over time:

> The social and religious functions of Yoruba musical instruments often change over time. For example, the *igbin* drum was originally a secular instrument played to entertain Obatala (believed to be the sky father and creator of human bodies by the Yorubas. According to Yoruba folklore, he was brought to life by Olodumare's smooth breath) in his lifetime. He loved the sound of the drum so much that he named the different instruments of the ensemble after his wives, namely *iya-nla, iya-agan, keke and afere. Iya-nla* is the principal drum, while *iya-agan*, *keke* and *afere* are the three supporting drums, known collectively as *omele*. The use of *igbin* drums assumed a sacred significance when they were adapted by the devotees of Obatala to accompany sacred rites in honour of their deity. Two drums, *bata* and *dundun*, whose roles and functions have also changed in recent times provide interesting perspectives on the ways in which the sacred and the secular have continued to merge in Yoruba music.

Similarly, Igbo music in pre-colonial Nigeria was largely intended for ritual and ceremonial purposes. The Igbos used music to worship their deity, to celebrate festivals, to initiate warfare and as a form of social protest. According to Ojukwu (2008:183), to the Igbo, music was (and still is) very political. The sound of the *ogene*,[1] depending on the tuning and intensity and the time it is played, often would tell whether or not a leader was still relevant or accepted by his/her people.

Hausa music, like that of the Yoruba and Igbo, also had a deep religious and cultural 'obligation' to pre-colonial Hausa society. Music in pre-colonial Hausa land was not just a tool for entertainment; music provided an avenue for the transmission of culture, history, and folklore. In traditional Hausa

---

1   The *Ogene* is a metal gong used as a 'master instrument' by Igbos to pass across information, enhance celebrations and warn communities of possible danger(s).

communities, a musical performance was a ceremony and was used as a status symbol. Musicians were generally chosen for political reasons as opposed to musical ones. The Hausa society also had a bank of courtly praise-singers who were hired and given the task of singing the virtues of patrons such as the Emir or Sultan (Ochonu 2008:99).

It is pertinent to state here that although Yoruba, Igbo and Hausa music are highlighted here as representative of music in pre-colonial Nigeria, they do not exhaustively cover the 250 other ethnic groups in the country. But given similarities in the culture of the various ethnic groups in Nigeria, it can be safely said that the selected tribes present a cursory idea of music in pre-colonial Nigeria.

The place of music in the socio-political milieu

> A song is something that we communicate to those people who otherwise would not understand where we are coming from. You could give them a long political speech – they would still not understand. But I tell you: when you finish that song, people will be like 'Damn, I know where you niggas are comin' from (Sifiso Ntuli, in Vershbow 2010).

Music's immense influence was evident in the struggle for independence in most African countries. Rallies, protests, and movements were laced with music and dances; musicians released albums that were filled with contents calling for the emancipation of their countries. In South Africa, for example, music was a major pivot for the anti-apartheid struggle. As Schumann (2008:19) asserts, inside South Africa music played a significant role in putting pressure on the apartheid regime. She recounts that artists such as Miriam Makeba, Hugh Masekela, Paul Simon and several others provided South Africans with the songs that were sung by demonstrators as they embarked on their numerous marches across the country against apartheid.

Nigerian musicians also played active roles in the quest for the attainment of the country's independence. Even after Nigeria attained independence in 1960, musicians were in the forefront of championing calls for social

justice and political transformation. According to Adegoju (2009:4), Nigerian musicians have always been in the forefront of advocating for positive social change through their music. He argues that before the recent transformation of the music industry in Nigeria, musicians were considered as social crusaders who led social protests through the medium of music and who communicated the people's frustrations with the government of the day through their lyrics. Musicians like Fela Anikulapo-Kuti, Sony Okosun, Onyeka Onwenu, Christie Essien Igbokwe, Dan Maraya Jos, Femi Kuti, Bisade Ologunde (*Lagbaja*) have severally used their music to sensitise and mobilise the populace towards social change and to call the government in power to 'order' when they erred.

Brown (2008) is of the opinion that almost every sound of music is political. He argues that even when the music is laced with sexually explicit content, it has a political undertone and engaged listeners will pick up the politics. Brown's views are given credence by the immense socio-political lyrical content of Hip-hop music which has a deep historical root in the expression of social and political protests initiated through music by urban African-American youths. Petchauer (2009:952) also posits that Hip-hop pedagogy has grown in the past ten years, as scholars and educators have researched and experimented with the use of Hip-hop music and culture to improve students' empowerment, cultural responsiveness, and skills of literary analysis and critical literacy. Music's potential as a tool for socio-political transformation and as a catalyst for social revolution should not be understated. Plato warned that 'the modes of music are never disturbed without unsettling of the most fundamental political and social conventions' (Plato, *The Republic*, in Byerly 1998:27). Braheny (2007:18) argues that music can be representational, and this, according to him, confirms music's interrelatedness with politics. Most musicians with a knack for activism often lace their music with clearly defined political viewpoints that represent their views about happenings in society and how people can take charge of their destinies.

Perhaps no Nigerian musician exemplifies the use of representational music more than the late Afrobeat sensation Fela Anikulapo-Kuti, popularly

referred to as Fela. An ardent traditionalist, social critic and staunch believer in African traditional religion, Fela believed that the most important things for Africans to fight against were: European imperialism, dictatorship and tyrannical governments on the continent. Fela steadfastly and consistently stood for and fought for the rights of society's underprivileged and vulnerable. Olaniyan (2004:242) affirms that Fela himself alluded to the representational nature of his music when he stated: 'I am using my music as a weapon. I play music as a weapon. The music is not coming from me as a subconscious thing. It's conscious'.

A classic example of Fela's representational music is the 1977 archetypal lyric entitled 'No Agreement':

No agreement today / No agreement tomorrow / I no go gree

Make my brother hungry / Make I no talk / I no go gree

Make my brother homeless / Make I no talk

No agreement now, later, never, never, and never (Olaniyan 2004:168).

Fela, in this song, presented himself as the spokesperson for the poor and downtrodden in the society. He declares that he will not stand mute and watch his people suffer because of government's irresponsible leadership. Fela's songs were analogous to whistle blowing as he consistently brought perpetrators of societal ills and injustices to public knowledge and sensitised the public into rising up against corruption, tyranny, and dictatorship that pervaded Nigeria during the heydays of Fela's musical activism. Olaniyan (2004:167) describes Fela's musical messages as defiance against the political status quo of his days and in spite of several government clampdowns, arrests, detentions and even threat to life, he remained bold and unrepentant, thus winning over a critical mass of people who still adore him today. His songs addressed an array of social issues such as tyranny, corruption, ethnocentrism, tribalism, religious bigotry and extremism, hypocrisy.

Perhaps a major proof of the generational impact of Fela's music is the adoption of his songs by social protesters across Nigeria. For example, during the January 2012 fuel subsidy protests that rocked major cities in Nigeria,

Fela's songs were used to motivate and inspire the protesters. Students in Nigeria's tertiary institutions have adopted several of Fela's songs and associated most of their lyrics to their demands and demonstrations against perceived deprivations and social injustices.

Music's effect as two-edged sword

Music's immense influence can be likened to the impact of two-edged swords with the possibilities to positively or negatively shape and influence the direction of society. History is awash with examples of how music was used as a tool to feed hatred in the hearts of men leading to the preventable deaths of millions of people. In the same vein, history is not short of instances where music's huge sway positively mobilised and sensitised society towards the attainment of positive societal goals.

The unfortunate genocide that ravaged the beautiful nation of Rwanda in 1994 brings to mind the immense influence music wields in society. During the trials at the International Criminal Tribunal for Rwanda that ensued after the unfortunate genocide, a popular musician, Simon Bikindi was indicted for a crime against humanity. The charges against him, according to the tribunal, included a deliberate conspiracy to initiate the annihilation of a certain segment of society through systematic genocide. He was accused of directly inciting the public to commit genocide by murdering and persecuting members of opposing ethnic group(s).

Gowan (2011:51) holds that Bikindi incited genocide with his music, thereby abusing the huge followership of his music in the Hutu community. Bikindi's indictment was for composing music that is said to have supported hatred for the Tutsi people, leading to their massacre in 1994. This has inspired much controversy regarding where the line should be drawn between freedom of speech and incitement to gross human rights violations. As Akinfeleye (2003:11) posits: freedom or liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no courts can save it.

The prosecutors in the trial of Bikindi examined two of his songs on the basis of their lyrics and the effects they had on inciting the public towards acts of genocide. According to Gowan (2011:54), the first song examined, *'Twasezereye ingoma ya cyami'* (We said goodbye to the Feudal regime), was first performed in 1987 at the time of Rwanda's 25th anniversary of independence. The lyrics verbally assaulted the monarchy which was removed in 1959, and celebrated the end of feudalism and colonisation. This particular song was later recorded in a studio in 1993 as part of an album and focused popular dissent against the peace plan being developed in Arusha, Tanzania at the end of the Rwandan Civil War in 1993. At this point, *'Twasezereye',* like several of Bikindi's songs, turned from simple hate speech to a demonstrable element of a consciously deployed call to genocide.

Bikindi's second song, '*Njyewe nanga Abahutu*' (I hate these Hutus), also contained illicit lyrics that overtly called on Hutus to systematically eliminate Tutsi minorities. In the opinion of Cloonan (2006:22), the song was not just a song against Tutsis and moderate Hutus; it was a song that was completely anti-coexistence. Bikindi in this song uses lyrics to gain support and inspire a reaction from the listener. He refers to the moderate Hutu as 'arrogant', a word that has monarchical undertones and could imply that the moderate Hutus are more like the Tutsi than they are like the Hutu. The lyrics of the song contained overt hatred for Tutsis and moderate Hutus:

> I hate these Hutu, these arrogant Hutu, braggarts,
> Who scorn other Hutu, dear comrades!
> I hate these Hutus, these de-Hutuized Hutu,
> Who have disowned their identity, dear comrades!
> I hate these Hutu, these Hutu who march blindly, like imbeciles,
> This species of naïve Hutu who are manipulated, who tear themselves up,
> Joining in a war whose cause they ignore.
> I detest these Hutu who is brought to kill – to kill, I swear to you,
> And who killed the Hutu, dear comrades.
> If I hate them, so much the better … (Gowan 2011:65).

Bikindi refers to the 'de-Hutuized Hutu' as specie, implying that they are sub-humans who do not deserve to be treated as equals. De-humanising the enemy has always been a tactic used in war. Bikindi's lyrics go on to mention 'Joining in a war whose cause they ignore', most likely referring to the Tutsi Rwandan Patriotic Front's invasion of Rwanda in 1990 in order to 'overthrow[President] Habyarimana and secure their right to return to their homeland' (Gowan 2011:59).

It is sad to state that the government used the power and influence of Bikindi's popular, nationalistic folk tunes as a tool to incite hatred between ethnic groups – a hatred that ultimately led to a 100-day massacre of the Tutsi minority, recorded as one of the most gruesome genocides in the history of mankind. According to Gowan (2011:59), a piece of music cannot be judged solely on its content, but as heard within the context in which it was created, especially if the lyricist is still alive and able to control where, when and in what contexts his music is performed. However, it is very clear that Bikindi's songs were deliberate, intentional and well-orchestrated to illicit hate and to encourage genocide.

The impact of music on (non-)violent elections

It is important to state that although music's influence on society can be negative, as exemplified by Bikindi's music discussed above, music has also been found to be a veritable medium through which society can be mobilised and sensitised for worthy causes such as the promotion of peaceful non-violent elections. Hitchcock and Sadie (1986:23) opine that music can play a vital role in arousing action in the public towards a very positive cause. For example, Bob Dylan is reputed to be one of the leading lights in the struggle against racial discrimination in America. His songs were so motivating that it served as an inspiration to civil rights groups by emphasising that the fight against racial discrimination should be a concerted one: no one is excluded because of colour.

African elections have historically been marred by electoral violence, usually resulting from an incumbent who is reluctant to hand over power

or from an electorate that is gravely divided along ethno-religious lines. According to Hafner-Burton and others (2014:4), in countries like Nigeria, Kenya, Democratic Republic of the Congo, Burundi and Zimbabwe without a well-developed respect for the rights of their citizens, elections increase political polarisation and potentially increase human rights abuses. However, elections in liberal states ultimately bring about wider political involvement, civic commitment and political accountability, all of which will improve respect for human rights over time.

The recent largely 'successful' elections in Ghana and the 2013 general elections in Kenya have been linked to the role played by musicians. In the recently concluded 2016 elections in Ghana, for example, musicians, sensing the possibility of Ghanaians resorting to violence after the declaration of election results, took the responsibility of ensuring a peaceful Ghana away from the hands of politicians by staging peace concerts in every part of the country. With a record of five military coups from 1966 to 1981 and six peaceful changes of government through free and fair elections, Ghanaian voters and politicians went to the polls aware of a reputation to protect as one of West Africa's most promising and stable democracies. Some notable musicians released singles with lyrics calling Ghanaians to put the country first, ahead of ethnic and party affiliations. One particular group of musicians organised the *azonto* peace dance competition, similar to that organised in 2012 targeted at Ghanaian youths with the sole aim of sensitising them on the need to act in a peaceful manner and shun violence during the 2012 elections. Although there were setbacks in the election and it would be imprudent to adduce the election's success to music only, the fact remains that political mobilisation and sensitisation before, during and after the elections played a huge role in its peaceful outcome.

Kenya's experiences were similar to those of Ghana, since elections in Kenya were marred by violence and wanton destruction of lives and property. In 2007, Kenya erupted into its worst violence since independence following the disputed re-election of President Mwai Kibaki, from the Kikuyu ethnic group. Desiring to forestall a possible recurrence, musicians in Kenya organised for peace in several ways ranging from releasing singles and

albums on the need for peaceful elections, to staging peace concerts across the major cities in the country. According to Ramah (2012:2), the umbrella body of all musicians and entertainers in Kenya – the Music Copyright Society of Kenya (MCSK) – organised a series of concerts and campaigns targeted at ensuring that Kenyans imbibed the culture of non-violence. One of such campaigns was the *'Ni Sisi Peace Campaign'* to educate Kenyans on the voting process and promote patriotism and unity in the run-up to the March 2013 elections. Thus, Nyoike-Mugo (2010:33) opines that while music played a huge role in the ensuing conflict after the election of 2008, this time musicians took concrete and deliberate steps before the election to ensure that they fostered peace through their songs.

The late musical sage, Christie Essien Igbokwe, known as Nigeria's lady of songs, was one of the leading voices in the calls for peaceful polls in Nigeria. In one of her songs released in the early 1990s, entitled '*Moloro yi so*' (I have something to say), Christy Essien chronicled the history of electoral violence in Nigeria and the wanton loss of lives and properties that characterised such elections. The lyrics of the songs contained overt pleas calling on Nigerians to shun violent acts during elections and to repel politicians with a track record of violence. The song, released at the peak of the regime of General Ibrahim Badamasi Babangida, got immense airplay on radio and television stations across the country and helped to assuage Nigerians and encourage the need to act peaceably during elections. It can be argued that her songs, coupled with those of other artists, played a huge role in the peaceful nature of the 12 June 1993 general elections in Nigeria, although it was later annulled by General Babangida.

Another musician who has played a significant role in mobilising and sensitising Nigerians on the need to live peaceably with one another is the dexterous Onyeka Onwenu. It may be argued that Onyeka's background in journalism could have greatly influenced her lyrical prowess. Understanding the immense influence the media wields in setting an agenda for public discourse and shaping public opinion, she exploited the reach, spread and acceptance her music enjoyed amongst Nigerians to preach the need for peace and harmony in the country. One of her most

popular songs, 'One love', is a classic example of how much she desired peace and unity in the country. The song gained widespread acceptance and was almost a national anthem when it was released in the early 1980s. Onyeka afterward, in the early 1990s, released a single entitled 'Peace song', that was also aimed at sensitising Nigerians on the need for peace. Several other Nigerian musicians have overtly preached peace in their songs. Artists like King Sunny Ade, Ebenezer Obey, Lagbaja and Dan Maraya Jos have songs dedicated to calls for peace and harmony in Nigeria and, in particular, peaceful elections.

Vote not Fight: The role of music in Nigeria's 2015 elections

Elections in Nigeria have been characterised by violence that has led to the loss of countless lives and properties. The build-up to elections in Nigeria is always characterised by voter apathy often linked to apprehensions of violence during elections. Fischer (2002:11) is of the opinion that Nigerian elections are typified by violence, which is either random or organised with the sole aim of delaying or determining the outcome of the election. Electoral violence in Nigeria is often aimed at influencing the outcome of the electoral process through verbal intimidation, hate speech, blackmail, assassination and wanton destruction of properties.

As the date for the 2015 general elections in Nigeria drew near, there was a palpable fear amongst the populace of a possible repeat of the violence that marred the 2011 elections. Human Rights Watch (2011:16) claimed that although the 2011 elections were largely regarded as peaceful by the international observers, it was blemished by the wanton loss of lives and property. Shortly after election results started trickling in at the collation centres, supporters of the rival parties took to the streets and started what would turn out to be one of the most brazen demonstrations of electoral violence witnessed in Nigeria since the First Republic of the 1950s and early 1960s. After the carnage, Human Rights Watch stated that over 800 Nigerians, mostly women and children, lost their lives to the conflict, especially in Northern parts of the country.

Thus, in a bid to prevent a recurrence of the unfortunate incidence of 2011, Nigerian musicians decided to take concrete and deliberate steps towards ensuring that elections were devoid of rancour. There are several reasons why Nigerian music and musicians can play significant roles in stemming the incessant electoral violence. Firstly, Nigerian music is arguably one of the fastest growing industries on the African continent. Nigerian musicians have a huge followership among Nigerians, particularly among her teeming youth population. This huge influence provides musicians the opportunity for what Akpabot (2008:79) refers to as social control.

The social control theory, propounded by Hirschi (1969:2), attempts to explain delinquent behaviours and the factors that limit and/or eliminate them. Hirschi's aim was to show what prevents juveniles from acting in delinquent ways. He viewed delinquency or deviance as being taken for granted and considered conformity or conventional conduct as being problematic. In the context of music and elections, Akpabot argues that messages in music, if designed to achieve a particular aim (such as non-violent elections), can create a sense of community that discourages and makes violence during the electoral process unattractive, thereby promoting peaceful and non-violent elections.

A prominent musician who took the onus upon himself to advocate for peace during the 2015 elections in Nigeria was Mr Innocent Idibia (popularly known as 2face). His involvement in the election, as well as his role in sensitising the public, forms the main unit of analysis on the impact of music on electoral peace for this study. At the onset of the study, there was no intention of studying 2face's music and how it impacted on the elections. The plan was to undertake a content analysis of selected songs and find out about the public perception of the impact the songs had on the public's behaviour before, during and after the election. However, when it became obvious that very few songs advocating peaceful elections gained enough airplay to be analysed, the focus was narrowed down to 2face's song, 'Vote not Fight', which became the major public sensitiser towards non-violent elections.

2face is immensely popular within and outside the shores of Nigeria. Arguably one of the most decorated and most successful African artists of his generation, he has received numerous awards within and outside

the continent such as the Music Television (MTV) Europe Music Award, World Music Award (WMA), Music of Black Origin (MOBO) Award, KORA African Music Award, the Black Entertain (BET) Award and the Channel O Award, to mention a few. He is very popular amongst the youth and pulls crowds running into hundreds of thousands to his shows. When this article was being completed (January 2017), he was gradually building a critical mass of people who would protest against the inefficiencies of the current government in Nigeria. Thus, the researcher sought to find out from the student population in his sample the impact 2face's peace songs had on the outcome of the election in their communities.

Findings

It is no doubt that musicians played a commendable role in the 'successes' of the general elections in Ghana and Kenya. Though it is a fact that the success of the elections cannot be totally attributed to the role played by music and/or musicians, it is, however, pertinent to state that they played more than just paltry roles.

In the lead-up to the elections, 2face under the aegis of 2face Foundation started a campaign aimed at dissuading youths from being used as tools for mischief by the political class during elections. The goal of the campaign was to 'transform the Nigerian youth into peacemakers and ambassadors in their communities for the promotion of a conflict-free environment' (2face and Youngstars Foundation 2017). As part of the campaign, 2face released a single, 'Vote not Fight' in which he urged politicians to desist from provoking young people to commit acts of violence or political hooliganism before, during and after the elections. The song's first verse and chorus will be content analysed and its impact on interviewed participants discussed.

Verse 1
Cos When Two Elephant Fight
Na the Grass dey Suffer
Grass Go dey Suffer, Grass Go Dey Suffer O
Innocent People Go Dey Run the Cover
The Cover, Each Other

North and South Go Dey Turn on Each Other
Each Other
Instead, Make We Fight Ourselves
Make We Fight Ebola Eh
Instead Of Fighting Corruption Make e No Dey
Some People Na to Do Make Naija No Dey
They Running and Running and They Running Everywhere
So We See Some Disco in the Air
No Matter Wetin Happen Dema Just Don't Care
Most of Them No Dey Really Live For Here
Dem Don Comeback Again This Year
We No Fear

Chorus
I hear them saying it is a do or die affair
Do or die affair
We don't want anybody to come scatter ground for here
Scatter ground for here
Vote not fight, that's what we wanting this year
In this election time (2face and Youngstars Foundation 2017)

In this song, largely sung in Pidgin English, 2face remarks that it is society's defenceless and vulnerable who suffer in a crisis – and not the political class. He called on Nigerians to collectively focus on the problems plaguing the country rather than fight one another. He remarked: '… instead make we fight ourselves, make we fight ebola eh' (Instead of us to fight ourselves, we should fight ebola). Expectedly, the song gained massive airplay at radio stations in every nook and cranny of Nigeria because of the positive messages therein. In Ilorin where the study was conducted, it was aired several times a day on both the private and public radio stations of the state, with interpretations provided in the local Yoruba dialect.

The first thing the researcher sought to determine was whether or not the sampled population was aware of the song. 183 out of the interviewed sample of 200 averred that they were aware of the song; the majority of them

said they got to know the song because they followed 2face on social media and were pre-informed of the song's release before it became very popular. Most of the interviewed population also averred that 2face was a role model to them; they affirmed that although he has been through some personal scandals and controversies, he still qualified to be regarded as a role model because he had overcome personal adversity. He represented the strength and tenacity with which Nigerian youths overcome harsh conditions.

The sampled population was also asked whether or not they felt 2face was 'qualified' to mobilise them for a worthy social cause given his scandalous relationship with multiple women. All the students remarked that they would still follow 2face regardless of the scandals following him; many of them arguing that most of the so-called social crusaders had skeletons in their own cupboards. But that did not deter them from leading their countries' quest for socio-political emancipation. One of the interviewed students had this to say when asked about 2face's suitability as a social crusader:

> Abeg, na who holy pass? (Please who is without sin?). 2face has always stood for the defenceless in society and most of his songs are laced with lyrics eschewing corruption and calling on Nigerians to do the right thing for the society to move forward. I would gladly come out if 2face ever asks us to join him for a worthy cause. I don't care how many women he has allegedly impregnated, the fact is that none of them came out to say they were raped.

The above response was echoed during the focus group discussion when the researcher sought to know whether or not the group thought 2face had the moral capabilities to call for positive social change given his history with women. Every member of the group said it would be wrong to judge a man's ability to lead by his past mistakes. One respondent remarked thus:

> The fact is that most of the men who had led us have no good moral standing; they just had a passion for solving problems. I have followed 2face for close to two decades and there is no album of his that does not highlight socio-political issues in the country. He is not attention seeking; he is truly concerned the plights of ordinary citizens.

The researcher then sought to find out whether or not they believed 2face's song 'Vote not Fight' affected their behaviour during the elections. Such findings might be more significant because the students in this study were attending higher institutions of the state itself, and are often the targets of political crackdowns. Despite the dangers, the Students' Union Governments of two of the sampled institutions adopted the song as their official campaign song against electoral violence.

All the students interviewed, observed and those who took part in the focus group discussions all affirmed that the music played a huge role in making them choose non-violent participation in the political process. Most of the sampled students said the song, amongst other ones, kept ringing in their heads as they were approached by political groups to scuttle the election. Some said even when they went home for the holidays, the song was still being heard as it gained widespread airplay and was even translated into Yoruba. One of the sampled students pointed to a particular section of the song's first verse. He sang the part as he was being interviewed:

> No matter wetin happen, dema just don't care; most of them (politicians) no dey really live for here, dem don come back again this year, we no dey fear.

The students then collectively remarked, during a focus group discussion, that most of the time politicians use unsuspecting youths as political thugs while their children school and live abroad safely. They also affirmed that when violence erupts during elections, the politicians often fly out of the country as they do not really live full-time in the country. One student said:

> When they make us steal ballot boxes and burn tires, they give us 2000 Naira and leave us to our fate. When the community burns, they take the next available flight to Europe or America and then leave those of us that cannot easily run to face the music. What happens to my aged mother and father? What about my siblings? I cannot collect money and then jeopardise the future of myself and family. Although I knew of the dangers of being a tool in the hands of politicians, 2face's song further reinforced it and made me realise that I actually did have a choice.

However, we observed that not all the students agreed that the song affected their political behaviour. Some averred that they had been sensitised in church and by their parents and that their minds were already made up. They said although 2face's song reinforced their stance for non-violence, it did not initiate it. There was general consensus however that the song had a far-reaching effect on how young people behaved during the election and that it played a huge role in ensuring that the elections were largely peaceful.

Conclusion and recommendations

It would be imprudent to claim that music was the decisive reason for the peaceful 2015 elections; but our study does indicate that music played a huge role. Artists are not, and cannot be, politically neutral; their art requires them to speak to and for society lyrically and in ways that can sensitise and mobilise people towards the achievement of positive and worthwhile goals. Electoral commissions in most African countries miss the great opportunity that music affords as a tool for mass mobilisation and sensitisation. As part of efforts aimed at reducing or completely eliminating electoral violence across the continent, we strongly recommend that musicians should take part in teams of peace builders. Music communicates to people in ways that go beyond rational argumentation. It touches their souls, and greatly impacts on their lives. When properly utilised, music can help create an opportunity for society to value and apply non-violent alternatives to solving conflict situations.

Sources

Adegoju, Adeyemi 2009. The musician as an activist: An example of Nigeria's Lagbaja. *Itupale Online Journal of African Studies,* 1 (2), pp. 1–23.

Akinfeleye, Ralph 2003. Fourth estate of the realm or fourth estate of the wreck: The imperative of social responsibility of the press. Inaugural lecture delivered on 14 May 2003 in the Main Auditorium, University of Lagos.

Akpabot, Samuel 1986. *Foundation of Nigerian traditional music.* Ibadan, Spectrum Books Limited.

Ames, David 1973. Igbo and Hausa musicians: A comparative examination. *Ethnomusicology*, 17 (2), pp. 250–278.

Atanda, Joseph 1980. *An introduction to Yoruba history*. Ibadan, Ibadan University Press.

Biko, Steve 1978. Some African cultural concepts. In: Stubbs, A. ed. *I write what I like.* Oxford, Heinemann Educational Publishers. pp. 40–47.

Braheny, John 2006. *The craft and business of song writing.* Cincinnati, Writer's Digest Books.

Brown, Courtney 2008. *Politics in Music: Music and political transformation from Beethoven to hip-hop.* Atlanta, Farsight Press.

Byerly, Ingrid Bianca 1998. Mirror, mediator, and prophet: The Music Indaba of Late-Apartheid South Africa. In: *Ethnomusicology*, 42 (1), pp. 1–44.

Cloonan, Martin 2006. *Popular music censorship in Africa.* Aldershot, Hampshire, Ashgate Publishing Limited.

Fischer, Jeff 2002. *Electoral conflict and violence.* Washington, D.C., International Foundation for Electoral Systems.

Gilbert, Shirli 2007. Singing against apartheid: ANC cultural groups and the international anti-apartheid struggle. *Journal of Southern African Studies*, 33 (2), pp. 422–441.

Gowan, Jennifer 2011. Fanning the flames: A musician's role in the Rwandan Genocide. *Nota Bene: Canadian Undergraduate Journal of Musicology*, 4 (2), pp. 49–66.

Hafner-Burton, Emily, Susan Hyde and Ryan Jablonski 2014. When do governments resort to election violence? *British Journal of Political Science*, 44 (1), pp. 149–179. Available from: <http://ilar.ucsd.edu/assets/001/pdf> [Accessed 25 February 2017].

Hirschi, Travis 1969. *Causes of delinquency.* Berkeley, University of California Press.

Hitchcock, Wiley and Stanley Sadie 1986. *New Grove dictionary of American music.* London, Macmillan.

Human Rights Watch 2011. Nigeria: Post-election violence killed 800. Published 17 May 2011.

National Population Commission (NPC) 2006. Population and housing census of the Federal Republic of Nigeria. National and state population and housing tables. Priority Tables Volume I. Abuja.

Nyoike-Mugo, Wanjiku 2010. The power of song: An analysis on the power of music festivals or concerts as a tool for human rights education in Africa. M.A. thesis, Eduardo Mondlane University, Maputo.

Ochonu, Moses 2008. Colonialism within colonialism: The Hausa-Caliphate imaginary and the British colonial administration of the Nigerian middle belt. *African Studies Quarterly*, 2 (3), pp. 95–127.

Ojukwu, Chris 2008. Igbo nation, modern statecraft and the geopolitics of national survival in a multiethnic Nigeria. *African Journal of Political Science and International Relations*, 3 (5), pp. 182–190.

Olaniyan, Tejumola 2004. *Arrest the music! Fela and his rebel art and politics.* Bloomington, Indiana University Press.

Omojola, Bode 2010. Rhythms of the gods: Music and spirituality in Yoruba culture. *The Journal of Pan African Studies,* 3 (5), pp. 29–50.

Petchauer, Emery 2009. Framing and reviewing Hip-Hop educational research. *Educational Research*, 79 (2), pp. 946–978.

Ramah, Rajab 2012. 'Kenya to clamp down hate speech as elections near'. Sabahi Online, 25, pp. 1–8. Available from: <http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/10/25/feature-01> [Accessed 19 February 2017].

Schumann, Anne 2008. The beat that beat Apartheid: The role of music in the resistance against Apartheid in South Africa. *Wiener Zeitschrift für kritische Afrikastudien*, 8 (14/2008), pp. 17–39.

Storr, Anthony 1993. *Music and the mind.* New York, Ballantine Books.

Vershbow, Michaela 2010. The sounds of resistance: The role of music in South Africa's Anti-Apartheid Movement. *Inquiries Journal,* 2 (6), pp. 1–12.

Wolcott, Harry 2005. *The Art of Fieldwork.* Lanham, MD, Altamira Press.

2face and Youngstars Foundation 2017. Vote not Fight, Election no be War. Available from: http://www.votenotfight.org/ [Accessed 23 February 2017].

Withdrawal from the International Criminal Court: Does Africa have an alternative?

Michelle Nel and Vukile Ezrom Sibiya*

Abstract

After a century in the making, the International Criminal Court (ICC) came into existence in 2002 with an overwhelming number of states ratifying the Rome Statute. With 34 signatories, Africa is the largest contributor in the Assembly of State Parties, yet Africa has become its severest critic. As threats of withdrawal become a reality with the imminent withdrawal of Burundi, this article considers the question of whether Africa has an alternative solution. With an African Union (AU) Constitutive Act purporting a commitment to combating impunity and promoting democracy, rule of law and good governance, one would expect the AU to be ready to pick up the reins. To end impunity and hold perpetrators accountable, finding an alternative for the lacuna left in the absence of the ICC has never been more pressing. The recent adoption of a strategy by African countries for a mass withdrawal has pushed the matter to the fore. This article discusses the feasibility of amnesty, domestic and local trials,

---

*   Dr Michelle Nel is a senior lecturer in criminal and military law at the Faculty of Military Science, Stellenbosch University. She is an admitted advocate to the High Court and has published a number of peer-reviewed articles on military law, international law and maritime security.

*   Mr Vukile Ezrom Sibiya is a lecturer in labour law and security law at the Faculty of Military Science, Stellenbosch University, as well as a guest lecturer in international law at the Senior Military Management Programme.

or an African regional court as viable alternatives to ICC jurisdiction and prosecution. The creation of an African regional court in the guise of the African Court of Justice and Human Right (ACJHR) seems the preferred solution, enabled by the Malabo Protocol extending its jurisdiction to international and transnational crimes. Slow ratification does not bode well for the proposed ACJHR and its extended jurisdiction. Time is of the essence and whatever solution is found will necessitate decisive action by the AU.

Keywords: ICC, African Union, African Court of Justice and Human Rights, impunity, amnesty, regional courts

Historical background

The idea behind the establishment of the permanent International Criminal Court (ICC) was debated nearly a century ago (Schabas 2014:171). To promote the affirmative conclusion several states entered into a number of treaties, but few were signed. Consequently, the treaties were never forcefully implemented. Where states were able to reach consensus, it culminated in a number of ad hoc international tribunals being formed to delve into atrocities and infringements of human rights committed during conflicts in the world (Bassiouni 1997:11).

After World War I, despite attempts under the Treaty of Peace with Germany [Treaty of Versailles] of 1919 to haul former German Emperor Kaiser William II before an international tribunal, only a few German officers faced the German Supreme Court at Leipzig. Germans viewed this prosecution with scepticism since war crimes were committed by both sides (Bassiouni 1991:2).

The Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties was formed pursuant to the 1919 Paris Peace Conference. Citing atrocities by Turkish forces against Armenians as a violation of 'laws of humanity' and deserving of punishment, the Commission recommended the prosecution of those implicated by a proposed international tribunal (Meron 2006:555). The United States

opposed the idea, contending inter alia that the 'laws of humanity' were imprecise (Meron 2006:556). Another unsuccessful attempt was made by the never ratified Treaty of Sevres (Meron 2006:558), followed closely by the Treaty of Lausanne in 1923 exonerating Turkish forces implicated in atrocities by granting them amnesty (Bassiouni 1991:3). The Allies' compromise seemed to be politically motivated since the Turkish ruling elite, being partial to the western powers, was needed to control the Bosporus and Dardanelles Straits through which the Russian Navy could reach the Mediterranean (Bassiouni 1991:17).

The assassination of Prince Alexander of Yugoslavia prompted the adoption of the Convention for the Prevention and Punishment of Terrorism by the League of Nations in 1937 (United Nations General Assembly Law Commission 1949), its Protocol providing for the establishment of an international criminal tribunal which never came into force – as only India ratified it (Bassiouni 1991:4).

Two ad hoc international military tribunals, the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East, followed in the wake of the World War II atrocities. A number of factors led to criticism of these tribunals, in particular the Nuremberg Tribunal, which was seen as a selective prosecution which favoured the allied forces, and was accordingly lambasted as nothing but 'Victors' Justice' (Economides 2003:34). Professor Christopher Blakesley (1994:80) argues that crimes committed by Soviets against minorities in Poland and the Baltic states could have been easily classified as 'crimes against humanity'. He questions the failure to haul Allied forces before tribunals notwithstanding the heinous acts committed in Tokyo, Dresden, Hiroshima or Nagasaki.

The continued quest to establish an international tribunal can be traced through post-World War II conventions such as the Geneva Convention on the Prevention and Suppression of the Crime of Genocide of 1948 which contained a provision predicting the establishment of the ICC by expressly recognising the jurisdiction thereof.

Lessons learnt

The Nuremberg and Tokyo prosecutions influenced the United Nations (UN) debate on the establishment of a permanent international court – a process that continued until it was stalled during the cold war era (Dugard 2011:171). Momentum was regained in 1989, following Trinidad and Tobago's motion to combat drugs and trafficking through the establishment of an International Criminal Court, when the United Nations General Assembly sanctioned the International Law Commission to develop a draft statute for an International Criminal Court (Schabas 2014:188). At its 46th session, the Commission adopted the formal draft and handed it over to the General Assembly for deliberation (Dugard 2011:171; Crawford 1995:404).

It was amidst the development of the draft statute that the United Nations Security Council (UNSC) was obliged to establish an ad hoc tribunal to deal with the atrocities committed in the former Yugoslavia. In May 1993, they adopted resolution 827 authorising the Tribunal to deal with individuals implicated in the transgressions of International Humanitarian Law (Schabas 2001:11). After the Rwandan genocide, the UNSC adopted resolution 955 in November 1994 in response to Rwanda's call for the establishment of an ad hoc tribunal to deal with those deemed liable for the atrocities committed in Rwanda and its neighbouring states (Schabas 2001:11).

In spite of their shortcomings, the Nuremberg and Tokyo tribunals served as a foundation upon which the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were established (Meron 2006:559). Prof John Dugard asserts that 'the Rwanda and Yugoslav Tribunals furthered the widespread belief that a permanent international criminal court was desirable and practical' (Dugard 2011:172).

The Rome Statute

Intense negotiations lasting five weeks in Rome signalled an end to the longest protracted process of drafting and agreeing on the Statute for the ICC (Economides 2003:37). States, Non-Governmental Organisations (NGOs) and activists' groups were to ensure that 'the long held dream of the ICC [would] now be realised' (Economides 2003:29). The primary aim of the ICC was to put a halt to impunity for perpetrators of the most egregious crimes and violations of human rights of international concern. Despite the heated debate surrounding many of these issues, ranging from fears of states that their sovereign rights would be impinged to concerns that the Statute conflicted with their foreign policies, a group of like-minded states, including Germany and Canada, pushed for 'a very powerful ICC with primacy over state practice' (Economides 2003:45; Benedetti et al. 2014:65).

The Statute of the ICC was adopted on 17 July 1998 by an overwhelming majority of states attending the Rome Conference. The Treaty (United Nations 1998) was adopted after 120 states voted in favour of adoption. Only China, Israel, Iraq, and the United States voted against it, and 21 abstained. By the 31 December 2000 deadline, 139 states had signed the treaty and by 11 April 2002, it had been ratified by 66 states (Benedetti et al. 2014:173). To date it has been ratified by 122 states, of which 34 are African.[1]

Situation and investigations

Since the ICC's inception, all the warrants against implicated persons have been issued against Africans although preliminary investigations have been conducted throughout the world, namely, Ukraine, Iraq/United Kingdom, Columbia, Afghanistan and Georgia. In Georgia the Prosecutor opened a

---

[1] The latest ratification status is available from: <https://asp.icc-cpi.int/EN_Menus/asp/pages/asp_home.aspx> [Accessed 4 February 2017].

proprio motu[2] investigation on 27 January 2016 over 'alleged crimes against humanity and war crimes committed in the context of an armed conflict between 1 July and 10 October 2008' (Office of the Prosecutor 2016; Gegout 2013:808). The Prosecutor is yet to issue indictments as a result of ongoing preliminary investigations (Office of the Prosecutor 2016).

While Palestine was accepting the jurisdiction of the ICC on 1 January 2015 and acceding to the Rome Statute on 2 January 2015, the Prosecutor opened a preliminary examination for atrocities in Palestine and East Jerusalem since 13 June 2014. Following the 2009 military coup of José Manuel Zelaya Rosales, the President of Honduras, the ICC instituted preliminary investigations on crimes committed during the post-coup period; however on 28 October 2015, the Prosecutor closed the preliminary examination citing lack of reasonable basis to proceed with an investigation (Office of the Prosecutor 2016). In 2014, the ICC Prosecutor, Mrs Fatou Bensouda, re-opened the preliminary examination of the situation in Iraq, aimed at analysing alleged crimes attributed to the armed forces of the United Kingdom deployed in Iraq between March 2003 and July 2009 (Office of the Prosecutor 2016).[3]

These preliminary investigations outside the African region serve to demonstrate the Court's preparedness to take on cases beyond Africa, thereby dispelling the myth that the ICC only focuses on situations in Africa.

Concerns raised by African countries

Africa is the largest regional grouping of countries within the ICC's Assembly of States (Murithi 2012:4). The idea of an autonomous apolitical international court attracted overwhelming support on the African continent (McNamee 2014:5). In spite of the perceived support of the ICC

---

2   Kaul (2010) states that under Arts 13 (c) and 15 of the Rome Statute, the prosecutor is empowered to initiate investigations ex officio solely based on his or her own appreciation of a certain situation or information (Art. 15 (3)–(5) Rome Statute).

3   According to the OTP report dated November 2016, the Prosecutor is in the process of gathering factual evidence in order to establish if there were atrocities committed during armed conflict in Iraq which may lead to indictment of those implicated.

and its ideals, it became clear that a number of African countries have now turned hostile towards the very institution it has pledged to support. Forerunners of this hostility seem to have come from the AU, the one organisation that represents all the countries on the African continent (Murithi 2012:4). This is an organisation whose Charter on Human and People's Rights very clearly states in the preamble that signatories will 'coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and ... promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights', and further recognises that human beings are entitled to 'national and international protection'.

These principles are further repeated in the AU's Constitutive Act as its objectives 'encourage international co-operation' and 'promote and protect human and people's rights' in accordance with the Charter of the UN and the Universal Declaration of Human Rights (African Union 2000).[4]

A number of high-profile, much publicised incidents have precipitated a change from initial support of the ICC to the AU's current hostile stance. The indictment of the Sudanese President Omar al-Bashir by the ICC Prosecutor and the African countries' perceived[5] refusal to assist in his arrest was followed by the indictment of Kenya's Uhuru Kenyatta and William Ruto who were subsequently elected president and deputy-president respectively. It has been argued that Africa's hostility should not be seen as a rejection of international justice per se; but rather a rejection of the continuing power plays by the more powerful nations in the international community (McNamee 2014:6). The perception remains that in spite of a number of conflicts throughout the world, to date the

---

4   See Art. 3 of the Constitutive Act of the African Union.

5   African countries did not in fact oppose the prosecution of Al-Bashir by the ICC. Their concern related to the timing of issuing of the arrest warrants which coincided with regional peacebuilding efforts (Murithi and Ngari 2011:9).

ICC has focussed exclusively on Africa (Murithi 2012:4).[6] This has created a wariness amongst African leaders regarding the agenda of the ICC. It has been argued that Africa is being singled out since the ICC cannot risk alienating its biggest financial supporters, and Africa lacks the diplomatic and economic power of other countries (Murithi 2012:5). This argument, however, loses traction if one considers the fact that a number of the prosecutions and investigations before the Court was due to self-referral by African states. Uganda, The Democratic Republic of the Congo (DRC) and the Central African Republic are cases in point (Hansen 2013).

Mueller (2014:29) argues that the move away from support of the ICC can be attributed to changes in the political situation and weaknesses in the rule of law. She argues that ratification and compliance was easy as long as support of the ICC carries little political risk. The history of the ICC investigations shows that the ICC initially concentrated on non-state actors and one side of the conflict (Mueller 2014:29).[7] In its 12 years of existence there have only been two successful prosecutions. Politicians can be forgiven for thinking that they would not become vulnerable to the ICC since it is an accepted rule in international customary law that a serving head of state is immune from the jurisdiction of other states (Akande 2008:1). Although Article 27(2) of the Rome Statute provides that such immunities do not prevent the ICC from instituting prosecution, to date serving heads of state have been relatively protected from prosecution.[8] Since their election as president and deputy-president, both Kenyatta and

---

6   There are however sufficient reasons to pursue the indictments and statistically the number of atrocities in Africa makes it a natural conclusion that the focus of prosecution will be on Africa. It is also of interest that it is the governments that are complaining and not the victims – see in this regard the discussion in Du Plessis et al 2013.

7   The conflict in Northern Uganda serves as example. In 2003 the Government of Uganda referred the conflict to the ICC. The chief prosecutor issued arrest warrants for five members of the Lord's Resistance Army (LRA) but chose not to issue warrants for members of the Ugandan Army. The crimes committed by the LRA were deemed of 'higher gravity than those allegedly committed by the Ugandan Army' (Malu 2015:87).

8   A notable exception is the indictment by the ICTY of Slobodan Milosevic while he was a serving head of state.

Ruto have been successful in mobilising the AU and challenging the ICC on legal grounds,[9] thereby frustrating the ICC's ability to go ahead with their cases (Mueller 2014:26).

However, the ICC's investigation of Kenya dramatically increased the political risk factor for other countries (Mueller 2014:29). With the high level of conflict in Africa and the involvement of both state and non-state actors, African leaders could clearly see that they were not as immune from the ICC as previously believed. Soon after the ICC prosecutor named the Kenyan defendants in December 2010, the AU came out in support of a deferment of the investigations, ostensibly to allow Kenya the opportunity to prosecute its cases in its own courts (Mueller 2014:31). When this proved unsuccessful,[10] the AU proposed a resolution for African states to pull out of the ICC. This was followed by a special summit in October 2012 to discuss the possible pull-out of African countries. The AU painted the ICC as an 'anti-African, colonial, western institute' (Mueller 2014:32–35). The AU even went as far as submitting a motion to the UNSC that all African heads of state should be given immunity from prosecution, which was not accepted by the UNSC (Mueller 2014:37).[11]

One of the objectives of the ICC is to end impunity, and the hostility towards the ICC raises concerns regarding the fate of other human rights treaties and international criminal justice in general (Mueller 2014:26). One need only look at the relative impotence of the African Human Rights Commission, who can only make recommendations, and the lack of political will in

---

9   Kenyatta challenged the admissibility of the trial before the ICC, arguing that Kenya was undergoing extensive legal and judicial reforms which would allow for the domestic prosecution of these trials. When this was unsuccessful he challenged the jurisdiction of the ICC on the grounds that the severity of the alleged crimes against humanity did not meet the required threshold as required in terms of the Rome Statute. This challenge also failed (Mueller 2014:26).

10   Due to its previous refusal, human rights bodies and victims did not trust the about-face of Kenya in expressing its desire to handle its own prosecutions (Mueller 2014:31).

11   Seven members voted in favour of the resolution while eight abstained. For a comprehensive discussion on the reasons for abstention see United Nations Security Council 2013.

implementing their suggestions. Desmond Tutu, prominent South African Nobel Peace Prize winner and human rights activist, stated that 'African leaders behind the move to extract the continent from the jurisdiction of the [ICC] [w]ere … seeking a licence to kill, maim and oppress their people without consequence' (Mueller 2014:37). The message of the ICC is that serious international crimes such as genocide, crimes against humanity and war crimes cannot be tolerated. This is an important rationale for international criminal justice – an intolerance for impunity should act as a deterrent. This requires that the international structures put in place to enforce international jurisdiction remain credible (Kastner 2012:10).

It is by ending impunity that the ICC assists emerging democracies in strengthening their own laws, thereby supporting respect for human rights (Murithi and Ngari 2011:18). The continued tension between the AU, the UNSC and the ICC will necessarily filter down to these emerging democracies. Tensions are most visible in the African context and consequently it has been argued that 'the impact of the ICC on global justice will be determined in Africa' (Murithi and Ngari 2011:18). Where most human rights treaties do not have any means of enforcement, the Rome Statute is enforceable. This in itself should mean that countries should be compelled to comply with the indictments. The challenge arises when a body is dependent on the co-operation of a government to fulfil its mandate yet it is that same government that stands to be investigated. Without the political will of its State Parties the ICC cannot function effectively. It frequently happens that those accused of atrocities in civil wars end up as leaders in the post-conflict governments (Murithi 2012:5). Some African countries' blatant disregard for the actions taken by the ICC does not bode well for its credibility.

This raises the important question: Does Africa have an alternative solution? The mandate of the AU ostensibly complements that of the ICC – both strive to end impunity and hold violators accountable. The problem lies with their divergent approaches, which is not surprising since the AU is a political body and the ICC a judicial body (Murithi 2012:7). This difference also reiterates the dichotomy between attaining justice versus attaining peace.

The one does not necessarily include the other.[12] By entering the international arena the judiciary is effectively entering the arena of politics, something that usually does not fall within its ambit. The ICC's mandate does not include the pursuit of peace and reconciliation (Murithi and Ngari 2011:2). Courts are by nature retributive and generally not focussed on reconciliation. With its colonial history it is also not surprising that the AU does not want to expose its political leaders to what is perceived as a mainly European judicial system.[13] The history of the African countries is an important consideration in the reasons for the violent atrocities taking place. Merely prosecuting a handful of individuals does not address the deep-rooted structural and socio-economic concerns that often drive the violence (Murithi and Ngari 2011:9). One could ask whether the pursuit of justice is feasible if it is to the exclusion of lasting peace.

This raises the question of what alternatives are available as opposed to prosecution before the ICC. Must offenders in fact be prosecuted? A number of international criminal treaties impose a duty on signatory states to prosecute individuals. These treaties are limited in application to either narrowly defined actions or to atrocities committed in international armed conflicts, thereby excluding the most prevalent cases of non-international armed conflicts (Scharf 1996:43–46). The same cannot be said for a number of general international human rights conventions. They do not impose any duty to prosecute, only to 'ensure the rights enumerated therein' (Scharf 1996:48).

---

12   Some argue that peace and justice are not necessarily mutually exclusive either. An initial focus on restorative justice before other avenues of justice should enable a country to consolidate peacebuilding efforts. Overemphasis on one at the expense of the other does not lead to lasting stability (Murithi and Ngari 2011:8 and 10).

13   Tladi (2009:66) postulates that the argument against imperialist interference has lost ground considering that the values espoused by the ICC, such as intolerance against impunity, have been 'appropriated by African culture'. He argues that one cannot simply ignore the fact that 33 of the 54 AU member states have ratified the Rome Statute and that the values enshrined in the Rome statute have also been included in the AU Constitutive Act. He postulates that 'the time has come to accept the values under consideration are not only part of European heritage but the common heritage of mankind, including Africa'.

Other possible alternatives?

Amnesty

Countries have resorted to a number of measures in trying to bring an end to violence and move towards peace. Transition may often only be possible where the needs of the state to balance a delicate political process and resolve the conflict can be reconciled with the international community's need to exact justice from the perpetrators of international crimes (Naqvi 2003:583). This cannot be done if the perpetrators of systematic human rights abuses are not held accountable (Mennecke 2008:1). Should accountability necessarily mean prosecution? The granting of amnesty, an option not deemed acceptable in the context of serious international crimes, has long been in use to facilitate conflict resolution and 'create conditions for reconciliation' (Arsanjani 1999:65). Several countries have offered domestic amnesty to perpetrators of a number of atrocities[14] and in some cases the amnesties were supported by the UN as a means of restoring peace and democracy. Amnesties are usually negotiated in an agreement or legislated to form part of national laws (Naqvi 2003:583).

Would the granting of amnesty to perpetrators impact an ICC investigation? It is required in principle, when negotiating amnesty, to exclude amnesties for international crimes that fall within the jurisdiction of the ICC (Murithi and Ngari 2001:5). A number of provisions in the Rome Statute clearly shows that the ICC is not in favour of amnesties (Arsanjani 1999:67).[15] The reality is, however, that this may often be the only way to draw actors from opposite sides of the conflict to a dialogue enabling a resolution to the conflict. The Rome Statute does not specifically prohibit amnesties and until the ICC has ruled on the matter, it remains debatable whether the ICC would recognise a domestic amnesty law granting amnesty to a perpetrator suspected of serious international crimes. Looking at the main objective of the ICC as facilitating the end of impunity, amnesty would seemingly

---

14   Scharf (1996:41) refers inter alia to Argentina, Cambodia, Chile, Haiti and South Africa.

15   See in this context inter alia the Preamble of the Rome Statute, Article 1 and Article 17.

not be conducive towards this end. National amnesty laws would also not bind the ICC as an international organisation which bases its resolutions on treaty law (Naqvi 2010).

Domestic and local trials

Even where countries have shown their apparent willingness to protect human rights by signing the Rome Statute, it does not necessarily follow that the domestic courts are equipped to prosecute perpetrators of violent atrocities. Very few African countries have in fact adopted the Rome Statute into their domestic law. Without such domestication perpetrators cannot be prosecuted on a national level, leaving the ICC with no option but to institute prosecution. It also shows a clear lack of political will by African leaders to protect human rights and end impunity.[16]

Africa has however shown that prosecution of the most serious crimes is indeed possible as evidenced by the Habré trial in Senegal. This trial was the first African-led prosecution, incorporating a blend of international and domestic laws (Sirleaf 2016:16). Despite experiencing financial difficulties, deposed Chadian President Hisséne Habré was convicted on 30 May 2016 by the Extraordinary African Chambers in the Senegalese court system for crimes, including war crimes, crimes against humanity, torture, sexual violence and rape (Human Rights Watch 2016b, Tladi 2009:67). He was sentenced to life in prison. Justice is therefore possible if the political will exists, but remains difficult to obtain. Habré's victims waited 25 years for justice.

Domestic courts may not be the only solution. Africa has a rich tradition of traditional justice mechanisms, which are often used by communities to handle disagreements (Muruthi and Ngari 2011:6). Can these traditional mechanisms, however, sufficiently address the most serious of international crimes? There are some examples where traditional mechanisms have been successful in attaining justice and also facilitating reconciliation. One such example can be found in the Gacaca trials held in Rwanda after the 1994

---

16   For a more detailed discussion see Institute for Security Studies 2009.

genocide killed close to 1 000 000 people. These trials ran parallel to the processes of the ICTR and the domestic court system. To a certain extent these courts functioned as a type of truth and reconciliation commission in that victims had the opportunity to find out what happened to their family members during these trials. Where perpetrators convinced the courts of their repentance, punishments tended to be more lenient than in the case of those who did not repent, and in many instances the perpetrators were even allowed to return and reintegrate into their communities without incurring punishment. More than 1.2 million cases were tried in 12 000 courts compared to the approximately 63 cases handled by the ICTR.[17]

Corey and Joireman (2004), however, argue that the Gacaca trials did not facilitate conciliation but in fact emphasised the ethnic divide and pursued inequitable justice since they only prosecuted genocide and not war crimes. For a number of years this has indeed been the pervasive opinion. Since the Gacaca trials ended in 2013, studies evaluating the impact of the trials on justice and conflict resolution are only now emerging. Although the main focus of the trials seemed to be on restorative justice, sentences incurred did in fact also reflect punitive aims. In spite of severe criticism of the process and outcomes over the years, Brehm and others (2014:346–347) find that the Gacaca trials rather encourage the use of innovative means to deal with lesser offences in a number of social contexts. Whether community-based trials are a viable method of dealing with mass atrocities remains a matter for debate, but the Gacaca trials can be regarded as 'a powerful response to mass crime and an important element in the struggle to address society-wide tragedy and move forward' (Brehm et al. 2014:347).

The African regional courts as an alternative?

On paper Africa has a good track record in the development of human rights documents to protect its people. Even during the reign of the Organisation of African Unity (OAU), an organisation known for its

---

17 See the discussion on the UN Background information on the justice and reconciliation process in Rwanda (United Nations 2016) for a detailed history on the Rwanda tribunal.

non-interventionist approach, a number of regional conventions were adopted as part of its legislative framework. The focus on human rights protection was developed further since the OAU partnered with the International Committee of the Red Cross (ICRC), and culminated with the evolution of the OAU into the AU (Mubiala 2002:35–59). For the first time, the Constitutive Act of an African regional organisation asserted a right to intervene in other countries where the AU Assembly agrees that the breaches are grave enough to warrant intervention (Viljoen 2004:349). One would therefore expect no hesitation in holding perpetrators accountable for serious violations of the human rights they reportedly support. The African Commission on Human and Peoples' Rights, modelled on the UN Human Rights Committee, was appointed as custodian responsible for human rights compliance in Africa. At its inception, it was the only body in Africa tasked with the promotion and protection of human rights. As part of its mandate its function includes consideration of complaints filed by various individuals and NGOs. These complaints are lodged in the form of communications which are usually considered during closed sessions and are of a confidential nature (African Union 2009).[18] In instances of dire emergency, the Commission would inform the Chair of the AU and request an in-depth study of the situation, or alternatively a fact-finding mission.

Unfortunately the decisions taken by the Commission are regarded as non-binding since the Commission is at most a quasi-judicial body. Decisions cannot be published without the authority of the AU Assembly of Heads of State and Government. The African Charter furthermore did not provide any enforceable remedies to track compliance by states with these decisions. The member states were obliged to give bi-annual reports on the state of human rights within their country, but few states complied and the Commission had no authority to enforce this.

---

18 A communication is a 'document submitted by a State Party, a Non-Governmental Organisation (NGO) with Observer Status before the African Commission or an individual alleging violations of the provisions of the African Charter by a State of the African Union' (African Union 2009).

This is set to change. In the Commission's Rules of Procedure, adopted in 2010, part four creates a relationship between the Commission and the African Court on Human and People's Rights. Rule 114 states that the court now complements the protective mandate of the Commission and allows the Commission to approach the Court where a country is unwilling to comply with the recommendations made by the Commission in addressing serious human rights violations. Although this is a step in the right direction, the African Court still lacks international criminal jurisdiction to prosecute serious violations. It would probably be able to make an order compelling a member state to address the concerns of the Commission, but it is still unclear to what extent this order would be enforceable.

It is necessary to make a brief overview of the history of the African Court in order to understand the reluctance towards accepting such a court as the solution to the prosecution of atrocities.

The genocide in Rwanda and wide-spread human rights abuses in Sierra Leone clearly showed the need for Africans to act against atrocities committed in Africa. Although ad hoc Tribunals were created, the prevalence of conflicts and the resultant abuses show the clear need for a permanent African court. Unfortunately this was not always the accepted mindset. Historically African leaders have shown a reluctance to submit themselves to a court's jurisdiction. In 1963 the founding conference of the OAU rejected the draft Charter that provided for a Court of Mediation, Conciliation and Arbitration (Udombana 2003:819). Their decision to rather create the Commission of Mediation, Conciliation and Arbitration in pursuit of facilitating peaceful dispute settlement is an indication of African leaders' preference for the use of quasi-judicial bodies rather than courts with enforceable jurisdiction.[19] The Commission never became operational.

The next opportunity for creating a pan-Africanist court once again met with failure when the OAU refused to establish the African Human

---

19 Udombana (2003:818) postulates that African dispute settlement favours 'consensus and amicable dispute settlement, frowning upon the adversarial and adjudicative procedures common to Western legal systems'.

Rights Court in accordance with the African Charter, settling instead on the African Commission on Human and People's Rights, who may only now potentially have the ability to enforce its recommendations. As stated above, it is unclear to what extent and what form the enforcement will take.

The Protocol to the African Charter on Human and Peoples' Rights (ACHPR) on the Establishment of the African Court on Human and Peoples' Rights was adopted as a protocol to the African Charter in June 1998 by the Assembly of Heads of State and Government in Ouagadougou, creating the African court. There was however some reluctance by African states in accepting the Court's jurisdiction. The Protocol was adopted in 1998 but only came into operation six years later in 2004 after 15 states had ratified it. As of the beginning of 2014 only 27 out of a possible 54 AU states have ratified the protocol. The slow ratification would seemingly indicate a continued reluctance by African nations to subject themselves to the jurisdiction of the court.[20] This does not bode well for a replacement of the ICC – which in fact has more African countries having ratified its treaty. The African court held its first public hearing only in 2012, eight years after coming into operation.

ACHPR is not the only court envisaged for Africa. The Constitutive Act of the AU makes provision for an African Court of Justice, the main judicial body of the AU (Udombana 2003:816).[21] The idea was that this court would interpret the Constitutive Act and resolve disputes between states (Pityana 2003). This court never came into existence. Its function is currently being fulfilled by the ACHPR.

---

20 The reluctance of African states in ratifying the Protocol partly stems from a lack of understanding of the role of the Court in their domestic jurisdictions. They seem reluctant to accept extra-territorial jurisdiction and fear that an African court may in fact undermine their domestic courts (Pityana 2004:123 and 129).

21 The Constitutive Act did not elaborate on the composition of the Court, its mandate or function.

Just as the development of the ACHPR was gaining momentum, the Chairperson of the AU Assembly at the time, President Olusegun Obasanjo, revived the idea of a merger between the ACHPR and the African Court of Justice (Sceats 2009:4). The suggestion was accepted and in July 2004 the AU Assembly agreed to the merger. As soon as the new court is established, it will be known as the African Court of Justice and Human Rights (ACJHR) and will be the main judicial organ of the AU (Sceats 2009:5). The Protocol establishing the court was adopted in July 2008 at the 11th AU Summit, but to date has only been ratified by five of the required 15 countries. Reflecting on the rocky history of the establishment of a pan-Africanist court, it remains doubtful that the court will become operational in the near future. In the interim the ACHPR remains operational until such time that the pending cases can be transferred to the human rights section of the African Court of Justice (Sceats 2009:6).[22]

The new ACJHR will have jurisdiction to hear cases brought against member states for the infringement on human rights. Where violations are found, the court would be able to issue binding judgments and could order compensation for the victims. They will also be able to issue advisory opinions on general questions of human rights law (Sceats 2009:6). Although the focus of the court originally was on human rights, the Assembly of Heads of State and Government requested a study into the implications of extending the court's jurisdiction to criminal matters in 2009. The subsequent Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (the Malabo Protocol) was adopted in June 2014 by the AU Heads of State and Government meeting

---

22 This interim measure was taken due to lobbying efforts of a number of NGOs who feared that human rights would have no judicial protection while waiting for the new court to come into existence. The ACHPR has both contentious and advisory jurisdiction, hearing cases and disputes relating to the interpretation and application of the African Charter on Human and Peoples' Rights, the Protocol as well as other human rights instruments ratified by its state parties. As of March 2017 the Court has received 124 applications since its first judgement in 2009. It has finalised 32 cases. Their website can be accessed at <en.african-court.org>.

in Malabo, Equatorial Guinea. The Malabo Protocol proposes to extend the jurisdiction of the ACJHR to international as well as transnational crimes (Amnesty International 2016).

If given criminal jurisdiction, the ACJHR will have an advantage that its European and inter-American counterparts and even the ICC do not have. Article 28 of the Statute of the ACJHR, as well as the preamble of the Protocol of the Statute, reiterates the Constitutive Act of the AU which provides for a Court of Justice with the jurisdiction to interpret and apply the Constitutive Act and '*all other Treaties* adopted within the framework of the Union'.[23] The other international courts are limited to interpreting only one treaty.

A negative aspect however is that complaints are only possible against states and not against individuals. Consequently it may be extremely difficult for those most in need of assistance to bring a matter before the Court. The Court only allows direct access to member states and a limited number of African NGOs. All other NGOs as well as individuals will only be able to gain access if the State against whom the action is based signs a special declaration acceding to the jurisdiction of the Court to hear the case (Sceats 2009:2). It would not be surprising if few, if any, states actually grant such permission, especially seen against their perceived reluctance to subject themselves to the court's jurisdiction.

By implementing and supporting an African court with jurisdiction over international crimes, African countries will be a step closer to ensuring that the ICC will not prosecute Africans. Since the ICC's jurisdiction is complementary, intervention will only take place where the domestic courts fail to establish credible avenues for prosecuting serious crimes (Muruthi and Ngari 2011:3). The actual exercise of the complementary jurisdiction may potentially create tension between the ICC and the African court. Article 46 A bis of the Malabo Protocol immunises serving heads of state and government, or anybody acting in such capacity for the

---

23   Emphasis added.

tenure of their office. This includes senior state officials. These immunities include functional and official immunities as provided under customary international law and deemed necessary in the maintenance of international peace and co-operation (Sirleaf 2016:11). Whereas the Rome Statute allows for the indictment of sitting heads of state, the African court will only have jurisdiction once their term ends. Considering the indefinite terms of tenure of some heads of state it remains to be seen whether the ICC will wait on the African court. Doing so could lead to justice denied for a number of victims.

Currently the complementary nature of the ICC's jurisdiction does not apply to regional jurisdiction, only domestic, but it would be possible to amend the Rome Statute in this regard or reach an agreement between the two courts (McNamee 2014:13). The ideal would be that the African Court address serious crimes and that referral to the ICC only takes place where the African court could not adequately redress the wrongs (McNamee 2014:13).

Conclusion

The strong anti-ICC stance of the AU has placed pressure on African signatories of the Rome Statute to bow under the regional pressure and not co-operate with the ICC (Weldehaimanot 2011:219; Tladi 2009:61). Africa's failure to hand over Al-Bashir is a case in point. The ICC's insistence on executing the arrest warrant has prompted the AU to discuss withdrawal at a number of summit meetings, culminating in Burundi, Gambia and South Africa indicating their intention to withdraw from the ICC.

After the UN Human Rights Council resolved to create a commission of inquiry into alleged human rights abuses, Burundi sent their formal notification of withdrawal to the UN, accusing powerful countries of using the ICC to punish African leaders (Human Rights Watch 2016a). Gambia's announced withdrawal was subsequently revoked by the newly elected President Barrow (Keppler 2017b).

On 19 October 2016 South Africa seemed set to withdraw when the Minister of International Relations and Co-operation signed the notice of withdrawal

from the ICC, informing the UN that South Africa's obligations to peaceful conflict resolution was incompatible with the UN's. The withdrawal would take effect one year after receipt of the notice (Nichols 2016). After the Gauteng High Court however ruled that South Africa's initial process of withdrawal was unconstitutional and therefore invalid, South Africa had to issue a notice to revoke their withdrawal (Staff Reporter 2017).

These proposed withdrawals raised the spectre of a possible mass exodus. The AU had made no secret of its acrimony towards the ICC. At the recent 28th Annual Summit of Heads of State at the end of January 2017 in Addis Ababa, the AU managed to adopt an ICC withdrawal strategy. The strategy is regarded by some as a 'political message' to the ICC (Du Plessis 2017). Although the strategy is non-binding since the AU is not a state party and cannot make decisions for the collective group, it is of serious concern that the AU has reached this stage of contemplating mass withdrawal without having a permanent alternative in place.[24] Membership to the ICC, once regarded with optimism, has become a serious divisive issue in Africa. Burundi is still set to withdraw and South Africa's revocation of their withdrawal was not due to a change of heart – its constitutional processes prevented withdrawal and its stance towards the ICC remains. On the other side of the issue is Nigeria, Senegal and Cape Verde who reiterate that the ICC still has an important role to play on the continent. These countries have lodged formal reservations to the decision adopted by the heads of state. Malawi, Tanzania, Tunisia and Zambia have requested more time to study the strategy. It is against this divisive background that now, more than ever, the AU must act decisively and not pay mere lip-service to its 'unflinching commitment to combating impunity and promoting democracy, the rule of law and good governance throughout the Continent …' (Weldehaimanot 2011:214).

---

24 According to Human Rights Watch, the strategy of ICC withdrawal is not in fact a clear call for mass withdrawal. It is a call for further research and consideration of the idea of a collective withdrawal. The strategy also reiterates the AU's concerns regarding its relationship with the UNSC and once again calls for an amendment of the Rome Statute to exempt sitting heads of state from prosecution. It does however provide information to states on how to withdraw from the ICC (Keppler 2017a).

Sources

African Union 2000. *Constitutive Act of the African Union*. Available from: <http://www. achpr.org/files/instruments/au-constitutive-act/au_act_2000_eng.pdf> [Accessed 14 February 2017].

African Union 2009. Communication procedure. African Commission on Human and People's Rights. Available from: <http://www.achpr.org/communications/procedure/> [Accessed 14 February 2017].

Akande, Dapo 2008. The Bashir Indictment: Are serving Heads of State immune from ICC prosecution? Oxford Transitional Justice Research Working Paper Series. Available from: <https://www.law.ox.ac.uk/sites/files/oxlaw/akande1.pdf> [Accessed 14 February 2017].

Amnesty International 2016. Malabo Protocol: Legal and institutional implications of the merged and expanded African Court. Available from: <https://www.amnesty.org/en/ documents/afr01/3063/2016/en/> [Accessed 14 February 2017].

Arsanjani, Mahnoush H. 1999. The International Criminal Court and national amnesty laws. Proceedings of the Annual Meeting (American Society of International Law), 93, pp. 65–68.

Bassiouni, M. Cherif 1991. The time has come for an International Criminal Court. *Indiana International and Comparative Law Review*, (1), pp. 1–43.

Bassiouni, M. Cherif 1997. From Versailles to Rwanda in seventy-five years: The need to establish a permanent International Criminal Court. *Harvard Human Rights Journal*, 10, pp. 11ff.

Benedetti, Fanny, Karine Bonneau and John Washburn 2014. *Negotiating the International Criminal Court Statute: New York to Rome, 1994–1998*. Leiden, Martinus Nijhoff Publishers.

Blakesley, Christopher L. 1994. Obstacles to the creation of a permanent war crimes tribunal. *The Fletcher Forum*, 327, pp. 77–102. Available from: <http://scholars.law.unlv.edu/ facpub/327> [Accessed 14 February 2017].

Brehm, Hollie N., Christopher Uggen and Jean-Damascéne Gasanabo 2014. Genocide, justice, and Rwanda's Gacaca courts. *Journal of Contemporary Criminal Justice*, 30 (3), pp 333–352.

Corey, Allison and Sandra F. Joireman 2004. Retributive justice: The Gacaca courts in Rwanda. *Africa Affairs*, 103 (410), pp. 73–89.

Crawford, James 1995. The ILC adopts a statute for an International Criminal Court. *The American Journal of International Law*, 89 (2), pp. 404–416.

Dugard, John 2011. *International Law: A South African perspective*. 4th ed. Cape Town, Juta.

Du Plessis, C. 2017. African countries adopt strategy for mass withdrawal from ICC. *Eyewitness News*, 1 February. Available from: <https://ewn.co.za/2017/02/01/African-countries-adopt-strategy-for-mass-withdrawal-from-icc> [Accessed 1 February 2017].

Du Plessis, Max, Tiyanjana Maluwa and Annie O'Reilly 2013. *Africa and the International Criminal Court*. London, Chatham House. Available from: <https://www.chathamhouse. org/sites/files/chathamhouse/public/Research/International%20Law/0713pp_iccafrica.pdf> [Accessed 14 February 2017].

Economides, Spyros 2003. The International Criminal Court: Reforming the politics of international justice. *Government and Opposition*, 38 (1), pp. 29–51.

Gegout, Catherine 2013. The International Criminal Court: Limits, potential and conditions for the promotion of justice and peace. *Third World Quarterly*, 34 (5), pp. 800–818.

Hansen, Thomas O. 2013. Africa and the International Criminal Court. In: Murithi, Tim ed. *Handbook of Africa's International Relations*. Abingdon, Routledge. pp. 165–179.

Human Rights Watch 2016a. Burundi: ICC withdrawal major loss to victims. *Human Rights Watch*, 27 October. Available from: <https://www.hrw.org/news/2016/10/27/burundi-icc-withdrawal-major-loss-victims> [Accessed 18 April 2017].

Human Rights Watch 2016b. The trial of Hisséne Habré. Available from: <https://www.hrw.org/tag/hissene-habre> [Accessed 01 February 2017].

Institute for Security Studies 2009. Statement by representatives of African civil society and the legal profession on the implications of the African Union's recent decisions on universal jurisdiction and the work of the International Criminal Court in Africa, Cape Town, 11 May 2009. Available from: <https://issafrica.s3.amazonaws.com/site/uploads/PRAUICC110509.PDF> [Accessed 14 February 2017].

Kastner, Philipp 2012. *International criminal justice in bello? The ICC between law and politics in Darfur and Northern Uganda*. Leiden, Martinus Nijhoff Publishers.

Kaul, Hans-Peter 2010. International Criminal Court. *Oxford Public International Law*. Available from: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e42?print> [Accessed 17 April 2017].

Keppler, Elise 2017a. AU's ICC strategy 'less than meets the eye': Opposition to withdrawal by states. *Human Rights Watch*, 1 February. Available from: <https://www.hrw.org/news/2017/02/01/aus-icc-withdrawal-strategy-less-meets-eye> [Accessed 18 April 2017].

Keppler, Elise 2017b. Gambia rejoins ICC: South Africa, Burundi now outliers on exit. *Human Rights Watch*, 17 February. Available from: <https://www.hrw.org/news/2017/02/17/gambia-rejoins-icc> [Accessed 18 April 2017].

Malu, Linus N. 2015. The International Criminal Court and conflict transformation in Uganda: Views from the field. *African Journal on Conflict Resolution*, 15 (2), pp. 81–103.

McNamee, Terence 2014. The ICC and Africa: Between aspiration and reality: Making international justice work better for Africa. Discussion Paper 2/2014. Brenthurst Foundation. Available from: <http://www.thebrenthurstfoundation.org/Files/Brenthurst_Commisioned_Reports/Brenthurst-paper-201402-ICC-and-Africa.pdf> [Accessed 14 February 2017].

Mennecke, Martin 2008. Fragile states and the International Criminal Court: Friends or foes? DIIS Policy Brief. Available from: <http://pure.diis.dk/ws/files/69515/PB2008_10_International_Criminal_Court.pdf> [Accessed 14 February 2017].

Meron, Theodor 2006. Reflections on the prosecution of war crimes by International Tribunals. *The American Journal of International Law*, 100 (3), pp. 551–579.

Mubiala, Mutoy 2002. International Humanitarian Law in the African context. In: Juma, Monica K. and Astri Suhrke eds. *Eroding local capacity: International humanitarian action in Africa*. Spain, Grafilur Artes Gráficas. pp. 35–59.

Mueller, Susanne D. 2014. Kenya and the International Criminal Court (ICC): Politics, the election and the law. *Journal of Eastern African Studies*, 8 (1), pp. 25–42.

Murithi, Tim 2012. Africa's relations with the ICC: A need for reorientation? In: Heinrich Böll Stiftung *A Fractious relationship: Africa and the International Criminal Court*. Heinrich Böll Stiftung. pp. 4–9. Available from: <https://za.boell.org/sites/default/files/perspectives_1.12_web-1.pdf> [Accessed 14 February 2017].

Murithi, Tim and Allan Ngari 2011. *The ICC and community-level reconciliation: In-country perspectives*, Regional Consultation Report. Institute for Justice and Reconciliation. Available from: <https://www.africaportal.org/dspace/articles/icc-and-community-level-reconciliation-country-perspectives-regional-consultation> [Accessed 14 February 2017].

Naqvi, Yasmin 2003. Amnesty for war crimes: Defining the limits of international recognition. *International Review of the Red Cross*, 85 (851), pp. 583–626. Available from: <https://www.icrc.org/eng/resources/documents/article/other/5ssdux.htm> [Accessed 14 February 2017].

Naqvi, Yasmin 2010. Amnesty and the ICC. *The Peace and Justice Initiative: Towards universal implementation of the ICC Statute*. Available from: <http://www.peaceandjusticeinitiative.org/implementation-resources/amnesties-and-the-icc> [Accessed 18 May 2014].

Nichols, M. 2016. SA begins process to withdraw from International Criminal Court. *Mail and Guardian*, 21 October. Available from: <http://mg.co.za/articla/2016-10-21-south-africa-begins-process-to-withdraw-from-the-icc> [Accessed 01 February 2017].

Office of the Prosecutor 2016. *Report on Preliminary Examination Activities*, 14 November. Available from: <https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-pe_eng.pdf> [Accessed 17 April 2017].

Pityana, Barney N. 2003. The African Court on Human and Peoples' Rights in Municipal Law. Paper presented at the Seminar for Eastern and Southern African States on the Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, 9–12 December, in Gaborone, Botswana.

Pityana, Barney N. 2004. Reflections on the African Court on Human and Peoples' Rights. *African Human Rights Law Journal*, 4 (1), pp. 121–129.

Sceats, Sonya 2009. Africa's new Human Rights Court: Whistling in the wind? Briefing Paper, Chatham House. Available from: <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/bp0309sceats.pdf> [Accessed 14 February 2017].

Schabas, William A. 2001. *An introduction to the International Criminal Court*. Cambridge, Cambridge University Press,

Schabas, William A. 2014. The United Nations War Crimes Commission's proposal for an International Criminal Court. *Criminal Law Forum*, 25 (1), pp. 171–189.

Scharf, Michael 1996. The letter of the law: The scope of the international legal obligation to prosecute human rights crimes. *Law and Contemporary Problems*, 59 (4), pp. 41–61.

Sirleaf, Matiangai V.S. 2016. The African justice cascade and the Malabo Protocol. University of Pittsburgh Legal Studies Research Paper Series: Working Paper no 2017-1. Available from: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2901608> [Accessed 18 April 2017].

Staff Reporter 2017. South Africa revokes ICC withdrawal. *Mail and Guardian*, 8 March. Available from: <https://mg.co.za/article/2017-03-08-south-africa-revokes-icc-withdrawal> [Accessed 18 April 2017].

Tladi, Dire 2009. The African Union and the International Criminal Court: The battle for the soul of international law. *South African Yearbook of International Law*, 34, pp. 57–69.

Treaty of Peace with Germany (Treaty of Versailles) 1919. *Treaty of Peace with Germany (Treaty of Versailles)*. Available from: <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002–0043.pdf> [Accessed 15 February 2017].

Udombana, Nsonqurua J. 2003. An African Human Rights Court and an African Union Court: A needful duality or a needless duplication? *Brooklyn Journal of International Law*, 28 (3), pp. 811–870.

United Nations 1998. *Rome Statute of the International Criminal Court*. Available from: <https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf> [Accessed 14 February 2017].

United Nations 2016. Background information on the justice and reconciliation process in Rwanda. *Outreach programme on the Rwanda genocide and the United Nations*. Available from: <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml> [Accessed 10 February 2017].

United Nations General Assembly Law Commission 1949. Question of international criminal jurisdiction. *Historical survey of the question of international criminal jurisdiction*. New York, United Nations Publication. Available from: <http://legal.un.org/ilc/documentation/english/a_cn4_7_rev1.pdf> [Accessed 11 February 2017].

United Nations Security Council 2013. Security Council resolution seeking deferral of Kenyan leaders' trial fails to win adoption, with 7 voting in favor, 8 abstaining. Available from: <https://www.un.org/press/en/2013/sc11176doc> [Accessed 16 April 2017].

Viljoen, Frans 2004. Recent developments in the African regional rights system. *African Human Rights Law Journal*, 4 (2), pp. 344–352.

Weldehaimanot, Simon M. 2011. Arresting Al-Bashir: The African Union's opposition and the legalities. *African Journal of International and Comparative Law*, 19 (2), pp. 208–235. Available from: <http://www.euppublishing.com/doi/abs/10.3366/ajicl.2011.0011> [Accessed 14 February 2017].

African Union approaches to peacebuilding: Efforts at shifting the continent towards decolonial peace

Siphamandla Zondi*

Abstract

This article argues that the African Union (AU) approach to peacebuilding, out of Africa's historical experience and lessons from the United Nations (UN), is comprehensive and holistic, but requires the existence of a legitimate government, a functional society and domestic parties for dialogue to begin. Without these conditions, the approach leads to extended peace enforcement rather than peacebuilding. Yet, whatever the conditions that prevail, peacebuilding in Africa has experienced limited success due to the failure to fundamentally transform the inherited post-colonial state, society and politics. The neo-colonial conditions helped to stall the achievement of lasting peace. The African experience with peacebuilding demonstrates a need for a more fundamental peace than is internationally the norm – a peace paradigm that hinges on the continued decolonisation of the African state and society in order to give rise to what may be called a decolonial peace.

Keywords: peacebuilding, AU, OAU, decolonial peace, reconstruction, UN

---

*   Professor Siphamandla Zondi is head of Department of Political Sciences at the University of Pretoria, South Africa and acts as the head of the Department's Institute for Strategic and Political Affairs. His areas of interest include African agency in international affairs, global South agency, decolonisation and African decolonial political thought.

Introduction

The African Union (AU) approach to peacebuilding is an outcome of African experience with peace missions and lessons from the global environment, especially the United Nations (UN). Murithi correctly indicates how discussions about peace efforts in Africa have focused on actions, successes and failures since the formation of the Organisation of African Unity (OAU) and sees them as part of the institutionalisation of pan-African ideals of prosperity for all, peace, development, self-reliance, freedoms and liberation (Murithi 2008:17). This gives the AU approach a fundamental uniqueness: its birth in a particular historical experience, its particular experiences of the structures of power and life that make up modernity/coloniality, and its aspirations born on the periphery of the world system we live in today. A major part of this peacebuilding agenda is contained in the *African Post-Conflict Reconstruction Policy Framework* (NEPAD 2005). The incomplete transition of Africa from colonial to post-colonial, resulting in the persistence of neo-colonial conditions, must be born in mind when analysing efforts at peacebuilding in Africa. This leads to what Ndlovu-Gatsheni terms 'neocolonised postcolonial' conditions where peace and development remain elusive for ordinary Africans (Ndlovu-Gatsheni 2013:3).

By decolonial (Grosfoguel 2009:10) peace we imply the pursuit of peace in a manner that also deals with the colonial continuities in the nature of the inherited state, with its underlying paradigm of war and violence, its coloniser model of the world and its colonial political economy. These continue to haunt post-colonial African societies. The concept is derived from the rich literature in decoloniality (Ndlovu-Gatsheni 2015:28), a family of theories that places on the discussion table the critical importance of decommissioning the underpinnings of the colonial order of things, including neo-colonialism, and pursuing decoloniality as an imperative for the achievement of full liberation in the global South. Decolonial peace forms part of the number of conditions that describe what the literature calls the decolonial turn, namely: decolonial ethics of co-existence,

political economy, power, being and love, among others (Mignolo and Escobar 2010; Maldonado-Torres 2006; Grosfoguel 2011; Ndlovu-Gatsheni 2013). So, this article seeks a departure from Eurocentric worldviews in the mainstream literature on peacebuilding that discount the fundamental problem of coloniality and constrain the transition to lasting peace and prosperity in African conflict situations. The article does not dwell on explaining the underlying paradigm of violence that lies at the foundation of the Westernised modern world since the late 15th century and how this has remained in place because of the incomplete process of decolonisation of power, knowledge and being. Though this is important, it is a subject that requires a full article on its own.

This article rather focuses on the contention that although the AU has innovated in useful ways in peacebuilding, the failure to fundamentally transform the inherited neo-colonial African society (including the state) limits the achievement of decolonial peace. Africans' experiences with centuries of structural violence and its manifestation in intra- and inter-state conflict demonstrate the need for a focus on a more fundamental peace than is internationally the norm. It requires a shift towards a peace paradigm that promotes the continued decolonisation of the African state and society in order to give rise to what we call decolonial peace.

It moves from the premise that peace efforts undertaken both by the AU and regional economic communities have a fundamental weakness arising from the fact that they take as given the colonial/neo-colonial state and economy established through violent processes of conquest, colonisation and domination; they envisage peace without the decommissioning of the underlying logics of coloniality and its support for perpetual and repeated violence. As a result, these initiatives register progress in peacebuilding that are reversible and fragile because the heritage of structural violence remains in place under neo-colonial arrangements first set in place at independence. Decolonial peace is similar to the act of detoxing a body while applying measures to heal diseases that nest in toxic conditions. This detoxing (decolonisation) is a long complex process that began as indigenous resistance to colonial conquest, and later developed into the

rebellions against colonial rule, the achievement of independence and now the search for alternatives to Western ways of achieving noble purposes of peace, development and justice.

On this basis, the idea of African solutions to African problems becomes meaningless because African problems are neither originated nor sustained by African sources. Therefore solutions will require the decommissioning of the colonial structures that underpin African problems, structures that are actually global in their nature. For instance, Madagascar's incessant conflict is not purely about what Malagasy political actors do or do not do, but also its entanglement with imperial designs of France which have not ceased in spite of independence in the 1960s. The very idea of the AU and regional economic communities seeking to take control of their destinies implies a rebellion against the structures of coloniality that reproduce colonial conditions of dependence, violence, divisions, illusions and other factors in the conflict. Perhaps it is utopian to believe that a completely transformed society will come to exist, but Africa can make great progress towards a decolonial peace wherein the colonial condition is fundamentally transformed.

Elusive peace: What *fundamentally* is the problem?

Given the ubiquity of imported approaches to the subject of peace in Africa, this article must begin with a short discussion on the value of Africa-centred thinking on the whole problem at hand. Ali Mazrui thinks of Africa today as haunted by the curse of Berlin, referring to the 1884–5 European partitioning of Africa into unviable states that embedded the paradigm of violence at the very foundation of African statehood, a paradigm Africa is struggling to disentangle itself from (Mazrui 2010:23). This produced what Ngugi wa Thiong'o calls deep dismemberment that has defied efforts at unity, peace and development long after independence (Wa Thiong'o 2009). For him, this is partly because the African elite that took over were brought up in that same Euro-North American modernity which fashioned the current African condition. For this reason, efforts at peace, development and liberation without re-memberment of Africa

at various levels have only helped provide for temporary respites rather than lasting solutions. It is in this analytical context that we consider the AU's approach to peacebuilding and its efficacy in fulfilling the African dream of peace, where peace means removing the gangrene that set in centuries ago and keeps manifesting as resurgences of conflict, poverty and despair (Césaire 1972). Peace is about a fundamental shift from the paradigm of violence at the root of the African states to a paradigm of peace that fosters the African renaissance (Du Bois 1953). Therefore, it is at the same time a process of decolonising the African colonial condition whose roots are a violent conquest and domination as well as the neo-colonial realities of post-colonial Africa. The article therefore makes a distinction between peace within coloniality, which amounts to mere silence of guns within a state founded in violence, and decolonial peace, which implies peace achieved by transforming the fundamentals on which the modern/neo-colonial state and society in Africa are founded. It is peace pursued alongside decolonisation of power, statehood, and state-citizen relations. This article will show that, while there are unique innovations by Africa in peacebuilding, they come short of this transition to decolonial peace because the African political class has lacked the courage, imagination and revolutionary consciousness to decommission the inherited modern state, its economy and ways of being in order to invent a new African political reality suitable for sustainable, fundamental and lasting peace (Nzongola-Ntalanja 1987:ix).

Continental peace architecture: The basis of AU peacebuilding

When the AU was born, conflict patterns were starting to change from inter-state towards greater incidence of intra-state conflict (Olympio 2004:109–112). New key factors of conflict also emerged, such as: ethnicisation of political and power struggles, competition over scarce resources and access to state power, violence fuelled by proliferation of small arms, armed groups influenced by politico-religious ideologies, and secession-seeking groups who wished to leave their nation states (Bujra 2002).

This revealed the underlying problem of the failure of the African state to protect and provide for its population. It became a state that was fragile and without full control over the whole of its territory. Rebel groups and militia could thrive outside protected capital cities and resourced towns. It turned out that this state was elitist, factionalist, tribalist, militaristic and autocratic, implicated more in oppressing and brutalising its people than offering social and economic development or ensuring security or building peace.[1] It is in this context that the AU refined and expanded the OAU experience with peace missions, to build its approach to peacebuilding, but this remains a work in progress.

The continental peace architecture provides an institutional framework for implementing the concept of a comprehensive peace that encompasses conflict prevention, peacemaking, peacekeeping, post-conflict recon-struction and peacebuilding. At the pinnacle of this architecture is the AU Peace and Security Council (PSC) established in 2004 with ten members elected for two-year terms and five for three-year terms in order to provide some stability and continuity to the Council's leadership. The focus of the PSC is similar to that of the OAU Central Organ, i.e. to prevent and resolve conflicts by monitoring potential security threats throughout the continent (Baregu 2011:14–25). It sends fact-finding missions and can authorise AU interventions in the form of peace envoys, observer missions, mediators, good offices, technical support teams, and armed forces to keep peace after agreements. Article 7(e) of the Protocol Relating to Establishment of the Peace and Security Council operationalises the AU Constitutive Act's principle of non-indifference by empowering the Council to recommend military interventions for authorisation by the AU Assembly in cases of crimes against humanity, genocide and war crimes (African Union 2002). This is a new dynamic in Africa's peace agenda – a continental decision-making platform for peacebuilding plus the principle of non-indifference towards violence within states. Its success will be related to whether and

---

1   There is a large literature on this failure to transform the state. See, for instance, Nzongola-Ntalanja 1987; Ndlovu-Gatsheni 2013; Nkrumah 1965.

how the continent manages to undo the curse of Berlin which infects the states, the economies and society in general. Otherwise, this architecture will be remembered only for its great promise rather than its actual effect on the ground.

AU-Regional Economic Communities (RECs) interface

The African Standby Force consists of five regional brigades and enables the AU to intervene in a coordinated fashion in a conflict situation. In this regard, the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), the Southern African Development Community (SADC), the Economic Community of Central African States (ECASS) and the Arab Maghreb Union (AMU) have responsibilities to make, secure and build peace in the regions. In this way, the AU framework for peacebuilding encourages regions to take responsibility for peacebuilding in conflict situations; thus the AU implements the principle of subsidiarity in order to build the capability of RECs to ensure peace in the regions (Adibe 2003:105–114). No other continent in the world uses regional structures for peacebuilding in the same fashion.

The SADC role in successful peace processes in Madagascar, Lesotho and Zimbabwe is a case in point. It took the lead in facilitating mediation processes, in deploying security forces in the case of Lesotho to secure peace, and in peacebuilding measures like training, confidence building and humanitarian assistance. Its leaders reported regularly to the AU PSC where they also sought endorsement of their peacebuilding efforts and looked for refreshed mandates; and the AU relied heavily on the ability of the region to provide political, security and financial resources to these peace processes. As a result, the burden of supplying resources shifted to the regional organisation whereas in many other peace missions, the AU shoulders the bulk of the burden with the help of outsiders. The analysis shows that this devolution of peacebuilding responsibilities strengthened the capacity of the regional organisation to respond swiftly to prevent, manage and resolve conflict for purposes of building permanent peace

(Zondi and Khaba 2014:1–17; Zondi 2013:49–79). The recent work of the EAC in bringing peace back to Burundi in 2015 (ICG 2016) and the IGAD role in facilitating South Sudan's peace negotiations after a devastating civil war in 2016[2] vindicate the AU approach of devolving responsibility for peacebuilding to regional organisations closest to the situations. In all occasions, the impact is, among others, a stronger capacity to building peace at the regional levels. It is an approach that is designed to help strengthen regions and promote a regional integration that transcends the limitations of involved nation states with their logics of power as dominance rather than cooperation (Adejumobi 1998:29–53).

But there is uneven performance and effect in the AU-RECs vertical coordination for peacebuilding with some RECs, like SADC and EAC, showing signs of maturity in taking responsibility for peace in their respective regions, while others, like ECCAS and Communauté Économique et Monétaire des États de l'Afrique Centrale (CEMAC), struggle in the absence of a willing and capable state or two to underwrite regional agency. Of course, the AMU remains moribund as a result of the broader geopolitical contestations over the Mediterranean and the Saharawi question. The pursuit of opportunities arising from the principle of subsidiarity in the AU Constitutive Act requires a willing and able set of leaders motivated by common good, but not all regions have this advantage. Secondly, the AU-RECs interface still suffers from poor coordination, the AU having failed to develop mechanisms to coordinate implementation of its decisions at regional levels and to assist regions to communicate their interests to the AU (Obouga 2016).[3] The envoys now exchanged between the regions and the AU have poorly defined roles, and very little of this is about ensuring cohesion between the two levels of governance. Thirdly, there is still limited horizontal coordination and harmonisation among

---

2   For reflections of the UN Security Council's Expert Panel on this, see United Nations Security Council 2015.

3   For a ground-breaking critical analysis of these peace efforts from below, see Maphosa and others 2014.

RECs and as a result there is no notable case of REC-REC coordination of a peace initiative. Fourthly, the RECs require well-developed institutional mechanisms to deliver on the promise of regional responsibility for peace, which includes the full operationalising of standby forces, institutions for political coordination of peace efforts, capacities for mediation and peace-making, and structures for driving regional post-conflict rebuilding. For instance, while ECOWAS established the long-awaited Mediation Support Division in the ECOWAS Commission only in 2015, other elements of the peace architecture – as the Mali crisis of 2012 showed – including an early warning capability, a rapid military response force and post-conflict peacebuilding, remain work in progress (Odigie 2016).

There is room for building the capacity of RECs to take on the responsibility for peace in regions and between regions, but this is not yet a major consideration in the upper echelons of the AU Peace and Security Architecture. Part of the reason for this is that Africa is battling to overcome the curse of Berlin that is manifest in what Ngugi wa Thiong'o called dis-memberment and what Mazrui called fragmentation of the African polity (Mazrui 2010:xii; Wa Thiong'o 2009:1–31). Until these weaknesses are remedied, the AU will be forced to rely on UN peacekeeping forces or former colonial powers like France to respond effectively to urgent security crises as it happened recently in Mali. Under these conditions, there can be no decolonial peace. A lasting peace must accompany the building of national unity, regional cohesion and continental integration – a set of conditions opposite to those arising from the curse of Berlin.

The AU thinking and the African Post-Conflict Reconstruction Policy Framework

Many of the lessons learned from various experiments in peacebuilding during the latter years of the AU were integrated into the *African Post-Conflict Reconstruction Policy Framework* whose development began when in 2002 the implementation committee of the New Partnership for Africa's Development (NEPAD) decided that Africa's peacebuilding approach would be an all-embracing strategy including a) restoring security;

b) managing political transition; c) anchoring socio-economic development; d) promoting human rights and justice; and e) resource mobilisation (NEPAD 2005).

These five dimensions are designed to be mutually reinforcing and complementary. The AU believes that there is no need to place these in a sequence, because it does not accept the logic that you need one element to be fully in place before the next phase kicks in, as is often the case with the UN and Western approaches to peacebuilding. It is assumed in the mainstream literature that conflict prevention, conflict resolution, reconstruction, peacekeeping, and peacebuilding form a linear framework that must be followed in that order. Therefore, the actual implementation of this AU policy differs from one conflict situation to another. The need to be context-specific and flexible in implementing this policy is an important feature of the AU approach to peacebuilding. Central to the policy is the need to pursue security, development and peace simultaneously at all times. Yet, in practice the AU follows the Western and UN approaches that assume the sequencing of interventions from prevention to post-conflict reconstruction as both the 2003 Protocol Establishing the Peace and Security Council (Art. 20) and the policy framework referred to above suggest. Actually, the failure to deploy troops to quell terror attacks on Mali in 2013 (Aning 2016:120–33) and the failure to send troops alongside mediators in the Central African Republic illustrate the pitfalls of the commitment to a linear process of sequencing interventions (AU Election Observation Mission 2016). In this approach, the underlying sources of problems, including the inherited violent neo-colonial state, economy and organisation of society, are maintained, giving Africa only temporary respite from violence and/or a merely fragile peace. More than a decade ago, the literature already pointed to shallow peace processes that failed to transform the state and society so that they become pillars of peace and development (Baregu and Landsberg 2002:2). The following analyses of key AU peacebuilding interventions will enable us to determine whether the AU has evolved a unique approach to peacebuilding and, if so, what this implies for the renaissance of a peaceful and prosperous Africa.

The AU record of peace interventions

Burundi

The AU inherited from the OAU several peace interventions, the first being in Burundi where the OAU had been involved since 1994 in de-escalating conflict, using good offices, peace envoys, esteemed mediators in Julius Nyerere and Nelson Mandela, peacekeeping and confidence-building measures (Muyangwa and Voigt 2000:10). The OAU had succeeded in bringing the parties to a power-sharing agreement in 2001 that led to a three-year transitional government. The AU got involved in April 2003, half-way through the transition, when the AU itself was barely a year old. The AU approach became apparent right at the beginning, with the establishment of a multi-disciplinary African Union Mission in Burundi (AMIB) deploying just over 3 000 troops from Ethiopia, Mozambique and South Africa to provide security for returning political activists and other refugees, and assist with the demobilisation of armed groups and general peacekeeping. A 43-member observer team was tasked with monitoring the implementation of the agreements. Political envoys in the form of former ambassadors were deployed to politically support the transition from one government to another through dialogues with all key political parties.

An experienced diplomat, Mamadou Bah, was placed in charge of the entire mission with a largely political role to ensure a coordinated peacebuilding effort. The special representative in this model of peacebuilding is expected to be a peace envoy available on the ground to help the stakeholders resolve any issue that crops up, to promote the transformation of politics from acrimony to continuous dialogue and to catalyse the positive role of international actors on the ground. As Bah explained, the AU orientation was that the AMIB was focused on creating conditions for permanent peace and for development rather than merely silencing the guns (Interview with Amb. Mamadou Bah 2003). For this purpose, the AU focus was on continuous confidence-building measures to enable the affected country to sustain on its own the peace thus built. Central to this approach, the

AMIB mobilised the UN and donor agencies to support the rebuilding of state capacity to deliver development, fight natural calamities like drought and promote the country for international investments.

Indeed, the UN played a critical role in reinforcing the AMIB even before the UN took over the control of the peace mission and converted it into the UN Operation on Burundi (ONUB) (Murithi 2008:75). With greater resources and lots of expertise in complex processes of demobilisation and reintegration of armed forces, the UN helped complete the AU efforts by demobilising thousands of armed persons. This laid the ground for the return to relative normalcy by 2009. However, the flare up of conflict in 2015 when armed forces sought to suppress political activists opposed to attempts by President Pierre Nkurunziza to extend his presidential term taught the AU that it was not wise to see the election of a post-transition government as marking the end of a peacebuilding process. The AU has not been able to re-engage its peace mission and complete the process that was ended prematurely. It was left to the East African Community (EAC) to facilitate inclusive political negotiations between Nkurunziza and his nemesis. While the teaming up with the UN, the central role of the regional body (EAC) and the privileging of political dialogue distinguish the AU approach from the OAU and other international approaches, negotiations led to the bankrupt idea of elite pacts involving top leaders of major political parties. This elitism undermines the role of civil society actors, indigenous structures on the ground and the rooting of peace in communities.

Somalia

The AU intervention in Somalia was conditioned by factors quite different from those that prevailed in Burundi because Somalia had experienced a complete collapse of government in the early 1990s and had become a complex den of militia-driven and terror-linked conflict (Murithi 2008:81). Central to the AU approach was the OAU idea of establishing a transitional government with a semblance of stability in Somalia because the AU approach requires the establishment of a government to be at the centre of dialogue, stabilisation, legitimation of international interventions and to

be the institution to which peace missions hand over the task of building peace in the long run. Restoring constitutional normalcy is for the AU the basis for peace intervention and that is why it places so much emphasis on brokering a political agreement providing for transitional government. In this case, like the OAU, the AU bases its approach on the establishment of even a weak government. The AU supported the Inter-Governmental Authority for Development (IGAD) in its efforts to achieve peace through the establishment of several fragile transitional governments since 2003 and thus the whole peacebuilding endeavour has also appeared weak, stuck in its first phase (establishing a government and beginning political dialogues) and there are no clear prospects for the AU approach to find expression in Somalia under these conditions. Such an approach to Somalia took the form of the UN Security Council Resolution 1725 of December 2006. This is why the AU formally established the AU Mission in Somalia (AMISOM) in January 2007 with the usual mandate of political dialogue, constitution building, confidence building, coordination with international agencies and security sector reform. But the mission has hardly been able to go beyond very basic tasks of political dialogue and propping up a fragile transitional government. It has also focused on humanitarian assistance. Yet, the AU has gone on to seek UN Security Council mandate to give the IGAD-AU mission international legal standing.

The UN deployed a force of 1700 peacekeeping troops from Burundi, Ghana, Malawi, Nigeria and Uganda in 2009, to first secure a political dialogue called the Somali National Reconciliation Congress. Since then, however, it has mainly been focused on protecting the fragile transitional government and helping to contain the security threat posed by the emergence of Al-Shabaab militants (AU Peace and Security Council 2015). The mission seems stuck in its infancy. NATO powers increased military operations in Somalia in the name of the War on Terror, and have further complicated the situation, helping to deepen conflict rather than reinforcing peace interventions. Therefore, the AU approach to peacebuilding has proved ill-suited to conditions where complex theatres of conflict continue even during peace attempts. This international cooperation is essential for

conflict resolution and subsequent peacebuilding in Somalia due to the entanglement of regional and extra-regional forces in problems facing Somalia. While the AU approach helped to contain the deteriorating security situation, it has not provided the conditions for peacebuilding further than relative stability or a security stalemate between government and militia.

According to the Peace and Security Council Report for 2015, AMISOM struggled to make headway because there are no conditions for peace in Somalia. Weak government and violence involving Al-Shabaab and other militia mean that national dialogue towards some constitutional normalcy and transitional political arrangements cannot take root. Under these conditions, AMISOM has become a force focused on managing conflict rather than keeping or building peace. AMISOM accepts that state formation, reconstruction of societal systems and the rebuilding of political processes are difficult to achieve in the absence of conflict resolution (AU Peace and Security Council 2014). If this leads to a greater focus on rebuilding the state, state-civil society relations, strengthening indigenous structures of peace, and securing the integrity of the territory, it might lead to some progress towards peace in Somalia.

Sudan

The AU peace intervention in Darfur in Sudan showcases a dimension of the AU peacebuilding approach which differs slightly from that in the cases outlined above, namely: co-ownership of the peace efforts between the AU and the UN. It is clear that this is an experiment born out of the realisation that without adequate financial and technical resources, international networks and the force of international law, good AU peacebuilding models will have a limited effect. As indicated earlier, the AU idea of peacebuilding is broadly similar to the UN peace framework. Of course, the AU approach takes peacebuilding as an overarching purpose of intervention rather than a phase that must only follow peacekeeping right at the end of the cycle of transformation from conflict to peace. The AU sees continuous political dialogue, confidence building, and institution building as central from

beginning to the end of the peace processes. This is why cooperation with the UN tends to happen long after the AU started with peacebuilding.

The African Union Mission in Sudan (AMIS) was established in the year that the PSC was born, i.e. 2004. The mission was to minimise the impact of the conflict between government forces, militias and rebel groups on civilian populations in Darfur as well as to secure the environment for political interventions aimed at finding peace agreements among key political actors. Fought largely through proxy forces like militia and armed bandits, this conflict in western Darfur descended into deadly ethnic conflict and banditry pitting indigenous Africans against Arabic Africans. The news of mass killings and the displacement of two million people from western Darfur led to the AU intervention through President Idris Deby of Chad in September 2003. This led to the Abeche Agreement signed by the main rebel group, Sudanese Liberation Movement (SLM), and the government that agreed to observe a ceasefire, to disarm irregular armed groups and to provide a safe passage for humanitarian assistance (Murithi 2008:81–82).

From March 2004, the AU became fully involved in attempts to de-escalate the conflict through a series of political negotiations seeking to ensure that all rebels and armed groups were involved in the peace agreements. It was also involved in confidence-building measures like facilitated dialogues among affected communities in the region. To give even more weight to this pressure for a peace agreement as basis for a structured AU peace mission, the then Chairperson of the AU Commission, President Alpha Konare, became directly involved in facilitating dialogue alongside other peace envoys. But this led only to another piecemeal agreement involving some and not all major players in the conflict: the Humanitarian Ceasefire Agreement signed by SLM, the Justice and Equality Movement and the government. The terms agreed were similar to previous peace agreements mentioned above. At last, the AU was able to ensure that peace agreements allowed for humanitarian corridors, observer missions, and peace envoys to explore comprehensive and inclusive agreements. Thus, the AMIS was born with the hope that it would implement the AU peacebuilding

approach (Toga 2007:214–244). But this approach has been of limited effect on conditions on the ground because the government remains unwilling to enthusiastically support the AU or UN interventions and because there are many splinter militias left outside the complex peace agreements.

The AU was central in peace negotiations designed to bring previously excluded actors within the fold of peace agreements, as in the talks that took place in Abuja, Nigeria. Each round concluded with a declaration of principles, which resulted in five agreements from five rounds of Abuja negotiations, showcasing the AU commitment to a patient nurturing of shared understanding and vision as the basis for agreements in cases where the situation was not on its own ripe for an agreement. The last round that took five months of facilitated negotiations culminated in the Darfur Agreement of May 2006. But it turned out that the agreement included only one faction of the SLM and excluded the JEM because both and a few others still believed that a military victory was more desirable and possible (Fadul and Tanner 2007:285). Under such conditions, the AU model on peacebuilding just does not work.

The first three phases of AMIS (April–September 2004; October 2004–March 2005; and April 2005 onwards) confronted challenges relating to operational unreadiness, poor planning, delays in deployment, weak supplies, and logistical deficiencies. Inadequate financing of the mission meant that it relied on Western funding for its essential capacities, thus undermining the pan-African ideal of self-reliance. The reliance on NATO to transport AU troops to Darfur between 2005 and 2007 meant that this Western military alliance was given legitimate presence on African soil. Thereafter NATO would not depart from the African space, and played a prominent role in the Western military campaigns against the government in Libya in 2011 that led to the assassination of Muammar Qadaffi and undermined African diplomacy (NATO 2008; Campbell 2012:97–105). The AU peacebuilding approach has this serious weakness: it is one of those great African ideas that Africans cannot fund. They have to look to the West for finance, and this obviously brings divergent political visions, peace orientations and priorities which weaken the AU model to the point of failure.

AMIS over time grew into a big military contingent made up by Nigeria (3 infantry battalions), Rwanda (3 infantry battalions), South Africa (1 infantry battalion, FHQ (Force Headquarters) Reserve, 1 engineer company), Senegal (1 infantry battalion), Kenya (1 Military Police Detachment), and Gambia (1 FHQ company) (Toga 2007:221). Late in 2007, a hybrid mission between the AU and UN, called United Nations-African Union Hybrid Operation in Darfur (UNAMID), replaced AMIS, further reinforcing this military force. This force proved crucial for the implementation and protection of humanitarian interventions, including the return of refugees in some areas, the resumption of economic activities in some villages and the prevention of further escalation of conflict. It also provided extensive training and capacity support for national security and policing, but given the central role of government in the conflict this formula was ill-advised and could not ensure better security for all and peace for the population. UNAMID became a greater hope for the people affected by conflict than government. But in the process, the mission turned into peace enforcement rather than peacebuilding as defined by the AU. With peacekeepers dying regularly in skirmishes with armed groups that continue to fester in Darfur, UNAMID has become entangled in the no peace-no war stalemate in Darfur (Ekengard 2008:26–33). However, the holistic nature of the AU-UN approach in this case means that the mission is still of value for helping to avoid a further meltdown of security in this area.

However, UNAMID has achieved in seven years not much more than AMIS did before it. This is because the conditions for peacebuilding simply did not change much under UNAMID's watch. The government remained recalcitrant and rebel groups continued to hope for greater advantage in military confrontation than in peace dialogue. If preventing a deterioration of the security situation is an achievement, then AMIS and UNAMID have been a relative success. Otherwise, there has been no real progress on the conflict resolution and post-conflict peacebuilding fronts. Protracted mediated dialogues with various parties to the conflict have also been harmed by poor coordination between Western actors imposing sanctions

and an arms embargo on the government and African actors trying to find a political settlement on the ground. If sanctions are the proverbial stick needed to support the diplomatic measures on the ground, then the two must be undertaken in a coordinated fashion. Mathew Leriche would make the same point. He found that Western-driven sanctions on South Sudan had by 2015 become obstacles to peace (Leriche 2015).

Which factors contribute to the uniqueness of the AU peacebuilding approach?

'Unique' describes and specifies an approach to peacebuilding which is particularly African and born out of the African experience. This does not mean features that cannot be found in some form in peacebuilding outside Africa. But it does mean that these features are from Africa's contribution to thinking and practice about peacebuilding. What is principally unique about the AU approach to peacebuilding is its historical genesis from peace initiatives driven by the OAU and then the AU. Part of it has to do with the contextualisation of central tenets of the UN's Agenda for Peace. Methodologically speaking, we have learned from the writings of Archie Mafeje (2000:66–71), Georges Nzongola-Ntalanja (1987), Tiyambe Zeleza (2006), Molefi Asante (1990), Ngugi wa Thiong'o (1981) and Paulin Hountondji (1997) that the authenticity of what is African arises from the fact that Africa's unique history presently produces particular African realities, thought patterns, approaches and orientations. This is true of all areas of public policy and politics including peacebuilding. No serious study of an African idea or reality can avoid the historical evolution of today's realities. The following discussion is on the key tenets of the particular AU approach to peacebuilding. We begin with unique AU tenets of peacebuilding.

An all-encompassing concept of peacebuilding is used

The AU approach has benefitted from the comprehensiveness of the conceptual basis of its peace interventions. This mirrors the Agenda for Peace conceptual framework that sees four key pillars of the peace

agenda (prevention, peacemaking, peacekeeping and peacebuilding) as interconnected, interdependent and mutually reinforcing. The AU sees peace as linked to development as the basis of this framework. Therefore, the AU approach has benefited from this holistic approach to thinking about peace and this leads to comprehensive peace interventions.

In line with the comprehensiveness of the conceptual framework, the AU peace interventions are multi-disciplinary in the sense that they include capacities to anticipate, de-escalate, secure, monitor and support post-conflict development. The capacities to prevent conflict, to resolve on-going conflict, to protect peace processes and to build new and peaceful societies are central to the AU approach. Where there is a strong leadership on the ground in the form of a Special Representative or peace diplomat, and where there is strong coordination among key players in an AU peace mission, the chances for success are much enhanced. Challenges have arisen, however, when the AU peace intervention is undertaken after conflict has broken out but before any meaningful peace process takes root, because it then gets translated into an endless peace enforcement intervention.

AU intervention in domestic affairs is legally justified

The qualitative difference between the OAU and AU approaches to peacebuilding is in the legal framework. Unlike the OAU Charter, the AU Constitutive Act permits intervention in member states in cases of crimes against humanity, war crimes and genocide. This removes the old problem where the pan-Africanist ideal of peace and prosperity is hampered by the Westphalian principle of non-intervention in national affairs. On this basis, having formally adopted the principle of non-indifference in Sirte, Libya, in 1999, two years before the idea of Responsibility to Protect was proposed by the International Commission on Intervention and State Sovereignty, Africa is the first region to provide the legal framework for setting aside the principle of non-intervention in specific circumstances, before the international community adopted the principle of Responsibility to Protect. Therefore, the AU Constitutive Act, the Protocol establishing

the PSC and other decisions of the AU on peace provide a conducive legal-political environment for comprehensive AU peace missions. This brings the AU's concept of peacebuilding closer to the ideals of the Responsibility to Protect – towards which the world has been working.

It forms part of a Comprehensive African Peace Architecture

The establishment of a continental peace and security architecture with the PSC at the centre is an outcome of lessons learned in the latter years of the OAU when the Central Organ on security was established with positive effect in all major OAU peace interventions. The African Standby Force and its regional brigades in all five regions of the AU are meant to enable the AU to respond timeously to incidents of violence defined in Article 3 of the Protocol establishing the PSC. This provides the necessary institutional framework for the support of the peacebuilding interventions.

It promotes AU-UN cooperation for peacebuilding

Clearly, the cooperation between the UN and the AU in peacebuilding in Africa is positive for building and strengthening African capacity for peacebuilding as well as for boosting the UN interface with regional organisations in keeping with the principle of subsidiarity. The AU approach is to lay the ground for such cooperation through comprehensive peace missions of its own, focused on anticipating conflict hotspots, confidence building and peacekeeping. This is essential for African ownership of hybrid missions as well as for building African capacity for peacebuilding. The challenge is to develop a shared conceptual framework for the AU and UN.

In spite of AU unconcern, its peacebuilding is supported by effective peace initiatives from below

The AU policies and protocols pay lip service to enabling citizen involvement in the implementation of AU programmes. The Post-Conflict Development and Reconstruction policy does the same. As a result, efforts from below function mainly because citizens pursue them rather than because governments enable them. African civil society interventions for

peace are many and various. The most notable include the women-driven efforts that helped transform the situation from conflict to a peace process in Liberia when organisations like the Women in Peace building Program (WIPNET), the Mano River Women of Peace Network (MARWOPNET) and Women Peace and Security Network Africa (WIPSEN-A) created a peace movement that politicians and rebel groups could not ignore. These formations remained vigilant enough to support social efforts to reintegrate demobilised fighters, build community centres for normalising community relations, provide counselling for the affected, engage in post-war community rebuilding, and convene dialogues to keep peace alive (UNIFEM 2007; Ecoma 2009; WIPSEN-Africa 2009). Such peacebuilding initiatives from below have enjoyed the support of intra-African and extra-African civil society networks as well as structures of the UN like the UN-INSTRAW and UNWOMEN (Hendricks and Chivasa 2008). They have become crucial for pursuing the full implementation of UN Resolution 1325. This is all part of efforts at attaining peace from below, involving organs of civil society where women's formations play a prominent role – efforts which have increased in number, scale and impact. This is in spite of a political, security, and legal environment that discourages the involvement of formations from below in AU-driven peacebuilding projects (Maphosa et al. 2014).

Which factors impair the uniqueness of African peacebuilding?

Over-reliance on external funding for peacebuilding

The reliance on former colonial powers and other external forces for financial and technical resources seriously undermine the AU's peacebuilding. 'Borrowed waters do not quench one's thirst' is an African proverb that supports the pan-African ideal of self-reliance. Thus, dependence on external financing of peacebuilding defeats the very purpose of the AU approach. We have shown that the AU approach is founded on African renaissance and on the ideals of decolonising the world; but these ideals

cannot be achieved while allowing Western powers space to influence what Africa thinks and does to this end. The failure of the AU to finance its programmes generally and the inability of many of its member states to finance their regular budgets is a major threat to the second decolonisation of Africa and its aim to finish the incomplete process of liberating the continent. This resource problem points to a fundamental weakness in the post-colonial African condition, and is a serious contributor to the post-colonial realities of deferred dreams, shattered expectations and illusions of change. Over-reliance on generous European Union funding mainly and other external donors means that AU's peacebuilding is not sustainable and cannot be considered to be fully sovereign and African. Assistance from the UN is better because the UN is an inclusive global organisation, but it still can be a conduit of imperial designs of the few dominant powers in the world, as happened when the UN played a problematic role alongside France in Côte d'Ivoire's coup and violence that brought the current government into power (Zounmenou No date).

The obsession with saving the inherited neo-colonial State

It is clear that like the states that constitute it as an intergovernmental organisation, the AU is still trapped in state-centric approaches to peace, focusing more on rebuilding the state, that was never authentic in the first place, than on transforming society as a whole. It has been about establishing the semblance of a functioning nation-state in the form of governmental institutions for providing services and security rather than re-orienting citizenry or boosting indigenous civil society structures that form part of social capital for peace and development. Such rebuilding should ideally be linked to institution building, leadership development, citizenship enhancement, economic rejuvenation. At a practical level, the conflict-resolution and peacekeeping components must be seen as the start to the post-conflict reconstruction and development process. Post-conflict does not mean that interventions start after conflict has ended, but that the focus of intervention is measured by what happens after agreements are implemented fully.

Conclusion

The AU approach to peacebuilding has evolved over the past fifty years from the terrible experiences of the early OAU years to improved interventions in the later years of the OAU. The AU inherited the lessons learned and improvements begun under the OAU, but benefitted also from UN-driven ideas of holistic and comprehensive pursuit of peace and development. This has produced the following features that now characterise the particular nature of the AU approach to peacebuilding:

- It is based on a holistic concept of peace that embraces all the elements of the UN Agenda for Peace (conflict prevention/anticipation, conflict resolution/peacemaking, conflict management and post-conflict reconstruction).
- It comprises a comprehensive peace architecture that ranges from early warning capacity to post-conflict rebuilding for peace, but this remains underdeveloped mainly due to resource constraints and lack of political will on the part of African governments.
- It uses a peacebuilding framework anchored on balance between continental leadership and regional responsibility for peace; but not all RECs are ready to give effect to this both in terms of capability and in respect of political will to act.
- It benefits from the growing participation of non-state actors in supporting state-driven peace processes; though this is far from enthusiastic on the part of governments and still suffers the weaknesses to do with donor-driven civil society initiatives, neo-colonial suspicions, imposing models from Euro-American history, and a bias towards technical interventions.
- Unique African historical experiences underscore the importance of fundamentally transforming the neo-colonised post-colonial state and its relations with the former colonial empires for permanent peace to take root.

Factors that undermine the uniqueness of African peacebuilding include:

- Limited horizontal coordination and interface both among RECs and among individual countries in building sustainable peace;
- Over-reliance on external resources for peace building, thus limiting African ownership of initiatives;
- Failure to transform the inherited colonial state and economy as a necessary condition for building the fundamentals of decolonial peace.

Siphamandla Zondi

The record shows that the AU interventions have been relatively successful in de-escalating conflict and restoring the authority of the state, but they have not been successful in transforming the conditions that lead to an elusive colonial type of peace in Africa. Until the very idea of the modern nation-state on African soil (which is colonial in its DNA) is resolved, Africa will remain a mortuary where beautiful concepts and models of peacebuilding die, failing to bringing about lasting peace. The colonial state and modern society as inherited are founded on the paradigm of war, a logic of violence that does not die at independence. It is this underlying colonial/neo-colonial structure of violence that must be overcome for a truly authentic peace paradigm to emerge. In the meantime, the AU peacebuilding efforts need to encourage the interface between efforts from below and those from above, between state-driven and community-driven interventions, and between Eurocentric and Afrocentric peacebuilding models. The latter will ensure that there is greater harnessing of indigenous social capital and historical experiences as well as the customisation of peacebuilding to specific regional and local African realities. Research is urgently needed to explore this in some detail.

Sources

Adejumobi, Said 1998. The crisis of elections and democracy in Africa. *Africa Quarterly*, 38 (2), pp. 29–53.

Adibe, C. E. 2003. Do regional organizations matter? Comparing the conflict management in West Africa and Great Lakes region. In: Bouldon, Jane ed. *Dealing with conflict in Africa – The United Nations and regional organizations*. New York, NY, Palgrave Macmillan. pp. 105–114.

African Union (AU) 2002. Protocol relating to the establishment of the Peace and Security Council. Available from: <http://www.au.int/en/treaties/protocol-relating-establishment-peace-and-security-council-african-union> [Accessed 2 April 2014].

Aning, Kwesi 2016. African Agency in R2P: Interventions by the African Union and ECOWAS in Mali, Côte d'Ivoire and Libya. *International Studies Review*, 17, pp. 120–133.

Asante, Molefi K. 1990. *Kemet, afrocentricity and knowledge.* Trenton, Africa World Press.

AU Election Observation Mission 2016. Preliminary Statement on the 30th December 2015 Presidential and Legislative Elections in the Central African Republic. January 2. Addis Ababa, AU PSC.

AU Peace and Security Council 2014. Report of the Chairperson of the Commission on the situation in Somalia, 16 October, Peace and Security Council, Addis Ababa. Available from: <http://www.peaceau.org/uploads/psc.462.rpt.somalia.16.10.2014.pdf> [Accessed 1 June 2016].

AU Peace and Security Council. 2015. Communiqué of the 521st meeting of the Peace and Security Council, 30 June 2015. Available from: <http://www.peaceau.org/en/article /communique-of-the-521st-meeting-peace-and-security-council-on-the-joint-au-un-mis sion-in-somalia#sthash.GwXZ4Mg9.dpuf > [Accessed 1 June 2016].

Baregu, Mwesiga ed. 2011. *Understanding obstacles to peace: Actors, interests, and strategies in Africa's great lakes region.* Kampala, Fountain Publishers.

Baregu, Mwesiga and Christopher Landsberg eds. 2002. *From Cape to Congo: Southern Africa's evolving Security Architecture.* Boulder, CO, Lynne Rienner Publishers.

Bujra, Abdullah. 2002. African conflicts: their causes and their political and social environment. DPMF Occasional Paper 4, Addis Ababa, pp. 5–6. Available from: <http://citeseerx.ist. psu.edu/viewdoc/download?doi=10.1.1.678.4533&rep=rep1&type=pdf> [Accessed 1 June 2016].

Campbell, Horace G. 2012. *NATO's failure in Libya.* Pretoria, Africa Institute of South Africa.

Césaire, Aime 1972. *Discourse on colonialism.* New York, Monthly Review Press.

Du Bois, W.E.B. 1953. Letter from W.E.B. Du Bois to World Peace Council, 30 October. W.E.B. Du Bois Papers (MS 312), 1868–1963. Special collections and university archives, University of Massachusetts Amherst Libraries. Available from: <http://credo.library. umass.edu/view/full/mums312-b141-i161> [Accessed 1 June 2016].

Ecoma, Alaga 2009. Gender perspectives on security sector reform process in West Africa – case studies of Liberia and Sierra Leone. Geneva, Geneva Centre for the Democratic Control of Armed Forces (DCAF).

Ekengard, A. 2008. The African Union mission in Sudan: Experiences and lessons learned. Stockholm, Swedish Defence Research Agency.

Fadul, Abdul-Jaffar and Victor Tanner 2007. Darfur after Abuja: A view from the ground. In: De Waal, Alex ed. *War in Darfur and the Search for Peace.* New York, Justice Africa/ Global Equity Initiative. pp. 284–313.

Grosfoguel, Ramon 2009. A Decolonial approach to political-economy: Transmodernity, border thinking and global coloniality, *Kult 6 - Special Issue: Epistemological Transformation*, Fall, pp. 10–37.

Grosfoguel, Ramón 2011. The Epistemic Decolonial Turn: Beyond political-economy paradigms. In Mignolo, W. and A. Escobar eds. *Globalization and the Decolonial Option.* London, Routledge. pp. 65–77.

Hendricks, Cheryl and M. Chivasa 2008. Women and peacebuilding in Africa. Workshop Report, 24–25 November, Pretoria. Pretoria, Institute for Security Studies.

Hountondji, Paulin ed. 1997. *Endogenous knowledge: Research trails.* Dakar, CODESRIA Books.

International Crisis Group (ICG) 2016. Insights from the Burundian crisis (III): Back to Arusha and the politics of dialogue. Commentary/Africa, 7 July 2016. Available from: <https://www.crisisgroup.org/africa/central-africa/burundi/insights-burundian-crisis-iii-back-arusha-and-politics-dialogue> [Accessed 20 July 2016].

Interview with Ambassador Mamadou Bah, the African Union interim chairman's special envoy, 30 April 2003, Bujumbura. Available from: < http://www.irinnews.org/q-and/2003/04/30> [Accessed 2 March 2016].

Leriche, Matthew 2015. Sanctions can undermine peace in South Sudan. *Conflict Trends*, 4. Available from: <http://www.accord.org.za/conflict-trends/how-the-use-of-targeted-sanctions-can-undermine-peace-in-south-sudan/> [Accessed 28 December 2016].

Mafeje, Archie 2000. Africanity: A combative ontology, *CODESRIA Bulletin,* 2 (1 & 2), pp. 66–71.

Maldonado-Torres, Nelson 2006. Césaire's Gift and the Decolonial Turn. *Radical Philosophy Review*, 9 (2), pp. 111–137.

Maphosa, L.B., L. DeLuca and A. Keasley eds. 2014. *Building peace from within: An examination of community-based peacebuilding and transitions in Africa*. Pretoria, Africa Institute of South Africa.

Mazrui, Ali 2010. Black Berlin and the curse of fragmentation: From Bismarck to Barack. In: Adebajo, A. ed. *The Curse of Berlin: Africa after the cold war*. Scottsville, University of KwaZulu-Natal Press.

Mignolo, Walter and Arturo Escobar eds. 2010. *Globalization and the Decolonial Option*. London, Routledge.

Murithi, Tim 2008. The African Union's evolving role in peace operations: The African Union Mission in Burundi, the African Union Mission in Sudan and the African Union Mission in Somalia. *African Security Review*, 17 (1), pp. 70–82.

Muyangwa, M. and M. Voigt 2000. *An assessment of the OAU mechanism for conflict prevention, management and resolution, 1993–2000*. International Peace Academy Monograph. New York, International Peace Academy.

Ndlovu-Gatsheni, Sabelo J. 2013. *Coloniality of power in postcolonial Africa: Myths of decolonization*. Dakar, CODESRIA.

Ndlovu-Gatsheni, Sabelo J. 2015. Decoloniality in Africa: A continuing search for a New World Order. *The Australasian Review of African Studies*, 36 (2), pp. 22–50.

New Partnership for Africa's Development (NEPAD) 2005. *African post-conflict reconstruction policy framework*. Midrand, NEPAD Secretariat.

Nkrumah, Kwame 1965. *Neo-colonialism, the last stage of imperialism*. London, Thomas Nelson and Sons.

North Atlantic Treaty Organization (NATO) 2008. NATO supporting African Union's missions, Press Release, February 1. Available from: <http://www.nato.int/docu/pr/2008/p08–018e.html> [Accessed 20 March 2008].

Nzongola-Ntalanja, Georges 1987. *Revolution and counter-revolution in Africa*. London, Zed Books.

Obuoga, B.O. 2016. Building regional capacity for conflict prevention and peacebuilding in the Great Lakes Region. *Conflict Trends*, 1. Durban, ACCORD. Available from: <http://www.accord.org.za/conflict-trends/building-regional-capacity-conflict-prevention-peacebuilding-great-lakes-region/> [Accessed 12 May 2016)].

Odigie, B. 2016. The institutionalisation of mediation support within the ECOWAS Commission. Policy and Practice Brief 042. Durban, ACCORD.

Olympio F.K.N. 2004. Transformation of the Organisation of African Unity (OAU): A new vision for the 21st century, or political rhetoric? Ph.D. Dissertation, Universität Trier, Germany.

Toga, D. 2007. The African Union mediation and the Abuja peace talks. In: De Waal, Alex ed. *War in Darfur and the search for peace*. New York, Justice Africa/Global Equity Initiative. pp. 214–244.

United Nations Development Fund for Women (UNIFEM) 2007. Liberian women articulate priorities for the reconstruction of the country. 12 February, Forum on Symposium on Gender and Development in Liberia in Washington, D.C. Available from: <http://www.unifem.org/news_events/story_detail.php?StoryID=557> [Accessed 21 July 2008].

United Nations Security Council 2015. Interim Report of the Panel of Experts on South Sudan established pursuant to Security Council Resolution 220. S/2015/656. Available from: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2015_656.pdf> [Accessed 12 May 2016].

Wa Thiong'o, Ngugi 1981. *Writers in politics*. London, Heinemann.

Wa Thiong'o, Ngugi 2009. *Something torn and new: An African Renaissance*. New York, Basic Books.

Women Peace and Security Network Africa (WIPSEN-Africa) 2009. Workshop on indicators of peace consolidation from a gender perspective: The case of Liberia including SCR 1325 & SCR 182. February 19–20, Monrovia, WIPSEN-Africa.

Zeleza, Paul Tiyambe 2006. *The study of Africa: Volume 1: Disciplinary and interdisciplinary encounters*, Dakar, CODESRIA Books

Zondi, Siphamandla 2013. South Africa and SADC mediation in Zimbabwe. In: Rupiya, Martin ed. *Zimbabwe's military: Examining its veto power in the transition to democracy, 2008–2013*. Pretoria, African Public Policy Research Institute. pp. 49–79.

Zondi, Siphamandla and Busisiwe Khaba 2014. The Madagascar crisis, SADC mediation and the changing Indian oceanic order. *Africa Insight*, 43 (4), pp. 1–17.

Zounmenou, David No date. Côte d'Ivoire's Post-Conflict Challenges. Available from: <http://webcache.googleusercontent.com/search?q=cache:rp7QAc7zqOsJ:mercury.ethz.ch/serviceengine /Files/ISN/137282/ichaptersection_singledocument/088a93a7-783a-42d6-84af-f6d7e5bceaef/en/ch_4.pdf+&cd=17&hl=en&ct=clnk>[Accessed 12 May 2016].

Book review

Political Identity and Conflict in Central Angola, 1975-2002

Reviewed by Olubukola Adesina*

Angola, located in Central Africa, is one of the most resource-rich areas in the world. The country is described as a model case in which natural resources provoke and sustain a conflict. The protracted civil war, which ravaged the country between 1975 and 2002, was mainly financed by and through those involved in the wholesale extraction of oil and diamonds. The conflict began as a struggle for independence and national liberation from Portuguese colonial rule. During the early 1960s, the agitation led

---

*   Dr Olubukola S. Adesina is a Senior Lecturer in the Department of Political Science, University of Ibadan, Nigeria. She obtained a Ph.D. from the University of Natal (now University of KwaZulu-Natal), South Africa.

to violence, which escalated in 1961. After many years of conflict, Angola gained independence in 1975. However, a fight for dominance broke out among the three nationalist movements: the People's Movement for the Liberation of Angola (MPLA), founded in 1956; the National Front for the Liberation of Angola (FNLA), established in 1961; and the National Union for the Total Independence of Angola (UNITA), founded in 1966. This degenerated into a civil war.

What played out during the civil war was a combination of Angola's violent internal dynamics and massive foreign intervention. Many foreign nations and entities played key roles in the prosecution and eventual outcome of the war as they positioned themselves to reach their own strategic objectives in the region. The crisis in Angola developed into a Cold War battleground as the superpowers (the United States of America and the Soviet Union) and their allies delivered military assistance to their preferred clients. The United States supported FNLA but supplied aid and training for both the FNLA and UNITA, while troops from Zaire assisted the FNLA. China, also, sent military instructors to train the FNLA. The Soviet Union provided military training and equipment for the MPLA. Cuba, in coordination with the Soviet Union, sent troops to Angola in support of the MPLA. During the summer of 1975, the Soviet-supported MPLA managed to consolidate power in Luanda, the country's capital, and oust the US supported FNLA from the capital, but the FNLA continued to attack. Also, in October 1975, South Africa sent troops to support the FNLA and UNITA and began conducting operations against the MPLA. Thus, Angola became the site of a proxy war. The external influence escalated the conflict as the warring sides continued to engage in civil war.

While many accounts of the conflict focused on the foreign intervention in the Angolan conflict, Justin Pearce's *Political Identity and Conflict in Central Angola, 1975-2002* examines the internal politics of the war that divided Angola for more than a quarter of a century after independence. The research attempts to fill a major gap in the literature by interrogating the internal dynamics of the Angolan conflict, paying particular attention to the relationship between the elites and the broader Angolan population.

The book is based on interviews with members of the elite and with ordinary people in towns and rural areas. These interviews helped to document how ideologies of state and nation developed on both sides of the Angolan conflict and how these came to define the relationship between political movements and people. The book provides an insightful introduction and follows with nine chapters, which examine the period from independence in 1975 until the peace initiatives of the late 1980s.

Specifically, the book examines, on the one hand, the mechanics of the relationship between political or military power and expression of political identity – how the creation and sustenance of ideas of grievance and identity became politically functional and to what extent people were able to articulate ideas that challenged those of the dominant political movement. Pearce illustrates how people's reactions to political education were not uniform but were influenced by factors such as their occupation, location, experience of events, and whether they had previously come into contact with different political ideas. On the other hand, the book interrogates how the ruling party, the MPLA, and its adversary, UNITA, both sought hegemonic control over people in the parts of Angola that it dominated by trying to make its power legitimate in the eyes of those over whom it ruled.

Pearce's account started with a problem about political identity: what did it mean to be a 'member' of UNITA or to be a 'government person' during the Angolan war? The introductory section began with a quote from a young woman in the town of Mavinga – a town at the centre of the MPLA-UNITA military struggle: 'I used to be a member of UNITA. But now I'm a member of the government'. Q: 'Why are you a member of the government?' A: 'Because I am here with the government' (p.1). In other words, she identified with UNITA when she was 'caught' by UNITA many years ago, and her allegiance changed when she was 'caught' by the government more recently (p. 2). Thus, political identity for many Angolans appeared to be defined in terms of the political movement that ruled over the territory where they were staying at a particular time. Peasant farmers, particularly those who had suffered violence from both armies at different times, had no choice but to cooperate with whichever was dominant in order to avoid

punishment. Additionally, the question of identity was further complicated by the fact that military and civilian officials on both sides habitually assigned identity to people simply on the basis of where the people were.

From the extensive interviews conducted, Pearce was able to show that each side of the conflict was associated with a distinct set of narratives about Angolan history, about the role of the two political movements within this history and the relationship of the movements to the Angolan people. As such, only a minority of the people interviewed had ever been in a position to listen to both sides and to make a choice about which of the two best represented their interests. For most of them, their earliest consciousness of politics was constituted within the narratives of one or other political movement. People who lived in the government-controlled towns for the most part believed that the MPLA's army was defending their security, while people in the parts of the countryside controlled by UNITA believed that UNITA was defending them against government forces that were a threat to their security.

Pearce was able to demonstrate that 'the Angolan war was never a conflict between communities of people defined on the basis of mutually incompatible prior interests' (p.180); rather, it was about the pursuit of power by the two rival movements and their use of force to control territory and the resident populations. He, however, concludes that the question of national identity in Angola remained unresolved.

Overall, the book is a well-written piece. It is intellectually stimulating, providing a very insightful glimpse into the Angolan conflict. It is a major contribution to the study of conflict and identity formation. The author exhibits a deep familiarity with the relevant literature, which together with his interviews and reflections serve as material from which to weave a very interesting narrative. The book is a worthy piece that should be read by everyone interested in the study of conflicts in post-colonial Africa.