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The International Criminal Court and the African Union: Is the ICC a bulwark against impunity or an imperial Trojan horse?
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Lay-out by Keegan Thumberan.
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In this issue, we have arranged five articles in two pairs around one in the middle, which is on meaningful concepts and possible realities. In ACCORD’s experience of dealing with conflict, we have from the start been aware of the importance of concepts in the minds of both conflict causers and conflict resolvers. For high school students and teachers, we compiled a manual entitled ‘Conflict – something to talk about’, in which we emphasised the need to understand concepts as ‘injustice’ and ‘discrimination’ as they appeared in the context of a particular conflict and in the purpose which motivated that conflict, and the subsequent need to start talking about such issues and keep on talking until the problems concerned have been talked out and the solutions have been implemented.

Through the years, our experience, in one case of conflict after the other, has confirmed the important role played by concepts – both in pursuing and in resolving conflict. There are the concepts that may appear, bluntly or subtly, in the slogans of parties, and there are those that may be listed, modestly and tactfully, in the suggestions of mediators. What we should realise, however, is that such concepts are not only written on banners or in note books, but that they can function as roadmaps to realities. And this is, in our opinion, the point where the articles in this issue can make an important contribution. They can focus our attention on the link between a concept and a possible reality. We have to remember, especially in the field of dealing with conflict, that there are no guaranteed realities, but only possible, or at best, probable ones.
Nevertheless, the concept-reality link is one constantly deserving consideration and research. Concepts, after all, are more than pointers to routes; they are drivers to destinations. We therefore trust that our readers will find new insight and inspiration in this issue. In the first two articles, we find meaningful case studies – one on the environmental care link between pollution problems and sound health, and one on the consociational link between ethno-political hostility and coexistence. The article in the middle focuses on the confession-forgiveness link between mere partial truth and proclaimed reconciliation on the one hand, and the actual experiencing of truth and reconciliation on the other. The fourth article investigates the linkage between own-groupish politics and violence and the political-will link between conflict waging and peacebuilding. In the last article we read how principles of non-interference, sovereignty and bias can lead to impunity and injustice, and how, on the other hand, non-indifference and responsibility to protect can contribute to retributive and restorative justice.

Finally, the review is of a book in which the connection between religious plus other grievances and intergroup enmity is analysed, and also that between socio-economic cooperation and intergroup amity.

We are therefore sending out this issue with a dual message about concepts as the forerunners of realities. We should be aware of concepts that may lead to unwanted realities, and take pre-emptive measures if possible. And we should promote and propagate concepts that may pave the way to surprising and amazing realities. We should also remember that ‘concept’ can serve as an umbrella term for a range of conceived starting points. The computer thesaurus gives eleven synonyms for ‘concept’: idea, notion, thought, perception, impression, conception, theory, model, hypothesis, view and belief. So many possible beginnings on the ways to remarkable realities!
Conflict implications of coal mining and environmental pollution in South Africa: Lessons from Niger Delta, Nigeria

Adejoke C. Olufemi, Paul O. Bello and Andile Mji*

Abstract

Globally, mining and combustion of fossil fuels, especially coal, have resulted in various environmental problems. The adverse effects of these industries on human health, agriculture and the general ecosystem, and how they could result in conflict, have been widely reported. Firstly, this study examines the current state of environmental pollution at a few places in South Africa, and how it could possibly result in environmental conflict between the affected communities and the polluting industries. Secondly, using Nigeria as a case study, it suggests pre-emptive measures that can be taken to forestall such conflict. The issues raised in this study are supported by findings from previous studies conducted at Emalahleni, in the Mpumalanga Province of South Africa. This study used a mixed-methods

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approach involving interviews with relevant stakeholders and scientific analysis to prove the levels of pollution in the Emalahleni area. The levels of certain air pollutants which are commonly linked with coal combustion and mining activities were assessed at five different schools around mines. Based on these scientific and qualitative results and other issues raised in this study, a number of recommendations are made. It was found that air pollution is a problem which cannot be ignored and immediate action should be taken to avoid future problems.

Keywords: Coal mining, industries, pollution, environment, health implications, South Africa

Introduction

Since the emergence of industries and technological advancement, our planet has faced many challenges which have put pressure on the global environment. One such challenge is environmental pollution, which is primarily caused by the mining and combustion of fossil fuels, such as coal. This has resulted in ancillary environmental problems such as environmental degradation, global warming and climate change. Environmental pollution through air, water, soil and other factors, has become a serious issue throughout the world, especially in industrialised environments. All these have had adverse effects on human health, plants and animals and have led to the general disturbance of the earth’s ecological systems. The World Health Organisation (WHO) reported that an estimated 1.3 million deaths annually can be ascribed to urban outdoor air pollution (Morakinyo et al. 2016:1). Moreover, if not addressed in time, these problems foreshadow and may culminate in threats to human life from human conflict.

Air pollution, with its detrimental effects on human health, could be a result of indiscriminate or uncontrolled burning or combustion of different substances such as coal. Exposure to certain pollutants that come from those substances could result in chronic health conditions such as increased respiratory problems, reduced lung function and cardiovascular
diseases (Albers et al. 2015; Brunekreef and Holgate 2002; Olaniyan et al. 2017; Samet et al. 2000; Stieb et al. 2002; Thaller et al. 2008). An increased number of deaths from respiratory diseases have also been reported (Laumbach and Kipen 2012; Jiang et al. 2016).

The effect of coal mining is not only limited to air pollution, but has further resulted in global warming all over the world. During coal mining activities, a number of greenhouse gases such as carbon dioxide, methane, nitrogen oxide and other heat-trapping gases are produced which remain in the atmosphere for several years once emitted (Lockwood et al. 2009; Hertwich et al. 2010). For example, the emission of carbon dioxide has drastically increased over the past years and continues to increase every passing year. Even though carbon dioxide is known to be the largest contributor to global warming yet, methane is 21 times more potent, since its greenhouse effect will become greater than that of carbon dioxide (Lloyd 2002:2).

The Natural Resources Defence Council has warned that ‘[w]ith current coal (and oil) consumption trends, we are headed for a doubling of CO2 concentrations by mid-century if we don’t redirect energy investments away from carbon-based fuels and toward new climate-friendly energy technologies …’ (Lashof et al. 2007:28). The effects of global warming have posed a great danger to human health, plants, animals and the general ecosystem. In fact, according to the Natural Resources Defence Council, ‘... global warming already is causing more severe storms, heat waves, droughts, and the spread of malaria and other diseases …’ (Lashof et al. 2007:28).

In the case of water, the continuous release of various chemicals from coal mines has drastically affected water quality all over the world. This has further resulted in acidification and degradation of the water, affecting the aquatic bodies and human health (Ali et al. 2017; Cloete et al. 2017; Mishra and Das 2017; Moschini-Carlos et al. 2011; Ochieng et al. 2010). For example, a study conducted in some rivers and stream sites in Australia revealed that these water resources contained different heavy metals at high
concentrations that were above the water quality guidelines for freshwater streams (Ali et al. 2017:1). A similar case was reported in Brazil where coal mining activities have seriously affected the water quality of three different lakes due to the presence of several metals at high concentrations which were above acceptable limits. The authors lamented that this detrimental impact has rendered the lakes unsuitable for human uses (Moschini-Carlos et al. 2011:280). All these reports agree with the United Nations Environment Programme (UNEP) reports which state that ‘… there is a global deterioration of water quality as a result of heavy metals concentration which has direct impacts on human health and environment …’ (Ali et al. 2017:2). People exposed to water polluted with heavy metals released from coal mining such as Arsenic have suffered from a range of chronic health problems which include increase in blood cholesterol, cardiovascular diseases, cancer and high mortality rates (Ali et al. 2017).

Reports from several other countries have revealed that these environmental problems have resulted in conflicts. For example, Ukraine – one of the largest producers of coal in the world – has experienced lots of problems such as economic disruption, environmental damage, conflict, various health problems and even deaths. As a result of these, serious fights occur daily in Ukraine (Kashuba 2012). Further, reports from this country have indicated that despite all the various efforts put in place to combat these problems, these circumstances are still prevalent (Kashuba 2012). A report of The Environmental Law Alliance Worldwide (ELAW) indicated that ‘[i]t is the right of Ukrainians, and citizens of all countries, to live in a healthy environment with fresh water, clean air, abundant food, open green spaces, and diverse species’ (Weiskel and Voytsihovska 2014:2).

Similarly, China, the most industrialised and polluted country, over the past 30 years has also experienced serious environmental pollution problems with regard to contaminated air, soil and water, which have resulted in harmful effects on public health and environmental well-being (Hu et al. 2014:1). This severe pollution in China is reported to claim the lives of huge numbers of people every year. In fact, in the year 2015 alone, about
1.8 million Chinese died as a result of environmental pollution (Yan 2017:1). Several reports have indicated that the pollution is not only affecting China but also neighbouring countries such as Japan and South Korea (Cain 2013; Galbraith 2013). This could possibly result in wars between China and these countries if care is not taken. The people of China, especially those in the most affected areas, experience critical problems from time to time with regard to their soil, water and health and this results in frequent protests against the government and the polluting industries (Xue et al. 2018; Zhang et al. 2014). In fact, Xue and others (2018:190) in their study went further to declare that ‘… environmental protest actions have come to be viewed as the most effective method of drawing government attention to environmental protection’.

South Africa’s experience with regard to the issues of pollution is not different from those reported in other countries. This is because South Africa largely depends on coal for electricity generation. Emalahleni on the Highveld of Mpumalanga province is the heart of South African coal production (eNCA News 2015). According to the Electricity Supply Commission (Eskom), this country produces about 224 million tonnes of marketable coal per year (Eskom 2016). This makes South Africa renowned as one of the largest exporters of coal worldwide, or, more specifically, the world’s fifth largest coal exporting country (Eberhard 2011; Eskom 2016). The country exports 25% of its production internationally while it uses 53% of the balance on electricity generation, 33% for petrochemical industries (Sasol), 12% for metallurgical industries (ArcelorMittal) and 2% for domestic heating and cooking (Eskom 2016:1).

**Environmental pollution at Emalahleni**

Emalahleni (meaning place of coal), formerly known as Witbank, is located on the Highveld of the Mpumalanga Province, South Africa. As far back as the 18th century, coal mining activities have been in operation in this area and the largest number of South Africa’s coal fields are located here (Maya et al. 2015; Munnik et al. 2010). In addition, there are about 45 coal
mines and 12 power stations situated in this Highveld (Yende 2016) and on a yearly basis about 220 million tonnes of coal are mined in Mpumalanga (Baillie 2015). This is equivalent to around 90% of South Africa’s annual total coal mine yield (Baillie 2015). Emalahleni also supplies the coal to neighbouring coal-fired plants. In addition, there are a number of smelting companies around the mines which use coal in the foundries (Maya et al. 2015). The effect of the mining, electricity generation and smelting industry in the area is the release of coal related gasses in very high concentrations (Pone et al. 2007). Emalahleni has the highest concentrations of these toxic substances in the atmosphere and is known to have the dirtiest air in the world (Maya et al. 2015; Munnik et al. 2010; News24 2013). This air pollution hotspot (Emalahleni) was declared by the Department of Environmental Affairs a Highveld priority area in terms of the National Environmental Management: Air Quality Act 39 of 2004 (Department of Environmental Affairs 2011; Munnik et al. 2010).

In view of the above-mentioned, conversations with a number of the town’s residents revealed that almost every evening one would notice smog emanating from the mines and other related industries (personal communication, 15 September 2010).

**South African coal and consequences**

South African coal is mainly used for electricity generation, and due to lack of suitable alternatives, the use of coal is unlikely to change over the next decades (Statistics South Africa 2005:10; Eskom 2016:1). While coal remains a very good source of energy, it has undeniably caused great damage to the health of the people of South Africa and the general ecosystem (Nkambule and Blignaut 2012). All these have also affected the country’s economy in terms of monetary cost (Nkambule and Blignaut 2012). Similarly, acid mine drainage is reported to have caused great damage to South African water resources (Feris and Kotzé 2014; McCarthy and Humphries 2013).
Conflict implications of coal mining and environmental pollution in South Africa

Below is an overview of how coal and its usage have resulted in destructive consequences in South Africa.

**Effect on air**

Coal burning from power stations for generating electricity is responsible for high levels of air pollution in South Africa (Department of Environmental Affairs and Tourism 2005) and has caused a great hazard to human health and the South African environment in general (Munnik et al. 2010; News24 2013). Electricity generation in South Africa annually releases 170 million tonnes of carbon dioxide into the environment, as well as about 0.7 million tonnes of nitrogen oxides and about 1.5 million tonnes of sulphur oxides (Lloyd 2002:3). However, according to Department of Environmental Affairs (2014) these amounts have continued to increase over the years. The increased and continuous use of coal for energy is the major cause of global warming in South Africa (Nkambule and Blignaut 2012; Tongwane et al. 2016).

**Effect on water**

Mining activities have had many effects on South African water resources for many years. Water drainage from coal mines is highly acidic and contains high concentrations of different toxic chemical substances (Council for Scientific and Industrial Research 2009). Acid mine water drainage in South Africa as in other countries over the years has resulted in serious degradation of the water quality. It is also regarded as one of the major causes of water pollution which has affected aquatic bodies (McCarthy and Humphries 2013). This affects the health of the people and animals that depend on the water for drinking (Bureau for Food and Agricultural Policy 2012; Ochieng et al. 2010).

As Mpumalanga is known to be a province where most of the South African coalfields are concentrated, the province is simultaneously regarded as a source for some of the country’s most important rivers (Kardas-Nelson 2010). These rivers supply water to South Africa’s major dams which are used for drinking, agriculture, and several other domestic purposes.
Unfortunately, all these waterways have already been polluted by the increased and continuous release of different toxic substances from the various mines (Council for Scientific and Industrial Research [CSIR] 2010). An example is the Olifants River, regarded to be one of the most polluted rivers in Southern Africa as a result of mining and power generation in the area (Department of Water Affairs 2011). Aquatic organisms have also been threatened and have become critically endangered as a result (World Wide Fund for Nature 2013). A study conducted in a certain stream site in Mpumalanga showed that several of the aquatic bodies were contaminated and died as a result of the presence of various heavy metals such as lead (Pb) and cadmium (Cd) (Cloete et al. 2017). In a situation where these contaminated organisms such as fish are consumed, they can pose a great danger to human health (Cloete et al. 2017; Ochieng et al. 2010).

This problem not only affects South African water resources, but also those of nearby countries such as Mozambique and Botswana (Kardas-Nelson 2010). This water pollution issue is likely to persist in South Africa for centuries to come (CSIR 2009), as a continuing environmental problem for future generations of South Africans.

**Effect on agriculture**

South Africa has good soil for agricultural production, especially in Mpumalanga Province, and most of the South African coal mines are also located in this same province (Bureau for Food and Agricultural Policy 2012). The fact that this province has had good soil for agricultural production makes the province the largest producer and supplier of food in South Africa (Bureau for Food and Agricultural Policy 2012). Unfortunately, the activities of the coal mining industry have led to a high concentration of heavy metals in the soil, with consequent degeneration of that soil over the years (Ochieng et al. 2010). Specifically about maize, there has been contamination and death of several tonnes of this crop by the toxic elements in the past years and more tonnes are expected to be lost in the future (Bureau for Food and Agricultural Policy 2012).
Farmers in Mpumalanga have continued to lament the severe pollution from the mining industries and to point out how this may result in a national food crisis if care is not taken. It was also expressed in a report of the Bench Marks Foundation that ‘… Mpumalanga is at the heart of South Africa’s maize triangle and coal mining is drastically reducing the land available for the growth of maize and it is also destroying the water required for farming …’ (Bench Marks Foundation 2014:1). The severe pollution from coal mining activities has not only affected food crops but also animals in various ways. Farmers in this area have complained about how it has affected their cows’ drinking water, which, in turn, affects milk production and quality. There were also complaints by them about the negative effects on the fertility of their cows and their ability to reproduce (Bench Marks Foundation 2014).

**Effect on human health**

Exposure to these toxic substances from coal mining could result in various health problems, such as cancer of some types, respiratory problems, cardiovascular problems and even deaths (Albers et al. 2015; Tang et al. 2008; Wright et al. 2011). Children as minors are especially vulnerable and can be affected to the extent that it can lead to lowered IQs, mental retardation and permanent loss of intelligence (Lockwood et al. 2009; Mathee et al. 2006; Okonkwo et al. 2001; Olaniyan et al. 2017). It is even worse for those that live, work or attend schools located in the vicinity of these industries. This claim was substantiated by studies of Bryan and Loscalzo (2017) and Guarnieri and Balmes (2014). They reported that people who live around industrial sources of contamination such as coal-fired plants are exposed to higher levels of whatever pollutants are being released, and are affected health-wise. In the same vein, a study conducted in schools located around mine dumps indicate that these school children are exposed to high levels of air pollutants such as sulphur dioxide (SO$_2$) inside their classrooms. Some of them are reported to have suffered from asthma attacks as a result of exposure to these pollutants (Nkosi et al. 2017). As a result of incorrect town planning in the past, some communities and residential areas were sited close to mines and industrial areas.
Unfortunately, those communities are continually exposed to whatever pollutants are being released from these industrial activities (Department of Environmental Affairs 2016:12). A conversation with one high school principal in Emalahleni revealed that there were approximately 15 mines in the general vicinity of her school (personal communication, 10 March 2011).

Another school’s principal indicated that: ‘Our children are constantly sick and hospitalised from time to time apparently without realising that their health issues may be linked to the pollution in this area’ (personal communication, 15 September 2010). According to Environment Youth Activism (2014), many people in this area are already sick with different diseases as a result of continuously drinking dirty water and inhaling bad air as part of their daily lives. Although people in these communities may be aware that their health challenges may be linked to the pollution, they have no control over the problem.

A series of studies conducted in Mpumalanga has reported a connection between the pollution in the area and the people’s health challenges (Albers et al. 2015; Environment Youth Activism 2014). Studies of children have revealed that they are more affected by this pollution and that this invariably happens within their homes and the school environment (Albers et al. 2015; Mathee 2003; Olaniyan et al. 2017).

These claims are supported by a previous study conducted in Emalahleni community (Olufemi 2012) in which conversations were held with school principals in the vicinity of the coal mines. A conversation with one principal revealed that the smoke and fumes from the mines, foundries and the power generating plants were affecting the schools and the health of the learners and staff (personal communication, 11 January 2011). When asked in what way, he indicated that learners who were subject to the effects of this pollution often fall ill. This, he argued, might be as a result of prolonged exposure to the nuisance from the industries that resulted in illnesses and ‘undue absence from school’. He further pointed out that these problems are not limited to learners, but affect teachers too. One important issue the
principal proposed was to investigate which pollutants could be affecting all those in the vicinity of the schools. This suggestion in fact prompted the scientific investigation which was incorporated in this study.

The researchers involved in this study decided to investigate the levels of certain air pollutants, which are commonly linked with coal mining activities, at five different schools around Emalahleni. Air samples were collected from within and outside the classrooms of these five schools and were later subjected to standard laboratory analysis. The results (as seen in the table below) reveal that these elements were detected within and outside the classrooms at various concentrations. The sampled air pollutants included sulphur dioxide ($\text{SO}_2$), nitrogen dioxide ($\text{NO}_2$), ozone ($\text{O}_3$) and compounds of lead (Pb).

Table 1: Concentrations of $\text{NO}_2$, $\text{SO}_2$, and $\text{O}_3$ measured inside and outside the classrooms in each school

<table>
<thead>
<tr>
<th>School</th>
<th>Location</th>
<th>Sample ID</th>
<th>NO$_2$ (µg/m$^3$)</th>
<th>SO$_2$ (µg/m$^3$)</th>
<th>O$_3$ (µg/m$^3$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>School A</td>
<td></td>
<td>O-12-1680</td>
<td>19</td>
<td>4.8</td>
<td>40</td>
</tr>
<tr>
<td>School B</td>
<td></td>
<td>O-12-1691</td>
<td>20</td>
<td>3.0</td>
<td>10</td>
</tr>
<tr>
<td>School C</td>
<td>Inside</td>
<td>O-12-1693</td>
<td>20</td>
<td>6.0</td>
<td>30</td>
</tr>
<tr>
<td>School D</td>
<td></td>
<td>O-12-1695</td>
<td>26</td>
<td>38</td>
<td>26</td>
</tr>
<tr>
<td>School E</td>
<td></td>
<td>O-12-1697</td>
<td>28</td>
<td>8.8</td>
<td>18</td>
</tr>
<tr>
<td>School A</td>
<td></td>
<td>O-12-1690</td>
<td>9.9</td>
<td>17</td>
<td>110</td>
</tr>
<tr>
<td>School B</td>
<td></td>
<td>O-12-1692</td>
<td>24</td>
<td>20</td>
<td>82</td>
</tr>
<tr>
<td>School C</td>
<td>Outside</td>
<td>O-12-1694</td>
<td>19</td>
<td>17</td>
<td>110</td>
</tr>
<tr>
<td>School D</td>
<td></td>
<td>O-12-1696</td>
<td>24</td>
<td>84</td>
<td>66</td>
</tr>
<tr>
<td>School E</td>
<td></td>
<td>O-12-1698</td>
<td>27</td>
<td>31</td>
<td>75</td>
</tr>
</tbody>
</table>

Adapted from: Olufemi 2012; Olufemi et al. 2018.

For the sampling of Pb, a ‘filter’ was used. There were only two filters available which were placed at Schools C and E. At the point of retrieval, the filter placed on the school premises of school E was found to have been tampered with, so no results could be reported from it. Nevertheless, a
Pb reading could be reported from the filter at School C, and laboratory analysis indicated that the Pb density was just less than 0.007 µg/m³.

When the values in Table 1 are compared with the national air quality standard for South Africa for exposure durations, as shown in Table 2 below, it indicates that the reported air pollutants were below or at acceptable limits. It may be argued then, that no problem exists.

**Table 2: National ambient air quality standards for NO₂, SO₂, O₃, and Pb compounds**

<table>
<thead>
<tr>
<th></th>
<th>Averaging period</th>
<th>Density</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO₂</td>
<td>1 hour</td>
<td>200 µg/m³</td>
</tr>
<tr>
<td></td>
<td>1 year</td>
<td>40 µg/m³</td>
</tr>
<tr>
<td>SO₂</td>
<td>10 Minutes</td>
<td>500 µg/m³</td>
</tr>
<tr>
<td></td>
<td>1 hour</td>
<td>350 µg/m³</td>
</tr>
<tr>
<td></td>
<td>24 hours</td>
<td>125 µg/m³</td>
</tr>
<tr>
<td></td>
<td>1 year</td>
<td>50 µg/m³</td>
</tr>
<tr>
<td>O₃</td>
<td>8 hours</td>
<td>120 µg/m³</td>
</tr>
<tr>
<td>Pb compounds</td>
<td>1 year</td>
<td>0.5 µg/m³</td>
</tr>
</tbody>
</table>

Adapted from: Department of Environmental Affairs 2004.

If prolonged exposure to these chemicals is taken into account, however, there is a problem to be dealt with. For instance, learners starting in Grade 8 in one of the schools are likely to be exposed to the pollutants for the next five years if they are to study there until Grade 12. According to the World Health Organisation (WHO) and other organisations, these chemicals are dangerous and are of great public health significance. They are all known to be carcinogenic and cause body organs and systems damage, even at lower levels of exposure, especially for the more susceptible populations (for example, the very young, the elderly, and the infirm) (Geiger and Cooper
Conflict implications of coal mining and environmental pollution in South Africa


The argument raised in the present study can be confirmed with a similar study conducted in the same study area (Albers et al. 2015). These researchers examined respiratory health consequences and associated risk factors in children living in two highly polluted towns in Mpumalanga. The results indicate that they were exposed to air pollution both at their schools and homes. As a result, they were diagnosed with various health conditions (see table 3) which some of them had experienced from their childhood up till the present time. Several of the children were sometimes absent from school as a result of these health problems.

Table 3: Prevalence of health conditions among children (N=627)

<table>
<thead>
<tr>
<th>Health outcome</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bronchitis</td>
<td>15.6</td>
</tr>
<tr>
<td>Asthma</td>
<td>7.1</td>
</tr>
<tr>
<td>Chest wheeze</td>
<td>11.4</td>
</tr>
<tr>
<td>Chest cough</td>
<td>10.1</td>
</tr>
<tr>
<td>Phlegm</td>
<td>25.6</td>
</tr>
<tr>
<td>Respiratory infections</td>
<td>34.1</td>
</tr>
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</table>

Adapted from: Albers et al. 2015.

One can deduce from the above results that the pollution in the environment where the children learn and live has adverse effects on their health. However, the World Health Organisation declares that ‘... the physical, social and intellectual development of children require an environment, which is both protected and protective of their health. A growing number of diseases in children are linked to unsafe environments in which they live, play, learn and grow …’ (South African Human Rights Commission 2001:323).

One would think that there will soon be a solution to all these problems. Unfortunately, it has been constantly reported that production of coal for electricity generation in South Africa will extensively increase in the future (Eberhard 2011; Statistics South Africa 2005). In other words, the more coal
is mined and burned for electricity generation in the course of time, the more health problems will be encountered – by present and forthcoming generations. It is very important that the environment where children live and learn is safe for their health.

Environmental pollution in the South Durban community

Other than Mpumalanga province, there are some other areas in South Africa where pollution problems are serious. An example is the case of the South Durban community which has also been rated as one of the most polluted areas in South Africa as a result of activities from the petrochemical industries (Nriagu et al. 1999; Naidoo et al. 2013). The people in this community, as those of Mpumalanga, are being exposed to various toxic substances from the Industries on a daily basis (Department of Environmental Affairs and Tourism 2007). This pollution has negatively impacted the people, and has resulted in various health problems such as respiratory conditions and asthma (Nriagu et al. 1999; Department of Environmental Affairs and Tourism 2007).

Naidoo et al. (2013) conducted a study in this area and indicated that the most vulnerable group of people were the school children. They were more vulnerable than children in other areas of Durban and in the country. This is because schools are located around the industries and as a result, these children are exposed to all sorts of nuisance in their school environment (Naidoo et al. 2013). So many efforts have been made by government, organisations and activist groups to deal with these issues and to make sure that the people of this community enjoy a clean environment, but the problem has remained unabated (South Durban Community Environmental Alliance 2003).

The fact that the lives of many people in South Africa are being endangered due to exposure to pollution on a daily basis is a cause for great concern.
Section 24 of the Constitution of the Republic of South Africa (1996:10–11) clearly states that ‘… everyone has a right
(a) to an environment that is not harmful to their health and well-being; and
(b) to have the environment protected for the benefit of the present and future generations, through reasonable legislative and other measures that—
(i) Prevent pollution and ecological degradation;
(ii) Promote conservation; and

South African youth awareness of pollution and conflict implications

One thing that is clear from the above overview of the serious consequences of pollution in South Africa is: if the situation is not addressed immediately, it may cause full-scale conflict among the affected communities, the industries, and the government in the near future. Such clashes might arise, when the community members, especially the current youth, become conscious and aware of the health problems which may emanate from environmental pollution.

The growing awareness is acknowledged by a study earlier conducted in Emalahleni, Mpumalanga. This study investigates the awareness high school students have of environmental pollution. The study reveals that students’ level of awareness and knowledge of pollution is high (Olufemi 2012; Olufemi et al. 2016).

The argument is that as these young ones grow older and increase their knowledge and awareness, there is a tendency for them to raise issues which may lead to conflict. Environmental activists may also bring the attention of the community to the effects of pollution on the inhabitants’ health and the immediate environment. This may later give rise to incessant attacks
and counter-attacks, as well as various kinds of skirmishes experienced in other countries. It has become evident that the environmental activists have called the attention of the young ones to these problems, and that this awareness has gathered momentum in South Africa. The youth have become increasingly involved in interventions into environmental issues, and these activists are already protesting against the mining industries (Environment Youth Activism 2014).

Some of the youths in Mpumalanga have protested against the state of unemployment and poverty. They claim that since there are several mineral resources present in their area, especially coal, job opportunities should be created for them. They complain that the companies are capitalising on the resources and yet are unwilling to employ and compensate the workers. However, the companies continue to be responsible for pollution, emitting toxic gases causing great damage to the environment (Environment Youth Activism 2014).

A parallel can be drawn between the situations in the coal-producing Mpumalanga region and the oil-producing Niger Delta region in Nigeria. In the Niger Delta, environmental pollution was caused by gas flaring, oil spillage and a range of other harmful activities by the multinational companies. These resulted in negative impacts on people’s health, agricultural activities and living conditions, to mention a few, and that led to the formation of different activist groups to protest against such injustices (Chukwuemeka and Aghara 2010). The direct consequence of the reactions was conflict, culminating in the loss of many lives and many adverse effects on the economy.

From the above-mentioned it can be gathered that South African youth can be similarly alerted to the implications of such environmental issues and become involved in protests against the industries and the government. The government of South Africa should not wait for this to happen before they begin to take necessary actions – as occurred in China where it is reported that ‘... environmental protest actions [conflicts] have come to be viewed as the most effective method of drawing government
attention to environmental protection …’ (Xue et al. 2018:190). Although the situation is not as severe in South Africa, it can surely escalate and become exacerbated, following in the footsteps of riots occurring in other countries. That can be avoided, however, if the South African government starts taking preventive measures now.

**Overview of conflict in the Niger Delta region of Nigeria**

One prominent skirmish that has marred the landscape of Nigeria since it gained independence from the British, is the Niger Delta conflict. The conflict cannot be divorced from the oil-palm price regulatory policy crises that pitted the indigenous Niger Delta communities against the British explorers during the colonial era (Oluwaniyi 2011; Obi 2006). This conflict witnessed the demise of several inhabitants of Niger Delta configuration on one hand, and on the other hand cemented a platform for a ground swell of persistent conflicts that have taken different forms in the region.

Following the discovery of oil in commercial quantities in Oloibiri in present day Bayelsa State in 1956, and the expansion in oil discoveries in other parts of the country, there was a shift in the calculation of wealth in the country, from palm oil to fossil oil, and the region was put in a strategic position both nationally and internationally. The radical shift contributed to the rise in the price of oil on the global oil market and an exponential increase in export earnings from crude oil from 1% in 1958 to almost 100% in the 1990s, as well as to generating almost 90% of the government revenue in the same period (Oluwaniyi 2010; Akande 2008).

Ironically, while the Transnational Oil Companies (TOCs) and the Federal Government of Nigeria (FGN) experienced a boom from the revenue generated from crude oil exploration, exploitation and exportation, the rural Niger Delta communities continue to suffer lack in the midst of plenty (Oluwaniyi 2010). Such lack was pummelled by incessant environmental pollution, particularly from oil spillage and gas flaring (Ajugwo 2013; Ebegbulem et al. 2013). The impacts of such pollution were reflected in the depletion of agricultural resources – including farm lands, the pollution of
rivers and drinking water, the death of aquatic animals, the extinction of gemstones, and health-related problems. These are in addition to spectrums of socio-economic problems such as poverty, hunger, unemployment and a poor standard of living (Ebegbulem et al. 2013; Nriagu et al. 2016; Oluwaniyi 2010). To make matters worse, very little attention was given to the development of communities despite all the damage done to their natural environment. The people live in the midst of plenty, yet they are poor, suffering and uncomfortable. The result of these incessant problems and effusive agitations has been violent conflict (Ajodo-Adebanjoko 2017; Nwankwo 2015). Although there were agitations for self-determination, resource control and equity, among other grievances of the Niger Delta communities, the occurrence of such skirmishes stems from the undulating impact of the above-mentioned environmental pollution and degradation.

Such negativities have fuelled a number of protests, demonstrations and agitations by people of Niger Delta configurations (Chukwuemeka and Aghara 2010). Unfortunately, most of such agitations have been suppressed by various regimes in the country, especially the military government. For example, environmentalists from the Niger Delta regions like Ken Saro Wiwa and eight other Ogoni chiefs were executed by one of the military regimes in Nigeria (Nwankwo 2015; Oluwaniyi 2010).

Since 1999, Nigeria’s return to democracy brought another dimension to the entire conflict episode. This period witnessed a renewed involvement of civil societies, human rights and environmental activists, amongst others; their aim being to galvanise the Niger Delta people. Unfortunately, it very soon happened that the tensions and violent nature of the Niger Delta socio-political and economic milieu were exploited by politicians. Some of the youth became ready tools for thuggery, ballot snatching and other political crimes during elections, particularly between 1999 and 2003 (Chukwuemeka and Aghara 2010). Such thuggery, consolidated by booties from politics and the underlying agitations, resulted in full-scale militancy and insurgence activities in the region in 2006 (Oluwaniyi 2010).
In addition to oil pipe-line vandalism and bunkering, these militants took to kidnapping and hostage-taking of TOC workers, to mention a few (Ajodo-Adebanjoko 2017). Repressive approaches by the FGN further aggravated the agitations and struggles of the Niger Delta people, most of which resulted in the emergence of insurgency cum militant groups. Prominent among them are the Movement for the Survival of Ogoni People (MOSOP), Movement for the Emancipation of Niger Delta (MEND), Niger Delta Volunteer Force (NDVF), Niger Delta People Volunteer Force (NDPVF), and the Tombolo Boys. According to Oluwaniyi (2011:49), these militant groups unleashed both ‘lethal attacks and the sabotage of oil installations with the effective use of global media to publicise their campaign’ of fighting for the emancipation of their people and communities.

When it became obvious that the efforts of the State were not yielding dividends, even with the establishment of commissions, such as the Oil Mineral Producing Areas Development Commission (OMPADEC) in 1992; the Petroleum (Special) Trust Fund (PTF) in 1995, and the Niger Delta Development Commission (NDDC) in 2000, a review of strategies became inevitable. Unfortunately, some of the new strategies are still very dictatorial, especially the Joint Military Task Force (JTF) that was set up to protect oil installations and the TOCs in a vacillating, troubled region (Chukwuemeka and Aghara 2010).

In 2009, the Federal Government of Nigeria (FGN), decided to adopt part of the recommendations of the Willink Commission of 1958, which had Disarmament, Demobilisation and Re-integration (DDR) as one of the conflict resolution models (Ebegbulem et al. 2013; Oluwaniyi 2011). This model was crowned by the granting of Amnesty to these militants. This initiative was applauded both locally and internationally, especially in light of the willingness of the militant groups to surrender their arms and embrace the presidential pardon. There was an improvement in government revenue due to an increment in oil production from 700 000 barrels to 2.4 million barrels per day (Oluwaniyi 2011). Kidnappings and oil-pipeline vandalism also witnessed a drastic reduction.
However, the initiative was not free from hitches. Within a few weeks after the expiration of the 60-day amnesty window, there were accusations and counter-accusations between government officials and the ex-militants concerning delay in payment of allowances, and corruption. Hence, the scheme became what Oluwaniyi (2011:52) described as ‘a very lucrative business, rather than a transformational strategy’. Moreover, such a scheme consumed enormous resources that could have been used to address other major perennial challenges facing the country.

**Recommendations about pre-emptive measures**

From the above account, it is evident that if the South African government will not now rise up to take action about the present environmental state of the country, the implication is that South Africa is likely going to face even more problems than Nigeria and other countries have experienced. In addition, the future generations of South Africa may be laden with more problems. To avoid these, the following preventive measures should be taken now.

1. If the well-being of the people is to be of primary importance, it is fundamental that the environmental laws already on the books should be strengthened. The government should bear in mind that the reason why the environment must be free from pollution is that the health of the people can be protected.

2. Measures should be taken to reduce the emission of gases into the environment. This can be done by constant monitoring of the pollution in the environment in order not to exceed the acceptable limits. The South African government should present better legislation for the mineral resources industry.

3. Polluting industries or companies should be properly educated about the consequences of their activities and actions. This is essential because many of them might not know the implications of all these indiscriminate activities for human health and the general ecosystem. This will help the companies to begin to adopt effective measures to mitigate their emissions.
Conflict implications of coal mining and environmental pollution in South Africa

4. Renewable sources of energy such as the sun, wind and water should be considered. These are more sustainable and are cleaner sources than coal. It is realised that the South African government, as the governments of other countries, is already in the process, but they should speed up the process in order to combat the pollution resulting from the use of coal.

5. Community leaders of the affected areas should meet periodically to discuss how to engage in a dialogue with the government and the management of these industries. They should also try to persuade the youth not to see violence as a way of solving problems.

6. Deliberate efforts should be made to educate the younger generations about how individual actions can lead to the degeneration of the natural environment and the general ecosystem. It is crucial that proper understanding and knowledge regarding pressing environmental issues and corresponding redemptive actions for mitigating them should be acquired early in life. The current state of the natural environment on the planet earth would not have been so disastrous if citizens, industry captains and executives had been given appropriate environmental education, empowering them to be responsible custodians of their environment.

7. Finally, government should make new policies that will warrant that industries are sited far enough away from residential areas and schools. In the case of mines which have to be situated where the resources are, appropriate distances should be mandated for residential areas and schools. If possible, existing schools and residential areas around mines now should be relocated, and industries should be relocated away from residential areas and schools.

The above recommendations are critical and cannot be left unaddressed. If the status quo continues and the people continue to be at the mercy of whatever chemicals are being released from the industries, it will have devastating effects.
Conclusion

This study has examined implications of coal mining and environmental pollution in South Africa with lessons drawn from the Niger Delta, Nigeria. The purpose of the study was twofold. First, to explore the current state of environmental pollution in South Africa, and how it could possibly result in environmental conflict between the affected communities and the polluting industries. Secondly, to suggest pre-emptive measures that can be taken to avoid such conflict. The case study focused on Emalahleni town, formerly known as Witbank, in Mpumalanga province. It has been rightly noted in the study that the negative impact of coal mining activities on the ecosystem of Mpumalanga region has given rise to severe air pollution, and pollution of water resources which has further led to contamination and depletion of aquatic bodies. Amongst other results, degradation and rapid agricultural decline, and injuries to human health have also been discussed.

Findings of our research study conducted in the vicinities of coal mines in Emalahleni were presented. It was observed that sulphur dioxide, nitrogen dioxide, ozone and lead compounds were present inside and outside the schools. Results from other studies conducted in these areas were also presented to support the present study. Other instances of pollution in South Africa such as the South Durban area were also highlighted.

It is evident from the above-mentioned that the effects of pollution in South Africa are not only detrimental to human health or the general ecosystem, but also have the propensity to disrupt relationships if nothing is done to address it timeously. Unfortunately, although previous studies on environmental pollution in South Africa have drawn the attention of the State to the devastating effects and future implications of coal mining activities, little or no effort has been made to address these. The concern of the authors of this article is that if all these issues persist, South Africa might follow in the footsteps of Nigeria and its Niger Delta region. Hence, this article is meant as a wake-up call for the South African Government to take proactive measures to address this re-occurring environmental malaise. If pre-emptive steps are not taken, it poses an enormous threat
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to the peace and security of the Republic. Contemporary South African citizens’ awareness levels are gaining momentum, not just concerning political matters per se, but regarding a spectrum of issues that affect the people. They are coming to realise the horrendous effects of pollution on their lives and the environment. Hence, in the near future, the public might begin to ask questions, make demands and agitate for compensation. Nigeria is still paying the price for not heeding early warning signals from various quarters in the past. It is therefore advised that the South African government should take preventative steps.

Sources


Department of Environmental Affairs 2011. Highveld priority area air quality management plan. Pretoria, Department of Environmental affairs.


Conflict implications of coal mining and environmental pollution in South Africa


Geiger, Andrea and John Cooper 2010. Overview of airborne metals regulations, exposure limits, health effects, and contemporary research. Portland, Oregon, Cooper Environmental Services LLC (Limited Liability Company).


Conflict implications of coal mining and environmental pollution in South Africa


Olufemi, Adejoke C. 2012. Assessing the levels of awareness, knowledge and attitude about environmental pollution as well as the presence of pollutants in the vicinity of schools in a coal mining area. Ph.D. thesis, Tshwane University of Technology, Pretoria.


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Conflict implications of coal mining and environmental pollution in South Africa


Power-sharing consociationalism in resolving South Sudan’s ethno-political conflict in the post-Comprehensive Peace Agreement era

Francis Onditi, Kizito Sabala and Samson Wassara*

Abstract

This article uses Arend Lijphart’s notion of ‘power-sharing consociationalism’ to understand the mutually reinforcing conflict system and the barriers to resolving such conflicts in South Sudan. ‘Consociationalism’ has been affirmed as an ideal approach for resolving conflicts in ethnically divided societies, but in South Sudan, the formal institutions of power sharing have not delivered sustainable peace. Analysis in this article reveals that the implementation of the various ‘peace agreements’ and ‘deals’ deviated from classical ‘consociationalism’. Consequently limited attention

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was paid to inter-ethnic tensions and too much emphasis was placed on the mechanics of power sharing among the executive and military institutions, leading to the proliferation of ‘organised political movements’. Rather than focusing on the mechanics of power sharing, a viable consociational model for South Sudan should concentrate on how such multifaceted layers of issues can be accommodated within a single settlement. Therefore, the South Sudan conflict system requires a stronger reconceptualisation of issues. Hence we have coined the term ‘tragedy of ethnic diversity’, not as a replacement of the well-known concept of ‘resource curse’, but as new thinking that might shape future research and scholarship in the increasingly complex South Sudan conflict system.

**Keywords:** Consociationalism, power sharing, conflict resolution, ethnicity, tragedy of ethnic diversity, South Sudan

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**1. Introduction: The conflict in South Sudan**

The disquieting relationship between President Salva Kiir and his former Vice-President, Dr Riek Machar, defines the conflict situation in the Republic of South Sudan. It is this unclear relationship that has framed the
intra-South Sudan conflict as ‘ethnocentric’. The country has experienced intractable conflicts, but also limited intermittent peace spells. Yet, the historical ‘power struggle’ within the military, political, territorial and economic structures continues to entangle the country in more humanitarian and development crises (Madut and Hutchinson 1999:126; Kuol 2016:6). Although some scholars such as Clemence Pinaud (2014:193) have argued that the problem of South Sudan cannot be juxtaposed with ‘ethnicity’, it is equally important to attest that within this ‘system of ethnic-based class domination’, tensions tend to emerge along the deeply entrenched fault lines: 1) ethnic affiliation; 2) socio-economic differentiation; and 3) loyalty buttressed up by the ‘big man’ syndrome. In contrast to this argument, Jurg Steiner (1981:1245) observes that instead of focusing only on ethnic divisions of a society, ‘levels of cultural segmentation’ should also be studied within the realm of consociationalism (Mehler 2009b:455).

Attempts by scholars such as Francis Deng (1997) to conceptualise consociationalism through the lens of ethnicity link this model of conflict resolution to value systems, institutions and patterns of behaviour that define a society. However, Johan Galtung (1958:28), considered as one of the pioneers of Peace and Conflict Studies, is sceptical and reckons that ‘value’-based conflicts are the most difficult to erase from the human race. Yet while this model of conflict resolution based on ‘shared values’ as opposed to ‘absolute ethnicity’ has worked in resolving European conflicts such as the case of Switzerland (Mueller 2014:90), the patronages and politics of ‘who knows whom’ in sub-Saharan Africa complicate the quest for sustainable peace in South Sudan.

Considering these conceptual incongruences and contextual convolutions, this article argues that the current ethno-political uncertainty and turbulence in South Sudan may not be resolved merely through formal governance institutions. Furthermore, this conceptual indistinctness has made it harder for scholars to explore other models of conflict resolution, because much attention has been put to the forked Anglo-Egyptian
Condominium Policy\textsuperscript{1} of administration (Collins 1983:470). As a point of departure from this historical scholarship, we begin our analysis from the understanding that South Sudan suffers from forces of kleptocracy characterised by political insolvency and economic stagnation, often reinforcing each other at the expense of peace and stability. This ethno-political manipulation has led to a constellation of ethnic powers (Oxford 2003:149; United States Central Intelligence Agency [US CIA] 2011; Kalyvas 2006). The ethnocentric form of governance has dramatically deepened, eroding gains made after the formation of the Agreement on the Resolution of the Conflict in South Sudan (ARCSS) mechanism in 2013. The country has simply plunged into what Thandika Mkandawire (2015:570) refers to as ‘neopatrimonialism’. As such, opportunities can only be accessed by an affiliation to a tribal homeland (Zambakari 2013:10).

In efforts to resolve these layers of conflicts, individuals and some stakeholders have undertaken various forms of conflict resolution, such as dialogue, mediation, negotiation and agreements that are sometimes clandestine in nature.

Seeking a deeper insight into these conflict resolution issues and mechanisms in South Sudan, this article contributes by addressing a lacuna in the theoretical study of Peace and Conflict, and in particular, ‘power-sharing consociationalism’. Consociationalism has been a central part of South Sudan’s conflict resolution efforts, where the ideological differences between President Salva Kiir and Dr Riek Machar led to clandestine political governance on the one hand, and resistance to such arrangement by the opposition on the other. This pseudo-political architecture apparently allowed President Salva Kiir’s faction to dominate the cabinet in the 2015/2016 power-sharing deal. However, Machar on the other hand, had not only the majority of the opposition members in the cabinet, but also the majority in the opposition membership in the national parliament. Although this deal seemed to have accommodated the diversity of the country, the July 2016 break up and fierce fighting thereafter, may

\textsuperscript{1} This was a British system of governance applied in most British colonies between 1899 and 1956.
have just confirmed the fears that this arrangement was merely a socio-political reengineering of institutions as opposed to forming a sustainable political architecture. On a similar note, President Salva Kiir, pronounced his discontent\(^2\) with the Inter-Governmental Authority on Development (IGAD)-led Agreement signed in Addis Ababa on 17 August 2015:

It must be stated clearly that the reality of political differences within the SPLM [Sudan People’s Liberation Movement] which has been cemented in the Peace Agreement, and accepted cheerfully by our colleagues in the opposition; requires us all to reorganize ourselves on a new basis. This simply means, the SPLM will never be one again as long as we follow the implementation (The East African 2016).

Indeed, the issues raised by President Kiir about the 2015 Peace Agreement are not different from his complaints over the April 2016 political arrangement. After all, conflict resolution scholars have observed that such an arrangement can only perpetuate covert power sharing among the elites at the expense of the society (Hartzell and Hoddie 2015:41–42).

In such an environment dominated by power-sharing tricks, the prospect for attaining durable peace and sustainable political architecture is close to an impossibility. This power-sharing consociational mechanism was further complicated by the fact that Dr Riek Machar, who is in exile for fear of assassination, has renewed ties with Khartoum after being rescued from the thick Garamba forest near Dungu by Khartoum organised aircraft and flown first to Kinshasha, Democratic Republic of the Congo (DRC), and later to Khartoum. This followed his escape after the fierce fight that broke out between his troops and President Salva Kiir’s in July 2016. This period of political entropy is a manifestation of miscalculations by both the government and the SPLM-IO (in Opposition) resulting in a

\(^2\) One of the reservations raised by President Salva Kiir was that the IGAD mediators with full consent of the former detainees (FDs), managed to keep the SPLM-FDs a distinctive group despite the Arusha SPLM-FDs reunification agreement. That brought the FDs back to Juba and reinstated Pagan Amum as the Secretary-General of the Party. His colleagues were also readmitted into the SPLM political bureau. For more information, see The East African 2016.
convoluted environment in which crafting an effective response on the basis of consociational power-sharing results in zero-sum game-bolstering apathy among the would-be peace brokers.

Although power-sharing ‘consociationalism’ has been hailed as an ideal model for resolving conflicts in ethnically plural societies (Butenschon 1985:90), there are concerns that in South Sudan, even with an internal state-centric approach favoured by ‘consociational’ peace deals, there has been an overly narrow focus on the mechanics of ‘power sharing’ – the design of the deal, especially with regard to who takes what within the internal circles of political and military elites. Despite concerted efforts by IGAD-Plus (a group of IGAD Member states and the Troika of the United Kingdom, United States and Norway) and the African Union Ad-hoc Committee on South Sudan to structure the peace process within the framework of the Joint Monitoring and Evaluation Committee (JMEC) to foresee the ARCSS, sustainable peace remains elusive. The question remains: Why have the formal institutions (political, economic, military and territorial) of consociational power sharing not delivered sustainable peace in South Sudan?

In order to address this fundamental question, this article is divided into five sections. The introduction is followed by section 2 on contextual setting and crucial issues. Section 3 is on theoretical perspectives of consociationalism and associated principles, section 4 examines the complexity of the conflict and limitations of the power sharing consociationalism in South Sudan while section 5 concludes by examining what does and what does not work with consociationalism. Finally, conceptual and policy recommendations are drawn on how consociationalism needs to be reconfigured in fragile societies.

2. Contextual setting and issues

The discussion of power-sharing consociationalism in South Sudan must be understood within the history of several ‘peace agreements’ designed, negotiated, implemented or terminated during the period between
2005 and 2017. These include the Inter-Governmental Authority on Development (IGAD)-led Comprehensive Peace Agreement (CPA), the ARCSS, the IGAD-led High Level Revitalization Peace Forum (HLRF) and the most recent ‘clandestine (dis)agreement’ between President Salva Kiir and ‘himself’.

The CPA, which was signed in Naivasha, Kenya, on 9 January 2005, brought an end to the intractable civil war and conflict (1955–1972; 1983–2005) (Rolandsen 2011:217; US Department of State 2011). The Agreement was the culmination of the intense negotiations between the National Congress Party (NCP) and the Sudan People’s Liberation Movement/Army (SPLM/A) (US CIA 2011). It ushered in a new political dispensation and provided for a referendum on self-determination which was conducted in January 2011 with 98.83 percent of South Sudanese effectively voting to secede from the larger Sudan (Shaka 2011:1–4). The General Assembly of the United Nations admitted the country into the community of nations as the 193rd member of the UN on 14 July 2011 (UN News 2011).

One of the strategic pillars in the CPA was the programme on Disarmament, Demobilisation and Reintegration (DDR) (Munive 2014:340). As part of the DDR implementation plan, parties to the CPA established the National Disarmament, Demobilisation and Reintegration Commission (NDDC) (African Development Bank 2016), which meant that it had been mandated to make policy decisions on who should be targeted and how to conduct the delicate process of disarmament without creating animosity among communities (Lamb et al. 2012:5; Haile and Bara 2013:33; Omeje and Minde 2014:27). The DDR process, however, did not happen as planned for fear of skewed disarmament.

The second important aspect of the CPA was a referendum for political independence. The referendum (9–15 January 2011), shed bright new light not only on the future of the country’s political independence, but also on a path-way for peacebuilding activities – cohesion, integration as well as post-conflict reconstruction and development. More than half a decade after this question was posed, the challenge of developing an inclusive
and democratic governance structure and of upholding the rule of law remains a puzzle to this 54th member of the African Union. Indeed, despite independence, South Sudan is still linked to the north (Zambakari 2012: 520), albeit with enmity and cynicism. The difficulty of resolving the Abyei border disputes (the Abyei, South Kordofan and Blue Nile) attests to the intractable tensions between the two countries. The referendum on self-determination seems to have been ‘merely a ray of passing sunshine’. In any case, the referendum never resolved the hostile relationships forged historically over years (Johnson 2014:306; Zambakari 2012:510).

Several attempts have been made to resolve these internal and border disputes, but such efforts have failed due to unaddressed local grievances that have fed militias and insurgencies countrywide. This has led to what researchers have termed a proliferation of ‘organized political movements’, and to dysfunctional decentralisation and exclusionary politics (Roque and Miamingi 2017:1–5). The August 2015 peace deal seems to have been destined for failure. The power-sharing deal brokered by IGAD calibrated the distribution of national resources as follows: Government of the Republic of South Sudan (GRSS) (53%); the South Sudan Armed Opposition (33%); Former Detainees (7%) and other political parties (7%) (IGAD 2015).

The ARCSS was the main mechanism for delivering and monitoring the power-sharing deal. The rival parties3 agreed to form a unity government and implement reforms in the country. Each faction nominated officials who were then appointed to the ministerial positions based on the number of ministerial portfolios allocated in the power-sharing deal in the new 30-member cabinet – where the government or SPLM-IG (in Government) had 16 national ministers, SPLM-IO (in Opposition) 10 national ministers,

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3 The rival parties include the government led by President Salva Kiir, the armed opposition faction of the SPLM-IO led by First Vice-President, Riek Machar, the Former Detainees (FDs) led by the now appointed Foreign Minister, Deng Alor Kuol, acting chairperson on behalf of Pagan Amum, former SPLM Secretary-General, and Other Political Parties (OPPs) led by Lam Akol, Chairman of the Democratic Change (DC) party, who also chairs the alliance of opposition political parties in South Sudan.
FDs (Former Detainees) two, and OPPs (Other Political Parties) also two. This was in addition to a number of deputy ministers (Sudan Tribune 2016).

In view of the foregoing discussion on ethno-political realignment, it would only be fair to frame the question in this article within the realm of ‘power-sharing consociationalism’.

3. Theoretical perspectives: Consociationalism and associated principles

Consociationalism is founded on the understanding that divided territories on the basis of regions or states or communities are usually governed according to consociational principles (O’Leary 1987:11; McGarry 1988:44). In most societies, the ‘division’ is driven by ethnicity, religion or language, or, sometimes, political inclinations. The concept of ‘divided societies’ as it relates to ‘consociationalism’ denotes separate cultural communities each running its own political and socio-economic institutions (Lijphart 1975:83–84). More often, such cultural divisions would limit interactions and communications across boundaries which could be geographic, socio-cultural and even psychological. Some scholars have defined ‘divided societies’ by pointing out that such phenomena play out during important national functions such as elections and boundary reviews (Fraenkel and Grofman 2006:630; Barry 1975:480). In other words, there can be no ‘uniformity’ on how such societies respond to such matters of national importance.

To frame these issues, one has to understand key principles underpinning ‘consociationalism’ as a model of resolving conflict in divided societies.

3.1 Consociationalists’ debate

The consociational debates tend to link conflicts to ethnic divisions. In the context of South Sudan, these divisions follow narrow cleavages of ethnicity and socio-economic diversities. For example, pastoral herders vs. agricultural farmers, those who participated in the liberation struggle vs collaborators with Khartoum – the former referred to as ‘heroes’ while the
latter are seen as ‘traitors’, or those who were in the diaspora vs those who fought the guerrilla war in the ‘bush’. The division in fragile countries such as South Sudan is due to a combination of political power, socio-cultural loyalty and national symbolism. This implies that the hypothetical significance of the consociational approach to conflict resolution lies in how such multifaceted layers of issues can be accommodated within a single settlement.

Consociational theorists further argue that the destabilising effects of sub-cultural or territorial segmentation are neutralised at the elite level by embracing non-majoritarian mechanisms for conflict resolution (Andeweg 2000:510, McGrattan 2012:390). However, some scholars (O’Leary 2003:670; Barry 2006:395) caution that even though the model attracted curiosity in resolving conflicts in moderately divided Anglo-Saxon countries, it might worsen the situation in multipolar societies. This is particularly the case of South Sudan where the historical injustices provoke hostile emotions along ethnic ‘fault lines’. Helen Kyed and Mikael Graves (2015:5–10) on the other hand, are hopeful that efforts to link economic and territorial pillars in peacemaking processes could develop ‘trust’ among the warring groups, hence leading to sustainable peace (MacGinty 2010:400).

Still, while anti-consociational narratives admit that cultural and political integrative approaches sound logical in addressing identity issues, they remain sceptical and claim that according to lessons from Europe (for example, Northern Ireland) transforming conflict through ‘identity change’ is always challenging in deeply divided societies (Kunze 2015:11–12; Dixson 2011). In short, they argue that consociationalism cannot deliver peace, merely on the basis of building bridges. They note that, in order to resolve such conflicts, it is imperative to address issues of territorial boundaries (Ibekwe 2012:74–75). Agreeably, other scholars argue that the formal institutions of power sharing are insufficient and therefore incapable of overcoming the belligerent and unspoken self-interests of the leading political elites (Seymour 2014:3; Cammett and Malesky 2012:987).
Nonetheless, a few success stories of how the consociational model can resolve and sustain peace stand out. One of them is Switzerland, which is established on consociationalism (Bohn 1981:1237; Bogaards and Crepaz 2002:360; Bogaards 2000:400). Based on the success of Switzerland, consociationalism is predicated on ‘organizational principles’: the first being executive power sharing, which implies that each of the main communities in the conflict share in executive power (Mueller 2014:85).

However, as is the case in other states in sub-Saharan Africa, class domination and the ‘big man’ syndrome complicate the case of South Sudan, excluding those regarded as ‘outsiders’ from the centre of power. Class politics seem to make the political elites in South Sudan thrive on violent ascent to power (Madut 2013:3; Pospieszna and Schneider 2013:50; Pinaud 2014:197). This is what Pa’gan Okiech (2016:10) reconstructs as the kleptocratic regime in Juba. The debate on a kleptocratic form of governance is well understood when framed within the principles of power-sharing consociationalism.

3.2 Consociationalism: Core principles of power-sharing

In addition to power sharing, consociationalism is premised on three other principles: autonomy/self-government, proportionality, and veto rights. The principle of self-government dictates that each faction to the conflict enjoys some measure of autonomy. In culturally divided societies, where the warring groups are concerned with identities, there should be an arrangement to have self-governance on matters of cultural concern. Andele Jinadu (1985:75) observes that this theory also provides a basis for the development and utilisation of consociational conflict-regulating mechanisms. A conflict-regulating mechanism can however, give rise to affirmative action policies to consolidate elite domination by an ethnically based political class faction.

Affirmative action as a tool for consociationalism is indeed problematic, in that in situations of ‘self-determination disputes’, ethno-national communities focus on contested homelands. The unresolved question is then, who should exercise power at the level of central government? In such
cases, the effectiveness of federalism and consociationalism as conflict resolution mechanisms may be limited. In federal states such as Nigeria, the competition to control the state and its resources has compelled political parties to cross-cut ethnic cleavages (Jinadu 1985:76). Critiques of consociationalism on the basis of the self-autonomy principle raise concerns that the approach is too elitist and that executive instruments of policymaking and conflict regulation lack popular control to bring peace to the ‘grass-root’ level (Hueglin 1985:203; Dixson 1996:131).

The principle of *proportionality* assumes that economic, political and territorial resources in divided societies can be distributed proportionally. For instance, each belligerent group is represented proportionally in key public institutions and is a beneficiary of public resources and expenditures in pro rata measures (McGarry 1988:240). In fragile post-conflict societies, scholars have underscored the use of the ‘closed-list proportional representation’ electoral system as the most effective power-sharing mechanism (Cammett and Malesky 2012:983). They further observe that this approach to conflict resolution, if well executed, might produce not only good governance, but also stability, and might prevent recurrence of conflict by emphasising the application of democratic processes such as voting and equitable distribution of state power (Cammett and Malesky 2012:998). This notwithstanding, the institution of democracy is difficult to attain because the ‘majority votes and seats can dominate minority groups’ (Ottaway 2003:316).

The final principle is *mutual veto*, which is the most complex to implement. It assumes that, when resolving conflict instigated by ethnic-political competition, a feature that characterises South Sudan’s conflict, mechanisms should be put in place to prevent domination in decision-making processes. This, however, was not done in South Sudan and what accordingly happened was the SPLM-IO fall-out and the subsequent divorce between Dr Riek Machar and President Salva Kiir. Heavy-weight political manoeuvres around individual-based political settlements, may anyway be expected in fragile states (Menocal 2011:1720).
Rudy Andeweg (2000:520) contests some of the auxiliary principles of consociationalism – such as ‘consensus democracy’ which remains controversial. Some scholars have posed the question as to whether the very logic of consociationalism may lead to a prescription for more adversarial politics, particularly in countries that have experienced social cleavages (McGrattan 2012:395). Allison McCulloch’s (2014:503) analysis, based on various countries where the consociational model has been applied, suggests that ethnicity should be recognised through ‘consociational’ institutions, as this may lead to an increase in inter-ethnic accommodation. For example, the proposed boundaries review process aimed at creating twenty-eight (28) states seems to have evoked ethnic consciousness, with bordering communities such as Bare and Mundare in Central Equatoria fighting over boundaries. These factors have been fuelling conflict among Sudanese people from as early as the 1950s to the 70s (Rolandsen 2011:216; Sambanis 2004:840). The failure.isSuccess of power-sharing consociational arrangements depends on the capacities and interests of armed groups involved in or excluded from an agreement (Spears 1999:527).

In South Sudan, successive policies of power sharing offer political payoffs for insurgent violence, thereby turning the rebel path into an appealing option in the pursuit of otherwise blocked aspirations (Podder 2013:20). A fundamental problem has been that, rather than building peace, these ‘deals’ represent little more than an elite ‘gentlemanly’ understanding on how the spoils of patronage are shared. It is against this background that readers of democracy in Africa, such as Nicholas Cheeseman (2011:339–340), caution that ‘formal power-sharing institutions in most parts of Africa are hurriedly designed to deal with crisis, hence high propensity to undermine prospects for sustainable peace.’

The most feasible mechanism of power sharing according to Donald Horowitz (2014) is a combination of both consociationalism and a ‘centripetal approach’. In both cases, the ultimate goal is to create inter-ethnic power-sharing political structures by establishing ethnically based
parties (Spears 1999:30). Yet, others caution that power-sharing processes are too risky, especially when the operating environment is characterised by notions of competition for political power (Traniello 2008:30).

It is evident that the outcome of the ‘power-sharing consociational’ structures can be weak, underdeveloped and untested ‘governance structures’ that continue to ‘bleed’ complications in South Sudan’s quest for sustainable peace – a problem that is interrogated by this academic prognosis.

4. The ‘bleeding’ complications and power-sharing ‘deals’

Despite numerous interventions, sustainable peace in South Sudan remains elusive, which prompts the question why the formal institutions based on the principles of consociationalism are insufficient to deliver peace in the country. The factional fighting that broke out in Juba between the SPLM-IG and SPLM-IO on 10 July 2016, gnarled the peace deal that had been agreed upon in April. The quest for peace is complicated by both structural and systemic factors. These include: 1) weak institutions of governance, 2) challenges associated with the politics of power-sharing, 3) politico-ethnic complications, 4) territorial tensions, 5) militarisation of the peace process, and 6) proliferation of parties to the peace process.

In regard to the first problem, there is the missing link between the governing institutions and the prioritisation of the socio-economic and cultural needs (Apuuli 2015:125). What does it mean to have Dr Riek Machar excluded from the peace process? The Transitional Government of National Unity (TGoNU) formed on 29 April 2016 was not enshrined in the Constitution. It was obvious that there were articles of the peace agreement which were in stark contradiction with provisions of the Transitional Constitution of South Sudan (TCSS) (Wassara 2016). People expected the harmonisation of the TCSS with the ARCSS, which did not happen until violence engulfed the country on 10 July 2016.

The second complication arises from the politics of power sharing. Arend Lijphart (1975:85) has defined consociationalism as requiring a ‘grand coalition’. The formation of a grand coalition has, however, been viewed as
the main weakness in the design of power-sharing agreements (McGarry and O’Leary 2004:215). The South Sudan case helps people realise that although grand coalitions are empirical possibilities, what makes consociations feasible and workable is joint consent across the significant communities, with emphasis on ‘jointness’ as opposed to ‘parallelism’. The peace deal of August 2015 continued to suffer sluggish implementation, amid struggles in the ranks of political elites. Engagement of regional states in the South Sudan conflict resolution remains controversial. For instance, Uganda called for a mini-summit comprised of Ethiopia, Kenya, South Sudan and Uganda. The purpose of the mini-summit was to assure President Salva Kiir that those provisions he disagreed with will be dropped from the text of the agreement.

The provisions of the agreement objected to by the government of South Sudan were, among others, the demilitarisation of Juba, the withdrawal of foreign troops from South Sudan, the monitoring and verification mechanism, the cantonment of forces, the accountability for war crimes, and separate armies (Africa Confidential 2016:5). Tensions among mediators persisted until the deal dubbed Agreement on the Resolution of the Conflict in South Sudan (ARCSS) was signed on 17 August 2015. The Ethiopian Prime Minister and the Ugandan President became involved in verbal altercations resulting in the early departure of Yoweri Museveni before the agreement signing. This meant that only the leaders of the SPLM/A-IO and the representative of the SPLM/A former detainees and other stakeholders signed. President Salva Kiir declined to sign the Agreement on 17 August 2015. However, he later signed the agreement on 26 August 2016 after registering sixteen reservations.

Thirdly, the deepening politico-ethnic division complicates the deal. Political settlement is one of the dimensions of the power-sharing method of conflict resolution (Hartmann 2013:127). In August 2016, the two rival groups fought fiercely in Juba with accusations and counter-accusations of attempted assassination of their respective leaders by the other group. In this case, the creation of a consociational political compromise was required. The Caroline Hartzell and Matthew Hoddie (2003:48) model
of political power sharing recommends that in a divided society, peace settlements should not only lay down structures for distributing political power in the core governing institutions of the state among groups, but also organise security structures in a manner that provides a ‘fall-back’ scenario for each party.

The August 2015 power-sharing arrangement did allow former Vice-President Dr Riek Machar to retain soldiers loyal to SPLM-IO, but that was contrary to the host of reservations levelled against the August peace agreement by President Salva Kiir. Critiques of power sharing are sceptical of its success in resolving complex conflicts (Spears 2013:35). The Kenyan one that sparked the post-election violence in 2007/8 collapsed shortly before the 2013 elections due to lack of trust, historical factors and – more critically – ethnic bigotry between the ruling Agikuyu community and the former Prime Minister, Raila Amollo Odinga, who hails from the Luo community.

The fourth complication arises from the very principle of power sharing between territorial sections of a country. Andreas Mehler (2009a:8) identifies four dimensions of power sharing: 1) inclusiveness, 2) degree of power, 3) level of power sharing, and 4) relative prominence of negotiators. Others, however, have cautioned that power sharing in Africa is narrowly exercised through federalism and decentralisation (Zanker et al. 2015:80). Federalism and decentralisation of power is usually achieved through the constitutionally entrenched system of governance that demands greater autonomy (Dash 2007:697–700). In South Sudan, the question of devolving power is not adequately addressed within the existing devolved structures of governance. The Riek Machar-led faction prefers federalism and defines it as a system in which power is shared between multiple levels of government as a means of arresting ethnic or regional divisions (Adeba 2015; Pospieszna and Schneider 2013:45).

Fifth, the militarisation of the peace process introduces further complications. Military power sharing ‘seeks to distribute authority within the coercive apparatus of the state’ (Hartzell and Hoddie 2015:43). In this case, warring groups are integrated into a ‘unified’ state security
force (Hoddie and Hartzell 2003:306). It seeks to specify the details around staffing, chain of command and control, and make-up of the state’s coercive agencies. In line with this military strategy, the August 2015 peace agreement included proportional numbers of forces mainly from SPLM-IG and SPLM-IO. Nevertheless, what was witnessed in Juba on Friday, 29 April 2016, was the appointment of each group to key leadership positions in all arms of government, including the security sector. The military dominant arrangement seems to have entrenched what Clemence Pinaud (2014:194) describes as ‘dominant class’, and which caused a situation that led to violence in Juba. No wonder, the widespread confrontations that ensued in 2016 began with deep altercations between SPLM-IG and SPLM-IO military forces laying allegiance to President Kiir and Dr Machar respectively.

Finally, the increase in the number of actors in the peace process is a factor that perpetuates contradictory articulation of demands. In the past, mediators used to deal with the Government and the two factions of the SPLM (in opposition and former detainees). Now, we have newcomers on the scene like the National Salvation Front (NAS), the South Sudan National Movement for Change (SSNMC), the National Democratic Movement (NDM), civil society organisations, and faith-based organisations. Nine parties accused the government of lack of political will to negotiate meaningful peace (Wassara and Kurimoto 2017:124; South Sudan Opposition 2018).

This proliferation of actors in the conflict and the growing distrust in the President Kiir-led government has led to the failure of the IGAD initiative to make peace deals during the second round of negotiations in February 2018. These structural challenges continue to diminish hopes that the IGAD-led revitalisation process will bear fruit. The process which at best can be described as the ‘old’ camouflaged as ’new’ is unlikely to result in any meaningful progress in the search for peace. This is due to the challenges of the previous efforts, such as inability to resolve the deeply entrenched mistrust among the various stakeholders and dismissal of the revitalisation process as Troika-controlled. The threats by IGAD to freeze bank accounts
of peace spoilers will not move the main protagonist in the conflict due to the lack of political leverage and clout, and converging interests from within and across the region.

Looking beyond domestic politics, the conflict resolution processes seem to have widened its regional presence. For example, in May 2018, the Members of the IGAD Council of Ministers travelled to South Africa on a shuttle diplomacy mission to hold consultations with the former South Sudan Vice-President, Dr Riek Machar. On this note, the former President of Botswana, Festus Mogae, who is also the Chairperson of the Joint Monitoring and Evaluation Commission, urged stakeholders to the conflict not to miss the opportunity for making peace during the next round of peace talks that were scheduled to resume in Addis Ababa. Although the IGAD-led High-Level Revitalization Peace Forum was optimistic that talks will pave the way for sustainable peace, ‘trust’ between President Salva Kiir and Dr Riek Machar continues to play a critical role in the management of the conflict. In fact, the opportunity to strike a peace deal hangs in the balance after it emerged that the former military chief, General Paul Malong Awan Anei, was side-lined from the Addis Ababa peace talks. Indeed, trust seem to be the only way to assure warring groups and citizens that the two leaders are committed to resolving the conflict.

Failure to build trust among the key protagonists and other actors in the conflict and fatigue may impede the would-be peace promoters. The economy will then probably continue to plummet, the humanitarian situation may worsen, and the likelihood of South Sudan becoming a forgotten country may become a reality.

5. Conclusions and Recommendations

The foregoing discussion reveals the limitations of trying to over-rely on power-sharing consociationalism as a model of conflict resolution without linking such processes to the society in its entirety. What is recognised as ‘best practice’ may not be the right prescription for every ethnic-based conflict around the world. Institutional weaknesses, lack of trust as well as
lack of conditions supportive of the ‘best practice’ are better off pursuing ‘second-best alternatives.’ As such, our conclusion and recommendations in this article contend that mitigating the reliance on formal institutions and individuals to resolve the conflict in South Sudan would reduce incentives for trapping the country in the conflict, and greatly increase chances of citizens’ ownership of the peace process and destiny for their country.

5.1 Conclusions

This article frames the discussion of the past and the ongoing peace and conflict resolution situation in South Sudan within the framework of a power-sharing consociational model as contained in the April 2016 political rearrangement. It is grounded on the understanding that the problem in South Sudan is partly due to lack of transformation of the country from a pseudo-political military party, the SPLM-IG and SPLM-IO, into a public policy-driven political structure that can allow democratic governance to thrive. Analysis of the power-sharing model has demonstrated that, in spite of the merits in resolving politically instigated violence, the model is not necessarily a ‘one-size-fits-all’. This is partly because the current kleptocratic style of governance in South Sudan was built on ethnic politics and military dominance leading to a culture of violence. The making and partial implementation of the South Sudan 2015 Peace Agreement indicates some limitations of the classical consociationalism model, due to its conceptual contradictions as well as contextual complications that continue to impede possibilities of sustainable peace in the country.

It is therefore fair, that we conclude this article by deducing the main limitations that a consociational South Sudan will have to address on its path to sustainable peace and stability.

5.2 Recommendations: The future of consociationalism in South Sudan

One of the weaknesses that consociationalism presents is dominance of certain groups in peace deals. For sustainable peace and stability to be achieved in South Sudan, the ordinary population should be involved in the
management of the country through efficient constitutionally respected institutions such as central and state legislative assemblies and mandates. In this way, checks and balances can be provided against the excesses of the state; and democratic values, principles and voices can be protected in domestic politics. A range of policy recommendations towards a political realignment in South Sudan, may also be made available. However, we shall focus our recommendations on: 1) Resolving contextual challenges; and 2) Conceptual flexibility.

5.2.1 Resolving contextual challenges

Analysis in the article demonstrates that previous design and implementation of consociationalism in South Sudan has misconstrued the critical role of the external actors or what we coin in this article as ‘the actor in the neighbourhood’. Although conflict resolution in South Sudan has involved national, regional and global mediators, the struggle for autonomy has sealed the country off from its former master – Sudan. Yet, the role of Khartoum in the South Sudan conflict cannot be ignored. This has produced two related problems. First, there has been a tendency to downplay the importance of the disputed boundaries – both internally and externally – by overemphasising the political power-sharing narrative and mechanics. Thus, the design and operation of consociationalism has neglected the possibilities of positive roles that Khartoum could play in the implementation and in the active operation of power-sharing settlements. As a result of this policy lacuna, Khartoum’s role tends to lean towards the role of a ‘spoiler’. Dr Riek Machar’s self-exile in Khartoum has raised suspicion as to the role President Al-Bashir of Sudan plays in the entire conflict spectrum.

Importantly, there is the role of self-determination in uniting divided societies. This is more of a contextual problem than a conceptual one. Evolution of consociationalism is traced in European countries – the Netherlands, Belgium, Austria and Switzerland. In other contexts, however, analysts argue that this approach might be counterproductive, especially in circumstances where the majority would like to have majority
rule, while the minorities want guarantees against an overruling majority rule (Dixson 1996:135; O’Leary 2003:700). This condition is fertile ground for degradation of inter-ethnic trust and a recipe for even deeper class divisions based on ethnic identities. Such class divisions are mainly fuelled by the need to access territorial, economic, military and political resources. Policy analysts and political scientists might want to classify such complications as ‘resource curse’ (Auty 2001:840; Shaxson 2007:1130), but due to the centrality of ethnic identities in South Sudan, we think that the social complexity presented by the conflict in South Sudan can be well articulated as the ‘tragedy of ethnic diversity’. One consequence of this type of social formation is that the emphasis in the traditional consociational model is on who should exercise power at the level of the central government. But self-determination disputes are often about how much power should be exercised by the central government and about whether there should be one or more central governments. Although autonomy is an important value in consociational arrangements, the emphasis in South Sudan is more often on territorial than on corporate autonomy.

A second Khartoum-related problem that was identified in the consociational South Sudan is the tendency to treat the state as a sovereign, independent and insulated entity. In South Sudan, even within the internal state-centric approach favoured in traditional consociational accounts, there has been an overly narrow focus on the design of the SPLM, and the need for agreement on whether the country can transform the SPLM into a fully-fledged political structure. The emergence of SPLM-IO was aimed at providing an alternative ideological stance, hence paving the way for a functional democracy. It is however important to note that the journey to sustainable peace normally requires agreement on issues that go beyond such institutions, such as the security sector reform, reforms in the police, demilitarisation, the return of exiles to their homes and more importantly, reintegration of ex-combatants into the society.

In order to address the challenge of reintegration in South Sudan, it is worth highlighting an institutional weakness of conventional consociational thinking. Lack of political will creates ‘insolvency’ in consociations;
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it appears to be premised upon overcoming trust and voluntariness. In South Sudan, absence of a forum via which political discourse could be directly effectual has been cause for the lack of sustainable political architecture. The political manoeuvres we are currently witnessing in Juba is a symptom of a ‘captured state’, a country awaiting the return of Machar – when the worst could happen.

5.2.2 Conceptual Flexibility

A further insight is into possibilities of conceptualising and contextualising consociationalism within the realities of African states’ ‘capture’ of the society and behaviour of the military and political elites. Although Lijphart has traditionally defined a consociation as requiring a ‘grand coalition’, many see that as consociation’s key weakness (both because it is difficult to achieve such a coalition, and because it is said to preclude democratic opposition).

Finally, democratic governance is central to this process of change and, importantly, to the impression of stability through its role in bringing together concepts, interaction and context. In other countries where consociationalism has worked, such as Northern Ireland, the 1998 and 2006 agreements have been carefully presented so as not to imply ‘radical change’ to the ideologies and goals of the parties concerned (Zuhair 2008).

The key to their success was the ability to propagate moves that were in line with the interests of one’s own group in a tactical and pragmatic way. Although there were several differences in the ideological settings and strategies (Filardo-Llamas 2008), between Northern Ireland and South Sudan, the underlying principle for most countries experiencing ethnic/ideological division is how to manage diversity and address the challenges associated with what we have coined in this article as the tragedy of ethnic diversity, a term that is not intended to replace the concept of ‘resource curse’, but an alternative thinking on how best to conceptualize complex conflict systems in Africa and beyond.

Thus, in this article we do not have references to a ‘United South Sudan’, as was the case in countries where consociationalism worked such as
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Northern Ireland, but only to an ‘Agreed South Sudan’ – a phrase which we believe acknowledges the necessary consent of all its members in order to make consociationalism work in Africa.

Sources


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Inter-Governmental Authority on Development (IGAD) 2015. Agreement on the Resolution of the Conflict in the Republic of South Sudan, Addis Ababa, Ethiopia, 17 August 2015.
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Power-sharing consociationalism in resolving South Sudan’s conflict


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Towards justice and reconciliation in post-conflict countries: Meaningful concepts and possible realities

Charles Mulinda Kabwete*

Abstract

This article contributes to the debates around concepts of truth, confession, forgiveness and reconciliation. The theoretical discussion shows to what extent these concepts are interconnected, and share a complex relation with justice and reconciliation. It argues that the knowledge about past violence is hardly a canonical truth. It is at best a negotiated truth. This knowledge is inevitably a combination of facts and interpretations. This knowledge is sought and used for understanding past violence but also for paving a way towards the reconstruction of post-conflict societies. The article argues that confession offers a twofold opportunity: it produces knowledge of past violence, and acknowledgement of victims’ pain through perpetrators’ expression of remorse, although in a limited manner. Forgiveness is also discussed in relation to its essential meaning, the actors involved, and its purposes. Finally, reconciliation is built on two pillars, firstly, the proclamation of a seemingly achieved reconciliation; and secondly, the experiencing of reconciliation in everyday interaction between perpetrators and victims.

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Keywords: Justice, truth, confession, forgiveness, reconciliation, post-conflict situations

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Introduction

Since the end of the Cold War, post-conflict reconstruction processes around the world have focused on three main interrelated mechanisms. The first dealt with the promotion of peace. The second dealt with conflict. The third ones have been formulated or articulated around what is called transitional justice, which includes legal justice and social justice. This third category also includes consideration of memory, truth, healing, human rights protection, reparation, and reconciliation, to name a few (Fisher et al. 2000; Oberschall 2007; Mason and Meernik 2006; Francis 2008; Malan 2008).

My focus is on the concepts which appear in the third category. Many of these concepts, such as justice, truth, confession, forgiveness, and reconciliation have been explored by social scientists for academic and social benefits. But their formulations have always faced obstacles stemming from the impossibility to wholly capture the object of study they are analysing, or the social reality they are trying to document and understand. On the one hand, these concepts are studied by social scientists of different disciplines, such as social science, anthropology, psychology, philosophy, history and political science, who happen to use different methodologies and approaches. This produces multiple interpretations of those concepts and their theories. On the other hand, post-conflict countries where these transitional justice mechanisms are being implemented have different histories, different violence backgrounds, and therefore, will have
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different ways of using those mechanisms in order to maximise success. This prompts me to reflect upon those concepts once again, with the view of using them in my fieldwork research on how testimonies about past violence contributed to the reconciliation process in Rwanda.

In their entirety, to what extent do testimonies of truth and confession lead to forgiveness and reconciliation in post-conflict situations? How are these truths and confessions collected and used? What are their narrative formats and problems? How can and should reconciliation be experienced in everyday life? This article might consider its method as philosophical, as it grapples with these main questions, examining and evaluating views and discussions found in the existing literature. This article revisits the concepts of truth, confession, forgiveness, reconciliation and everyday interaction between perpetrators and victims after a protracted and violent conflict, with an aim to understand their intricate complexities at semantic, theoretical and empirical levels. It will attempt to separate, delineate and problematise these concepts, thus opening them up to analysis.

This article contributes to the debates around concepts of truth, confession, forgiveness and reconciliation. It argues that the knowledge about past violence, often referred to as ‘truth’, is hardly a canonical truth. It is a complex mixture of plausible truths, resulting from a negotiation process. This knowledge is also a combination of facts and interpretations. It is sought and used for understanding past violence but also for paving a way towards the reconstruction of post-conflict societies. Confession, for instance, does not only produce knowledge of past violence but also, when perpetrators express remorse, acknowledgement of victims’ pain. And forgiveness is discussed in relation to its meaning and the actors involved, but also with a view to its purposes. Finally, the article argues that reconciliation is built on two pillars, its proclamation and its experiencing in everyday interaction between perpetrators and victims.
Truth and confession

The negotiation of ‘Truth’

As far as reconciliation is concerned, the idea of truth has been idealised from the time when truth commissions became the centre-stage for addressing traumatic violent pasts. When truth commissions then documented traumatic pasts, the revealed knowledge justified their existence. But these truth commissions have in turn to be created. In most cases, it is post-conflict governments that are in charge of this task. The truth commissions usually work with civil society organisations where these are available and active or willing to participate in the process. International agents also get involved in the process to support efforts of post-conflict states’ leaderships and civil society organisations in this regard. Truth commission members come from state, civil society and sometimes even from international actors. Thus, the creation of truth commissions is itself a negotiated process.

The decision over what past to uncover depends on the events, the time and actions that the above actors consider as more important. Again those actors may converge or diverge over choices to be made. The final decision will depend on the balance of power that the state, the civil society or the international organisations hold in this respect. It may also come from a compromise between them. The best scenario would be when a consensus decision is reached.

The naming of the body in charge of collecting this past is also not done in the vacuum. It has its own history. It comes from what happened in the concerned country, what needs to be remembered in the present, and what use is expected from the knowledge of that violent past experience. Many commissions have been about truth and reconciliation, others about truth, justice and reconciliation, still others about national unity and reconciliation. Many have favoured some kind of restorative justice, others some combination of restorative with retributive justice, others with the collection of truth only. A few have included dialogue.
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Since much is at stake in revealing what happened, leaders and commission members have devised several methods to instil witnesses – perpetrators, victims, and others – to narrate their experiences. These methods include laws, incentives or conditions, such as judicial amnesty, reduction of punishment for perpetrators, confidentiality, security and even material incentives. In most cases, these measures are implemented gradually to instil more participation (Whittaker 1999; Ndahinda and Muleefu 2012).

As far as perpetrators are concerned, instilling them to testify, that is, to confess their crimes, has been very difficult. The first widespread response of the perpetrators to this truth-uncovering process has been to hide the truth, i.e., their responsibility in the past violence. The second has been to distort that truth. In this regard, denial of genocide or crimes against humanity has been one of the reactions of perpetrators in many cases. Another reaction has been to produce outright lies. In fact, few perpetrators have been ready to reveal their role as well as what they knew about the violence.

These instilling measures have tried as much as possible to establish favourable conditions that would enable perpetrators to feel secure and assured enough to reveal what they knew and what they had done. These measures have been implemented in many post-conflict cases, but differed from case to case and from epoch to epoch. What happened in Chile differed from what was implemented in Argentina, in South Africa, in Sierra Leone or even in Rwanda. Such measures also differed from one epoch to another within a case: severe punishment at the beginning, a softer one later or even the opposite (Hazan 2010; Ndahinda and Muleefu 2012).

The Rwandan Gacaca for example adopted a policy of reducing sentences for those perpetrators who would confess their crimes and show remorse. This however went hand in hand with the concern about the sincerity of some confessions, given the fact that perpetrators would just confess in order to have their punishment softened (Longman 2006). Moreover, the Rwandan and South African cases have revealed that the first perpetrators who testify become a reference for others to do so. This creates some kind of imitation
effect. A testifying chain is created, where those who testify influence others to do so, up to the point when events, unfoldings and actions of violence gain more explanation or light (Rutayisire 2013b; Minow 1998). This negotiation for truth for amnesty or reduced sentence has not always applied to all perpetrators. For example, perpetrators of excessive crimes in South Africa, Côte d’Ivoire and Rwanda were not granted such opportunities (Minow 1998; Labelle and Trudel 2012; Swaak-Goldman 2001).

The truth-probing processes are at the heart of the relation between justice and truth. For example, we see the offering of amnesty for truth in the South African case (Roht-Arriaza 2006). The existence of tribunals and truth commissions also exemplifies this justice-truth tandem. They provide retributive and restorative types of justice and constitute an archive of past violence. This archive becomes at the same time truth for justice and truth for historical knowledge. Roht-Arriaza (2006:6) argued that international tribunals are repositories of past crimes records. This author further argued for the complementarity of truth and prosecutions (Roht-Arriaza 2006:8).

Most importantly, the core mission of transitional justice is to provide both truth and justice in the post-conflict context:

Transitional justice involves prosecuting perpetrators, revealing the truth about past crimes, providing victims with reparations, reforming abusive institutions and promoting reconciliation. This requires a comprehensive set of strategies that must deal with the events of the past but also look to the future in order to prevent a recurrence of conflict and abuse (Van Zyl 2005:209).

In the same vein, Teitel (2000:72) offers the way trials help produce this truth-telling process:

Trials are long-standing ceremonial forms of collective history making. But beyond this, trials are the primary way of processing events in controversy. The ordinary criminal trial’s purposes are both to adjudicate individual responsibility and to establish the truth about an event in controversy.
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In the view of Futamura and Stan, international tribunals do not only produce history in the sense of recording narratives of past violence, but also become historical events themselves, that is, they make history by prosecuting high profile perpetrators (Futamura 2008:45; Stan 2009:2). Having perpetrators officially named and acknowledge their crimes leads to some appeasement of victims (Sriram 2004), who realise that this past is not only known, but also managed. “The need “to deal with the past”, which is often expressed through commemoration, is increasingly considered to be crucial for transitional justice since an engagement with past violence is considered necessary for reconciliation and a peaceful future’ (Wittlinger 2018:4).

Once in place, then, truth commissions undertake their job, which is to reconstruct events of the past with a view to reaching different objectives, such as reconciliation, justice or peace. As far as post-conflict reconstruction is concerned, this truth-probing process with perpetrators is productive, because it enables victims to learn about how their family members were killed, where they were buried or put, and who their killers were. This is expected to bring as much as possible ‘a fuller picture of the past’. It also helps to build a collective memory about what happened in the past, thereby creating a shared belief and understanding of past violences, and reducing lies or denials about them (Minow 1998; Gibson 2004).

However, for those who want or wish canonical truth, these commissions can be disappointing, because they are spaces for negotiation of truths, what in the South African case Martha Minow called ‘trade of truth for punishment’ (1998:56 and 129) and Pierre Hazan ‘transactions’ (2010:34). Uncovering enough or ‘total’ truth may not be possible in the present time. Nevertheless, in the future new conditions and new questions on remembrance can create a space for additional testimonies (Minow 1998). The experience of the memorialisation of the Armenian genocide has revealed to what extent different generations of survivors needed different memories, but also posed different questions to uncover what happened in 1915–1923 against their family members (Fourcade 2007). If the written records preserve ‘cases’ which ‘stand in the historical record forever’
(Hamber 2009:144), it would be a mistake to think that they are fixed. Their interpretation will surely vary according to audiences and will keep on evolving in different epochs.

**The collection of truth**

The findings of the collection of truth by truth commissions appear in the final reports that they produce at the end of their mandate. The collection phase brings together commission teams (commission leaders, researchers, technicians, and assistants) with the witnesses. In this regard, the commission team acts as the audience or mediator for the perpetrator who comes to testify. In other cases, the commission team meets with both perpetrators and victims who testify together in a group. In still other cases, a wider audience gathered from the local population is also invited or even requested to participate. Certain gatherings are even broadcast on television, such as the South African Truth and Reconciliation Commission (TRC). These sessions are called hearings. From such hearings, the reconciliation process is expected to begin (Schabas 2006).

The testimonies that truth commissions collect on violent events of the past are never full, complete nor enough. Not all witnesses are contacted, sensitised and prepared to give testimonies. Also not all witnesses are approached by the commission, even when they want to (Hayner 2011). Moreover, ‘truth’ depends on the politics of its collection but also the feasibility or the possibility of collecting it (Wilson 2001). This justifies the fact that after commissions’ reports in different post-conflict countries, researchers must continue to collect more testimonies, analyse them, write their histories, and evaluate their usefulness in reconciliation or for other outcomes.

In addition to fact finding, interpretation of those facts is needed, in order to make intelligible the ‘fragments of the past’ (Minow 1998:120). This is close to what Phil Clark (2010:34–35), analysing the Rwandan Gacaca, called ‘truth-shaping’, i.e., the agency of national leaders, local judges, and witnesses in the reconstruction of what happened during the genocide.
against the Tutsi. Further, he makes a distinction between ‘legal truth’ and ‘therapeutic truth’, i.e., “truth” told for more personal, emotional reasons’ (Clark 2010:186–187). Clark’s point makes it clear that those who narrate these past violent memories do two things at the same time: they narrate them, but also interpret them. Depending on types of past offences, and actors seeking truth and reconciliation in the South African TRC, multiple truths were targeted: factual or forensic truth, personal or narrative truth, social truth, and healing and restorative truth (Wilson 2001).

Thus, facts combined with their interpretations are needed. A proper methodology of collecting those facts of the past must be designed, but also interpretive approaches must be conceived. It is interpretation that will help identify gaps, silences and even caveats from available data (Hayner 2011; Burrell 2013). This interpretation – or reinterpretation – is fundamental, because the ideology that legitimised past violence was also an interpretation of the past. Thus, the reinterpretation of this past after the violence serves to contradict the perpetrators’ ideologies and to reconstruct a collective memory that will heal society in present and future (Dimitrijević 2006).

The uses of truth

The reconstruction of the history of past violence helps delegitimise past violence and injustices. It does so by unpacking and deconstructing past ideologies of genocide and other violence, hence discouraging those who would support them again. Above all, it challenges denial and distortions of that past. It also stands as a justification for paying reparations to victims of past violence (Minow 1998; Hayner 2011).

The collection of truth about past violence also preserves memory. Many authors advocate extreme caution in the collection and use of perpetrators’ testimonies. For example, Christopher Browning who has analysed the Holocaust has suggested that Adolf Eichmann’s testimony be taken seriously. While several other authors rejected it as mere self-defence in court, Browning focused on details provided by Eichmann which might not
be known otherwise. He concluded that though we must remain sceptical on the content of perpetrators’ testimonies, there can be something new to learn from them and which is not available elsewhere (Browning 2003).

The survivors’ testimonies are also criticised for the trauma imprint they carry. Since the memory of survivors is disturbed by the trauma of past violence, as it is posited, their recollection of the past events, actions and violence is not always congruent. Browning suggests again to look at this testimony differently: ‘The “authenticity” of the survivor accounts is more important than their “factual accuracy”. Indeed, to intrude upon the survivors’ testimonies with such a banal or mundane concern seems irrelevant and even insensitive and disrespectful’ (Browning 2003:38).

The collection of this memory is for knowledge production but also acknowledgement; fact-finding about the past but also healing in the present (Schabas 2006; Gready 2011). This memory is about past violence, but also about how this violence is viewed in the present and how it can and must be prevented in the future (Villa-Vicencio 2004). This process requires the presence of the witness testifying and the audience before which he/she is testifying. Then an interaction ritual of speaking and listening will be initiated, where perpetrators confess their crimes and society members actively receive and assess them. This is the main mandate of truth commissions (Humphrey 2002). This interaction ritual also provides a space for future reconciliation between the perpetrator and his/her self, but also between him/her and the rest of the society (Schaap 2005). Moreover, this audience is not just a requirement, it is also an asset. Indeed, by having the whole country and community listening to the witness, he/she feels that his/her experience is shared, that he/she is not an isolated wrongdoer or martyr (Minow 1998).

Truth seeking also aims at restoring justice (Longman 2006; Hayner 2011). It again aims at reconciliation. Perhaps this is why many commissions are called truth and reconciliation commissions. However, we must distinguish between individual reconciliation and social reconciliation (Bloomfield et al. 2003).
In the same vein as truth commissions, some historians have positioned themselves – or offered their scholarship – for the benefit of reconciliation. They have correctly shown how their discipline – with its intricate methods and techniques – can constitute a useful tool for reconstruction of past violence, or a past ideology of hate, and then inform society about it and about ways of preparing for reconciliation (Barkan 2005). In this regard, historians and others who produce historical works, in their role of public intellectuals, will be an added value to truth commissions and tribunals (Barkan 2009). That history is useful as a tool for fostering truth and ascertaining whether reconciliation is attainable. However, how to teach history for reconciliation is what sometimes poses practical challenges (Pingel 2008). One such attempt has been to produce – and where it is available – to promote a shared history, i.e., a shared understanding of past violence. This attempt has been a necessary step for reconciliation, as is shown in the case of Rwanda (Staub 2008).

Finally, psychologists assert that truth becomes the starting point for ‘healing, forgiving and reconciliation’. With truth in hand, the victims’ victimhood and innocence are ascertained. It also reveals why perpetrators should accept and express their guilt (Staub and Pearlman 2002:217–218).

Confession

While truth telling or the collection of accounts tends to come from all witnesses of past violence, confession is expected to come from perpetrators or those who were responsible for the violence. The perpetrators’ accounts are important for the reconstruction of history or for healing as we saw above. They are also about acknowledgement of guilt through providing information about one’s crimes.

There are a number of problems that are enumerated in the literature about the confession activity itself. Firstly, the language to describe past violence is heavy; so there is some tendency to soften it, hence reducing the veracity of the content of the confession itself. The complexity of naming violence by perpetrators has prompted some of them to use metaphors in order to veil their atrocious acts in the past. This happened in Northern Ireland’s reconciliation confessions. The words and representation used by
Pat Magee, the perpetrator, soften, and even conceal the violence of the bombing he was involved in (Cameron 2007:208–210). But is it possible to describe past violence in the exact words? And what words would be capable of depicting – i.e., resurrecting the exact image of – extreme violence, say of genocide or crime against humanity?

Secondly, there can be a problem where a post-conflict state has put in place a confession framework such as truth commissions or the gacaca jurisdiction in Rwanda. When some perpetrators come forward to confess their crimes, their sincere apologies acknowledge victims’ victimhood or suffering and at the same time paves the way for victims to see perpetrators once again as humans. But how can the sincerity of apology be assessed? (Barkan and Karn 2006).

As argued by Leigh A. Payne (2008:2), ‘Rather than apologize for their acts, perpetrators tend to rationalize them and minimize their own responsibility, thus heightening, rather than lessening, tension over the past’. The realist view from Payne suggests that perpetrators will not tell the whole truth about past atrocities in order to protect themselves. They may also be motivated to confess their crimes for the benefit of healing their own trauma from past violence, and at the same time reduce their punishment in an impending trial.

Moreover, the perpetrators’ technique of contextualising past violence may trivialise confession and constitute a euphemism for the guilt. Such, for example, is the case of Captain Alfredo Astiz who explained his violent role in crimes against humanity in Argentina as purely resulting from his military duty (Payne 2008:75). Conversely, the perpetrator Duch from Cambodia’s Khmer Rouge refused to put the blame on the leadership and acknowledged and confessed his own crimes as head of a prison that killed hundreds of opponents (Curvellier 2011:3 and 41).

A close scrutiny of case studies suggests that confession testimonies always come with a twofold reality: they offer insights about the past violence – sometimes accompanied with remorse from perpetrators, sometimes not – but they do not tell the whole truth.
In East Timor, perpetrators called deponents were given the opportunity to confess their crimes as a condition to be reintegrated into the community after the violence. They had to appear before the Commission for Reception, Truth and Reconciliation and before the community members that they wronged, and were expected to confess their crimes and apologise. Some victims felt convinced enough to forgive those who confessed their crimes, but others required more truth and remorse from deponents. And deponents did not always provide this. But whatever the case, victims who opposed the state’s process of confession and reconciliation lacked the right ‘not to reconcile’ (Larke 2009:666–667).

In Rwanda, a history of confessions and apologies of genocide prisoners points out that massive apologies from prisoners started at Rilima in the rural part of Kigali as early as 1998. After that, more prisons were sensitised so that prisoners would confess their crimes and narrate details of the unfolding genocide and their responsibility in it. Many did so and as a result, very important information on the victims who were killed and their killers was made available. This information enabled the court to identify more perpetrators from those who were then in prison but also others who were outside (Rutayisire 2013a). However, many who confessed their crimes did not show enough remorse. So the quality of confession became problematic (Rutayisire 2013a and b).

The gacaca phase of collection of testimonies relied on ‘confessions, guilt pleas, repentance and apologies from the persons who participated in genocide’ (Rwanda 2004). Some of the information were pure lies, half-truths, or even fabrications. At times, silences hampered efforts at collecting truth. In most cases, half-truths were about minimising their own crimes (Rutayisire 2013c).

Thirdly, if confessions come with the expression of remorse, they are believed to bring about reconciliation. However, it is necessary to emphasise the audience that records these confessions. Is it the truth commissions, churches, civil societies or is it individual encounters between the perpetrator and the victim who was wronged? What forms of forgiveness and reconciliation will come from these encounters?
Forgiveness and reconciliation

Forgiveness

So what is forgiveness, and how is it produced, manifested and used for reconciliation purposes? First, forgiveness is defined from a rational point of view. In this regard, forgiveness is an effort of redefinition of the perpetrator by the victim: ‘… the forgiving person [is the one who can] “see the offender in a more complex way”’ (Quoted in Worthington 2006:21). Forgiveness can also be defined as the antithesis of vengeance: ‘Reaching for a response far from vengeance, many people, from diverse religious traditions, call for forgiveness. The victim should not seek revenge and become a new victimizer but instead should forgive the offender and end the cycle of offence’ (Minow 1998:14). As far as rational choice is concerned, Minow argues that there are individual and social benefits to gain from forgiving. She rejects cheap forgiveness: ‘Perhaps forgiveness should be reserved, as a concept and a practice, to instances where there are good reasons to forgive. To forgive without a good reason is to accept the violation and devaluation of the self’ (Minow 1998:17).

Secondly, since forgiveness is also a matter of the heart, it is defined from an emotional point of view: ‘Emotional forgiveness occurs due to replacing negative, unforgiving stressful emotions with positive, other-oriented emotions’ (Worthington 2006:17).

Concerning the production and manifestations of forgiveness, Worthington proposes two types of forgiveness, intrapersonal and interpersonal. ‘The intrapersonal component can reflect either an internal forgiveness or a lack of it. The interpersonal component involves the expression of forgiveness to the person toward whom one is unforgiving. The victim could either express or not express forgiveness’ (Worthington 2006:18). Interpersonal forgiveness has four possibilities:

In the first possibility ... the person is simply unforgiving .... However, if the person feels forgiveness toward the transgressor but does not say so, silent forgiveness has occurred .... If the victim does not feel forgiving but tells the transgressor he or she is forgiving, this is hollow forgiveness. Hollow forgiveness is given when victims feel that the social norms require
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forgiveness. It can be the most costly to the victim .... In full forgiveness, internal forgiveness is expressed to the perpetrator. Both victims and perpetrator benefit (Worthington 2006:18).

Political forgiveness or simply forgiveness is given by the victim to the perpetrator – sometimes as a response to apology. But this does not mean that forgiveness is conditional. Forgiveness is a free gift of the victim to the perpetrator. It is not released as a result of any bargain with the perpetrator. This is so because apology or confession does not help the victim regain his/her prior life condition, i.e., the state the victim was in before being harmed. Which means that the victim remains always on the losing side as far as past loss is concerned (Schaap 2005; Volf 2002). But forgiving the perpetrator does not mean necessarily accepting him/her: ‘Forgiveness should therefore not be confused with acceptance of the other .... To offer forgiveness is at the same time to condemn the deed and accuse the doer; to receive forgiveness is at the same time to admit to the deed and accept the blame’ (Volf 2002:45). It may mean tolerating him/her.

Among the goals of forgiveness there is also reconciliation. The victims forgive the perpetrators so that they can live harmoniously together again. Forgiveness is accorded by the victims, but reconciliation is produced by both the victims and perpetrators, often with the help of a mediator such as the state or any other agents (See Staub 2006). But it is also possible to forgive without planning to live side by side with the perpetrator. So forgiveness does not always lead to reconciliation (Clark 2010). Reconciliation also includes forgiveness and has many other aspects (Worthington 2002).

Reconciliation

Reconciliation means different things to different people who want to reconcile (Verdoolaege 2008). This difference of meanings of reconciliation is understandable and therefore not surprising (Schaap 2005). Broadly speaking, reconciliation is a peaceful and amicable relationship that occurs between – and is built by – perpetrators and victims after a conflict. This relationship is both rational and emotional (Auerbach 2009). One possibility of its occurrence is through the willingness of the perpetrators to confess their crimes to victims and society and receive
forgiveness from them. They see each other as human once again and learn to trust each other (Bar-Tal 2000; Worthington 2006). In the best condition, reconciliation is produced through confession by perpetrators and forgiveness by victims and society at large.

**Proclamation of reconciliation**

In ideal situations, once the perpetrators confess their crimes and the victims positively welcome their confessions and forgive them, a reconciliation process can be initiated. And after a certain level of interaction between the opposing groups has been attained, they can proclaim to be reconciled.

Louis Kriesberg’s aspects of reconciliation help us to understand some of the requirements for the proclamation of reconciliation. He firstly speaks of antagonistic units, what I would call agents, i.e., those who reconcile. These include the individuals and the groups or nations – ordinary citizens and elites. The proclamation and the success of reconciliation will depend on the willingness of these agents (Kriesberg 2007:2–3). He secondly elaborates on what he calls dimensions of reconciliation (Kriesberg 2007:3–7). These include: 1) a shared truth about the violent past, 2) justice (legal and social), 3) respect (expressed through remorse, guilt, regret, and shame), and 4) security (here understood as absence of threat from each group).

In a best scenario, these components can be fulfilled in combination. His third aspect is the degree of fulfilment. The greater the fulfilment, the more successful the outcome of achieved reconciliation outcome may be.

The actions of reconciliation include ‘restoring friendship and harmony between rival sides after a conflict’ and attaining ‘an act of conflict resolution, but also an emotional process of changing the motivations, beliefs, attitudes and emotions inferred about the rival side’ (Bekerman and Zembylas 2012:57). The actions of the perpetrator include confessing his/her wrongs, acknowledging the victimhood of the survivor and sympathising with him/her (Schaap 2005). By so doing, the perpetrator may be forgiven by the survivor and may then be brought back to his/her community.
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Reconciliation is close to restorative justice in the sense that the latter also intends ‘to repair the harm, heal the victims and community, and restore offenders to a healthy relationship with the community’ (Tiemessen 2004:60). According to Labelle and Trudel (2012), reconciliation is a component of transitional justice. As far as this justice is concerned, the South African Ubuntu implies guilt plea, remorse, repentance, forgiveness and reparation for reconciliation (Brock-Utne 2009). The Rwandan gacaca also relied on the collection of confessions, guilt pleas, repentances and apologies (Rutayisire 2013a).

Reconciliation should be understood to include both the process of reaching it and its achievement (Bekerman and Zembylas 2012). But it does not end with an apparent achievement such as the publication of TRC reports; that is rather where it begins (Nagy 2004). It would be a fallacy to think that proclamation of reconciliation is enough for agents to have reconciled. This is a necessary step, but by no means a sufficient one (Long and Brecke 2003). The proof of reconciliation will come from the way the former perpetrators and victims live together in present time and in future.

**Experiencing reconciliation**

We need first to identify the agents who interact in this process of reconciliation. Personal reconciliation is within the individual him/herself. Interpersonal reconciliation is among two individuals, the victim and the perpetrator. These two types of reconciliation are in the domain of the private sphere. Political reconciliation on the other hand is among two previously antagonistic groups or communities. Some authors call it social reconciliation (Kohen et al. 2011).

Secondly, we need to stress the relational process between the agents. As Lederach rightly pointed out, reconciliation is first and foremost about the relation. ‘To enter reconciliation processes is to enter the domain of the internal world, the inner understandings, fears and hopes, perceptions and interpretations of the relationship itself’ (Lederach 2002:195). So the key word here is ‘between’. It is this relation that I call interaction.
Stages of reconciliation help us to understand negative and positive interaction. When the state has built enough of a peaceful environment to enable non-violent coexistence (Mendeloff 2004), this would be referred to as negative interaction or first-step interaction. After bringing a relative peace and security and building institutions necessary for the functioning of the state, a possibility of coexistence is established between former perpetrators and victims. In this way, and ideally, perpetrators are unable to continue the killing process against victims, and victims cannot take revenge on their perpetrators.

Interaction occurs during the negotiation for reconciliation between the victim and the perpetrator. When facts of the past are being narrated by the perpetrator to the victim, when confession is taking place, and is possibly followed by forgiveness, this is already the first step interaction (Kohen et al. 2011). This paves the way for future durable interaction, i.e., the possibility and the experience of living together in harmony. This durable interaction is both a process and an end. The perpetrator and victim have to nurture it on a daily basis. However, such a process takes a long time, often more than one generation, in order to succeed (Hazan 2010).

The second step is that of a deeper coexistence, expressed or manifested through a relation of trust and recognition of humanity between the victim and the offender. The third stage is empathy. This involves truth-telling, sharing common interests including economic benefits (Bloomfield et al. 2003). Trust and empathy are needed in the first encounter, but need to be strengthened in the course of living together (Staub 2006). Trust appears as a basic necessity for individual and group interaction, for sharing hopes, goals and social life (Buford 2009; National Unity and Reconciliation Commission [NURC] 2008).

When trust has been destroyed by conflict, how does it become revived? It is argued that mutual commitment and patience among those who reconcile are crucial in order to make a joint sacrifice of self-interest (Lederach 2002). This post-conflict interaction needs to be as friendly and as amicable as possible (Bar-Tal 2009). Rachel Back (2007) gives an example
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of South African women victims whose children were killed by apartheid leaders in 1986. These women founded an association called Mamelodi 10 Project and decided to meet with the white men who had killed their children. The contact, here called ‘encounter’, showed the willingness and sacrifice, but also the difficulty of reconciliation. In addition to humanity, humility is also needed. This highly religious concept and reality enables the perpetrators, victims and truth commission members to tolerate each other in this lifelong process.

As far as process and progress of reconciliation are concerned, individuals and communities need not have the same pace of positive interaction. The most important thing is to have the preconditions of ‘truth’ for the past, justice for the present, forgiveness and peace for the future met, as much as possible (Lederach 2002).

Staub (2006:887) argues that ‘… genuine engagement … must exist for contact to work. Joint activities, with shared, “superordinate” goals, facilitate such contact’. Research by Ezechiel Sentama indicates that collaboration by former perpetrators and survivors of genocide in cooperative economic activities has enabled both groups to improve their economic situation. Most importantly, working together helped them to overcome negative feelings of ‘fear, anger and hatred’ and replace them with convivial relations, positive communication and peaceful collaboration both inside a cooperative working environment and also in the social sphere (Sentama 2009:90–132).

Indeed, economic associations encompassing both perpetrators and victims started to operate in Rwanda very early. By 2001, the National Unity and Reconciliation Commission (NURC) was financially helping more than 60 of them. In this regard, unity and reconciliation was in tandem with the economic well-being of members (Nantulya et al. 2005). No wonder the NURC’s definition of unity and reconciliation links them with development. That is why we have associations and cooperatives of interaction which focus not just on reconciliation but also on economic progress (NURC 2010).
The case of interaction between South Africans of different races shows that income was significant. Those with a high income tended to socialise more than those of lower income position (Du Toit 2017). So the economic factor is significant in the reconciliation process. Indeed, the improvement of socio-economic conditions has proved more important in paving the way to reconciliation between communities as is seen in Bosnia and Herzegovina (Eastmond 2010). In relation to trust and interaction, another concept is used. It is social cohesion, both vertical and horizontal (NURC 2008:28–29).

In my research, I am more concerned with horizontal interaction, i.e., the interaction between perpetrators and victims as individuals in everyday life. Maddison (2017) used the concept ‘relational reconciliation’ to refer to this horizontal interaction. Furthermore, the creation of reconciliation clubs in schools by the Rwandan NURC was in line with both interpersonal and social reconciliation (Nantulya et al. 2005).

In Rwanda, interpersonal reconciliation has also been undertaken by Churches. Both lay members and clergy have been active in sensitising perpetrators to confess their crimes and victims to forgive them. A few examples from the Roman Catholic churches mention two women from the Tutsi victims who initiated campaigns of going to prisons to talk with genocide perpetrators. These women, Anne-Marie Mukankuranga and Consolee Munyensanga, created prayer groups that ended up becoming avenues for reconciliation between local victims and perpetrators. A priest from the Roman Catholic Church, Ubald Rugirangoga, initiated expiation rituals and sessions of theological teachings that united victims and perpetrators with the aim of obtaining reconciliation between them. From these actions, it transpired that confession, forgiveness and reconciliation were seen as God’s rule and gift (Carney 2015).

A few other cases illustrate the centrality of trust and dialogue in the post-conflict interaction process. The case of reconciliation in Northern Ireland addresses intergroup relations in which trust is seen as successful when the decision to engage in dialogue is voluntary (Tam et al. 2009). The following factors helped evaluate the degree of the reconciliation process between Germany and Israel: trust, history and common interests.
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(Wittlinger 2018). The case of coexistence between former antagonists in Bosnia shows to what extent reconciliation is a gradual process. It goes from geographical closeness to an open social interaction (Clark 2012). The case of Kosovo and Serb communities shows how lack of trust has impeded the reconciliation process between them (Burema 2012). As Noor and others (2015:647) argue, ‘In the absence of trust, even conciliatory gestures by the perpetrator group are likely to be interpreted as manipulative ploys’.

Conclusion

This theoretical discussion around the concepts of truth, confession, forgiveness, and reconciliation after conflict has showed to what extent these concepts are interconnected. We saw that those who seek truth have to pass through a negotiation process or something that looks like a negotiation. Those who narrate this truth, recall past events but also interpret and even reinterpret them. This whole exercise can be seen as an attempt to contextualise the collection of truth but also to problematise it. Truth in most cases is plural, not singular. Again, the fact that the whole truth is ever rare may be disappointing, but actors may hope to get more truth with time. Our above discussion of confession also points to a number of other problems. First, the form and the substance of confessions matter. Second, the techniques used by perpetrators in their confession language tend to conceal or reduce their responsibility in past violence. We saw also that forgiveness by victims is evoked from confession by perpetrators, but it can also be given unconditionally. Reconciliation is presented as the outcome from truth, confession and forgiveness. But it also goes beyond these, to mean the process itself. Finally, reconciliation firstly manifests as a proclamation by the victims, perpetrators and other actors that have reconciled, and secondly manifests in their experience of living together harmoniously. As we explained above, these two requirements need more time than is mandated for truth and reconciliation commissions.

Both transitional justice and reconciliation have proved to be at least useful and at best unavoidable policies for post-conflict situations. This article concludes with a strong recommendation that the meanings of
these concepts must be clearly understood. These meanings are not only semantic or cognitive, they are also contextual. That is, the way a given society or country will shape and then implement a transitional justice or a reconciliation process will depend on how it understands justice, truth, confession, forgiveness and reconciliation, and what it needs, given its history and current situation. The worst scenario would be to use them in the same way other countries or societies have implemented them without adapting them to own contexts. One possible avenue that has proved successful has been to relate these policies and mechanisms to home-grown solutions.

The implications for this reformulation are threefold. First, as this article has shown, there is no single and agreed understanding of the concepts of truth, confession, forgiveness and reconciliation to address all post-conflict situations. Second, the analysis of new cases of violence may require a separate as well as a combined examination of the above concepts. Third, any meaningful reformulation must consider negotiation processes, cognitive and emotional aspects, and judicial, moral, social and material benefits in post-conflict solutions.

Finally, some key questions need to be addressed. What are the institutions of transitional justice and reconciliation that are suitable in a given post-conflict situation in order to deal with the issues of truth, confession, forgiveness and reconciliation? Will they be: commissions or tribunals or both or anything else? Who will be the agents of this process? What content of past violence will be gathered? How will it be gathered? How will it contribute to building a peaceful interaction between former perpetrators and victims? What activities will be carried out in a short or medium or long term? When will the evaluation of the process take place?
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Sources


Burrell, Jennifer L. 2013. *Maya after the war: Conflict, power and politics in Guatemala*. Austin, University of Texas Press.


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Towards justice and reconciliation in post-conflict countries


National Unity and Reconciliation Commission (NURC) 2010. *Rwanda Reconciliation Barometer*, Kigali, NURC.


Charles Mulinda Kabwete


Rwanda 2004. *Organic Law No. 16 establishing the organisation, competence and functioning of Gacaca No. 43 Special issue of June 19.*


Towards justice and reconciliation in post-conflict countries


Linkages between political parties and political violence: Some lessons from Kenya and South Africa

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Abstract

Political struggles and competitions are conflictual by their very nature, and if not well managed can lead to violence. As political parties are crucial actors in political processes, it is vital to understand the roles they play in escalating or de-escalating political violence. This paper provides an analysis of political parties in Kenya and South Africa, focusing on their linkages to political violence. It concludes that political parties are indispensable actors in peacebuilding. The design and implementation of peacebuilding interventions that effectively target political violence must therefore anticipate the involvement of political parties. This applies to both case study countries, but most probably to other countries as well.

Keywords: political parties, political violence, Kenya, South Africa

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1. Introduction

One of the means which social groupings have over the years used to formalise their struggles and competition has been political parties. Political parties are not only a means of influencing outcomes of elections, but they are also the most credible outlets for the meaningful participation of individuals in political processes (Gauja 2016:44). Political struggles and competitions are conflictual by their very nature and if not well managed, can lead to violence. Kenya and South Africa have both had histories replete with organised political struggles and competition. In South Africa, the political struggles and competitions have involved clashes between Britons and Boers\(^1\) (Katz 1987:148), non-white resistance to the white-initiated policy of Apartheid (Zuidema 2002:11) and black-on-black clashes for political supremacy (Marks and Andersson 1990:54). Despite long periods of disenfranchisement in South Africa, political organisations were an available means for political expression by non-whites. In Kenya on the other hand, political struggles and competitions have been prominent between Africans and British colonial rulers (Durrani 2008:191) as well as among Africans themselves, with the most visible causes being ethnic divisions (Ahere 2012:33; Ayindo 2017:207).

The interactions between and among political parties and organisations in Kenya and South Africa have caused political violence. Beyond the divisive issue of elections, political parties in both countries have resorted to violence when their members disagree during competitive political processes such as parliamentary debates and street demonstrations.

The recurrence of political violence has continued to be a cause for concern for the respective governments as well as the civil societies. The adoption of new constitutional dispensations in South Africa (1997) and Kenya (2010) targeted many institutions with the aim of reforming the respective

\(^1\) Boer, Dutch for ‘farmer’, is a South African of Dutch, German or Huguenot descent, especially one of the early settlers of the Transvaal and the Orange Free State. The descendants of the Boers are these days commonly referred to as Afrikaners (Gooch 2000:ix).
societies in order to obviate recurrent violence. The structural reforms were so extensive and progressive that they may be said to have laid the foundation for what Lederach (2014:3) and Galtung (2007:14) refer to as conflict transformation.\(^2\)

Despite the afore-mentioned reforms, political parties have continued to remain the weakest links of the national infrastructures for peace (NIfPs) in both countries. Kumar and De la Haye (2012:14) underscore the significance of NIfPs\(^3\) in countries where structural conflicts are inherent. Anarchist theorists like George Woodcock would however question the efficacy of political parties in NIfPs, given that political parties are themselves imbued with the aim to seize the state machine that seeks to concentrate power, monopolise violence and perpetuate hierarchy (Woodcock 1962:31), whereas NIfPs aim to prevent conflicts and build peace. That said, the evolution of peacebuilding as a practice in Kenya and South Africa has seen the appreciation of political parties and organisations as crucial to National Peace Committees given that they offer citizenry the avenues for ventilating their political aspirations and by extension promote dialogue and consultation, which are pivotal in furthering sustainable peace (Odendaal 2012:47).

It is vital to understand the roles that political parties play in escalating or de-escalating political violence in Kenya and South Africa. This basic understanding can generate knowledge, which when properly contextualised, can be crucial in discerning how it relates to the present, and useful in peacebuilding intervention programming (Graseck 2008:367). This paper, therefore, provides an analysis of political parties in Kenya

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2 Conflict transformation is the envisioning of and responding to the ebb and flow of social conflict as life-giving opportunities for creating constructive change processes that reduce violence, increase justice in direct interaction and social structures, and respond to real-life problems in human relationships (Galtung 2007:14).

3 Defined within the context of this paper as the ‘… dynamic network of interdependent structures, mechanisms, resources, values, and skills which, through dialogue and consultation, contribute to conflict prevention and peace-building in a society’ (Kumar and Haye 2012:14).
and South Africa, focusing on their linkages to political violence. This analysis is used in underscoring the indispensability of political parties as actors in peacebuilding efforts in both countries.

2. Methodology

The information collected is from primary and secondary sources, and consists of questionnaires, interviews, conference papers and reports, research reports, policy briefs, journal articles, books, websites and other reliable publications that provide histories of political parties as well as political violence in Kenya and South Africa.

Trochim and others (2015:21) acknowledge that the first step in deciding how data can be analysed is to define a unit of analysis. For the purpose of this paper, the following units of analysis have been used: colonial heritage, ideological standpoints, ethno-racial motivations, and the type of political systems in place. This will set the stage for analysis of the linkages between political parties and political violence in both countries.

3. Historical analysis of political parties

3.1 Heritage of colonisation and Apartheid

Carey (2002:55) argues that the colonial heritage that was inherited at a country’s independence had a significant impact on the shape and evolution of political parties in that country and in Africa. Whereas political parties’ formation in Kenya and South Africa can be examined through the lens of colonial heritage, the South African context presents an additional lens of scrutiny – that of the era of Apartheid.

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4 Due to ethical concerns, pseudonyms are used to mask identities of interviewees and questionnaire respondents. Interviews and questionnaires were conducted in Durban and Pietermaritzburg (South Africa) as well as in Nairobi (Kenya) between November 2017 and February 2018.
3.1.1 Heritage of colonialism in Kenya

Until 1960, the British colonial authorities in Kenya prohibited the formation of nationwide political parties in order to suppress African national aspirations. Political organisations were only allowed to operate at the district level. Even then, Anderson (2005:549) affirms, the British continued by rewarding their allies while punishing their enemies. In Central Province, British colonial officers rejected attempts to form political parties. This was based on the perceived support of the Mau by the Agĩkũyũ ethnic group that inhabits the province (Anderson 2005:549). In the rural parts of the Rift Valley Province on the other hand, the formation of political parties was encouraged by colonial authorities partly due to the delay in the Kalenjin and Maasai ethnic groups organising themselves politically. It can be inferred that the aim of the colonial authorities was to minimise the Agĩkũyũ political influence while encouraging and/or uplifting that of the Kalenjin and Maasai.

Upon the lifting of the ban and the calling for elections in 1961, two major parties were formed: the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). Barkan (cited in Carey 2002:56) contends that these parties ‘were basically loose coalitions of the district and local level political organizations’. Apart from ideological differences which will be discussed in a subsequent section in this paper, it is important to note that the period between lifting of the ban on nationwide parties and the holding of national elections was short and might have influenced the choice by African political luminaries to combine the afore-mentioned coalitions in order to form two national parties. It is these two parties that participated in the negotiation for Kenya’s independence in 1963.

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5 The Mau Mau was a militant revolt for liberation from colonialism that triggered the British declaration of a State of Emergency in Kenya from 1952 to 1960. While explaining that the Mau Mau had nationwide support, Ogot (2003:9) disagrees with the ‘populist’ narrative, which he says is postulated by the British, that the revolt was a manifestation of purely Agĩkũyũ frustrations.
3.1.2 Heritage of colonialism and Apartheid in South Africa

Political formations in South Africa have historically been shaped by the relations amongst whites (Britons vs. Boers) on the one hand and on the other hand, the attitude of other races towards white domination.

Briton-Boer relations, especially after the Second Anglo-Boer War (1899–1902), were fractured and this influenced the establishment of the white-dominated parties ahead of the formation of the Union of South Africa, a result of the granting of nominal independence by the British parliament in 1910. Maloka (2014:230) observes that white-dominated political parties were divided between those aligned to the English interest (the South African Party, the United Party, the Unionist Party, the Progressive Federal Party and its predecessor Progressive Party, the New Republic Party and the Democratic Party) and those affiliated to the Boers (the National Party, Afrikaner Party and the Conservative Party).

It is striking, however, that both sets of white-dominated parties were discriminatory against non-whites as they steered the country towards the formation of the Union of South Africa. They did this through disenfranchisement. This unity of purpose lasted through the formalisation of Apartheid in 1948, until after the 1966 elections when more Britons began to vote for the National Party after it had successfully projected itself as the party that represented white interests in conditions of increasing isolation and insecurity (Maloka 2014:231).

Galvanised by their displeasure with ‘the pro-white policies of the British colonial administrators followed by the discriminatory legislation enacted by the Union of South Africa’, non-whites formed political bodies for purposes of vocalising and advocating their social, political and economic rights, especially after the Second Anglo-Boer War (South African History Online 2011b: para. 17). This led to the establishment of organisations such as the Natal Native Congress, formed in 1902 to present African grievances to the colonial government (African National Congress 1982:5) and the African People’s Organisation, which was formed in 1902 to represent
the interests of Coloureds6 (South African History Online 2011a: para. 2). Also formed was the South African Native National Congress (SANNC) that, according to Maina and others (2004:155), was the first African political party, formed in 1912, to oppose the discrimination against Africans in the South African Constitution of 1910. In 1923, SANNC was renamed the African National Congress (ANC). Another organisation set up around the same period was the Inkatha Liberation Movement, which was formed in the 1920s to preserve the unity of the Zulu nation (Deegan 2014:16).

Ultimately, the formation, growth, agendas and relationships of all categories of the afore-mentioned parties were heavily influenced by the discriminatory policies from the colonial and Apartheid periods.

3.2 Ideological orientations

Just as has often been the case with political organisations elsewhere in the world, the formation of most major political parties in Kenya and South Africa has been based on ideology, which is defined by Jost and others (2009:309) as a set of beliefs about the proper order of society and how it can be achieved. These are normally set out in the articles of association of the political parties and used as the basis of developing their manifestos. Ideally, ideologies determine the convergence or divergence of the positions of different political parties on issues. Be that as it may, there are political parties that, based on their political actions or inactions, could be said to be driven by a pragmatism shaped by political opportunism.

3.2.1 The discourse on devolution in Kenya

In Kenya, the formation of independence parties was based on ideological differences. KANU, who were the victors of the 1963 general elections, the last before independence, and KADU had divergent views on the shape of the post-independence state. Whereas KANU favoured a unitary system, KADU preferred majimboism. The latter means ‘regionalism’ and its promoters argued that decentralisation of political power to regions

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6 In South Africa, the term ‘Coloured’ refers to an individual of mixed race, as opposed to indigenous Africans or whites of European ancestry (Pinchuck et al. 2002:81).
of equal status would protect smaller communities from dominance by larger communities (Anderson 2005:547). However, the unitary system proponents prevailed when KADU disbanded and joined KANU in 1964 before the transformation of the country into a one-party state (Materu 2015:23).

Nevertheless, the seeds of *majimboism* had been sown and they never died. Amid the excesses and malfeasance of the unitary state under KANU, especially in marginalisation of sections of the country, the debate re-emerged in the 1990s, when political parties began a demand for a new constitution. In fact, the 2010 constitution, negotiated after the 2008 post-election violence, has at its core the devolution of government and resource management to structures known as Counties.

There is, however, a school of thought that contends that political parties in Kenya, with the exception of the independence parties, are driven less by ideology and more by the political ambitions of their leaders. Mutua (2016: para. 6) surmises that political parties in Kenya are empty husks for individual politicians to seek and keep political power. It is no wonder that during election years, politicians have been known to hop from one party to the other the moment they lose in the primaries. At one point, the chairperson of the Independent Electoral and Boundaries Commission (IEBC) described this habit as ‘political immorality’ (Mayabi 2012: para. 4).

**3.2.2 Apartheid versus the Freedom Charter in South Africa**

Most political parties of note in South Africa have had, as a basis for their formation and existence, development policy doctrines for which they stand. Given the country’s history of identity struggles and racial discrimination, the discourse on development policies became the glue that bonded like-minded political elites into forming political parties.

Legassick (1974:5) observes that the Boer vision of a South Africa driven by self-development in separate areas of the country delineated by race, influenced the formation and growth of the National Party which went on to legislate Apartheid when it came to power in 1948.
Before the end of Apartheid (and even after), a majority of the non-white dominated political parties coalesced around doctrines that were diametrically opposed to racial discrimination. The pillars of this coalescence were the tenets of the Freedom Charter. This Charter was the product of the South African Congress Alliance and outlined the core principles of the demand for and commitment to a non-racial South Africa. The Freedom Charter contains elements of liberalism in its references to the protection of human rights, some elements of socialism in its call for nationalisation and redistribution of wealth, and Africanism with its observation that the people had ‘been robbed of their birth right’ in terms of their black identity, cultures and heritage of their ancestral land (Sisk 2017:150).

3.3 Ethno-racial motivations

Closely tied to the ideological orientations mentioned above is the issue of identity. In Kenya and South Africa, the identity question behind the formation and consolidation of political parties manifests itself in nuanced ways. Issues of racial divisions are prominent in South Africa whereas tribal differences apply in Kenya.

3.3.1 Tribal Politics in Kenya

The negotiation for independence pitted KANU against KADU. The former was synonymous with the politically dominant tribes of Agĩkũyũ and Luo while the latter was formed as a coalition of minority tribes who feared loss of land in the future as a result of the policies of the dominant communities (Maxon and Ofcansky 2014:158).

Maloba (1995:17) argues that the notion of political parties, whose foundations and existence are perceived to be ethnic identification, is an indicator of the failure of national politics. This manifested when, after

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7 The South African Congress Alliance consisted of the ANC, the South African Indian Congress, the South African Congress of Democrats and the Coloured People’s Congress. The Alliance adopted the Freedom Charter on 26 June 1955 after a historic meeting in Kliptown (Pillay 1993:88).
independence, suppression of political rivals and dissidents led to what Mazrui (cited in Maloba 1995:17) refers to as ‘retribalisation’ of politics. This occurs when the national centre or elite is viewed as unfair, especially when ethnic equations are used in determining the access to and control of national assets and opportunities. In this case, those who are not included may opt for sectional identification as a source of strength and safety. This explains the formation of the Kenya People’s Union (KPU) in 1966 following the disagreement between Jomo Kenyatta, the first President of Kenya (Agĩkũyũ) and his Vice-President, Oginga Odinga (Luo). During the three-year period that the KPU existed before being banned by Kenyatta, it drew its support mainly from the Luo in Nyanza Province who had felt suddenly marginalised by the centre.

The period after legalisation of multipartyism in 1991 opened the doors to political parties formed around ethnic coalitions, especially during election years. The trend since independence has been for political parties keen on securing control of government to form multi-ethnic political party coalitions around four main tribes (out of approximately 42): Agĩkũyũ, Luhya, Luo and the Kalenjin. In fact, each of the four presidents that Kenya has had, rose to power based on the strong support of two or more coalitions of the afore-mentioned tribes (Kagwanja and Southall 2010:9).

3.3.2 The ‘Rainbow Nation’ and the political parties representing it

It is not uncommon to hear South Africa being referred to as the ‘rainbow nation’. This is a product of the discourse that took place during the negotiation process for the end of Apartheid wherein arose the question of what would define a South African identity. The term ‘rainbow nation’ was therefore coined to symbolise the new South Africa in which there is recognition of the unity of multi-culturalism and convergence of people of many nations within a country once plagued by discrimination (Mapungubwe Institute for Strategic Reflection [MISTRA] 2014:76). The nature of political parties representing the interests of the ‘rainbow nation’ have throughout history been influenced by these realities of diversity.
However, Respondent Three (2017) suggests that in post-Apartheid South Africa, political party affiliation still is predicated along racial lines – the Democratic Alliance being mostly supported by whites and people of mixed-race, and the ANC by blacks. Van Tonder (2015: para. 7) cautiously challenges this line of thought by arguing that even though the Democratic Alliance was once a white-dominated party and operating under racist laws legislated by the National Party, it now has support from non-white voters due to its liberal principles which opposed Apartheid from within the system. In addition, it elected Mmusi Maimane as the party’s first black African leader in May 2015.

Lieberman (2003:188) points out that even though there are indications that membership and support of political parties exhibit a racial dimension, it is interesting that after 1994 none of the leading parties have mobilised their membership based on explicit racial or ethnic claims, and all of them have attempted to attract supporters across the racial divide. Price (cited in Lieberman 2003:189) agrees with these sentiments, noting that parties such as the Pan African Congress (PAC) and the Freedom Front that did try to mobilise membership based on racial or ethnic divides, suffered dismal electoral returns. Even the radical leftist Economic Freedom Fighters (EFF) party which is perceived to have most of its support from black South Africans, entered into an unexpected coalition with the Democratic Alliance8 after the 2016 municipal elections in order to lock out the ANC from governing the metros of Johannesburg, Tshwane and Nelson Mandela Bay.

3.4 The political systems

The existence and natures of political parties largely depend on the type of political system on which they are domiciled. According to Heslop (2017: para. 1), a political system is the set of formal legal institutions that constitutes a government or a state. Kenya and South Africa are democracies

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8 In terms of ideology, the EFF and the Democratic Alliance are far apart, and many pundits have called their coalition a ‘marriage of convenience’ (Mtungwa 2017: para. 1).
with the most progressive constitutions in Africa, but their systems of
government do not only differ; they have also taken different historical
trajectories. Exploring these differences may provide indications about the
extents to which they have influenced the nature of political parties.

3.4.1 Authoritarianism and the journey towards the Third Liberation
in Kenya

During the time of the formation of KANU and KADU in 1960, Kenya was
in essence a multiparty system (Ogot 1995:239). Soon after becoming a
Republic in 1964, the country was transformed into a one-party state when
KADU voluntarily dissolved itself and joined KANU. A mass defection of
left-leaning members of KANU led to the formation of KPU in 1966 before
the latter was banned by the government in 1969. With the banning of
KPU, Kenya became a *de facto* one-party state until 1982 (Aubrey 2003:90).
In 1982, an attempt was made by the opposition to form the Kenya African
Socialist Alliance (KASA), but this was nipped in the bud when in June of
the same year, Parliament amended the constitution and inserted Section
2A, which transformed Kenya into a *de jure* one-party state (Ogot 1995:239).

During the regimes of the first two presidents of Kenya, Jomo Kenyatta
and Daniel arap Moi, there was little or no tolerance for opposition parties.
Political expression was only allowed through KANU, which was the only
party that was legal and/or allowed to exist from 1969 to 1991.

Multipartyism was reintroduced in 1991 following the repeal of Section
2A. It was the commencement of a journey by Kenyans towards a system in
which they could feel free from political economies surrounded by elitism,
egregious graft and social inequality. Mills and Herbst (2012:7) refer to this
as the ‘Third Liberation’. Van de Walle and Butler (2007:19) offer a typology
of political parties that would normally emerge upon the reintroduction of
multiparty politics. This paper looks at two of them.

Firstly, there are parties that made the transition from a single party
regime and continue to play an active role in politics. These include KANU,
which after the return of multipartyism won the general elections in 1992
and 1997. It is important to note that, given its historical strength and association with the state, KANU received extensive support in the form of patronage, media access and logistical assistance (Throup and Hornsby 1998:358).

Secondly, and perhaps the bigger category, are the parties that emerged in the course of the transition to multipartyism. This category of parties appeared virtually *sui generis*, shortly before, during or after the aforementioned transition with the aim of competing for power (Van de Walle and Butler 2007:20). These new parties often had their origins in civil society, which was allowed to exist or somehow existed in spite of repression. The leaders of these new parties were often those who had long histories of opposition to the one-party regimes.

### 3.4.2 From a system of racial segregation to a fledgling democracy in South Africa

To many black South Africans, the one and only liberation they have had, came at the end of Apartheid. In fact, before Apartheid was ended, the Organisation of African Unity classified South Africa as a country that had not achieved self-determination (Page 2003:443). To many supporters of Apartheid-era white-dominated political parties on the other hand, liberation could be tagged to the independence that was obtained in 1910 when the Union of South Africa came into being. The nature and existence of political parties before, during and after each of these liberations depended on the legal frameworks and political spaces that the respective political systems offered.

Inasmuch as the Boers came to establish a strong political party that ruled for more than 40 years, White and Davies (1998:186) claim that it was only after the Second Anglo-Boer War that political parties began to form in South Africa. Among the indigenous groups, political organisation during this period was very low due to the Boer-Briton policies of segregation that kept the indigenous groups out of any form of government.
However, political organisation became more relevant to all groupings in the country after the Second Anglo-Boer War given that the country was negotiating its way towards the establishment of the Union. Different groupings needed their interests factored in the process.

The political system that emerged after formation of the Union was one that excluded the participation of non-white political parties in elections and government. A crucial waypoint on the path towards legislation of Apartheid was the 1936 removal of black South Africans from the common voters roll. This did not, however, prevent political organisation among non-whites. Political organisations continued to exist outside of the legal frameworks in place and when they started to agitate more aggressively, the government tightened the laws to suppress them even more.

Given its connections to global capitalism at the height of the Cold War, and in order to buy tolerance of Western powers to Apartheid, South Africa passed the Suppression of Communism Act in 1950, which outlawed any political parties affiliated with Communism (De Visser 2005:52). This law, and others that came afterwards to strengthen it, defined the existence and parameters of political parties throughout the Apartheid era. It gave the Minister of Justice unlimited authority to arbitrarily ‘ban’ a person or entity. A banned person or entity could not organise/attend meetings, publish literature or promote their cause (Beck 2000:129). The ANC, PAC and many others were banned under this law and their leaders were forced, for fear of long jail sentences or indefinite arbitrary detentions, to go underground or operate from outside of South Africa.

The end of Apartheid and the coming into effect of a new progressive constitution in 1997 entrenched universal suffrage and multipartyism. Ever since, a political party may be registered even if the party is formed on the basis of ethnicity, religion, regionalism, tribalism or advocacy of secession from the Republic (Electoral Institute for Sustainable Democracy in Africa 2006: para. 4).

So far, this paper has provided a historical analysis of the formation and nature of political parties in Kenya and South Africa. The following
sections link this analysis with the manifestations of violent contestations attributable to political parties and the question of how peacebuilding programming can benefit from the historical analysis.

4. Political parties and political violence

In trying to understand the roles of political parties in political violence, it is useful to examine some of the most visible context-specific ways in which they escalate or de-escalate political violence in both countries.

4.1 How political parties escalate political violence

4.1.1 Kenya

Political parties can sow the seeds of political violence through enactment of certain laws or using state machinery to monopolise the political space. When it was in power from 1963 to 1991, KANU perfected this by suppressing all forms of dissention and avenues of effective political expression. In recent times, it was striking that during the period of brinkmanship that followed the Supreme Court’s annulment of the results of the August 2017 presidential elections, it was the supporters of the opposition coalition, the National Super Alliance (NASA), that bore the brunt of excessive use of force by the police, who were under instructions by the Jubilee Party-controlled government to quell mass protests (Kenny and Ahere 2017: para. 5). However, mass protests by perceived Jubilee Party supporters did not receive similar attention from the police even when they turned violent or caused public anxiety (Gitonga 2017: para. 4; Maichuhie 2018: para. 7). From the afore-mentioned situations, it can be argued that when some part of a people are offered very limited or no options of ventilating their dissenting political expressions or are prevented from political participation, violence begins to become an attractive recourse (Saunders 2017:6).

The manner in which political parties reward their followers can also cause violent conflicts. Political parties in Kenya tend to favour certain classes or certain ethnicities, especially in allocating leadership positions in the parties and notably during nomination of candidates to represent the respective parties during elections (Respondent Ten 2018). When they
come to power, political parties also tend to reward the regions that voted for them and punish those that did not. Public appointments and state resource allocation would favour the constituencies of the ruling party or coalition. As to the few opportunities that would be available to election losers, they would be dished out by the victors in order to co-opt individual losers within the system – thereby diluting opposition to the incumbents and, as Ngunyi (1995:124) notes, ensuring the continuation of the system of political patronage. This ‘carrot or stick’ style of politics has continued to cultivate deep-seated resentments between the supporters of election winners and losers, and raised the stakes in elections since winning is synonymous with accessing state resources for the development of a region, class or a tribe.

Political parties also instigate political violence through overtly or covertly sponsoring violence directed at supporters of opposing parties. For instance, there are indications that, in order to authenticate President Moi’s early 1990s contention that multipartyism would fracture the country along tribal lines, some of the ethnic clashes in the 1992 and 1997 general elections were orchestrated by KANU. This was through the use of violence specialists from the military as well as the police to furtively unleash deadly action against civilians (Klopp and Zuern 2007:135). Other political parties, notably the Orange Democratic Movement (ODM) and the Party of National Unity (PNU) also instigated violence, especially in 2008, that targeted supporters of opposing parties and these incidences of violence often took ethnic dimensions (Njogu 2009:4).

The formation and existence of political parties based on ethnicity remain strong; and in the run up to the 2017 general elections, political coalitions were formed based on ethnic backgrounds of the respective party leadership. This was a proximate⁹ cause of the violence that was triggered by the dispute about the presidential election results.

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⁹ Proximate causes of conflict differ from root causes by degree only and are generally necessary to move a society closer to violence. They include such things as entrenchment of tribalism, electoral system manipulation, widespread human rights violations. For differentiation between root causes, proximate causes and triggers of conflicts, see Ahere 2012:32.
4.1.2 South Africa

The policy of Apartheid made discrimination endemic in the socio-economic and political processes and thereby cultivated deep-rooted conflicts. One of the consequences is the current disequilibrium that sees the minority white South Africans continue to control the major part of South Africa’s wealth (Respondent One 2017). Some political parties have preyed on the exasperations of non-white South Africans about this situation and ratcheted up rhetoric that purport to identify with their feelings. It has therefore been common to hear of revisionist calls and campaign slogans by some political parties. Despite their well-meaning intentions, such calls may cause social fractures and anxieties, which if not well managed, may lead to violence.

That said, prominent incidences of political violence after 1994 have not only been between political parties but also among different factions within political parties.

Intra-party factionalism and the competition to control the process of development of party lists have led to political violence. Nowhere has this been felt more than in KwaZulu-Natal province where in the first half of 2016, there were at least 20 politically motivated deaths (De Haas 2016:48). Intra-party violence has mostly affected the ruling ANC where competition for seats is fiercest (Gottschalk 2016: para. 8; Respondent Five 2017).

There are also parties that have meted out violence against opponents in competition for political turf. A conspicuous case is the frosty relationship between the IFP and National Freedom Party (NFP) whose competition to control the KwaZulu-Natal vote has led to violence (Taylor 2011: para. 3).

It should be noted, however, that in spite of strong indications of political party involvement, it is not always possible to clearly mark the boundaries of political violence. In some localities, political violence overlaps with the taxi industry conflicts. Yet in others, it can be hard to separate political killings from other criminally motivated murders. De Haas (2016:44) posits that the distinction becomes onerous to make when political office-bearers
have business interests such as in the taxi industry. To compound the matter, *Izinkabi*\(^\text{10}\) are used in political, taxi as well as criminally motivated killings.

### 4.2 How political parties de-escalate political violence

#### 4.2.1 Kenya

Political parties have on occasion been able to rise above partisanship and pass legislation that is in the interest of peace and stability. Such actions have been useful in contributing to defusing structural political conflicts. A case in point was the 1997 Inter-Party Parliamentary Group (IPPG), which was composed of members of parliament from various parties who agreed on the repeal of certain colonial-era laws that restricted freedoms of association, and on expanding the composition of the electoral commission to bring in the opposition and to lay the groundwork for comprehensive constitutional reforms (Mwakikagile 2001:123).

Another crucial way that political parties have used to de-escalate conflicts has manifested itself in those occasions when they have closed ranks during periods of unabating political violence and worked in concert with other civil society organisations to end the violence and prevent its recurrence through advocacy. With initiatives such as the *Uwiano Platform for Peace*,\(^\text{11}\) politicians have found a podium to participate individually and collectively in conflict prevention. There have also been moments when different political parties have implemented joint activities aimed at promoting peace among communities. An example is when Amani National Congress

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\(^{10}\) Plural of *Inkabi*, which in isiZulu denotes an individual who is hired to assassinate mostly political and/or business competitors. According to Respondent Two (2017), the wars between the IFP and the United Democratic Front (UDF) in the 1980s and early 1990s as well as the existence of *uMkhonto we Sizwe* (the paramilitary wing of the ANC) led to a situation where after the end of Apartheid, there were a lot of combat-ready young people roaming around KwaZulu-Natal with nothing to with their limited labour market skills. In their quests to earn a livelihood in a region awash with small arms, these young people joined the ranks of *Izinkabi*.

\(^{11}\) For more on Uwiano Platform for Peace please see: <http://www.ke.undp.org/content/kenya/en/home/operations/projects/peacebuilding/uwiano-peace-platform-project.html>. 

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and Ford Kenya political parties’ members in the conflict-ridden North Rift of Kenya teamed up in April 2018 to preach peaceful co-existence in the region (Daily Nation 2018).

4.2.2 South Africa

On the national stage, political parties came together in 1999 under a conflict management programme. This programme was executed through provincial-level conflict management committees, which received election-related complaints and proposed ways of handling these amicably before they reached the courts or resulted in unrest (Booysen and Masterson 2009:419). This was followed by the 2009 signing of an electoral Code of Conduct by political parties wherein they pledged to eschew activities that encouraged violence and also to discipline any of their supporters who perpetrated violence (February 2009:61). Both initiatives were conceptualised and implemented through the facilitation of the Independent Electoral Commission (IEC).

The function of the IEC in the afore-mentioned initiatives brings to light another important role that political parties have played in the de-escalation of political violence. Political parties have, through comprehensive legislation and their supportive actions, collectively generated sufficient political will in support of the actions that the IEC takes to implement the afore-mentioned Code to the letter. According to one of its principal electoral officers, this has resulted in the public perception that the IEC is a neutral and impartial institution (Respondent Eight 2017). This has made a large contribution to reducing violent conflicts that would otherwise arise out of suspicion of the activities of the IEC as has happened in Kenya.

5. Lessons learnt and recommendations for peacebuilding

With its focus on political violence, this paper set out to provide an analysis of the nature of formation of political parties in Kenya and South Africa with the intention of using that analysis to underscore the indispensability of political parties as actors in peacebuilding efforts in both countries.
A historical analysis provided a snapshot of how political parties metamorphosed into the entities that they are now in both countries. By understanding such metamorphoses, a practitioner is able to descry the linkages between the nature of the parties and their actions as far as political violence is concerned.

This paper has ascertained that political parties do play a role in escalating and in de-escalating political violence. This is against the backdrop of the fact that prevention and management of political violence is an integral part of peacebuilding as a process. Since peacebuilding is political in nature (Cousens 2001:7), for the process to be legitimised, it is important that political parties are a part of it. Effective participation of political parties in this process calls for peacebuilding practitioners to design interventions that are congruent with the nuanced *raisons d’être* of political parties in both countries and the discernment of how their (the political parties’) operations have influenced political violence over the years.

One of the ways in which practitioners can design interventions that anticipate the participation of political parties as actors or beneficiaries is to use the conflict mapping and analysis model espoused by Paul Wehr (see Jandt 2016:55). This model may enable the design of effective peacebuilding programmes by: 1) identifying the specific roles that political parties play as actors in political violence, 2) delving into specific aspects of political violence in the country concerned and 3) evaluating the contexts wherein the incidences of political violence occur.

The participation of political parties in the peacebuilding efforts in both countries can however be more effective if there is a solid guiding framework. Regulatory frameworks in both countries need to be reformed by the legislatures and commit political parties to be members of formalised NIfPs. An examination of the key regulatory frameworks that govern the operations of political parties in Kenya (Political parties Act: No. 11 of 2011; The Political Parties (Amendment) (No. 2) Act 2016; The Political Parties (Amendment) Act 2012) and South Africa (Electoral Commission Act 51 1996) reveals that there is an absence of principles that explicitly prescribe the role of political parties in sustainable peacebuilding.
6. Conclusions

Political parties in Kenya and South Africa contribute to the vicious cycles of political violence. They have also played some crucial roles in the de-escalation of such violence. Analysis shows that the respective roles that they have played have been informed by their natures, derived from their historical metamorphoses. Given that peacebuilding has political impacts and political parties are fundamental to political processes, it is the conclusion of this paper that political parties are indispensable actors in peacebuilding. The design and implementation of peacebuilding interventions that effectively target political violence must therefore anticipate, and even encourage where possible, the involvement of political parties in de-escalating political violence.

Sources


Electoral Commission Act 51 1996, South Africa.


Linkages between political parties and political violence


Page, Melvin E. 2003. Colonialism: An international social, cultural, and political encyclopedia. Santa Barbara, ABC-CLIO.


Political parties Act: No. 11 of 2011 Kenya.


Linkages between political parties and political violence


The International Criminal Court and the African Union: Is the ICC a bulwark against impunity or an imperial Trojan horse?

Westen K. Shilaho*

Abstract

There is a diplomatic impasse between the International Criminal Court (ICC) and the African Union (AU) regarding accountability for mass atrocities committed in Africa. The AU accuses the ICC of bias against African rulers, in effect, ‘Africans’, while the ICC insists that as a permanent legal institution, it affords justice to all victims of egregious crimes such as war crimes, crimes against humanity and genocide. And so Africans, victims of these crimes, deserve justice too. Since the indictment of the Sudanese president, Omar al-Bashir, twice for crimes against humanity and then for genocide, the ICC has elicited antipathy from some African rulers and their supporters who perceive it as an adjunct of imperialism encroaching on Africa’s sovereignty. However, sovereignty entail responsibility to protect (R2P). The AU Constitutive Act of 2000 affirms this under the non-indifference principle. It is therefore counter-intuitive to accede to international norms and concurrently invoke ‘absolute sovereignty’ as

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some African rulers attempt to do. Africa’s conflicts are characterised by mass atrocities owing to weak states that are unable and often unwilling to protect citizens and dispense justice. In some cases these states are themselves perpetrators of heinous crimes, which necessitates intervention by the international community. Historically, realpolitik, self-preservation and geopolitics have marred international criminal justice, and Africa’s relationship with the West is steeped in humiliation making some African rulers suspicious of Western-dominated institutions. The perception that the ICC dispenses lopsided justice stems from this history. This paper argues that the choice between justice and peace is a false one since the two mutually reinforce each other, while impunity, if not checked, portends instability in Africa.

**Keywords:** Africa, Kenya, African Union, ICC, R2P, ethnicity, international criminal justice

**Introduction**

The European Holocaust brought into sharp focus the horrendous atrocities that human beings, possessed by visceral hatred and incitement, can inflict on fellow human beings because of racial, political, ethnic, religious or even class difference. It showed how a rogue regime can be a threat to the existence of a people defined as a group. The sheer scale and meticulousness of the European Holocaust was unconscionable. Nazi extremists abused science, a marker of modernity, to kill millions of people in a manner that bordered on the barbarous. The mass killings were unprecedented and unsurpassed in recorded history. Not that there is a hierarchy of atrocities and suffering, but what distinguishes the European Holocaust was the attempt to annihilate entire groups of people – Jews, Gypsies, communists and other groups they defined as sub-human – because of their identity. These horrendous crimes gave rise to the word ‘genocide’. It is, however, important to note that the first historically documented genocide in the 20th century was the Herero one (1904–1908). German troops targeted Herero and Nama people in the then German South West Africa, now Namibia, for elimination (Melber 2005).
Genocide is the apex crime in the criminal justice system. It is an attack against our collective sense of humanity and that is why it must concern human beings of ethical and moral standing, regardless of where it occurs and who are the victims. In Article 2 of the United Nations (UN) Convention on Genocide, ‘genocide’ is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as: (a) Killing members of the group; (b) Causing serious mental or bodily harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group (United Nations 1948; Rome Statute of the International Criminal Court (ICC) 2002: Article 6).

What is central to the definition of the crime of genocide is not the severity of the atrocities or the number of victims, but the intent. If the killings are deliberate, discriminative and targeted at a particular group, it is regarded as genocide, regardless of whether the deaths are thousands or millions.

In the wake of the atrocities committed by the Nazis, the world vowed that ‘never again’ would such a horrendous crime be tolerated anywhere in the world. Since the European genocide, however, humanity has been debased throughout the world by further crimes against humanity, war crimes, ethnic cleansing, and genocide. Since the European genocide, gross violations of international humanitarian law have occurred in Latin America, Africa, the Middle East, and Eastern Europe, specifically in the Balkans. At the time of writing, egregious violations of human rights continue unabatedly in Syria, Libya, the Democratic Republic of the Congo (DRC), Myanmar (formerly Burma), Ethiopia, and South Sudan. The world has learnt either little or nothing from the history of atrocities.

Had the ICC been in existence at the time when mass atrocities occurred in Latin America, most of its indictments would most likely have been from this region. When the ICC began functioning (2002), however, it was Africa where there was a legacy of autocratic regimes responsible for mass atrocities, and where, in spite of the shift to multiparty democracy
in the early 1990s, egregious crimes still occurred. The Rwandan genocide in 1994, the genocide in Darfur, Sudan (2003), ethnic massacres in South Sudan, cyclic tribal atrocities in Kenya, Nigeria, Uganda, the DRC and the Central African Republic (CAR) are among prominent cases of wanton destruction of human life under multiparty politics – in an era in which the rule of law and respect for human rights were expected to prevail. Previous atrocities and specifically the Rwandan genocide, atrocities in the Balkans, Liberia, Sierra Leone, among other parts of the world, made a compelling case for a permanent legal infrastructure to address heinous crimes and flagrant disregard of international humanitarian law.

Dictatorial civilian and military regimes under Africa’s one-party states committed gross human rights violations. Those of Hissène Habré of Chad, the Dergue of Mengistu Haile Mariam in Ethiopia, Jean Bédel Bokassa of CAR, Idi Amin of Uganda, Sani Abacha of Nigeria, to name but just five, rank among the most brutal of them all. A history of horrific occurrences, and specifically the Rwandan genocide, resulted in Africa’s near unanimous initial support for the formation of the ICC, a permanent institution to combat mass atrocities. Thus Africa has the largest regional bloc within the Assembly of States Parties (ASP). South Africa’s frontline support and participation in the drafting of the Rome Statute was invoked by the fact that the UN defined the apartheid system as a crime against humanity (United Nations 1973; Rome Statute of the ICC 2002: Article 7(j)). The ICC is central in international criminal justice since it obviates the need to form ad hoc UN criminal tribunals and hybrid courts previously set up on a case-by-case basis. The International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for Yugoslavia (ICTY), and the Special Court for Sierra Leone are illustrations of institutions previously used to discharge international criminal justice.

The article defines the concept of genocide, analysing it and related crimes to underscore its centrality in the Rome Statute and the Responsibility to Protect (R2P). It also highlights sovereignty as a moral obligation to defend and secure international humanitarian law, but not as a veneer behind which mass atrocities unabatedly take place. The article, further, problematises the question of justice and particularly the false choice between justice
and peace, and the ‘dichotomy’ between retributive and restorative justice. It argues that justice is *sine qua non* to entrenching political stability and in its absence, impunity thrives which, if not checked, can easily dissolve a state into unmitigated lawlessness. A nuanced reading of the clash between jurisprudence and politics in the ICC operations in Africa also features.

**Sovereignty as ‘Responsibility to Protect’**

The principle of sovereignty is not an absolute. Interference in the internal affairs of states by others has been in existence for centuries. In the nineteenth century, for instance, the international community intervened to bring an end to piracy, slave trade, and violation of the human rights of minority groups (Sarkin and Paterson 2010:347). As such, the character of the principle of sovereignty must reflect a state’s international obligations, treaties, and its participation in international organisations. All these instruments and membership within international bodies limit the sovereignty of a state. Simply put, ‘by virtue of their commitment to human rights and democratic governance, and by virtue of their membership in the global community of nations, all states and their personnel undertake to abide by international norms’ (Mwanasali 2006:90).

According to Deng, the concept of sovereignty rests on three principal sources: the degree of respect merited by an institution, the capacity to rule, and the recognition that this authority acts on behalf of and in the best interest of the people (Deng 2010:360). Sovereignty imposes obligations on a state. A government worth its salt has the responsibility to maintain security, enforce the rule of law and deliver on collective goods and services. In a word, sovereignty entails accountability and responsive leadership. When people are in imminent danger of deprivation, or death, the concerned state has to secure their wellbeing and safety; if not, the international community is morally obliged to intervene to forestall a humanitarian crisis and violation of human rights (Deng 2010:354). Moreover, Deng observes that it would be callous and irresponsible for a caring world not to respond in the face of a humanitarian crisis. He sums up the essence of the idea of ‘sovereignty as responsibility’ thus: ‘The best assurance of maintaining sovereignty is therefore to establish at
least minimum standards of responsibility if need be with international cooperation. Thus, the role of the international community is to render complementarity protection and assistance to those in need and to hold governments accountable in the discharge of their national responsibilities’ (Deng 2010:354).

The application of the responsibility to protect (R2P) principle in Africa is controversial because of a history of humiliation. Slavery, colonialism, the Cold War, and Western-dominated institutions, have eroded the sovereignty of virtually all African states. Many African rulers are therefore suspicious of the intentions of Western-led intervention missions in Africa’s conflicts for fear of encroachment on their sovereignty, or what remains of it, under the pretext of responsibility to protect (Sarkin and Paterson 2010:344). African governments have acceded to the principle and practice of a multilateral approach to R2P both at the regional and continental levels (Sarkin and Paterson 2010:344). Therefore these governments have to implement these norms by upholding human rights and international humanitarian law.

**Prevention: The core of R2P**

According to the United Nations Secretary-General’s report on ‘Implementing Responsibility to Protect’, responsibility to protect means a responsibility to prevent a crisis from occurring, a responsibility to react once it occurs, and a responsibility to rebuild in the aftermath of a crisis (United Nations 2009:7). The R2P principle provides for the use of force, but prevention is its centrepiece in the sense that States are encouraged to meet their core protection responsibilities to pre-empt conflicts (United Nations 2009:7). States have the responsibility to protect their citizens from avoidable catastrophes such as mass murders, rape, and starvation, but when they are unwilling or unable to fulfil this responsibility, the international community must step in. When a population is threatened by serious harm due to civil war, insurgency, repression, or state failure, but the affected state is unwilling or unable to bring the challenge under control, ‘the principle of non-intervention yields to the international responsibility to protect’ (Sarkin and Paterson 2010:344–345).
Deng argues that the concept of sovereignty as responsibility has two complementarity dimensions. Firstly, sovereignty obliges the state to protect its citizens for it to have legitimacy and respectability within the international community. Secondly, ‘sovereignty as responsibility’ refers to accountability. It means that when a state lacks the political will or capacity to discharge its responsibility to safeguard the welfare of its citizens, the international community is duty-bound to intervene and assist whether the affected state seeks international assistance or not (Deng 2010:354–355). However, the intervention must not be unilateral. The International Commission on Intervention and State Sovereignty (ICISS) outlines six criteria that a military intervention must meet: it must be for a just cause, have the right intentions, be a last resort, be authorised and executed by a legitimate authority, adhere in action to the principle of proportionality, and have a prospect of success (Sarkin and Paterson 2010:347). Owing to the power imbalance in global affairs, however, it is often easy to intervene in small and weak states, but geopolitically strategic states in imminent danger of a humanitarian crisis, or themselves responsible for the violation of their citizens’ rights, are usually engaged diplomatically or their actions are deemed consistent with the dictates of sovereignty (Deng 2010:355).

Sovereignty is a tenuous concept in Africa, however. In some African countries such as the DRC, the government is confined to Kinshasa, the capital city, and hardly controls the entire territory because various internal forces challenge its legitimacy. In a word, ‘sovereignty is more legal fiction than practical reality’ in this context (Sarkin and Paterson 2010:348). African countries have ceded part of their sovereignty through membership in regional bodies and the African Union whose Constitutive Act of 2000 is consistent with R2P principles (Sarkin 2010:348). Sovereignty is no longer sacrosanct when the United Nations (UN) Human Rights Council reviews the human rights of countries that have ratified specific human rights treaties as well as those that have not – a development that has diminished the claim to sovereignty that tends to regard ‘domestic affairs’ as the exclusive domain of individual states (Sarkin and Paterson 2010:348).
The African Union and R2P

The launch of the AU in July 2002 in Durban, South Africa, was expected to herald transformative and normative politics in Africa. Article 4(h) of the AU Constitutive Act affirms ‘the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances namely: war crimes, genocide, and crimes against humanity’ (AU Constitutive Act 2000). The Organisation of African Unity (OAU) abetted gross human rights violations through the notion of non-interference in internal affairs of member states. Counter-intuitively, the non-interference clause is still codified in the AU Constitutive Act 4(g): ‘non-interference by any Member state in the internal affairs of another’ (AU Constitutive Act 2000). The OAU was exclusively an entity of heads of state and government and played a negligible role in addressing human rights violations because these rulers were at the same time the perpetrators of human rights abuses. As such, humanitarian intervention was often out of the question (Sarkin 2010:372). Not long before its dissolution, however, the OAU made some steps to prevent and resolve some conflicts in countries such as Burundi (Sarkin 2010:372).

Africa's single party and multiparty autocrats took advantage of the OAU’s self-serving interpretation of sovereignty in order to oppress dissidents and entire communities, and, in some cases, commit human rights violations against them. Illiberal regimes defined sovereignty parochially to mean territorial integrity and the right to abuse legitimate instruments of violence to suppress dissent with impunity. They dismissed those who disagreed with them as a threat to state security. They thus conflated dissent with a treasonable offence that provided a legal imprimatur to target political opponents, stigmatised as enemies of the state and traitors. The AU has seen some shift in thinking regarding its role in addressing human rights violations in Africa. The AU places emphasis on the non-indifference principle in line with the international norm whereby strict and rigid notions of sovereignty are giving way to the ‘responsibility to protect’ (Sarkin 2010:373). But this norm is yet to be consistently and optimally actualised under the rubric of ‘African solutions to African problems’ due to the absence of political will, the lack of resources, and the normative incoherence within the AU.
Non-interference to non-indifference

The AU has not demonstrated aversion to pervasive impunity. Impunity imperils Africa’s stability. Some African rulers exploit violence and amend constitutions to cling to power upon removal of term limits. Pierre Nkurunziza of Burundi, Denis Sassou Nguesso of Congo Republic, and Joseph Kabila of the DRC lengthened their stay in power through removal of the third term limit. Dubious elections were thereafter held in Burundi and Congo Republic that the incumbents controversially won. Paul Kagame of Rwanda, in power since 2000 and as de facto president since 1994, extended his stay in power through a dubious referendum in which his campaign for the constitutional amendment received near universal endorsement that could see him stay in power possibly until 2034. In 2016, Nkurunziza and Sassou Nguesso were challenged locally, whereupon they reacted brutally and cracked down on protesters resulting in deaths and injuries. In May 2018, Burundi held a referendum on the removal of the constitutional term limit and extension of the presidential term from five to seven years. A majority, 73.26 percent, voted ‘Yes’, which allowed Nkurunziza to run for two seven year terms and potentially extend his tenure until 2034 as well. The DRC is in the throes of instability across the country, a situation that could be exacerbated by succession-related violence unless Joseph Kabila paves the way for credible elections to allow the Congolese to exercise their inalienable right to choose his successor. Kabila overshot his legal two terms that expired in December 2016 under the pretext that the country lacked the capacity to hold elections. The AU must treat the contravention of term limits, sham elections that guarantee that the incumbent retains power, and refusal by incumbents to concede defeat during elections as seriously as unconstitutional change of power through coups that are outlawed by the AU Constitutive Act (AU Constitutive Act 2000). Impunity was the defining characteristic of the OAU, cemented by the non-interference in internal affairs of member states clause (OAU 1963: Article III). The OAU interpreted this clause to mean non-intervention even in situations of gross human rights violations. Then, sovereignty was synonymous with non-interference and impunity. Like its precursor, the AU still has to contend with the lack of resources and political will to
implement the non-indifference principle. Most of the rulers under the AU, have credibility and moral issues that deprive them of the moral authority to condemn impunity and call out its perpetrators.

**The Politics of International Criminal Justice**

International criminal justice is not immune to politics. In any case, masterminds of crimes against humanity, war crimes, and genocide are not ordinary suspects. They are powerful state actors and non-state actors who often deploy violence to compete for power and resources. It is for this reason that geostrategic considerations and politics, but not legal considerations per se, play a role in the operations of the ICC. Who to indict and when, how many people to indict in a given conflict, issues of evidence gathering, and issuance of arrest warrants and how to affect them are as much legal matters as they are political. Despite these realities, a credible judicial process must restrict itself to individual criminal responsibility, and must not only be impartial in the pursuit of justice, but also be seen to be so.

Like its predecessors – International Military Tribunals (IMTs) after World War II, ad hoc UN tribunals, truth commissions, amnesties, and hybrid courts – the ICC has been dogged by politics since its inception and accused of perpetrating victor’s justice. It simply means the victor in a conflict subjects the vanquished to the victor’s preferred justice since the victor has the power to decide what will happen to the loser (Jalloh and Morgan 2015:199). The irony is that the triumphant parties that come to control the government of a post-conflict nation are likely to have had a role in the conflict (Jalloh and Morgan 2015:199). In Côte d’Ivoire, the ICC is accused of discharging victor’s justice by focusing on atrocities by Laurent Gbagbo, the former president, and his supporters while ignoring atrocities by the allies of his successor, Alassane Ouattara (Corey-Boulet 2012). The Nuremberg Trials and the ad hoc UN tribunals were accused of dispensing the victor’s justice too. In 1946, the Allies expediently ignored atrocities committed by their associates but chose to prosecute twenty-two
Nazi leaders (Jalloh and Morgan 2015:199). The ICTR was accused of trying only Hutu suspects but not Paul Kagame’s Rwandan Patriotic Front (RPF) personnel who committed atrocities as well (Call 2004:104–106). Jalloh and Morgan, however, do argue that ‘victor’s justice is not only practically inevitable but in some cases it may also be practically desirable’ (Jalloh and Morgan 2015:200). Critics fault the ICC for apparently ignoring atrocities in Palestine, Israel, Ukraine, Afghanistan, Chechnya, Iraq, Myanmar, Sri Lanka, and Syria because of the sensitive politics attendant to these conflicts (Murithi 2013:5). It has to be noted, however, that the Court has since opened preliminary examinations in more countries including Palestine, Iraq/UK and Afghanistan. Murithi is not convinced that these preliminary investigations are genuine. He observes that the former Chief Prosecutor, Luis Moreno-Ocampo, ensured that these investigations had an air of interminability in the sense that Moreno-Ocampo invoked technicalities to indefinitely avoid launching prosecutions (Murithi 2014:11; Murithi 2013:5). Iraq is not a State Party to the Rome Statute and neither has the United Nations Security Council (UNSC) referred atrocities in that country to the ICC although investigations concerning possible atrocities by British soldiers in Iraq have been launched (ICC 2006). ICC critics cite the fact that except Georgia, all ten countries with cases under investigation before the ICC are African. The fact that five of these situations are self-referrals has not debunked the narrative that the ICC caseload has an African hue while atrocities elsewhere seem to have been ignored for political and geostrategic reasons. No matter how hard it tries, the ICC cannot claim to be apolitical:

I think the ICC has to recognize, and what Ocampo has to recognize and I don’t think he really did it at first, is whether he likes it or not, the ICC is a political institution. I fully believe that there are no institutions, governmental, legal, etc, that are not political institutions. There is a political component to all aspects of the global community and the ICC is not exempt from that (Prof Eric Leonard in Hoile 2014:27).

Furthermore, critics accuse the ICC of ignoring atrocities committed in Libya by the world’s powerful nations under the North Atlantic Treaty
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Organisation (NATO) aegis, while concentrating entirely on those by the ‘bad guys’ such as the fallen Libyan dictator, Muammar Gaddafi and his allies. What these accusations illustrate is that the relationship between jurisprudence and politics affects not only the ICC but also other international bodies, and that that happens for one principal reason: the law always operates closely with politics. Generally, their relationship is a reciprocal one. In international criminal law, this relationship is permanent – although not always evident – in at least two areas: the establishment of relevant institutions, and the specific operations of those institutions (Musila 2009:11).

The fact that the five veto-wielding permanent members (P5) of the UNSC – the US, Russia, Britain, France and China – refer cases to the ICC is evidence that the ICC is not and cannot be entirely a judicial institution. Among them, the US, Russia and China have not ratified the Rome Statute but often use their privilege to block proceedings against them and their allies as the case in Syria demonstrates. The UNSC cannot refer Bashar al Assad and his forces to the ICC for crimes against humanity because Russia and China, his backers, would veto such a resolution. Neither can the US, Britain and France countenance referral of the Syrian opposition to the ICC for war crimes. Contrary to Moreno-Ocampo’s stance that the ICC remit did not involve politics, the Court is not a purely legal institution and has to navigate international jurisprudence, realpolitik, and cultural nuances. During the trial of Kenyan suspects, the Office of the Prosecutor tried to prove that an organisational policy preceded the post-election violence in 2007–08. Uhuru Kenyatta and William Ruto, the most prominent of the Kenyan suspects, were accused of exploiting their command of tribal militias established by ancient traditions to commit atrocities against enemy tribes after the violently disputed elections in 2007 (ICC 2016; The New York Times 2016b). Moreover, the Assembly of States Parties (ASP) of the ICC, serves as the administrative arm of the Court, and constitutes mostly politicians, civil society, and government functionaries. This further proves that politics is closely linked to the law in the operations of the ICC.
The ICC also relies on the cooperation of member states to effect arrest warrants, and in evidence gathering against the accused – actions which go to the core of politics. The politically charged Kenyan and Sudanese cases and the impasse between the AU and the ICC, and that between South Africa and the Court over its failure to arrest al-Bashir while in attendance during the AU summit in Johannesburg in 2015, highlight the influence of politics in international criminal justice. The ICC intervention in Africa’s conflicts is guided by geopolitics and, in some cases, is devoid of impartiality. It is ironic that some of the ardent critics of the Court are also beneficiaries of its perceived bias. The ICC is silent on complicity of Rwandan and Ugandan forces in gross human rights violations in the DRC (Reuters 2012). In Uganda, CAR, and the DRC, the ICC is accused of focusing exclusively on atrocities by rebels but not those by government forces. In the Ugandan context, President Yoweri Museveni was in attendance during a conference at which Luis Moreno-Ocampo, the founding Chief Prosecutor, announced that Uganda had referred five top commanders of Lord’s Resistance Army (LRA), a rag tag army led by Joseph Kony that committed mass atrocities in Northern Uganda since 1986, to the Court. This seemingly skewed approach to justice erodes the ICC independence and casts aspersions on its impartiality (Hoile 2014:26–31). In Sudan, however, it indicted government actors as well as Darfuri rebels. Ultimately, ‘The ICC must be committed both to the prosecution of crimes – that is, the most serious crimes of concern to the international community as a whole’, as defined by Article 5 of the Rome Statute – and to the shifting, often contested terrain within which the Court was forced to operate’ (Clarke 2012:311).

**The ICC as a bulwark against impunity: Is Justice taken seriously?**

Given that the ICC dispenses retributive justice, it was accused of impeding social cohesion and sustainable peace in Sudan and Libya after it indicted Omar al-Bashir and Muammar Gaddafi, respectively, in the midst of conflicts in the two countries. Previously the ICC had issued arrest warrants
against LRA commanders when negotiations for peace were ongoing, and were blamed for scuppering the process and hence to the resumption of hostilities and violence in northern Uganda (Clarke 2012:310–311). The AU asked the UNSC to defer proceedings against al-Bashir in the interest of peace in Sudan but when the UNSC did not act on the request, it asked member states not to cooperate with the ICC or risk being sanctioned. But there is no unanimous position on the ICC impasse even within the AU, let alone Africa, and that is why Botswana, among other states, publicly defied the AU and affirmed their international obligations under the Rome Statute (Werle et al. 2014:247). The UNSC Resolution 1593 that referred the situation in Darfur to the ICC included positive votes by Benin and Tanzania while Algeria abstained. UNSC Resolution 1970 that referred Libya to the Court was unanimous and had positive votes by Gabon, Nigeria and South Africa.

According to Nouwen (2013:172), the ICC-style justice is faulted because it tends to be ‘individual rather than communal, criminal rather than distributive, and punitive rather than restorative’. The ICC critics advocate restorative justice as often happens through African traditional conflict resolution systems. This does not create villains and victims. The gacaca courts, formed in the aftermath of the Rwandan genocide, complemented the ICTR and trials in the local judiciary, but they also exposed the inadequacies of traditional forms of conflict resolution because they were bedevilled by challenges such as intimidation and killing of witnesses, incomplete or fake confessions and corruption (Rugege and Karimunda 2014:99–101). The contrarian view is that the ICC, as a ‘court of last resort’, operates under the complementarity principle that compels it to intervene only when local judicial systems fail victims of atrocities. Although the ICC has inherent flaws, it is not compelling to dismiss it wholesale, especially if there is no other recourse to justice for the aggrieved. The failure to afford justice to victims of mass atrocities throughout Africa’s post-colonial period has cemented impunity and the consequent vicious cycle of violence. As Rwanda demonstrated, there is no dichotomy between redistributive justice and restorative justice because the two forms of justice are complementary and neither takes precedence over the other.
Antidotes for impunity and lawlessness are therefore urgently needed, because entrenched impunity ultimately spawns a deleterious cycle of violence (Nouwen 2013:172). Justice and accountability can indeed function as such antidotes, and should be taken as seriously as possible. The dichotomy between justice and peace and/or peace and truth is a false one. Clarke argues that justice and peace are often treated as if they are polar opposites: binaries that must be dealt with by different entities on the assumption that justice deals with the law while peace falls in the realm of politics. This false separation overlooks structural issues at the core of violence in many parts of Africa (Clarke 2012). In fact, it is counter-intuitive to talk about peace while ignoring justice and truth. Justice guarantees sustainable peace through reconciliation and state building. Through justice, a society affords itself an opportunity to affirm the sanctity of human life, and humanise victims of violence. Often Africa’s victims of gross human rights violations are reduced to mere statistics, especially in the media. Fundamentally, the judicial process is cathartic, especially for the victims when they recount the horrors they encountered at the hands of callous perpetrators, and when they witness their tormentors atoning for their crimes in a judicial process that seeks to impartially ascertain the truth regarding atrocities committed. Although it may not deter would-be masterminds and perpetrators of egregious crimes in the future, and entrench the rule of law, justice ensures that the suspects of mass atrocities are held accountable and that the sanctity of human life and people’s property is not degraded. Murithi is oblivious of this point when he argues that despite the ICC conviction of Thomas Lubanga in 2012, militia still visit atrocities upon Congolese unabatedly, to discredit the Hague-based justice (Murithi 2013:7).

The ‘no peace without justice ideology’ (Nouwen 2013:187) can serve as the searchlight of an impartial judicial process. An impartial criminal justice system can, however, also accord masterminds and perpetrators of violence a chance to redeem themselves. It does not have to be adversarial. The masterminds and perpetrators have to face their victims in a fair judicial process and could either be acquitted or convicted to atone for their crimes. Retributive justice and peace are not mutually exclusive. In the absence of
justice, impunity holds sway and impedes resolution of conflicts. Impunity renders conflicts intractable and recriminatory because it buttresses the notion that violence for political gain is rewarding. When state actors and non-state actors get away with the violation of international humanitarian law, violence gets embedded in power contestations. Politics imbued with violence easily leads to state collapse because it erodes the capacity of the state institutions, particularly the judiciary, to rein in politicians’ caprices and regulate their behaviour. Rogue politicians are a threat to constitutionalism and social cohesion.

South Sudan illustrates the significance of justice in conflict resolution. Since 2013, the country has experienced internecine violence as forces allied to Salva Kiir, the President, and Riek Machar, the former first Vice-President cum rebel leader, fought against each other largely along ethnic lines following a fall-out between the two. Upon formation of a unity government in 2016, the United States (US) and the United Kingdom (UK) recommended the formation of an international tribunal, the Hybrid Court for South Sudan, to try those responsible for atrocities committed since December 2013 until 2016, although egregious human rights violations continued unabatedly beyond 2016. Whereas Kiir seemed to favour reconciliation through truth telling as opposed to ‘disciplinary justice’, Machar seemed to back the hybrid court approach to bring to justice those responsible for gross violation of international humanitarian law. He disowned an article in The New York Times purportedly jointly authored by the two politicians that argued for reconciliation to the exclusion of retributive justice (The New York Times 2016a). The Human Rights Watch report on atrocities in Unity State, South Sudan, attributed continued commission of atrocities in that country to decades of impunity, and recommended intervention through an independent hybrid court or the ICC (Human Rights Watch 2015). If individual criminal responsibility falls away under the guise of peace and stability, impunity could be entrenched in the South Sudanese body politic, the newest African state that seceded from the greater Sudan in 2011, and render the country dysfunctional.
The AU and external actors

Despite avowed talk against impunity and even documents that extoll normative politics, the AU has battled to get past statements of intent to implement the ideal of non-indifference. Implementation of the non-indifference norm is hampered by a lack of political will, which can be ascribed to several factors: the age-old propensity by African rulers to stand in solidarity with one another no matter what; the rulers’ tendency to outsource responsibility for Africa’s problems by wholly attributing them to actors from outside Africa; and suspicion over the intentions of multilateral bodies due to the legacy of colonialism and imperialism. Overdependence on external funding whereby over 70 per cent of the AU’s annual budget is underwritten by donors contributes to the inability by the AU to take charge of Africa’s security and assert its sovereignty. The AU lacks the capacity—logistically, technically and financially—to deploy peacekeeping missions in conflict situations without external assistance.

The conflict in Sudan’s Darfur region was meant to give form to the AU’s much vaunted mantra of ‘African solutions to African problems’. In 2004, the AU dispatched troops on the ground in Darfur but they were overwhelmed by the scale and complexity of the conflict in a region so expansive. It forced the AU to shed all pride and call for its mission to be upgraded to a United Nations one. The Darfur humanitarian crisis showed how a security situation could go terribly awry when the ‘responsibility to protect’ does not go beyond rhetoric (Mwanasali 2006:95).

Since 2007, soldiers under the African Union Mission in Somalia (AMISOM) have been fighting against Al Shabaab militants to stabilise Somalia since it descended into anarchy in 1991. The forces depend on the European Union (EU) and the United States (US) for financial, expert, and logistical support. Burundi runs a risk of relapsing into civil war following a crisis triggered by the insistence by Pierre Nkurunziza to run for an unconstitutional third term in 2015. Neither the regional body, the East African Community (EAC), nor the AU could pre-empt the crisis, which casts doubts on the efficacy of early warning systems within the two bodies. Violence broke out,
but the AU and the EAC could not stabilise the country. The AU initially invoked Article 4(h) of its Constitutive Act and resolved to deploy a 5,000-strong peacekeeping force to protect civilians from government forces and other violent groups. In reaction, Pierre Nkurunziza stated that he would regard the AU troops as an invading force if they ever set foot on Burundian soil. It compelled the AU to back off and instead send human rights and military monitors (Reuters 2016). One of the AU’s glaring inadequacies is that it is not a supranational body with powers to enforce and even impose its resolutions on member states – a failing of non-institutionalisation of the rule of law within individual member states. Errant rulers invariably ignore the AU’s resolutions without sanction.

The ICC and African judiciaries

Some African rulers and their supporters accuse the ICC of bias. It is not easy to denounce this accusation because the ICC case-load is largely African and black, and there is asymmetry in global power as reflected in the composition of the United Nations Security Council (UNSC). European funders are perceived to have leverage over the operations of the Court, hence ‘cases are not being pursued on the universal demand of justice, but according to the political expediency of pursuing cases that will not cause the Court and its main financial supporters any concerns’ (Murithi 2013:3). Worth noting, however, is that the ICC is a ‘Court of last resort’, whose cardinal pillar is the principle of complementarity, a core principle in the Rome Statute. Put simply, the Court only intervenes in situations in which the local judiciary is either ‘unwilling or unable’ to prosecute masterminds of gross human rights violations. The responsibility to prosecute suspects for egregious human rights violations lies first with national jurisdiction. According to Article 17 (1) (a), a case is inadmissible before the Court as long as ‘[t]he case is being investigated or prosecuted by a State which has jurisdiction over it unless the State is unwilling or unable genuinely to carry the investigation or prosecution’ (Rome Statute of the ICC 2002).

But Africa is the ICC’s ‘favourite customer’, in Igwe’s words (Igwe 2008) because the continent is hamstrung by certain legal and political deficits.
Principally, there is lack of political will and capacity to prosecute masterminds of crimes under the ICC jurisdiction. Furthermore Africa’s judicial systems tend to be weak due to executive political interference and corruption. Compounding the situation is that most African legal systems do not anticipate crimes under the Rome Statute and therefore a legal framework for such crimes is absent. In the Kenyan government’s admissibility petition before the ICC, it argued that cases against six suspects be referred to the country, and promised to form an international crimes division in the High Court to try them (International Justice Monitor 2014). Moreover, identity politics based on ethnicity, cultural and linguistic differences, religion, clannishness, and regionalism make it hard for state institutions, including the judiciary, to operate above the fray of societal fissures. Thus Africa’s judiciaries have no capacity or political will to bring to justice violators of international humanitarian law, who in most cases are exclusively prominent state actors some of whom are heads of state and government or their surrogates in the security forces. Warlords are equally powerful and the fact that they have the capacity to challenge the state through violence means it is not easy to try them locally either. The ICC suspects are therefore usually influential individuals, some with cult-like support that assumes tribal and clan fault lines. Besides, they have massive resources. Cumulatively, these individuals are often too powerful for domestic judiciaries.

Before the Rome Statute came into force on 1 July 2002, African countries did not invoke the principle of universal jurisdiction that permits countries to hold to account suspected masterminds of egregious human rights crimes irrespective of where the crimes were committed. Ousted dictators were accorded sanctuary in exile in other African states, where they lived in luxury. Some still do, such as Mengistu Haile Mariam who fled to Zimbabwe in 1991 and has been living there in exile since – despite requests by Ethiopia that he be sent back home to face trial for crimes under his socialist autocratic regime. Successive Ethiopian regimes have equally been implicated in atrocities and so, in a way, lacked the moral gravitas to try Mengistu had he been extradited. Apart from solidarity
among African rulers, Mugabe offered him sanctuary in reciprocation for Mengistu’s support during the liberation struggle against Ian Smith and fellow Rhodesians. Except within South Africa, Ghana, Botswana, Mauritius and a handful of African countries, the doctrine of separation of powers is non-existent in African polities. Weak and dysfunctional judicial systems beholden to the executive are the norm. This combined with deeply divided polities because of identity politics causes Africa to have the highest number of cases before the ICC.

**African rulers and self-preservation**

Initially the ICC was preoccupied with cases involving warlords specifically in situations in the DRC, Central African Republic (CAR), Darfur, Sudan, and Uganda. There was no backlash from the AU after the indictment of warlords and rebel leaders. In these cases, particularly in the DRC and Uganda, the ICC helped to eliminate from the political matrix elements that incumbents regarded as undesirable and a threat to their hold on power. That is why Uganda’s President, Yoweri Museveni, referred Lord’s Resistance Army (LRA) commanders to the ICC but later turned into an acerbic opponent of the Court. Self-referral cases are not necessarily proof that the referring states have confidence in the ICC or uphold the rule of law. Some incumbents invoke the ICC to delegitimise the rebels and opposition that pose a threat to their hold on power. One of the ICC’s critics, David Hoile, argues that Uganda and the DRC government forces also committed atrocities similar to those that the rebels were accused of before the ICC, but none of their actors was indicted on the basis of command responsibility (Hoile 2014:243, 271). In these countries, local judiciaries could not resolve these disputes owing to lack of resources, capacity, independence, and the fear of polarising further already divided societies and polities – thus leaving the ICC as the only recourse.

Once the ICC issued arrest warrants against Sudan’s Omar al-Bashir, first for war crimes and crimes against humanity and then for genocide, in March 2009 and July 2010 respectively, most African rulers were concerned. Through al-Bashir’s legal woes, their own sense of vulnerability before the
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Court that they had no control over became clear. This unprecedented situation, followed by the indictment of Uhuru Kenyatta of Kenya, elicited a siege mentality and the closing of ranks among African rulers. Kenyatta was indicted in 2010 before he rose to power in 2013, but the AU rallied behind him and launched attacks against the ICC, dismissing the Court as a tool of the West to dominate, harass and even recolonise Africa. Curiously, Kenyatta, Ruto and their allies had rejected attempts to form a local tribunal to try suspected masterminds of Kenya’s post-election violence by defeating a motion to that effect (The Standard 2011). Eventually the Kenyan cases collapsed for lack of sufficient evidence, and because of state interference with witnesses. The Kenyan government adopted a non-cooperation policy towards the ICC and refused to avail incriminating evidence against the accused, especially Kenyatta, as requested by the Court. The Office of the Chief Prosecutor (OTP) dropped crimes against humanity charges against Kenyatta, his deputy William Ruto and co-accused. Some witnesses inexplicably recanted their testimonies once Kenyatta and Ruto ascended to power in 2013. Witness tampering was extreme in that some witnesses had died through extrajudicial execution while others disappeared (ICC 2015; Kenya Human Rights Commission 2016). The dropping of crimes against humanity charges against the Kenyan suspects revealed three major weaknesses. Firstly, it exposed shortfalls in the ICC especially in the witness protection and investigative units. Secondly the pressure Kenya and the AU mounted against the ICC that led to some concessions, witnesses disappearance, deaths and recanting of testimonies by others, is proof that not many local judiciaries in Africa can withstand the pressure and interference from high profile suspects – the masterminds of mass crimes. Thirdly, the collapse of the Kenyan cases, in a way, showed that the ICC relies on evidence and not politics to convict and so powerful suspects have no reason to antagonise it unless they have something to hide. Curiously, not as much resources and energy have been expended in the case against the former Ivorian president, Laurent Gbagbo, or his Liberian counterpart, Charles Taylor, although the latter was tried and convicted before the Special Court for Sierra Leone. It implies that incumbency is what makes African rulers to rally behind one of their own in solidarity as
opposed to the mere fact that an ICC suspect was at some point a head of state or government. And so the accusation of bias that some African rulers level against the ICC is self-serving.

‘The African ICC’

A suggestion to expand the mandate of the African Court on Human and People’s Rights, and make it ‘the African Court’ to have jurisdiction over the Rome Statute crimes is laudable. However, it is not clear where the AU will source funding to operationalise it, given that the AU itself relies on donors. The cost of running the ICC is prohibitive and largely rests with the European states. The cost of successfully prosecuting one case can be extremely costly in monetary terms (Hoile 2014:37). However, justice is priceless and so cannot be quantified in cents and dollars. The impartiality of a judicial process but not the number of convictions is the yardstick for its credibility. Having said that, a judicial system in which colossal amounts of money and resources are invested but which has few convictions attracts criticism. The International Criminal Tribunal for Rwanda (ICTR) has been widely criticised for guzzling a lot of money but being short on convictions. Its significance, however, lay elsewhere. Jalloh and Morgan argue that the ICTR was jurisprudentially significant and contributed to international criminal justice that had been in abeyance for 45 years since the Nuremberg trials. It gave effect to the 1948 Convention on Prevention and Punishment of the Crime of Genocide and laid the groundwork for modern genocide law (Jalloh and Morgan 2014:215–217).

In June 2008 the AU Assembly adopted a Protocol on the Statute of the African Court of Justice and Human Rights to merge the African Court on Human and Peoples’ Rights (AfCHPR) in Arusha, Tanzania, and the African Court of Justice in Banjul, the Gambia, to form the African Court of Justice and Human and Peoples’ Rights (ACJHR), as the ‘African ICC’, as it were, to have jurisdiction over the Rome Statute crimes. Although this intention predates the impasse between the AU and the ICC, it is difficult not to see the link between the AU’s attempt to shield errant African rulers from prosecution and the renewed call for the fast tracking of the process
of the creation of the ‘African ICC’. During the AU Summit in Equatorial Guinea in 2014, the AU member states voted and passed the Malabo Declaration to grant immunity to sitting heads of state and government and senior government officials before the envisaged court – an aberration from international criminal justice that historically has no immunity for suspects (Van Schaak 2010). If the ‘African ICC’ would not have jurisdiction over egregious crimes masterminded by senior state actors then it is doubtful whether it would play a role in addressing impunity. Before the Malabo Declaration, the AU had passed a resolution in Addis Ababa in 2013 that purportedly accorded heads of state and government immunity against the ICC. The Malabo Declaration and the Addis Ababa resolution were conspicuous in their failure to mention victims of violence and citizens of the affected countries.

The independence of the would-be African Court is also in doubt. In large measure, Africa’s judicial systems are weak, pliable and pander to the whims of the executive, and it is doubtful that this court would be different. The whole is as good as the sum. The plan to form an ‘African ICC’ is reactive and aimed at duplicating efforts, and at worst is a cynical subterfuge by wily African politicians. Initiatives towards justice for victims of mass atrocities and other forms of injustices in Africa have proven elusive. The Southern African Development Community (SADC) tribunal, for instance, became a victim of its independence when it was defanged and then disbanded in 2012 after it ruled against Zimbabwe’s former president, Robert Mugabe, in a series of cases involving land disputes (Zimbabwe Daily 2011).

**Conclusion**

Genocide and other crimes under the Rome Statute are the most egregious that a human being or group of human beings can ever commit. It behoves the world to ensure that there is no room for commission of these crimes. Africa needs to strengthen its judiciaries to avoid being in the sights of international criminal justice. Through justice, Africa would secure peace and stability. Restorative justice and retributive justice reinforce each other and are not diametrically opposed to each other. Impunity imperils
sustainable peace and stability because it undermines the rule of law and emboldens rogue politicians keen on exploiting violence for political disorganisation to reach self-serving ends.

The ICC is deficient in the sense that its operations are marred by inherent weaknesses as a result of the treacherous thin line between politics and the law in the Rome Statute. The refusal by the US, Russia and China among other nations to ratify and domesticate the Rome Statute and the UNSC politics regarding referral of cases to the Court denies the ICC universal legitimacy and credibility, and reinforces the perception that the Court is meant for weak states, especially in Africa. Such perceptions, however, do not justify denunciation of the institution as an adjunct of ‘imperialists’, formed to harass and gratuitously lock up African rulers. There are hardly any remedial legal mechanisms for victims of mass atrocities in Africa. Given that appropriate justice can hardly be accessed locally, the ICC is obliged to afford these people justice in keeping with the complementary principle. Justice and peace or peace and truth are not mutually exclusive. Such a dichotomy is spurious and therefore a false choice. Without truth, there cannot be justice and without justice, reconciliation, peace and stability cannot be attained. Ultimately, the ‘Never again’ rallying cry in the aftermath of the European Holocaust should not be a hollow slogan as it has been exposed by the Rwandan genocide. The legacy of atrocities on the continent is a living testimony that unless accountability becomes the lodestar of politics, the risk of recurrence of mass atrocities exists.

The ICC is seen as a bulwark against impunity by its apologists who hold the view that, on the whole, Africa’s judiciaries are weak, compromised and beholden to the executive, and thus genuinely unable to hold masterminds of egregious crimes to account. In contrast, some African rulers, their supporters and other critics perceive this institution as specifically set up to harass and keep African rulers in check. Both positions deserve attention. The ICC has to contend with a crisis of legitimacy, yet it requires legitimacy in order to dispense justice even-handedly and avoid the enduring accusation of promoting only victor’s justice. It is time the inherent deficits in the Rome Statute were addressed. The foremost is
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the mandate by the UNSC to refer cases to the Court although three of its Permanent Members – the USA, China and Russia – have not ratified the Rome Statute. It effectively means these nations do not recognise the Court. This provision embeds the Court deeply in global geopolitics. The ICC should come to terms with the fact that although it is a permanent legal institution to address the most heinous of crimes, it operates in a political milieu because its suspects are predominantly political actors. The ICC, therefore cannot afford to characterise itself as an apolitical entity.

In as much as African rulers’ accusations against the ICC cannot be dismissed out of hand, these individuals have the responsibility to uphold the rule of law within their respective states, protect their citizens’ lives and property, and strengthen local judiciaries to combat impunity. It is not tenable for these rulers, under the aegis of the AU, to plead victimhood while at the same time some of them stand accused of perpetrating mass violence against defenceless citizens. The AU must uphold and implement the R2P as encapsulated in its Constitutive Act. Normative polities – hinged on the rule of law, invocation of the complementarity principle, at the core of the Rome Statute, as well as the principle of universal jurisdiction – will obviate the need for the ICC to intervene in African conflicts. Many treaties and international obligations, like the Rome Statute, to which African rulers are signatories, do chip away at sovereignty and render untenable the notion of ‘absolute sovereignty’. African rulers, like their counterparts in other parts of the world, are duty-bound to honour such restrictions on their powers. Failure to comply with these treaties must elicit sanction.

The tendency among African rulers to stand in solidarity with their colleagues accused of gross human rights violations diminishes human life and impedes Africa’s quest for security, peace and stability. Sovereignty means responsibility to defend and protect lives and property and is tested when citizens are at risk of ethnic cleansing, war crimes, crimes against humanity, and genocide. Given that in some cases high ranking government officials and security personnel are responsible for these apex crimes, the ‘responsibility to protect’ those at risk falls on regional bodies, the AU, the UN, and influential international actors such as the US.
Sources


Westen K. Shilaho


Book review

Creed & Grievance: Muslim-Christian relations & conflict resolution in northern Nigeria

Mustapha, Abdul Raufu and David Ehrhardt, editors 2018

Woodbridge, Suffolk, James Currey, 364 pp.
ISBN 978-1-84701-106-0

Reviewed by Jannie Malan*

This is a book with a thought-prompting title and cover, and with thought-prompting contents and conclusions. The colourful cover picture takes the reader into a historical background of hundreds of years. It shows a parade of men mounted on adorned horses ‘greeting the Emir of Kano during the annual Durbar Festival in Kano’s Old City, 2008’. The Durbar (military parade) Festival dates from the time when in the then Emirate (state) horses were used in warfare (NigeriaGalleria 2017), but it also has culturo-religious connotations. It is held at the culmination of two great Islamic festivals at the end of the month of Ramadan (NigeriaGalleria 2017). The sub-title points to a recent history of a few decades which is discussed in the book: Muslim-Christian relations and conflict resolution in northern Nigeria.

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The title implies a linkage with theories about greed and grievance as causes of civil conflict. In *Creed & Grievance*, the key publication *Greed and Grievance in Civil War* (Collier and Hoeffler 2000) is mentioned where the author of chapter 7 refers to its finding ‘that religious diversity, like ethnic diversity, is associated with an increased propensity to conflict’ (p. 186). However, Collier and Hoeffler also found that the greed for resources to finance rebellion seems to play a greater role in causing civil conflict than grievances about ethno-religious discrimination, political repression and inequality. One may therefore wonder whether the *Creed & Grievance* title is not perhaps meant to imply that creed may be greedy, and that greediness for more support of one’s own religion might be a stronger motivation for conflict than grievances about suffering discrimination. And, therefore, that absolute loyalties to creeds may be the fundamental cause of conflict in northern Nigeria.

The author of chapter 2 is cautious about this contentious terrain in the domain of religion, but does venture to mention that ‘[t]here is still a high degree of religiosity among northern Muslims, just as there is among Christians: a lot of firm belief in systems of metaphysical-theological-moral propositions, founded on sacred texts …’ (pp. 76–77). He adds that such convictions are held even by people with Ph.D. degrees, and are well and widely established, so that ‘Nigeria’s believers of all persuasions’ tend to guard and defend them (p. 77).

Apart from these frank comments about religiosity, religiousness is apparently treated in an uncritical (bona fide?) way throughout the rest of the book. What is stressed in the Introduction (chapter 1) as well as in chapters 4, 7 and 9, however, is that any conflict which seems to be somehow related to religion should not simplistically be labelled as ‘religious’. This applies to conflict in northern Nigeria, in the whole of Nigeria and probably ‘in any society’ (p. 18). For a proper understanding of such conflict, the social, political and economic context must be taken into account. Following this emphasis on contextuality, the next few pages of the introductory chapter are focused on the educational, social and economic
disadvantages suffered by northern Nigeria since the early colonial period (pp. 19–21). The discussion is endorsed by a table showing poverty levels of more than 70% (p. 21).

The first of the three parts of the book is about the Muslim and Christian context. Chapter 2 describes the Muslim majority of over 70% in northern Nigeria – according to the last census that gathered data about religious affiliation (55 years ago). It also gives questionnaire results (of just over 9 years ago), from which may be derived that probably 80% of Muslims in the whole of Nigeria belong to sub-groups of the Sunnis, while the remaining 20% is made up of several smaller groupings. It is acknowledged that over more than 70 years there has been intra-Islam intolerance as well as violence in northern Nigeria, which in some cases led to state intervention. It is stated that while Boko Haram and a few other groups are rejecting any secular state, ‘[e]veryone else accepts the constitution and laws’ (p. 79), including Sharia law in the states where applied. But also that everyone experiences the problem ‘that the laws are constantly corrupted and subverted by human greed and incompetence from which no religious or ethnic group is immune’ (p. 79).

Chapter 3 is about the significant Christian minority with its diversity of denominations. According to the 1963 census, Christians were just below 10%, and followers of African Traditional Religions just below 20%. Various issues, for instance leadership and gender relations, are discussed. In chapter 4, historical contexts of Muslim-Christian encounters are described and discussed. There were the shocks of aggressive colonialism and contentious religious pluralism as well as legal pluralism. There were the missionaries who proclaimed ‘the superiority of Christianity’ (p. 113), and there were the states where Sharia law was instituted. There was fear of discrimination and domination. But there was also the reality of Muslim and Christian communities who ‘live peacefully side-by-side for the most part’ (p. 126).

This phenomenon of peaceful coexistence interrupted by antagonistic confrontation is called ‘the central puzzle’ of the whole book (p. 126).
Possible and partial answers to this puzzle are given towards the end of chapter 4 and in the subsequent seven chapters, but I will not reveal them here. A book review is after all (usually) supposed to recommend review readers to read the book itself.

Part two is about key contemporary issues: Sharia law and legal pluralism (chapter 5), Boko Haram, youth mobilisation and jihadism (chapter 6), and complementarity and competition (chapter 7). In chapter 7, several informal, occupational enterprises are described and discussed – showing that while they may at times aggravate competition and conflict, they are playing an important role in promoting complementarity and mitigating conflict.

Part three gives practical examples and details of conflicts and peacebuilding in Jos (chapter 8) and on the Jos Plateau (chapter 9), and a comparison between bottom-up and top-down approaches to peacebuilding (chapter 10). Various causes of conflict are discussed – for instance, problems between herders and farmers, ‘indigenes’ and ‘settlers’, religious majorities and minorities, and commissions of inquiry and military interventions.

The concluding chapter (11) is about diversity, religious pluralism and democracy, and contains a very useful overview of problems and possibilities. There are most relevant recommendations and implied recommendations to governing bodies and political leaders, religious bodies and their leaders, ethno-linguistic groups and their leaders, and to religiously affiliated and other members of the public.

As such an instructive and insightful book, it can be strongly recommended to practitioners and researchers in the field of dealing with challenging conflict – whether ethno-religious, socio-economic, politico-hegemonic, or all of these interrelated, and whether in northern Nigeria or elsewhere in Nigeria, Africa or the world. A book built on so much experience, expertise and research – including previous research as manifested in the impressively long bibliographies – should encourage ongoing dialogue and research.
Technically, the planning, editing, lay-out and printing have been very well done. I did not read in a proof-reading mode, but I seem to have an editing alertness whenever I read, and in this way I happened to notice only four minor omissions and one or two style discrepancies. 

_Creed & Grievance_ is indeed a very recommendable book. Its authors have managed to share a wealth of data and discussions about contentious issues in an impartial way, but with a message about the possibilities of mutual understanding and tolerance, of restoring damaged relations, and of transforming contra-existence into co-existence.

**Sources**

