

AFRICAN JOURNAL ON CONFLICT RESOLUTION

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**Towards a framework for resolving the
justice and reconciliation question in Zimbabwe**

**The consequences of not healing:
Evidence from the *Gukurahundi* violence in Zimbabwe**

**Getting the past right in West Africa and beyond:
Challenging structures through addressing
gender-based violence in mediation**

**The International Criminal Court and conflict
transformation in Uganda: Views from the field**



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Lay-out by Keegan Thumberan.

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Foreword

Jannie Malan

As in a previous foreword, I wish to share an encouraging experience I had while busy with the editing. I had to visit the offices of the insurance company where our belongings are insured – not to claim anything, but just to update some details. As I entered the foyer, I was firstly struck by the writing that covers one entire wall. In large letters of a few different sizes, and in a well-planned collage-like arrangement, it contained a dozen motivating words. While I waited for a few minutes to see a consultant, I wrote them down in my pocket book: confidence, excellence, honesty, inspiration, strength, freedom, ambition, team work, motivation, courage, creativity, passion, authenticity. Secondly, the receptionist and the consultant – representing both genders and two skin colours – were so friendly and so efficient that I couldn't help thinking they are indeed living up to the key words on their wall.

Afterwards, my thoughts kept returning to the connection between motivating words and motivated actions. I also compared the typical responsibilities of an insurance company with those of a conflict resolution organisation, and realised that there are similarities. Both are committed to help fellow human beings who happen to be in unpleasant circumstances. And both know that their contribution has its limitations. After all, what they are able to do, cannot undo the mishap, and cannot necessarily restore everything that went wrong. But the something they *can* do, both can do in the spirit of confidence, excellence, honesty, inspiration and the other qualities highlighted on that wall.

This brief but meaningful experience confirmed the gratitude I feel for being a part of ACCORD's very motivated team. We don't have a wall full of such key words, but in our foyer we do have the inspiration-radiating face of Nelson Mandela and his reminder that the principles underpinning our operations 'are the very ideals for which humanity has striven for centuries'. It is a privilege to work in such an environment and together with similarly inspired colleagues. And to send out another issue of our journal to others who form part of a humanity-wide team of conflict resolution practitioners.

With these few thoughts, I wish to attach this introductory message to the contents of this issue. We have a never-ending and always-challenging job. We cannot prevent conflicts from happening, just as an insurance company cannot prevent accidents or incidents of crime. But we can keep on, day by day and year by year, as highly motivated workers in a worth-while field. We can radiate our inspiration and practise our motivation.

We thank our contributors to this issue for articles and a reviewed book on various cases of powerful people who are engaged in protracted violent conflict and remain unwilling to acknowledge injustice and restore justice. We appreciate the findings and recommendations with regard to restoring justice to the victims of injustice – including the unjustly treated gender – and working towards healing wounds, reconciling antagonistic groups and transforming conflict into coexistence. We thank our readers for implementing whatever ways and means they find appropriate to their situations.

Towards a framework for resolving the justice and reconciliation question in Zimbabwe

*Sabelo Ndlovu-Gatsheni and Everisto Benyera**

Abstract

Zimbabwe has never had meaningful and comprehensive programmes to provide justice in the many issues that cascade from conflict and violence in the nation. What has been done, amounts to armistices rather than transitional justice mechanisms. Consequently, Zimbabwe has not seriously dealt with the primary sources of conflict and violence that date back to colonial times. The rhetoric of unity premised on amnesia has been privileged over effective practical healing and reconciliation mechanisms that address the root causes of recurrent human rights violations. Indemnities, amnesties and presidential pardons have been used to protect perpetrators of conflict and violence. This article attempts to explore key issues and challenges around the healing and reconciliation question by exposing the contending perspectives and issues provoked by the adoption of the new constitution in Zimbabwe and the setting up of the National Peace and Reconciliation Commission (NPRC). Theoretically, the article posits that the very logic that informs the construction of ‘the political’ (as a domain of political values and incubator of political practices), which privileges notions of ‘the will to power’ and the ‘paradigm of war’, makes conflict and violence to be accepted as normal. Practically, the article advances ideas

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of 'survivor's justice' as opposed to the traditional 'criminal justice' that fragments a society emerging from a catalogue of conflicts and violence into simplistic 'perpetrator' and 'victim' binaries. Survivor's justice privileges political reform as a long-lasting solution involving reconstitution of 'the political' itself.

Keywords: healing and reconciliation, Zimbabwe, 'the political', human rights abuses, National Peace and Reconciliation Commission.

1. Introduction

The new interest in the resolution of conflict issues and the norming of national healing as a paradigm for government action emerges within a context in which Zimbabwe adopted a new constitution in 2013 which mandates the government to set up a National Peace and Reconciliation Commission (NPRC). This new constitution and commission are taking place in a country where the very constitution of 'the political' has been underpinned by a perennial 'paradigm of war' that is articulated in terms of a series of *Zvimurenga* (First *Chimurenga*, Second *Chimurenga*, and Third *Chimurenga*) and is therefore refusing to die. This paradigm of war has inscribed conflicts and violence. It has created unending cycles for perpetrators and victims in which victims become perpetrators in one episode of violence and perpetrators become victims in the next. Under these circumstances, peace, justice and reconciliation inevitably remain elusive and the work of the National Peace and Reconciliation Commission is bound to be a daunting task. Under these circumstances, ordinary Zimbabweans continue to cry out for a new paradigm of peace, justice and reconciliation.

This article proposes the reconstitution of 'the political' in Zimbabwe as a turning point towards a pursuit of healing and reconciliation mainly because a 'paradigm of war' exists as central Leitmotif of political practice. Chantal Mouffe (2005:8) defined 'the political' as the domain of values, norms and 'ontological' issues, which lie at the very base of the constitution of society.

She understood 'politics' as made up of the empirical practices of power and visible 'institutions through which an order is created, organizing human coexistence in the context of conflictuality provided by the political' (Mouffe 2005: 9). The article posits that these unhelpful values are etched at the very centre of 'the political', then to break out of them, there is need to take advantage of the adoption of the new constitution and get follow-up work by the NRPC to predicate their work on the principles of what Mahmood Mamdani (2015) terms 'survivor's justice'. Survivor's justice gestures towards reconstitution of 'the political' (political reform), rather than the traditional post-1945 Nuremberg-criminal justice with its propensity to fragment a people emerging from mass violence into 'perpetrators' and 'victims'. In survivor's justice, people emerging from conflict are collectively understood as survivors who are crying out for a new society, underpinned by a new 'political' capable of producing a new humanity.

What must be backgrounded is that cross pre-colonial, colonial and post-colonial historical interludes, Zimbabwe has experienced recurrent conflicts on a protracted basis (Benyera 2014a:3). These violent episodes were given various names, such as: inter-communal raiding in the pre-colonial era, pacification of primitive and barbarous tribes during the colonial encounters and *Chimurenga* during the nationalist liberation struggle. The arrival of the Ndebele-speaking people in 1838 is often blamed for bringing *Mfecane*-like violence into the space between the Zambezi and Limpopo rivers. But this type of argument ignores the fact that those people whom the Ndebele found in Zimbabwe also raided each other. The Ndebele-speaking people seem to have used a mode of fighting which made their raiding more successful than that of other pre-colonial people.

The advent of colonialism exacerbated conflicts and violence. Colonial encroachment and rule provoked not only the Anglo-Ndebele War of 1893, the Ndebele-Shona Uprising (1896–1897, otherwise known as the First *Chimurenga*/Primary Resistance), but also the Second *Chimurenga* (War of Independence, 1960–1980). The nationalist struggle was also a theatre

of violence as settler colonial intransigence and brutality provoked African nationalist counter-violence – with far-reaching implications for human rights issues. At the centre of the conflict was not only the racial question, but also the ethnic question which was subordinated to the nationalist rhetoric. The nationalist liberation was seriously affected by what Masipula Sithole (1979:vii) termed ‘struggles within the struggle’. In the process of liberating the country, the liberation struggle succeeded in politicising identities while failing to create a common national patriotism, a challenge which continues to haunt Zimbabwe to date.

The negotiations at Lancaster House in London in 1979 became an armistice for 30 years (Ndlovu-Gatsheni 2013a). In the first place, the land question, which was among the cardinal anti-colonial historic grievances that caused the nationalist liberation struggle, was not resolved at Lancaster (Bakare 1993). The negotiations were dominated by debates over the future of the white minority settlers and their economic privileges. White economic privileges were to be guaranteed in exchange for majority rule. Ethnic questions were not raised as the Zimbabwe African Patriotic Union (ZAPU) and the Zimbabwe African Nation Union (ZANU) pretended to be a united Patriotic Front (PF), only to fragment prior to the elections of 1980 into hostile and contending political formations.

Zimbabwe came into being as a product of a protracted armed liberation struggle that spanned over 15 years. Zimbabwe’s history has a complicated pre-colonial genealogy and a complex experience of colonial brutality, leaving memories of repressive and violent cultures (Mlambo 2009:105). White settler colonialism was introduced through violence and was maintained through domination, repression and exploitation. Taken together, these processes and experiences bequeathed to Zimbabwe huge tasks of justice and reconciliation. It is therefore logical to take into account where Zimbabwe is coming from as we think about the prospects of a justice and reconciliation framework.

Consequently, Zimbabwe was born in 1980 with a very bad birth mark and subject to serious suspicions cascading from the liberation with far-reaching

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consequences for security thinking, nation-building, state-making, inter-ethnic relations and most importantly, healing and reconciliation. The piecemeal policies of national reconciliation and national unity, which were nowhere put into writing, did not succeed in extinguishing the potential post-colonial conflicts. Whereas racial identities had provoked the liberation struggle itself, ethnic identities provoked the post-colonial conflict that mainly affected Matebeleland and Midlands regions (CCJP and LRF 1997).

Thus, incomplete decolonisation provoked the *Hondo Yeminda/Third Chimurenga/Jambanja* (violent Fast Track Land Reform Programme that commenced in 2000). Ethnicity and inter-nationalist power-struggles provoked Operation *Gukurahundi* (1983–1987) that targeted Ndebele-speaking people of Matebeleland and Midlands of Zimbabwe (Catholic Commission for Justice and Peace and Legal Resources Foundation Report, CCJP and LRF 1997). Post-2000, power-struggles pitting the ruling Zimbabwe African National Union – Patriotic Front (ZANU-PF) against the opposition Movement for Democratic Change (MDC) formations provoked election-related violence, code-named Operation *Mavhoterapapi* (Where did you place your vote?) of 2008 (Sadomba 2011:229).

Like all post-colonial polities, Zimbabwe is still in a stage of ‘becoming’ a nation-state (Ndlovu-Gatsheni 2009, Raftopoulos and Mlambo 2009) and this conjectural phase is often fraught with conflicts. Election times have rarely been peaceful in Zimbabwe since 1980. Belonging to different political formations provokes hatred and violence in a country where the question of equitable distribution of national resources and indigenisation of the national economy is still in the process of being fully resolved. This is worsened by the persistence of historical questions of colonialism and coloniality which continue to hang over the minds of people like a nightmare (Sachikonye 1996, Ndlovu-Gatsheni 2013a, 2013b). As a result of these realities, conflict and violence have continued to be a major challenge in Zimbabwe (Mashingaidze 2010).

Ironically, there has never been any serious national commitment to finding the truth, establishing justice, and forging durable reconciliation in Zimbabwe. It is not surprising that after 35 years of existence as a sovereign post-colonial nation, Zimbabwe is still desperately crying out for a well-thought-out truth, justice and reconciliation mechanism. A paradigm of war refuses to disappear in Zimbabwe and *Chimurenga* emerges as the prime and most preferred solution to most national questions. Zimbabwe has just emerged from a violent Third *Chimurenga* that was used to resolve the land question. Closely tied to the ideology of *Chimurenga* is the practice of governance through military operations. This has resulted in a society that is permeated institutionally by militarism and violence. This creates more healing and reconciliation challenges while leaving previous ones unresolved.

2. Towards the reconstitution of the political in Zimbabwe

The quest for national healing and reconciliation is in fact a quest for the reconstitution of ‘the political’ and the practising of politics and statecraft. The political speaks to such ontological issues as values and norms that inform and underpin political practice (Mouffe 2005:8). Therefore, the central proposition of this article is that there is everything wrong with the conception, constitution and configuration of ‘the political’ (as a concept and embodiment of normative political principles) and the concomitant practice of politics (as an activity) in Zimbabwe. This wrong conception, constitution, and configuration of ‘the political’ are currently confusing the definition of the national question which is the guiding vehicle for healing and reconciliation endeavours in Zimbabwe. The national question is understood by the liberation forces at least in a skewed partisan perspective and at most as a regime-survival tactic.

The Zimbabwean problem of conflict and violence emanates from the fact that ‘the political’ is still understood from a Hobbesian (1894) notion of a *leviathan* whose life is ‘short, nasty and brutish’; a Nietzschean (1968) idea of politics as a ‘will to power’; and a Machiavellian (1910) perspective

of a leader as 'the prince' who enjoys absolute power. The reduction of the purpose of 'the political' to that of the 'will to power', in particular, constitutes the original corruption of 'the political' as a totality, involving the distortion of its noble vocation of politics itself (Dussel 2003:8).

To Enrique Dussel, the original and noble vocation of politics was founded on the 'will to live' and not the 'will to power' (2003: 4). In this original conception, 'Politics is above all that action that aspires towards the advancement of the life of the community, of the people, of humanity' (Dussel 2003:61). For Dussel (2003:78), as a result of the corruption of 'the political,' the 'will to live' is 'negated by the will-to-power of the powerful'. But 'politics, as consensual and feasible will-to-live', should attempt by all means to allow all 'members to live, to live well, and to increase the quality of their lives' (Dussel 2003:85).

The corruption of 'the political' takes the following format of distortion if not destruction of the ethical, positive, progressive, emancipatory/liberatory, and humanist vocation of politics. Dussel (2003:3) termed the process of corruption of the 'the political' 'the fetishism of power' in which a political leader becomes 'the centre or source of political power' rather than the political community defined as the people/citizens. He elaborated on corruption of power:

This corruption, moreover, is double: it corrupts the governors who believe themselves to be the sovereign centre of power, and it corrupts the political community that allows itself (consents) to become servile rather than be an actor in the construction of the political (actions, institutions, principles) (Dussel 2003:4).

Under a corrupted 'political', power is simply exercised as *domination*. The consequence is that under these circumstances, people are *surviving* rather than *living*, and each day is about avoiding and postponing death. Citizens become subjects who live in a perpetual survival, self-preservation mode as issues of justice and reconciliation become trivialised at the government level. This situation arises when 'power *qua* service' (exercise of power in the service of the political community) has been allowed to die

(Dussel 2003:130). For Dussel (2003:131), when ‘the political’ is corrupted, power is understood as a ‘thing, an object at hand, or a well-bound package’ that has to be conquered, taken and then retained by all means necessary. In this conception of ‘the political’ and this practice of politics, the state exists to preserve itself by conquering and retaining power and not to heal and reconcile a fractured nation. This explains the Zimbabwean state’s lackadaisical approach to issues of healing and reconciliation.

There is therefore a need for a reconstituted political in which the central aspect of political practice is predicated on a ‘will to live’ rather than the ‘will to power’. In this reconstituted political there is need for a radical departure from the ‘paradigm of war’ to a ‘paradigm of peace’. There is also need to shift drastically from traditional criminal justice in which there is a perpetrator and a victim to what Mamdani (2015:61–65) terms ‘survivor’s justice’ that is amenable to reconciliation and national healing. Survivor’s justice leans towards political justice that speaks to political transformation of a society emerging from mass violence. Otherwise, how do you achieve healing and reconciliation in a situation of a corrupted political, where the state is accused of benefitting from human rights abuse? The answer to this question is that what is needed is a programme for the resolution of justice issues that is predicated on the very reconstitution of ‘the political’ itself.

Zimbabweans have, since the 1990s, been calling for a fundamental reconstitution of the political. This call has taken the form of a demand for a people-driven constitution. It has taken over ten years for Zimbabwe to have a new constitution, albeit not really a people-driven one, as the political gladiators hijacked the process. At least the new constitution that became operational in 2013 incorporates a National Peace and Reconciliation Commission (NPRC). Our intervention is therefore that the NPRC has to initiate a comprehensive process of reconstituting ‘the political’ that is predicated on a paradigm of war cascading from colonial and nationalist traditions. We also posit that the NPRC has to pursue justice in a manner that seeks to attain the five objectives outlined by Boraine (2006): accountability, truth recovery, reconciliation, institutional reform, and reparations. These are efficacious in both guiding the work of

the NPRC and also judging its performance. Suffice to state that the global record of such commissions has been less than satisfactory (Eppel and Raftopoulos 2008:12). In choosing the means through which the NPRC will be operationalised, it must be noted that the end must determine the means instead of the means determining the end.

More specifically, Hayner, in Eppel and Raftopoulos (2008), contextualised the factors which contributed to the failure of commissions such as the NPRC since their formation. She noted that the most significant contributory factors are lack of consultation, inadequate preparations, setting high expectations, and the lack of institutional follow up to support the processes of the commission. The more than two dozen truth commissions set up to date suffered these shortcomings in one form or the other and the NPRC needs to be mindful of them. Such fears are exacerbated by the poor performance records of Zimbabwe's past commissions (Benyera 2014a:114). Given such a poor track record, it is necessary to unpack some of the key issues and challenges facing the justice and reconciliation question in Zimbabwe.

3. The key issues and challenges around justice and reconciliation in Zimbabwe

Zimbabwe is haunted by a plethora of injustices cascading from the past. These can be categorised into political, social and economic categories. A host of historical issues are central to justice and healing considerations for Zimbabwe. Specifically, these are: historical legacies of abuse and violence dating from pre-colonial times; challenges arising from incomplete decolonisation; the interpretation of nationalism and liberation; issues of inclusion and exclusion; the national question which comprises nation-building and state-building; inter-and intra-party tensions and contestations; issues of race, ethnicity and citizenship; and finally the role of external interference, otherwise known as 'coloniality' (Quijano 2000). Coloniality captures a situation of continuation of colonial-like practices of governance in a post-colonial state.

With all these burdens still unresolved Zimbabwe inevitably became a politically volatile country. Political differences continued to be settled through the use of violence or the threat of its use, and political intolerance has remained the cornerstone of Zimbabwe's political contests. Whatever mechanisms and methodologies employed to achieve justice and reconciliation must therefore be capable of engaging with the historical legacies of conflict and violence, such as those pitting the Ndebele against the Shona in the pre-colonial era. This is pertinent because Zimbabwean national history remains shot through by a xenophobic narrative in which the descendants of pre-colonial Shona-speaking people continue to harbour a grievance against the descendants of the pre-colonial Ndebele-speaking people. Ndebele raids continue to be counted as the result of a historic grievance. Even the Fifth Brigade atrocities were justified in some quarters as vengeance for what the Ndebele did in the 19th century. But such an approach to conflict resolution creates unending cycles of perpetrators and victims, and possesses the potential to seriously hinder every effort at nation-building.

The initiative towards national healing, justice and reconciliation is not only facing complex and multi-layered political issues but equally complex economic and social justice challenges that include dealing with the land question, ownership and indigenisation of the economy, compensation and reparations, social cohesion and unity, and resolving economic and social inequalities, perceptions and realities of marginalisation of minorities, patriarchy and gender. These are intersected and combined in a paradoxical manner with past legacies of conflict and violence. This then means that if the NPRC has to deal effectively and honestly with these issues, it has to take into account colonial realities of brutality, dispossession and exploitation that go as far back as the 1890s. As a conflict resolution mechanism the Lancaster House Settlement was not honest and suffered the lack of honest brokers (Novak 2009:149–174). For example, Lord Carrington acted as a third party negotiator who steered unborn Zimbabwe into a neo-colony rather than a sovereign post-colonial nation-state.

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Consequently, incomplete decolonisation has continued to haunt Zimbabwe – as in the case of the land question that has once again put the Zimbabwe question on the global map. The brokers of peace who supported maintenance of unequal ownership of land set Zimbabwe on a course for another conflict. It can for instance be argued that the unresolved land ownership also originated from the manner in which the Lancaster House negotiations were conducted by Carrington – ‘with a fast-paced tempo, hard deadlines, and strict ultimatums’ (Novak 2009:151). In that way Carrington managed to deal with the three contentious issues of securing a ceasefire, setting a transitional administration to see the country through the ceasefire period and the all-race elections, and a new constitution for independent Zimbabwe in such a way that the land question was postponed as a problem to be resolved by the administration of Zimbabwe.

The legacy of nationalism and liberation struggle has not been positive for Zimbabwe. Notions of monolithic unity enforced from above were bequeathed on post-colonial Zimbabwe, and so was intolerance of dissent and adherence to a personality cult (Ndlovu-Gatsheni 2003:99–134). The dominant political cultures during this nationalist period were ‘authoritarianism, commandism, regimentalism and intolerance’ (Ndlovu-Gatsheni 2012:3). These violent liberation cultures continue to haunt the country and were aptly captured by the historian Terence Ranger (2003:1–2) who postulated that:

Perhaps post-independence authoritarianism was the result of liberation wars themselves, when disagreements could mean death. It was difficult to escape the legacy of such a war. Maybe it sprang from the adoption by so many nationalists and especially liberation movements, of Marxist-Leninist ideologies. These implied ‘democratic centralism,’ the domination of civil society by the state and top-down modernising ‘development.’ But perhaps there was something inherent in nationalism itself, even before the wars and adoption of socialism, which gave rise to authoritarianism. Maybe nationalism’s emphasis on unity at all costs—its subordination of trade unions and churches and all other African organisations to its imperatives—gave rise to

an intolerance of pluralism. Maybe nationalism's glorification of the leader gave rise to postcolonial personality cults. Maybe nationalism's commitment to modernisation, whether sociality or not, inevitably implied a 'commandist' state.

Such an analysis beckons us to reflect on the sources of disdain for constitutionalism, failure to strictly adhere to the principles of separation of powers, and intolerance of freedom of expression. This is clear evidence that there is need for investment in understanding the very constitution of 'the political' as well as the complex legacies of the past and how they impinge on the current realities of healing and reconciliation in Zimbabwe. Without such an understanding, any efforts in dealing with the current problems of governance, injustice, violence and impunity might be focused on symptoms rather than substantive causalities. So far, the mechanisms adopted towards resolution of conflict in Zimbabwe have not only been minimal, but they also lack the active backing of the state which instituted them.

4. Contending perspectives on justice and reconciliation

Three mechanisms were used by the state between 1979 and 2014 to address the justice and reconciliation question in Zimbabwe. These three were: amnesties and pardons, amnesia, and commissions of inquiry.

Amnesties and pardons

Just before the dawn of independence in 1979, the colonial state embarked on a legal project predominantly aimed at protecting its forces from post-political independence prosecution. This was in the form of the General Amnesty Ordinance 3 of 1979, which heralded the beginning of amnesties and pardons that were to characterise the end of each epoch of state-sponsored violence in Zimbabwe. Stated simply, these amnesties and ordinances gave unfettered immunity from prosecution and accountability to all those accused of gross violation of human rights, such as the genocide of 1983–1987 known as Operation *Gukurahundi*. Other pardons and amnesties include: Amnesty (General Pardon) Ordinance 12 of 1980, Clemency Order No. 1 of 18 April 1988 (General Notice 257A of 1988),

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Clemency Order Number 1 of 2000 (General Notice 457A), Clemency Order No. 1 of 2008, (General Notice 85A of 2008) and Clemency Order Number 1 of 2002.

These amnesties gave blanket immunity thereby stifling the processes of truth telling, truth recovery, healing and reconciliation. The capacity of the NPRC to remedy these historical shortcomings remains to be seen. However, based on its current trajectory, the Commission will operate as an instrument to hide the truth and obstruct accountability. This observation is based on the state's track record at healing and reconciliation which, besides being littered with amnesties and pardons, is heavily punctuated with an amnesia that has become its official position regarding past human rights abuses. The National Reconciliation Policy of 1980 and the Unity Accord of 1987 are the cornerstones of this amnesia policy (Mungwini 2013).

Amnesia

Amnesia is a policy which entails a conscious decision by the government not to investigate past atrocities on the grounds that such investigations will jeopardise precarious peacebuilding efforts (Tendi 2010:2018). Amnesia informed Zimbabwe's first reconciliation policy as espoused by Mugabe in his independence acceptance speech as the country's first Prime Minister. In the speech Mugabe implored Zimbabweans to 'let bygones be bygones' (Nyarota 2006:145). This speech, it can be argued, was the event which marked the death of statist justice and reconciliation mechanisms in Zimbabwe.

Commissions of Inquiry

Commissions of Inquiry also featured prominently in Zimbabwe's justice and healing landscape. Two commissions of inquiry, namely the Dumbutshena Commission of Inquiry of 1982 and the Chihambakwe Commission of Inquiry of 1983, had led to high hopes, but the state refused to make public their findings. This amounted to secondary victimisation, especially to the victims and perpetrators who had given their testimonies to the two commissions.

The latest in this series of commissions was the Zimbabwe Human Rights Commission of 2009. The Commission was simply a still birth as it never even had offices or staff. Then came the short-lived Organ on National Healing, Reconciliation and Integration (the Organ) of 2008 which was part of the two-year Government of National Unity (GNU). The Organ never achieved much given the toxic political environment in which it operated. Machakanja (2010:5) concurs and noted how continued impunity during the tenure of the GNU undermined the concept of an inclusive power sharing founded on the principles of social cohesion, national healing and unity. The Organ is the predecessor of the NPRC which is being headed by Vice-President Phelekezela Mphoko. These initiatives were not without their challenges, some of which will be briefly discussed in the following section.

5. Shortcomings of reconciliation and healing mechanisms used in Zimbabwe

The biggest challenge which faced statist justice and healing initiatives from Zimbabwe since 1980 was premised upon what Jonathan Moyo referred to as *implementesis*.¹ This is the lack of political will to implement government decisions. As a political disease, *implementesis* paralyses state departments, rendering them incapable of following clearly articulated government policies – such as the operationalisation of the Zimbabwe Human Rights Commission. Wyn Reilly (1987:27) calls it the ‘hombe thesis’ which is the ability of the bureaucracy to effectively mismanage state projects and policies so that they benefit from the mismanagement.

Perennial polarisation of the political climate in Zimbabwe only aided the failure of statist healing and reconciliation initiatives. A political environment in which partisanship overrides national interest is not conducive for healing and reconciliation, especially when the country is

1 Jonathan Moyo coined the term *implementesis* in his public lecture delivered at the Department of Political Sciences, the University of Zimbabwe, in October 2008. In the lecture, Moyo identified the failure by the bureaucracy as one of the seven contributing factors to the failure of public administration in Zimbabwe.

characterised by selectivity in the application of domestic and international law. Probably one of the biggest challenges which faced statist healing and justice mechanisms in Zimbabwe was the conundrum of using the state organs to prosecute the state, which is itself believed to be a perpetrator of gross violations of human rights. This explains the state's perennial proclivity towards amnesia, which, when 'reconstituting the political', will make it essential to have an all-stakeholder concerted effort to achieve healing and reconciliation in Zimbabwe.

6. The roles of the various domestic actors

Now that the NPRC is constitutionally provided for, certain stakeholders are expected to play a major role in its functions. The government has the biggest role to play, which is largely to create an enabling environment for justice and reconciliation. Specifically, the government of Zimbabwe must consider:

- 1) Speeding up the setting up of the NPRC.
- 2) Enacting legislation enabling the NPRC to commence its mandate.
- 3) Providing the necessary budgetary and policy support needed by the NPRC.
- 4) Publishing the reports by the various former commissions of inquiry and where applicable, implementing recommendations made in those reports.
- 5) Initiating and promoting state institution reform as a means of enhancing the public's confidence and trust in such state institutions. This will simultaneously enhance their capacity to deliver and to promote political dialogue, national healing and reconciliation.
- 6) Ensuring a true and consistent national narrative on healing and reconciliation.

An impartial judiciary is an integral part of any justice process. In order to fulfil that mandate effectively, the executive needs to improve its respect

for the judiciary. This will in turn enhance the credibility of the judiciary which has been perceived as a perpetual soft target for the executive. The Zimbabwe Lawyers for Human Rights concurred and were quoted by Goredema (2010:99) arguing that

in Zimbabwe we have had the executive refusing to enforce certain court orders that are seen to be unfavourable to the state or the ruling ZANU PF party. The executive has also attacked the judiciary openly, quite unprofessionally and unfairly in a number of cases. The government of Zimbabwe however has a history of attacking the judiciary or members of the legal profession each time the executive is unhappy at certain judiciary decisions.

At a lower level there is need for the judiciary to ensure that the rulings of traditional courts, especially village heads, are given credence. This will ensure that justice is literally brought to the doorsteps of the people, particularly those in rural areas. Political parties have the great responsibility of mobilising their members away from violence, revenge, hatred – and towards reconciliation. A great step in this direction would be to have a clause in each of the political parties' manifestos that deals with peacebuilding and reconciliation. A key lesson coming from South Africa is the need for political will in the implementation of any justice and reconciliation mechanism. In demonstrating political will and leadership, Nelson Mandela, as leader of the African National Congress (ANC), accepted collective responsibility for all human rights violations committed by ANC members in their attempt to end apartheid (Castel 2009). This made it easy for lower level political party members to deal with their past heinous activities. This can be contrasted to ZANU-PF's position in 1980, when its leader Robert Mugabe announced a policy of blanket reconciliation (Benyera 2014a:39)

Women should do more than just bring out their testimonies. They need to be actively involved in whatever reconciliation and healing initiatives are instituted so as to ensure that the perennial issues of patriarchy and gender are not ignored. Women bring to the fore gender-based violence

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and abuses that cannot be ignored in any sustainable framework of justice and reconciliation, bearing in mind that women are often the most abused population in any form of conflict (Human Rights Watch 1996, Turshen 2001:55–68).

The role of civil society is to complement the efforts of the state. This could take various forms, such as raising awareness, disseminating information, establishing education programmes around the work of the Commission, producing and distributing publicity materials, funding debates and outreach campaigns, translating key materials such as constitutions and Commission mandates, and funding radio and television programmes and advertisements that focus on publicising the work of the Commission.

In South Africa, the media was an integral part of the work of the Truth and Reconciliation Commission (TRC), broadcasting the location of future hearing venues and raising public awareness (Shea 2000:4). The media also facilitated the live broadcast of the hearings, thereby helping to bring the work of the TRC to the nation (Cole 2010). This generated public interest, enhanced participation and, it can be argued, played a part in bringing reconciliation to South Africa. Civil society and the international community could assist the NPRC in the production and distribution of its outputs on an on-going basis. These outputs could be monthly or annual reports of the NPRC, the dissemination of which would act as integral components of the peacebuilding process. Given the lack of financial resources of the Zimbabwean state, funding from the international community is essential to ensure the success of this programme.

Non-Governmental Organisations working on healing and reconciliation in Zimbabwe can support the process with the provision of technical support, expertise and even personnel in support areas such as communication, logistics, advertising and data analysis. Their visibility and participation in various ways will have the ability to bring international credibility to the whole process, as was the case in South Africa. The role of business would be expected to be mainly that of partnering with the government in various ways such as, but not limited to, the assistance with resources.

As a case in point, businesses in the Telecommunications sector can assist with publicity and information dissemination.

Faith-based organisations, especially churches, have been an integral part of most truth commissions. They provided truth commissions with the moral ground from which they operated. By authenticating the work of the truth commission, faith-based organisations, in a way, encourage their members to support such institutions. At a more practical level, they can assist with logistical issues such as venues, personnel, counsellors and even financial resources. Their ability to reach large numbers of people on a frequent basis can be used by the NPRC as a publicity platform for their work.

Concepts used in justice and reconciliation such as confession and forgiveness also have their basis in religion and faith. Thus a symbiotic relationship between faith-based organisations and the NPRC becomes a *sine qua non* for the effective delivery of justice and reconciliation in Zimbabwe (Benyera 2014a:4). For strategic buy-in, the NPRC needs to liaise with organisations that represent various faith-based organisations in Zimbabwe such as the Zimbabwe National Traditional Healers Association, Zimbabwe Catholic Bishops Conference, Union for the Development of Apostolic Churches in Zimbabwe and Africa, Zimbabwe Christian Alliance, Zimbabwe Jewish Board of Deputies, Evangelical Fellowship of Zimbabwe and the Zimbabwe Council of Islamic Scholars (Chitando and Manyonganise 2011:78).

On a broader level, faith-based organisations are expected to initiate grassroots-based local justice and reconciliation mechanisms that complement the work of the NPRC. These organisations were involved in the quest for healing and reconciliation as noted by Chitando and Manyonganise (2011:83):

[O]ne would be forgiven for imagining that it was only individuals and groups aligned to Christianity that have sought to empower their members to face the difficult situation. Muslim leaders have been heavily involved in preparing their followers to be relevant to the Zimbabwe crisis.

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By its very nature the NPRC is a temporary mechanism, hence the need for permanent grassroots-based structures such as the church to partner the NPRC in reconciliation. Traditional leaders play a central role in Zimbabwe's customary law (Machakanja 2010:8). Their function will be to create those cultural spaces needed for the facilitation of the victim-perpetrator acknowledgement. For Machakanja, traditional leaders are also efficacious in validating the losses and pain of both the perpetrator and the victims. They also initiate local grassroots mechanisms such as the use of customary courts to prosecute lower level offenders. At a spiritual level, they are expected to lead their various constituencies in performing certain rites, rituals and ceremonies to cleanse the land (Benyera 2014b:53). Their support serves to authenticate the NPRC.

To date, various community-based institutions and organisations have worked on attaining healing and reconciliation in Zimbabwe. While most of these were faith-based (Christianity, Islam, Hinduism, Buddhism, Baha'i and Rastafarianism) (Chitando and Manyonganise 2010:78), some of these organisations such as the Zimbabwe Human Rights NGO Forum and Heal Zimbabwe are purely civic organisations. Some of these organisations have been working on healing and reconciliation, hence the need for the NPRC to tap into their work. These NGO and civic organisations can contribute to the work of the NPRC by:

- 1) Continuing the work of seeking healing and reconciliation at local level
- 2) Considering expanding their operations to other areas
- 3) Sharing their experiences with like-minded organisations
- 4) Identifying and pursuing in courts of law cases where victims are entitled to reparations.

7. Resource constraints

For the NPRC to achieve its aims of reconciliation and establishment of the truth, full funding should be committed and available at the start of its work. Lack of funding was experienced in Uganda, where the first Truth

Commission was established in Africa (Quinn 2004:89). The Ugandan Commission of Inquiry into Violations of Human Rights between 1962 and 1986 suffered from a severe lack of funding and political support, which resulted in irreparable operational difficulties (Freeman 2006:40).

While the lack of sufficient funds is a worrying factor for Zimbabwe's healing and reconciliation process, other concerns also exist, such as weak governance systems and structures. According to the International Anti-Corruption Index, as far back as 1999 Zimbabwe had the second weakest governance structures in SADC, after war-torn DRC. These results were consistent with similar ones from Transparency International's Corruption Perceptions Index (Transparency International 2013), and the Heritage Foundation Index on Economic Freedom (Heritage Foundation 2014).

Regarding the funding of reparations, lessons from South Africa indicate a need to empower the Commission to offer urgent, smaller, interim standard payments to victims or their families (South African Truth and Reconciliation Commission 1996: Volume 1, chapters 2 and 6, and Volume 6). However, research by the Catholic Commission for Justice and Peace (CCJP and LRF 1997:29) in Matabeleland revealed that individual compensation was not well supported by victims there or in parts of the Midlands Provinces. A key recommendation from the research was the use of communal reparations, specifically through the formation of *Uxolelwano* (reconciliation) Trusts in lieu of individual financial reparations.

However, such a move needs to be well managed, as similar previous well-meaning endeavours were looted by the politically well connected. Earlier compensatory schemes which offered cash, such as the War Victims Compensation Scheme of 1998, were severely plundered with some beneficiaries falsifying injuries and creating fictitious stories just to receive compensation (Carver 2000). The award of individual financial reparations must therefore be considered both in the light of the distortions that such monetary compensation attracts as well as victim's rights to compensation of their choice.

This being the case, the fact that Zimbabwe was at one point bankrupt should not impede its quest for an NPRC, as there are many examples of Truth Commissions that received external funding. For example, El Salvador's Commission was fully funded (to the tune of \$2.5 million) through voluntary contributions by UN members (Shea 2000:64, Kritz 1995:332, Hayner 2011:217). The South African TRC also received financial support from international donors who supplemented the money provided by the South African government (Hayner 2011:224). However, given that the NPRC will have a 10-year mandate, funds and resources may become a major stumbling block to its operations. This was the case with other well-funded mechanisms such as the ad hoc International Criminal Tribunal for Rwanda (ICTR).

8. Conclusion

The constitution of 'the political' speaks to the values underpinning political practices. In a reconstituted political, the role of the government must be to create an enabling environment for healing and reconciliation to occur. But for Zimbabwe, the challenge to the proposed reconstitution of 'the political' is that the very government which is supposed to champion national reconciliation and healing is accused of benefitting from human rights abuses. This challenge, therefore, gives credence to those voices that clamour for regime change as an essential prerequisite for genuine national healing and reconciliation.

This article highlights the importance of engaging with the past and dealing with the legacies of the past because these seem directly to impinge on the current efforts to re-build the nation through a justice and reconciliation mechanism. This approach does not mean that a simple acknowledgement of wrongs of the past can be the only enabling factor in opening new paradigms predicated on peace, truth, justice and reconciliation. It means that the edifice of 'the political' must be reconstituted in a manner that renders it sensitive to national healing and reconciliation. This is important because there are many wrongs which are crying out for rectification.

The people of Zimbabwe must be involved in defining and articulating the wrongs that haunt their nation and their lives. They must participate in the reconstitution of 'the political'. The article also underscores that while national memorialisation programmes are a valid national rallying point, family and community memorialisation programmes are more effective in bringing healing and closure (Eppel 2013). The article therefore emphasises the imperative of involving communities and families in deciding how they would want to remember their past. The erection of monuments is one popular method used in post-genocide Rwanda and it can be applied to the victims of gross violations of human rights in Zimbabwe such as Operation *Gukurahundi* of the 1980s.

Unfortunately, Zimbabwe's NPRC is a top-down mechanism which is yet to open up for communities and families to participate in the search for national healing and reconciliation. In a country like Zimbabwe, where community input is either disregarded or not solicited at all, the NPRC faces a huge challenge in selling itself to the people so that they come forward with their testimonies. The polarisation of the political environment does not make the task any easier. Traditional authorities and civil society organisations such as faith-based organisations present a more credible mechanism which the state can utilise to get wide community buy in. As for those in the Diaspora, there is a need to come up with inclusive mechanisms for them to also participate in this programme.

Broadly speaking, this article concludes that it is also important to re-think the very political edifice on which Zimbabwe is erected – that privileges *Chimurenga* as a paradigm of war used to resolve complex political questions. It seems impossible in Zimbabwe at the moment to institute Nuremburg-type trials predicated on criminal justice because the state itself is the main culprit that has abused and killed its own citizens. A way out is to adopt a new 'survivor's justice' that privileges the political reform of society (reconstitution of the political). We therefore end by saying that there is no ideal time for a justice and reconciliation mechanism to get underway. Choosing a time is part of the struggle to break a 'paradigm of war', build a 'paradigm of peace' and make a start.

Sources

- Bakare, Sebastian 1993. *My right to land in the Bible and in Zimbabwe*. Harare, Zimbabwe Council of Churches.
- Benyera, Everisto 2014a. Debating the efficacy of transitional justice mechanisms: The case of national healing in Zimbabwe, 1980–2011. Ph.D. thesis, University of South Africa.
- Benyera, Everisto 2014b. The contribution of mass graves to healing and closure: The case of Chibondo in Mt Darwin, Zimbabwe. *International Journal of Humanities and Social Sciences*, 4 (1), pp. 47–56.
- Boraine, Alex 2006. Transitional justice: A holistic interpretation. In: Boraine Alex and S. Valentine eds. *Transitional justice and human security*. Cape Town, International Centre for Transitional Justice.
- Carver, Richard 2000. *Zimbabwe: A strategy of tension*. Writenet Paper 4/2000, UNHCR/CDR, July. Available from: <<http://www.refworld.org/pdfid/3ae6a6c70.pdf>> [Accessed 21 June 2014].
- Castel, Heather 2009. When the soldiers returned: The Mkatashinga and the ANC politics of denial. *Africa Review*, 1 (1), pp. 15–33.
- Catholic Commission for Justice and Peace and Legal Resources Foundation (CCJP and LRF) Report 1997. *Breaking the silence, building true peace: Report on the disturbances in Matebeleland and the Midlands, 1980–1989*. Harare, CCJP and LRF.
- Chitando, Ezra and Molly Manyonganise 2011. Voices from faith based communities. In: Murithi, Tim and Aquilina Mawadza eds. *Zimbabwe in transition: A view from within*. Sunnyside, Jacana Media. pp. 77–111.
- Cole, Cathrine M. 2010. *Performing South Africa's Truth Commission: Stages of transition*. Bloomington, Indiana University Press.
- Dussel, Enrique 2008. *Twenty theses on politics*. Translated by George Ciccariello-Maher. Durham and London, Duke University Press.
- Eppel, Shari 2013. Repairing a fractured nation: Challenges and opportunities in post-GPA Zimbabwe. In: Raftopoulos, Brian ed. *The hard road to reform: The politics of Zimbabwe's Global Political Agreement*. Harare, Weaver Press.
- Eppel, Shari and Brian Raftopoulos 2008. *Developing a transformation agenda: Political crisis, mediation and the prospects for transitional justice in Zimbabwe*. Pretoria, IDASA and the Zimbabwe Institute.
- Freeman, Marx 2006. *Truth commissions and procedural fairness*. Cambridge, Cambridge University Press.
- Goredema, Charles 2004. Wither judiciary independence in Zimbabwe? In: Raftopoulos, Brian and Tyrone Savage eds. *Zimbabwe injustice and political reconciliation*. Cape Town, Institute for Justice and Reconciliation. pp. 99–118.
- Hayner, Priscilla 2011. *Unspeakable truths: Transitional justice and the challenge of truth commissions*. 2nd edition. New York, Routledge.

- Heritage Foundation 2014. *Heritage Foundation Index on Economic Freedom*. Available from: <http://www.heritage.org/index/pdf/2014/book/index_2014.pdf> [Accessed 7 April 2014].
- Hobbes, Thomas 1894. *Leviathan: Or, the Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil* (Vol. 21). New York, Routledge and Sons.
- Human Rights Watch 1996. *Shattered lives: Sexual violence during the Rwandan genocide and its aftermath*. New York, Human Rights Watch.
- Kritz, Neil J. 1995. *Transitional justice: How emerging democracies reckon with former regimes*. Washington, D.C., United States Institute of Peace Press.
- Machakanja, Pamela 2010. *National Healing and Reconciliation in Zimbabwe: Challenges and opportunities*. Zimbabwe Monograph Series No. 1. Cape Town, Institute for Justice and Reconciliation.
- Machiavelli, Niccolo 1910. *The Prince*. New York, P. F Collier and Son.
- Mamdani, Mahmood 2015. Beyond Nuremburg: The historical significance of the post-apartheid transition in South Africa. *Politics and Society*, 43 (1), pp. 61–88.
- Mashingaidze, Terence M. 2010. Zimbabwe's illusive national healing and reconciliation processes: From independence to the inclusive Government 1980–2009. *Conflict Trends*, 2010 (1), pp 19–28.
- Mlambo, Alois S. 2009. From the Second World War to UDI, 1940–1965. In: Raftopoulos, Brian and Alois S. Mlambo eds. *Becoming Zimbabwe: A history from the pre-colonial period to 2008*. Harare, Weaver Press.
- Mouffe, Chantal 2000. *On the Political*. New York and London, Routledge.
- Mungwini, Pascal 2013. Conscripts and not volunteers: Indigenous peoples, tradition and the postcolonial question of reconciliation in Zimbabwe. *Journal on African Philosophy*, 7, pp. 19–31.
- Ndlovu-Gatsheni, Sabelo J. 2003. Dynamics of the Zimbabwe crisis in the 21st century. *African Journal on Conflict Resolution*, 3 (1), pp. 99–134.
- Ndlovu-Gatsheni, Sabelo J. 2009. *Do 'Zimbabweans' exist? Trajectories of nationalism, national identity formation and crisis in a postcolonial state*. Oxford, Peter Lang.
- Ndlovu-Gatsheni, Sabelo J. 2012. *Elections in Zimbabwe: A recipe for tension or a remedy for reconciliation?* Cape Town, Institute for Justice and Reconciliation.
- Ndlovu-Gatsheni, Sabelo J. 2013a. The entrapment of Africa within the global colonial matrices of power eurocentrism, coloniality, and deimperialization in the twenty-first century. *Journal of Developing Societies*, 29 (4), pp. 331–353.
- Ndlovu-Gatsheni, Sabelo J. 2013b. *Coloniality of power in postcolonial Africa: Myths of decolonization*. Dakar, CODESRIA Book Series.
- Nietzsche, Friedrich 1968. *The will to power*. A new translation by Walter Kaufman and R.J. Hollingdale. New York, Vintage Books.
- Novak, Andrew 2009. Face-saving manoeuvres and strong third-party mediation: The Lancaster House Conference on Zimbabwe-Rhodesia. *International Negotiation*, 14 (1), pp. 149–174.

Resolving the justice and reconciliation question in Zimbabwe

- Nyarota, Geoffrey 2006. *Against the grain: Memoirs of a Zimbabwean newsman*. Cape Town, Zebra Press.
- Quijano, Anibal 2000. Coloniality of power, eurocentrism and Latin America. *Nepantla: Views from South*, 1 (3), pp. 533–579.
- Quinn, Joanna 2004. Constraints: The un-doing of the Ugandan Truth Commission. *Human Rights Quarterly*, 26, pp. 401–427.
- Raftopoulos, Brian and Alois S. Mlambo eds. 2009. *Becoming Zimbabwe: A history from the pre-colonial period to 2008*. Harare, Weaver Press.
- Ranger, Terence 2003. *The historical dimensions of democracy and human rights in Zimbabwe*. Volume Two: *Nationalism, democracy and human rights*. Harare, University of Zimbabwe Publications.
- Reilly, Wyn 1987. Management and training for development: The Hombe Thesis. *Public Administration and Development*, 7 (1), pp. 25–42.
- Sachikonye, Lloyd M. 1996. The Nation-State Project and conflict in Zimbabwe. In: Olukoshi Adebayo O. and Liisa Laakso eds. *Challenges to the nation-state in Africa*. Uppsala, Nordic Africa Institute. pp 136–153.
- Sadomba, Zvakanyorwa Wilfred 2011. *War veterans in Zimbabwe's revolution: Challenging neo-colonialism, settler and international capital*. Harare, Weaver.
- Shea, Dorothy 2000. *The South African Truth Commission: The politics of reconciliation*. Washington, D.C., United States Institute of Peace Press.
- Sithole, Masipula 1979. *Zimbabwe: Struggles within the struggle*. Harare, Rujeko Publishers.
- South African Truth and Reconciliation Commission 1996. *South African Truth and Reconciliation Commission Report*. Volumes 1 and 6. Kenwyn, Cape Town, Juta.
- Tendi, Blessing-Miles 2010. *Making history in Mugabe's Zimbabwe: Politics, intellectuals, and the media*. Volume 4. New York, Peter Lang.
- Transparency International 2013. *Transparency International Corruption Perception Index 2013*. Available from: <[http://www.ey.com/Publication/vwLUAssets/EY-Transparency-International-Corruption-Perceptions-Index-2013/\\$FILE/EY-Transparency-International-Corruption-Perceptions-Index-2013.pdf](http://www.ey.com/Publication/vwLUAssets/EY-Transparency-International-Corruption-Perceptions-Index-2013/$FILE/EY-Transparency-International-Corruption-Perceptions-Index-2013.pdf)> [Accessed 7 April 2014].
- Turshen, Meredith 2001. The political economy of rape: An analysis of systematic rape and sexual abuse of women during armed conflict in Africa. In: Moser Caroline and F. Clarke eds. *Victors, perpetrators or actors: Gender, armed conflict and political violence*. London, Zed Books. pp. 55–68.

The consequences of not healing: Evidence from the *Gukurahundi* violence in Zimbabwe

*Dumisani Ngwenya and Geoff Harris**

Abstract

Between 1983 and 1987, an estimated 20 000 people from Matabeleland and parts of Midlands Province in Zimbabwe were killed by government forces in an operation code-named *Gukurahundi*. Since that time no official apology, justice, reparations or any form of healing process has been offered by the government which was responsible for these atrocities. Many people still suffer trauma from the events of this time.

This article reports part of a larger research project which investigated whether the survivors of *Gukurahundi* could heal themselves via participation over time in a group action research project directed at their healing. The present article focuses on the consequences of failing to heal, based on the experiences and attitudes of the participants. We found that to the extent that healing does not occur: trauma is passed on to the next generation, a strong desire for revenge is felt, and high levels of mistrust are maintained towards the ethnic group involved in the massacres.

Keywords: Trauma healing, violence, *Gukurahundi*, Zimbabwe, action research, transitional justice.

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Introduction

Between 1983 and 1987, an estimated 20 000 people from Matabeleland and parts of Midlands Province in Zimbabwe were killed by state security agents, mostly from the Central Intelligence Organisation and a specially trained battalion of the Zimbabwean National Army, during an operation code-named *Gukurahundi* (a Shona word meaning ‘the rain which washes away the dirt’). The main purpose was to deal with those thought to have sympathies with Zimbabwe People’s Revolutionary Army (ZPRA, also referred to as ZIPRA) and Zimbabwe African People’s Union (ZAPU), its political wing. In practice, this involved violence against Ndebele individuals and communities, the story of which has been documented by the Catholic Commission for Justice and Peace (2007).

No apology or any form of healing process has been offered by the government. If anything, the government has contributed to ongoing pain by on occasions actively suppressing any such initiatives. As a result, individuals and communities in these areas have never been afforded opportunities to openly talk about their experiences or to seek relief for their painful memories of the past. A companion article (Ngwenya and Harris 2015) has examined the extent to which individuals still suffering from *Gukurahundi* could heal themselves. Following a participatory action research process which took place over two years, the participants reported that they experienced ‘a measure of healing’. The central objective of this article is to investigate the consequences of failing to heal.

Forgiveness, healing and reconciliation in Zimbabwe

There is a surprisingly limited academic literature on healing in Zimbabwe. A search of the Academic Search Complete and Africa-Wide Information databases in early November 2015, using the key words *Gukurahundi* and healing, resulted in 29 articles of which only a handful proved relevant to community and personal healing. (Using *Gukurahundi* and reconciliation as key words resulted in 56 articles, some of which were also included in the 29). We are aware of a number of important articles on ethnic issues

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in Zimbabwe, but judged these as not relevant to the present study. The former group of articles indicate two levels of healing – one for individuals and their communities and another for the national level. First, however, it is necessary to briefly distinguish between forgiveness, healing and reconciliation which are at times used as if they have the same meaning.

Forgiveness has been helpfully defined by Kenneth Kaunda as ‘a constant willingness to live in a new day without looking back and ransacking the memory for occasions and resentment’ (quoted by De Waal 1990:77). Forgiveness is a pathway to healing (Smedes 1996) and even when it is not possible for members of victim and perpetrator groups to meet, it is still highly desirable that those who have experienced violence and suffering be given an opportunity to forgive for their own sakes so they can heal and move on with their lives (Villa-Vicencio 2004:202). Reconciliation is a much bigger step, with strong spiritual underpinnings. As Lederach (1997:24) emphasises, it involves a ‘movement away from a concern with the resolution of issues and towards ... the restoration and rebuilding of relationships’. He goes on to develop a model of reconciliation which contains four major components – truth, mercy, justice and peace. Where these meet, suggests Lederach, ‘that place is reconciliation’ (1997:29). It is clear that reconciliation goes well beyond forgiveness and healing, although these are essential parts of it; we may forgive a perpetrator and may be helped to heal as a result and yet have no opportunity, and possibly no interest, in reconciling with them.

At the individual and community level, healing can be enhanced by quite specific actions. For example, Eppel (2006) has suggested the exhumation of the victims of *Gukurahundi* from mass and shallow graves and their re-burial as a way of bringing healing to their living family members and relatives who are often haunted by the fact that their loved ones have not been buried properly. Ngwenya and Harris (2015) identified repressing the truth, continued feelings of fear and insecurity, impunity and lack of an apology as major hindrances to healing.

A wider range of factors which would promote healing is apparent from Vambe's (2012) study, in which he interviewed 315 participants of different ages (both Shona and Ndebele) in five areas in Matabeleland and the Midlands in 2010 to assess their changing perceptions of the impact of *Gukurahundi* as time has passed. One of his questions – 'What did you expect the government to do for the people of Matabeleland and the Midlands provinces to bring closure to the trauma and social challenges caused by *Gukurahundi*?' – is particularly relevant to the present research. Four options were provided: apologise to the families of the affected, government assistance to families, create employment, foster economic development in the provinces and jail those responsible for the atrocities. Young people aged between 20 and 40 emphasised government assistance to families and employment creation/economic development, while those over 50 – who may have experienced atrocities first hand – favoured the jailing of perpetrators. There was consistency across age groups in wanting an apology and these far outweighed those wanting jail sentences.

After we submitted this article for consideration, we became aware of a related article by Murambadoro (2015). She examines the possibilities for reconciliation following *Gukurahundi* based on interviews with 36 participants, including community members, conducted in the Nkayi District of northern Matabeleland in April, 2014. Her respondents emphasised three actions which would facilitate reconciliation for them: acknowledgement by government of the gross human rights abuses which it had committed from *Gukurahundi* through to the election violence in 2000, truth-telling (including dialogue between victims and perpetrators and the release of the findings of several commissions of enquiry) and an apology by government to the victims. These findings are similar to those reported by Ngwenya and Harris (2015) as hindrances to healing (repressing the truth, feelings of insecurity, impunity and lack of an apology). For the present article, however, the research design and the research objective – a participatory action research project conducted over two years concerned with healing using small group processes – are quite different to those of Murambadoro, who used interviews and focus groups at a point of time to study attitudes towards reconciliation.

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Healing can come about in a number of ways, which are not mutually exclusive: some individuals manage the healing process from their own inner resources; some receive help from family and friends; some are helped by traditional or faith-based rituals; and some benefit from face-to-face counselling. The research reported here is based on another option, where traumatised individuals come together in a group to seek healing. The logic behind it is that the *Gukurahundi* violence was meted out in communities, and communal healing of memories is crucial where collective traumatisation has taken place. 'Men, women, and children in traumatized communities must heal together, if they are to heal at all, because their lives are bound up with one another' (Pintar 2000:64). Healing is necessary not just for the relief of wounded individuals and communities. It is also important in the prevention of future violence which might be caused by survivors taking revenge and passing on their trauma and hatreds to the next generation.

Turning to healing at the national level, a country must decide what to do with a 'bad past'. Some countries have opted for amnesia and denial, while others accept that abuses took place but emphasise the importance of moving on and focusing on the future. Others have opted for various retributive and/or restorative justice initiatives which are usually described as transitional justice and which can make an important contribution to individual and community healing. In the words of Kofi Annan, transitional justice covers a wide range of processes and mechanisms

... designed to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals or combinations thereof (United Nations 2004:4).

Healing at the national level in Zimbabwe has been discussed by a number of researchers, including Machakanja (2010) and Muchemwa et al. (2013). Both point out that such a mechanism almost came into being during the Government of National Unity (GNU) between 2009 and 2013 when

the Global Political Agreement that ushered in the GNU provided for the establishment of the Organ on National Healing, Reconciliation and Integration (ONHRI). However, there has been little political will to see this through, and the vagueness and non-specificity of the provision meant that those tasked with the responsibility to implement it were not sure how to go about this task. They also point out that the process was a heavily top-down approach which made it elitist and irrelevant to ordinary people. Machakanja (2010) in particular has criticised the wording of the Article, which according to her is vague and non-committal and fails to adequately address such critical issues of equality, national healing, cohesion and unity.

Muchemwa et al. (2013:153) attribute the lack of political will to the fact that many of those responsible for the violence are still in power and as such are not willing to expose themselves to possible actions of recrimination. The provisions of the National Peace and Reconciliation Commission in the New Zimbabwe Constitution (adopted in 2013) are couched in similar language, but there is no indication when the Commission, which has a life span of 10 years from 2013, might be established.

The research process

A participatory action research (PAR) approach was used because it provides for both knowledge production and action. In the present research, PAR meant that the participants were in charge of the research process, with the first researcher acting as a facilitator. An invitation was extended through the ZPRA Veterans Trust (ZVT) for volunteers to take part in the research, which involved no monetary reward and required long-term commitment. The research findings are based on the experiences and attitudes of nine ZPRA ex-combatants (three females and nine males) and three peace studies students from Solusi University who were acting as interns with ZVT. Ethical clearance for the research project was granted by the Durban University of Technology's ethics committee. The participants' involvement was confidential and no individual has been identified in reporting the research.

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Six dialogue sessions were held between January 2012 and May 2014. These interactive sessions, which included group discussions, argumentation and consensus meetings, were the prime tool for data collection. Dialogue typically plays a central role in PAR because participants are thus enabled to better understand their own reality as a result of the critical analysis of their own particular situations and problems. Participants engaged in informative, reflective and interrogative discussions concerning their experiences and actions during the sessions, and were able to devise solutions or actions. The discussions were held in a mixture of *isiNdebele* and English which were recorded (with the permission of the group) and later transcribed to facilitate data analysis. One limitation of this way of capturing data is the loss of much of the nonverbal aspects of the conversations which usually add a critical dimension to the understanding. Having a transcribed record of the discussions was important because these could be shared with the participants, not only for their records and use, but also for verification purposes. In addition, a Tree of Life workshop (a therapeutic three-day workshop, on which see Reeler et al. 2009 and Templer 2010) and a half-day writing workshop were also held, both being actions requested by the group.

As ex-combatants, the participants were politically conscious and generally not afraid to express their views and discuss their experiences. On the whole, the discussions were genuine and frank and the discussions were frequently very robust, as is evident from the quotations reported below.

Although an inductive content analysis was used, an a priori theoretical framework and personal interests and preconceptions influenced the approach to the analysis. This carries a risk that researcher bias might influence results and conclusions reached. In PAR, one of the ways to guard against this is to ensure that there are 'appropriate communicative structures in place throughout the research and action which allow participants to continue to associate with and identify with the work of the collective project change' (McTaggart 1998:225). In the final analysis, the extent to which participants identify with and feel they truly own both the process and the final product is the crucial indicator of validity.

The preliminary results of the research were brought to the group for verification and discussion, and the final results incorporate a number of comments made at this stage of the research.

Results and discussion

The participants were clear that a lack of healing carried negative consequences for an individual, their community and the country in general. They specifically identified the intergenerational transmission of trauma, a desire for revenge, a mistrust of the government and a sense of guilt for 'failing' their communities.

Transmission of trauma and anger to the next generation

As indicated earlier, our group had three university students who were interns with ZVT. This provided an opportunity for having two generations (the ex-combatants being the primary survivors and the students being the next generation) in the same study, and to better appreciate the dynamics of the transmission of trauma from one generation to the next. From the discussions, it was clear that the older participants were aware of this concept and the student interns indicated that they had been affected by the hurts of the older generation. As Volkan (2001:87) comments:

Within virtually every large group there exists a shared mental representation of a traumatic past event during which the large group suffered loss and/or experienced helplessness, shame and humiliation in a conflict with another large group. The transgenerational transmission of such a shared traumatic event is linked to the past generation's inability to mourn losses of people, land or prestige, and indicates the large group's failure to reverse ... humiliation inflicted by another group, usually, a neighbour, but in some cases, between ethnic or religious groups within the same countries.

According to Kogan (2012:6), there are two mechanisms by which transgenerational trauma is transmitted. The first is 'primitive identification', which refers to the child's 'unconscious introjection and assimilation of the damaged parent's self-images through interaction with

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that parent'. That is to say, the child unconsciously incorporates into its own psyche the parent's ideas, apparently in an attempt to heal the parent and to help him/her recover. However, this identification leads to a loss of the child's separate sense of self and to an inability to differentiate between the self and the damaged parent. The second mechanism is 'deposited representation', which emphasises the role of the parent, who unconsciously or consciously forces certain aspects of themselves on to the child. In so doing, the parent affects the child's sense of identity and passes on certain specific tasks to the child to perform. In a sense, the children become 'reservoirs for the deposited images connected to the trauma' and as a result, 'the children are compelled to deal with the shame, rage, helplessness, and guilt that the parents have been unable to work through for themselves' (Kogan 2012:7). The group tended to lean towards the second mechanism. It appeared that for the students in particular, parents had shared their stories together with the pains that go with them. Whether there was a deliberate attempt on the part of their parents to deposit their representation or not was difficult to determine but the end result was the same as that described by Kogan. Statements such as: 'It becomes painful for us when our parents tell us of their experiences during *Gukurahundi*', and 'It has an effect when our parents narrate how it took place', or 'Sometimes you also end up feeling the pain', seem to confirm Kogan's second mechanism.

Their assertions concurred with Kogan in another respect – that of children feeling compelled to act on behalf of their parents. Describing his feelings, a male student intern, put it this way: 'I feel pained and my heart struggles. I fail to think as a human being. I become evil in a way'. Another male student added: 'It becomes a cycle of violence if there is no healing. The youth are seeing it as a matter of family honour to avenge their parents'. Later on during the same discussion, the second intern went further, saying, 'This anger which is transferred will be from my father or mother to me – It's not one time, it's two times. It is no longer the same; it becomes worse than my parents'. These observations concur with those of Weingarten (2004:52) who wrote that 'children who see, know, or intuit that their parents or grandparents have been humiliated are particularly

vulnerable to developing retaliatory fantasies. When one generation fails to restore social and political equality, this failure forms the next generation's legacy' (see also Fromm 2012; Belnap 2012).

On the part of the older generation (the ex-combatants), there seems to have been a conflict between the desire not to taper the pain and hurt, and the realisation of the negative impact the transmission process might have on the next generation. The dichotomy between the urge to deposit their failed retaliatory fantasies on their children, and the desire to spare them pain, was fascinating to observe. For instance, one of the most vocal proponents of this idea declared that 'It is painful if we can't get an apology, but we will pass that to the next generation. We will not bury it; we will pass it to the next generation'. In a later discussion, however, he seemed concerned about the negativity of burdening the next generation when he said 'When I saw Bill Clinton's quote in your office [which reads "Those who cannot let go of the hatred of their enemies risk sowing the seeds of hatred within own their communities"], I identified with it.[The fact that I] ... might pass this hatred to my community ... was really alive to me'. Even so, a short while later in the same conversation, he was once more adamantly saying 'Let's pass it to the next generation. If we can't do anything now, maybe the next generation...?'

There then ensued a discussion in which the first author pointed out that while he had no problems with passing on the history of *Gukurahundi* to the next generation, his concern was that it should be done in a way that did not cause trauma in the younger generation. This led to the following interchange between two participants which illustrates the desire to tell it like it was and thus incriminate the perpetrators in the eyes of the next generation, and the desire not to be a cause of ongoing enmity.

A: No, no, no, we have to pass it with the correct tempo, so that when they approach it, they approach it with the necessary strength, because if you polish it up, if someone wants to kill you...

B: ... I agree that indeed someone is really out to kill us at this time and that such people should not be tolerated. [But] we are saying we shouldn't inspire anger and hatred in the lives of future generations.

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A: Why not?

B: ... because it would leave the whole country in continuous turmoil ... You want to tolerate, at the same time you want to recriminate, but I think we need to find *space in between the two approaches* (italics added).

A desire for revenge

Most participants were quite open in talking of their desire to exact some form of revenge upon the perpetrators of *Gukurahundi*, as illustrated by statements like 'We need revenge', 'Given a chance, I would also inflict the same pain' and, 'The best is to do the worst [to them]'. Such views encompass both private revenge and public revenge, the latter being typified by statements such as 'These people must face retribution; they must face the law'. However, participants seem to make no clear distinction between revenge, justice and punishment and these terms were used interchangeably. While a few had specific individuals in mind, by and large the indication was that vengeance would be targeted at ordinary Shona. It seems that when people have no outlet to express their hurts and anger, they will channel their revenge or desire for revenge against innocent members of the group from which the offenders originate (see Botcharova 2001). This phenomenon is similar to displaced aggression theory in psychology, wherein the target of the aggression is not the source of the initial harm, and is usually less powerful than both the initial offender and offended.

As could be expected, different definitions of revenge have different emphases. Rosebury (2009:4), for example, defines revenge as 'a deliberate injurious act against another person which is motivated by resentment of an injurious act or acts performed by the other person against the revenger or against some other persons whose injury the revenger resents'. Stillwell et al. (2008:253) have a somewhat different emphasis when they define it as 'an aggressive act that is often justified by the pursuit of equity'.

These definitions reflect elements of what the participants mentioned in our discussions on revenge. First of all, there was resentment of the wrong

done to the participants. As Gollwitzer et al. (2011:364) explain, the desire to avenge is 'directly tied to our moral intuitions and our subjective notions of justice and deservingness'. Participants certainly exhibited a sense of indignation and unfairness regarding the wrongs visited upon them during *Gukurahundi* and their sense of injustice was all the more, given that this transgression was committed by a government that was meant to protect them and by people with whom they had fought to liberate Zimbabwe. They strongly felt that they had done nothing to deserve the treatment they had received; these acts were not only injurious to them but were also morally unjustifiable.

Three points stand out in explaining why survivors can be drawn towards the need to avenge their suffering. The first is what Worthington (2006) calls the 'injustice gap and its appraisal'. Participants have had a long time to ruminate over the wrongs that were done to them; and the more a person does this, the more the actions seem unjust and the angrier they become. Naturally, people who have a healthy self-respect tend to resent moral injuries done to them. In this regard, 'retributive feelings can be synonymous with self-respect because they demonstrate that survivors take their rights seriously' (Aldana 2006:117). One who fails to be at least offended by such acts is lacking in self-respect. For the younger participants, their desire for revenge seems to be premised on their 'affronted sense of honour' (Rosebury 2009) as a result of their parents' suffering. Second, participants seemed to identify an 'emotional asymmetry' caused by the fact that the perpetrator is enjoying life while the survivors are suffering. According to Gollwitzer et al. (2011), the offence causes an imbalance between the perpetrator and the survivors, which the survivors try to reduce by wanting the perpetrator to experience an appropriate amount of harm or suffering. Third, there was a degree of humiliation felt by most participants, perhaps exacerbated by the fact that ZPRA ex-combatants have always viewed themselves as having been better trained and possessing better skills than their Zimbabwe African National Liberation Army (ZANLA) counterparts. And their suffering at the hands of 'ill-trained' soldiers only served to 'rub salt into the wound'. This point coheres with Goldberg (2004:25), who

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points out that feelings of humiliation or shame are powerful motivators of reprisal, and that it is harder to forgive an injury to one's pride than any other form of injury to oneself.

For the younger participants, their desire for revenge was tied to the obligation they felt to avenge their parents' humiliation. This is because 'Children who see, know or intuit that their parents or grandparents have been humiliated, are particularly vulnerable to developing retaliatory fantasies. When one generation fails to restore social and political equality, this failure forms the next generation's legacy' (Weingarten 2004:52). In addition, the mourning mechanisms of the previous generation, which are necessary for the repair of loss, no longer provide relief to the younger generation and lead to them experiencing all life as loss. This contributes to the transfer of destructive aggression from the older to the younger generation. It therefore is no surprise that both younger and older participants felt quite strongly about the need for revenge.

It was not very clear what participants expected the end result of revenge to be, but here seemed to be two purposes in mind. One had to do with trying to restore a sense of justice through proportional compensation from the perpetrator, what Jackson and Gerber (2013) have termed 'just deserts'. Participants said, for example, 'If you kill someone and then you are sentenced to death, that's a sort of revenge' and, 'I think we need retributive justice whereby a criminal should go through the same pain I went through'. At the same time, they also seemed to express vindictiveness and a desire to 'get back' at the offender and make him suffer for the offence. This was exemplified by a participant who stated 'I would love to see these people punished... The best is to have this thing solved by punishment... there must be retribution of some kind'.

Given the injustice gap, the desire for revenge seems to be the default response to any act deemed to be unjust by the recipient of that act. Indeed, this desire to retaliate is a universal phenomenon found in both human and non-human primates across all ages and cultures (Gollwitzer et al. 2011), and it probably is the reason why there are laws governing revenge

in the Old Testament. In Numbers 35, God instructed the Israelites to set up cities of refuge to which those who killed another person accidentally could flee; once there, an avenger could not touch the person. The ‘eye for an eye’ principle set out in Leviticus 24 recognises the ubiquity of revenge but attempts to limit its extent.

It is hard to know what any of the participants would have done, had they indeed been given an opportunity to take revenge. Placing the discussion on revenge within the context of the whole research, there is not much suggestion that participants would in fact retaliate given the opportunity to do so, which suggests that their talk about revenge was an expression of frustration at their feelings of helplessness and powerlessness. A hypothesis advanced by Goldberg (2004:5–6) and Gower (2013) is that these vengeful desires, while real, remain in the realm of fantasy and help to limit and balance the effects of destructive drives by directing them away from the self; revenge is thus part of the healing process of hurt and anger. So, when the desire for revenge remains on the level of fantasy, it serves several constructive psychological functions as it allows us to work with and to master the feelings of revenge. ‘Being able to fantasise the ways in which one might redress and avenge hurtful acts is a great outlet and a discharge for aggression: a way of acting *without acting*’ (Gower 2013:115, italics added). At the same time, the inability to imagine and fantasise can be very problematic and might lead to action in order to release aggression and get relief. In our case, this might well apply more to the younger generation because of the pressure of expectations placed upon them. This was highlighted by one participant when he said, ‘...people get educated nowadays at schools and start asking questions on the reasons for *Gukurahundi*. When they look for information, it makes them feel angry ... People will stand up at some stage and say, “Come on man, let’s confront this system”’.

A final comment on revenge has to do with the ‘magnitude gap’ – the problem of quantifying the proportionate measure of revenge, given that what might seem fair to the original victim may seem grossly unfair to the original perpetrator. Statements by participants as discussed above do

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not suggest a desire to go beyond the pain inflicted on them in their quest for revenge; their statements suggest that they would be satisfied to exact only what was done to them, to make them ‘feel the same pain’. However, it will always be difficult to satisfy both parties in terms of the restoration of equity. Even when the ‘eye-for-an-eye’ principle is legalistically applied, there will always be discrepancies due to the fact that different people perceive the same events, and their significance, differently. While participants desired some form of revenge, they nevertheless seemed to have been caught between two minds: wanting to avenge but realising the negative results of revenge. This dichotomy was both intrapersonal and interpersonal. The intrapersonal dilemma was illustrated well by a male student intern:

What I see is that this thing will never ever get out of my mind and if everyone had the same thinking like me it was going to be something else. But, thank God, we are different, *because if they had the same mind like me, this is the recipe for a civil war. But we are not ready for that because I know it's got more impact further on. But let's rather try to talk over things because 'an eye for an eye' will leave everyone blind. I am no longer sure who said that.* I think that we need retributive justice whereby a criminal should go through that same pain that I went through. Given a chance I would also inflict that same pain that I have to the next person, but I would not want to do that because of the way I was raised and the way I believe things should be...(italics added).

A conversation in the final dialogue session illustrates the interpersonal aspect of this dichotomy:

Participant 1: A case in point is [Minister] Mzila's¹. Two days ago in Hwange, a lot of people went in support... They could not fit in the court room, they were pushed away and they remained singing emotional songs outside, saying we were killed, when we try and talk about it we get arrested. You know it stings a part of the body, people

1 Moses Mzila was one of the three co-ministers of the Organ for National Healing and Reconciliation under the Government of National Unity (2009–2013). He was arrested in Lupane while attending a *Gukurahundi* event organised by a community.

in Matabeleland North – they are very angry right now about it ... This thing is a problem. We are living a fake life. We are living on borrowed time. We need revenge.

Dumisani: What form of revenge, should we also go and kill someone?

Participant 1: No, no, in the form of a civilised court so that the perpetrator they face justice, because this was a crime, a crime was committed. If you kill someone and then you are sentenced to death that's a sort of revenge. The survivors they feel consoled...

Participant 2: Retributive

Participant 1: Yes, if that person comes out clean (pause), that's why people go and look for African medicines so that...

Participant 2: To make them disappear, feel the pain, equitably?

Participant 1: Yah, A tooth for a tooth and an eye for an eye.

Participant 2: But it will make Zimbabwe blind! (laughs)

Participant1: Right, there must be people like Ngwenya somewhere, to control this anger (laughter). To say, 'No, no, don't kill'. I for one, I am looking for revenge. Personally, I think I need revenge. If I can get hold of some of the perpetrators and do the same to them, my community, the community I come from, would be very excited and probably make them forget. As they would say, we in the end, we dealt with them. And generally in my community, the feeling is there should be revenge because the state does not want us to talk about it. The state says let's not open old wounds now ...

In this case, Participant 2 acted as the external voice of reason. But what is interesting is that he, in one of the previous dialogues, had indicated his willingness to 'bring down' a certain individual who had not only caused him personal grief, but had also presided over the death of a friend while he watched helplessly. Perhaps it is easier to appreciate the negativity of revenge from a distance. It seems that pain might to some extent cloud one's moral judgement as one becomes consumed by the injustice of the act perpetrated against him/her. For some participants, these dilemmas were raised by their Christian beliefs.

A climate of mistrust

The participants expressed concern that because of the silence around *Gukurahundi*, people in the communities were suspicious of the possible role they might have played in the atrocities. One elaborated the concern as follows: ‘They know I was a soldier so they would ask, “Where were you? Were you killing people somewhere?”... Obviously they think I was doing something similar somewhere’. Another amplified this concern further when she added:

The Fifth Brigade [the army unit which carried out most of the violence] used to come to Gwanda with people who knew how to speak *isiNdebele*. So the elders now don’t know whether these people were Ndebele people or people who only knew how to speak it. [So community members may] no longer be sure but think, ‘Maybe while you were not here, you were also somewhere else doing the same’. Last year we visited Tsholotsho. A certain lady said, ‘Amongst you, there might be one of them because they are still there but we don’t know them’.

Although they made light of this concern, it seemed it was a real issue. They emphasised that during their ZPRA training, they had been taught to respect civilians as they were their lifeline. These suspicions and accusations levelled against them by some community members led to some developing a sense of guilt for having failed their parents and their communities. One expressed this concern succinctly when he told the group that, whenever he visits, people in his home area ask ‘Why did you let our people be killed whilst you were there?’ He commented ‘I don’t know how to answer that, I feel I betrayed them’.

Behnia (2004) posits that many survivors of war and torture often feel guilty that they are alive and well. He points out that the extreme situations of war and torture call into question connections such as kinship, friendship and a sense of community that link individuals to each other. What this indicates is that the participants already carried a burden of guilt; having their communities accuse them in this manner, only served to increase these negative feelings. Endress and Pabst (2013:90) explain that ‘violence captures the experience of human vulnerability and the power

to violate others. Being violated affects one's capacity to encounter others and the world as well as one's self-understanding and potentiality to act, experiences of violence lead to a fundamental shattering of trust'.

This mistrust is not only held within an affected community, but is also strongly experienced towards the perpetrators and has led most people in Matabeleland to dissociate themselves from anything to do with the government. As one participant observed, 'They [the people of Matabeleland] are now isolated ... They have found solace in South Africa. They don't want anything to do with the government. They don't want to join the army. They don't want to join the police'. Ross (2011) argues that this attitude is driven by the belief that it is safer to keep a distance from others. To him, 'Mistrust makes sense where threats abound, particularly for those who feel powerless to prevent harm or cope with consequences of being victimised or exploited'.

This mistrust runs so deep that just about everything that happens to the survivors is treated with suspicion. Participants seemed to connect and interpret every action associated with the government within the framework of the *Gukurahundi* discourse. In the words of one,

Trust has also been affected by those past experiences. The police have become enemies and they are no longer protecting our lives. Why? Because most police speak Shona and they have been used to perpetrate violence, especially during elections. When there is violence, the parents at home feel angry and would say, 'This used to happen before and it's continuing'. As [another participant] has mentioned, *Gukurahundi* is continuing so hatred is still there.

Mistrust is self-fulfilling, in the sense that people will always find evidence that justifies to them why they should never trust the perpetrators again.

Conclusion

This article has focused on one aspect of a larger research project on the possibility of healing, from the experiences of *Gukurahundi* between 1983 and 1987. Drawing on the experience of a small group of survivors, the lack of healing results in the need to pass the story on to the next generation

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(while not at the same time wanting to cause them pain), a desire for revenge (but some suggestion that an opportunity for actual revenge might not be taken) and mistrust (from their communities towards the survivors and, more importantly, from the survivors and their communities towards the government). The desire for revenge, it might be noted, is not likely to diminish over time. As Weingarten (2004:52) notes, 'When groups are humiliated and must swallow their resentment, the desire for revenge builds'.

These are formidable negative consequences and clearly point to the importance of healing work to be undertaken. The government has the resources to support such healing but has thus far shown no inclination to do so. The establishment of the Organ on National Healing, Reconciliation and Integration seems to have become an exercise in window dressing, with little obvious outcome. The work of civil society organisations like Tree of Life offer the prospect of some measure of healing but the numbers who can be helped by such organisations are small.

Sources

- Aldana, Raquel 2006. A victim-centred reflection of truth commissions and prosecutions as a response to mass atrocities. *Journal of Human Rights*, 5, pp. 106–126.
- Behnia, Behnam 2004. Trust building from the perspective of survivors of war and torture. *Social Services Review*, 1, pp. 26–40. Available from: <<http://www.jstor.org/stable/10.1086/380768>> [Accessed 6 June 2014].
- Belnap, Barri 2012. Turns of a phrase: traumatic learning through the generations. In: Fromm 2012.
- Botcharova, Olga 2001. Implementation of track two diplomacy: Developing a model for forgiveness. In: Helmick and Petersen.
- Catholic Commission for Justice and Peace 2007. *Gukurahundi in Zimbabwe: A report on the disturbances in Matabeleland and the Midlands 1980–1988*. Johannesburg, Jacana Media.
- De Waal, Victor 1990. *The politics of reconciliation: Zimbabwe's first decade*. London, Hurst & Co. and Cape Town, David Philip.
- Endress, Martin and Andrea Pabst 2013. Violence and shattered trust: Sociological considerations. *Human Studies*, 36, pp. 89–106.
- Eppel, Shari 2006. Healing the dead: Exhumation and reburials as a tool to truth telling and reclaiming the past in rural Zimbabwe. In: Borer, Tristan Anne ed. *Telling the truths: Truth telling and peace-building in post-conflict societies*. Notre Dame, IN, University of Notre Dame Press.

- Fromm, M. Gerard 2012. *Lost in transmission: Studies of trauma across generations*. London: Karnack Books. Available from: <<http://site.library.com/lib/durbanut/docDetail.action?docID=10516094>> [Accessed 29 May 2014].
- Goldberg, Jane G. 2004. Fantasies of revenge and the stabilisation of the ego: Acts of revenge and the ascension of Thanatos. *Modern Psychoanalysis*, 29 (1), pp. 13–21.
- Gollwitzer, Mario, Milena Meder and Manfred Schmitt 2011. What gives survivors satisfaction when they seek revenge? *European Journal of Social Psychology*, 41, pp. 364–374.
- Gower, Maxine 2013. Revenge: Interplay of creative and destructive forces. *Clinical Social Work Journal*, 41, pp. 112–118.
- Helmick, Raymond G. and Rodney L. Petersen 2001. *Forgiveness and reconciliation: Religion, public policy and conflict transformation*. Radnor, PA, Templeton Foundation Press.
- Jackson, Jonathan and Monica Gerber 2013. Retribution as revenge and retribution as just deserts. *Social Justice Research*, 26, pp. 61–80.
- Kogan, Ilany 2012. The second generation in the shadow of terror. In: Fromm 2012.
- Lederach, John Paul 1997. *Building peace: Sustainable reconciliation in divided societies*. Washington, D.C., United States Institute of Peace.
- Machakanja, Pamela 2010. *National healing and reconciliation in Zimbabwe: Challenges and opportunities*. Cape Town, Institute for Justice and Reconciliation.
- McTaggart, Robin 1998. Is validity really an issue for participatory action research? *Studies in culture, organisations and societies*, 4, pp. 211–236.
- Muchemwa, Cyprian, Emmaculate Tsitsi Ngwerume and Mediel Hove 2013. When will the long nightmare come to an end? Challenges to National Healing and Reconciliation in post-colonial Zimbabwe. *African Security Review*, 22 (3), pp. 145–159.
- Murambadoro, Ruth 2015. 'We cannot reconcile until the past has been acknowledged': Perspectives on *Gukurahundi* from Matabeleland, Zimbabwe. *African Journal on Conflict Resolution*, 15 (1), pp. 33–57.
- Ngwenya, Dumisani 2014. *Healing the wounds of Gukurahundi: A participatory action research project*. Doctoral thesis, Durban University of Technology, Durban.
- Ngwenya, Dumisani and Geoff Harris 2015. Healing from violence: An action research project among survivors of *Gukurahundi*, Zimbabwe. *Peace and Security Review*, in press.
- Pintar, Judith 2000. Anticipating consequences: What Bosnia taught us about healing the wounds of war. *Human Rights Review*, January–March, pp. 56–66.
- Reeler, Tony, Kudakwashe Chitsike, Fungisai Maizva and Beverly Reeler 2009. Tree of Life: A community approach to empowering and healing survivors of torture in Zimbabwe. *Torture*, 19 (3), pp. 180–193. Available from: <<http://www.ncbi.nlm.nih.gov/pubmed/20065537>> [Accessed 24 March 2014].
- Rosebury, Brian 2009. Private revenge and its relation to punishment. *Utilitas*, 21 (1), pp. 1–22.
- Ross, Catherine E. 2011. Collective threat, trust, and the sense of personal control. *Journal of Health and Social Behaviour*, 52 (3), pp. 287–296.
- Smedes, Lewis 1996. *Forgive and forget: Healing the hurts we don't deserve*. San Francisco, CA, Harper.

The consequences of not healing after the *Gukurahundi* violence in Zimbabwe

- Stillwell, Arlene M., Roy F. Baumeister and Regan E. Del Priore 2008. We're all survivors here: Toward a psychology of revenge. *Basic and Applied Social Psychology*, 30, pp. 253–263.
- Templer, Sara 2010. Integrity of process: How Tree of Life is taking root in Zimbabwe. *Africa Peace and Conflict Journal*, 3 (2), pp. 106–112.
- United Nations (United Nations Security Council) 2004. Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). Available from: <<http://www.unrol.org/files/2004%20report.pdf>> [Accessed 29 October 2015].
- Vambe, Maurice T. 2012. Zimbabwe genocide: Voices and perceptions from ordinary people in Matabeleland and the Midlands provinces, 30 years on. *African Identities*, 10 (3), pp. 281–300.
- Villa-Vicencio, Charles 2004. Reconciliation. In: Villa-Vicencio, Charles and Erik Doxtader eds. *Pieces of the puzzle*. Cape Town, Institute for Justice and Reconciliation.
- Volkan, Vamik D. 2001. Transgenerational transmission and chosen traumas: An aspect of large-group identity. *Group Analysis*, 34, pp. 79–97.
- Weingarten, Kaethe 2004. Witnessing the effects of political violence in families: Mechanisms of intergenerational transmission and clinical interventions. *Journal of Marital and Family Therapy*, 30 (1), pp. 45–59.
- Worthington, Everette L. 2001. Unforgiveness, forgiveness, and reconciliation and their implications for societal interventions. In: Helmick and Peterson.

Getting the past right in West Africa and beyond: Challenging structures through addressing gender-based violence in mediation

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Abstract

Fifteen years after the launch of the UN's landmark resolution 1325 on women, peace and security, its recommendations concerning women as civil society actors, and women as victims of conflicts, have become part of a largely accepted and standardised guide for the international community and in many states. Fewer advances have been made with involving politically skilled women in high-level negotiations and understanding the wider processes of conflict mediation – where the basis for peace is crafted at different levels of society. This article offers insights on which issues should be taken into account regarding gender-based violence during mediation and suggests how a conflict context can be analysed from a perspective of gender and women. It also explores the issues that have dominated

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the agenda of peacemaking in West Africa in particular and across the continent, in order to provide real-world examples of peace and transitional processes where lessons can be learnt about addressing or failing to address gender-based violence. A transformative and inclusive peace process that changes conceptions of the status quo, fights gender-based violence, and includes women in post-conflict planning could remove many risks from women's agency in post-conflict peace and security. It could gradually reform structural factors that constrain women's participation.

Keywords: Gender-based violence, peace processes, mediation, transitions, post-conflict peacebuilding, West Africa.

1. Introduction

For many women's groups, activists, and survivors of gender-based violence during conflicts, addressing the atrocities of that violence during peace processes and in transitional settings means 'getting the past right'. War and violence, and the processes of mediation, are contexts where women are often silenced and forgotten. Getting the past right also means highlighting the kinds of broader structural injustices that must be openly debated and challenged during effective mediation. The integration of a gender perspective into peace mediation implies engaging the negotiating parties in transformative thinking about the different roles of men and women in peace and conflict. Indeed, peace negotiations should be spaces where decisions are taken that prevent a return to the status quo of previous gender relations and pre-conflict power configurations.

Fifteen years after the launch of the UN's (United Nations) landmark resolution 1325 on women, peace and security, the recommendations on action, advocacy and protection concerning women as civil society actors, and women as victims of conflicts, have become part of a largely accepted and standardised guide for the international community and for many states (UN Women 2012:2–3; Rehn and Johnson Sirleaf 2002). Fewer advances have been made towards involving politically-skilled women in high-level negotiations and understanding the wider processes of conflict mediation (Bell and O'Rourke 2010), where the basis for peace is crafted at different

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levels of society. Certainly while all the injustices of the past cannot be righted in one agreement and gender issues cannot only be addressed by legal documents in a post-conflict environment, there is plenty that peace processes can indeed accomplish.

The UN Guidance for Effective Mediation, based on consultations with mediators and practitioners globally, highlights the need to include a broad cross-section of conflicting parties and other stakeholders as one of the eight fundamentals for an effective process.¹ The standards set by the World Conferences on Women, UN Security Council resolutions, and Secretary-General reports and commitments provide a normative baseline that supports the efforts of local actors and shapes the expectations of political leaders and donors.² The Global Study (Coomaraswamy 2015) on the implementation of resolution 1325 launched in October 2015 stresses that while national ownership is the base for any successful peace process, international support for the process, decision-making and implementation mechanisms can play a major role in advancing the goal of inclusivity and participation of women.

Moreover, recent academic work based on qualitative and quantitative evidence indicates that in inclusive processes, especially in cases where women's groups were able to exercise a strong influence on the negotiation, there was a much greater chance that an agreement would be reached than when women's groups exercised weak or no influence (Paffenholz et al. 2015). The involvement of civil society in peace processes has no discernable negative impact on the outcomes. Indeed, it can reduce the chances of failure by up to 50% and improve the chance of more sustainable agreements. The more specifically inclusion is written into the agreement, the more effective it has been in practice (O'Reilly et al. 2015).

1 See United Nations Guidance for Effective Mediation (UN Secretary-General 2012).

2 See Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979); the Beijing Platform for Action (The Fourth World Conference on Women 1995); UN Security Council Resolution 1325 (UN Security Council 2000) and subsequent resolutions.

Addressing the past is particularly important in contexts where gender-based violence has been a significant manifestation of the conflict or has triggered deeper violence. During mediation processes, victims are often silenced in order to achieve political agreement between political and military actors. Yet operating in a business-as-usual environment where the focus is exclusively on cease-fire agreements and power-sharing arrangements, the underlying causes of conflict are ignored, and its victims are ignored. Men and women who have been direct victims or who have seen atrocities committed cannot become full members of their societies unless this violence is recognised by the parties involved in the conflict, and unless this victimisation is acknowledged by the state. The first step in recognition is establishing accounts of the past where the victims feel their stories and interpretations are represented.

With resolutions 1889 (2009) and 2122 (2013), the UN Security Council turned its focus to women's active roles as leaders in peacemaking, conflict transformation and conflict prevention. Resolution 1889 addresses women's exclusion from peacebuilding and the lack of attention to women's needs in post-conflict recovery. Resolution 2122 calls on parties to peace talks to facilitate equal and full participation of women in decision-making; aims to increase women's participation in peacemaking by increasing resources for women in conflict zones; and acknowledges the critical contributions of women's civil society organisations. In order to reinforce these resolutions and bring back 1325 to its human rights origins, the Global Study launched in October 2015 stresses how the international community should take a stronger stand against gender-based violence during and after conflicts, and anticipate the backlash against women. Nationwide strategies should be implemented to protect women and women's rights defenders, especially if the governments are not able or willing to provide this support.³

Building on resolution 1325 and the subsequent resolutions, this article offers insights on which issues should be taken into account regarding

3 See Coomaraswamy 2015, Chapter 12. Linkages between human rights mechanisms and the Security Council resolutions on women, peace and security: Opportunities for enhanced accountability for implementation.

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gender-based violence during mediation and suggests how the conflict context could be analysed from a perspective of gender and women when the mediation strategy is being defined. It also explores issues that have dominated the agenda of peacemaking in West Africa in particular and across the continent, and in other continents with similar processes – to provide real-world examples of peace and transitional processes where various lessons can be learnt about addressing or failing to address gender-based violence.

Gender in this article constitutes a central premise of conflict analysis, and gender-based violence a context-specific concept that mediators need to use as a method for understanding societal dynamics – not just something left to experts in gender issues or women’s issues. The idea of a ‘continuum of violence’ is a key point, because it offers a framework for describing how different types and levels of violence interact with each other, and how past conflicts are built-into the logics of contemporary violence (Kelly 1998; Steans 2006:58; Pankhurst 2008:1–6).

The evidence presented here is based on knowledge accumulated from a joint project on the West African peace processes with the Crisis Management Initiative (CMI) and the West African Network of Peacebuilding (WANEP) between 2011 and 2014.⁴ Interviews with local and international experts, government representatives, local organisations, focus group discussions, reports on West Africa in general and Liberia and Côte d’Ivoire in particular are used as sources, along with academic literature on mediation.

This project did not collect a comprehensive sample of evidence, nor did it base recommendations on high-profile cases.⁵ Rather, the evidence builds on the workshops and in-depth interviews conducted during fieldwork in Liberia and Côte d’Ivoire, and discussions in 2011 and 2012 in Abuja and Dakar with ECOWAS, AU, and UN representatives, as well as with

4 To know more about the CMI-WANEP project on Gender Based Violence and mediation in West Africa, and an earlier, practitioner version of the study, see Tarnaala 2013.

5 A comprehensive sample can be used to identify systematic patterns, whereas drawing conclusions from high-profile cases alone can lead to inaccurate predictions. See on this issue Nordås 2012 and Cohen and Hoover Green 2012.

people from both governments. The findings do not represent all West African conflicts in a systematic and exhaustive manner, but do suggest a theoretical and practical framework for integrating lessons learned from these West African peace processes with regard to the work of mediators in the future.

Gender-based violence and relevant mediation frameworks in Africa

According to the Committee on the Elimination of Discrimination against Women (CEDAW), ‘Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures’ (CEDAW 1992). Gender-based violence takes different forms according to the context of each conflict, and transforms through various phases of the conflict cycle. Thus it should not be analysed independently from other social and political violence occurring in these situations. International scholarship on gender has long shown how sexual and gender-based violence rarely conforms to the timelines of peace treaties and ceasefires but endures past them (El Bushra 2012:6, and El Bushra and Sahl 2005). This is why in order to prevent this violence, more should be known about its causes and how it manifests over time.

In this article, I use Gender-Based Violence (GBV) as an umbrella term for any harmful act that is perpetrated against a person’s will and that is based on socially ascribed (gender) differences between males and females. Along these lines, gender-based violence ‘encompasses a range of human rights violations and includes, but is not limited to, forced marriage, attacks against women’s human rights defenders, other harmful traditional practices and sexual violence (including rape, sexual slavery, trafficking, forced impregnation, forced abortion, forced sterilisation, forced prostitution, indecent assault, inappropriate medical examinations, strip searches and sexual harassment). The results are devastating as survivors face multiple psychological and medical problems including HIV and other sexually transmitted infections, pregnancy, infertility and

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genital mutilation. GBV can be directed at women, men, girls and boys, but is more often directed against women and girls and is linked to women's subordinate status in society' (Inter Agency Standing Committee (IASC) 2005:7; see also Nagarajan and Green 2012:2–4).

In the past 15 years, increasingly it has been African actors, rather than external international actors who have led the engagement in mediation and conflict prevention during moments of crisis within the region. This has happened simultaneously with the strengthening of normative frameworks and mechanisms on gender and women both in Africa and globally.⁶ The African regional human rights system – which includes the African Commission on Human and Peoples' Rights, and the African Court on Human and Peoples' Rights – has some of the strongest normative frameworks for women's rights. This includes the Protocol on the Rights of Women in Africa, the first international or regional human rights instrument to include provisions on abortion. Unfortunately, the African system lacks enforcement, painting a dim picture of justice for women's rights violations at regional levels. The African Commission, which receives individual complaints of human rights violations, has received only one complaint in its history (of 550 such complaints) requesting a remedy for a violation of women's rights (Coomaraswamy 2015).

Since 2002, the African Union's (AU) African Peace and Security Architecture (APSA) has functioned as the main framework for managing peace and security challenges on the continent, offering the prospect of African solutions to African challenges. APSA offers a holistic approach to peace and security that recognises the importance of mediation and how it needs to be adapted to changing politics and new global challenges in Africa (Vines 2013:107). While the APSA foundational document does not mention gender per se, the AU's Gender Policy from 2009 opens the space for women to participate in mediation, and states that female leaders should be mobilised and included 'in mediation processes and reflection

6 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Union 2003), see also the Solemn Declaration on Gender Equality in Africa (African Union 2004).

groups, as well as post-conflict actions'.⁷ Since mediation processes are by their very nature intensive, long-term commitments, they require a flexible and nearly permanent engagement with a dedicated support unit, as well as considerable financial resources. Not only are situations under mediation complex and protracted, but the very environment within which mediation occurs is also increasingly complex (Gomes Porto and Ngandu 2014:197). It is within this complexity of long-term commitment that both official and unofficial mediators, in structured and unstructured processes, need to engage relevant actors and pose the right questions to address gender-based violence. The following sections will suggest the most relevant issues gathered from practitioners and victims in the field, and from the academic literature.

2. How to address gender-based violence that occurred during conflict and displacement

2.1 How sexual violence should be analysed, measured, and its mechanisms understood

During the past twenty years, research and expert reports have brought to light how sexual violence is being used against women (and to a lesser extent men) in conflicts. In a study by the Peace Research Institute Oslo (PRIO) on sexual violence in African conflicts, this form of violation featured in five of the conflicts, in Uganda, Liberia, Sierra Leone, Burundi, and the DRC (Nordås 2011:2). Since 2013, in the conflicts in South Sudan and Central African Republic, national and international organisations have called attention, based on the testimonies and other evidence from victims, to the frequent occurrence of sexual and gender based violence. In these instances, rapes occurred in front of family members and in public spaces, and some victims were abducted and forced to provide sexual favours for soldiers and to perform daily labour for the warring factions. In order to understand the phenomena, mediation teams need to seek out not only research on sexual violence during conflict, but also find out the priorities of victims' themselves.

7 AU gender Policy Feb 10, 2009.

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Sexual violence is not an isolated violation, and it often follows a logic that can be researched and understood (Wood 2009:131). If mediators fail to understand this logic in their general conflict analysis, they risk forming an inaccurate picture of the deeper dynamics at play in the conflict. There might be a high incidence of sexual violence, for instance, because it is being used as an explicit 'strategy of war' to target particular political or ethnic groups. But rape might also be a result of weak chains of command, and unsupervised troops on the ground. In order to prevent the repetition of sexual violence during mediation processes, more needs to be known about its causes and why it changes. Cycles of hatred and revenge produced by sexual violence rarely conform to the timelines of peace treaties and ceasefires, but endure and are difficult to reconcile.

According to Nordås, in many Sub-Saharan Africa wars of the 1990s, victims of sexual violence were purposefully selected for political reasons; but apparently such political targeting decreased in conflicts in the first decade of the 20th century. However, sexual violence has not abated; it is simply being conducted for different reasons. It was reported that Sierra Leonean rebels, for example, were specifically targeting very young girls to reduce the risks of contracting sexually transmitted diseases (STDs) (Nordås 2011:2). During post-conflict electoral violence in Côte d'Ivoire and in Guinea 2009, however, sexual violence was aimed at opposing political factions and anti-government protesters (the latter particularly in Guinea).

Testimonies collected in Sierra Leone and Liberia in the 1990s, show how some young girls joined the militias more or less voluntarily in order to escape forced marriages, among other things. In these roles, they had to take on many different tasks – not only sexual services – but also combat missions and raids, weapon and munitions transport, intelligence gathering, torture, robbery and pillage, providing basic daily supplies, and caring for the wounded (Haas and Schäfer 2009:4). In order to avoid shame and stigmatisation, these young women later tried to hide, refused bringing in public the violence perpetrated against them and denied their own actions as members of militias.

It is difficult to estimate if sexual violence during conflict is decreasing as a result of the increased publicity and improved channels for reporting. Some academic experts estimate that rape is not getting worse over time. But we do not know the total number of victims globally per year, so it is impossible to gauge. Utas suggests that recipients of humanitarian aid are aware of this dynamic: he found that Sierra Leonean refugees in Liberia believed that rape victims received special attention from aid organisations, and that some would answer researchers accordingly (Utas 2005, quoted in Cohen and Hoover Green 2012:449). What we do know through testimonies is that after war-time rapes, sexual violence continues inside the communities, perpetrated by family members, neighbours, youth gangs, and ex-combatants. Statistical evidence also suggests that post-conflict survivors of sexual violence tend to be far younger than survivors of domestic violence and other violent crimes, and that perpetrators of sexual and domestic violence are generally considerably older than their victims (Small Arms Survey 2012:2).

To complement 1325, United Nations Security Council resolutions 1820 (2008), 1888 (2009), 1960 (2010) and 2106 (2013) specifically request numerical data on the 'prevalence and trends' of sexual violence since the lack of accurate data for mediators has been a justification for inaction. Much of the information on sexual violence analyses the phenomenon based on confidential testimony, and often individual stories are repeated without questioning how representative the stories are in the broader context. This is why estimates and percentages about the extent of sexual violence have become part of the academic and policy debate on what we know about sexual violence and how it could be tackled. In response to this, Cohen and Hoover Green (2012:455) suggest that 'it is preferable to use accurate, if vague, terms (i.e. "many thousands" to describe the extent of rape in Liberia for example), and to hew to the principle that one human rights violation is one too many'. Rather than only registering or analysing incidents, a whole culture of inaction and impunity should be questioned.

2.2 Listening to internally displaced persons and refugees

During the past several decades of conflict and instability across Sub-Saharan Africa, survivors have moved from being internally displaced people (IDP), to refugees to returnees. In many cases, ‘refugee’ becomes a nearly permanent status. When the issues of displacement and conditions for return are discussed, mediators and their teams should seek detailed knowledge on the social, political, and gender dynamics among IDP communities and among refugees in camps. Resolution 2122 (2013) supports an increase in women’s participation in peacemaking by increasing resources for women in conflict zones, as well as acknowledges the critical contributions of women’s civil society organisations. For mediators this can include organising activities ranging from wide consultations to focus group meetings in order to provide women the opportunity to engage both with the mediators and the public during the dialogue. Equally important for this type of inclusion is financial and technical support to organisations of displaced women.

Women in refugee camps are frequently victims of sexual or gender-based violence. The atmosphere in camps is usually very tense, and many victims of violence live in fear – for themselves and their families – that they could become victims of violence again. This intensifies the initial traumas of GBV. While it is a reflection of the wider political tensions, sexual violence is unfortunately a hidden crime, particularly in camps and during times of displacement, as victims are reluctant – or unable – to report attacks. Survivors of sexual violence frequently encounter severe prejudice from members of their own families and communities and are therefore reluctant to publically discuss an attack (Dabo 2012:10, 14; Hovil 2012:6). Prejudice and fear reinforce a culture of impunity in gender-based violence.

Displacement impacts the lives of women and men differently, as women will often assume new responsibilities as heads of households while they are refugees, or internally displaced. Frequently women leave their homes

as wives of men at war, but end up as widows taking care of their children and/or elderly parents during the displacement, or they become mothers while in a refugee camp. The focus groups of this study highlighted that upon returning, the expectations of women and men differ, and women's concerns were seldom heard. It is therefore essential to report clearly on IDP camps in a standardised manner – providing gender indicators and developing data that differentiates between women and children.

Within refugee and IDP camps, access to justice is usually lacking or nonexistent. Hovil (2012:15) notes that camps are often run and perceived as isolated islands outside of national jurisdiction, particularly in cases where UNHCR (UN High Commissioner for Refugees) or other international actors effectively run the camps when there is limited national capacity. Linked to this is the problematic notion that what goes on inside a camp is irrelevant to wider national processes, unless it has a direct bearing on the 'outside'. There has been a major shift within the humanitarian establishment, with a growing awareness of the political ramifications of humanitarian action. The concept of the passive 'good' refugee without agency or political intention is increasingly being challenged (Hovil 2012). This is even more important when considering that many African IDPs do not even live in camps. In many countries, according to international organisations, there are more displaced persons and refugees living outside of camps than inside, and most are women.

To assess the differential impact of displacement on men and women, the differences between camp settings and other conditions of displacement need to be distinguished, given that the vulnerabilities of displaced women and refugees are often more numerous outside camps. Within camps, mediators need to seek conditions that allow people to speak freely, and ensure they are listening to both men and women with an awareness of the existing political tensions. Issues of sexual violence need to be brought to the fore, and secure conditions provided for women to speak.

3. How to address gender-based violence in transitions from conflict to peace

3.1 Engendering transitional justice

During the past decade, significant gender-sensitive requirements on transitional justice have been characterised by very high levels of international involvement and pressure. According to Aroussi (referred to in Pratt and Richter-Devroe 2011:497–498) this may have facilitated the inclusion of model provisions on justice for gender-based violence, but has also created significant threats to the peace process. Most importantly, unrealistic requirements may result in peace agreements that carry very little hope of implementation. Other analysts have underlined that transitional justice mechanisms are – and should be – vehicles for creating gender justice, which can correct structural injustices of the previous regimes. Women themselves need to play a pivotal role in this development. For many, ‘getting the past right’ means not only truth-telling and historical memory about the impact of conflict, but also the recognition of structural injustices against women, such as inheritance laws for example, that need to be addressed and transformed by transitional justice measures (Meertens 2012:13).

It is important to ensure that a gender perspective is included throughout the implementation of transitional justice mechanisms and not isolated within parallel administrative structures. Women must not only be given a nominal presence in the process, and/or appear in separate chapters in a truth commission report. The implementation of Truth and Reconciliation Commission (TRC) recommendations to address gender-based violence should be a high priority, including recommendations on memorialisation, reparations, and state recognition. The larger society must know the truth about what happened to women during the conflict, and recognise the specific nature of suffering that women have undergone. As a way of recognising structural injustices, this can become a driver of post-conflict reconstruction and reconciliation.

If alternatives to the formal justice system are explored, their effectiveness and their ability to address not only gender concerns but also international human rights standards should be tested. For many women's groups the biggest problem of traditional justice mechanisms has been their lack of gender sensitivity, both at the level of individual justice operators, and in structures. Alternatives might include local mediation, use of paralegals, Palava Hut⁸ discussions and codification of customary law. Most importantly, women should be consulted in the application and modification of these alternatives. For most of the women interviewed for this study, as well as in the comparative literature on transitional justice, forgiveness necessarily has to be accompanied with recognition of crimes committed by the perpetrators. This claim is highly gender-specific and has transformative power. 'They need to recognize what they did', was the statement reiterated during many meetings. 'We can forgive but not forget.' For most women consulted in this research, the path to reconciliation starts with the recognition of the atrocities committed against them, the state acknowledging their victimisation, (with women ultimately no longer being stigmatised for what they have suffered), and ends with the demand that perpetrators plea their victims for forgiveness.

In Liberia and Sierra Leone, the TRC processes, albeit critiqued for the many ways they did not achieve their objectives on truth and reconciliation – nevertheless as an exemplary first step towards gendered transitional justice, collected tens of thousands of testimonies, of which almost half were from women. The Liberian TRC was the first to include the diaspora in a truth and reconciliation process. Among the diaspora, statements were taken from Liberian refugees in the United States and in neighbouring West African countries. The recently established Ivorian TRC, in line with the recommendations of resolution 1325 and the African regional human rights system has included in its mandates: listening to women refugees and IDPs and the creation of two specific commissaire posts for women.

8 The Palava hut process is a dispute resolution mechanism accompanied by cleansing rituals that has been used by the Kwa-speaking people in Liberia in the case of tribal warfare between two ethnic groups. It embodies the key dimensions of truth-telling, accountability, reconciliation and reparation. See, for example, Pajibo 2008.

3.2 Reporting and registering

What women face almost everywhere, is not only a problem of justice and data, but also, on a more concrete level, many difficulties when trying to report cases of GBV through justice systems. Courts in countries recovering from conflict are often understaffed, meaning that cases are not called for hearing. In many West African countries, legal advice is very expensive and thus unattainable for women. Mediators should insist that societies debate whether and to what extent war-time perpetrators of GBV will face legal consequences. The creation of free and otherwise accessible mechanisms for reporting and registering is key in this process.

In Côte d'Ivoire and Sierra Leone a medical certificate 'proving' rape for the court can cost over US\$100 – an amount that most women cannot afford. Though sexual and domestic violence cases reported to the police might result in an arrest, few are tried in court and convictions are rare. From the point of view of women, government authorities are perceived as distant, inefficient and on the side of men. Therefore, training and awareness-raising among judges is vital. Another serious issue that prevents women from reporting GBV is the fact that survivors are often pressured to regard their cases as internal family matters to be dealt with outside of the formal justice system.

Since there are no gender-sensitive legal provisions in place related to the participation and protection of witnesses and victims, creating mechanisms of informal data gathering and approaching other witnesses of GBV is also critical. Pharmacists and health clinic personnel, for instance, are often well-aware of the prevalence of GBV. On the other hand, as Dziewanski (2012:13) reminds us, national monitoring systems are usually not sufficient because the extent to which they reflect the actual situation depends both on the state's capacity to provide data on incidents of violence and the ability or willingness of survivors to report them. Contextualisation and interpretation of the data from different angles should be taken seriously as well. As an example, in Liberia, no study currently exists that makes use of interviews with male perpetrators of sexual violence.

Concrete support to victims must go beyond collecting testimonies. And experts underline the importance of maintaining the confidentiality and protection of victims throughout the process of collecting testimonies. Women need to feel that they will not risk anything by telling their story. Furthermore, counselling needs to be given before the testimonies are recorded since recollecting and sharing the experience of violence can be both healing and frustrating. In fact, focus group participants for this study shared examples where testimonies led to deepening frustration but not healing. Nothing had followed after several rounds of talking to outsiders.

In spite of the extensive impunity and difficulties with the judicial systems, there remains a level of confidence in justice systems among the women in civil society organisations and public service interviewed for this study. In Côte d'Ivoire, testimonies of rape are collected by different organisations to permit the prosecutor of the Republic to open investigations. In Liberia, the 2012-enacted rape law is an indication that the state is becoming less tolerant of GBV-related crimes.

3.3 Property inheritance and land rights

The fierce competition over economic resources, particularly land, can trigger violence and revive old conflicts. When reparations or restitution of property are discussed, more attention needs to be focused on the rights of widows and other women as legal inheritors of land and property, and monitoring mechanisms created to ensure the effective implementation of land restitution. In countries where the pre-conflict context was profoundly biased against women and land ownership, there may be a need to address not only the fallout from the conflict, but also the inequalities and discrimination that existed before the conflict (UNEP 2013).

In the civil wars of Sierra Leone and Liberia in the 1990s, and to a large extent in Côte d'Ivoire at the beginning of 2000, land rights were at the heart of the conflict. According to Haas and Schäfer (2009:3), young men in these countries took up weapons in order to remove corrupt political elites who were perceived to be 'ruining' the country and robbing natural resources.

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In fact, young combatants would often target old men in the villages who were perceived to be powerful and who had demanded extremely high bride prices when they married off their daughters. In all three countries, marriage, land use rights, and political participation were prerequisites for recognition as full men. These prerequisites of ‘manhood’ were often systematically denied to young, low-ranking men – and hence many joined the rebel groups (Schäfer 2009:3). This intense competition for economic resources and opportunities, together with rigid age stratification, was one of the triggers of violence in all three West African countries.

When the war was over, widows especially had to struggle to retake possession of their husbands’ land in situations in which their in-laws did not recognise their right to the land. In most cases, property inheritance and land ownership were regarded as belonging to the husbands’ male family members. Women whose husbands had died before they had children were the worst off as they could not claim their husband’s possessions, including land he would have inherited. More complicated were cases where families refused to recognise the legitimacy of marriages or children born in exile. As a consequence, women were either pressured to leave the family land, or had to stay and accept the leadership of the male relatives or the family.

Consequently, while widespread land disputes are a legacy of war, they are also a source of gender-based violence today. For example, with ethnic tensions heightened by the conflict and given the importance of land for security and livelihoods, the issue of access to land has been identified as a potential trigger point for renewed conflict in Liberia (UNEP 2013:29–30). In Côte d’Ivoire, experts consulted for this study indicated that some of the most complex issues of GBV currently have to do with the rights of women to inherit land, and the traditional practice wherein widows become a possession of the deceased husband’s brother (levirate⁹).

9 Levirate marriage is a type of marriage in which the widow is obliged to marry her deceased husband’s brother, and the brother of a deceased man is obliged to marry his brother’s widow.

4. Understanding post-conflict gender-based violence in order to minimise obstacles for reconciliation

It is often the case in conflict contexts that women will acquire unaccustomed social and political leadership roles in their communities while men are engaged in warfare – which temporarily weakens traditional hierarchical structures. In many conflicts this can strengthen the roles women play in mobilising constituencies and advocating for an end to the conflict with key combatant actors. Yet this type of newly acquired agency can become a source of tension. It is important to understand that these multiple roles – victim, survivor, mediator, and community leader – also expose women to further violence, especially locally, when positions of power are being renegotiated in post conflict. Resolution 1889 (2009) urges all programs providing support to post-conflict processes to evaluate the degree to which women are safely habilitated and technically prepared to engage on equal footing with men. Further, these evaluations should assess whether women are able to build cohesive platforms, organise coalitions, debate and agree with partners on how to bring about cultural change, create awareness and garner support from women in both rural and urban areas (UN Women 2012).

This is important because when demobilised but not completely disarmed combatants return to their homes and families, war behaviours often move to the private sphere. In many countries that have suffered a violent conflict, rates of interpersonal violence remain high after the cessation of hostilities (WHO 2002:15; Theidon 2011:15). In this sense, disarmament, demobilisation, and reintegration (DDR) are at the heart of gender-sensitive peace agreements. Not everything can be resolved in a peace process, but with today's knowledge of post-conflict violence, mediation should always address the options available for the prevention of future community violence in face of demobilisation. In order to provide secure conditions for women, the impacts of DDR arrangements on civilians need to be assessed before the implementation of reintegration programs. DDR and its subsequent implementation phases create scenarios for power struggles

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where the reassertion of violence in the private sphere may constitute a form of compensation for male combatants for their loss of public status and hegemony. Furthermore, engaging in violence can be a rational choice for men when there are few other opportunities to gain economic security, social status and value within their communities, and security for their families and communities (Pratt and Richter-Devroe 2011:495).

Theidon (2013:17) has highlighted how, according to organisations that monitor processes of disarmament, arms are used to commit violence against women within the household by intimate partners and friends. This happens during conflict as sanctions against violence break down, and women's social and economic vulnerability increases, but often escalates in post-conflict environments. In situations of conflict and endemic violence, hyper-masculinity plays an enlarged and elevated role. Its social power is intensified when violence is endemic, and other social structures are weak. The keeping up of these hyper-masculine patterns and hierarchies is particularly strong in the immediate post-conflict process. Haas and Schäfer (2009:6–7) have noted how outside the capital in Liberia, old male and female elites used all means at their disposal to undermine the new national guidelines on post-conflict inclusiveness. Also in neighbouring Sierra Leone, female circumcisers, who are highly regarded and powerful, interpreted selective female genital mutilation as a way to help re-establish the old social order, and some actually received expense allowances from the wives of high-ranking politicians (Cohen 2013:385). This political and economic support by elite local women to traditional structures was also reported in Côte d'Ivoire.

More attention should be directed at creating early warning mechanisms to alert national authorities and international actors monitoring peace processes about community violence against women, as a manifestation of GBV in a post-conflict situation. Young women are particularly vulnerable, as they are commonly the victims when domestic and community violence rates go up after a demobilisation process. In a way, sexual violence during war time translates to a 'normal state of affairs' in unstable post-conflict societies. A recent study by the Small Arms Survey (2012:7–8) found that

while females are the predominant targets of sexual and domestic violence, males and females generally experience similar rates of victimisation in terms of overall criminal offences.

Many ex-combatant females who joined combat units in the hope of a better future are reported to be the most miserable now in West Africa (Conciliation Resources 2012:8). Many are frustrated and could take up weapons again to secure their livelihood. Young male ex-combatants are another frustrated group who suffer distrust and rejection by society. However, according to the Small Arms Survey (2012:7), despite the persistent stigma that appears to surround this group in Liberia, the role of ex-combatants in sexual violence in post-conflict Liberia may be overstated. Perpetrators of sexual and domestic violence are apparently more likely to be friends, neighbours or family members. Data by the same organisation shows that approximately four per cent of GBV cases are gang rapes, indicating that 95.2 per cent of GBV offenders are males who are generally much older than their victims.¹⁰ Moreover, in the same study a rape counsellor at the Du Port Road Clinic in Monrovia observed that most rape cases she comes across involve girls and young women between five and seventeen years old (Small Arms Survey 2012:8). A disturbingly high number of GBV survivors in post-conflict environments are very young girls who have been raped by family members, friends, or neighbours.

According to the IRC (2012:3–5) ignoring these so-called ‘private matters’ results in a failure to confront one of the most significant public health crises and is a primary obstacle to women’s empowerment in post-war societies. The deeper scars of domestic violence often manifest as shame, humiliation and isolation – which inhibit a woman’s participation in social, economic or community activities and render reconciliation efforts difficult. It also inhibits young girls from becoming full members in their societies.

10 On average, perpetrators of sexual violence and domestic violence are approximately 25 and 33 years old, respectively. The household survey data indicates that the majority of victims are young girls who are on average just under 19 years old.

5. Conclusion

Evidence from many conflicts is showing how the past decades have changed the scenarios of war, with civilians in general and women in particular becoming more tightly involved in conflict, both as targets and actors. The vast majority of today's conflicts have moved from battlefields to cities, their outskirts, and villages where civilian lives are intertwined with war and conflict actors. This has subjected civilian populations to rules of violence for extended periods of time and simultaneously changed the roles women play drastically. Because of these new settings, women have emerged as indispensable actors in mediating peace: they lead and understand the logics of peace movements, and are essential in shaping the international normative frameworks regulating conflict.

A new complex social and political terrain is emerging, characterised by formal gains of women in normative and constitutional developments, and the political displacement of men. The presence of women peace-builders can reorient negotiations away from limited notions of cessation of hostilities and power-sharing to issues of social justice such as responsibility sharing for the victims and communities affected by war (ICAN 2015:6). It is on this new, uncertain territory that women's gains and the changing roles of men in post-conflict situations are played out. Cahn and NíAoláin (2009:8) remind us that many forms of violence may be hidden in post-conflict processes and have more to do with the real or symbolic displacement of men from pre-war or war time power positions. Because of these power struggles, in order to secure benefits for women, the whole conflict cycle should be acknowledged and analysed, and key implementation arrangements should be negotiated within the peace agreements. Land ownership, property inheritance, and elections stand out in this context as the most contested issues.

A transformative and inclusive peace process that changes conceptions of the status quo, fights gender-based violence, and includes women in post-conflict planning could remove many risks from women's agency in post-conflict peace and security. It could gradually reform structural

factors that constrain women's participation. In Africa today, the African Union, its member states and regional organisations such as ECOWAS have elaborated gender policies and adopted gender declarations, action plans and frameworks, strategic plans, gender audits and gender analysis tools which guide mainstreaming, programming and budgeting. They have also developed training tools and resources. Yet a stronger integration of efforts between mediation, post-conflict reconstruction and reconciliation with their impacts on gender relations is still to be developed. In peace mediation the agenda has been created but it needs the political will of strategically placed men and women to put it in practice in concrete processes. It needs states not only to formally adopt the language and recommendations of resolution 1325, but to act according to its spirit.

Sources

- African Union 2003. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women* (The Maputo Protocol) 2003. Maputo, Assembly of the African Union.
- African Union 2004. *Solemn declaration on gender equality in Africa*. Addis Ababa, African Union.
- African Union 2009. *African Union Gender Policy*, Rev 2/Feb 10, 2009. Addis Ababa, African Union.
- Bell, Christine and Catherine O'Rourke 2010. Peace agreements or pieces of paper? The impact of UNSC Resolution 1325 on peace processes and their agreements. *International and Comparative Law Quarterly*, 59 (4), pp. 941–980.
- Cahn, Naomi and Fiona NiAoláin 2009. Hirsch Lecture: Gender, masculinities, and transition in conflicted societies. *New England Law Review*, 44 (1), pp. 2–23.
- CEDAW (Committee on the Elimination of Discrimination against Women) 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available from: <www.un.org/womenwatch/daw/cedaw/cedaw.htm> [Accessed 20 February 2015].
- CEDAW 1992. General Recommendation No. 19 (11th session, 1992), Article 6. Available from: <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>> [Accessed 20 February 2015].
- Cohen, Dara Kay 2013. Female combatants and the perpetration of violence: Wartime rape in the Sierra Leone civil war. *World Politics*, 65 (3), pp. 383–415.
- Cohen, Dara Kay and Amelia Hoover Green 2012. Dueling incentives: Sexual violence in Liberia and the politics of human rights advocacy. *Journal of Peace Research*, 49 (3), pp. 445–458.
- Conciliation Resources 2012. *People's perspectives on insecurity in West Africa*. Case study report. Available from: <http://www.c-r.org/downloads/PPP_instability_WestAfrica.pdf> [Accessed 15 March 2014].

Getting the past right in West Africa and beyond: Addressing gender-based violence

- Coomaraswamy Radhika 2015. *Preventing conflict, transforming justice, securing the peace: A global study on the implementation of the United Nations Security Council resolution 1325*. New York, UN Women.
- Dabo, Awa 2012. *In the presence of absence: Truth-telling and displacement in Liberia*. New York, International Center for Transitional Justice.
- Dziewanski, Dariusz 2012. *Peace without security. Violence against women and girls in Liberia*. Issue Brief 3/2012.
- El-Bushra, Judy 2012. *Gender in peacebuilding: Taking stock*. London, International Alert.
- El-Bushra, Judy and Ibrahim Sahl 2005. *Cycles of violence: Gender relations and armed conflict*. London and Nairobi, ACORD.
- Gomes Porto, João and Kapinga Yvette Ngandu 2014. The African Union, preventive diplomacy, mediation, and the Panel of the Wise: Review and reflection on the Panel's first six years. *African Security*, 7, pp. 181–206.
- Haas, J-W. and Rita Schäfer 2009. *Masculinity and civil wars in Africa – New approaches to overcoming sexual violence in war*. Eschborn, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ).
- Hovil, Lucy 2012. *Gender, transitional justice, and displacement: Challenges in Africa's Great Lakes Region*. New York, International Center for Transitional Justice.
- IASC (Inter Agency Standing Committee) 2005. *Guidelines for Gender based Violence Interventions in Humanitarian Settings. Focusing on Prevention and Response to Sexual Violence in Emergencies*. Geneva, Inter Agency Standing Committee.
- ICAN (International Civil Society Action Network) 2015. *The better peace tool*. First Edition. Available from: <www.betterpeacetool.org> [Accessed 10 November 2015].
- IRC (International Rescue Committee) 2012. *Let me not die before my time: Domestic violence in West Africa*. New York, International Rescue Committee.
- Kelly, Liz 1988. *Surviving sexual violence*. Cambridge, Polity Press.
- Meertens, Donny 2012. *Forced displacement and gender justice in Colombia: Between disproportional effects of violence and historical injustice*. New York, International Center for Transitional Justice.
- Nagarajan, Chitra and Caroline Green 2012. *Putting women's rights into the Arms Trade Treaty*. London, Gender Action for Peace and Security (GAPS).
- Nordås, Ragnhild 2011. *Sexual violence in African conflicts*. CSCW (Centre for the study of civil war) Policy Brief 01.2011. CSCW/PRIO (Peace Research Institute Oslo).
- O'Reilly, Marie, Andrea Ó Súilleabháin and Thania Paffenholz 2015, *Reimagining peacemaking: Women's roles in peace processes*. New York, International Peace Institute.
- Paffenholz Thania, Antonia Potter Prentice and Cate Buchanan 2015. *Fresh insights on the quantity and quality of women's inclusion in peace processes*. Geneva, CCDP (Centre on Conflict, Development and Peacebuilding) Policy Brief.
- Pajibo, Ezekiel 2008. *Traditional justice mechanisms: The Liberian case*. Stockholm, International Institute for Democracy and Electoral Assistance (IDEA).
- Pankhurst, Donna 2008. Introduction: Gendered war and peace. In: Pankhurst, Donna ed. *Gendered peace: Women's search for post-war reconciliation*. London, Routledge.

- Pratt, Nicola and Sophie Richter-Devroe 2011. Critically examining UNSCR 1325 on Women, peace and security. *International Feminist Journal of Politics*, 13 (4), pp. 489–503.
- Rehn, Elisabeth. and Ellen Johnson Sirleaf 2002. *Women, war, peace: The independent experts' assessment on the impact of armed conflict on women and women's roles in peace-building*. New York, UN Women.
- Small Arms Survey 2012. *Liberia armed violence assessment*. Geneva, Small Arms Survey.
- Steans, Jill 2006. *Gender and international relations: Issues, debates and further directions*. Cambridge, Polity.
- Tarnaala, Elisa 2013. Gender-based violence and peace processes in West Africa: Outlining a framework for mediators. Crisis Management Initiative (CMI). Helsinki, Unigrafia. Available from: <http://www.cmi.fi/images/GBV_Report_Outlining_Framework.pdf> [Accessed 10 March 2014].
- The Fourth World Conference on Women 1995. *Beijing declaration and Platform for action*. Available from: <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>> [Accessed 10 March 2014].
- Theidon, Kimberly 2011. *Gender, conflict and peacebuilding: Lessons learned and challenges ahead*: A USIP State of the Field Report. Washington, D.C., United States Institute of Peace.
- UNEP (United Nations Environment Programme) 2013. Policy Paper No.4. *Women and natural resources. Unlocking the peacebuilding potential*. New York, United Nations.
- UN Secretary-General 2012. United Nations guidance for effective mediation. In: *UN Peacemaker*. New York, United Nations.
- UN Security Council 2000. Resolution 1325. S/RES/1325 (2000). Available from: <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS%20SRES1325%20.pdf>> [Accessed 20 February 2015].
- UN WOMEN (United Nations Entity for Gender Equality and the Empowerment of Women) 2012. *Identifying women's peace and security priorities*. New York, UN Women.
- Vines, Alex 2013. A decade of African Peace and Security Architecture, *International Affairs*, 89 (1), pp. 89–109.
- WHO (World Health Organisation) 2002. *World report on violence and health*. Ed. Etienne Krug.
- Wood, Elizabeth Jean 2009. Armed groups and sexual violence. When is wartime rape rare? *Politics and Society*, 37 (1), pp. 131–161.

The International Criminal Court and conflict transformation in Uganda: Views from the field

*Linus Nnabuike Malu**

Abstract

The International Criminal Court (ICC) commenced investigation of the armed conflict in Uganda in 2004. In 2005 it issued arrest warrants for five leaders of the Lord's Resistance Army (LRA). This article examines how the court's involvement in the situation has impacted on conflict transformation in Uganda after ten years of judicial work. It also addresses the problem of assessing the impact of law on conflict through the use of an analytical framework that is based on four variables: deterrence, victims' rights, reconciliation, and accountability to the law. Relying on this framework, and on a report of a field research project in Uganda, it argues that the ICC's intervention has had multiple impacts on the situation in Uganda, and that despite some arguments to the contrary, the ICC does promote conflict transformation through deterrence, promotion of accountability to the law and promotion of victims' rights.

Keywords: ICC, conflict transformation, Uganda, international justice, LRA.

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1. Introduction

The struggle to promote accountability at national levels by the international community through international justice mechanisms has a fairly long and tortuous history, stretching back to 1919 after the First World War (Schabas 2012:6) and taking root in 1945 during the Nuremberg and Tokyo trials. There is also a domestic dimension to the evolution of international accountability which, Sikkink (2012:250) argues, comes from the diffusion of accountability practices from country to country, within regions, from region to region and finally flowing into the international system of accountability. As a result of these developments and the focus of the international community on human security, a new normative order seems to be emerging. This order emphasises the protection of people from abuse during conflict and in peacetime, and accountability for abuses (Teitel 2011:10). These developments are concerned with protecting humanity both in human rights and criminal law contexts from abusive conduct on the part of states, officials, and criminal groups. Scholars such as Sikkink (2011:227) and Akhavan (2001:2) argue that prosecution in transitional societies could lead to improvements in human rights protection. Nevertheless, it is doubtful if the surge in accountability has indeed stirred more respect for the rule of law, or prevented conflicts. It is also debatable whether accountability has inspired peace (Drumbl 2007:10). Since the end of the Second World War, for instance, armed conflict continues to confront the world in different regions. The end of the Cold War gave rise to hopes of a new peace based on universal law and a new political order. But these hopes were dashed as conflict arose in Afghanistan, Kosovo, Iraq, Iran, Syria, and in different parts of Africa, coupled with the astounding rise in terrorism and religious fanaticism (Teitel 2011:10). The international community responded through direct interventions in several of these conflicts and through the deployment of international justice mechanisms in the former Yugoslavia, Rwanda, Sierra Leone, Lebanon, East Timor and Cambodia, and finally, through the establishment of the ICC. The hope was that reliance on law and adherence to laws prohibiting aggression and other crimes could ultimately promote

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peace and reduce conflicts (Schabas 2001:616). The ICC, an entirely new mechanism for conflict transformation, represents the new order which embodies the progress of the international community in combating impunity. This new order frowns upon amnesty and requires that the terms of any peace agreement to be in accord with international law as enshrined in the Rome Statute.

To illustrate the above, this article examines the conflict in northern Uganda between the Government of Uganda (GoU) and the LRA, the peace efforts made at managing it, and the intervention of the ICC in the conflict. The focus of the article is on the impact of the ICC's intervention on conflict transformation in northern Uganda. The central issue examined is whether the ICC is facilitating conflict transformation or stalling/complicating it, or having little or no impact on it. The article explores these issues from the perspectives of relevant literature on international justice and conflict transformation, and also from the findings of field research conducted in Uganda in 2013. Concerning the conflict transformation in Uganda, this article relies on an analytical framework that integrates findings according to four variables: deterrence, promotion of victims' rights, promotion of reconciliation, and promotion of accountability to the law. Once identified, many scholars use these terms to discuss and make sense of the impact that international justice has had on conflict and post-conflict situations (Akhavan 2001:1; Nouwen 2012:186). The article will examine this question in terms of how the ICC promotes accountability to the law, how it promotes victims' redress, how it contributes to deterrence, and how it supports reconciliation processes.

Darehshori and Evenson (2010:22) state that the ICC intervention in post-conflict situations supports conflict transformation. They argue that the existence of arrest warrants for leaders suspected of international crimes does not necessarily undermine the peace process. Also, Nouwen (2012:186) submits that the ICC, by operationalising international law and by deterring crimes is inevitably contributing to peace building in Africa. Lanz (2007:27) also opines that the peace and justice controversy in northern Uganda should be understood as a manifestation of the tensions

between different actors with different agendas and priorities, and that the ICC despite its limitations, promotes the peace process in Uganda. This article looks beyond the immediate issues of how to end the conflict in northern Uganda, and how to build peace after the conflict. It also focuses on the long term strategies of transforming conflict in northern Uganda. It examines whether the ICC intervention contributes to conflict transformation by providing long-term strategies for addressing some of the root causes of the violent conflict, such as massive violations of human rights and systemic impunity embedded in the legal system of Uganda. The article therefore argues that the ICC will be contributing positively to conflict transformation in Uganda if it promotes reconciliation, accountability to the law, rights of victims of atrocities, and deters future atrocities or gross human rights violations. It argues that the degree of impact will depend on the nature, degree and scope of impact on all or some of the variables.

2. Methodology

A qualitative methodology was used for the research. Data for the research was collated from in-depth interviews, and from answers to questionnaires which were administered to respondents in Uganda. The researcher visited Uganda from 10 November 2013 to 3 December 2013 and interviewed some of the respondents. Also, from January, 2014 to February 2015, the researcher administered questionnaires to respondents in Uganda. A total of twenty persons were given in-depth interview, while two questionnaires were administered to two respondents. The respondents were lawyers, staff of some NGOs who work on transitional justice, one law teacher, human rights activists, researchers, one government official, one religious leader, youth leaders and other experts involved with international justice and conflict transformation in Uganda. Data for this study was mainly drawn from interviews, although most case studies involve the use of multiple methodologies. Such methodologies were not used because of the financial limitation on this study. Also, the results of the study were not compared with results from other sources. Still, the in-depth interviews used have been a rich source of qualitative research data.

3. Synopsis of the conflict in Northern Uganda

The conflict in northern Uganda erupted after the National Resistance Army/Movement (NRA/M) took over the government of Uganda in January 1986 (Human Rights Watch 2005:8), and the subsequent NRA/M's attacks on Acholis occurred after the regime change (Otunnu 2002:11; Royo 2008:6). Economic and political divisions and disparities between the north and south, partly created by the colonial government and exacerbated by the post-independence governments, are frequently cited as some of the main causes of the conflict (Happold 2007:4; Mallinder 2009:6; Royo 2008:6).

After the overthrow of General Tito Lutwa Okello in January 1986 by the NRA/M, embattled government soldiers from the deposed regime fled to the north, and to neighbouring countries (Royo 2008:8). In subsequent months, these soldiers who were mainly from northern Uganda, re-grouped under different armed organisations (the most significant among them was the Uganda People Democratic Army [UPDA]) to fight the NRA and to protect the interests of the north (Human Rights Watch 2005:8). The crisis in the north also led to the emergence of political and military leaders who claimed to be spirit mediums.¹ One such leader was Alice Auma Lakwena, who established the Holy Spirit Movement (HSM) and led armed campaigns against the NRA (Mallinder 2009:7). These northern resistance groups soon disappeared: the HSM was crushed at Jinja as its soldiers marched toward Kampala in late 1986, while the UPDA signed a peace agreement in 1988 with the GoU (O'Kadameri 2002:35). The demise of the two groups created a vacuum which was filled by the former members of these groups, who later formed two other new groups: The Lord's Army (Also called Holy Spirit Movement II), led by Alice Aluma Lakwena's father, Savarino Lukoya, and the LRA, led by Joseph Kony (O'Kadameri 2002:34). The Lord's Army quickly disintegrated because the leader could not provide the charisma reminiscent of the Alice Lakwena era. The LRA led by charismatic Joseph Kony combined spiritual elements and military powers to become the de facto resistance movement.

1 Spirit mediums were people in northern Uganda who claimed they were possessed by certain spirits, and thus were purportedly directed by the spirits.

The LRA enjoyed the support of the Sudanese government, but this stopped after the signing of the Nairobi Peace Agreement in 2005² (Human Rights Watch 2005:9). Between 1989 and 1991 the group killed hundreds of people, abducted thousands from villages in northern Uganda, and also tortured and mutilated civilians by cutting off their hands, ears or lips (Nyeko and Okello 2002:18; UN High Commissioner for Human Rights and Uganda Human Rights Commission 2011:xiii). Over 66 000 persons were said to have been abducted in Acholi land between 1998 and 2005, with 20% of male abductees and 5% of female abductees believed to have been killed (UN High Commissioner for Human Rights and Uganda Human Rights Commission 2011:xiii).

In 2002, the Ugandan Army (also called the Uganda Peoples Defence Forces [UPDF]), with the Sudanese government's consent launched 'Operation Iron Fist I', and in 2004 'Operation Iron Fist II' against the LRA inside Sudan. In response, the LRA fled to northern Uganda where it expanded its operations to areas previously untouched by the war, such as Lira and Teso sub-regions in eastern Uganda, and territories in the DRC (Lanz 2007:6). The LRA also began larger scale abductions, killings, looting, and general attacks on civilians, thus causing an upsurge in the number of people leaving their homes and exacerbating the humanitarian situation. The government responded by ordering people in abandoned villages to move to government camps. According to a Human Rights Watch account (2005:10), there were more than 500 000 internally displaced persons in early 2002. By late 2002, as a result of LRA's return to northern Uganda, and under the UPDF order, the number increased to about 800 000. The LRA has since 2005 been driven out of northern Uganda. Its operations have also decreased and are now limited to the Democratic Republic of Congo and Central African Republic.

2 The Comprehensive Peace Agreement (CPA) was signed by the Government of Sudan and the Sudan People's Liberation Movement to end the Second Sudanese civil war, and to develop a timetable for the independence of Southern Sudan.

4. The International Criminal Court's intervention in the conflict.

Uganda signed the Rome Statute in 1998 and later ratified it in June 2002. The conflict in northern Uganda was subsequently referred to the ICC in December 2003, by the GoU. In July 2004, the chief prosecutor decided that there was a reasonable basis to open an investigation into the 'situation concerning northern Uganda'. The chief prosecutor later filed an application for warrants of arrest for five leaders of the LRA. No member of the UPDF was indicted because, according to the chief prosecutor, the crimes committed by the LRA were of higher gravity than those allegedly committed by the Ugandan Army (Lanz 2007:7). In July 2005, Pre-Trial Chamber 11 of the ICC granted the chief prosecutor's application, and issued warrants of arrest for five LRA leaders, namely: Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya, and Dominic Ongwen. The warrants of arrest were unsealed in October 2005. The cases against Raska Lukwiya and Okot Odhiambo were terminated after their deaths were confirmed. In 2014 Dominic Ongwen surrendered, and is currently in the custody of the ICC, charged with three counts of crimes against humanity and four counts of war crimes. Joseph Kony and Vincent Otti are still at large.

The intervention of the ICC in Uganda was received with mixed reaction (Tenove 2013:3). While the intervention was welcomed by most international human rights and justice non-governmental organisations (Allen 2006:96), it received a hostile reception from many local groups in the north, such as Acholi leaders, local non-governmental organisations, the Amnesty Commission of Uganda, and religious groups under the auspices of Acholi Religious Leaders' Peace Initiatives (ARLPI). The main concerns about the ICC intervention were that: the timing of the arrest warrant was ill-conceived; the chief prosecutor did not make public the results of his investigations into the crimes committed by the UPDF (Human Rights Watch 2012:5); the court was biased (Mallinder 2009:39), and the ICC will exacerbate the conflict or complicate the peace process.

Another concern about the ICC in Uganda is that it sidelines traditional mechanisms for conflict resolution and reconciliation, thereby allegedly complicating the peace process. The ICC is perceived as an inappropriate imposition that dispenses a foreign concept of justice, without the capacity to heal psychological wounds, establish individual responsibility, and reconcile parties to the conflicts. The proposition for the use of traditional transitional justice mechanisms for the conflict came from various groups, including human rights activists, peace activists, aid workers, religious groups, traditional leaders, and representatives of the LRA. The GoU is also in support. Though it referred the situation to the ICC in 2003, in 2007 – following the peace talks in Juba – it also signed an agreement on accountability and reconciliation with the LRA. This proposed among other things, that local measures drawn from the customs of the Acholis and their neighbours should be recognised and incorporated into Ugandan law.³

5. The Amnesty Programme in Uganda

The current amnesty was introduced to Uganda in January 2000 as part of the government's efforts to implement its policy of reconciliation and establish peace and security in the country. The programme was introduced after years of violent conflict and disastrous attempts by the government to end these conflicts through the use of force (Hovil and Lomo 2005:3). Thus, the Amnesty Act was enacted in 2000 to provide amnesty to Ugandans involved in armed conflicts in various parts of the country. The central objective is to entice people to abandon insurgency without fear of prosecution, with the aim of ending the conflicts in various parts of Uganda (International Centre for Transitional Justice and Human Rights Centre, University of California 2005:46). Since the enactment of the Act, over 26 000 persons have benefited from the Amnesty Programme (Interview with an Officer of the Amnesty Commission of Uganda, 21 November 2013). But only 5 000 have been resettled (Daily Monitor Newspaper, 16 May 2013). Out of this number, only 55% were from the LRA (Mallinder 2009:31).

3 Agreement on Accountability and Reconciliation signed between the GoU and the LRA during the JPT. See *Beyond Juba: Building consensus on sustainable peace in Uganda* 2015.

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The Amnesty programme introduced by the 2000 Act is popular as there seems to be wide-spread support for it as one of the mechanisms of conflict transformation in northern Uganda (Hovil and Lomo 2005:31; International Centre for Transitional Justice and Human Rights Centre, University of California 2005:47). Research conducted by Refugee Law Project (2005:2) shows that 'despite a number of challenges in its implementation, the Amnesty Law is perceived as a vital tool for conflict resolution, and for long-term reconciliation and peace within the specific context in which it is operating'. The programme has also been praised for its ability to promote the peace process, and encourage combatants to surrender. According to a respondent, the programme is 'one path towards peace because if the rebels all come out, including their commanders then peace can also prevail, and then justice can follow/come later' (Interview with a member of the Acholi Religious Leaders Peace Initiatives, 14 January 2015). The programme is nonetheless criticised for its inability to impact significantly⁴ on LRA members (Mallinder 2009:31). Most of the respondents interviewed during this study in Uganda⁵ state that amnesty is important for the resolution of the conflict in the north because the majority of the people who participated in war were former abductees who deserve amnesty (Interview with a Law Lecturer in Uganda, 14 November 2013), and because amnesty will assist in settling the conflicts since it facilitates reconciliation and resettlement (Interview with a Legal Practitioner in Uganda, 27 November 2013). Other respondents argue that the amnesty programme supports the peace process by enabling people to abandon the rebellion and return to their homes (Interview with a Youth leader from northern Uganda, 30 November 2013), and that African culture and processes of peace support amnesty, forgiveness, reconciliation, and performance of rituals to cleanse the society (Interview with a Lecturer in peace and conflict resolution in Uganda, 15 November 2013). Another view is that in addressing conflict transformation all mechanisms, including amnesty should be explored

4 Mallinder (2009:1) states that only 55% of those that benefited from the programme are LRA members.

5 Interviews were conducted in Uganda between 11 November 2013 and 2 December 2013.

(Interview with a female NGO Executive in Uganda, 20 November 2013). However, several respondents objected to the granting of amnesty to senior members of the LRA who committed grave international crimes. They argue that such persons should be punished.⁶ The views of respondents in support of the Amnesty programme are captured by one interviewee, who stated:

Amnesty helped the peace process in Uganda. First, in the amnesty programme, there is a perspective for peace and reconciliation, because of the nature of the conflict, since we were dealing with our children, amnesty was important. Second, there is no contradiction in the ICC interventions and the amnesty programme of the government (Interview with a Lecturer in Uganda, 14 November 2013).

The amnesty programme in Uganda, despite its procedural, legal, financial and implementation challenges is good for conflict transformation since it has facilitated the return of over 26 000 persons, some of them from the LRA. The ICC's involvement does not stop the rank-and-file LRA fighters from taking advantage of the amnesty programme, but, as alleged by the LRA leaders during the Juba Peace Talks, the ICC may be blocking the leaders of the LRA from taking advantage of the amnesty programme, and to that extent may be complicating the peaceful resolution of the conflict.

6. The Juba Peace Talks

One of the main initiatives to end the conflict in northern Uganda was the Juba Peace Talks (JPT) held in Juba, South Sudan, between the GoU and the LRA from July 2006 to April 2008. The JPT was mediated by the then South Sudan Vice-President, Riek Machar (Wijeyaratne 2008:4). The negotiation produced six main documents or agreements signed by the GoU and the LRA. The Final Peace Agreement (FPA) signing ceremony was arranged for April 2008 in Ri-Kwangba, but Kony failed to arrive for the ceremony. The failure of the LRA to sign the FPA was a big disappointment to many (Wijeyaratne 2008:5). However, some of the agreements are

6 The majority of those interviewed in Uganda in November 2013 and December 2013 shares this view.

already being implemented by the GoU. For instance, the establishment of the International Crimes Division of the High Court of Uganda in 2008 is as a result of the agreement on accountability and reconciliation. The JPT is also credited for promoting the peace process, improving security in northern Uganda and embedding international accountability standards into the negotiation agenda (International Crisis Group 2007:8). The ICC has been criticised for obstructing the Peace Talks by refusing to withdraw the arrest warrants for five LRA leaders and for being directly responsible for the refusal of the LRA to sign the FPA as Kony was said to fear being apprehended and taken to the Hague (Nouwen 2012:186; Tenove 2013:3). But the ICC was credited for propelling the Peace Talks as the threat of international prosecution helped to bring the LRA to the negotiation table. It was also credited with making accountability one of the core issues during the negotiation (International Crisis Group 2007:12). Thus, the ICC impacted both positively and negatively on the peace process, and also on conflict transformation in Uganda in similar ways.

The preponderance of opinion from respondents is that the intervention of the ICC propelled the peace process by influencing the LRA to join the JPT. This view was canvassed by some of the respondents who opine that it is doubtful if the LRA would have joined the JPT if the ICC had not indicted its leaders. They argue that the LRA leadership calculated that they could neutralise the ICC intervention and the arrest warrants by seeking peace. One such respondent is a Legal Practitioner in Uganda who argued that ‘the ICC was a driver to the Juba Peace Talks and promoted the peace process in Uganda positively by indicting leaders of the LRA, which forced them to negotiate for peace’ (Interview with a Legal Practitioner in Uganda, 27 November 2013). The Director and the Project Coordinator of a peace and conflict organisation who were interviewed together in Uganda said as much when they stated that ‘the ICC was one of the key factors that influenced the LRA to the negotiating table, and the Juba Peace Talks were very useful as they led to discussions about the Ugandan conflict, and eventually to the withdrawal of the LRA from Northern Uganda’ (Interview with a Director and the Project Coordinator of a Peace NGO in Uganda, 21 November 2013). However, there is a minority view that

the ICC intervention stalled the JPT and frustrated the peace process. One youth leader submitted that, 'the ICC has negatively impacted on the peace process in Uganda. It was clear the ICC disrupted the Juba peace deal, because Kony was about to sign the peace agreement, but refused because of the intervention of the ICC' (Interview with a youth leader and also the project coordinator of a NGO in Uganda, 25 November 2013).

7. Furthering national efforts to promote accountability to the Law in Uganda

The intention of the ICC to establish accountability at national levels is clearly stated in the preamble to the Rome Statute where it is declared that 'the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation'.⁷ Accountability to the law suffered during the years of conflict in Uganda. In the north, where the LRA held sway, there was almost a total collapse of justice administration institutions. In the south, the rule of law also suffered as neither the LRA nor government forces that committed grave human rights abuses against civilians during the years of conflict in the north were prosecuted (Human Rights Watch 2012:10). Since the end of the conflict in the north, the GoU has made both restoration of the rule of law and accountability to the law cardinal points of its administration. The GoU embarked on the process of re-opening administration of justice institutions in the north, building new courts, establishing the International War Crimes Division of the High Court of Uganda (Tadeo 2012:1), and publishing a comprehensive transitional justice policy.

This section examines how the ICC intervention impacts on accountability to the law in Uganda by arguing that: (a) the ICC influenced the enactment of accountability-promoting laws, to the extent that, some legislation promoting accountability to the law were enacted/amended after the ICC became engaged, and (b) the ICC influenced the establishment of

7 Paragraph 4 of the Preamble to the Rome Statute (States Parties to the Rome Statute 1998).

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administration of justice promoting institutions, to the extent that some justice administration institutions were established/reformed after the ICC intervened. There are some connections between the involvement of the ICC in Uganda and/or the creation of more justice administration institutions, or the introduction of reforms in some existing justice administration institutions. It is not clear whether the ICC influenced the establishment of these institutions or the introduction of these reforms. However, it is clear that these developments took place after the ICC intervened in Uganda, and secondly, that these reforms and institutions attempt to mirror international standards or models. The GoU established the International Crimes Division of the High Court of Uganda in 2008 to try those who committed international and other crimes. The International Crimes Division is modelled after international tribunals, comprising a Bench of at least three Judges, a Registry, an Office of the Prosecutor, and that of the Defence Counsel. Another important development is the establishment of the Justice, Law and Order Sector which works on justice reforms, law and order. These developments were linked to the interventions of the ICC in Uganda by several respondents in Uganda. The point was clearly made by a respondent who opined that 'the ICC has promoted the establishment of the International Crimes Court in Uganda and has entrenched the rule of law in the area of international crimes, because right now, we have a full court dealing with international crimes (Interview with a staff of an International organisation in Uganda, 25 November 2013).

A former head of the Ugandan Human Rights Commission also stated that:

The whole discussion of establishing the Uganda international crimes court was because of the ICC. The whole debate about establishing the transitional justice system in Uganda was because of the ICC intervention. Also, the intervention of the ICC has helped in promoting access to justice in Uganda, as there are now more mechanisms for promoting the rule of law and accessing the courts in Uganda (Interview with a former head of the Ugandan Human Rights Commission, in Uganda, 18 November 2013).

The ICC influenced the enactment of accountability promoting laws, to the extent that some accountability to the law promotion laws were enacted/amended after the ICC got involved. Some of these laws mimic international laws while some introduced reforms. This article does not argue that the ICC directly facilitated the enactment of these laws and regulations, but affirms that since these laws and regulations came into place after the ICC involvement, and some of the provisions mirror their international counterparts, there is likelihood that the ICC involvement may have influenced the decisions to enact these laws and regulations. For instance, the GoU enacted the International Criminal Court Act, 2010, signed the Accountability and Reconciliation Agreement with the LRA, and published a comprehensive Transitional Justice Policy. Also, The Prevention of Genocide Bill, 2015 is currently before the Ugandan Parliament. The bill seeks to, among other things, establish an Independent National Committee to spearhead the fight against genocide. Many respondents in Uganda argue that the involvement of the ICC in Uganda may have influenced the decision of the GoU to take these steps. One such respondent is a legal practitioner in Uganda who argued that there are many positive contributions of the ICC to the rule of law. ‘Some are: it lead to the enactment of the Ugandan ICC Act, it lead to the establishment of the War Crimes Court, within the High Court, and last government now has embark in the development of a transitional justice policy’ (Interview with a Legal Practitioner in Uganda, 27 November 2013).

However, the enactment of these laws and the establishment of justice administration institutions have not led to the prosecution of more people for crimes committed during the armed conflict in northern Uganda. Presently, only Thomas Kwoyelo is being prosecuted in the International War Crime Division of the High Court of Uganda. The case is still pending because the Supreme Court of Uganda has only recently ruled that Thomas Kwoyelo’s trial before the International Crimes Division of the High Court of Uganda must resume (*Uganda v Thomas Kwoyelo*, Constitutional Appeal N0.01 of 2012). This is an appeal by GoU against the decision of the Constitution Court of Uganda which directed the International Crimes

Division of the High Court to end the trial of Thomas Kwoyelo (International Centre for Transitional Justice 2015:4). Thus, the establishment of rule of law promotion institutions and the enactment of laws and regulations that mirror international standards does not automatically lead to the promotion of accountability to the law at national level. However, the incorporation of these international crimes into domestic laws could lead to greater pressure for judicial accountability for perpetrators of gross violations of human rights (Freeland 2010:7).

8. Promoting victims' rights

The Rome Statute makes several references to the roles and interests of victims, including the right of victims to intervene in proceedings, the establishment of a Victims and Witnesses Unit within the Registry, the recognition of entitlement of victims to reparations (Schabas 2007:323), and the establishment of the Trust Funds for Victims (TFV). The Rules of Procedure of the ICC also provide that a Chamber in making any direction or order, and other organs of the court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witnesses.⁸

In Uganda, the ICC has not approved reparations for victims of the armed conflict, since the court is just about to commence the trial of Dominic Ongwen, the first case from that country. However, the TFV has been active in northern Uganda and has established about eighteen projects, designed to assist victims of the conflict in northern Uganda. Presently, the TFV-funded partners in northern Uganda have provided services to an estimated 39 750 victims of crimes against humanity and war crimes (McCleary-Sills and Mukasa 2013:10). The ICC's victims' redress mandate provides exceptional opportunities for the ICC to contribute to peace (Nester 2006:9). Also, the TFV considers its assistance to victims a key step towards establishing durable peace and reconciliation in conflict settings, such as northern Uganda. Most of the respondents argue that the

8 Rules of Procedures and Evidence Document ICC-ASP/1/3, pp10–107, Rule 86.

TFV's projects will have long lasting impact on victims and on conflict transformation, as it promotes reconciliation and rehabilitation, and assists such victims in rebuilding their lives and their communities. The TFV projects were also described as capable of promoting sustainable peace in these communities, because they will assist victims to return to a dignified and community life. They agreed that the TFV projects are very useful to individuals and communities that suffered from the brutality of the LRA and government forces, during the armed conflict in the north. For instance, the project coordinator of an NGO that works on victims rehabilitation stated that victims' protection projects will assist people to resettle, and will promote peace and conflict transformation (Interview with the Project Coordinator of an NGO that works on victims' redress in Uganda, 23 November 2013). Also, the head of a human rights NGO argued that the TFV projects will promote peace and reconciliation, and support the resettlement programmes of the GoU (Interview with the head of a Human Rights NGO in Uganda, 26 November 2013). Relying on these comments and arguments, it is contended that these TFV projects will not negate conflict transformation but will positively contribute to the peace process in Uganda.

9. Promoting reconciliation in Uganda.

Defining reconciliation is complex because of its varying contexts, diverse understandings, and because it means different things to different people (Tolbert 2013:2). In its broadest sense, reconciliation could mean the establishment of strong patterns of social trust and cooperation across ethnic lines in post-conflict societies (Nalepa 2010:318). In Uganda, and in this article, reconciliation has been identified as the healing of wounds of conflict, mistrust, prejudice and marginalisation (Civil Society Consultative Conference 2007:ii). Interventions by an international criminal justice system in a post-conflict situation could facilitate the process of reconciliation (Fletcher and Weinstein 2002:598). The main argument of the proponents of the ICC is that the court creates conditions which are conducive for reconciliation, which is important for peacebuilding

(Fisher 2010: 424). There is another view that there is insufficient evidence to conclude that international justice contributes to national reconciliation (Drumbl 2007:150; Tolbert 2013:4).

The intervention of the ICC in Uganda is perceived by some respondents as contributing to reconciliation in the long-term in Uganda, by creating the necessary environment for reconciliation. In the words of Akhavan (1997:339), 'the symbolic effects of prosecuting even a limited number of such leaders before an international jurisdiction would have considerable impact on national reconciliation as well as deterrence of such crimes in future'. Some respondents were of the opinion that the ICC, by tackling impunity and promoting accountability, is contributing to the process of establishing democratic principles, based on the rule of law, which could be useful in transforming some of their problems and facilitating reconciliation in the long term. For instance, a youth leader in Uganda argued that 'the ICC intervention has some impacts on reconciliation, since it has helped the society to stabilise and to promote the peace process' (Interview with a Project Coordinator of an NGO in Uganda, 25 November 2013). Another respondent stated that 'the interventions of the ICC made Ugandans start thinking about reconciliation' (Interview with an international justice expert with Advocates Sans Frontiers in Uganda, 26 November 2013).

However, these views are contested by some who think that retributive justice in Uganda may not lead to reconciliation and that more emphasis should be placed on restorative justice mechanisms (Murithi and Ngari 2010:7) such as the traditional justice mechanisms and the amnesty programme of the government. The ICC in Uganda is also seen to be engaged in selective prosecutions which have polarised the country further along the north-south divide (Interview with a Lecturer in Law in Uganda, 14 November 2014). It is also blamed for contributing to prolonging the war as a result of the arrest warrants on leaders of the LRA. For example, Kony refused to sign the FPA unless the arrest warrants were withdrawn (Nouwen 2012:186). In summary, this article argues, that, on the weight of evidence, the involvement of the ICC does not contribute to reconciliation in the short term, but creates conditions which are conducive for eventual reconciliation in Uganda.

10. Deterring atrocities in Uganda.

Advocates of international criminal justice insist that the involvement of international courts in conflict and post-conflict situations contributes to deterring future atrocities because individual accountability is an important part of a preventive strategy, necessary for sustainable peace building (Akhavan 2001:10). Deterrence consists of general deterrence which is designed to prevent crime in the general population, or to prevent others from committing similar crimes to the accused, and specific deterrence, which is designed to deter the specific offender from committing the same crime or other crimes in future (Akhavan 2001:12). The main principles of the deterrence theory are: severity, certainty, and swiftness (Wright 2010:2).

The main argument in support of the positive impact of the ICC on future gross human right abusers is that, because of the presence of the ICC and its permanent nature, the possibility of ICC intervention is one factor future human rights violators now take into consideration when making decisions. It may be argued that the ICC contributes to general deterrence in Uganda by threatening punishment, deterring crimes by increasing their costs. According to the cost-benefit argument of deterrence, the ICC increases the costs of committing crime by increasing the certainty and severity of prompt punishment (Akhavan 2001:1–9). Most respondents agree that the ICC has deterred military and political leaders from committing atrocities – since the ICC has the power to ‘touch the untouchables’ (Interview with the Director of a Youth Organisation in Uganda, 21 November 2013). A respondent argued that politicians and other top business leaders in Uganda are now afraid of the ICC, so they are likely to be more cautious about human right abuses (Interview with a former Head of the Ugandan Human Rights Commission, 21 November 2013). Another opinion is that the ICC has promoted respect for the law in Uganda, and people are conscious of the power of the ICC to prosecute (Interview with a Human Rights expert in Uganda, 29 November 2013).

After viewing the totality of the actions of the ICC in Uganda, one international justice expert also opined that it does have the capability to deter, since it has the power to sanction (Interview with an international justice expert with Advocates Sans Frontiers in Uganda, 26 November 2013).

In Uganda, the ICC is contributing to conflict prevention through deterrence without actually prosecuting most of the indicted leaders of the LRA. Its actions include, the Prosecution of Dominic Ongwen, the ICC's numerous public comments on the situation in Uganda, its investigations in Uganda, and the issuing of arrest warrants for five leaders of the LRA. As a permanent international court, the ICC is also a constant reminder to all would-be violators of international norms in Uganda that their conduct can be punished. These conclusions are in line with the main argument proffered by deterrence theorists that an increase in the likelihood of imposition of sanctions will lead to a decrease in violations. Before the intervention of the ICC, a system of impunity for political leaders was evident in the country's justice system as those who committed atrocities during previous and past armed conflicts in Uganda were not prosecuted. Since the ICC's intervention, prosecution of those who commit international crimes became more likely. The cost of committing international crimes increased, and the benefits have remained relatively constant.

11. Conclusion

The involvement of the ICC in Uganda brought international justice nearer to the country after many years of armed conflict, atrocities and impunity. Ten years down the line, this article argues, the ICC is facilitating conflict transformation, by promoting accountability to the law through enactment of laws that promote accountability. It has also encouraged the establishment of justice institutions. The ICC also promotes general deterrence by its investigation and prosecution, increasing the likelihood of sanctions. Also, it was argued that the ICC, through the TFV, has positively impacted on peace in some communities. On the other hand, the ICC in the short term does not seem to be contributing to reconciliation in Uganda, but may promote reconciliation in the long-run as the impact

of accountability becomes established. The ICC had positive and negative impacts on the JPT. The ICC is criticised for obstructing the Peace Talks and for being partly responsible for the refusal of the LRA leaders to sign the FPA. However, the ICC is also hailed for propelling the Talks, because the threat of international prosecution by the ICC contributed to bringing the LRA to the negotiation table, and for making accountability one of the core issues during the negotiation. Put together, and on balance, this article concludes that the ICC involvement in Uganda facilitates conflict transformation. However, the ICC needs to work with the GoU to ensure that its involvement in Uganda does not block amnesty for the low-level LRA soldiers who may still want to return home. It is also important to intensify efforts to ensure that all those indicted by the ICC in Uganda are brought before it.

Sources

- Akhavan, Payam 1997. Justice and reconciliation in the great lakes region of Africa: The contribution of the international criminal tribunal for Rwanda. *Duke Journal of Comparative and International Law*, 7 (2), pp. 325–348.
- Akhavan, Payam 2001. Beyond impunity: can international criminal justice prevent future atrocities? *The American Journal of International Law*, 95 (7), pp.7–31.
- Allen, Tim 2006. *Trial justice: The international criminal court and the lord's resistance army*. London, Zed Books.
- Beyond Juba: Building consensus on sustainable peace in Uganda 2015. Agreement on Accountability and Reconciliation signed between the GoU and the LRA during the JPT. Available from: <http://www.beyondjuba.org/BJP1/peace_agreements.php> [Accessed 4 September 2014].
- Civil Society Consultative Conference 2007. Report of the civil society consultative conference on paving the way for a sustainable reconciliation process in Uganda. Available from: <http://www.beyondjuba.org/BJP1/Conference_presentations/Reconciliation_Conference_Report.pdf> [Accessed 20 September 2014].
- Darehshori, Sara and Elizabeth Evenson 2010. Peace, justice, and the international criminal court. Oxford Transitional Justice Research, Research Article 1. Available from: <<http://www.cls.ox.ac.uk/documents/DarehshoriandEvenson2010.pdf>> [Accessed 4 September 2014].
- Drumbl, Mark 2007. *Atrocity, punishment and international law*. Cambridge, Cambridge University Press.
- Fisher, Martina 2010. Transitional justice and reconciliation: Theory and practice. Available from: <www.berghof-handbook.net/documents/publications/fisher_tj_and_rec_handbook> [Accessed 16 April 2014].

The International Criminal Court and conflict transformation in Uganda

- Fletcher, Laurel and Harvey Weinstein 2002. Violence and social repair: Rethinking the contributions of justice to reconciliation. *Human Rights Quarterly*, 24, pp. 573–639.
- Freeland, Steven 2010. Effectiveness of international criminal justice. Available from: <<http://www.austlii.edu.au/au/journals/ALRS/2008/16.html>> [Accessed 20 September 2015].
- Happold, Mathew 2007. The international criminal court and the lord's resistance army. *Melbourne Journal of International Law*, 8, pp.1–26.
- Hovil, Lucy and Zachary Lomo 2005. Whose justice? Perception of Uganda's amnesty act 2000: The potential for conflict resolution and long term reconciliation. Available from: <<http://www.refugeelawproject.org.htm>> [Accessed 8 September 2014].
- Human Rights Watch 2005. Uprooted and forgotten: Impunity and human rights abuses in northern Uganda. Available from: <<http://www.humanrightswatch.org.htm>> [Accessed 16 October 2014].
- Human Rights Watch 2012. Justice for serious crimes before national courts: Uganda's international crimes division. Available from: <<http://www.hrw.org.htm>> [Accessed 9 August 2014].
- International Centre for Transitional Justice 2015. Pursuing accountability for serious crimes in Uganda's courts. Available from: <<https://www.ictj.org/sites/default/files/ICTJ-Briefing-Uganda-Kwonyelo-2015>> [Accessed 13 August 2015].
- International Centre for Transitional Justice and Human Rights Centre, University of California, Berkeley 2005. Forgotten voices: A population-based survey on attitudes about peace and justice in northern Uganda. Available from: <www.ictj.org> [Accessed 28 May 2014].
- International Crisis Group 2007. Seizing the opportunity for peace. Africa Report No 124, 26 April 2007. Available from: <<http://www.crisisgroup.org/en/regions/africa/horn-of-africa/uganda/124-northern-uganda-seizing-the-opportunity-for-peace.aspx>> [Accessed 9 August 2014].
- Lanz, David 2007. The ICC's intervention in northern Uganda: Beyond the simplicity of peace vs. justice. Available from: <http://www.reliefweb.int/sites/reliefweb.int/files/resources/EC66215A0071F156C12573910051D06D-Full_Report.pdf.htm> [Accessed 4 September 2014].
- Mallinder, Louise 2009. Uganda at a crossroads: Narrowing the amnesty? Available from: <http://www.academia.edu/205946/Uganda_at_a_Crossroads_Narrowing_the_Amnesty.htm> [Accessed 7 September 2014].
- McCleary-Sills, Jennifer and Stella Mukasa 2013. External evaluation of the trust fund for victims' programmes in northern Uganda and the Democratic Republic of Congo: Towards a perspective for upcoming interventions. Available from: <<http://www.icrw.org.htm>> [Accessed 10 September 2014].
- Murithi, Tim and Allan Ngari 2010. The ICC and community-level reconciliation: In-country perspectives regional consultation report. Available from: <www.ijr.org.za.htm> [Accessed 20 August 2014].

- Nalepa, Monika 2012. Reconciliation, refuge returns, and international criminal justice: The Case of Bosnia and Herzegovina. In: Williams, Melissa, and Rosemary Nagy eds. *Transitional justice*. New York, New York University Press.
- Nester, Adam 2006. Victim's issues, multi-track diplomacy and the International Criminal Court. Available from: <<http://www.http://imtd.imtdeast.org/papers/OP-17.pdf.htm>> [Accessed 30 September 2014].
- Nyeko, Balam and Lucima Okello 2002. Profile of the parties to the conflict. In: Okello 2002.
- Nouwen, Sarah 2012. The International Criminal Court: A peace-builder in Africa? In: Devon, Curtis and Dzinesa Gwinyagi eds. *Peace-building, power, and politics in Africa*. Ohio, Ohio University Press. pp 171–192.
- O'Kadameri, Billie 2002. LRA/government negotiations, 1993–94. In: Okello 2002.
- Okello, Lucima ed. 2002. *Protracted conflicts, elusive peace*. Available from: <<http://www.c-r.org.htm>> [Accessed 12 July 2014].
- Otunnu, Ogenga 2002. Causes and consequences of the war in Acholi land. In Okello 2002.
- Refugee Law Project 2005. Update on the repatriation of Rwandese refugees in Uganda. March 2005. Available from: <<http://www.refugeelawproject.org/current-issues.htm>> [Accessed 30 September 2014].
- Royo, Josep Maria 2008. War and peace scenarios in northern Uganda. *Quaderns de Construccio de Pau*, 6. Available from: <http://escolapau.uab.cat/img/qcp/war_peace_uganda.pdf> [Accessed 20 June 2015].
- Schabas, William 2001. International law responses to conflict. In: Croaker, C, F. Hampson and P. Aall eds. *Turbulent peace: The challenges of managing international conflict*. Washington D.C., United States Institute of Peace.
- Schabas, William. 2007. *An introduction to the international criminal court*. Cambridge, University Press.
- Schabas, William 2012. *Unimaginable atrocities: Justice, politics and rights at the war crimes tribunal*. Oxford, Oxford University Press.
- Sikkink, Kathryn 2011. *The justice cascade: How human rights prosecutions are changing world politics*. New York, W.W. Norton and Company.
- States Parties to the Rome Statute 1998. *Rome Statute of the International Criminal Court*. Document A/CONF.183/9 of 17 July 1998. Available from: <https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf> [Accessed 30 September 2014].
- Tadeo, Asiimwe 2012. Effecting complementarity: Challenges and opportunities: A case study of the international crimes division of Uganda. Available from: <<http://www.asf.be.htm>> [Accessed 12 August 2014].
- Teitel, Ruti 2011. *Humanity's law*. Oxford, Oxford University Press.
- Tenove, Chris 2013. Uganda and the international criminal court: Debates and developments. Available from: <<http://www.africaportal.org.htm>> [Accessed 17 July 2014].

- Tolbert, David. 2013. Can international justice foster reconciliation? Available from: <www.aljazeera.org> [Accessed 16 April 2013].
- UN High Commissioner for Human Rights and Uganda Human Rights Commission 2011. *The dust has not yet settled: Victims' views on the right to remedy and reparation: A report from the greater north of Uganda*. Available from: <<http://www.Uganda.ohchr.org.htm>> [Accessed 12 July 2014].
- Wijeyaratne, Surendrini 2008. Promoting an inclusive peace: A call to strengthen Canada's peace-making capacity. Available from: <<http://www.ccic.ca>> [Accessed 24 May 2014].
- Wright, Valerie 2010. Deterrence in criminal justice: Evaluating certainty vs. severity of punishment. The Sentencing Project. Available from: <www.sentencingproject.org> [Accessed 20 May 2013].

Book review

The nature of intractable conflict: Resolution in the twenty-first century

Christopher Mitchell* 2014

*New York, Palgrave Macmillan, 353 pages.
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The term 'intractable conflict' is widely perceived as an impossible dilemma: a situation with which there is no positive outcome, no solution. These are the conflicts alleged to stubbornly elude resolution despite the use of popular conflict management techniques available. Intractable conflict, a vast area of concern, has often been characterised by the prolonged violent actions of state actors or communities in response to harmful social or cultural hardships. Redress and/or revenge are motivating factors. These conflicts have survived because of deep-rooted and complex attitudes, behaviours and situations which seem to be impenetrable to methods of resolution. Or are they? Christopher Mitchell in his book

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The nature of intractable conflict: Resolution in the twenty-first century, sets out to unpack the nature and behaviour of intractable conflicts of the twenty-first century. The book provides a detailed and intriguing overview of how certain conflicts became intractable, of the reasons for their prolonged survival and possible steps towards their termination. Over all, Mitchell attempts to provide a roadmap, not to lasting peace and security, but towards building a practical understanding of the theoretical issues and applicable techniques.

The book takes us back to the timeless psychological debate concerning nature versus nurture. Chapter one gives reasons for the formation of man's violent aggressive nature which could result in warlike actions and responses. Using examples from primatology, Mitchell is able to suggest how environments impact on later human behaviour. Chapter two explains, using Johan Galtung's triangular model of conflict structure (a constant theme throughout the book), the importance of contending behaviours, issues and attitudes in any conflict. The chapter attempts to explain the nature of conflict formation by examining the basic structure of any conflict and the process which causes conflicts to emerge. Mitchell enlightens the reader about the vast spectrum of conflicts and the many different elements which can cause various kinds of conflict. To best understand the development of conflict, Mitchell clarifies this in chapter three, where he indicates the necessity for organising conflicts into various required categories. These, then, reveal the underlying dynamics and suggest possible solutions depending on the conflict situation. Mitchell identifies specific factors that can perpetuate conflict, such as: growing violence in the region, external support for violence, and continuous polarising confrontations. Using these factors, analysts need to develop strategies to better cope with continuing violent warfare.

Chapter five introduces the concept of conflict prevention. Here, Mitchell presents four preventive approaches to avert an increase of violent conflict. Where prevention strategy occurs at the initial stage of basic conflict formation, it becomes clear that prevention often only stops violence at the surface of the conflict leaving the deep rooted causes of the conflict to

remain present, and often resulting in a relapse or re-ignition of conflict in the future. To prevent this from occurring, Mitchell suggests long-term structural prevention strategies to accompany the shorter-term crises measures. Yet, history has shown us that preventive measures often become effective only after violence has broken out. Does this mean that prevention is successful only once violence ends?

One way of answering this question is through the implementation of the principle of mitigation discussed in chapter six. Mitigation is used in situations which might be immune from the most destructive effects of violence and where times can be established during which the practice of violence will be suspended to protect individuals from the worst effects of violence. This is often seen when humanitarian relief programmes are established, although mitigation practices can take on a number of forms, which are vast and numerous. A high point within the chapter stresses that mitigation most importantly calls for restraint and reciprocity. Often adversaries, in the heat of violent warfare, forego decorum and apply an 'everything goes' approach against one another. Therefore, to maintain civility, mitigation, as stressed by Mitchell, is primarily applied to remind parties that there are limits on behaviour and that a code of conduct should be applied.

Following the use of mitigation as a framework of rules within which conflicts should be waged, chapter seven addresses the specific rule systems and restraints used to regulate behaviours once a conflict has become overt. In this chapter, Mitchell provides the reader with examples throughout history which show that mitigating conflict is not only necessary, but that the examples reveal that rules and systems have always been in place when coping with conflict. In a further effort to limit violent conflict, chapter eight addresses the notion of institutionalisation. Mitchell acknowledges that international society has moved beyond the stage of 'conventional constraint'. However, institutionalising peace accords and legal considerations on the ground has been problematic. For such institutionalising to occur, Mitchell categorises five types of rule systems which could operate according to the structures, characteristics and situation of a state's system of governance.

But, how do we know when a conflict is terminated? Chapters nine and ten both address the issues surrounding the termination of intractable conflict. Chapter nine is concerned with addressing the root causes of a conflict. Mitchell indicates that for a conflict to end once and for all, Galtung's illustrated triangle must be applied through the incorporation of peacekeeping practices. Conflict is understood to be terminated only once violent behaviour has ceased. Nevertheless, Mitchell acknowledged that although violent forms of behaviour could cease, this may do nothing to affect the ways individuals and communities thought and felt about one another. The conflicting goals and contradictions which lead to the violent behaviour still remain in place, which may re-ignite conflict in a near future. Chapter ten addresses issues of resolving the underlying causes of conflict and the reasons that lead to its continuation. In an attempt to terminate prolonged conflict, Mitchell provides possible solutions through expansion, substitution and the concept of sharing through division and distribution. Though Mitchell proposes theoretically positive solutions towards terminating conflicts, whether they are effective in intractable conflicts, remains unknown.

Chapter eleven looks at terminating insolvable conflicts believed to end in a zero sum game as adversaries take up contrary positions that appear to permit only a winner or a loser. Mitchell provides possible ideas on how to deal with conflicts which may not necessarily be intractable, but still seem insolvable. Mitchell suggests possibilities of resolution through creativity: thinking out of the box. He adapts John Burton's theory of basic socio-cultural needs to devise most appropriate ways of satisfying the fundamental needs of the parties in attempts to develop solutions to complex conflicts. However, in a zero sum game, often the adversary's depiction of winning is the total annihilation and extinction of an entire race, culture or identity. Mitchell stresses that unless attitudes, emotions and opinions of one's adversary changes, it is hard to argue that any conflict, intractable or not, has been terminated.

The final chapter, chapter twelve, deals with the concept of reconciliation. What happens towards the end of an intractable conflict? Will there ever be a certain resolution? Mitchell argues that the resolution of intractable

conflicts is not impossible, just extremely difficult. There is the possibility of reforming the mindsets of those involved in the conflict through short-term conciliation techniques followed by a longer-term process focused on different stages of reconciliation. The implementation of demobilisation and reintegration processes, rebuilding and reconstructing society, rehabilitation and arranging the return of displaced persons may become necessary. These techniques aim to reverse the psychological process that enabled the dehumanisation of society into an 'enemy' in the first place. Mitchell strongly advocates openness, transparency, acknowledgement, remorse and apology for restoration and restitution to repair a broken society.

In conclusion, throughout the structure of the book, Mitchell has attempted to answer primary questions. First, how and why conflicts actually arise between individuals, groups and communities. Second, what the sources of human conflict are and what causes humans to engage in aggressive and violent disputes. Mitchell determines that there is no innate biological or neurological reason for human beings to indulge in conflict, and argues that conflict needs to be addressed by all affected parties of the conflict who are impacted by the environment, behaviours and attitudes known to fuel humans' violent expression. As the book progressed, it became clearer that violence, even if stopped for long periods, can reoccur, but if the adversary's cognitive thought and attitudes are reformed, there is a chance for the total cessation of conflict.



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