



Foreword

Jannie Malan

A few days ago I received an interesting newsletter by mail, just as I was on my way out. Between two different commitments I had to wait about twenty minutes, and so I started reading the newsletter. But what I did, apparently spontaneously, was to read the articles first, and the editorial last! My immediate thought was, quite obviously: I wonder when readers of our Journal get to the editorial Foreword – that is, if they get to it at all.

Fortunately, however, this sobering little experience has not deterred me from faithfully adhering to the tradition of prefacing each issue of a journal with an editorial page or two. Fortunately also, I already had two ideas in mind, which I would like to share with readers of this issue – or at least, with those who might care to read this piece.

The first is about the experience of reading something that confronts you with a different way of thinking. It may be the mild experience of simply feeling that you are tactfully invited to a minor paradigm shift. Or it may be the sudden shock of realising that you are challenged to nothing less than a major change of mindset.

It so happens that each of the articles in this issue, and even each of the books reviewed, can provide the reader with a micro, macro or an in between experience of this kind. I am of course tempted to mention the mind-openers that I encountered while reading these articles and reviews, but I will refrain from doing that. I rather wish to grant every reader the opportunity of sensing the thrill of discovering a new perspective, or reaffirming a previous insight. At the same time I want to allow readers the freedom to search for new ideas in an unprejudiced way – or even to conclude that they could not find any

surprising new view. From the editorial desk, however, we do trust that most of our readers will feel that for the time they devoted to this issue they have been rewarded, not only by new thoughts but also by calls to new ways of thinking.

The second idea I had in mind, was one about an experience which almost inevitably follows such a breakthrough in one's thinking. One tends to feel the yearning to pass on your new (or newly confirmed) insight to others, and especially to those who are in situations where such an understanding may be of crucial and far-reaching importance. In particular, if this feeling is prompted by something in an *academic* journal, one may be inclined to ask how the worthwhile perspective could get beyond the academic precincts and make a difference in real life.

With regard to this question, more than one possible answer may be considered. Generally speaking, we may firstly say that all academic teaching and research should be life-oriented. We may therefore trust that every true academic will welcome each new, life-related idea, internalise and radiate it, and share it wherever appropriate in her or his teaching.

Secondly, however, we should be searching for ways of implementing, or at least promoting, specific applications. Accepting this responsibility may cause us to do something more after putting down the article concerned. It may just be a little bit of 'extra trouble', such as sending a copy of the relevant page(s) to an opinion former in the particular field. But the initial something may also develop into an ongoing and growing commitment to help bring about a change of approach and/or attitude in a particular area of our everyday life.

Enough said, in the shortest editorial I have written thus far. Let us read, and follow up where we feel prompted to spread a meaningful message.

Book Review

For Better Or Worse? Women And ZANLA In Zimbabwe's Liberation Struggle

Josephine Nhongo-Simbanegavi, 2000
Harare, Weaver Press, 168 pp.

Reviewed by Terence M. Mashingaidze
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Traditional scholarship about Zimbabwe's liberation struggle tended to be gender neutral and highly romanticised. The liberation fighters were presented as fair, brave and disciplined whilst the opposite applied to the forces of the colonial state. Recent historiography is now showing that all the protagonists in the war perpetrated injustices against the unarmed civilians and within their ranks. It is in this vein of challenging, reconstructing and deconstructing dominant notions and paradigms that Nhongo-Simbanegavi's book, *For Better or Worse? Women And ZANLA In Zimbabwe's Liberation Struggle*, emerges. The book deserves the commendation of all those interested in the history of African liberation movements. It is probably the most cogent refutation of the claims of the Zimbabwe African National Liberation Army (ZANLA) to the establishment of gender equity during the war of liberation. It shows the resilience of patriarchal hegemony in the

various contexts that punctuated Zimbabwe's history, such as the colonial and post-colonial periods, and the times of war and peace. The book is well researched and weaves a rich tapestry of women's, mostly combatants', experiences during the war and in the post-colonial dispensation. Besides oral interviews and data from secondary sources, the book relies heavily on the rich but largely inaccessible ZANLA archives at the Zimbabwe African National Union Patriotic Front (ZANU-PF) headquarters in Harare.

The book is divided into six chapters. The first chapter looks at how myths of gender equality developed during the liberation war. ZANU's media organs such as the *Zimbabwe News* were awash with stories depicting the transformation of gender relations during the liberation process. Women with guns strapped on their back and wearing trousers and T-shirts were shown as symbols of women power and the equality they had attained since the masculine and feminine gender divide had been erased by the revolutionary process. Subsequently writers and researchers uncritically relied on this official propaganda and accepted the view that women emerged from the war significantly emancipated from the grip of patriarchy.

The ensuing five chapters span the period from mass mobilisation and recruitment for fighting, largely between 1972 and 1976, to the transition to independence and gender dynamics in the post-colonial phase. Basically, it is these chapters that, through a systematic presentation of empirical evidence, dispel the fallacious view of the establishment of gender equality during the war. Women played what were largely perceived as auxiliary roles during the war. Initially ZANLA did not tolerate women's presence on the battlefield. The operational field was regarded as masculine terrain. Women were confined to the rear bases in Mozambique, such as Chibawawa, Osibisisa and Nyadzonya, where they took part in activities such as nursing, teaching, and secretarial duties. Starting from 1978, ZANLA's attitude changed, and women cadres began to go into the field, but their main task was the transportation of war materials. The female cadres also nursed the sick and the injured, and they mobilised support for the war. The author observes that:

Although some were, by then (1979), fighting as armed guerrillas, they never constituted more than a small component of the total ZANLA forces. Mostly they were deployed in 'liberated' or 'semi-liberated' zones as porters and nurses and political commissars. Their presence in operation zones merely served to extend the frontiers of their 'auxiliary' operations rather than represent a change in their roles.

Essentially the duties of women on the front did not differ from what they had been doing in the camps at the rear in Mozambique. Female cadres as well as ordinary women were often sexually abused and accused of witchcraft during the war. This shows that the revolutionaries were still bound by traditional patriarchal proclivities of associating witchcraft with women more than men, and of taking women largely as sexual play toys. In the villages at the front women were never co-opted into the base committees that co-ordinated the procurement of provisions for the guerrillas, such as food, clothes and batteries for their radios. Cooking and laundry were their main wartime duties. Basically, the war perpetuated the peripheralisation and domestication of women. They were never co-opted into the decision-making process. Nhongo-Simbanegavi notes that by 1979 Sheba Tavarwisa, the Deputy Secretary For Education, was the only woman in the High Command (HC). The HC was ZANLA's highest level of command and it had 28 members. Tavarwisa also sat in the Central Committee (CC) from 1977, together with Teurai Ropa Nhongo (now Joyce Mujuru), the Secretary For Women's Affairs. The CC had 33 posts in all. In the Women's Affairs Section of ZANU, the patriarchal streak of the party manifested itself as well, as top posts were occupied by those women connected to the male leadership of the party. The author notes that:

Teurai Ropa, the wife of the ZANLA Operational Commander, Rex Nhongo, was appointed the departmental head. Her deputy, Sally Mugabe, was the wife of Robert Mugabe, the President of ZANU. Julia Zvobgo, the wife of the Party's Publicity Secretary, became the department's secretary for administration...thus speculation about the husbands' influence regarding their appointment could not be ignored.

The gross under-representation of women in the liberation movement's decision-making organs was pathetic, especially when looked at against the background of its claims that by 1979 more than a third of its combatants were women.

With the coming of détente in 1979, ZANLA exploited society's attitude of associating warfare with men more than women to use its female cadres to campaign for it contrary to the cease-fire stipulations. Trained fighters were supposed to be at assembly points. Nhongo-Simbanegavi observes that:

The media focused on 'the boys from the bush' because ZANLA had deployed few women fighters inside Zimbabwe. In addition, the guerrilla leaders who came to help implement the ceasefire exercise

Terence M. Mashingaidze

were almost all men. By excluding women fighters from the limelight, ZANLA was able to cheat the monitoring system. During the ceasefire, ZANLA deployed its women fighters extensively, especially in areas where the men were under pressure to leave for Assembly Points (APs). The holding of elections in February 1980 and the consequent unravelling of the post-colonial dispensation did not usher in much for women. For example, 'out of the fifty-seven seats ZANU-PF secured in Parliament, women won five. These women out of a total of eighty candidates were the only women the Party had fielded in the elections'. Three of these female parliamentarians got cabinet posts. Teurai Ropa became Minister of Youth, Sport and Recreation, Victoria Chitepo became deputy minister in the Education and Culture Ministry, and Naomi Nihwatiwa became Deputy Minister of Posts and Telecommunications. The under-representation of women at governmental level after the war was inevitable, since ZANU had largely excluded women from its top administrative structures in the war.

The patronisation of women continued in the post-colonial era because women's participation was legitimate only through the ZANU-PF affiliated Women's League. The establishment castigated women who tried to operate outside the ambits of the Party. As some women began to create alternative platforms to address pertinent issues, they set themselves up in non-governmental organisations, creating organs like the Women's Action Group. ZANU-PF, however, was not happy with organisations operating out of the orbit of the League. Nhongo-Simbanegavi observes that:

Teurai Ropa directly castigated one newly formed group, the Women's Task Force, whose members she described as 'the elite group of women'. She accused the Task Force of two things: merely sitting around and doing nothing, or when they worked at all, of opposing the League. She vowed 'to act to stop all this confusion'. Such threats created an atmosphere of intimidation, thereby restricting and curtailing women's organisation outside the dictates of the party. The message was clear: unless people wanted to organise around charities, whose terms of reference excluded meddling in politics, there was no space for them.

The authorities at times took measures that curtailed the rights of women. In 1983 the police conducted an infamous 'clean-up operation'. They picked up some men for vagrancy, but they rounded up hundreds of women moving at night, alleging that they were prostitutes. The police decided that since the women obviously had nothing better to do, they should be taken to the Zambezi Valley to engage in agricultural production. They claimed 'this

would not only benefit the women, but also the people of that terribly under-developed part of the country'. This act by the police shows that the urban environment was considered legitimate only to male citizens at night and it also shows how society was determined to ensure the perpetual control of women by men. There was a paradoxical element of continuity between the Zimbabwean authorities' and their Rhodesian predecessors' attitude towards women. Rhodesian colonial authorities often raided men's hostels in the urban centres to flush out the women living there and return them to the rural areas.

However, though ZANU-PF- was largely unsympathetic to women, it passed laws that empowered women in line with its wartime assertions and the politically correct views it pronounced during the pre-election campaign. The most commendable of these was the Legal Age Of Majority Act of 1982. Before this, women were considered perpetual minors and could not enter into any transaction without the consent of male kin. Now with the passage of the Act, anyone above the age of 18 years, irrespective of sex, was competent at law to enter into any contract or relationship. The Labour Relations Act of 1985 also erased sex-based discrimination at work. Before this act, women could not earn more than three-quarters of a male counterpart of equal rank, experience, and educational qualifications. The Matrimonial Causes Act was also passed. It changed property distribution practices in the event of divorce. In the past, the bias 'towards tribal customs' had favoured men. The Act also removed blame as a factor in determining distribution of property after divorce.

Finally, the book clearly shows that in spite of ZANLA's posturing as a progressive movement, sensitive to gender equality, patriarchal tendencies held sway in the actions of the party both during the struggle and thereafter. Male interests took centre stage, often at the expense of women.

Book Review

Searching for Peace in Africa: An Overview of Conflict Prevention and Management Activities

**Monique Mekenkamp, Paul van Tongeren and Hans van
de Veen (eds) 1999**

**Utrecht: European Platform for Conflict Prevention and
Transformation. 528 pp.**

***Reviewed by George Mboya
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If there ever was a book written about Africa that offers prospects for hope on such a grim subject, then it is this one. The book resulted from the work of numerous authors who have ably assisted the editors, and whose expert views on the conflict in Africa are fresh, provide food for thought, and urge Africa to awake from slumber and seize her moment. The book is set against a background in which ten major conflicts in Africa in the past 25 years have claimed the lives of between 3.8 and 6.8 million people. In 1998 alone, of the 200 violent conflicts occurring world-wide 72 were credited to Africa, thus making Africa 'the most warring region on the planet'. It is in this context that the authors proceed to analyse Africa in the light of conflict and the prospects for peace, since 'there is also another Africa, an Africa where people are

living in peace and harmony with each other and their neighbours'. Hence the fundamental question of 'Who will bring peace to Africa?' seems to be the pervading theme in the book. The West on its part has always dubbed Africa as the hopeless continent on the brink of extinction. This inaccurate analysis is the result of stereotyping and inadequate information. If these sentiments are propagated, then it will take a long time before Africa establishes herself in the world. The authors, while acknowledging this failure on the side of the West, reiterate that Africa on its part is not devoid of blame. They dispel the notion that everything associated with colonialism is bad. It is therefore not enough to point fingers of accusation, as this will only exacerbate the stalemate by opening up old wounds. Hence, to avoid the pitfalls of blame, the African Renaissance was initiated, providing an opportunity for Africa, as a whole, to mount a collective effort to quell the growing incidence of conflict propelled by hate. It is the hope of the authors that Africa will grasp the reconciliation, stability and economic independence necessary for social, economic and political development.

The book is divided into three comprehensive parts. Part I, entitled 'Reflections', analyses the conflicts in Africa and suggests ways of preventing and resolving the conflicts. In this part Chris Landsberg and Shaun Mackay ask fundamental questions and offer salient answers. The idea of an African Renaissance was coined by such figures as Kwame Nkrumah, Julius Nyerere and Steven Biko, among others, but it is the current President of South Africa, Mr Thabo Mbeki, who is credited with igniting the flames yet again. In essence this is a call for Africa to realise the potential she holds, and for its people to steer her out of the deep abyss of hopelessness. By borrowing from South Africa and other countries, the two authors are of the opinion that Africa should adopt a policy of democracy and reconciliation if any peace is to be achieved.

A very useful summary is given of 16 lessons learned from a previous project (*People Building Peace: 35 Inspiring Stories from Around the World*). These include the creation of local capacities for peace, the creation of dialogue, the exchange of experiences, and the promotion of an integrative approach. Subsequently in the concluding chapter of Part I, Fitzroy Nation, shows how numerous peace-building initiatives have spread their web across Africa enveloping it in a cocoon of peace. This brief background into Africa's conflict serves both as an introduction to and as the foundation for the book in review.

The regions of conflict, North Africa, The Horn of Africa, Central Africa, West Africa and Southern Africa, are discussed in Part II, entitled

'Surveys of Conflict Prevention'. By dividing the continent into diverse sub-regions the authors explain the interrelatedness of the conflicts in Africa and also emphasise the need for sub-regional co-operation in quelling conflicts. This does not diminish the importance played by outside actors, however. In fact, according to Michael S. Lund, 'Outside actors have had as much success as inside actors'. Thus it is important that an effective and efficient co-operation exists between the sub-regions and other international organisations willing and able to assist in peace initiatives. According to the authors, this spirit of working together was totally lacking in the 1994 Rwandan genocide when the international community failed to act despite warnings by human rights groups of the impending genocide. The Forum on Early Warning and Early Response (FEWER), made up of international organisations and some United Nations agencies, and other participants in an international study during 1996 found that international bodies and many governments had ample warning of the impending genocide in 1994, but ignored this warning. In contrast, the efforts by the regional Economic Community of West African States Ceasefire Monitoring Group (ECOMOG) have been credited with bringing some peace to Sierra Leone. Although it is not ideal, it serves as a foundation on which future peace initiatives can be built. Notwithstanding the setbacks, the potential capacity for co-operation is well founded in Africa.

Part III gives a list of African and international organisations that seek to promote peace by building from the grassroots level to the top management. The activities of each organisation are briefly stated as well as their contact address and their budget. The book is not complete in its coverage, but the 120 mentioned organisations are adequately dealt with. This brief acts as a quick guide of who is who in conflict prevention and resolution in Africa.

Searching for Peace in Africa is detailed, but succinctly written. The report is well researched and provides ample background knowledge of the origin of conflicts and how they can be stopped. The book is a concerted effort of authors who are equipped not only to analyse but also to provide prospects for future reconciliation. The book is not a mere rhetoric, but shows the peace building capacities developed and in action in Africa. Africa should tackle her own problems as reliance on the West will graft into the subconscious the fallacious mentality of colonial superiority *vis-à-vis* Africa's inferiority. As it is well said in a song about Africa: 'Africa's shaped like a question mark; Africa's got the answer!'

Book Review

The Right To Be Nuba

**Suleiman Musa Rahhal (ed) 2001
The Red Sea Press. 136 pp.**

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The war in the Sudan has ravaged on for 18 years with no end in sight. The book in review shows the plight of one particular community in the Sudan. If this community is being neglected now during the war then it cannot be ignored when efforts at peace are being made. The book tells the story of a people who are fighting for their right – the right to be Nuba. With or without any prior intention by the authors, the book ultimately serves as a mouthpiece for other marginalised communities whose participation in any peace effort is vital. The book brings a tribute to the Nuba and their fight against injustice. It provides a testimony to the courage of a people bent

on preserving their culture and heritage, which is vitally important in any peace process.

The book dispels the fallacy that the war in Sudan is a bipolar war pitting only the two major factions, namely the Government of the Sudan and the Sudan People's Liberation Movement, against each other. On the contrary, the war also involves numerous other communities whose rights have to be addressed. The authors contend that these communities have one voice in the Nuba. The Nuba, like these communities, are struggling to preserve their culture despite efforts by the government of the Sudan to deter them. The book in review tells many tales of looting, rape and murder of prominent Nuba figures as well as ordinary Nuba folk. As the government is increasing pressure on them, the Nuba are proving to be more resilient than ever to ensure their posterity.

The picture that dominates the front cover may easily be overlooked by the superficial reader. But to the clairvoyant reader this picture, taken by George Rodger the renowned British photographer, is a reflection of what the book is all about: the desire of the Nuba to guard their culture. This famous photograph, that finally brought the Nuba under the scrutiny of the world, shows a victorious wrestler being lifted on the shoulders of his defeated adversary. The picture itself portrays the character of the Nuba. Indeed the linguist, Professor Roland Stevenson, has described the Nuba as a 'vigorous hill people of good physique, much independence of mind, strong in traditions and fighting qualities'. These fascinating sentiments serve to emphasise that the Nuba are indeed here to stay.

The book is divided into 13 chapters, each by a different author. This tends to give a balanced view of this unique and delicate subject. Alex de Waal in the first chapter, 'The Right to be Nuba', introduces this salient subject by charting a brief historical voyage into the war in Sudan. This not only accelerates the exploring of the pervading theme, but also unearths the underlying essence that is the Nuba. By focusing on the Nuba the authors hope that a window of similarity will be accorded other communities that still continue to suffer neglect. From the title of the book one would expect to encounter a beaten down people, but one finds that for the Nuba these hardships have endeared and strengthened their resolve to live and, most importantly, to ensure the posterity of their culture.

The book is imbued with vivid and panoramic pictures. Despite the threats of religious pressurising, failed humanitarian aid and gross human rights violations, the culture of the Nuba has remained undiluted. The two

religions, Islam and Christianity, have failed to affect the Nuba way of life. These two institutions have been credited with shaping much of humanity, but in the Nuba both have met with stiffer opposition. With slave trading the Muslims tried to coax the Nuba to abandon their culture but to no avail. Indeed much to the annoyance of many, the Nuba have proved that Muslims and Christians can coexist peacefully. To the Nuba religious identity takes second place to ethnic identity.

The authors have reiterated the importance of quick but impartial humanitarian aid in conflict areas. Hugh Miall, Oliver Ramsbotham and Tom Woodhouse, in their book *Contemporary Conflict Resolution*, echo the sentiments of the authors who opine that humanitarian aid if administered appropriately can alleviate much suffering. The authors therefore question the relevance of the Operation Lifeline Sudan (OLS) when it cannot deliver aid to the Nuba mountains because their work is hindered by the government. Citing one example of this inefficiency, one of the authors draws our attention to a particular incident when the OLS failed to administer relief to the people of the Nuba mountains. The following was the response: 'The OLS mandate does not allow us to work in the Nuba mountains or to support Sudanese institutions wishing to do so'. What then is their duty in the Sudan if the government is interfering in their work? This stalemate was finally resolved when the UN Secretary General, Mr. Kofi Annan, intervened, forcing the government of Sudan to allow the OLS into the Nuba mountains. To avoid such inefficiency, the Nuba have on their own initiated a non-governmental organisation called the Nuba Relief Rehabilitation and Development Organisation (NRRDO) that runs health, education, and agriculture programmes as well as facilitating community development. The Nuba have realised that accusations and counter accusations will not solve their problems.

Chapter 7, 'Voices from the Nuba Mountains', echoes the cries of victims of gruesome human rights violations. The old and young, men and even women have not been spared. Despite all the atrocities the Nuba still engage in their culture and perform wrestling and dancing festivals oblivious to what hardships they go through. Although the Nuba want peace, they are not ready to compromise their culture. The importance of the Nuba to the marginalised in the Sudan is summed up as follows, 'It is the Nuba, two million people in the heart of the country, who carry the flame for a brighter Sudan. If that flame is extinguished, we shall all pay the price'.



Dynamics of the Zimbabwe Crisis in the 21st Century

Sabelo J. Ndlovu-Gatsheni*

Abstract

Zimbabwe is experiencing one of its worst crises since the attainment of independence in 1980. The official explanation of this crisis is biased towards external forces at the expense of internal dynamics. The crisis is

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This study is based on a paper presented at the 7th Congress of the Organisation of Social Science Research in Eastern and Southern Africa (OSSREA) held in Sudan, 14-19 December 2002 under the title: *Putting People First: From Regime Security to Human Security: A Quest for Social Peace in Zimbabwe, 1980-2002*.

blamed on the minority group of white settlers, the British, and the opposition Movement for Democratic Change (MDC), which is officially depicted as a front for Western interests. This article seeks to provide an alternative explanation for the crisis affecting Zimbabwe at the present moment. This explanation is predicated on the critique of the dominant nationalist position represented by the Zimbabwe African National Union Patriotic Front (ZANU-PF). The article proceeds to present the Zimbabwe crisis as a consequence of blocked

democratic transition at the turn of the century. The significance of this contribution lies in the fact that the Zimbabwe crisis has crucial lessons for Southern Africa. It has shaken peace and security in the region. As such it deserves to be fully understood by all those who are pre-occupied with the stability of the region.

1. Introduction

Zimbabwe is beset by a serious crisis of governance. This crisis has given birth to political, economic, social, ideological, and humanitarian problems in the country. While it is true that the colonial legacy bequeathed serious problems to all post-colonial African states, the contribution of African leaders themselves to some of the problems must not be ignored. For instance, it is clear that in Zimbabwe the dominant nationalist ideology that guided the liberation struggle has become bankrupt. It has only succeeded in entrenching a nostalgic thinking about the government and some Zimbabweans, particularly the war veterans, who are devoid of future plans and of a way forward for the country. The economic salvation of Zimbabwe and other crucial facets of development have been reduced to the politicised, violent, and partisan land reform programme.

The analysis in this article is predicated on three crucial concepts. These are *regime security*, which is the main pre-occupation of the ruling ZANU-PF party; *human security*, which is a currently sought after dispensation by the civil society; and *post-nationalist alternative*, which is a clarion call of the opposition MDC party and its supporters. Regime security is concerned about the welfare, safety and protection of the ruling elite and its few cronies. Its main reference points are territorial integrity, sovereignty, and state security (Kondowe 2000:85). In most cases, African dictators, in order to deny their citizens democratic rights and to justify autocracy, use these

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high sounding terms. Human security means safety for the people from both violent and non-violent threats (Hubert 1999:3; Dorn 2001:113-5). It is an alternative way of seeing the world, taking people as its point of reference, rather than focusing exclusively on the security of territory or the government in power. A post-nationalist alternative is grounded in civil society and social movements and is predicated on empowerment and participation of people in governance. It accepts the crucial fact that the Zimbabwean nationalist paradigm has become bankrupt and has reduced itself to unproductive patronage, cronyism, violence, and lawlessness as a survival strategy. It also accepts that Zimbabwean nationalism has now lost its noble emancipatory ideals and has become impervious to the human rights and democratic demands of the people. Worse still, the nationalist consensus crafted in the 1960s and 1970s to spearhead the liberation war has broken down and needs to be replaced by a new consensus predicated on pluralism, democracy, human security, tolerance, rule of law, consent of the governed, and respect for human rights.

In this article, it is posited that Zimbabwean nationalism as espoused by ZANU-PF has an inherent authoritarianism, which combined, right from the onset in 1980, with other factors, such as the colonial legacy to thwart the emergence of a new democratic, human rights conscious, and human security sensitive political dispensation. This article therefore tries to reveal the concealed and inherent negative aspects of Zimbabwean nationalism that have contributed tremendously to the Zimbabwe crisis.

This study does not by any means deny the contribution of the external forces to the crisis in Zimbabwe. What it attempts to do is to provide an audit of the contribution of the internal forces to the current crisis unfolding in Zimbabwe. It focuses particularly on ideological problems simply because they are rarely discussed in Zimbabwe. Zimbabweans at the moment are inundated with songs, poems, media articles and government speeches that solely blame the West for the Zimbabwe crisis. While this position is warranted, it tends to overshadow the contribution of government policies and ideas to the crisis. In fact, it may be regarded as fallacious and escapist to simply blame the West for all the African problems. Worse still, to always explain African problems using external factors or to always blame people of white stock for Zimbabwean problems is tantamount to elevating the 'white agency' in African affairs. This is why this article focuses on critiquing the internal dynamics of Zimbabwe as another very important way of understanding the Zimbabwe crisis.

2. Some Negative Determinants of the Present Zimbabwean Political Culture

Zimbabwe's political culture is largely a product of four main influences: the pre-colonial, the colonial, the armed liberation struggle, and ZANU-PF rule. As noted by Stefan Mair and Masipula Sithole (2002:21), the contemporary political culture of Zimbabwe represents an articulation of these four streams. This was also confirmed long ago by Karl Marx who contended that: 'the tradition of all the dead generations weighs like a nightmare on the brain of the living' (Mair & Sithole 2002:21).

The four influences that gave birth to the Zimbabwean political culture were all undemocratic.

For instance, pre-colonial societies were characterised by non-competitive politics. Competition for power was not only illegitimate, but fatal, and often those who sought power had to found their own polity elsewhere (Ndlovu-Gatsheni 2003b). Hence, to this day, the Zimbabwean political elite looks at political competition with suspicion and open hostility. The other important and cardinal operative principles of pre-colonial Zimbabwean political authority was the idea of life kingship or chieftaincy, an idea and practice that easily translates itself into the notion of 'life presidency' (Mair & Sithole 2002:21).

Colonialism that succeeded pre-colonial rule was, by definition and design, an autocratic system of governance. It was undemocratic to the core. There was no pretence at all by the settler colonial government to create democratic institutions that embraced the Africans. Political participation was severely limited. No political competition was allowed or tolerated between the Africans and the white races. As articulated by Mair and Sithole (2002:22):

Colonial authoritarianism, far from deepening a commitment to democratic norms and practices on the African nationalist elite, merely consolidated an incipient authoritarian psyche in the nationalist leadership. The authoritarianism of the colonial era reproduced itself within the nationalist political movements. The war of liberation, too, reinforced rather than undermined this authoritarian culture.

The more recent influence in the shaping of the Zimbabwe political culture is the nationalist liberation struggle. Every African was expected to embrace the liberation war and every one had to toe the line. This, more than anything

else, generated and institutionalised a culture of fear, conformity and unquestioning support. The guerrilla armies and the nationalist parties were never democratically structured and did not operate in a democratic fashion. They were highly commandist and authoritarian. Robert Mugabe captured the *modus operandi* of the liberation forces well when he said:

The ZANU axe must continue to fall upon the necks of rebels when we find it no longer possible to persuade them into the harmony that binds us all (Mair & Sithole 2002:22).

The government of ZANU-PF is permeated by the culture of intolerance, intimidation and violence derived from the liberation struggle. The liberation struggle instilled in many political leaders and their supporters a militaristic conception and perception of politics and political process. At the present moment ZANU-PF certainly prides itself in its violent past and its capacity to deploy this infrastructure of violent politics to those who dare challenge it.

3. The Nationalist Struggle and the Birth of Authoritarian Politics in Zimbabwe

It should be clear then that none of the above outlined political precedents that shaped the Zimbabwean political culture promoted democratic values and practices. None of them were driven and underpinned by the noble values of civic tolerance and human security. For instance, the nationalist struggle was characterised by complex ambiguities and contradictions to the extent that the liberation war became fraught with intense intrigues, frictions, factionalism, violent purges, and assassinations. There was a lot of witch-hunting and intimidation, and 'enemies' within were summarily liquidated.

Nevertheless, the struggle for Zimbabwe was conceived as a movement for democracy and human rights. The nationalist movements tried by all means to project a people-centred outlook. Populist propaganda was used to mobilise people across class and ethnic divides. Indeed, peasants, workers, women, the youth as well as the petit bourgeoisie heeded the appeals of African nationalism and fought for the liberation of Zimbabwe.

What has escaped the minds of many analysts is that the African nationalist movements were not only positive schools of democracy and human rights that 'put the people first'. They were also negative schools of despotism, authoritarianism, violence and the cult of personality (Bhebe &

Ranger 2003:2). These negative aspects of African nationalist movements in Zimbabwe and elsewhere in Africa emerged poignantly at independence and continued to influence the character of the post-colonial African state.

In Zimbabwe the African nationalist struggle is still being glorified, and the former nationalists are still leading the country. The dominant party political rhetoric emphasises that the African nationalist struggle bestowed democracy and human rights on the Zimbabwean people. While this is true to some extent, analysts must not be blind to the negative legacy of African nationalism that has continued to shape the Zimbabwean state ideology. For instance, the current pre-occupation and obsession with 'regime security' as opposed to 'human security' was embedded in the nationalist struggle for Zimbabwe.

At the present moment, the ruling ZANU-PF has been pushed by the opposition, labour-backed MDC to frantically project itself as a people's organisation that 'puts the people first' in its agenda. This was clearly demonstrated during the ZANU-PF Congress held at Victoria Falls in December 2001, which carried the theme 'People First'. The ruling party even went back to its nationalist archives to remind the people how it liberated them from the yoke of Rhodesian white minority settler rule. The wartime songs were revived and fine-tuned. The legacy of departed nationalist heroes like Dr Joshua Nkomo took centre stage on national television and radio. In schools, teachers were ordered to teach nationalist history, and history as a subject was made compulsory for every student at 'O' level.

All this effort is being done against the bedrock of heated contestation for power and support between ZANU-PF and the MDC. The MDC has mounted a serious challenge to ZANU-PF's political dominance, particularly in the urban areas, where it has argued that the ruling party is no longer with the people, especially the workers (Bond & Manyanya 2002). A new debate has emerged in Zimbabwe as to which party really represents the true interests of the people, ZANU-PF or MDC. The fact that the ruling ZANU-PF party has taken refuge in war-time nationalist rhetoric and propaganda in its bid to render the MDC politically redundant and irrelevant, calls for a reflection on the legacy of African nationalism itself as a powerful force that continues to shape the character of the post-colonial state as well as the nature of political contestation over power and dominance.

In Zimbabwe the nationalist struggle combined militarism with mass mobilisation. The latter dictated the need for populist slogans, propaganda and rhetoric in the nationalist movement. It was in this bid to mobilise the

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masses that African nationalists tried by all means to 'put people first'. The issue of 'putting people first' was central to the survival of the nationalist movement as indicated by such nationalist literature as Maurice Nyagumbo's *With the People: An Autobiography from the Zimbabwe Struggle*. Nyagumbo was himself a leading African nationalist, who perceived his long detention in Rhodesian institutions of incarceration as part and parcel of remaining with the people (Nyagumbo 1981).

In order to mobilise the masses, African nationalism became populist in outlook. Leading Zimbabwean nationalists like Joshua Nkomo, Reverend Ndabaningi Sithole, Robert Mugabe, Herbert Chitepo and Bishop Abel Muzorewa among many others, were unanimous in denouncing colonial violation of the dignity of Africans, political disenfranchisement of the colonised, racial discrimination, lack of equal opportunity, oppression and exploitation of the colonised as well as the denial of basic human rights in general. The African nationalists tried by all means to identify themselves with the 'people's historic grievances'. Ngwabi Bhebe (1989:53-54) noted that the first African nationalist organisation to be formed in Zimbabwe, the Southern Rhodesia African National Congress (SRANC), did 'some homework on the people's grievances concerning racial discrimination, land, health, education and so on, so that their political propaganda and education would be based on concrete situations'.

As a result, by 1958, the SRANC had already identified the historic grievances of the African masses as the Land Apportionment Act, the Land Husbandry Act, the oppressive Native Affairs Department, the limited education opportunities for Africans, the racist franchise system and the discriminatory industrial relations (Bhebe 1989:54). Subsequent political organisations such as the National Democratic Party (NDP), the Zimbabwe African People's Union (ZAPU), the Zimbabwe African National Union (ZANU) and others such as the United African National Council (UANC), all modelled themselves as 'people's movements'. The nationalist struggle itself was presented as a 'people's revolution' meant to establish a 'people's state' where the interests of all social groups including peasants, workers, the youth and women would be promoted and respected (Nzongola-Ntalaja 1987:75). A more democratic and human rights conscious political, economic and social dispensation was promised in the wake of an African nationalist victory.

The nationalist populist ideology managed to raise the nationalist movement into a broad-based coalition of labour, student, religious, women, youth, and peasant movements as well as into an unstable organisation

encompassing conservative, moderate and radical tendencies (Sachikonye 1995:129-140). All this was a product of the nationalist populist agenda of trying to 'put people first'.

On the other hand, the exigencies of the armed struggle added the element of quasi-military tendencies to the nationalist movement. Quasi-military tendencies had to co-exist with populist tendencies for the survival of the nationalist movement. In pursuit of populism, the liberation struggle in Zimbabwe was popularised as *Chimurenga* and the supporters of the nationalist struggle were christened as *vana vevhu* in Shona, *abantwana benhlabathi* in Ndebele, or *children of the soil* in English (Tshuma 1997; Martin & Johnson 1981). All this was meant to maintain the full steam of mass mobilisation and to retain the element of the nationalist struggle as a 'people's struggle' for land.

However, the armed phase of the struggle for Zimbabwe added some negative tendencies to the whole nationalist movement. African nationalism itself as a social movement was basically hegemonic and intolerant of diversity, internal and external criticism and dissent. As a movement it was basically sweeping in what it claimed and annihilatory in what it rejected. Ngwabi Bhebe and Terence Ranger (2003:2) in their book, *Nationalism, Democracy and Human Rights in Zimbabwe*, observed:

But perhaps there was something inherent in nationalism itself even before the wars and the 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 a post-colonial cult of personality. Maybe nationalism's commitment to modernisation, whether socialist or not, inevitably implied a 'commandist' state.

Indeed the post-colonial state authoritarianism cannot be explained only on the basis of its being a successor to an equally authoritarian settler colonial state. Rather, the legacy of African nationalism itself tainted the post-colonial state with authoritarian tendencies.

Masipula Sithole's (1999) *Struggles-within-the-Struggle* captured the main contradictions and ambiguities within the Zimbabwean nationalist movement, which nurtured intolerance and authoritarianism. The Zimbabwean nationalist movement was a 'revolution that ate its own children', where

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'revolutionary justice' was used to eliminate others (Sithole 1999). Beginning with the swallowing of autonomous youth, women, student, labour and church organisations, African nationalism and the liberation struggle proved to be intolerant of pluralism, dissent and different opinions, and tried to foster a mono-dimensional definition of the struggle based on the interpretation of dominant petit-bourgeois nationalist leadership. Differing interpretations of the struggle and methods of achieving independence led to the rise of splinter nationalist groups that were hostile to each other. Intolerance was indicated by the use of rigid and annihilatory terms such as 'patriots' versus 'puppets', 'freedom fighters' versus 'sell-outs', as well as by officially sanctioned violence against those defined as 'puppets' and 'sell-outs' (Ndlovu-Gatsheni forthcoming:10-18).

What is even more important to note is that the Zimbabwean state ideology and dominant party political rhetoric emerged from the hegemonic and authoritarian circumstances of the nationalist liberation struggle. The circumstances of prosecuting a protracted liberation war necessitated the emergence of a strong leader who could combine both military and political attributes. What was also necessary, was unquestioning loyalty to one leader and one party. The exigencies of war called for authoritarian discipline among the supporters of the nationalist movement. Violence was officially accepted as a legitimate tool of the struggle (Bhebe & Ranger 1995a). Indeed ex-detainees like Joshua Nkomo and Robert Mugabe worked very hard in exile to elevate themselves to the heights of commanders-in-chief of the Zimbabwe People's Revolutionary Army (ZIPRA) and the Zimbabwe African National Liberation Army (ZANLA), respectively, in the 1970s (Gava n.d.:2-10).

It was during the struggle for Zimbabwe that the party leader and the party itself were glorified in such slogans as *Pamberi ne ZANU, Pamberi na Robert Gabriel Mugabe!* (Forward with ZANU, Forward with Robert Gabriel Mugabe!) (Nyangoni & Nyandoro 1979:43-49). The adoption of Marxist-Leninist ideologies, particularly by ZANU, solidified the prominence of the leader and the party in a nationalist movement. During the struggle for Zimbabwe, disagreement could lead to death. For instance, in 1963 and 1964, ZAPU and ZANU bitterly fought each other in the townships. ZAPU could not accept and stomach the reality of the existence of ZANU as an autonomous nationalist movement (Nehwati 1970). The operations of the nationalist movement on quasi-military lines were not amenable to democracy

and human rights within the movement itself. This was evident in Stanlake Samkange's post-colonial reflections on nationalist thinking and operations in the 1960s. He remembered that:

Before a rally, our youth must wake up at 3 a.m., knock at the door of every house and tell the inmates we expect them to be at the rally and we shall be watching to see that they are. People will be afraid to stay away. We will have a huge rally and our leader will be acknowledged by all as the leader and spokesman of Africans in this country. Those who are not with us are sell-outs. Those who form a rival political party must be prevented at all costs. So houses and cars were stoned. Petrol bombs thrown into people's bedrooms (Sunday Mail 1984).

To have a different political allegiance was tantamount to committing suicide and treason. For instance, trade union leaders who supported the nationalist struggle but did not wish to sacrifice the autonomy of the trade union movement by joining the nationalist movement, like Rueben Jamela of the Southern Rhodesia Trade Union Congress (SRTUC), were branded as sell-outs, imperialist stooges and threatened with direct nationalist violence such as 'Kill Jamela, Drive him away – sell-out' (Raftopoulos 1999:141-142). The prosecution of the armed struggle also introduced the tendency of accumulating arms of war as the only surety of safety, and these arms of war were used to eliminate political opponents even within the nationalist movement itself.

The glorified and worshipped nationalist leadership developed 'tough talk' and sophisticated propaganda and political rhetoric. It also developed arrogance and self-confidence. The African patriarchal ideologies were combined with nationalist authoritarianism to produce a 'father-figure' in the nationalist leader. For example, Joshua Nkomo became referred to as *Umdala* and 'Father Zimbabwe'. Songs and poems were composed and written about the person of the nationalist leader. Various names and praises were showered on the nationalist leaders such as *Shumba yeZimbabwe* (Lion of Zimbabwe) and *Chibwechitedza* (Slippery Stone) (Parade 1999; Moto 1999).

The other legacy of a protracted war of liberation was the generation of suspicion and fear, and of a siege mentality. The nationalist movement became over anxious about being infiltrated and about the existence of 'enemies within us'. It became very difficult to criticise nationalist leaders, as people with critical minds were easily branded as enemies of the revolution

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and traitors. This was clearly demonstrated by the Chairman of the Bulawayo Youth League in 1961, Dumiso Dabengwa, when he stated that:

Any African who remains independent and does not take part in the common cause is as bad a sell-out as the so-called moderates.

...Those who are not with us are against us (Bantu Mirror 1961).

The Youth League was very active in harassing, intimidating and beating up those who were considered to be against the nationalist cause. Bhebe and Ranger (2003:6) noted that 'in exile the hunt for spies and those who threatened unity inevitably became more frenzied and brutal'. Indeed, moderate African nationalists like Reverend Ndabaningi Sithole and Bishop Abel Muzorewa, who entered into an 'internal settlement' arrangement for majority rule with Ian Smith, were lambasted and threatened with death. For instance, in 1979, Dr Eddison Zvobgo, the Deputy Secretary for Information and Publicity in ZANU, went to the extent of drawing up a 'death list' with all the names of politicians who participated in the short-lived Zimbabwe-Rhodesia government of Bishop Abel Muzorewa (Hudson 1981:Appendix 2).

The net effect of all this was profound for the future politics in the post-colonial state. Firstly, the glorification of the nationalist leaders engineered a feeling of indispensability as well as irreplaceability. The elevation of the nationalist party above everything else generated rigid party loyalties and a preparedness to kill and be killed in defence of the party. Secondly, the quasi-military legacy of the nationalist movement has bequeathed intolerance of dissent and has entrenched the culture of violence in the game of Zimbabwean politics. Mass mobilisation generated a blind worship of majoritarian politics. Eddison Zvobgo emphasised this point in the 1980s when he said 'we worship the majority as much as Christians worship God' (*The Chronicle* 1983). Thirdly, the hegemonic tendencies of African nationalism eventually led to the attempt by the petit-bourgeois nationalists to try and 'privatise politics' as a preserve of only those who participated in the liberation struggle and their clients. This became poignantly clear after 1980 when the triumphant petit-bourgeois nationalists tried hard to demobilise and depoliticise women, youth, trade unions and student organisations, including some ex-freedom fighters (Ndlovu-Gatssheni forthcoming:98-104). All these issues had far-reaching implications for the Zimbabwean perception of peace and security.

4. The Post-Colonial State of Zimbabwe

The Zimbabwean post-colonial state was a product of particularly two recent major legacies. Firstly, it was a direct successor to the brutal and authoritarian settler colonial state. Secondly, it was a product of a protracted nationalist armed struggle. Thus, the character of the post-colonial Zimbabwean state was shaped by these two major historical realities. These also shaped the Zimbabwean peace and security perspective. The third element that determined the peace and security perspectives of Zimbabwe was the geo-political realities of the Southern African region.

What must be emphasised here is that the conclusion of Zimbabwe's guerrilla war in 1980 heralded the country's first opportunity and ideal chance to build democratic institutions that would really put the people first and promote the much-awaited human security. The people expected a break with the tradition of nationalist and guerrilla violence, and were looking forward to the emergence of expanded democratic spaces, to the protection of human rights, and to basic, tangible material benefits, once majority rule had been achieved (Alexander & McGregor 1996).

However, as noted by Georges Nzongola-Ntalaja in his *Revolution and Counter-Revolution*, the post-colonial state as a 'regulator' or 'societal gendarme' endeavoured to moderate and contain the very contradictions of which it is a product, so as to maintain order and social cohesion. In doing so, the post-colonial state upheld the interests of the classes that dominated the social order and acquired its character in the process (Nzongola-Ntalaja 1987:74-77). His argument seems to imply that by its very nature the post-colonial state is not people-centred. It does not put people first, but the interests of the triumphant petit-bourgeois nationalists who led the nationalist struggle for independence.

On the other hand, Ibbo Mandaza in his *Peace and Security in Southern Africa* noted that the post-colonial state is a nation-state-in-the-making, which is weak, lacks essence and is suffering from being a hostage and dependent state. As such, it is increasingly vulnerable and is unable to mediate competing forces in society, which makes it incapable of satisfying growing social demands. The post-colonial state has poor political and economic foundations. It is fragile and is given to conflict (Mandaza 1996:xviii-xxi). Indeed, the legacy bequeathed on the post-colonial state by both colonialism and African nationalism needed a strong apparatus with the

ability and capacity to embark on radical transformation of the existing order if ever the wishes and aspirations of the people were to be fulfilled.

5. Authoritarian and Hegemonic ZANU-PF Politics in the 1980s

The post-colonial Zimbabwean state under ZANU-PF failed dismally to make a break with the tradition of nationalist authoritarianism and guerrilla violence as well as colonial settler repression. The ruling party itself, having been a militarised liberation movement, failed to de-militarise itself, not only in practice, but also in attitude and style of management of civil institutions and the state at large. The new ZANU-PF government readily assumed the resilient colonial and military oriented structures left by the retreating Rhodesian settler state, with serious implications for democracy, human rights and human security. From the outset in 1980, the people's keen concern for democracy and human security clashed and contended with the different authoritarian legacies from the nationalist and liberation war. From the beginning also, the ZANU-PF government thwarted the chances of the formation of new civic structures outside party and government patronage, representing different voices in civil society, which resurfaced with the end of the liberation war to assert an autonomous position (Saunders 2000:15-20).

The ZANU-PF government in 1980 inherited the colonial and violently repressive legal machinery of the Rhodesian state. Taken together with the tradition of African nationalist authoritarianism, a new intolerant state soon emerged. No wonder that militarism and violence became part and parcel of the nascent Zimbabwean state. Both settler colonialism and African nationalism were schools of violence and intolerance, as settler brute force had to be met with an equally brutal and intolerant African nationalist strength (Ncube 2001; Bhebe & Ranger 2003:6-10).

However, African nationalism was also underpinned by populist ideology that appealed to the people's aspirations, interests and wishes. As such, the Zimbabwean peace and security perspective was a compromise of authoritarian violence and populist ideology, the security of the ruling elite and the security of the people, regime security and human security. This falls neatly within Gramsci's notion of hegemony, which emphasises the importance of changing balance between coercion and consent in state strategies of

domination. The new leadership of Zimbabwe had to strike a balance between its interests and those of the people. People expected a radical societal reform programme with the aim of raising the standards of living of the African population as well as an equally radical transformation of the colonially inherited structures of the economy (Alexander, McGregor & Ranger 2000:308-312).

As such, the survival of the Zimbabwean post-colonial state depended on striking a balance between the interests of the ruling elite and those of the ordinary people. This was particularly important in 1980 when the ruling party elite desperately needed the support of the people. The support of the people on its own was a strong source of security for the ruling elite. Popular support for the ruling elite depended on the ability of the post-colonial state to satisfy the people's expectations of independence.

The government tried, by all means in line with the nationalist populist ideology, to pursue welfarist policies. First and foremost, the government declared itself to be socialist in ideological orientation, implying that it was committed to principles of equitable distribution of resources for the benefit of the disadvantaged social groups such as women, peasants and workers. Secondly, in line with the nationalist quest for unity, a government of national unity was established in 1980 that included the Patriotic Front of the Zimbabwe African People's Union (PF ZAPU) and the white politicians. Thirdly, an attempt was made to heal the deep scars of war through adoption of national reconciliation among all the former warring combatants. Robert Mugabe as the new Prime Minister made an impassioned plea for peace in these words:

If yesterday you hated me, today you cannot avoid the love that binds you to me and me to you. Is it not folly, therefore, that in these circumstances anybody should seek to revive the wounds and grievances of the past? (Saunders 2000:17).

This was indeed a bold step in the direction of inclusion of everybody into the new Zimbabwean nation as well as an impressive step in the direction of political tolerance.

Concrete steps were also taken to fulfil some of the wartime promises. For instance, impressive steps were taken towards addressing the severely unequal and intolerable differences between the economically privileged minority and the impoverished black majority. The government invested heavily in education, health and other social services. Free compulsory primary education was introduced, massive expansion in secondary schools and teacher training was undertaken, community primary health care was

developed, and large investments were made in rural hospitals and clinics. In the public service, a deliberate acceleration and advancement of the Africans was launched. An attempt was also made to build a unified national army out of ZANLA, ZIPRA and the Rhodesian forces (Ndlovu-Gatsheni 2003c:18-21).

All the above efforts were meant to fulfil the aspirations and wishes of the people and were part and parcel of the nationalist legacy of populism. However, while all these commendable steps were being taken, an opposite development was taking place concurrently – in the wrong direction and away from the people.

It must be noted that the authoritarian legacies from the nationalist liberation struggle emphasised the concept of monolithic unity. The result was that even the celebrated policy of reconciliation announced by the government in 1980 was not part and parcel of acknowledgement of diversity, but was a move to co-opt the former warring parties into the dominant party structures. The same is true with regard to the idea of a government of national unity. These populist policies were meant to endear the opposition into joining forces with ZANU-PF and at the end being swallowed up. This argument is vindicated by the case of PF ZAPU, which joined forces with ZANU-PF to form the first coalition government of Zimbabwe in 1980, but was later violently crushed because of its attempt to continue as an opposition movement. Indeed PF ZAPU ended up being swallowed by ZANU-PF.

As noted by Richard Saunders in his book, *Never the Same Again: Zimbabwe's Growth Towards Democracy*, the top-down strategies and politics needed to win a liberation war strongly influenced the behaviour of the nationalist parties once they were in power. The nationalist leadership now in government soon displayed strong signs of intolerance, which raised questions about the nature of Zimbabwe's emerging democracy (Saunders 2000:20). Intolerance and authoritarianism permeated the official populist ideology and the dominant political rhetoric. Immediately after 1980, the ruling elite began to subordinate imperatives of economic development and people's freedom to the major goals of regime security and keeping ZANU-PF in power forever.

A number of factors complicated Zimbabwe's growth to democracy, and favoured growth towards regime security. In the first place, rural assertions of collective rights to land, tradition and local economy soon conflicted with the state-led, state-determined, state-formulated and confident interventions in the people's lives. Secondly, workers' attempts to assert their rights and their demands for a solution to their long standing grievances dating back to the

colonial period, soon conflicted with the hegemonic desire of the ruling party to subordinate trade unions and to speak on their behalf. Thirdly, the women's advocacy movements inevitably came to clash not only with the essential patriarchy of African nationalism but also with the new government's desire to de-politicise and re-domesticate women (Ndlovu-Gatsheni 2003a:10-15; Ranger 1985; Kriger 1992; Raftopoulos & Phimister 1997; Raftopoulos 1992; Nhongo-Simbanegavi 2000)

As noted by Bhebe and Ranger, the Zimbabwean situation in 1980 was a complex and plural one, which required complex and multiple solutions. However, the ruling ZANU-PF government attempted to use a hegemonic and monolithic solution underpinned by the sword of its violent agencies inherited from the past such as the party Youth League, Women's League, ex-combatants, the Central Intelligence Organisation (CIO) and the army (Bhebe & Ranger 2003:18).

In the 1980s, an ambiguous and contradictory situation prevailed in Zimbabwe whereby the powerful aspirations of the ordinary citizens for rights, democracy and human security co-existed with the strong and resilient practices of authoritarianism and violence. This meant that even the noble ideas of welfare socialism that undoubtedly promoted human dignity in the 1980s, were tainted with top-down authoritarianism. The situation was further complicated by the pre-occupation with regime security, which by its very nature allowed for official violence at the expense of human security.

It is vital to note that a number of factors indicated the government's move away from the people to its pre-occupation with regime security. The first move was the creation of so-called 'politically correct' military units, parallel to the national integration of ZIPRA, ZANLA and Rhodesian forces into a unified Zimbabwe National Army (ZNA) (Mazarire & Rupiya 2000; Ndlovu-Gatsheni 2003c). Secondly, there was the move to destroy PF ZAPU as an opposition party through violent means. Thirdly, there was enthusiasm in the use of the military in the maintenance of internal order. Fourthly, there was the official sanction of violence against the citizens, particularly the workers, students and members of the opposition movements.

One of the disturbing issues about Zimbabwe in the 1980s was the failure of the society to de-militarise itself more rapidly in line with the new political realities. Such a de-militarisation was itself an indispensable pre-requisite for the entrenchment of a new culture of peace, human rights, democracy and human security. However, instead of adopting a broad-based de-militarisation process, the new 'politically correct' military units were

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formed such as the North Korean trained Presidential Guard, the Artillery Regiment, the People's Militia and the notorious Fifth Brigade. These units were highly politicised and partisan, and they were formed in the midst of and parallel to the tenuous demobilisation of some ex-ZANLA, ex-ZIPRA and ex-Rhodesian forces (Mazarire & Rupiya 2000:72-73).

Thus, the overarching framework of de-militarisation was abandoned midway as the ZANU-PF government felt threatened. Zimbabwe had to deploy forces on two fronts in the early 1980s, barely two years into independence. This was on the external front in Mozambique along the Beira, Limpopo and Nyamapanda Corridors and inside the country in Matebeleland and the Midlands (The Catholic Commission for Justice and Peace and the Legal Resources Foundation 1997). In 1981, Robert Mugabe justified re-militarisation of Zimbabwe by saying 'a large army is necessary to answer the threat that South Africa poses to our democracy' (Martin & Johnson 1986:51-76).

The de-militarisation process was also marked by the failure to achieve a non-violent and smooth integration of ex-ZIPRA, ex-ZANLA and ex-Rhodesian combatants into the new ZNA. This failure was demonstrated by savage fighting between the ex-ZIPRA and ex-ZANLA forces at Entumbane, Connemara and other Assembly Points (APs) around the country, as well as the defection of some ex-ZIPRA combatants from the ZNA and the fleeing of others into the countryside to become what became known as 'dissidents' (The Catholic Commission for Justice and Peace and The Legal Resources Foundation 1997).

What is even more revealing about the ruling ZANU-PF's conception of peace and security, came from the government response to the so-called 'dissident problem' in Matebeleland and the Midlands. As noted by Bhebe and Ranger (2003:21), the violent response was not conditioned by objective security dangers but more by the nature of Zimbabwean nationalism. Government forces, particularly the newly formed 'politically correct' units sympathetic to ZANU-PF as a party, combed the Matebeleland and Midlands villages, looking for the ex-ZIPRA forces. In the process gross violations and abuse of civilians' rights were committed by the military. The atrocities committed in Matebeleland and the Midlands are well documented in the Catholic Commission for Justice and Peace in Zimbabwe and the Legal Resources Foundation Report, *Breaking the Silence: Building True Peace: A Report on the Disturbances in Matebeleland and the Midlands, 1980 to 1988* (The Catholic Commission for Justice and Peace and The Legal Resources Foundation 1997)

and in a courageous academic book written by Jocelyn Alexander, Joan McGregor and Terence Ranger, *Violence and Memory: One Hundred Years in the 'Dark Forests' of Matebeleland* (Alexander, McGregor & Ranger 2000).

The violence that engulfed Matebeleland and the Midlands in the 1980s demonstrated more than any other episode in the history of independent Zimbabwe, the ZANU-PF regime's preparedness to use violence against defenceless citizens. The ruling party, in a bid to violently crush once and for all PF ZAPU as an opposition movement, eagerly seized the security problem in Matebeleland and the Midlands. Enthusiastic, politically motivated and partisan forces such as the CIO, Fifth Brigade, ZANU-PF Youth Brigade, Police Internal Security Intelligence (PISI), Zimbabwe People's Militia (ZMP) and others less enthusiastic forces such as the ZNA, the Police Support Unit (PSU) and the Zimbabwe Republic Police (ZRP), lumped together PF ZAPU as an opposition party, PF ZAPU leadership, PF ZAPU supporters, the de-mobilised ex-ZIPRA combatants and all Ndebele speaking people as 'dissidents' and as a security threat (Ndlovu-Gatsheni 2003c:16-23; Nkomo 1984; Werbner 1991; The Catholic Commission for Justice and Peace and The Legal Resources Foundation 1997).

As a result of the violent handling of the security situation in Matebeleland and the Midlands, the remaining hopes for human security and the expected spaces of peace, democracy and human rights in the two regions and the rest of the country, were rapidly replaced by the culture of fear, suspicion and insecurity (Ndlovu-Gatsheni 2003c:16-24). The insecurity grew as a result of the realisation by the people that the atrocities were not an accident but officially blessed by the ruling elite of Zimbabwe. For instance, in April 1983 Robert Mugabe as the Prime Minister stated that:

Where men and women provide food for dissidents, when we get there we eradicate them. We don't differentiate when we fight, because we can't tell who is a dissident and who is not... (Lawyers Committee for Human Rights 1986:38).

In the same month 1983, Emmerson Mnangagwa, who by then was the Minister of State Security, told a gathering of Ndebele speaking people in Matebeleland North, that the army had come to Matebeleland like fire and that in the process of cleansing the area of the dissident menace, had also wiped out their supporters. He went on to state in a parody of scriptures that:

Blessed are they, who will follow the path of the government laws, for their days on earth shall be increased. But woe unto those who will choose the path of collaboration with dissidents for we will certainly

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shorten their stay on earth (*The Chronicle* 1983).

Another culprit was Enos Nkala, the Minister of Home Affairs. He did not mince his words when it came to the intentions of the violent campaign in Matebeleland and the Midlands. He once stated that:

We want to wipe out the ZAPU leadership. You've only seen the warning lights. We haven't yet reached full blast...the murderous organisation and its murderous leadership must be hit so hard that it doesn't feel obliged to do the things it has been doing (Lawyers Committee for Human Rights 1986:52).

All these statements and speeches were said in the midst of the violence in Matebeleland and the Midlands, and had the effect of making the security forces commit more and more atrocities up until the time of the Unity Accord in December 1987.

The celebrated Unity Accord as a conflict resolution measure succeeded only in meeting the minimalist conditions for peace, human security and human rights. On the positive side, one can cite the fact that the violence that had engulfed Matebeleland and the Midlands for almost a decade came to an end. However, modern studies on conflict resolution and peace building such as F. Deng and I.W. Zartman's *Conflict Resolution in Africa* and P. Mathoma, G. Mills and J. Stremlau's *Putting People First: African Priorities for the UN Millennium Assembly*, have clearly shown that the absence of overt violence or open conflict does not mean that there is peace and security in a society (Deng & Zartman 1991; Mathoma, Mills & Stremlau 2000).

One of the tragedies of the Unity Accord is that it was not a product of a broad-based democratic consensus that included the people's voices. It was part and parcel of the authoritarian and top-down strategies of ZANU-PF meant to strengthen regime security rather than to entrench the desperately needed culture of democracy and peace. The agreement was confined to the top leadership of PF ZAPU and ZANU-PF. What was at stake was not the security of the people but power sharing among the political elites. As such the Accord lacked a comprehensive post-conflict peace building arrangement, which is always necessary for the enhancement of human security. Worse still, the swallowing of PF ZAPU by ZANU-PF tended to confirm the success of the authoritarian legacy of nationalism predicated on monolithic unity rather than diversity and pluralism (Chiwewe 1989:242-286; Ndlovu-Gatsheni 2003c:19-28).

The Unity Accord was at best a pact between the petit-bourgeois nationalist elite in PF ZAPU and ZANU-PF, who by the fact of their common

class position realised that they shared a common ideology. As such, the post unity period saw the 'new united' ZANU-PF openly pushing for a legislated one-party state in Zimbabwe. Saunders saw this as one of the clearest examples of the government's move away from the people. He argued that the party leadership worked determinedly towards the establishment of a one-party state using the following means: the tightening of control over debate and political expression within the ruling party; the promulgation of the party's views and perspectives (to the exclusion of others) in the wider space of civil society; and the 'colonisation' by the party of the state, the bureaucracy and a range of public institutions. Most importantly, it involved the marginalisation if not eradication of the opposition parties, which were seen as the chief obstacle to one-party rule (Saunders 2000:20-21). The details on the debate on the one-party state in Zimbabwe are well captured in Ibbo Mandaza and Lloyd Sachikonye's book, *The One Party State and Democracy: The Zimbabwe Debate* (Mandaza & Sachikonye 1991).

The ruling party moved away from identification with the basic aspirations of the masses, remaining in agreement with popular hopes only at the level of rhetoric. The government leadership pursued its own enrichment at the expense of the people. Corruption and primitive wealth accumulation by the political leadership led to the introduction of a ZANU-PF leadership code in 1984, as a means of curbing avaricious behaviour on the part of senior party and government officials (ZANU-PF Leadership Code 1984).

The state, the government and the ruling party became alienated from the people. The people realised that the political elite was beginning to betray them. The ruling party quickly realised the danger of being rejected by the people, hence it intensified the agenda of a one-party state that was going to close the door for regular elections as well as party choice. Despite the fact that the agenda of a legislated one-party state was officially shelved in 1990, the ruling party continued to devise more strategies of keeping power and destroying opposition.

One of ZANU-PF's most eloquent and articulate ideologists, Dr Eddison Zvobgo, superbly summed up his party's obsession and pre-occupation with regime security in the following manner:

A party's eyes are focused on one thing if it is a political party: conquest of power, and retention of power. Conquering power and keeping it—that is the primary function of ZANU-PF (Saunders 2000:38).

The one-party state political system was meant to be the major method of keeping power in the 1990s. The liberation war and the violent military

campaign in Matebeleland and the Midlands were used to conquer power by ZANU-PF in the 1980s. In its quest to remain in power in the 1990s, ZANU-PF used the following broad methods: constant amendments to the constitution, manipulation of state institutions, coercion, intimidation and outright violence.

In pursuit of regime security, Robert Mugabe was elevated from a Prime Minister to an Executive President with very wide, discretionary and arbitrary powers. For instance, the president was given unlimited powers to interfere with the electoral process and even to manipulate it to the advantage of the ruling party (Constitution of Zimbabwe; Moyo 1992:43-50, Makumbe & Compagnon 2000:15-35). The idea was to make sure that all restraints on absolute and supreme power were removed, and the intention was to create an 'imperial presidency' in Zimbabwe.

Besides the use of strategic electoral reforms, ZANU-PF has mobilised other aspects of the state machinery to guarantee regime security. John Makumbe and Daniel Compagnon's book, *Behind the Smokescreen: The Politics of Zimbabwe's 1995 General Elections* and Jonathan Moyo's *Voting for Democracy*, provide detailed evidence of the openly partisan use of public facilities by ZANU-PF, including a monopolistic access and use of publicly-owned media, such as the Zimbabwe Broadcasting Corporation (ZBC) and Zimpapers, as party mouthpieces during and after elections (Moyo 1992; Makumbe & Compagnon 2000)

Muzzling of opposition is another strategy used by ZANU-PF to remain in power. Opposition political movements in Zimbabwe have not been tolerated by the ruling ZANU-PF party ever since 1980. The intolerance of opposition was embedded in the nationalist struggle itself, where disagreement could lead to death.

Beginning with PF ZAPU in the 1980s, opposition movements have been treated as political enemies rather than political opponents. The strategy used to destroy PF ZAPU combined outright violence and attempts to 'rubbish' its nationalist credentials. The leader of PF ZAPU, Joshua Nkomo was subjected to character assassination. He was portrayed as a coward who reluctantly embraced the armed struggle and who always avoided detention by going overseas. Nkomo's continued search for peace through negotiations with Ian Smith until 1976 was portrayed as an act of selling-out. Nkomo was said to have committed a few military forces to the front, keeping the bulk of well-trained forces in Zambia with the intention of staging a *coup d'état* if ZANU-PF won elections. For instance, Robert Mugabe in 1983 publicly

called for violent action against Joshua Nkomo's person. He told the supporters of ZANU-PF that:

ZAPU and its leader, Dr Joshua Nkomo, are like a cobra in a house. The only way to deal effectively with a snake is to strike and destroy its head (Nkomo 1984:2).

The harassment of PF ZAPU leadership and the killing of its supporters, which began in 1983 and continued up to 1987, forced PF ZAPU to enter into a unity agreement with the ruling party and into a process of disbanding itself as a political party.

The year 1989 saw the formation of the Zimbabwe Unity Movement (ZUM) by Edgar Tekere. This party vehemently opposed the one-party state agenda of the ruling party in its campaigns throughout the country. Like ZAPU, ZUM was harassed and its supporters attacked by the supporters of the ruling party. The clearest case of intolerance of ZUM by the ruling party was the shooting of Patrick Kombayi in broad daylight by a state agent (Saunders 2000:41). The other opposition parties that existed included ZANU (Ndonga), the United Parties (UP), the Zimbabwe Union of Democrats (ZUD) as well as the MDC formed in 1999.

The other clear strategy used by ZANU-PF to frighten the opposition is to trump up treason charges against opposition leaders. In the 1980s, Dumiso Dabengwa and Lookout Masuku of PF ZAPU languished in detention on unproven charges of wanting to dethrone the government of ZANU-PF. In the 1990s, Reverend Ndabaningi Sithole of ZANU (Ndonga) was also summoned before the courts on charges of attempting to kill president Robert Mugabe and for forming a rebel movement called *Chimwenje*. In the run up to the March 2002 presidential elections, the MDC leaders, Morgan Tsvangirai, Professor Welshman Ncube and Renson Gasela were hurled before the courts on treason charges of organising with a Canadian consultant firm to assassinate president Robert Mugabe. In February 2003, the treason trial began in the Supreme Court in Harare based on a very unclear videocassette and very unreliable state witness, Ari Ben-Menashe. All this was and is being done to enhance regime security of ZANU-PF in Zimbabwe.

6. The Democracy and Human Rights Crisis of the 1990s

The ZANU-PF regime has not taken the people's quest for democracy and human rights kindly. For instance, following the findings of the Sandura

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Commission and student demonstrations against corruption in high places as well as the rejuvenation of a critical voice from the civil society, Robert Mugabe admitted that:

We now must admit that we are reaping the bitter fruits of our unwholesome and negative behaviour. Our image as leaders of the party and government has never been so tarnished. Our people are crying for our blood and they certainly are entitled to do so after watching our actions and conduct over the nine years of our Government (Saunders 2000:37).

Indeed the people had been watching the actions of the ruling party and the government busy trying to 'privatise' politics as a preserve of the petit-bourgeois nationalists that led the liberation struggle from Zambia and Mozambique in the 1970s. The people also watched the avaricious behaviour of the party leaders in accumulating wealth at the expense of the peasants, workers, youth, students and women.

As a result of these observations coupled with international and regional developments of the 1990s, including the end of the Cold War, the fall of the Soviet Union, the crumbling of the Communist regimes of Eastern Europe, the retreat of apartheid in South Africa and the collapse of dictatorial and one-party state regimes of Kenneth Kaunda in Zambia and Kamuzu Banda in Malawi, Zimbabwe entered its own ambiguous and contradictory period of *glasnost* (Saunders 2000:35). These developments did not only expose the one-party state system model of government as prone to corruption, dictatorship and unworkable, but also inspired a renewed debate and activism on the part of Zimbabwean civil society formed around the pertinent issue of good governance, democracy, human rights and human security.

The ZANU-PF government was forced to abandon its selfish idea of establishing a one-party state in Zimbabwe. Under pressure from the civil society, particularly students, workers and intellectuals, ZANU-PF government was also forced to repeal the colonially conceived and constructed State of Emergency (Ncube 2001). During the same period of hope and anxiety, the government adopted the neo-liberal Economic Structural Adjustment Programme (ESAP), without consulting the people. This arbitrary decision reminiscent of the authoritarianism of the 1980s provoked widespread criticism, mainly by the workers and the students (Mlambo 1997).

The adoption of the Western conceived ESAP and misinforming people that it was home grown was a direct assault on the economic and social security of the people. Government subsidies on health, food, education and other basic social protection schemes were removed. Prices of goods skyrocketed in

the midst of retrenchments. The workers through the Zimbabwe Congress of Trade Unions (ZCTU) embarked on strikes and stay-aways, which were met by violent response from the government. What is even more important to note is that the adoption of ESAP did not only demonstrate the abandonment of the people by the government, but also the successful transformation of the Zimbabwean petit-bourgeois nationalists over time into a state-based bourgeoisie with capitalist interests. Hence the ease with which it readily embraced neo-liberal structural realities against the wishes of the people. This, however, happened within an ambiguous and contradictory framework characterised by a fragile process of accumulation that was being curtailed by the same ESAP. With the adoption of ESAP the ZANU-PF leadership became less and less concerned about the welfare needs of the peasants and workers and abandoned the goal of equity (Mlambo 1997).

Thus, by the 1990s, the Zimbabwean former nationalist elites had not only arrived at the accommodation of each other through the Unity Accord but also accommodated itself with global capital, which made the adoption of ESAP attractive and feasible (Bhebe & Ranger 2003:23-4; Bond & Manyanya 2002; Nabudere 2000).

While the conditionality of the Western Financial Institutions (FIs) like the World Bank (WB) and International Monetary Fund (IMF) dictated the need to adopt triumphant liberal democratic political reforms as well as reduced cabinet, this was ignored by ZANU-PF as a threat to regime security. Instead of opening up the political space the ZANU-PF government tightened its grip on power through intolerance of any opposition. This led to what Bhebe and Ranger (2003:19) preferred to term 'the rights and democracy crisis of the late 1990s'.

The crisis was precipitated by the fact that the welfare socialism of the 1980s was now scrapped by ESAP and in the political arena there was no credible opposition to chart an alternative political dispensation. People demonstrated their hatred of ZANU-PF politics by just not participating in elections in large numbers. Political analysts came to talk about apathy. This was not until the civil society organisations, particularly the ZCTU and some new human rights groups like ZimRights, rose to the occasion to fill the political vacuum (Moyo, Makumbe & Raftopoulos 2000).

The civil society organisations such as the Zimbabwe National Liberation War Veterans' Association (ZNLWVA) and others were committed to address their members' needs and interests in the face of the deepening economic crisis and the devastating HIV/AIDS pandemic. Others like the

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Catholic Commission for Justice and Peace, the Zimbabwe Council of Churches and the Legal Resources Foundation concentrated on the protection of people's rights in the face of an arrogant, corrupt and power-hungry political elite manning the state. There were also women movements such as Women Action Group (WAG) and Msasa Project, which concentrated on the protection of women's rights (Moyo, Makumbe & Raftopoulos 2000).

The government response to the pressure from the civil society organisations involved the use of the 'stick and carrot'. Attempts were made to castrate the ZCTU and the students through introduction of the Labour Relations Amendment Act of 1992 and the University Amendment Act of 1990. These two instruments were meant to limit the autonomy and assertiveness of the workers and the students in the political landscape of the 1990s. In 1995 the government introduced a further draconian piece of legislation in its bid to contain the pressure from various civil society organisations in the form of the Private Voluntary Organisations Act (PVO). This Act replaced the liberal Welfare Organisations Act of 1967 (Saunders 2000:74-79).

However, these harsh measures were not able to extinguish the pressure of civics. For instance, in 1997 the ZNLWVA openly confronted the government, demanding to be given compensation and gratuities for their participation in the liberation struggle. They accused the government of being negligent on the plight of the war veterans. Their struggle successfully forced the government to award each war veteran a Z\$50 000 lump sum, a Z\$2 000 monthly pension and various other social benefits. This preferential treatment extended to the war veterans bought them to the side of ZANU-PF, and they were and are being used by the party to intimidate, harass, threaten, and even torture civilians on behalf of ZANU-PF.

The current struggle for democracy and human rights in Zimbabwe is still championed by the civil society, and the current credible opposition in the country was born out of the civics, more specifically the ZCTU and National Constitutional Assembly (NCA). The role of the civil society, particularly the labour movement in the struggle for democratisation in Zimbabwe, is well treated in Brian Raftopoulos and Lloyd Sachikonye's brilliant and well edited book, *Striking Back: The Labour Movement and the Post-Colonial State in Zimbabwe, 1980-2000* (Raftopoulos & Sachikonye 2001).

The MDC represents the most formidable challenges to the ruling party, though it has faced the same treatment as PF ZAPU including the character assassination of its leader Morgan Tsvangirai. The party has been described as foreign sponsored and reduced to a front of the imperialist forces bent on

the re-colonisation of Zimbabwe. The supporters of the MDC have faced threats to their lives, others have been killed and yet others detained (Zimbabwe Human Rights NGO Forum August 2001).

To constrain the operations of the MDC, the ruling party has enacted new draconian pieces of legislation such as the Public Order and Security Act (POSA). This piece of legislation has been used to harass MDC members and to deny them permits to hold rallies and to campaign freely. Despite the formidable factors working against it in the Zimbabwean political landscape, MDC has forged ahead, gaining 57 seats in the parliamentary elections and winning substantial votes in the presidential elections, nearly defeating the ruling party. At the moment the MDC is challenging the results of the presidential elections in the high court of Zimbabwe.

7. The Zimbabwe Crisis and Blocked Democracy

The nationalist project represented by ZANU-PF in Zimbabwe has failed to provide the broad masses of the people with human security and social peace. This failure is well treated in Patrick Bond and Masimba Manyanya's most recent classic book, *Zimbabwe's Plunge: Exhausted Nationalism, Neoliberalism, and the Search for Social Justice*, where they wrote that it is clear that two decades after independence, fatigue associated with the ruling ZANU-PF's malgovernance and economic mismanagement has reached a breaking point (Bond & Manyanya 2002). The fact that Zimbabwe has reached 'a breaking point' is also implied in Amanda Hammar and Brian Raftopoulos's recent book, *Unfinished Business: Rethinking Land, State and Citizenship in Zimbabwe*, where the two authors noted that the dramatic changes in Zimbabwe's economic, political and social landscape since early 2000, have come to be known as the 'Zimbabwe Crisis' (Hammar & Raftopoulos 2002). Moreover, this crisis takes place against a background of deeply entrenched structural impediments as well, which hinder the development of democracy in Zimbabwe.

The Zimbabwe crisis is basically that of legitimacy, governance, economic decadency as well as a humanitarian crisis. It is worsened by the fact that the democratic embers are now trapped by the bankrupt and violent nationalist backlash. This is demonstrated by the widening polarisation and tension between the ruling ZANU-PF and the civil society. People are crying for protection from hunger, disease and poverty. Indeed Zimbabweans are

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facing a serious drought coupled with the existing ravaging HIV/AIDS pandemic. ZANU-PF's legitimacy is under serious scrutiny and critique. Nationalism has lost its emancipatory appeal to the people. The threat of state violence has failed to silence the masses' critique of existing bankruptcy of the existing government. Basic commodities such as mealie-meal, sugar, salt, petrol, bread and cooking oil are nowhere to be found in Zimbabwe.

The politics of the period from 1996-2002 witnessed a concerted effort to provide a 'post-nationalist' framework of debate. This post-nationalist position was clearly articulated in March 2000 by the MDC leader, Morgan Tsvangirai when he stated that:

In many ways we are moving away from the nationalist paradigm to politics grounded in civil society and social movements. MDC politics are not nationalist inspired, because they focus more on empowerment and participation of the people. ZANU's thinking has always been top-down, centralised, always trapped in a time warp. Nationalism was an end in itself instead of a means to an end. One of ZANU's constant claims is that everyone in Zimbabwe owes the nationalist movement our freedom. It's therefore also become a nationalism based on patronage and cronyism (Southern Africa Report June 2000).

However, this post-nationalist framework was soon beaten back by a radical, vindictive and authoritarian nationalism. In the meantime, however, the embers of such a post-nationalist politics are still burning. The advocates of post-nationalist politics include bigger coalitions of civil society such as the NCA and the Zimbabwe NGO Forum, and they have agreed that the popular consensus created by the nationalist movement in the 1960s and 1970s has served its purpose and that it has broken down under the weight of new demands in the twenty-first century. The nationalist inspired consensus was not based on consent but on authority and coercion. What is needed is a new consensus emanating from the civil society, a consensus which is pluralist, democratic, human rights oriented and people-driven and people-centred.

The 'Zimbabwe crisis', therefore deepened and became complicated as the new social democratic process soon locked horns with a concerted, defensive, well calculated and hard line nationalist backlash championed by the ruling ZANU-PF party. The ruling party has taken refuge in its history and has tried to remind the masses about the longevity of its revolutionary credentials. It loudly proclaimed that:

Our party is the only one with a proven history of revolutionary achievements whenever the political and economic situation in our country has

called for real transformation. Ever since its formation, ZANUPF has distinguished itself as an unwavering, principled, revolutionary party with a tradition of promoting political participation, social and economic advances and total human freedoms that are constitutionally protected and guaranteed under conditions of unity, peace and development (ZANU-PF Manifesto, as quoted in Raftopoulos 2001:18).

The long-standing land question was utilised as the central organising theme for the ZANU-PF election campaign. The slogan 'Land is the Economy, Economy is the Land' was popularised at the expense of other pertinent issues such as employment creation and reduction of inflation. In line with its attempt to force ZANU-PF's history down the throats of hungry and unemployed Zimbabwean youth, the government introduced the so-called national service. This national service is in real terms a revival of the notorious ZANU-PF Youth Brigade that was famous in the 1980s for intimidating people into voting for the ruling party.

On the other hand, the MDC became ambiguous as it tried hard to pose the labour movement as the true inheritor of the now bankrupt nationalist legacy. This was clearly revealed in its Manifesto that partly read:

The political struggle in Zimbabwe, historically led by the working people, has always been for dignity and sovereignty of the people. In the first *Chimurenga*, workers fought against exploitation in the mines, farms and industry, and peasants against the expropriation of their land. The nationalist movement that led the second *Chimurenga* was born from and built on the struggles of the working people. The current nationalist elite hijacked this struggle for its own ends, betraying the people's hopes and aspirations (MDC Manifesto Summary 2000:2).

In terms of real policy framework, the MDC presented itself as a social democratic party, committed to 'human-centred, equitable development policies, pursued in an environment of political pluralism, participatory democracy and accountable and transparent governance' (MDC Manifesto Summary 2000:2). What is interesting to note is that the MDC was clear on the need for a 'human-centred' political dispensation and that ZANU-PF too was forced to masquerade as an organisation that 'puts people first'. The fast track land reform programme was expressed to the people as a monumental indication of ZANU-PF's concern with human security after twenty years of neglect. If the fast track land reform programme is anything to go by, then credit must go to the emergence of credible opposition that forced ZANU-PF to go back to the people.

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A fundamental dimension to the current 'Zimbabwe crisis', however, relates to the ideological contest between ZANU-PF and MDC in the context of a multi-polar international dispensation. This multi-polar dispensation requires a flexible and pragmatic ideological orientation amenable to the imperatives of globalisation and democratisation. At the local level, Brian Raftopoulos (2001:34) has summarised the situation very well when he stated that:

Zimbabwe is caught on severely contested terrain in which a beleaguered state, presiding over an economy in severe crisis, nevertheless retains a critical mass of rural support through a combination of a populist articulation of the land question, and the use of force to break an alternative political presence in the rural areas.

For the purposes of gaining support during the June 2000 parliamentary and March 2002 presidential elections, ZANU-PF was indeed capable of raising itself from the looming political cemetery through a populist articulation of the land question. However, this can only work in the short term for ZANU-PF. The future requires ZANU-PF to adjust its ideological orientation in such a way that it suits the imperatives of the multi-polar world and globalisation if it is to survive longer than now. The nationalistic arrogance of trying to withdraw Zimbabwe from the international community of states is a disastrous option in the twenty-first century.

Zimbabwe at the moment is trapped in an ideologically muddled situation, which continues to generate economic crisis, social strife, political conflict and more importantly, fostering uncertainty about the future on the part of Zimbabwean populace in general. It is more than clear at the moment that ZANU-PF is ideologically bankrupt save for the remaining populist rhetoric that has failed to revive the failing economy. On the other hand, the MDC as a promising alternative, is now trapped in a neo-liberal web and matrix, where it is finding it difficult to reconcile the specific 'justice-related issues', like the land question that powerfully influences politics in former settler colonies, with the demands of neo-liberal capitalism and globalisation. Worse still, the MDC has not succeeded in projecting a clear, attractive and pragmatic post-nationalist paradigm, capable of rendering ZANU-PF's exhausted nationalism redundant and at the same time taking the peasants, youth, women, intellectuals and other social groups on board.

The net effects and implications of this confused situation have been far-reaching and adverse for Zimbabwe. Firstly, it has made it possible for ZANU-PF to cling to power with its bankrupt ideological trappings, which are

in turn trapped in a time warp. The democratic train has been blocked by the intransigence of ZANU-PF and this has worsened the crisis in Zimbabwe. For instance, ZANU-PF stepped up its nationalist authoritarianism, violence and intimidation. ZANU-PF has been portrayed as bloody (*ndeyeropa*) and its leadership has projected an image of having degrees in violence. The state has undergone re-militarisation through the war veterans and the youth brigades in the opposite direction from the worldwide demilitarisation in the post cold war era. The militarisation of the state culminated in the treasonous statement uttered by the military *chefs* prior to the presidential elections of March 2002, that they would not salute anybody without liberation war credentials even if that person was elected by the people as the country's president. Secondly, the ruling party has gone ahead with its practice of endless amendment to the remaining constitutional structures. This has reduced the current constitution to nothing more than an instrument of political warfare. The existing constitution has been turned into a shield for ZANU-PF regime protection and a sword to be used against the commercial farmers and the MDC (Okoth-Ogendo 2000:41-43). The government also introduced new draconian legislation such as the POSA and Access to Information Act, further limiting the rights of citizens, and not enhancing human security. Thirdly, under the guise of making the fast track land programme possible, the ruling ZANU-PF government has tied and clipped the hands of the judiciary, ushering in a phase of lawlessness, particularly in the designated farms. Fourthly, the image of Zimbabwe abroad has been damaged beyond repair.

8. Conclusions: The way forward

The starting point for Zimbabwe is to accept first of all that the country is in a very deep crisis. The government must accept that this crisis is not only a product of the so-called enemies of Zimbabwe or the current drought, but is due to unsound past and present economic and political policies that need urgent review. This is a necessary pre-requisite for the review of past performance, before looking for new alternatives. What is clear is that economic crisis cannot be solved by populist rhetoric, devoid of pragmatism.

In this century of globalisation, it is impossible for any nation, including the developed West, to try and isolate itself even in a 'splendid isolation' fashion from the complex web and framework of the international community

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of states. Samir Amin's notion of 'de-linking' as a way forward seems to be too theoretical to be practical in dealing with the threats of capitalist globalisation. As such, the way forward for Zimbabwe lies in returning to the diplomatic chessboard and to bargain from within, rather than to adopt a belligerent stance against the international community. The starting point in this arena is to take open steps towards restoration of the rule of law at home and a commitment to good governance consonant with internationally cherished and accepted standards. Perhaps Zimbabwe should not shun the current NEPAD package as it incorporates attractive principles regarding governance in Africa, particularly the unique peer review mechanism. Zimbabwe needs to take advantage of NEPAD to return to the ambit of the 'global village'.

There is need for a sincere and honest search for a democratic consensus grounded in the civil society. The time for high-sounding speeches is over. The way forward lies in the development of an urgent and concerted leap forward beyond the authoritarian, violent, intolerant and hegemonic tendencies of the liberation war. The truth is that the nationalists have made their contribution and must quickly change their mentality of seeing themselves as the alpha and omega leadership of Zimbabwe. After all, the nationalists are not indispensable and irreplaceable. There is urgent need for a flexible, malleable and visionary leadership capable of charting a new dispensation not clouded in bankrupt ideologies, but consonant with the prevailing local, regional and international developments.

The Zimbabwean case study has demonstrated the failure of the nationalist project to develop and nurture a democratic and human security oriented dispensation. Nationalist inspired economic policies have proved to be antagonistic to market forces, but amenable to regime survival and security. What is clear is that while market forces require moderation, they cannot just be ignored by any serious government or subordinated to the imperatives of regime security always.

In terms of practical steps to be taken to push Zimbabwe beyond this current crisis, one cannot ignore the need for a new constitution. The existing constitution no longer satisfies the name constitution. It has been overtaken by events and has been ghettoised through constant amendments. A new constitution derived from the people themselves is one of the fundamental pre-requisites for the burial of the past authoritarianism and a necessary condition for the entrenchment of a new genuine, people-centred, pluralist and democratic consensus in Zimbabwe.

There is need for the de-militarisation of the Zimbabwean society. This century does not belong to the warlords and their militaries. It belongs to civil society. What is desperately needed in Zimbabwe is not coercion derived from military might, but consensus framed around the pertinent issues of governance, democracy, human rights, human security and economic stability and prosperity.

The practice of 'privatising politics' as a preserve of the nationalists and war veterans is not consonant and amenable to democratisation in Zimbabwe in the twenty-first century. It stifles the necessary broad-based, open and honest dialogue involving civil society over the way forward for the country. Opposition needs to be tolerated as a necessary audit and critique in the body politic of Zimbabwe.

At the moment Zimbabwe desperately requires a courageous and bold adjustment of the existing inflexible nationalist ideology, and the adoption of a new flexible people-driven, visionary and pragmatic ideology consistent with global developments, while at the same time not sacrificing local needs and demands of Zimbabweans. Finally, the inevitable march of the social democratic movement needs to be nurtured and tolerated as an essential pre-requisite for social peace and human security in the twenty-first century. This means that the following steps be taken in Zimbabwe: firstly, politics must be liberated from its present perception of warfare. Secondly, the electoral process must emerge from its present conversion into an intellectual fraud and a political illusion. Thirdly, the Zimbabwean society must be saved from its current division into the 'people' and 'their leaders'. Lastly, the security of the state must cease to be privileged over other forms of security such as human security, social security and security from arbitrary power.

Sources

Publications

- Alexander, Jocelyn & McGregor, Joan 1996. Representing Violence in Matebeleland, Zimbabwe: Press and Internet Debates, in Allen, T. (ed), *The Media of Conflict: War Reporting and the Representation of Ethnic Violence* 1999. London: Zed Books.
- Alexander, Jocelyn, McGregor, Joan & Ranger, Terence 2000. *Violence and Memory: One Hundred Years in the 'Dark Forests' of Matebeleland*. Harare: Weaver Press.
- Bhebe, Ngwabi 1989. The Nationalist Struggle, 1957-62, in Banana, C.S. (ed), *Turmoil and Tenacity: Zimbabwe, 1890-1990*. Harare: The College Press.

Dynamics of the Zimbabwe Crisis in the 21st Century

- Bhebe, Ngwabi 1999. *The Zapu and Zanu Guerrilla Warfare and the Lutheran Evangelical Church in Zimbabwe*. Gweru: Mambo Press.
- Bhebe, Ngwabi & Ranger, Terence (eds) 1995a. *Soldiers in Zimbabwe's Liberation War*. Vol 1. Harare: University of Zimbabwe Publications.
- Bhebe, Ngwabi & Ranger, Terence (eds) 1995b. *Society in Zimbabwe's Liberation War*. Vol 2. Harare: University of Zimbabwe Publications.
- Bhebe, Ngwabi & Ranger, Terence (eds) 2001. *The Historical Dimensions of Democracy and Human Rights in Zimbabwe, Volume One: Pre-Colonial and Colonial Legacies*. Harare: University of Zimbabwe Publications.
- Bhebe, Ngwabi & Ranger, Terence (eds) 2003. *Nationalism, Democracy and Human Rights, Volume Two: Colonial and Post-Colonial Legacies*. Harare: University of Zimbabwe Publications.
- Bond, Patrick. 2001. Radical Rhetoric and the Working Class During Zimbabwean Nationalism's Dying Days, in Raftopoulos & Sachikonye 2001.
- Bond, Patrick & Manyanya, Masimba 2002. *Zimbabwe's Plunge: Exhausted Nationalism, Neoliberalism, and the Search for Social Justice*. Harare: Weaver Press.
- Chiwewe, Willard Anasi 1989. Unity Negotiations, in Banana, C.S. (ed), *Turmoil and Tenacity: Zimbabwe, 1890-1990*. Harare: The College Press.
- Davies, Hubert 1999. Human Security: Safety for the People in a Changing World. Unpublished paper presented at a Regional Conference on the Management of the African Security in the 21st Century. Lagos: Nigerian Institute of International Affairs.
- Deng, F. & Zartman I.W. (eds) 1991. *Conflict Resolution in Africa*. Washington: The Brookings Institution.
- Dorn, Walter 2001. Of Guns and Goods: Small Arms, Development and Human Security, in Naidu M.V. (ed), *Perspectives of Human Security: National Sovereignty and Humanitarian Intervention*. Brandon: Canadian Peace Research and Education Association.
- Gava, Agrippa n.d. From Lancaster House Conference to the Unity Accord: Marginalization and Conflict in Zimbabwe, 1979-89: A Case Study for Southern Africa. Unpublished paper: University of Zimbabwe.
- Hammar, Amanda & Raftopoulos, Brian (eds) 2002. *Unfinished Business Rethinking Land, State and Citizenship in Zimbabwe*. Harare: Weaver Press.
- Hudson, Miles 1981. *Triumph or Tragedy? Rhodesia to Zimbabwe*. London: Hamish Hamilton.
- Kondowe, Shyley 2000. Sovereignty, Intervention and Democratisation in Small Africa States, in Mathoma, P., Mills, G. & Stremlau, J. (eds), *Putting People First: Africa Priorities for the UN Millennium Assembly*. Johannesburg: The South Africa Institute of International Affairs.
- Kriger, Norma J. 1992. *Zimbabwe's Guerrilla War: Peasant Voices*. Cambridge: Cambridge University Press.

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- Mair, Stefan & Sithole, Masipula 2002. *Blocked Democracies in Africa: Case Study of Zimbabwe*. Harare: Konrad Adenauer Stiftung.
- Makumbe, John & Compagnon, Daniel 2000. *Behind the Smokescreen: The Politic of Zimbabwe's 1995 General Elections*. Harare: University of Zimbabwe Publications.
- Mandaza, Ibbo (ed) 1996. *Peace and Security in Southern Africa*. Harare: Sapes Books.
- Mandaza, Ibbo & Sachikonye, Lloyd (eds) 1991. *The One Party State and Democracy: The Zimbabwe Debate*. Harare: Sapes Books.
- Martin, David & Johnson, P. 1981. *The Struggle for Zimbabwe: The Chimurenga War*. Harare: Zimbabwe Publishing House.
- Martin, David & Johnson, P. (eds) 1986. *Destructive Engagement: Southern Africa at War*. Harare: Zimbabwe Publishing House.
- Mathoma, P., Mills, G. & Strelau, J. (eds) 2000. *Putting People First: African Priorities for the UN Millennium Assembly*. Johannesburg: The South African Institute of International Affairs.
- Mazarire, Gerald & Rupiya, Martin 2000. Two Wrongs Do Not Make a Right: A Critical Assessment of Zimbabwe's Demobilization and Reintegration Programmes, 1980-2000, in *Journal of Peace, Conflict and Military Studies*. Vol 1, No. 1, 69-80.
- Mlambo, Alois 1997. *The Economic Structural Adjustment Programme: The Case of Zimbabwe, 1990-1995*. Harare: University of Zimbabwe Publications.
- Moyo, Sam, Makumbe, John & Raftopoulos, Brian 2000. *NGOs, the State and Politics in Zimbabwe*. Harare: Sapes Books.
- Moyo, Jonathan 1992. *Voting for Democracy: Electoral Politics in Zimbabwe*. Harare: University of Zimbabwe Publications.
- Nabudere, Dani W. (ed) 2000. *Globalisation and the Post-Colonial African State*. Harare: African Association of Political Science.
- Ncube, Welshman 2001. The Courts of Law in Rhodesia and Zimbabwe: Guardians of Civilization, Human Rights and Justice or Purveyors of Repression, Injustice and Oppression?, in Bhebe & Ranger 2001.
- Nehwati, Francis 1970. The Social and Communal Background to 'Zhii': The African Riots in Bulawayo in 1960, in *African Affairs*, Vol 69, No.276, 120-138.
- Ndlovu-Gatsheni, Sabelo 2001. Imperial Hypocrisy, Settler Colonial Double Standards and the Denial of Human Rights to Africans in Colonial Zimbabwe, in Bhebe & Ranger 2001.
- Ndlovu-Gatsheni, Sabelo 2003a. Domestication of Women By Other Women in Zimbabwe: Another Look at the Dynamics of Patriarchy in Africa. *Southern African Feminist Review*, Vol 6, No.4, in press.
- Ndlovu-Gatsheni, Sabelo 2003b. *Dynamics of Democracy and Human Rights Among the Ndebele of Zimbabwe*. Unpublished Ph.D. thesis, University of Zimbabwe.

Dynamics of the Zimbabwe Crisis in the 21st Century

- Ndlovu-Gatsheni, Sabelo 2003c. The Post-Colonial State and Matebeleland Regional Perception of Civil-Military Relations, 1980-2002, in Williams, Rockliyn et al (eds), *Civil Military Relations in Southern Africa*. Forthcoming.
- Ndlovu-Gatsheni, Sabelo Forthcoming. *Human Pasts: Prognoses and Visions on Democracy and Human Rights in Zimbabwe in 21st Century*. Book Manuscript.
- Nhongo-Simbanegavi, Josephine 2000. *For Better or Worse? Women and ZANLA in Zimbabwe's Liberation Struggle*. Harare: Weaver Press.
- Nkomo, Joshua 1984. Nkomo: *The Story of My Life*. London: Methuen.
- Nyagumbo Maurice 1981. *With the People: An Autobiography from the Zimbabwe Struggle*. London: Allison and Busby.
- Nyangoni, C. & Nyandoro, G. (eds) 1979. *Zimbabwe Independence Movements: Selected Documents*. London: Rex Collings.
- Nzongola-Ntalaja, Georges 1987. *Revolution and Counter-Revolution in Africa: Essays in Contemporary Politics*. London: Zed Books.
- Okoth-Ogendo, H.W.O. 2000. The Quest for Constitutional Government, in Hyden, G., Okoth-Ogendo, H. & Olowu, D. (eds) *African Perspectives on Governance*. Trenton: Africa World Press, Inc.
- Raftopoulos, Brian 1992. Beyond the House of Hunger: Democratic Struggle in Zimbabwe. *Review of African Political Economy*, Vol 54.
- Raftopoulos, Brian 1999. Problematising Nationalism in Zimbabwe: A Historiographical Review. *Zambezia*, Vol 26, No. ii, 20-30.
- Raftopoulos, Brian 2001. The Labour Movement and the Emergence of Opposition Politics in Zimbabwe, in Raftopoulos & Sachikonye 2001.
- Raftopoulos, Brian & Phimister, Ian (eds) 1997. *Keep On Knocking: A History of the Labour Movement in Zimbabwe, 1900-97*. Harare: Baobab Books.
- Raftopoulos, Brian & Sachikonye, Lloyd (eds) 2001. *Striking Back: The Labour Movement and the Post-Colonial State in Zimbabwe, 1980-2000*. Harare: Weaver Press.
- Ranger , Terence 1985. *Peasant Consciousness and Guerrilla War in Zimbabwe*. London: James Currey.
- Sachikonye, Lloyd (ed) 1995. *Democracy, Civil Society and the State: Social Movements in Southern Africa*. Harare: Sapes Books.
- Saunders, Richard 2000. *Never the Same Again: Zimbabwe's Growth Towards Democracy*. Harare: Edwina Spicer Productions.
- Sithole, Masipula 1999. *Zimbabwe: Struggles Within the Struggle*. Harare: Rujeko Publishers.
- Tshuma, Lawrence 1997. *A Matter of (In)justice: Law, State and the Agrarian Question in Zimbabwe*. Harare: Sapes Books.
- Werbner, Richard 1991. *Tears of the Dead*. Edinburgh: Edinburgh University Press.

Reports, Magazines, Newspapers and Manifestos

A Consolidated Report on The Food Riots 19-23 January 1998, by Amani Trust, on behalf of the Zimbabwe Human Rights NGO Forum, March 1998.

Bantu Mirror, 2 December 1961.

Breaking the Silence and Building True Peace: A Report on the Disturbances in Matebeleland and the Midlands, 1890 to 1988, by the Catholic Commission For Justice and Peace in Zimbabwe and the Legal Resources Foundation. Harare: February 1997.

Chronicle, 5 April 1983.

Moto, July 1999.

MDC Manifesto, 2000.

Parade, July 1999.

Politically Motivated Violence in Zimbabwe, 2000-2001, by Zimbabwe Human Rights NGO Forum, August 2001.

Organized Violence and Torture in Zimbabwe in 2000, by Human Rights Legal Unit of the Zimbabwe Human Rights NGO Forum, March 2001.

Sunday Mail, 16 September 1984.

Southern Africa Report, June 2000.

ZANU-PF Leadership Code 1984.

ZANU-PF Manifesto 2000, by Election Directorate, 2000.

Zimbabwe Wages of War, by Lawyers Committee for Human Rights, New York 1986.



Regional Organisations and International Mediation: The Effectiveness of Insider Mediators

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Abstract

During the last two decades of the twentieth century, the world witnessed an increasing number of regional conflict management efforts undertaken by regional inter-governmental organisations. There are therefore strong reasons to study the advantages and disadvantages of mediation efforts by regional

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organisations, and compare these with initiatives taken by the United Nations (UN). In this article, we argue that regional organisations have certain characteristics that in principle make them effective mediators. They are ‘insiders’, closely connected to the conflict at hand, with an intimate knowledge about local conditions, and a stake in the outcome. This article builds on experience from ECOWAS (the Economic Community of West African States) interventions in West Africa to analyse the pros and cons of regional mediation. We find that the interventions did indeed produce beneficial results, but that ECOWAS mediation efforts were disturbed by the fact that its activities were seen as highly partial. We recommend regional mediators to be ‘impartial insiders’, paying special attention to creating relations of trust with all actors involved.

Introduction

During the last two decades of the twentieth century, the world witnessed an increasing number of mediation and other forms of peaceful intervention efforts undertaken by regional intergovernmental organisations (IGOs). In Central America, for example, peace agreements were negotiated in El Salvador and Nicaragua with the help of the Organization of American States (OAS). In West Africa, ECOWAS intervened in the civil wars in Liberia and Sierra Leone. The Arab League tried – unsuccessfully as it turned out – to mediate in the Iraq-Kuwait conflict. The European Union (EU) was involved in numerous intervention activities, ranging from good offices to peacekeeping, in the former Yugoslavia. At times, such regional initiatives were conducted in conjunction with the UN; at other times such initiatives were undertaken unilaterally, and independently of the UN.

There are good reasons to believe that regional conflict management efforts in the Third World will become even more frequent. Great powers and supra-national institutions have demonstrated a diminishing desire to become physically and financially involved in far-away conflicts. Discussions have started on how to create a division of labour between the global organisation, the UN, and regional organisations, with respect to responsibility for conflict resolution. In Chapter VIII of the UN Charter regional organisations are encouraged to deal with conflicts in their ‘own back-yard’, provided their activities are consistent with the principles of the UN. Such actions must be approved by the Security Council, and the regional organisation must then

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report to the Council on those actions. There are thus strong reasons to study the advantages and disadvantages of mediation efforts by regional organisations, and compare these with initiatives undertaken by the UN.

We argue that regional organisations have certain advantages *vis-à-vis* the UN. We wish here to utilise research by Paul Wehr and John Paul Lederach (1996), and suggest that regional organisations have characteristics that in principle make them effective mediators. They are 'partial insiders', closely connected to the conflict at hand, with an intimate knowledge about local conditions, shared norms or experiences with the parties in conflict, and a stake in the outcome of the conflict. Geographical proximity and deep knowledge about the conflict arguably create favourable conditions for effective mediation.

This article builds on experience from ECOWAS interventions in West Africa to analyse the pros and cons of regional mediation and to test this argument. What lessons can be drawn and what recommendations can be derived from these cases? We find that the ECOWAS interventions did indeed produce beneficial results, but that its mediation efforts were disturbed and distorted by the fact that its activities were seen as highly partial. We recommend regional organisations to be 'impartial insiders', paying special attention to creating relations of trust with all actors involved in the conflict.

We commence by first outlining our theoretical ideas concerning insider-partial vs. outsider-neutral mediators. In the following section, the increasingly important role of regional mediation initiatives is described. The empirical part first highlights the positive aspects of the ECOWAS mission by presenting important functions that its activities fulfilled. Thereafter, the problems ECOWAS experienced, which created severe obstacles for its ambition to solve the conflicts, are analysed. We end by discussing what role (im)partiality plays in international mediation efforts and what the implications are for future regional peace initiatives.

Outsider-neutral vs. Insider-partial Mediators

The answer to the question 'who should be selected as a third party?' was traditionally that the mediator should be a *neutral outsider* (Hopmann 1996:223; Wehr & Lederach 1996). According to this view, neutrality (or impartiality – these terms being used here as synonyms) is seen as a necessary tool in the armoury of the successful mediator (Carnevale & Arad

1996:40-41; Young 1967:309). The third party should preferably have no ties to any of the parties and no stake whatsoever in the conflict outcome; he or she is ideally '*not connected* to either disputant, is *not biased* toward either side, has *no investment* in any outcome... and does *not expect any special reward from either side*' (Wehr & Lederach 1996:57). These traits were supposed to increase the credibility of the mediator and make him or her acceptable to all parties, but also to enhance his or her possibilities of getting information from the disputants and increase the legitimacy of the proposed solutions (Kleiboer 1998:29; Carnevale & Arad 1996:41).

Today, this assumption is questioned by many mediation scholars. The idea of mediator neutrality is puzzling, as 'any intervention that turns a dyad into a triad simply cannot be neutral' (Bercovitch 1992:6). Active intervention by a third party affects both the substance and the likelihood of an agreement (Gibson et al. 1996:70-71). If mediation is conceived as an extension of negotiation, as 'three-cornered bargaining' with the mediator as one of the players (Carnevale & Arad 1996:41; cf. Princen 1992:23), it is difficult to associate mediation closely with neutrality. Indeed, there seems to exist a consensus that 'it is the mediators' resources and ability to effect change, rather than their perceived impartiality, that determine their acceptability and effectiveness (Jönsson 2002:222; cf. Zartman & Touval 1985:255). In brief, mediation analysts today assert that neutrality is problematic and that the effectiveness of impartiality is contingent: under some circumstances, impartiality results in efficiency, but this may not be true in other contexts. Often, the best one can hope for is a third party that is not biased in the sense that she or he is willing to sacrifice the interests of one of the parties in favour of those of the other (Hopmann 1996:225).

In an influential article, Paul Wehr and John Paul Lederach (1996) suggested that effective mediation may also be performed by what they call 'insider-partials'. Based on their observations of Central American mediation, they proposed that internality and partiality may under certain circumstances lead to successful mediation outcomes. The insider-partials are mediators from the conflict area. They have a stake in the outcome and will have to live with the consequences of their work. The trust that parties feel for the insider mediator is a result not of perceived neutrality, but of the intimate knowledge of and connections to the disputants that the mediator has. Interpersonal, face-to-face relationships are important in ensuring that the parties to the conflict will accept the mediator. Previous experiences result in expectations that the insider mediator will work for a just and durable settlement. Wehr

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and Lederach contend that the effectiveness of insider-neutrals may be particular to 'more traditional societies' who rely heavily on interpersonal trust and personal relationships. They further suggest that this type of mediation should be seen as a positive complement to intervention by outsider-neutrals.

Wehr and Lederach closely link being an insider to partiality, but they are not very clear in their usage of the latter term. For them, partiality seems to rest in the closeness and previous ties a mediator has to the disputants. This is, however, only one among several possible meanings of partiality, the one that we would call *relational partiality*. Equally important is *processual partiality*, where the mediator favours one party during the negotiation process, for example by listening more closely to that party, and *outcome partiality*, which means that the mediator deliberately favours one of the conflicting parties in its proposals for settlements (cf. Elgström 2001). As these types of partiality are not necessarily associated, any discussion on the usefulness of impartiality should clearly stake out what type is being debated.

Regional vs. Global Mediators

International conflict management is conducted by many actors, undertaking different forms of conflict management. Mediation is undoubtedly one of the most common forms of conflict management. Mediation can be undertaken by numerous actors, not the least of which are regional and international organisations. In a study of formal conflict management in international disputes from 1945 to 1995, a total of 3 737 different conflict management efforts (negotiation, arbitration, mediation, etc.) were identified (Bercovitch & Diehl 1997). Over 2 100 of these efforts involved mediation. The UN and other regional organisations engaged in close to 1 300 of these efforts. The UN and regional organisations clearly outnumber mediation efforts by states or individuals. We should not lose sight of just how often regional organisations and/or the UN initiate and undertake mediation.

In Table 1 (see page 16) we show the geographical distribution of 160 disputes in the 1945-1995 period which experienced regional or UN mediation, and the frequency of mediation efforts by each body.

Mediation by regional organisations or the UN is a popular method of conflict management because it allows the parties to retain control over the outcome, while gaining more flexibility over the process. Whether undertaken

Table 1: Geographic Distribution of International Disputes and Mediation Activities

Region	Dispute Frequency	Mediation Frequency	UN	Regional Organisations
Central & South America	30	179 (13.8%)	86 (6.6%)	92 (7.1%)
Africa	43	342 (26.4%)	223 (17.2%)	97 (7.5%)
South West Asia	7	73 (5.6%)	71 (5.5%)	-
East Asia & the Pacific	20	80 (6.2%)	77 (6.0%)	2 (0.2%)
Middle East	46	247 (19.1%)	188 (14.5%)	59 (4.6%)
Europe	14	373 (28.8%)	173 (13.4%)	116 (9.0%)
Total	160	1294 (100.0%)	818 (63.2%)	366 (28.3%)

Table 2: Regional vs. Global Mediation

Organisation Mediator and Success

Organisation Mediator	Number of Managed Disputes	Number of Mediation Attempts	Successful Mediation	Success Rate
United Nations	117	818	307	37.5%
Regional Organisations	85	366	154	42.1%
Co-operative Mediation: Combined attempts by the UN and Regional Organisations	15	110	42	38.2%
Total		1294	503	

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by regional actors or other bodies, mediation's goals are: to stop violence and hostility, reduce fatalities, and achieve a political settlement. These are the criteria of successful mediation. In Table 2 we offer information on the extent of mediation involvement by regional organisations and the UN, and a comparative analysis of their rate of success, e.g. the extent to which each mediation effort contributed to achieving any of the objectives above (For further details on operationalisations and measurement, see Bercovitch & Diehl 1997). The data suggest that regional organisations are more successful mediators than the UN. As our data do not distinguish between different types of conflict, this result must, however, be interpreted cautiously.

In Table 3 we offer more specific information on the extent to which regional organisations or the UN achieve any of the specific objectives of mediation. We can see from the information below that mediation by regional organisations achieved a full settlement in 8.2 per cent of the cases in which they were involved, compared to only 3.1 per cent by the UN. Regional organisations achieved some success with their mediation (that is a cease-fire, partial or full settlement) in 42.1 per cent of cases; the UN achieved success in 32.1 per cent only.

Table 3: Categories of Mediation Outcome

Grouped Organisations	Mediation offered only	Un-successful	Cease-fire	Partial Settlement	Full Settlement
UN	3.3%	59.2%	8.4%	26.0%	3.1%
Regional Organisations	6.3%	51.6%	12.6%	21.3%	8.2%

Regional organisations are co-operative organisations based on geographical proximity, social and political similarity, interdependence, and a commitment to regional security. As such, regional organisations are more likely to be familiar with local issues, the situation and the parties in conflict. We maintain that regional organisations that intervene in regionally bounded conflicts often share the characteristics of insider-partials. Their members are often immediately affected by the conflict and they cannot leave the post-negotiation situation. This makes them take a greater interest in managing or

mitigating a conflict, lest it escalate and engulf the whole region. Regional organisations thus have a vested interest in managing a regional conflict. Their closeness to, and knowledge of, the local context give them an advantage as conflict managers compared to an outsider, like the UN.

Relational partiality is probably an inherent trait in regional insider mediators, as they have asymmetrical historical ties and bonds to the conflicting parties. This does not mean, however, that they are necessarily less effective than neutral outsiders. Furthermore, a regional mediator may well demonstrate both processual and outcome impartiality. How regional mediators have behaved in this respect is a matter for empirical research.

Regional organisations have a further advantage over outside third parties or the UN in the area of mediation: getting the UN involved internationalises a conflict; having a regional organisation, mediating from within, as it were, keeps the conflict local. Most parties in conflict would rather keep a conflict localised, rather than face the prospect of some form of international intervention. They would regard regionalisation as preferable to internationalisation.

Thus our argument here is that in most international conflicts, a regional organisation would be preferable as a mediator to the UN, because of (a) its superior knowledge of local conflicts, and strong incentives to resolve them, (b) proximity to a conflict, and ability to react faster, and (c) the ability of a regional organisation to provide forums for formal discussions and informal dialogues (Black 1996; Diehl 1994; Jones & Duffey 1996; Marnika 1996).

Lessons from ECOWAS Intervention in Liberia and Sierra Leone

A brief background

Established in 1975, ECOWAS was designed to promote economic development and political unity within the West African region through an integration of the economies of its members. Since its inception, ECOWAS has striven to promote the economic growth of the region and to guarantee economic and political stability, but also to further social and cultural integration (Obiozor et al. 1991). Goal attainment has, however, been hampered by economic constraints and by regional insecurity. Trying to reach the goals of integration in an environment characterised by violence and enmity is clearly a daunting task.

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In order to reconceptualise its role concerning regional security, ECOWAS in 1981 agreed on a 'Protocol on Mutual Assistance on Defence' (Yoroms 1999). But it was not until the early 1990s that ECOWAS became actively involved in regional security affairs. The civil wars that erupted in Liberia in 1989 and subsequently in Sierra Leone in 1991 soon revealed how easily internal conflict could lead to a destabilisation of the entire region. The members of ECOWAS were directly affected by the instability in the two countries and this constituted a powerful motivation for them to engage in regional peace efforts. The result was mediation initiatives and intervention in both cases.

To detail the history of the two conflicts, and the role of ECOWAS in them, is well beyond the scope of this article (see Adebajo 2002a and b; Berman & Sams 2000; Tudor 2000; Barclay 1999; Hutchful 1999). Instead, we first delineate what contributions ECOWAS made to the peace processes and what major functions it fulfilled, alone or in conjunction with the UN. Thereafter, we analyse what weak spots can be detected in its mediation efforts and the reasons for these deficiencies. In both sections, we refer to the insider-partial mediation model to explain our findings.

The Benefits of Insider-partial Mediation

To begin with, it should be emphasised that peace accords have been concluded in both Liberia and Sierra Leone. This is at least partly due to external mediation and pressure, where the ECOWAS mission has been the most prominent actor (Berman & Sams 2000:108; Hutchful 1999:8; Morrison Taw & Grant-Thomas 1999). Great power pressure and UN intervention also contributed, but mainly by lending additional strength and legitimacy to the efforts by the regional organisation (Adebajo 2002a:51). The fairness and durability of the peace agreements may be rightfully disputed, but the fact remains that ECOWAS intervention helped to bring about at least temporary solutions in situations that were highly unfavourable to negotiated settlements. The disputes were long drawn-out and complex, and had not reached obvious stalemates at the time of intervention. There was a large number of parties, often internally divided, whose representatives had not always sufficient authority to speak for their members (Such characteristics are seen as indicating a low likelihood of negotiated peace by negotiation theorists; cf. Bercovitch 1992:8; Susskind & Babbitt 1992:48). By the time ECOWAS became involved in Liberia, 90 per cent of the country was already occupied

by the rebel forces. In Sierra Leone, the military had already overtaken the government when ECOWAS was asked to intervene (Tudor 2000; Clapham 2000). Nevertheless, ECOWAS managed to draft peace plans as the leading mediator, plans that were later implemented, even if not in their original form.

Secondly, the probability is high that no substantial external intervention at all would have taken place in the absence of regional initiatives (Berman & Sams 2000:148). Great powers were quite willing to issue statements and official condemnations, but were extremely reluctant to engage in actual fighting (Adebajo 2002a). When UN troops were after all sent to Sierra Leone – primarily because of the withdrawal of Nigerian ECOMOG (ECOWAS Monitoring Group) troops from the country – they were ‘dramatically under-equipped and ill-trained’ (Malone & Thakur 2001:16; cf. Adebajo 2002a:99-101). The United Kingdom did indeed provide a contingent of military personnel (besides its diplomatic and humanitarian assistance), but only briefly and mainly to protect European civilians and UN personnel (Adebajo 2002a:93-94). US and EU logistical support after the rapprochement between Nigeria and the main rebel leader, Charles Taylor, in 1996 did significantly help ECOMOG in its efforts to disarm Liberia’s factions (Adebajo 2002a:62-63). Still, only committed regional actors seem to have the motivation to employ sufficient numbers of troops for longer time-periods (We will return to the material conditions that prevent them from actually doing so). Thus, ECOWAS was the only actor who had the *political will* necessary to assume primary responsibility for regional peacekeeping (Berman & Sams 2000:148; Morrison-Taw & Grant-Thomas 1999).

Thirdly, ECOWAS performed a number of important tasks that contributed to the negotiated outcomes. In its mediating role, it functioned both as a facilitator and a manipulator. ECOWAS was the convenor, or co-convenor, of most of the peace conferences arranged in both conflicts (Tudor 2000; Clapham 2000). In this way, it forced the conflicting parties to the negotiating table (even if all parties did not always participate) and compelled them to take an official stance on the issues at hand. Combined with its monitoring function, where ECOWAS reacted if actors did not follow previous agreements – for example by breaking cease-fires, this meant that the warring parties were put under constant pressure and could not abandon their commitments at will. ECOWAS also made it clear that its members would not recognise any government that came to power through force: ‘military successes will not win the rebels legitimacy or recognition’ (UN Special Report 1999:5). Denying any victorious rebel regime legitimacy was

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a significant weapon for ECOWAS and the international community. This instrument fulfilled the first condition for successful mediation put up by mediation scholars Susskind and Babbitt (1992:48): 'disputants must realise that they are unlikely to get what they want through unilateral action'. According to some observers, threats of non-recognition were what made the rebel factions come to the negotiating table (Haygood 1996).

The position of ECOWAS as a committed and knowledgeable insider certainly helped the organisation in its mediator performance. The organisation had, through its members, a functioning communication network with all disputing parties and reliable information on developments both in the field and on the political arena. This was despite, or perhaps because of, the splits within ECOWAS itself, with different member states supporting different parties to the conflicts (see below). Personal relations with all leading figures were established, although trust was not always present. Its closeness to the conflict arena and its connectedness to the disputants made it a privileged mediator.

Fourth, ECOWAS acted as a peace enforcer and an active protector of peace agreements. Through ECOMOG, the ECOWAS Monitoring Group, the organisation became an active part of the military struggle. In Liberia, ECOMOG tried by force to protect its objectives in the peace process. ECOMOG from time to time engaged in regular fighting with what it considered rebel forces (Adebajo 2002b; Tudor 2000:626; Haygood 1996). This was motivated as a necessary step to defend the peace initiatives ECOWAS had taken. In Sierra Leone, ECOMOG intervened to oust the military regime, which had overthrown the previous elected government, that ECOWAS wanted to reinstall (Clapham 2000). Although unable to defeat the rebels in either country, the military engagement demonstrated resolve and sometimes prevented coup makers from carrying out their intentions. By becoming a military actor, siding with some factions against others, ECOWAS clearly abandoned its pretensions of neutrality. This created, as we will demonstrate, serious problems for ECOWAS in its mediator role. However, it may be argued that partiality against non-democratic or lawless forces is at times necessary for a regional intervener. In the words of Malone and Thakur (2001:13), 'the need for impartial peacekeeping should not automatically translate into moral equivalence among the conflict parties on the ground'. A committed regional insider might be indispensable in order to protect democratic forces against stronger autocratic opponents, when the UN is unlikely to engage in such action.

The Problems of Insider-partial Mediation

Although the work of ECOWAS has in the UN been heralded as ‘an important example of a successful African peace-keeping mission’ (UN Press Release 1996), and as a ‘model for African peace-keeping’ (Rowe 1998), the Liberian and Sierra Leone missions have both been fraught with difficulties and even failures. One major problem, which they share with many UN interventions, had to do with *resources* (Berman & Sams 2000:104-105; Hirsch 1999b). Neither ECOWAS nor the UN mission had the financial resources or the trained peacekeeping personnel necessary to properly carry out their tasks. The ECOWAS members did not have the economic capacity to fund the peacekeeping effort by their own means. The problems were somewhat alleviated by contributions from the UN and individual members of the international community (Adebajo 2002a:141), but still the amount available for the missions in Liberia and Sierra Leone was far from sufficient. This, together with a sometimes alarming lack of professionalism among the ECOMOG troops (Yoroms 1999), had repercussions on the efficiency of the interventions that were in fact marked by bad organisation and discipline.

Another serious obstacle for effective conflict management was the *lack of unity* within ECOWAS. It turns out that established interpersonal relations, a defining characteristic of mediation attempts by an insider-partial according to Wehr and Lederach, can obstruct as well as facilitate co-operation. In the Liberian case, personal ties between the leaders of the Ivory Coast and Burkina Faso and members of the Liberian ruling elite that was ousted early on in the conflict, made these two ECOWAS members fund the rebel army and help it with ammunitions and weapons – contrary to the policy of ECOWAS as such (Adebajo 2002a:48; Clapham 1994; Inegbedion 1994). In Sierra Leone, Liberia and Burkina Faso morally and financially supported rebel groups as ECOWAS struggled to convince the same rebels to respect the cease-fire they had agreed upon. ‘The ECOWAS consensus on regional peace has been fractured as Nigeria, Guinea, Ghana and Mali are contributing peacekeeping troops in Sierra Leone to a peacekeeping effort seemingly opposed by Liberia and Burkina Faso’ (Hirsch 1999a:3; cf. Clapham 2000). The infamous ‘diamonds-for-guns trade’ gave many actors powerful economic incentives to prolong the fighting. Fragmentation within ECOWAS weakened its peace efforts and its credibility in general. Towards the end of the Liberian conflict, when agreement on the necessity to end the

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fighting increased dramatically, not least because of the costs engendered by refugee flows to many countries in the region, the pressure on the fighting parties also increased and ECOWAS mediation became more effective (Tudor 2000). Nigeria's decision to make peace with Taylor resulted in a more positive approach from the francophone ECOWAS members, including troop contributions, thereby strengthening subregional unity (Adebajo 2002a:17, 44).

Finally, and especially important in this context, ECOWAS *partiality* has been a major stumbling block hindering successful mediation. ECOWAS has since its creation been associated with fears of Nigerian domination (Adibe 1994:197; Adebajo 2002b). Not least, the francophone countries have at times been suspicious of the intentions of the regional great power. As both the interventions in Liberia and Sierra Leone were prompted by Nigeria, and to a large extent relied on Nigerian troops (Inegbedion 1994; Yoroms 1999), they were by some observers seen as expressions of Nigerian foreign policy, rather than as West African peace initiatives (cf. Adebajo 2002b:245-247). It was furthermore claimed that the Nigerian president, Babangida, had friendly ties with one of the actors involved in the Liberian power struggle (cf. Adibe 1994:197). There was thus ample evidence of relational partiality.

But the ECOWAS experience is also full of examples of processual and outcome partiality (Berman & Sams 2000:148-149; Hutchful 1999). As indicated above, ECOMOG troops took part in actual fighting, siding with some of the domestic factions against others. It is clear that the rebels perceived ECOWAS and ECOMOG as yet another enemy (Barclay 1999; Tudor 2000:622). Although the main aim of ECOWAS was to facilitate negotiations between the rebels and the governments, or between different rebel groups, its mediation efforts were often met by mistrust and suspicion by many regime opponents. Despite the insistence of the Nigerian president that '[T]he ECOMOG is a peace force.... It is not an army of conquest or occupation.... The ECOMOG forces are soldiers without enemies or favored faction in the conflict...' (Babangida, quoted by Skau 2000), the rebel leaders obviously thought differently. But not only the rebels were sceptical; even international observers like Jimmy Carter criticised ECOMOG for partiality (Haygood 1996; cf. Adebajo 2002a:17). It is fair to conclude that ECOWAS was seriously handicapped in its mediation efforts by its own lack of process and outcome impartiality.

Conclusion: An Advocacy of Insider-impartial Mediation

ECOWAS was clearly an insider mediator. Its member states had deep interests in the disputes and were directly affected by refugee flows, by the fact that their citizens were trapped in the fighting and by the risk of diffusion of regional insecurity. The states of the region are highly interconnected and interdependent. This created strong incentives, both to put an end to the fighting and to accomplish a lasting peace agreement.

The cases highlight both the advantages and the limitations of insider-partial mediation. The ECOWAS missions distinctly demonstrate some of the benefits that come with being an insider mediator. A high commitment to the peace process was linked to deep knowledge of the conflict area and a dense network of personal contacts. With the support of the international community – and by peace forces in the war-plagued countries themselves – ECOWAS finally succeeded in brokering cease-fire and peace agreements. ECOWAS played the roles of facilitator and manipulator, and could pose a credible threat of non-recognition to the warring factions. It is clear that ECOWAS contributed to a negotiated settlement, however temporary and fragile. The outsider-neutral mediator, the UN, helped lend legitimacy to ECOWAS policy initiatives and played a supportive but minor role in the peace processes (cf. Adebajo 2002a:143).

It is at the same time equally obvious that ECOWAS in some respects was not ideal as a mediator. The lack of internal unity decreased the credibility and consistency of its mediation efforts. Even more problematic was its not very subtle partiality. It was by some actors perceived as one part among others in the conflict, and not as a neutral mediator. An insider is probably always relationally biased, but in this case ECOWAS was also blatantly partial in the process and as regards the outcome.

Linking our findings to recommendations, we suggest that insider mediators should at least exhibit processual impartiality, not openly favouring one or some of the parties to the detriment of others, if they want to achieve durable solutions. It is not necessary, or even possible, for an insider mediator to break up earlier bonds of friendship or personal relationships (relational partiality). Open processual bias is, on the other hand, counterproductive in mediation. Mediator unity is also strongly recommended; effectiveness is heavily curtailed if actors within a mediating organisation pull in different directions.

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In brief, mediation efforts by regional IGOs seem to be both necessary and positive ingredients of any future global peace-building regime. Global actors often hesitate to become involved in conflicts where their economic or security interests are weak. Insider mediation holds many advantages – especially if it is also impartial in its handling of the mediation process.

Sources

- Adebajo, Adekeye 2002a. *Building Peace in West Africa: Liberia, Sierra Leone, and Guinea-Bissau*. Boulder, Co. and London: Lynne Rienner.
- Adebajo, Adekeye 2002b. *Liberia's Civil War: Nigeria, ECOMOG, and Regional Security in West Africa*. Boulder, Co. and London: Lynne Rienner.
- Adibe, Clement Emenike 1994. ECOWAS in Comparative Perspective, in Shaw & Okolo 1994:187-217.
- Barclay, Anthony 1999. Consolidating Peace Through Governance and Regional Cooperation: The Liberian Experience, in Adebayo, Adekeye (ed.), *Comprehending and Mastering African Conflicts*, 297-316. London and New York. Zed Books.
- Bercovitch, Jacob 1992. The Structure and Diversity of Mediation in International Relations, in Bercovitch & Rubin 1992:1-29.
- Bercovitch, Jacob (ed) 1996. *Resolving International Conflicts*. The Theory and Practice of Mediation. Boulder, Co. and London: Lynne Rienner.
- Bercovitch, Jacob & Diehl, Paul 1997. Conflict Management and Enduring Rivalries: The Frequency, Timing and Impact of Mediation. *International Interactions*, 22 (2), 299-320.
- Bercovitch, Jacob & Rubin, Jeffrey Z. (eds) 1992. *Mediation in International Relations*. New York: St. Martin's Press.
- Berman, Eric G. & Sams, Katie E. 2000. *Peacekeeping in Africa: Capabilities and Culpabilities*. UNIDIR/2000/3. Geneva: United Nations Institute for Disarmament Research.
- Black, Davidson 1996. Widening the Spectrum: Regional Organizations in Peacekeeping Operations. *Peacekeeping & International Relations* 25 (3), 7-9.
- Carnevale, Peter J. & Arad, Sharon 1996. Bias and Impartiality in International Mediation, in Bercovitch 1996:39-53.
- Clapham, Christopher 1994. Liberia, in Shaw & Okolo 1994:66-85.
- Clapham, Christopher 2000. Sierra Leone: Recent History, in *Regional Surveys of the World*. Africa South of the Sahara 2000, 951-958. London: Europa Publications.
- Diehl, Paul 1994. *International Peacekeeping*. Baltimore: The Johns Hopkins University Press.

- Elgström, Ole 2001. The Honest Broker? – The European Union Council Presidency as a Mediator. Paper presented at the 4th Pan-European International Relations Conference, Canterbury, Kent, September 2001.
- Gibson, Kevin; Thompson, Leigh & Bazerman, Max H. 1996. Shortcomings of Neutrality in Mediation: Solutions Based on Rationality. *Negotiation Journal* 12 (1): 69-80.
- Haygood, Wil 1996. As Words Soar, Liberia Spirals Ever Downward. *The Boston Globe*, May 27.
- Hirsch, John L. 1999a. Peace Prospects for Sierra Leone. IPA Initiatives. Newsletter of the International Peace Academy, Summer 1999, p.3.
- Hirsch, John L. 1999b. Saving Sierra Leone. *The Washington Post*, March 4.
- Hopmann, P. Terrence 1996. The Negotiation Process and the Resolution of International Conflicts. Columbia, S.C.: University of South Carolina Press.
- Hutchful, Eboe 1999. The ECOMOG Experience with Peacekeeping in West Africa, in Malan, Mark (ed.), *Whither Peacekeeping in Africa?* Institute for Security Studies, Zambia.
- Inegbedion, E. John 1994. ECOMOG in Comparative Perspective, in Shaw & Okolo 1994:218-244.
- Jönsson, Christer 2002. Bargaining, Negotiation and Diplomacy, in Carlsnaes, Walter, Risse, Thomas & Simmons, Beth (eds), *Handbook of International Relations*. New York: SAGE.
- Jones, Richard & Duffey, Tamara 1996. Sharing the Burden of Peacekeeping: The UN and Regional Organizations. *Peacekeeping & International Relations* 25 (3), 4-7.
- Kleiboer, Marieke A. 1998. *International Mediation: The Multiple Realities of Third-Party Intervention*. Boulder, Co: Lynne Rienner.
- Malone, David M. & Thakur, Ramesh 2001. UN Peacekeeping: Lessons Learned? *Global Governance* 7 (1): 11-17.
- Marnika, Maurice 1996. Regional Peacekeeping: The Case for Complementary Efforts. *Peacekeeping & International Relations* 25 (3), 9-11.
- Morrison-Taw, Jennifer & Grant-Thomas, Andrew 1999. U.S. Support for Regional Complex Contingency Operations: Lessons from ECOMOG. *Studies in Conflict and Terrorism* 22 (1): 53-77.
- Obiozor, George A. et al. 1991. *Nigeria and the ECOWAS Since 1985: Towards a Dynamic Regional Integration*. Lagos: Fourth Dimension Publishing.
- Princen, Thomas 1992. *Intermediaries in International Conflict*. Princeton, N.J.: Princeton University Press.
- Rowe, Sylvester E. 1998. ECOMOG – A Model For African Peace-Keeping. *African Law Today*, October.
- Shaw, Timothy M. & Okolo, Julius E. (eds) 1994. *The Political Economy of Foreign Policy in ECOWAS*. New York: St Martin's Press.

Regional Organisations and International Mediation

- Skau, Carl 2000. A Concept for Peace in Africa: Experiences from ECOWAS Intervention in Liberia and Sierra Leone. Master's Thesis. Lund: Department of Political Science.
- Susskind, Lawrence & Babbitt, Eileen 1992. Overcoming the Obstacles to Effective Mediation of International Disputes, in Bercovitch & Rubin 1992.
- Tudor, Gill 2000. Liberia. Recent History, in *Regional Surveys of the World. Africa South of the Sahara 2000*, 625-631. London: Europa Publications.
- UN Press Release 1996. UN Press Release SC/6162, 15 January 1996, International Community Must Not Make Liberia Another Orphan in Quest for Peace.
- UN Special Report 1999. Special Report of the Secretary-General on the United Nation Observer Mission in Sierra Leone. S/1999/20. 7 January 1999.
- Wehr, Paul & Lederach, John P. 1996. Mediating Conflict in Central America, in Bercovitch 1996:55-74 (first published in *Journal of Peace Research* 28 (1), 1991).
- Yoroms, Josef G. 1999. Mechanisms For Conflict Management In ECOWAS. Paper prepared for the Seminar on the Operationalisation of the SADC Organ for Politics, Defence and Security, Durban, South Africa, 27-29 October.
- Young, Oran R. 1967. *The Intermediaries. Third Parties in International Crises*. Princeton, N.J.: Princeton University Press.
- Zartman, I. William & Touval, Saadia 1985. Conclusion: Mediation in Theory and Practice, in Touval, Saadia & Zartman I. William (eds), *International Mediation in Theory and Practice*. Boulder, Co.: Westview.



The Conflict Dimension of Environmental Degradation and the Case of Lesotho

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Abstract

This article highlights the consequences of conflicts on the environment and its management. Environmental conflicts fall under public disputes, which have been observed to be a result of human needs. This observation is based on the fact that environmental degradation is more a result of social conflicts than of bio-physical conditions, and hence eludes attempts to control it. Numerous international examples of conflicts that have resulted in environmental degradation are highlighted to reinforce this theory. The case for Lesotho's environmental degradation is traced from a historic perspective to present day problems and their manifestations. It concludes by examining the experiences of the National Environmental Youth Corps (NEYC) project and the recognition for the first time of the conflict dimension to the environmental

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degradation. It reviews the mitigation measures put in place by this project and the first positive signs towards the solution of the environmental degradation that has ravaged this country for years. It closes by advocating the equipping of natural resource and land-use planners with conflict analysis skills if the environment is to be conserved effectively.

Introduction

Timberlake and Tinker (1985) state that there is a growing conviction of a correlation between environmental degradation and the conflict over natural resources, which has not been widely documented. Recent research has been focusing on a few articles on environment and conflict, gradually bringing to light the impacts of the socio-economic dimensions on environmental degradation. This study therefore examines the impacts of the socio-economic dimensions on the environmental degradation in Lesotho, which has become second to none in the world.

According to conflict theory, environmental disputes are considered as a sub-sector of public disputes by Carpenter and Kennedy (1988), who also highlight that public disputes come in all shapes and sizes. There are disputes that occur between communities or between a community and decision-makers or planners, or within a community. According to Kraybill (1995) the underlying factor is that environmental conflicts are normally based on human needs and at local level they tend to be over the allocation, distribution and management of natural resources. Carpenter and Kennedy (1988) go on to characterise public/environmental disputes, but the underlying fact is that they all are different from each other. The general characteristics are:

- (i) That new issues and new parties keep on popping up as the negotiations proceed.
- (ii) That such disputes occur at varying levels of expertise: they can simply be differences over land boundaries, and they can be as complex and scientific as disputes over the pollution of a river and its impacts on the health of the communities down stream, which would require chemical and biological tests on the water and humans involved.
- (iii) That they have to deal with different forms or sources of power: one party could be using legal power and the other party financial power, or

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power differences may be due to the numbers or skills with which each side is endowed.

- (iv) That they normally would have differences in decision-making procedures, e.g. those of government bodies and those of private organisations.
- (v) That these disputes normally lack continuity in relationships or even the wish for a continued relationship after the dispute.

Another factor that Carpenter and Kennedy (1988) highlight, is that in most cases these public or environmental disputes are splashed in newspapers, and over TV and radio, which makes their resolution very difficult. Morris (1999) emphasises the fact that environmental issues tend to involve everybody in a community. They often arise over benefits or trade-offs between environmental and economic issues. They can also involve more than one country, however. Trolldalen (1998) describes International Environmental Conflicts (IECs) as conflicts that are a result of the utilisation of natural resources by one country, in a way which has negative environmental consequences for another, or a group of countries.

The foregoing section has introduced the concept of environmental conflicts and their complexity, which will undoubtedly contribute to the difficulty in resolving or managing them.

It is therefore within these confines that this article attempts to argue the following:

Environmental degradation is more a result of social conflicts, which have not been recognised, than of bio-physical conditions and actions on the environment, and hence there is a low rate of success in most of the projects set up to arrest environmental degradation.

This article tries to illustrate that unless it is recognised to what extent environmental degradation is a result of conflicts, the world will keep battling with the wrong issues and fail to make progress on the environment management front. The article is divided into two major sections. The first section highlights international environmental conflicts and their impact on the environment, and how they have been managed. The second section describes the Lesotho case study, showing how conflicts over natural resources have resulted in devastating environmental degradation and how attempts that have been embarked on for decades, but have ignored the conflict dimension, have been fruitless. It looks at the historical perspective of the problem and concludes by examining the current attempts, which have taken the conflict dimension into perspective.

1. Lessons from International Environmental Conflicts

This section attempts to review conflicts that arise over the management and utilisation of natural resources or the environment, in order to provide background evidence for the case study. The issues dealt with here, as outlined by Morris (1999), are mainly those of the use of environmental resources by an individual in a way which conflicts with the wishes of the society that the individual lives in. For example, although land can be purchased and owned by an individual, the environmental resources on it remain properly public, and therefore the individual cannot just use them as he/she wants. For instance, the tree species on a privately owned piece of land might contain some protected or endangered species, and therefore the public has a right to object to the land owner's wish to fell the trees and clear the land. Goldblatt (1995) says that since land has an intrinsic value and there is scarcity of it, it is not surprising that conflicts erupt over it. As could have been expected when people were forcibly removed from their land in South Africa during apartheid, a lot of conflicts were sparked in those days. This was so because the people had attached value to the land that they were being moved from. The conflict over land in South Africa went into a latent phase during the period of oppression, but as soon as freedom was achieved, all the tribes started demanding restitution and thus reopened the old conflicts. Therefore today, a successful land reform process would have to be characterised by the ability to manage and resolve the disputes over land. Goldblatt (1995) further highlights how in Saldanha Bay, South Africa, conflicts ensued between conservationists and industrialists, and how the industrialists eventually won the cases due to their financial muscle – underscoring the intrinsic value of land. He also indicates how the conflicts that erupted in Kogelberg over a future dam, which threatened a special biodiversity park, reflected a clash of interests between one sector of the community and another.

By means of an example, he shows how a fishing policy should accommodate the fishing rights of local communities if conflict is to be averted. A fishing regulation in the Kariba Dam on the Zimbabwe/Zambian border required every fisherman to apply for fishing permits, ignoring the fact that the Tonga people's staple diet is fish and they had been fishing from the river for their livelihood long before the dam was built. Hence conflicts always ensued when dam wardens tried to arrest the local fishermen (Tongas) as they fished on the Kariba dam without permits. This resulted in the Tonga community fishing at night to avoid being seen, and consequently catching

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whatever they could get, big or small. This curtailed the continued harvest from the lake, and re-emphasised the unfortunate results of a lack of negotiations between the local communities and government agents. Goldblatt (1995) also referred to the conflicts that ensued between developers and city residents in South Africa when a new housing development threatened the environmental and cultural heritage of a city. When conflicts over land or natural resources erupt, and management falls foul, it leads to the degradation of the disputed natural resources.

The examples above re-affirm the fact that environmental conflicts are public disputes, and hence they range from technical to political issues. Also, due to their complexity they are difficult to resolve, as highlighted by Kraybill (1995).

Poonan and Mackenzie (1996) describe how, during the implementation of the South African Reconstruction and Development Programme (RDP), conflicts started due to lack of transparency of an allocation of land claims. They also describe the conflicts that ensued between ecotourism and mining lobbies over certain pieces of land. Cousins (1996) focused on conflicts in the South African Land Reform Committee between the chiefs and civil associations for influential positions within the committee. Conflicts are also recorded to have occurred between the 'would be' beneficiaries of the land reform and government planners, since the communities were not in agreement with the resource management rules laid down by government. This further emphasised the intrinsic value of land as seen by Goldblatt (1995), as well as the lack of proper negotiations over natural resources.

The current Zimbabwe conflict over land is an example of how intense and violent conflicts over natural resources can get. Chitiyo (2000) describes this crisis in five stages, which have all turned violent. The first Chimurenga (guerrilla warfare) of 1890–1929 was the stage when colonialists grabbed the land and imposed white rule over the country after a number of battles. The second stage was the period of the Land Apportionment Act, from 1930 to 1959, when the fertile and good land was legally taken away from the black population and civil resistance ensued. This saw the millions of black Zimbabweans being pushed on to marginal lands with limited resources, which resulted in land degradation setting in. He views the third stage as the second Chimurenga of 1966–1979, when an armed conflict arose, primarily over the land issue. This saw the destruction of farming infrastructure. Dip-tanks were broken or filled with stones, streams were polluted with chemicals, and forests were burnt by soldiers as they tracked down the

freedom fighters. The fourth stage was the post independence period, 1980–1997, when land was superficially returned to the black population through the ‘Land Resettlement Programme’. The Land Reform Programme resulted in the opening of former conservation areas to land hungry blacks, who then went in to cut down the trees which had been out of their reach for decades. They then overstocked the land and overgrazed them, gradually devegetating the areas, eventually turning them into a state similar to the communal areas. This was an unpopular process which lacked transparency and ended prematurely in 1988, allowing this conflict to go into another latent phase in its escalation. The involvement of the Zimbabwe army in the Democratic Republic of Congo (DRC) from 1997 and the appeasement gesture given to the war veterans (Z\$50 000 per veteran) combined to bring down the Zimbabwean economy by increasing inflation to over 100 per cent. This marked the beginning of the fifth stage. This saw the economy of the country go down, the ruling party becoming increasingly unpopular as the election approached. Seeing their downfall approaching, their only remaining card that could turn the stakes of the downward spiralling of the party was to refocus on the land issue, which they knew was definitely unresolved. This sparked the current white farm invasions. The result of this has been the fragmentation of the land and the plundering of resources as the new settlers cleared bushes to construct their dwellings and cut trees for fuel-wood. This shows how decades of misapplied state intervention in agrarian reform can easily be replaced by grassroots reactions, often in the form of an anarchic conflict resolution process. Unfortunately all these conflicts are taking place at a great expense to the environment. They serve as further proof that mishandled conflicts never go away, but just go into latent phases and only need a trivial incident to go into an escalation phase again.

A review of refugee activities, which are normally a result of conflicts, reveals how they affect the environment and lead to further conflicts (UNHCR 1999). Kakonge (2000) describes refugee activity as a sudden influx of large numbers of people into areas without any planning or any provisions made for them. In the receiving area, they tend to cause competition for resources like fuel-wood, timber for construction, water and fertile land for cropping; hence tensions between them and the receiving communities become inevitable. He notes that even when assistance is given, it is only food supplies and does not include the energy to cook the food. Therefore, for as long as they are there, the refugees will depend on the local environment for the energy source to cook their food. In these camps, deforestation and cropping lead to devegetation,

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which leads to soil erosion and eventually results in desertification. It should be noted here that in all refugee situations the assistance is only given to the refugees and not the receiving communities. Trolldalen (1998), highlighting the evidence from Mozambican refugees in Zimbabwe during the 1980s and the refugees in the Horn of Africa, describes in detail the kind of environmental destruction that refugees cause – from water pollution to deforestation, from soil erosion to food shortages for the receiving communities. On the other hand, the United Nations High Commissioner for Refugees alludes to the fact that if environmental degradation or conflicts between the refugees and the resident population are not addressed, it undermines the effectiveness of their programmes. This is an acknowledgement of the negative impacts of refugees on the environment. Although refugees are not expected to put environmental considerations before their safety and welfare, they are expected to minimise their environmental impacts, hence reducing the conflicts with the receiving communities. Suhrke (1994) looks at the problem from the angle of environmental degradation, which causes environmental refugees to be viewed as victims as well as sources or perpetrators of conflicts in the receiving areas. He alludes to the fact that refugees can destabilise states as they move across borders, and that when they move into urban areas, they contribute to fast and uncontrolled urbanisation which is unstable and conflict prone. This definitely causes more environmental degradation in terms of sanitation problems, water pollution and other problems for the receiving community, which may initiate another cycle of new conflicts. This further confirms the spiralling of conflicts as described by Mitchell (1981).

In describing the relationship between development, environment and conflict, Friedman (1994) discusses negotiated development as opposed to development that is imposed on a community. He alludes to the fact that development is conflictual since it destroys some things and creates some things. It destroys the social relationships in a society; hence it can trigger conflicts or violence from threatened communities. Kraybill (1995) describes development as a process that raises expectations and brings change to a society, which always results in conflicts and disagreements, either within the community or between communities, or between the communities and planners. He further alludes to the fact that although on the surface it might look as if the people are competing over resources, the real causes of the conflict are usually much deeper. The actual cause might be that the community needs to be involved, recognised and/or acknowledged in the development that is taking place. Therefore, if the planner does not address such needs, a

seed of bitter conflict would have been sown. Payne (1998) emphasises that in order to avoid conflicts that are a result of environmental problems, sustainable development might be the answer. He alluded to the phenomenon that environmentally caused conflicts tend to erupt in poor countries, which are not in a position to implement sustainable development. It is therefore necessary to note that development can cause negative environmental impacts, which can lead to conflicts, and the conflicts could result in a further environmental degradation and so the cycle continues.

Morris (1999) examines two methods of resolving environmental conflicts or public disputes: the traditional one and an alternative methodology. The traditional method of resolution is arbitration by a government official, but this method does not allow full comprehension of the environmental and economic facts involved in the case. It utilises laws and precedents in earlier judgements, and therefore works against the facts. Each environmental dispute is different from others, and the parties could even be coming from completely different cultures. The precedents may therefore be rendered irrelevant. The settlement in this method is through a third party and not through the parties themselves. Therefore, disputing parties never get into direct interaction to disconfirm their negative perceptions of each other. The parties never really get to know and understand each other. The likelihood is that any settlement reached in this way will not last for very long because it will need to be policed by an external party, which is normally not possible. The alternative method is that of market-based contracts, which was developed by Coase in 1960. This method allows for the deep understanding of the environmental facts, and for direct negotiations between parties. It allows parties to iron out differences in perceptions that normally lead to conflict escalation. It depends on open exchanges of information and understanding of each other's interests, since it is better to comprehend each other than to alienate each other. This method is weak as far as fairness is concerned, so its fairness can only be of value for localised environmental damage. In conclusion, Morris (1999) settled for a hybrid between the two methods, which uses the power of the market-based system to motivate and facilitate efficient settlements while preserving the perceived fairness and legitimacy of the legal/tradition system.

Murphree and Wright (1996) critically evaluate the co-optation methodology as a framework for the resolution of environmental conflicts. They observed that it has three steps or facets, i.e. channelling, inclusion and salience control. Channelling works well with orderly and reliable

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communities, but not with disorganised and fragmented communities. Institutionalising might be seen as an attempt at neutralising the opposition parties. The conditions for channelling are that it has to be focused at the leadership that has a majority control, and that it has to be considered in difficult situations. In fact, the bigger the threat, the better it is to use this method. The co-optation method should be regarded as a risk, however, since the community can later be hostile if they discover that this method was used on them. Inclusion involves including the opposite side or the antagonists in the decision-making process, even if their input does not affect the outcome. Their participation in the process increases their commitment and their acceptance of the decision, since they will always feel that they are part and parcel of the decision. This method was effectively used in Zimbabwe's first parliament where the main opposition party, Zimbabwe African Peoples' Union (ZAPU), which had only 20 out of 100 seats, was included in the government. Although they could never change any decision, they felt they were part of the government. Salience control is the third facet of this triangle. It is the appeasement of a group over critical issues, by making it appear as if those issues are being addressed, so the opposition parties do not have to push them to the forefront anymore. A warning is that this might work in the earlier stages, but later co-optation may be recognised and that may lead to the discreditation of the negotiation process. Therefore, it might be a good candidate for environmental conflict resolution, but is to be used with caution in case it backfires.

Campbell and Floyd (1996) examined the use of negotiation or mediated negotiation as a framework for environmental conflict resolution. They alluded to the fact that although it might be faster and cheaper to litigate when one looks at global issues, the decision may be longer lasting and more satisfactory if it is made from negotiation or mediated negotiation. Carpenter and Kennedy (1988), as well as Susskind and Ozanwa (1984) have shown evidence of this. Campbell and Floyd (1996) observed that environmental mediation has developed as a sub-field of dispute resolution, but that, although it has been used extensively, it is still unresolved when mediation should be used as an appropriate tool for environmental disputes. Some of the conditions that are required for mediation are a situation when there is a relative balance of power, and one in which the conflict has reached an impasse. In addition Campbell & Floyd (1996) introduced the role of the development or environmental planner into the environmental conflict matrix. He observed that although the planner is a technician, in most cases

he has to double up as a politician or a hybrid of the two. It will also be an advantage for the planner to be a negotiator or mediator in order for him to be democratic in the planning process. This is a quality that most planners do not possess, which explains the difficulties they face in the planning process and also the number of unimplemented plans.

Griggs (1996) explores how the study and the comprehension of culture would assist in understanding environmental conflicts and in attempting to resolve them. He says that because environmental conflicts are so linked to communities, it is important to understand the four myths of culture. Firstly, 'Culture is a product of tradition', hence successful cultures are those that adjust and respond to the changing physical, social and economic constraints of their environment. Secondly, 'Culture is environmentally determined', hence people choose a variety of adaptation strategies within environmental constraints. Thirdly, 'Culture is an anachronism and will disappear with modernization', but although culture is socially constructed, it cannot be dismissed that easily, because an imposition of new culture could meet with violent resistance. Lastly, 'Culture is equivalent to ethnicity and race', but it is much wider than ethnicity and smaller than race. Griggs concluded by saying that culture has to be recognised as an active force with the task of creating a harmonious balance between the people and the environment. All these theories are illustrated by Weaver (1996), when he examined the management of two swamps in East Africa. One was managed by the use of legislation, fences and armed guards, which resulted in community conflict. The other was managed by local action through negotiations, and this method conserved the swamp in a harmonious manner with no conflicts. He concludes by stressing that outsiders will not produce the expected results; it is the internally generated action that will bring pride within the community and will bring conflict-free management of the environment.

Linsell and McDaid (1996) more or less concur with Griggs (1996) by saying people want control of their lives and their environment. They sometimes therefore go into conflict with environmental groups that want them to choose between their livelihood and saving the environment. If they are consulted on how they would combine the two, the result will be non-conflictual. This re-emphasises the importance of local consultations and internal solutions. Lyster (1990) advocates alternative methods to litigation for environmental conflicts. He argues for civil enforcement, and negotiating for compliance, and recommends the use of dispute resolution where judicial

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enforcement has failed. Finally, he propagates the use of the land utilisation planner as a mediator, since he regards this as one of the most effective methods. This is reinforced by Fowkes (1992) who highlighted that the involvement of the public in all the stages of development and policy making will ensure that conflicts do not come up in the future. She highlights four critical stages for involvement: the people should be part of the assembly ('forming'), and then they should be involved in the debate ('storming'), in the setting of norms ('norming'), and in the implementation of the policies that would have been developed ('performing'). If these suggestions are followed by environmental authorities, conflicts may become to be a feature of the past.

Finally, this paper would briefly like to examine how International Environmental Conflicts (IECs) are managed. Trolldalen (1998 chap. 3) divides the management of IECs into two categories, non-legal and legal. The non-legal approach is to identify the threats, assess them and the causes, report on them and advise on how to avert the conflict. Another approach of a non-legal kind has been highlighted as the development of 'soft laws' such as guidelines, resolutions, recommendations and standards. Such approaches, however, should be coupled with national institutional building for monitoring purposes. On the other hand, IECs can be managed through a legal process, such as the production of international treaties or laws, or the documentation of customary laws. In this light, the United Nations Environment Programme (UNEP) has a mandate to co-ordinate environmental action globally, and to manage and/or minimise the chances of IECs through monitoring and assessing the development of action plans and of new legal instruments. To date, the UN has been heavily criticised for its approach of merely addressing the manifestations of IECs instead of attending to the underlying causes.

It is strongly believed that environmental conflicts can be effectively managed if all the foregoing experiences are taken into account. One would like to see a situation where most personnel that deal with environmental issues have been trained in conflict management techniques so that environmental conflict mitigation will be part of the environmental planning process. Since it is a generally agreed principle that 'prevention is better than cure', environmental conflict mitigation will definitely be cheaper and more effective than environmental conflict management or resolution, or attending to the consequences of environmental conflicts.

2. The Lesotho Case Study

The Conflict Ridden History of Lesotho

The environmental conflicts in Lesotho have had their underlying causes and their impacts or consequences. Various attempts have been undertaken to manage or resolve these conflicts. Lesotho's environmental problems have reached unprecedented proportions today because attempts to solve them have always focused on the 'green issues' or physical environment, totally ignoring the 'brown issues' of the social, cultural and political aspects of the environment. It is to be hoped, therefore, that an analysis of the conflict dimension will contribute to a new beginning of taking a more pragmatic and genuine approach towards addressing the environmental degradation that we have seen to date as a result of conflicts.

The creation of the Lesotho Kingdom was 'a crisis foretold'. Lesotho, a small mountainous kingdom completely surrounded by the Republic of South Africa, occupies 30 400 square kilometres. Prior to the establishment of Lesotho as a country, the Basotho people occupied the whole of the present Free State Province of South Africa and the present day Kingdom of Lesotho (Lelimo 1998). As the Boer Trekkers moved north from the Cape Province in the 1830s, they temporarily settled in the sweet grasslands and eventually started fighting the Basotho. As the war ensued the Basotho retreated to their defensive posts in the mountains, leaving about 75 per cent of their original land to the Boers (descendants of the Dutch). As the Boers continued to push them, the Basotho king asked for protection from the British, who then established the Basotholand Protectorate under King Moshoeshoe I. By that time, most of what Lelimo (1998) calls 'the conquered territory' had already been lost to the Boers and so became the 'Orange Free State'.

In this unfolding crisis, the Orange Free State retained the flat to gentle undulating land, which was fertile, potentially arable and provided good grazing land. The newly established, tiny Lesotho Kingdom retained only 25 per cent of the original land of the Basotho. Moreover, this part consisted of rugged, unfertile land, of which only about 13 per cent was potentially arable. The Basotho people are traditionally livestock keepers, but since they had been driven out of their grazing lands with their large numbers of animals into the rugged mountains, they had very little choice except to adapt to the mountains. The Basotho as a tribe have strong cultural affiliations, however, and these were further strengthened by the threat of the Boers. This fact is confirmed by Martinussen (1988) who states that tribal and cultural ties get

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stronger under threat of losing identity. Therefore, although they were now mountain dwellers, they would not accept the loss of their cultural identity as keepers of livestock. Therefore, as their population inevitably increased with time, the livestock numbers increased proportionally. Also, as the population increased, more land came under the plough until eventually the people started crop farming on the fragile mountain slopes and using the mountains for grazing on a continuous basis, instead of the original seasonal grazing. It therefore became clear right from day one of the kingdom that it will not be a sustainable kingdom unless there was a safety valve somewhere, either by absorption of the excess population into industries in urban areas or by expanding the size of the land. The reality was, however, that none of these options took place, and hence the crisis foretold is with us today.

Lesotho's Environmental Crisis and Impacts

It is an established fact in literature that globally, soil erosion in Lesotho is only second to that of Ethiopia. The question to be asked is whether land degradation, and specifically soil erosion, is the real problem, or whether this is just a symptom of problems with deep-rooted causes. It has to be understood that soil erosion is the final stage/product of a chain of events. From 'the crisis foretold' perspective, it was clear that overpopulation and overstocking would lead to serious problems. A population of 2 million people on an area of 30 400 square kilometres has 0.0152 sq km or 15.2 ha per capita, but if food can be produced on only about 9.4 per cent of the total area, this translates to 1.43 ha per capita. Therefore, the overcrowded population started encroaching into the foothills for more cropland and into the high mountains for grazing, hence degrading these fragile marginal lands. The large number of animals overgrazed the strips of uncropped land in the lowlands and in the fragile mountain ecosystem. The people cut down the trees to build more shelter and opened up more croplands exposing these fragile marginal lands to further degradation. These cycles were repeated, resulting in deforestation and overgrazing, and leading to complete devegetation of the areas. Therefore, as it rained on bare steep slopes, soil erosion set in. The steep slopes and generally rugged terrain exacerbated the erosion process. At this point, the agents of desertification set in as the topsoil was lost, and desiccation of the subsoil resulted in the production of a hard impervious layer which increased the amount of surface run-off, and thus another cycle of erosion begun. Without belabouring the point on environmental degradation, it can be concluded by saying that the environmental problems or land degradation

are characterised by devegetation, soil erosion, and desertification. However, the factors causing, accelerating and perpetuating the process were a result of social issues; hence the need to review and examine the conflict dimension of the environmental crisis in this country.

It should be noted here that from the onset a crisis resulted from a conflict over natural resources, and that when the British intervened, they only protected what was remaining in terms of land instead of looking at the problem and at what lay in the future of these people who had lost most of their land and its natural resources. This conflict then translated from a conflict between the Boers and the Basotho people to a dispute between the Basotho and the British administrators and land-use planners during British rule when the British tried to rationalise the use of the land (Lelimo 1998). When the planners stipulated the livestock carrying capacity of the land and translated it to what each family could have, this became a problem since the number of animals per household was unacceptably low and continued to be reduced as the population increased. When the country got its independence in 1966, this dispute shifted from the British to the national government planners and the land users. Any form of control on the number of animals and the size of land for each family's crops was viewed negatively as repression by the government. Unfortunately the communities could not appreciate or understand that the planners, whether British or local, were only making an assessment of the capacity of the land resources and passing it down to the people. The people at village level saw it as an infringement of their rights. All these refusals and resistance resulted in the collapse of contour ridges, and in overstocking, deforestation, erosion and eventually desertification.

Later this conflict transformed into inter-community and intra-community conflicts as the reality got closer to home, and as the competition for the limited resources became a reality in the villages. As the problem further manifested itself, conflicts ensued between neighbouring communities over use of limited resources like grazing areas, water resources and tree resources. Each community guarded its resources jealously, resulting in boundary disputes between chieftainship areas. Gradually, as the sharing of resources within the community or village got tighter, disputes arose between members of the same village when each member could not get enough land for cropping, grazing for their animals or enough trees for fuel-wood and construction. The communal land tenure system exacerbated the situation in the grazing lands, since it was a free for all situation. Everybody tried to extract as much as they could as fast as they could, in the true form of the

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'tragedy of the commons' (Hardin 1968). What then became the results and impacts of these conflicts at the various levels in the system was land degradation, visible as soil erosion, deforestation and desertification, to such an extent that Lesotho became 'famous' for its gullies. This is a social problem which has transformed itself into an environmental catastrophe. It serves to illustrate how conflicts over the use of land and other natural resources leads to the degradation of the same resources. It also illustrates how this starts a vicious cycle where the degraded environment can only support a fraction of the pre-determined numbers of animals and this kick-starts a second spiral of the conflict which is more intense than the first one, true to the conflict spirals of Mitchell (1981). This therefore is a case study within which several conflict theories have been seen to come true, like the typical phenomenon, highlighted by Carpenter and Kennedy (1988), of new issues popping up during negotiations about public conflicts.

The next section analyses what the response has been to this environmental catastrophe. The basic response has been to attend to the damaged environment, which meant attending to the symptoms, and this has proved to have been a complete misperception of what the problem was and still is.

Environmental Rehabilitation: A Historical Review

There have been various attempts to stop the escalating environmental degradation and more specifically soil erosion. Environmental degradation and soil erosion have been talked about in Lesotho for over 40 years, since the colonial days. It is interesting to note that as attempt after attempt was made to halt the soil erosion, it kept on increasing. It was not only the density of the gullies that increased, but they got wider, deeper and longer by the season. This should have been viewed as an indicator that the wrong approach was being used or that attention was being focused in a direction that was not yielding any positive results.

One of the earliest documented attempts was that by the British in the early 1960s when they introduced the contour ridges. They brought in mechanical equipment to construct the structures on the farmers' lands without the farmers fully understanding or agreeing to what was being done. This led to lack of maintenance of the structure, rendering a good technology useless. It was a clear case of attending to the symptoms rather than the core of the problem. The Thaba Bosiu Project was another attempt in the 1970s to curb the increasing soil erosion. After the termination of each project, the structures collapsed and channelled water into gullies resulting in deep

incisions. The Phuthiatsana Project in the 1980s also had an element of soil conservation, and this was followed by the FAO's Soil and Water Conservation Project (SOWACO). These were followed by the GTZ, Matelile Project, which focused on soil conservation, and the Production Through Conservation (PTC I) project which culminated in PTC II.

It was only the PTC II project that started noticing the social conflict aspect of the problem and began actively asking for people's participation and opinions throughout the whole process, from planning through to implementation. The peculiar aspect of all these attempts was that they focused on the rehabilitation of the physical environment. They concentrated on the amount and intensity of the rainfall, the slope of the land, and the resulting impacts on the environment, but – although agricultural extension services were available – nobody ever tried to understand the underlying causes of why the people were part and parcel of the degradation of the land.

The Experiences of the National Environmental Youth Corps Project

The experiences of this NEYC project, which took some lessons from PTC II, are elaborated in the following sections. The NEYC is a United Nations Development Programme (UNDP) project which was set up as a response to the United Nations Conference for Environmental Development (UNCED) 1992, which focused on environmental rehabilitation and management by unemployed youth. The objectives of the NEYC project were two pronged, that is, to rehabilitate the rural and urban environment and at the same time to create employment for the multitudes of unemployed youth who make up about 41 per cent of the population. This project paid the youth a small allowance while they were being trained to rehabilitate their local environments under the joint supervision of the project and the village leadership. The youth were nominated for the project by the village leadership and the areas to be rehabilitated were identified by the village leadership. The community participation started right from the initial meetings of the whole village, at which the project concept was introduced, and continued when the selection of the youth and of areas for rehabilitation took place. A two-way dialogue was established and maintained by having follow-up meetings and workshops periodically to get feedback from the village on whether what was happening was agreeable and whether they were noticing the benefits to the youth, the community at large, and their local environment. By involving the communities in this way the project management thought it had everything

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that was needed to reverse the environmental degradation as per the project design. The project concentrated on activities like establishment of plant nurseries, afforestation programmes, rehabilitation of dongas/gullies, road drainage in the rural areas and solid waste management, including recycling of waste materials, for urban areas. No conflicts were expected to ensue from the project, since this was an empowerment and participatory environmental project. Conflicts did arise, however, out of this supposedly well designed and well implemented project, and these are highlighted below.

First and foremost, the selection of only 20 per cent of the youth to take part in the project generated the first type of conflict. Although the project was fully aware of this factor, the assumption was that if the village as an entity were asked to select the youth themselves on a Village Development Council (VDC) basis, they would amicably agree on who should be engaged in the project. What was not evident was that in an area where poverty and unemployment rates for this category of youth were running at 65–70 per cent, this was enough to open a 'pandora box' (Sibanda 2000). In reality every parent who had a qualifying youth wanted his/her own child to be engaged, not that of the neighbours.

The project also took too lightly the possibility of conflicts arising from other factors. Firstly, the village is basically a conglomeration of relatives. So that a parent may think: 'If my child is not selected, his cousin may be in'. In reality, therefore, the project became a struggle, positioning brother against brother and cousin against cousin. Secondly, the amount that was going to be paid as an allowance to the youth was only R200.00 per month for year 1, R100.00 monthly for year 2 and R50.00 monthly for year 3. The project was worried that this was too small an amount, so it would be difficult even to recruit enough youth for the project. On the contrary, every youth in the village wanted to be in it and every parent backed his or her own child, because in a family where nobody had an income this was a lot of money which would be paid consistently. A third factor that contributed to the pre-implementation conflict was that the VDC, which is made up of 3 or 4 villages, was supposed to select an area (watershed) where the youth group would do some consolidated rehabilitation work. In reality, this had to be in one of the village areas and could not be in all of them. Therefore, the villages within the same VDC started fighting about which village was going to benefit from the rehabilitation while the others were only going to supply youth labour and only get partial benefits of the project. From the above narration one can already visualise that within a week after arrival in each area this

project was no longer as welcome as it had been envisaged at the district level. This started a nightmare within which the project, which had not been prepared for such conflict, had to operate for the next four years.

The bottom line to this unveiling nightmare was that it was on the money that the community focused, rather than on the environmental rehabilitation and proper management of the environment, on which the project was focused. Therefore the intra-village conflicts and inter-village conflicts worked against the achievement of the projects objective. At the initial project-introductory meetings at village level, the project negotiated with the villagers to allocate the gullied area for rehabilitation on a permanent basis to the youth group, and the villagers agreed to this without thinking about it deeply and examining the implications and consequences. The project viewed this as an incentive to the landless youth, and the villagers were not worried about giving the degraded land away since it was valueless. But the physical impact that the project produced in these areas within 6–8 months made the elders in the village change their minds about the allocation. As a result of the high rate of erosion, the gullies filled up with the fertile topsoil from surrounding fields and these former gullies turned into lavish green valleys within a season or two. What once had been valueless land was now valuable land that was admired within the village. The village elders and VDC members who were supposed to assist the youth whenever they needed help, started alleging that these few youth were going to get double benefits, i.e. receiving a cash allowance and then receiving the land they could rehabilitate. The form 'C' (a lease document) that the village chief was supposed to prepare for the legalisation of the transfer was therefore never completed. These problems gradually demoralised the youth as they could not accomplish what they had been trained to do or achieve their objectives, hence the rate of environmental rehabilitation slowed down.

Another issue that sparked some more conflict in the village was the fact that built into the project was an aspect of skills training for the youth leading to environment-related income-generating projects. This would continuously provide an income to the group even after the funded phase of the project. The VDC and chief had been asked at the initial stages of the project to allocate another piece of land for the income-generating project, and in principle this was agreed. When the time for the income-generating projects came (9 to 15 months later), it became one of the most difficult issues for the village to deal with. This was seen as a third benefit to the few youth who had already been privileged. It started a conflict between the youth group

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and the village elders, hence confirming Kraybill's (1995) theory that says development brings conflict, because these formerly peaceful villages were now in so much conflict within themselves and between each other just because of this environmental development project.

Consequences of the Conflicts

Although the project focused on rehabilitation and proper management of the environment, it resulted in disputes, jealousies as well as negative impacts on the environment which the project was supposed to conserve. These conflicts were manifested in the following ways. As the youth group constructed the soil conservation structures, some members of the village would destroy them by driving animals over them. Some members from the village would allow the out-planted tree seedlings to be grazed, after they were moved out of the fenced nursery/garden. Animals would be driven into the nursery to feed on and destroy the tree seedlings and vegetables being grown for sale by the youth group. After the tree seedlings were out-planted in the catchment areas/watersheds under rehabilitation to increase the vegetation cover, they would either be uprooted or grazed within a few weeks, rendering the efforts of the youth to fully rehabilitate these areas virtually useless. Therefore, the catchment areas, which were not supposed to be grazed for a season or two, were constantly violated by certain members of the community, especially at night. Reports about these violations to the village leadership yielded no punitive action to curb this behaviour. In some instances, the garden fences were stolen from the nursery/garden leaving the vegetables and seedlings unprotected. In some instances, as the youth group was trying to build the chicken or poultry houses for income generation, the walls would be constantly destroyed during the night. The female members of the group were constantly harassed on their way to and from work on a daily basis. These acts discouraged the youth groups and at most sites they never saw any of their tree seedlings grow to full size trees. Therefore, what was set out to be a village project to benefit all members of the village directly or indirectly, caused all these conflicts with the result that the benefits were small or only short-lived. Meanwhile, the tree seedlings died, erosion continued, devegetation continued and desertification continued to take a grip on the country. The initial objectives of putting some of the rehabilitated lands back to production were never realised fully at more than half the sites.

Another aspect of the project which was hardly achieved, was the objective to increase the vegetation cover. As a matter of fact, some members of the

village complained that the project was taking away their grazing land and putting it under tree plantations, hence they were not going to allow the tree seedlings to grow into plantations. These allegations were not being aired for the first time, because some woodlots, which were planted under the World Bank's 'Woodlot Project', had been set on fire even when they were fully grown. This was done by communities in conflict over land rights and area boundaries.

The positive impacts on the environment were obviously not as could be expected from a project designed to rehabilitate the environment. It only demonstrated that it is possible to do something about the extensive erosion or to rehabilitate the lands damaged as a result of earlier conflicts. What it mainly demonstrated, however, was how the environment suffers as a consequence of conflicts between communities, especially if the disputes are over land or some natural resources. It also showed how even the quest to improve the environment has resulted in conflicts. There are many more examples that can be highlighted to illustrate how the environment is usually the victim of conflicts.

NEYC Conflict Mitigation Measures

This section highlights the current measures being undertaken by the NEYC project to remedy the situation described above. Although the problems discussed above paint a gloomy picture, the project was largely successful to the extent that the government of Lesotho decided to have a second phase and to expand the project by having the project recruit more youth. The project management then decided that before Phase II was implemented it was necessary to look into the problems of Phase I. This took the form of workshops with a representative part of the traditional leadership (chiefs) and the elected local government leadership (Village Development Councils) in each district. The workshops were a combination of fact-finding and problem-solving training forums. Between 60 and 400 leaders per district were workshopped in groups of about 60–70 per group, depending on the district size and the number of chiefs and VDCs. A report was compiled for each district highlighting the perceptions and problems and this resulted in a combined report highlighting the commonalities among the various areas and the strategy devised for phase II of the project.

In addition to what was learnt from the conflicts themselves, the project learnt a couple of key lessons in these frank and open discussion forums.

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Although the chief was made an ex officio member of the VDC at the creation of this structure, in practice there was still a power struggle between these two institutions, namely the traditional and the elected leaders of the people. This resulted in a village polarised between the two. Hence where the project worked closely with one side, the other side was busy inciting the people to destroy what was being done. This was aggravated by the fact that the leaders were always trained separately and each did not have the terms of reference of the other, since up until 1998 they reported to different ministries.

Although the VDCs were supposed to be development agents of government, the truth of the matter was that they were elected on party political lines and they saw themselves as party representatives rather than government agents. Whatever development was spearheaded by the VDC was seen as promoting the ruling party, hence the opposition parties saw it fit to destroy the work or incite people to destroy it.

Another conflict unearthed in these workshops was that there is an intra-structural conflict within the local government structures themselves, i.e. between the VDC and the District Development Council (DDC). Although the DDC is normally made up of the secretary and chairperson from each Ward Development Council (WDC), which in turn had similar representatives from the VDC, there was some communication breakdown between the three. Basically the WDCs were not functional, hence what was discussed at the VDC level was not filtering through to the DDC. Similarly, whatever the project management discussed at the district with DDC never filtered down to the VDC where the project was being implemented. This culminated in an information flow problem, which normally resulted in more conflicts.

Land allocation was another controversial subject between the VDCs and the chiefs. The chief believed that it was his sole jurisdiction to allocate land as per powers entrusted to him by the king, but on the other hand the VDC Act says that the VDC with the chief perform the land allocation duties. So the project was always caught between the two. If it got the land for the youth from the VDC, the chief would still go ahead and allocate that piece of land to somebody else just to cause confusion. In some areas, the VDC members never attended meetings or did any of their duties because they saw no point in doing anything since they were not remunerated, while the chiefs were remunerated. In these areas development plans lagged behind and it was always difficult to get any commitment on anything from the VDCs, hence the environment suffered greatly.

Conclusions

It is hoped that this case study has highlighted the complex relationship between the environment, development and conflict and how they impact on each other. What it portrays clearly, is that community conflicts, disputes or disagreements are manifested in different ways but in most cases the manifestations have negative impacts on the environment. The unfortunate aspect is that planners, environmentalists and development agents never examine the social conflict dimension of the problems and programmes that they are looking into, because they do not possess the extra lens provided by conflict management skills. It is this extra lens that is needed in development planning to move the development to the next level by being able to take care of the conflict dimension and being able to understand the conflicts and mitigate their impacts. The lack of this expertise has always left the jobs half-baked without a full understanding of the root causes of the problems that would be under scrutiny. It is a wish and a hope that the recognition of the conflict dimension in environmental management issues will open a new chapter, which might produce great strides in the proper management of the environment.

Sources

- Campbell, M.C. & Floyd, D.W. 1996. Thinking critically about environmental mediation. *Journal of Planning Literature* 10(3), 235-248.
- Carpenter, S. & Kennedy, W. 1988. *Managing Public Disputes: A practical guide to handling conflict and reaching agreements*. London: Jossey-Bass Publishers.
- Chitiyo, T.K. 2000. Land Violence and Compensation: Reconceptualising Zimbabwe's Land and War Veterans' Debate. *Track Two* (May), 1-30.
- Cousins, B. 1996. Redressing the apartheid legacy: Conflict resolution in South Africa's tenure reform programme. *Track Two* (December), 23-26.
- Fowkes, S. 1992. Storming and Norming: Involving the public in policy making, an environmental case study. *Track Two* (August), 10-12.
- Friedman, S. 1994. The concealed community: Who exactly negotiates development? *Track Two* (February), 6-8.
- Goldblatt, S. 1995. Land Reform, Conflict and the Research and Development Programme: Altering the parameters of conflict over land. *Track Two* (September), 13-15.


The Conflict Dimension of Environmental Degradation

- Griggs, R. 1996. The cultural dimensions of environmental decision-making. *Track Two* (December), 14-18.
- Hardin, T. 1968. The Tragedy of the Commons. *Science* 162, 1243-1248.
- Kakonge, J.O. 2000. A review of refugees' environmental-oriented projects in Africa: A case for environmental impact assessment. *Refugee Projects: Impact Assessment and Project Appraisal* 18, 23-32.
- Kraybill, R. 1995. Development conflict resolution and the RDP: Towards peaceful development. *Track Two* (September), 1-8.
- Lelimo, M. 1998. The Questions of Lesotho's Conquered Territory: It's Time for an Answer. Morija Museum & Archives.
- Linsell, L. & McDaid, L. 1996. Of pelicans and people, steel and survival: Big capital is the problem, say environmentalists. *Track Two* (December), 7-10.
- Lyster, R. 1990. Environmental dispute resolution, in Pretorius, P. (ed), *Dispute Resolution*. Cape Town: Juta.
- Martinussen, J. 1988. *Society, State and Market: A guide to competing theories of development*. London & New Jersey: Zed Books; Pretoria: HSRC.
- Mitchell, C.R. 1981. *The Structure of International Conflict*. London: Macmillan.
- Morris, M. 1999. Social Psychological Obstacles in Environmental Conflict Resolution. *American Behavioral Scientist* 42(8), 1322-1349.
- Murphree, D.W. & Wright, S.A. 1996. Toxic waste siting and community resistance: How cooptation of local citizen opposition failed. *Social Perspectives* 39(4), 447-464.
- Payne, R.A. 1998. The limits and promise of environmental conflicts prevention: the case of the Global Environment Facility (GEF). *Journal of Peace Research* (UK) 35(3), 363-380.
- Poonan, U. & Mackenzie, P. 1996. Land and justice, animals and diamonds: Unfolding conflict in the Madimbo Corridor. *Track Two* (December), 20-22.
- Sibanda, H.M. 2000. The Implementation of the National Environment Youth Corps Project, LES/94/008. Experiences to date. GOL/UNDP Lesotho. Presented as part of the End of Assignment Report.
- Suhrke, A. 1994. Environmental change, migration, and conflict: A lethal feedback dynamic? in Crocker, C.A., Hampson, F.O. & Aall, P. (eds), *Managing Global Chaos: Sources of and Responses to International Conflict*.
- Susskind, L. & Ozanwa, C. 1984. Mediated Negotiation in the Public Sector, in *American Behavioral Scientist* (Nov-Dec).
- Timberlake & Tinker 1985. Environmental Refugees: The origins of a construct. Worldwatch Institute, Earthscan, UNEP (chapter 11).
- Trolldalen, J.M. 1998. International Environmental Conflict Resolution: The role of the United Nations. WFED, UNITAR, NIDR.

Henry M. Sibanda

UNHCR 1999. Refugees and the Environment (4 pages). Environmental concerns during refugee operations (3 pages). Recent Developments in environment (2 pages). www.unhcr.ch

Weaver, T. 1996. A tale of two swamps: Community conflict and community conservation in East Africa. *Track Two* (December), 11-13.



The International Criminal Tribunal for Rwanda: A Distorting Mirror; Casting doubt on its actor-oriented approach in addressing the Rwandan genocide

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Abstract

The traditional approach to criminal justice faces the challenge of balancing multiple goals – usually expressed as deterrence, incapacitation, rehabilitation, and retribution – which focus on crime control. A restorative approach seems needed in all societies that have suffered massive and collective victimisation, and must be kept in mind in Rwanda by the International Criminal Tribunal for Rwanda (ICTR) as it implements its overall strategy.

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The ICTR's almost exclusive focus on an actor-orientated perspective, viewing the individual as a building block of the genocidal reality, distorts and obscures a structure-orientated perspective on the ethno-centric social reality that converted tens of thousands of Hutus into a mass of killers, turning on their friends, neighbours and colleagues. The main focus for the punishment of war criminals must remain at the national level, although the existence of an international tribunal legitimises the criminalisation of internal atrocities. The ugliness of internal strife and the political reality of the ethnic hatred cannot be isolated in an international courtroom for resolution.

1. Introduction

The end of the Cold War, which paralysed the UN from its inception, was a cause for celebration and hope. Following the historic Security Council Summit Meeting of January 1992, the then Secretary-General of the United Nations, Boutros Boutros-Ghali, spoke of a growing conviction 'among nations large and small, that an opportunity has been regained to achieve the great objectives of the *UN Charter* – a United Nations capable of maintaining international peace and security, of securing justice and human rights and of promoting, in the words of the Charter, “social progress and better standards of life in larger freedom”.¹ Even as this optimistic mission statement was being made, the Balkans erupted into a theatre of war and Rwanda's genocidal conflagration was in the making. Organisation and planning was certainly at work in Rwanda, where an estimated one million people from a total population of 7.5 million were slaughtered in less than three months.²

The horror of civil war in the Balkans generated a particular urgency in the West to do something to mask the appearance of disorder and moral collapse on its periphery. With the United States as lead lobbyist and financier,³ two ad hoc international criminal tribunals were established,

1 *Report of the Secretary General on the Work of the Organization*, UN GAOR, 47th Sess, para 3, UN Doc A/47/277, S/24111 (1992).

2 See *The Situation Concerning Rwanda: Establishment of an International Tribunal for the Prosecution of Persons Responsible for Violations of International Humanitarian Law in the Territory of Rwanda and Rwandan Citizens Responsible for Such Violations Committed in the Territory of Neighbouring States*, UN SCOR, 49th Sess, 3453rd mtg, at 14, UN Doc S/PV.3453 (1994).

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ostensibly to restore order to the former Yugoslavia⁴ and as an afterthought, to Rwanda.⁵ Hailed by UN leadership as moral progress (Annan 1997: 363,365),⁶ these institutions were to merge our humanitarian instincts with a purported administrative capacity to control deviant behaviour. Virtually overnight, the capacity of the international community to punish in a presumptively non-discriminatory and salubrious manner grew exponentially, with scant philosophical reflection or historical depth (Gustafson 1998:51,53).

The International Criminal Tribunal for Rwanda grew out of the response of the UN human rights system to the Rwandan tragedy. Parallel to the efforts within the UN human rights system, the government of Rwanda that came to power by toppling the genocidal regime⁷ made a request to the UN Security Council for assistance to bring those responsible for the genocide to justice.⁸ Based on its concern that the serious and extensive human rights violations in Rwanda would disrupt international peace and security,⁹ the Security Council invoked its Chapter VII authority under the *UN Charter* and established the ICTR.¹⁰

3 See Office of the Press Secretary, The White House, *US Efforts to Promote Human Rights and Democracy*, Pub No 11769 (1997) 2.

4 See UN SCOR, 48th Sess, 3217th mtg at 2, UN Doc S/RES/827 (1993).

5 See UN SCOR, 49th Sess, 3453d mtg at 2, UN Doc S/RES/955 (1994). For those unacquainted with the Nuremberg precedent for international criminal tribunals, the late professor Telford Taylor, a chief prosecutor at Nuremberg, has written a definitive account (Taylor 1992). The mass of literature written on the legal issues surrounding the international court for the former Yugoslavia, Rwanda, and a permanent international criminal court dissuades me from rehashing the legal debate. For a sample of literature on the subject, see generally Akhavan 1996:501, Bhattacharyya 1996:57, Hochkammer 1995:119, Marquardt 1995:73, McCormack 1997:681, Morris 1997:349, Sunga 1995:121, Meier Wang 1995:177.

6 'These tribunals have made significant progress and are setting an important precedent.'

7 The Rwandan Patriotic Front took power in July 1994. For an overview, see Prunier 1997a:193.

8 Letter Dated 28 September 1994 from the Permanent Representative of Rwanda Addressed to the President of the Security Council, UNSCOR, 49th Sess, UN Doc S/1994/1115, at 4 (1994).

9 Serious human rights violations implicate Chapter VII jurisdiction. See Beres 1993:325, Tocker 1994:527.

10 The ICTR, with jurisdiction over human rights crimes committed from 1 January

The Security Council's resolution establishing the ICTR articulates a set of decisions, assumptions, wishes, and objectives.¹¹ States serving on the Security Council participated in the debate creating the ICTR. Remarkably, though voting for the most part in favour of the resolution creating the ICTR, the States articulated various objectives, or perhaps more importantly perspectives, which in many ways could be construed to be in conflict with each other.¹² Primarily, the States that voted in favour of the creation of the ICTR indicated that the root of the problem was *individual violations* of international criminal law. Only one State that voted for the resolution did not equate ipso facto ICTR actions with justice. That State considered the ICTR only one of the many tasks at hand for the international community. The ICTR was merely a vehicle of justice, 'but it is hardly designed as a vehicle for reconciliation.... Reconciliation is a much more complicated process' (Czech Republic).¹³ Interestingly, Rwanda, which voted against the resolution, spoke of the problem in terms of a *culture of impunity*.¹⁴ The Rwandan delegate used words with implications different from those linked to individual wrongdoing. The UN paid little to no heed to the subtle, but extremely different way in which the problem was characterised and the implications this would have on the type of tool needed to deal with that problem.¹⁵

The potential contribution of the ICTR to national reconciliation in Rwanda depends on understanding the root causes of the 1994 genocide. It is

1994, through 31 December 1994, is based in Arusha, Tanzania. It is one of the two ad hoc tribunals established by the UN to bring human rights criminals to justice. The ICTR's complete name is International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwanda Citizens Responsible for Genocide and other such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994. See SC Res 955. The other ad hoc tribunal has jurisdiction over crimes committed in the former Yugoslavia. See SC Res 827, UN SCOR, 48th Sess, 3217th mtg, at 1, UN Doc S/Res/827 (1993). See also Johnson 1996:211, Sunga 1995.

11 SC Res 955.

12 For the views of the various States, see UN SCOR, 49th Sess, 3453d mtg, UN Doc S/PV.3453 (1994) 2-10.

13 UN SCOR, 49th Sess, 3453d mtg, UN Doc S/PV.3453 (1994) 7.

14 UN SCOR, 49th Sess, 3453d mtg, UN Doc S/PV.3453 (1994) 14.

15 The ICTR's sister tribunal in Yugoslavia, the ICTFY, was clearer about what it believed to be its objectives by interpreting its mandate from the Security Council.

obvious that an essential ingredient of this tragedy was historical rivalry and ethnic fear between Hutu and Tutsi.¹⁶ But this ingredient was not sufficient. For the tragedy to take place, it was necessary to transform these tensions into systematic mass violence, a feat that could only be achieved through careful planning and execution under the direction of political elites. It is imperative that the ICTR clarify goals lest, in the words of Michael Reisman (1995:175), 'we fall victim to a judicial romanticism in which we imagine that merely by creating entities we call 'courts' we have solved major problems'. Of course, the aim of achieving justice, which has no empirical referent, is clearly not an adequate response. In discharging its burden, the ICTR should keep in mind Holmes's admonition against blind guesses (Holmes 1997:989,1002¹⁷).

While courts are needed to enforce law, courts do not and cannot make human rights real. The achievement of human rights is a much more complex process than the establishment of a court. While the Rwanda tribunal responds to the lawyer's gradualist approach to institutional and normative development of international criminal law, thus far it has failed to successfully address the basic purposes for which it was established, to end impunity and deter potential offenders. It has been hampered by conceptual considerations.

To delve more deeply into the ICTR's handicap in addressing the human rights situation in Rwanda through the international penal process, this article makes use of a distinction in looking at human, social or for that matter

They are, to bring to justice those responsible; to contribute to ensuring that such violations are halted and effectively redressed by acting as a powerful deterrent to all parties against continued participation in inhuman acts; to gradually promote an end to armed hostilities; to be a tool for promoting reconciliation by working to attribute acts to individuals and thereby provide justice to individual victims to diminish group hatred and the need for revenge. See The Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, in *ICTFY Year Book* (1994) 81, 86-87, UN Sales No E.95.III.P.2. The UN Legal Counsel Carl August Fleischhauer stated that the tribunal was set up with three aims: ending war crimes, bringing perpetrators to justice, and breaking the cycle of ethnic violence and retribution. See Kelly 1993:52.

- 16 For an excellent overview of the historical roots of the rivalry between Hutu and Tutsi, see Prunier 1995:9-40.
- 17 Republishing Holmes's March 25, 1897 speech on its centennial. 'What have we better than a blind guess to show that the criminal law in its present form does more good than harm?'

world affairs: *actor-orientated* and *structure-orientated* perspectives (Galtung 1994:26-49). These perspectives can be seen as two ways of reflecting, and reflecting on, social affairs and legal tradition, each of them focusing on different aspects. The legal paradigm (especially criminal law) is biased in favour of the actor-oriented perspective due to its simplistic concreteness, identification of the evil actor, apprehension and prosecution. This article sets out (in Part 1) to consider how far the ICTR has fulfilled its objectives, which transcend the prosecution and conviction of guilty persons. The contention is that the ICTR still has not made the most of its opportunity to facilitate change. The article explains some of the reasons why the ICTR has not fulfilled this opportunity.

Part 2 of the article provides a *tour d'horizon* of Rwanda's history, aimed at bringing to light the constructed ethnicity and the infusion of ethno-centric hatred. Part 3 of the article discusses why the Court needs to focus on a structure-oriented perspective to complement its current overemphasis on an actor-oriented perspective in the ongoing effort to achieve respect for a human rights culture in Rwanda in order to maximise its social impact in Rwanda. This is particularly so, given the opinions voiced by many Hutu refugees that no atrocities occurred at all, or that any atrocities that did occur were brought on by the Tutsis themselves.

Part 4 of the article discusses the inappropriateness of the classical criminal law paradigms adopted by the ICTR in its judicial operations, pointing out that the objectives that come with these paradigms do not have much relevance for the Rwandese situation. Part 4 also explores the restorative dimension of justice as a possible viable instrumentality in achieving the ICTR's objectives.

2. Constructing Ethnicity: A *Tour d'Horizon* of Rwanda's History

The genocide of 1994 was anything but a surprise for the international community. It was the culmination of many years of cynical indifference and wilful blindness to the plight of the Rwandan people. In the words of the Rwandan representative to the Security Council: 'Since 1959 Rwanda has repeatedly experienced collective massacres, which, as early as 1964, were described by Pope Paul VI and two Nobel Prize winners – Bertrand Russell and Jean-Paul Sartre – as the most atrocious acts of genocide this century

after that of the Jews during the Second World War. But whenever such tragedies occurred the world kept silent and acted as though it did not understand that there was a grave problem of the violation of human rights.¹⁸ Thus in 1994, the international community became a spectator to an archetypal genocide, the attempted extermination of an entire people. The tragedy that befell Rwanda in 1994 deserves a special place in the blood-stained pages of history.¹⁹ The Rwandan genocide merits distinction primarily because of its shocking efficiency, its scale and its proportional dimensions among the victim population.²⁰

Prior to the genocide, the population of Rwanda consisted of an estimated 85 per cent Hutu, 14 per cent Tutsi, and 1 per cent Twa and other.²¹ As far back as the fifteenth century, the Rwanda-Burundi area was ruled by monarchic clans. Prior to the colonial era, political tensions in Rwanda were not particularly accentuated along ethnic lines. The Hutu and Tutsi together comprise the Banyarwanda, 'people of Rwandan extraction' (Prunier 1997b:400), and speak the same language, Kinyarwanda, without differences in dialect or vocabulary (Prunier 1997b:400-407). Historically, both groups were socially fluid, with intra-societal divisions operating more along clan lines than 'ethnic' lines (Prunier 1997b:15,370).²² As Gourevitch notes, Hutu and Tutsi 'intermarried,

18 UN SCOR, 49th Sess, 3453d mtg, UN Doc S/PV.3453 (1994), 13-14.

19 The UN Special Rapporteur observed in 1994: 'The Rwandese have indeed been the victims of a number of massacres in the past, notably in 1959, 1963, 1966, 1973, 1990, 1991, 1992 and 1993. However, those being perpetrated at present are unprecedented in the history of the country and even in that of the entire African continent. They have taken on an extent unequalled in space and in time.' *Report of the Situation of Human Rights in Rwanda Submitted by Mr R Degni-Séqui, Special Rapporteur of the Commission on Human Rights*, UN ESCOR Commission on Human Rights, 51st Sess, Prov Agenda Item 12, para 24, UN Doc E/CN.4/1995/7 (1994) para 20.

20 The number of persons killed throughout the territory is to be numbered in the hundreds of thousands, estimates ranging from 200 000 to 500 000. In fact, even the latter figure is probably less than the reality. Some observers think that the figure is close to a million. It is not sure that the exact number of victims will ever be known.

21 The indigenous Twa minority was the first people to populate the area of Rwanda as far back as 2000 BC. Around 3 000 years later, a migration of Hutu to the area began. People of Tutsi extraction began to migrate to the area around 1500 AD. Traditionally, the Hutu have been agrarian and sedentary whereas the Tutsi have been cattle-owners and nomadic.

22 Where a glossary of Rwandan terms is provided.

and lived intermingled, without territorial distinctions, on the same hills, sharing the same social and political culture' (Gourevitch 1998:47).

As the nineteenth century drew to an end, Germany began to assert indirect colonial rule over Rwanda and Burundi with only a very small presence through the tactic of 'divide and rule'. The reinforcement and manipulation of the ruling elites in Rwanda formed an important element of Germany's colonial policy from 1897 to 1916 (See generally Destehexhe 1995:39-47. During the First World War, Germany lost control over the area to Belgium, which then ruled Rwanda from 1916 to 1962. Belgium administered Rwanda under the League of Nations mandates system, pursuant to Article 22 of the *League Covenant*, and then, following dissolution of the League of Nations on 18 April 1946, as a United Nations Trust Territory. As Germany had done, Belgium reinforced the centuries-old Tutsi monarchy in Rwanda through a system of patron-client control, favouring the minority Tutsi people as the ruling class, partly on the grounds that the Tutsi people originated from the Nile River region, were somehow 'more European' in character than the Hutu people, and therefore, were supposedly superior as well.²³

The Belgians believed the apparent physical distinctions between the Hutus and Tutsis represented anthropological differences related to group ancestry (see Des Forges 1999:16). From this grew the constructed nature of ethnicity in Rwanda. The construction was consolidated by the introduction in 1933 of mandatory "ethnic" identity cards,' which each Rwandan was obliged to carry (see Gourevitch 1998:56-57).²⁴ These cards made the lines between Tutsi and Hutu official and impenetrable (Destehexhe 1995)²⁵ and

23 See e.g. Pierre Ryckmans, *Dominer Pour Servir* (1931:26), quoted by Prunier (1995:9): 'The Batutsi were meant to reign. Their fine presence is in itself enough to give them a great prestige *vis-à-vis* the inferior races which surround... It is not surprising that those good Bahutu, less intelligent, more simple, more spontaneous, more trusting, have let themselves be enslaved without ever daring to revolt.'

24 See also Human Rights Watch, *Playing the 'Communal Card': Communal Violence and Human Violence* (1995) 1-2 (describing the system of identity cards).

25 Detailing the imposition of identity categories and concluding that identity cards were the basic instrument of the genocide. In the early days of colonialism, the Belgians favoured the Tutsi, elevating them to important positions within the colonial state. Closer to the time of independence, the Belgians promoted Hutu to important positions, ostensibly to prepare the nation for the majority-based democratic society that would emerge after independence.

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established the distinction between Hutu and Tutsi as a cornerstone of Belgian colonial rule. The colonial introduction of ethnic identity cards, patronage based on ethnic group membership, and the European fascination with the anthropological origins of Hutu and Tutsi led to what Chabal and Daloz (1999:57) call the 'invention of ethnicity'. By this they do not mean that '[ethnic] affiliations did not exist prior to colonial rule but simply that they were reconstructed during that period according to the vagaries of the interaction between colonial rule and African accommodation' (Chabal & Daloz 1999:57).

After the Second World War ended, Rwandan Hutus pushed for democratic reforms, a goal supported by the Belgian Government. Tutsis not only opposed Belgium's proposed democratic reforms, which threatened to undermine Tutsi positions of privilege and power, but also intensified a drive for national independence from Belgium. In November 1959, the heightened resentment between the two groups took the form of open hostilities. Several hundred Tutsis were massacred, which in turn sparked a mass exodus of thousands of Tutsis from Rwanda, mostly to Uganda and Zaire.

In 1961, the Rwandan monarchy, which had existed for centuries, was abolished by overwhelming popular demand through a national referendum and replaced by a republican form of Government. On 26 October 1961, Gregoire Kayibanda, leader of Parmehutu (Party for the Emancipation of the Hutu people), was formally elected President of the newly formed Parliament of the Republic of Rwanda, and maintained political control until 1973. On 1 July 1962, Rwanda achieved independence. Hutu and Tutsi, fairly benign constructs until Rwandan independence, quickly changed (and were changed) to define political cleavages and foster enmity. In the early 1960s, violence was never absent from the scene. Particularly large-scale massacres were perpetrated in 1963 and 1966, mainly against Tutsis.

In July 1973, Juvenal Habyarimana, a Hutu from the north of Rwanda, seized control of the Government, and in 1975, formed the National Revolutionary Movement for Development. The Hutu government of Juvenal Habyarimana, which ruled Rwanda from 1973, exploited and politicised the inter-ethnic tensions that had been simmering since Rwandan independence in 1960 (see Des Forges 1999:3-5). Although Habyarimana promised to create a fair balance between the Hutu and Tutsi groups, he banned all opposition political parties except his own, and in 1978, changed the Constitution to make Rwanda officially a one-party State.

Motivated to regain their former position of prestige in the country, and concerned to aid their brothers and sisters in Rwanda from the recurrent violence perpetrated against them, Tutsi paramilitary forces coalesced into the Rwandese Patriotic Front (RPF). The RPF launched small-scale incursions from neighbouring countries into Rwandese territory in order to force Habyarimana towards power sharing. On 1 October 1990, the insurgent RPF crossed the Ugandan border and carried out several military operations in the north of Rwanda. Out of revenge, Hutu groups killed some 300 Tutsis in the following weeks.²⁶ By 1992, over 350 000 persons had fled the violence in the northern regions of Rwanda, becoming displaced in the interior of Rwanda.

By 1993, it must have been clear to the Habyarimana Government that the RPF had become an insurgency movement capable of destabilising Rwanda and that it would be prudent to explore the possibilities of a cease-fire. On the other side, RPF commanders were obliged to negotiate with the Government in order to translate small-scale military victories into longer lasting political success. Negotiations between the Government of Rwanda and the RPF commenced at Arusha, Tanzania, on 10 August 1992. The main issues to be addressed at the Arusha peace negotiations were: the need for multi-party elections and power sharing in Rwanda; the fostering of peace and respect for the rule of law; and an end to the RPF insurgency. These negotiations did not bear fruit immediately.

While the Arusha Accords were considered by many as the first sign of effective power sharing, they also bolstered the accusations made by extremist Hutu elements that the Habyarimana regime was merely a puppet of foreign Tutsi interests who threatened to regain direct control over the Government. In the final months of 1993, these extremist Hutu elements began to plan the elimination of the Tutsi people by training groups of 300 persons (the *Interahamwe*), in methods of systematic slaughter.

In early April 1994, President Habyarimana flew to Dar es Salaam to attend a meeting with President Ali Hassan Mwinyi of Tanzania, Kenyan Vice-President George Saitoti, Burundian President Cyprien Ntaryamira, and President Yoweri Museveni of Uganda, concerning the maintenance of peace and security in the region. On 6 April, following the meeting, the President of

26 See generally Misser 1995 for a series of interviews conducted with the Vice-President and Minister of Defence of the Government of Rwanda, Major-General Paul Kagame.

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Rwanda returned by jet to Kigali accompanied by the President of Burundi who intended to continue on to Bujumbura. As the presidential aircraft circled Kigali airport to land, it was shot down. All those aboard, including Juvenal Habyarimana and Cyprien Ntuyamira, several ministers and their entourages, died in the crash.

The downing of the aircraft triggered massacres throughout the country. Within thirty to forty minutes of the aircraft crash, roadblocks were set up in Kigali by Hutu militia, at which identity cards were checked, Tutsis singled out, and murdered on the spot. The immense slaughter plunged Rwanda into total chaos. United Nations inactivity and acquiescence to the genocide is damning. There were credible reports that the United Nations peacekeeping force in Rwanda (UNAMIR), which had been present to facilitate the peace negotiations between the Hutu government and the RPF, apparently knew that genocide might take place but the UN took no preventive action.²⁷

The massacres continued, perpetrated mainly by extremist Hutu militia associated with Habyarimana's political party, the Coalition for the Defence of the Republic, members of the Presidential Guard and regular army forces of the then Government of Rwanda. The slaughter required extensive administrative and logistical planning, evidenced by the chillingly calculated and thorough way in which it was carried out, and by the fact that most of the victims – between 500 000 and 1 million mainly Tutsi persons as well as politically moderate Hutu leaders and their families²⁸ – were killed over the relatively short period from 6 April through the first three weeks of May 1994. This death toll amounts to roughly ten per cent of the Rwandan national population.²⁹ Notwithstanding the 'low-tech' nature of the massacres (see Morris 1997:350),³⁰ '[t]he dead of Rwanda accumulated at nearly three times

27 Human Rights Watch, *World Report 1995* (1994) 41. See generally Joint Evaluation of Emergency Assistance to Rwanda, *The International Response to Conflict and Genocide: Lessons From the Rwanda Experience*, Vols I-V (March 1996). This is collaborated by *Report of the Independent Inquiry Into Rwanda Report*, below n 91.

28 See Report on the Situation of Human Rights in Rwanda, referred to in note 19 above, at para 24.

29 See Gourevitch 1998:4: 'Decimation means the killing of every tenth person in a population, and in the spring and early summer of 1994 a program of massacres decimated the Republic of Rwanda.'

30 Victims were butchered with machetes (panga), sticks, tools, and large clubs studded with nails (masu).

the rate of Jewish dead during the Holocaust. It was the most efficient mass killing since the atomic bombings of Hiroshima and Nagasaki' (Gourevitch 1998:4).³¹ In this sense, the genocide was well organised, co-ordinated, and administered; it was anything but spontaneous and random.³²

Immediately preceding and during the Rwandan genocide, the political instrumentalisation of ethnicity was so focused and so pointed that Hutu were led to believe – and many actually believed – that they were doing good by killing Tutsi. The genocide was not about ethnic identity operating as a constitutive element of Rwandans' personal identity. Rather, the genocide was about ethnicity operating coercively as the unwavering, singular expression of good or evil, of 'us' and 'them' (Drumbl 2000:1221,1294).

Shortly after the Hutu extremists launched the genocide, the RPF undertook a military offensive, moving from Uganda into northern Rwanda. By mid-July 1994, under the leadership of Paul Kagame, the RPF was able to halt the genocide, force the retreat of the former Government of Rwanda and associated militia from Kigali, and assert effective control over the rest of Rwandese territory.

The article now turns to an examination of the actor-orientated and structure-orientated perspectives by setting out the disjunction between actor and structure by the ICTR in its conceptual operations. The view that the ICTR is dealing with an event rather than a *state of affairs* is particularly misleading and distorts the overall vision and dialectics necessary for the ICTR to contribute to the establishment of human rights culture in Rwanda.

31 'That's three hundred and thirty-three and a third murders an hour – or five and a half lives terminated every minute' (Gourevitch 1998:133). Of course, to these numbers have to be added the 'uncounted legions who were maimed but did not die of their wounds, and the systematic and serial rape of Tutsi women' (Gourevitch 1998:133), in order to fully grasp the numbers of aggressive participants and victims in the genocide.

32 Most of the individuals responsible for carrying out violations of human rights and humanitarian law fled the country amongst the over 2 million that sought refuge in the neighbouring countries of Burundi, Zaire and Tanzania, for fear of possible Tutsi reprisals and revenge attacks. Numerous criminal suspects fled to Francophone West African countries, as well as to Kenya, and as far away as Belgium, Canada, France, Switzerland and the United States.

33 Gramsci is specifically relevant for Rwanda, given the extreme level of social conformism that characterised pre-genocide Rwanda. Gramsci argues that retribution or any other punishment objective that does not account for the reintegration of offenders back into society tends to reinforce social conformism, which is normally useful to the ruling group's interest.

3. A Crippling Flaw: The Disjunction between Actor and Structure

Prosecuting a case in violation of the rules just to obtain a conviction may not necessarily alleviate the human rights situation. Assumptions about the system's role in achieving that society's objectives underlie each State's justice system (see Gramsci 1971).³³ Some are based on a Hobbesian notion (see MacPherson 1985), while others are based on a social contract ideal (see, e.g. Tyler 1990). Each country's penal system is unique with differing values and differing ideas as to how to realise those values.³⁴ Given that the conceptualisation and operation of the ICTR falls to the UN, a complex tapestry of legal systems is implicated. Thus, there are different assumptions attempting to coexist about human behaviour and the penal system's role in regulating, modifying, or augmenting values.

The first prosecutor of the ICTR held views that are generally similar to those of many within the prosecutorial profession. He believed the fear of detection, financial penalties, and indignities of guilt were at the centre of criminal justice. Like most prosecutors, he placed the judicial response at the top of the hierarchy. 'Yet as all criminal lawyers will agree, detection and punishment are the only means by which to curb criminal conduct' (Goldstone 1997:1,2). From this perspective the ICTR prosecution office is largely focused on what to do with the evil actors, and the answer is necessarily threefold: converting them to better intentions, weakening them by depriving them of capability and/or making them more passive in general. The rude reality though is that the trials and convictions of 53 indictees³⁵ on the ICTR's list of shame will not have some kind of legal domino effect on the acts and intents on the rest of the perpetrators numbering tens of thousands, many of whom are active in guerrilla-style military incursions against the Tutsi-dominated government in power.

Obviously the mass murders in Rwanda did not arise spontaneously.

34 See UN Crime Prevention and Criminal Justice Division, *The United Nations and Crime Prevention - Seeking Security and Justice for All* (1996) 3-4. Some States may not have enough information or the capacity to realise the underlying objectives of the law.

35 See 'Press Briefing by the Spokesman for the ICTR', 19 October 2000, Doc. ICTR/INFO-9-13-018. This can also be accessed at the following URL: <<http://www.ictr.org/ENGLISH/pressbrief191000.html>>.

They were instigated by persons in positions of power who sought to gain personal advantages through violent and hideous means. Unless these persons are held accountable for their crimes against humanity, the reconciliation necessary for the reconstruction of this torn society may not be possible. By assigning guilt to the leader-instigators, the tribunal may also lift the burden of collective guilt that settles on the Hutus, whose leaders directed or ordered such terrible violence. The assignment of guilt by a neutral tribunal also may enable the international community to differentiate between victims and aggressors. However the international justice process must not erase the fact that the inter-ethnic conflict, while not genetically inbred, is firmly embedded in the socio-cultural structure and subconscious mind of the Rwandese society, and thus addressing these structural defects is part of the process of deterrence.

Sole focus on the ICTR indictees is unrealistic and demonstrates that the Tribunal is unclear about why the Court exists and how the Court could make its modest contribution for the betterment of human rights in the region (Howland & Calathes 1998:135,148). There is an abundance of the 'evil' ones, those who have already through their acts proved that they are evil, as well as those who may be suspected of harbouring evil intentions. The causes of the Rwandese tragedy rest with them, expressed in their acts or threats or general inclination to engage in evil acts, but the fact is that the international penal process will only try a minuscule fraction of the whole group of perpetrators, the indictees.³⁶ So many people were killed principally because there were so many killers. Significant numbers of Rwandans perpetrated the bloodbath. What induced so many individuals to participate was not coercion, but rather genuine support of the idea that the Tutsi had to be eliminated, together with the pursuit of solidarity with others in attaining this goal. This belief that one was doing right by killing might explain why so many of the killings were so brutal.³⁷ It may be that there was little courage in Rwanda simply because most people were not actually opposed to the genocide.³⁸ To the contrary, many

36 One Africanist estimates that the number of Rwandans directly involved in the acts of killing amounted to between 75 000 and 150 000 (Jefremovas 1995:28).

37 For case studies of such incidents, see Human Rights Watch/Africa et al., *Shattered Lives: Sexual Violence During the Rwandan Genocide and Its Aftermath* (1996) 42-68; see also Prunier 1997a:255-57 (describing types of brutal acts committed).

38 Although some Tutsi were 'saved' through Hutu intervention, many of these 'saved' Tutsi were not spared because of intellectual or structural opposition to genocide, but

people may have believed that killing the Tutsi was a civic duty – in other words, nothing less than the right thing to do.³⁹ The indirect or direct participation of so many people in the Rwandan genocide blurs the line between guilt and innocence. An even larger number of people acquiesced in the face of genocide. In Rwanda, the killings were committed publicly and were known to all.⁴⁰ They ‘did not take place at out-of-the-way sites...[but] throughout the country: in virtually every village and in almost every urban neighbourhood’ (Neier 1999:48).

Not surprising, the ICTR’s existence and presence in Eastern Africa has done little to deter extremist Hutus in neighbouring countries from waging bloody guerrilla-style excursions into Rwanda. Thousands of unarmed civilians have been killed across the border, in the Democratic Republic of the Congo (DRC), in an armed conflict involving several governments, including Rwanda, as well as various armed opposition groups, including Rwandese *Interahamwe* militia and soldiers of the former Rwandese armed forces. The Rwandese government continues to offer support to the rebel Rally for Congolese Democracy (RCD), part of the deal being permission to conduct military operations in Congolese territory against Hutu extremists. The overzealous Rwandese government troops have not been averse to conducting ruthless military operations around refugee camps (Amnesty International 2000), reinforcing its apparent commitment to consolidating a national ethnocracy. The same zeal is reflected by the Hutu extremists keen to wrestle back the reins of power from the Tutsi dominated government. Arguably their main grievance is not the brand of politics or style of governance of the government of the day, but rather, the ethnic composition, which they see as destroying Hutu ethnic hegemony spanning over three decades (since independence in 1961).

In order to perform the genocide, the Hutu leaders over the years succeeded in organising a campaign that redefined the Tutsis (the victim

rather because of idiosyncratic convenience. See Gourevitch 1998:130, stating that: Many people who participated in the killing – as public officials, as soldiers or militia members, or as ordinary citizen butchers – also protected some Tutsis, whether out of personal sympathy or for financial or sexual profit. It was not uncommon for a man or a woman who regularly went forth to kill to keep a few favourite Tutsis hidden in his or her home.

39 For a description of slaughter as civic duty in Butare prefecture, see Des Forges 1999:515.

40 Des Forges 1999:770 (discussing broad advertisement of killings).

group) as worthless, outside the web of mutual obligations, a threat to the Hutu hegemony, and in the run-up to the 1994 genocidal conflagration, as subhuman. Even after such a campaign of vilification and dehumanisation⁴¹ the actual performance of the mass killing required a good deal of coercion and centralised control that converted a large segment of the Hutu populace into a band of mass killers and thus criminals. While much has been said about the pragmatic dimension of punishing mass human rights violations through prosecutions as a preventive measure, no paradigm has yet been set out in relation to the task of post-conflict peace-building which entails a psychological dimension of justice and reconciliation.

The ICTR's almost exclusive focus on concrete entities, perceiving the individual actor as a building block of the genocidal reality, distorts and obscures the structural reality that converted tens of thousands of Hutus into a mass of killers, turning on their friends, neighbours and colleagues (Jefremovas 1995:28). The 1994 genocide followed three earlier rounds of massacres targeting Tutsis in 1959, 1963 and 1966.⁴² The 1994 bloodbath was preceded by a macabre dress rehearsal in 1992.⁴³ With preparations complete, in 1994 the government was able to manipulate the structure founded on a sharp, ethno-centric rift by fuelling the hatred through national radio (Radio Television Libre des Mille Collines) broadcasts that dehumanised the Tutsis

41 The renowned African scholar, Ali A Mazrui (1986:243), noted that 'violations of human rights are preceded by a process of psychic sub humanisation' by which the violator 'sub humanises his victim in his own imagination,' although 'residual humanity is often necessary to give meaning to the sin of inter-human cruelty'. Such dehumanisation, he explained, is the 'reverse of the psychology of love' because no human being can love a non-human object 'unless the object undergoes psychic humanization in the imagination of the lover'. When someone loves her dog 'it is because the dog has been, in some sense, anthropomorphized,' and when someone loves his 'motherland' it is because his imagination 'has invoked a metaphor of human kinship' with the territory. The psychology of hate, on the other hand, requires 'a partial reduction of humanity'. Since it is difficult to hate an inanimate object or animal, the most fertile soil for hatred is that 'intermediate area of sub-humanity' or 'tendency on the part of the hater to reduce the humanity of the person hated'.

42 See note 19 above.

43 On 1 October 1990, the insurgent RPF crossed the Ugandan border and carried out several military operations in the north of Rwanda. Out of revenge, Hutu groups killed some 300 Tutsis in the following weeks. By 1992, over 350 000 persons had fled the violence in the northern regions of Rwanda, becoming displaced in the interior of Rwanda.

as '*inyenzi*' (cockroaches),⁴⁴ facilitating the creation of an effective killing machine that stretched from the city suburbs to villages and remote farms.

This process of dehumanisation was a contrivance of populist leaders which fed on the primitive impulse to denigrate the Tutsis as a means of self-affirmation. Before ordinary Hutus could participate in the slaughter of defenceless children, the Tutsi had to be portrayed as an inherently blood-thirsty and cruel people who were out to break the Hutu hegemony through violence, and thus it was necessary to launch preventive measures, which incidentally took the form of preventive violence. The Hutus were spurred on by exhortations appealing to them as a collectivity to preserve their ethnic hegemony by eliminating all sympathisers and supporters of the RPF whose military successes had forced the government to the negotiation table.

For many, the ICTR will establish individual guilt and thereby move suspicion and blame from the group to the individual. It is a laudable goal, but a complex one in the circumstances. For crimes to be crimes there must be individual acts. These crimes may or may not be part of a criminal enterprise. When a crime is part of a criminal enterprise, the nature of the relation between the individual, the crime, and society profoundly changes.⁴⁵ Any penal response to a criminal enterprise must understand the entire crime and its relation to society to begin to address it effectively through the justice system.⁴⁶

44 The term '*inyenzi*' is Kinyarwanda for cockroaches. The widespread use of the term in radio broadcasts was initially to denounce supporters and sympathisers of the Rwanda Patriotic Front (overwhelmingly Tutsis and moderate Hutus). In time it conferred the de facto meaning of 'persons to be killed'. Within the context of the Civil War of 1994, the term '*inyenzi*' became synonymous with the term 'Tutsi'. See the Ruggiu Judgment, *The Prosecutor v Georges Ruggiu*, ICTR-97-32 at para 44.

45 When people engage in crime as a series or pattern of illegal acts which result in an uneven or incomplete meting out of punishment, some implicit or explicit accommodation must be made within any criminal justice system. This process of compromising law enforcement involves a wide range of considerations with direct impact on the organisational pattern and structure, which can be traced to the nature of law itself. See McCaghy & Cenkovich 1987.

46 Criminal enterprise behaviour is a type of behaviour that invariably arises as a natural social phenomenon in nearly every society. It is a social epidemic that takes different forms at different times across these societies, but because its etiology so differs from that of individual criminal behaviour, its effect on society and its demand of a response from the justice system is markedly different as well. Crime as part of a criminal enterprise almost always results in selective and discriminatory

Within the ICTR's framework of thinking, the genocidal acts by extremist Hutus are seen as an *event*, not a *state of affairs*; something that was and is lurking, and probably will continue to lurk in the sub-consciousness of the extremists. It may be a slowly or quickly changing state of affairs, depending on the circumstances, key among which is the process of the extremists reclaiming back political and military authority in Rwanda. The war in Rwanda is unfinished; there was not even a temporary respite after the genocide, before the Hutu-Tutsi struggle for the control of the State resumed. There is little doubt in this context that the ICTR is seen by Hutus as international punishment by the victors, Tutsis, with the blessing and support of the United Nations.⁴⁷ Tutsis may themselves see the Tribunal and the genocide trials they are conducting in Rwanda as their opportunity for revenge (Akhavan 1996:508).⁴⁸ For that reason, the ICTR, since it is not part of an overall political settlement of the Hutu-Tutsi struggle for political power, is virtually irrelevant to the future of Rwanda (Lowell 1995:23-25).

enforcement of laws. The use of discretion in dealing with these offences by a criminal justice system offers an opportunity for criminal forces to strongly influence the justice process itself. In a sense, a functional 'tolerance policy' by law enforcement bureaucracies may develop and often does. When responding to crime as part of a criminal enterprise, social control bureaucracies are confronted with the vexing problem of enforcing laws about which little, sporadic, or inconsistent social consensus among society's many groups may be discerned. See Gusfield 1963. The community's ruling elite inevitably finds itself in an odd position, a position which potentially can severely challenge its authority as a justice insurer. The ruling elite must select which values within the community it must advance and then either selectively enforce laws and punishments, or attempt to obliterate a portion or all of the class of violators. Irrespective of this problem, if a justice system is to respond in an effective way to organised crimes, it must seek, quite naturally, to develop its coalition of support in order to expand not only its budgetary/personnel resources and their enforcement power, but its will to pass and enforce laws proscribing the offensive behaviours. See Becker 1963.

47 Credibility of the Rwanda Tribunal is unlikely to materialise among Hutus because they are its main targets. The prosecution of Tutsis is essential for the tribunal's legitimacy. In the case of the Yugoslav Tribunal, the prosecution of Bosnians and Croats – and not just Serbs – would enhance that tribunal's legitimacy in the eyes of perpetrators across the board.

48 It is interesting to note that the RPF government wanted the Rwanda Tribunal situated in Rwanda so that it would teach the 'Rwandese people a lesson, to fight against the impunity to which it had become accustomed... and to promote national reconciliation'. But this is only possible if the tribunal enjoys some credibility with the perpetrators.

What the ICTR (as well as the international community) hopes to achieve, it cannot achieve with the current prioritisation of objectives. The ICTR hopes to bring about a discontinuous jump, by breaking the vicious cycle of human rights violations through an international presence that is little felt in Rwanda itself. The deep-seated animosity between these two segments of the Rwandese population will not be dispelled easily by a few years of international justice. The animosity and hatred was cultivated, reinforced and manipulated for over six decades by the colonial powers, then well nurtured by the Hutu leaders who ascended to power after independence. It has taken close to a century to achieve a well-entrenched social structure pegged on ethnic stratification, founded on deep-seated hatred.⁴⁹ This is not to say that the effort at prosecution is an exercise in futility. Obviously there are actors around, otherwise the structure would not operate. Individual guilt, leading to prosecution is important, but it should not detract from the flaws in the Rwandese social structure. The actor-oriented perspective draws its strength from its simplistic concreteness: its ability at capturing concrete actors, the individuals. But only a segment of an actor is in the structure, and only a part of the structure shows up in any one particular actor. While the ICTR's indictees may have been architects of the genocide, they simply tapped into the huge reservoir of ethno-centric hate that had been entrenched in the sub-consciousness of Hutus and was converting a great deal of them into pathological killers.

Having a positive impact on a complex socio-political process is not the same as successfully prosecuting a person for a criminal violation of human rights law in accord with the law. Only by seeking to address the causal factors of the genocide will the ICTR translate its prosecutorial victories into victory for human rights in Rwanda. The ICTR should provide an institutional framework that will contribute to the extremely complex process of moving a society from one characterised by massive human rights violations to one built upon the respect of human rights law. A key oversight in the ICTR's prosecutorial strategy is that it does not seek to address the accumulation of collectively organised evil within the Rwandese society, entrenched over a period of almost one century.⁵⁰

49 See Part 2 of the article.

50 See generally Destehehexe 1995; Ryckmans 1931; Prunier 1995.

Having reviewed the ICTR's focus on the actor and his/her disjunction from the structure, the article now turns to consider classical criminal law theories on which the ICTR is premised, and their inadequacy. The failure of these criminal law theories in addressing the Rwandese situation is a necessary consequence of the ICTR's disjunction of actor and structure.

4. The ICTR: Hooded by Classical Criminal Law Theories

The recognised punishment objectives of a court system fall within the generally accepted spectrum of deterrence, rehabilitation, retribution, and incapacitation.⁵¹ The international penal process at the ICTR seems focused on deterrent, retributive and incapacitative aspects of the criminal process with little pragmatic effort to incorporate rehabilitative and restorative aspects into its overall strategy.

Virtually all theories of criminal justice can be characterised as either retributive or deterrent (utilitarian).⁵² For utilitarians, punishment is justified to the extent that it produces a socially desirable consequence, ordinarily general deterrence.⁵³ In contrast, consequences are irrelevant for retributionists. Rather, they consider it simply morally fitting that criminal offenders are punished.⁵⁴ Described by Robert Solomon, 'the desire for retribution is the desire for vengeance[,]...getting even, putting the world back in balance' (Solomon 1990:41).

In terms of contributing to the development of a world understanding of human rights and the need to respect them, the Tribunal, via the media, has made a specific educative contribution to justice work.⁵⁵ The contribution of publicising evil acts, although worthy, alone falls far short of meeting a

51 One scholar from a human rights perspective has attempted to look at some of these punishment objectives as they relate to sentencing options for the ICTR. See Schabas 1997:461.

52 See Rawls 1988:38; De Haan 1990:103, noting that all theories of punishment are based on retribution and deterrence.

53 See Cederblom 1977:3.

54 See Berns 1988:85 (stating that we punish criminals principally to pay them back).

55 Creating a human rights culture is a complex process in which education and public awareness play a critical role. See Asmal 1992:28.

comprehensive punishment objective for a court system. An increase in international awareness of the Rwandan atrocities probably does not equate to generally deterring the ethno-centric philosophy of hate deep down in the sub-consciousness of the armed Hutu militia and ex-government soldiers conducting bloody military excursions in and around Rwanda.

The Deterrence Theory

Whether the offence is tax evasion or genocide, deterrence theory presupposes a rational, utility-maximising actor. Persons commit crimes, so the theory goes, when the expected value of doing so exceeds the cost of punishment. To reduce crime, society need only raise the price by imposing harsh penalties. In the real world, James Gilligan identifies 'only' four problems with this model: 'It is totally incorrect, hopelessly naive, dangerously misleading, and based on complete and utter ignorance of what violent people are actually like' (Gilligan 1996:94-95).

Much of the Tutsi minority, historically dominant, lives with the phobia of its physical elimination, while the Hutu majority demands proper political representation. The 1994 genocide in Rwanda has heightened the fears of the minority, leading Tutsi extremist elements to undertake ruthless actions against Hutu populations. Hutu extremists, in turn, are reinforced and supported from outside the country by some of the perpetrators of the Rwandese genocide. In such an environment, the voices of moderation are being drowned out, silenced or eliminated altogether.⁵⁶ An international justice process that fails to deter individuals with reason enough to value their lives and freedom can only be regarded as meaningless.

Killings in Rwanda rose in the period after its founding.⁵⁷ Although currently the number of killings inside Rwanda has decreased compared to 1998, killings of unarmed civilians and 'disappearances' were still reported throughout 1999 and 2000. As government troops regained control of the northwest, the armed conflict abated and the level of violence decreased.

56 *Report of the Secretary-General on the Situation in Burundi*, UN SCOR, 51st Sess, para 3, UN Doc S/1996/116 (1996).

57 The genocidal militia continued the killing. The territory in which it is operating and the numbers of victims have rose steadily in 1997. In response, killing by Rwandan government forces also increased. See US Department of State, *Rwanda Country Report on Human Rights Practices* (1997).

However, the situation remained tense and the peace fragile. In many respects, the armed conflict during which thousands of civilians had been killed in Rwanda in 1998 continued over the border in the DRC. The presence of armed groups continued to be reported sporadically in Rwanda near the DRC border and the Rwanda Patriotic Army (RPA) (formerly the rebel RPF) carried out military operations in this area (Amnesty International 2000).

The complexity of the Rwandan situation and the operations of the ICTR would frustrate those who advocate punishment as deterrence. Societies engulfed by mass political violence are not particularly conducive to rational behaviour or fears of eventual apprehension. How can we expect individuals to make a calculated rational choice when they are surrounded by hysteria, social chaos, panic, coercion, prejudice, and a government that is exhorting mass violence?⁵⁸ Layered on top of the irrational context in which mass violence operates, is the reality that an individual's decision to act violently may not be perceived as a legal or even a moral wrong. When taken together, these two factors support the conclusion that choices to participate in mass violence may be only slightly, if at all, deterred by the prospect of eventual prosecution – especially if undertaken by some distant international tribunal. If those committing the barbarities do not expect to lose power to the victims (or to third parties such as international authorities), they may not take the threat of penal sanction very seriously.⁵⁹

58 Yet the ICTR and the ICTY seek to achieve this goal of utilitarian deterrence. See Schabas 1997:461,498 (stating that: '[R]eferring implicitly to the notion of deterrence, the Security Council affirmed its conviction that the work of the two tribunals "will contribute to ensuring that such violations are halted". The effective prosecution and punishment of offenders is therefore intended to deter others from committing the same crimes, and perhaps to convince those already engaged in such behaviour that they should stop.' (Footnote omitted in which the Statute of the ICTY is quoted). The judgments of the ICTR reveal the importance the tribunal accords to deterrence. See *Prosecutor v Rutaganda*, Case No ICTR-96-3, P 475 (International Criminal Tribunal for Rwanda 6 December 1999) <<http://www.ictor.org/>> (stating that: '[T]he penalties imposed on accused persons found guilty by the Tribunal must be directed. ...at deterrence, namely to dissuade for ever [sic] others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of international humanitarian law and human rights.');

59 See Minow1998:50: 'Individuals who commit atrocities on the scale of genocide are unlikely to behave as "rational actors," deterred by the risk of punishment.'

The International Criminal Tribunal for Rwanda

Punishments in Rwanda, even if they are imposed to any real extent by the ICTR, will be meted out slowly, given limited resources (Howland & Calathes 1998:151). The fact that cases are handled in a slow and circuitous manner contravenes the axiom that for deterrence to work punishments must be meted out with swiftness and certainty (Burns & Hart 1970, Newman 1983). It is unrealistic to presuppose that a new institution operating in the Rwandan genocidal context could act efficiently enough for the desired deterrent impact to be realised. Approximately 125 000 individuals – roughly ten per cent of the adult male Hutu population – are incarcerated in Rwandan jails designed to hold 15 000.⁶⁰ At the present rate of national trials, it would take hundreds of years to adjudge all of these detainees (see McKinley 1997:§1.3). The ICTR is not of much help either in reducing the number of detainees, after spending over 200 million dollars; it has indicted 53 individuals and heard only nine cases.⁶¹

Seemingly, the ICTR's presence is not having the intended sobering effect on the Hutu extremists. This would be largely because the general stance of the international community is to view the genocide in terms of a *sudden event*, the evil act of the evil actor, and thus the international penal process is seen as a remedy. But the evil act rests within a large part of the population, something permanent, the permanent evil intent among extremists in both groups wrought by a volatile social structure pegged on deep-seated animosity that has spawned a strong culture of hatred and ethnic rift.

While the creation of the ICTR may have a lasting effect on the application of humanitarian law to both international and domestic conflicts, and accomplish what its first Prosecutor Goldstone stated as the significant task of placing human rights squarely on the international agenda (Tyler 1996), the Tribunal will not make a significant contribution if it fails to generate substantial appreciation on the part of Hutus of the extreme criminality of

60 See Integrated Reg'l Info Network for Cent & E Afr (IRIN-CEA), United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), Update No 509 (24 September 1998) <<http://www.reliefweb.int/IRIN/index.phtml>>; Drumbl 2000:571; Morris 1997:352.

61 See International Criminal Tribunal for Rwanda (visited 16 September 2000) <<http://www.icttr.org>>; see also See John Prendergast & David Smock, US Inst of Peace, Postgenocidal Reconstruction: Building Peace in Rwanda and Burundi (1999) <<http://www.usip.org/oc/sr/sr990915/sr990915.html>>.

acts of the mass killings, and on the part of the Tutsis, of the fact that reciprocal counter-measures, whether low intensity or not, amount to crimes based on the same legal standards that the Hutus face.

It is not enough that the international penal process classifies the behaviour as wrong, extremely distasteful and the acts as international crimes. Until the Hutus (and extremists among the Tutsis who may have a vision of grand vengeance) are capable of doing so, they will not abstain from the act, they will not have a bad conscience, and they will disapprove of the State or international community applying the normal standards built into national law and international treaties. Thus the extremists see their post-genocidal intention and actions in another direction: killing yes, but not with the intent of wiping out the other group, but with the intention of avenging their own personal losses, and furthering themselves and their ethnic hegemony through erosion and attrition of the other group in numbers. As Drumbl (2000:607) notes:

One reason trials in Rwanda have not been very successful in promoting a national historical narrative of the genocide is that they have failed to produce a sense of individual responsibility or blameworthiness among prisoners. The overwhelming majority of the prisoners we interviewed do not believe they did anything 'wrong,' or that anything really 'wrong' happened in the summer of 1994 in Rwanda. Many detainees see themselves as prisoners of war, simply ending up on the losing side. In fact, the prisoners do not even call the events of April to July 1994 the 'genocide,' but, instead, refer to these events as 'the war'.⁶²

The Retributive Theory

The liberal vision of reducing crime by attacking its social causes was essentially supplanted in the late 1970s by retributive schemes requiring that criminals get their 'just deserts' (see Rutherford 1993:15-16). These retributive schemes reflect the belief that it is morally fitting that offenders be made to suffer (see Rawls 1988:37-38). The ICTR is imbued with like sentiment and the characteristic self-righteous tenor of those striving to secure the 'deserved' punishment of others. This is not surprising, for a look at Security

62 Conflating the genocide with the war against the RPA contains faulty reasoning. See Gourevitch 1998:98-99: '[A]lthough the genocide coincided with the war, its organisation and implementation were quite distinct from the war effort.'

Council proceedings regarding the aims of the ICTR unearths a majoritarian view by participating States favouring the 'just deserts' discourse.⁶³

Before its renaissance, retribution was widely considered a dead letter, particularly among liberal theorists like H.L.A. Hart.⁶⁴ In the words of Hannah Arendt (1963:254), '[w]e refuse, and consider as barbaric, the propositions "that a great crime offends nature, so that the very earth cries out for vengeance; that evil violates a natural harmony which only retribution can restore; that a wronged collectivity owes a duty to the moral order to punish the criminal"'. There is perhaps no greater canard than the idea that punitive justice provides needed therapy for individuals; that nothing can assuage anger or restore dignity like punishment. The emphasis on victimhood, blame, and powerlessness may actually undermine recovery from violent crime.

Retributionists believe that if offenders are not punished for their crimes, then other people will not respect the criminal law and not obey it. For this school of thought, the focus is on the development of strategies for administering the courts, the police and the prisons more effectively (see e.g. Benekos 1992:4-5). Retribution attracts people that want a quick fix crime solution. Its usefulness as a tool for building a strong culture of justice in developing nations is therefore limited. Retribution merely shifts the revenge over from the individual to the State (Howland & Calathes 1998:153).

Around 125 000 people have been detained in prisons and detention centres across Rwanda, most accused of participation in the 1994 genocide. Many are being held without charge or trial for prolonged periods in conditions amounting to cruel, inhuman and degrading treatment. Arbitrary arrests have been reported. Detainees in local detention centres and in military custody are ill-treated. At least 1 420 people were tried for participation in the 1994 genocide. In 1999 at least 180 were sentenced to death. A number of detainees who were released were re-arrested, including several who had been tried and acquitted (Amnesty International 2000). This only serves to reinforce the hard feelings between the two groups, as it appears to be some kind of victor's justice, that may even turn the pacific sentiments held by moderate Hutus into bitterness. Specifically referring to the Rwandan proceedings, Minow (1998:124) concludes that '[r]ather than ending the

63 See UN Doc. S/PV. 3453 (1994).

64 See Hart 1988:15 (stating that 'a cloud of doubt has settled over the keystone of 'retributive' theory'). See also Braithwaite & Pettit 1990:2, and Primoratz 1989:71.

cycles of revenge, the trials themselves were revenge'. No doubt the Hutu extremists will be itching for a chance to pay back the Tutsis in their own coin in the future.

The willingness to punish the unusual is a basic criminal law philosophy. But if an actor commits an act that can be seen as 'normal' in the precise sense that the other actors in the same position would commit the same acts in the same situation, the justice process is then seen as motivated by vengeance. Mass violence constitutes what Carlos Santiago Nino (1996:7), citing Kant, calls 'radical evil'.⁶⁵ 'Radical evil' amounts to violence in situations where acting violently is simply not deviant. Nino (1996:ix) observes that 'the kind of collective behaviour that leads to radical evil would not have materialised unless carried out with a high degree of conviction on the part of those who participated in it'. When this conviction is broadly shared, it loses its deviance no matter how pronounced its ugliness. Thus the extremists may see the international penal process as the consequence of their loss of political and military authority in Rwanda, and not so much as a process aimed specifically at their push to homogenise Rwanda and the resulting atrocities. On the other hand, the Tutsis are more focused on the national trials that will send the guilty to the gallows, not some ritzy international trial that will send the guilty to Europe.

The ICTR has 53 indictees, 45 of whom are in custody⁶⁶ and the Rwandese prisons have some 125 000 individuals in custody over the genocide. The fact though is that between 75 000 to 150 000 possible defendants, spread throughout Rwanda and in neighbouring countries as refugees, will never see the inside of a courtroom (Jefremovas 1995). What about them? Do they get the message that their actions were wrong and atrocious? For some, yes; for most, unlikely. Journalist Philip Gourevitch (1998:34,123) asks and then eerily concludes: '[W]hat if...murder and rape become the rule?' 'During the genocide, the work of the killers was not regarded as a crime in Rwanda; it was effectively the law of the land...'. The ICTR relies on the actor-oriented

65 Nino 1996:vii adds the following description: "[R]adical evil" [refers to] offences against human dignity so widespread, persistent, and organized that normal moral assessment seems inappropriate'.

66 This figure is as of 31 October 2000. Of the 45 in custody, 41 were held at the ICTR's detention facility at Arusha, and three others were awaiting transfer from other parts of the world. See 'Press Briefing by the Spokesman for the ICTR', 19 October 2000, Doc. ICTR/INFO-9-13-018.

approach in which it is easy to see who should be apprehended, arraigned into court, adjudicated and eventually punished.⁶⁷ This objective does not tend to build dynamism and dialectics into the ICTR's vision of not only prosecuting the guilty, but also addressing impunity. The ICTR seeks to depict and regulate an *event* where certain acts are proscribed. The rest is left open.

What the ICTR ultimately seeks through incarceration is an authoritative expression of moral condemnation. Suffering is to be inflicted on the genocide architects so as to demonstrate the international community's abhorrence of the destruction of life. H.L.A. Hart (1963:65-66),⁶⁸ among others, assailed such expressive justice, describing it as 'uncomfortably close to human sacrifice as an expression of religious worship'. Reprobation and denunciation are important aspects of social ordering, but remote, atomised penal institutions are a dubious means to this end. As Drumbl (2000:1324-1325) notes:

The social engineering contemplated by retributive criminal justice does little to address the structural sources of the mythology of ethnic superiority in a society such as Rwanda's. Trials create a bipolar leitmotiv of the postgenocidal society, which is binarily deconstructed into the 'guilty' and the 'innocent'. This deconstruction runs the risk of oversimplifying history by negating the importance of collective wrongdoing, acquiescent complicity, and the embeddedness of 'radical evil'. By treating genocidal violence as an individualised, pathological, and deviant transgression of social propriety, the criminal justice system may do the dualist postgenocidal society a disservice by blanketing and perpetuating the structural nature of this violence to the detriment of survivors and future generations. Blaming occurrences of radical evil entirely on the existence of some evil people obscures the fact that so many people, to varying degrees of complicity, are required for 'radical evil' to operate publicly on a macro level.

The article now turns to an exploration of the restorative dimension of justice and its potential to offer a more viable and pragmatic paradigm to the ICTR as it pursues its objectives. The restorative paradigm's strength derives from its appreciation of both the actor and the structure within which the actor operates.

67 The mathematics of the process are ridiculous when you consider the number of indictees in relation to the overall figure of possible defendants.

68 Quoted by Kahan 1996:591,596.

Rediscovering the Restorative Dimension of Justice

In criminological theory, the restorative justice paradigm is often preferred as the principal alternative to retributive justice (Hudson & Galaway 1999:332,333). Criminologists Joe Hudson and Burt Galaway (1999:332-333) posit three elements as fundamental to restorative justice:

First, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities, and the offenders themselves, and only secondarily as a violation against the state [or the international community]. Second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute. Third, the criminal justice process should facilitate active participation by victims, offenders, and their communities in order to find solutions to the conflict.⁶⁹

Concrete objectives and compassion must characterise justice in Rwanda, based on human rights and a restorative perspective. This process should explicitly engage all relevant players by bringing about peace on all levels and joining ends to means. In other words, the justice system should be engaged in peace making. The radical nature of peace making is clear. There must be a transformation of the human being and an understanding that there can be no peace without justice. As currently conceived and understood the ICTR's objectives provide little guidance. A serious analysis of its various objectives, by sifting out those that are unrealistic, can achieve greater clarity. If the ICTR thinks it must achieve all of the objectives alone, it would be bound for failure.⁷⁰

A particularly questionable position of the ICTR is its equation of punishment and justice. Gandhi recognised that criminal punishment signifies the antithesis of justice.⁷¹ He disdained peace attained through punitive measures, and dismissed an international police force as 'a concession to

69 See also Minow 1998:91: 'Unlike punishment, which imposes a penalty or injury for a violation, restorative justice seeks to repair the injustice, to make up for it, and to effect corrective changes in the record, in relationships, and in future behaviour.'

70 See Gordon 1995:217,234 (where she discusses how the ICTR is ill conceived and success is virtually impossible, given the enormity of the task at hand).

71 See Iyer 1986:498: 'Peace must be just. In order to be that, it must be neither punitive nor vindictive.'

human weakness, not by any means an emblem of peace' (Iyer 1986:498). Gandhi recognised that institutionally inflicted punishment constitutes violence that no amount of justification can make intrinsically good or indicative of virtue. To equate prosecutions with justice in a position of collective criminal responsibility is illiberal.

The ICTR seems to overlook the fact that it is not only prosecution of its indictees that is central to the question of solving the Rwandese situation. There has to be an effort to identify that there are other units, individuals or groups that should be the target of efforts to restore order to the badly fractured society. Backing a remedy designed to socialise individuals, the ICTR envisions a society disintegrated into an amoral Hobbesian war of all against all, rather than into rival moral communities. Deftly noted by Dennis Wrong, for group-level conflict to occur, the individual group members must already 'have been socialised to...correctly gauge the expectations of others, internalise at least some norms, and possess selves sensitive to the appraisal of others' (Wrong 1994:182).⁷² The familiar lack of remorse shown for acts that if committed against a member of one's own group would draw heavy censure, signals a disjunction between groups' values and norms.

The ICTR's seeming view that applying individual level justice will promote social order will not and cannot work if it is the only tool envisaged. Individual level punishments can only affect a permanent change if the cause of the deviant behaviour resides solely with the individual (Newman 1978). In Rwanda, however, it is impossible to conclude that the causes of deviance reside with the individual. As the ICTR is focusing its attention on individual deviants, it is presenting the world, and the Rwandans, with the image of a person who needs correcting through punishment instead of a social system, structurally stratified by ethnic rift that needs reorganisation. The Tribunal, while an important instrument by which those responsible for the genocide are distinguished from moderate Hutus, should nonetheless be alive to the destabilising effect being posed by Hutu extremists, many of who are not in custody, and are unlikely to ever face prosecution.

While the prosecution of former leaders is an essential ingredient for reconciliation at the political level, there has to be a corresponding transformation of values among the Rwandan people who have been

72 For instance, in both Nazi Germany and Rwanda in the 1990s, a strong tradition of obedience to authority prevailed. See Gerhart 1996:156; Thompson-Noel 1996:xvi.

subjected to decades of incitement to ethnic hatred and violence, whether as victim or as obedient perpetrator. The Tutsi must absolve the Hutu of indefinite collective responsibility for the genocide while also having a legitimate means of vindicating their suffering through a 'collective catharsis'. The ICTR in concert with the Rwanda national trials can play a decisive role in this respect. Structures cannot be juridical persons with intentions and capabilities. They cannot distinguish between right and wrong. While structures cannot be put on trial, they can be changed through rehabilitation, by focusing on them as the primary root of the problem as well as the 53 indictees of the tribunal. Possibly the ICTR can lay ground for a new paradigm combining the actor-oriented and structure-oriented perspectives, promoting an international law that truly permeates the human populace, not stopping at the gates of the State but bridging the gap between collective and individual actors better than it has done so far. The key condition for such change is consciousness, and more sensitivity to the actor-structure relationship. Alongside trials, public inquiries must be made to reveal the weaknesses of the structure and help ensure that the Rwanda situation is not simply a change of guard, one ethnic hegemony for another.

Kent Roach (1995:268-270) presents the notion of accountability as operating on three levels: literal accountability ('a process in which individuals are forced to account for their actions'); organisational accountability ('a process where organisations are called to account for events and policy failures'); and social accountability ('a complex process that depends on social recognition of the problem being investigated and subsequent demands by the interested public that individuals, organisations and society account for their response to the problem'). Roach's review of public inquiries⁷³

73 Roach (1995:269) explored the effectiveness of three Canadian public inquiries in promoting accountability. These three inquiries related to (1) illegal activities by members of the Royal Canadian Mounted Police (the McDonald Commission), (2) the wrongful conviction of Donald Marshall, Jr, and (3) aboriginal justice in the province of Manitoba. The Manitoba Aboriginal justice inquiry was 'more concerned with promoting social accountability for the treatment of Aboriginal people and viewed even individual misconduct as a symptom of larger social and political problems' (Roach 1995:289). The "'social function" of the Manitoba inquiry was crucial' (Roach 1995:288). In the end, however, there was a definite trickle-down effect, as social accountability may encourage 'people [to] begin to question their own attitudes and behaviour and those of others' (Roach 1995:288).

reveals that their unique institutional features allow them to hold organisations and society accountable in ways that courts cannot.⁷⁴

Attention should be paid to how reconciliation can be facilitated in today's Rwanda. Adopting a restorative approach may be part of the answer. The restorative school of criminal justice demonstrates the importance of behavioural, material, emotional, and cognitive outcomes for victims, offenders, and societal members (see Alper & Nichols 1981). Success in sanctioning is measured by the degree of reparation for the victims and their participation, or even better, their ownership, in the process. It also includes the recognition of the offenders of wrongdoing and their level of empathy with victims. It is further measured by the development of a shared perspective in society that offenders have been denounced and held accountable in a fair process. The Rwandese courts may appear to lack credibility with the group of perpetrators, overwhelmingly Hutu, being prosecuted by an overwhelmingly Tutsi government. Ethnic stratification is replayed, as basically the Tutsis are prosecuting the Hutus, and the victors are entombing their victory through judicial process. It may very well be the case that the Rwandan national trials may be enhanced by closer, formal co-operation between the national and international process, to alleviate the credibility problem.

While the Rwandan courts have received mixed, and to a degree improving, reviews, many of the first trials have been considered a disaster from a due process perspective. Most of the more than 125 000 detainees have been arbitrarily arrested and have been detained for long periods without trial.⁷⁵ To many in Rwanda, this process negatively colours their impression of the Rwandan government and its ability to treat fairly those accused of genocide. The Rwandan trials will not help achieve reconciliation if they are considered unfair or if they are removed from the population.⁷⁶ Rwanda itself was warned when advocating for the creation of a tribunal with international

74 See Roach 1995:273: '[M]ost courts continue to put individuals, not organisations, on trial. They stress individual responsibility for wrongs and not the structural shortcomings of institutions, even if only organisational reform can prevent similar wrongs in the future'.

75 For an interesting history of the Rwandan government's attempt to respond to the genocide and mass killings with its justice system, see Schabas 1996:523.

76 Although the understanding of a community's perception of law and legal process is underdeveloped, especially in a place like Rwanda, fairness and morality are important. See, e.g., Robinson & Darley 1995.

participation of 'victor's justice' if it organised the trials on its own.⁷⁷

In the absence of a working strategy between the international and national processes, the ICTR continues to deal with *individual criminals* and not with a *culture of impunity*. After all, the majority in the Security Council believed neutrality and independence of the ICTR was more important than a connection to the social process in Rwanda. For the Rwandese it has become evident that independent justice means a justice that Rwanda will have no influence over, including the creation of a prosecutorial strategy.⁷⁸ The structural distance of the ICTR from the Rwandan social process makes it very difficult for the ICTR's work to be relevant and even more unlikely that its work will address the root causes of the genocide.

It would seem to be the case in Rwanda, that lasting reconciliation requires assigning individual responsibility for the atrocities, while it is regarded as imperative that trials of those accused take place. Clearly, the most resonant of such trials will be those in Rwanda, organised and accomplished by the Rwandan people, so that individual responsibility is an internal, rather than an external designation.⁷⁹ It follows that the high profile of the ICTR should not overshadow and steal the 'thunder' from the national trials. It would seem though that that is precisely what has happened: the ICTR has just about all the 'big fish', while the rest have been left to the Rwandese national courts.

The major reason why the international and national justice systems may fail to respond adequately to the Rwandese situation is that they seem to think inadequately about the crimes by defining them only as law breaking. The concentration is solely on the resulting adversarial relationship between government (or Tribunal) and the criminal offender. This existing pattern of thinking fails to address, or even recognise, the other dimensions involved. A human rights crime is not merely an offence against the State. Likewise, justice is more than punishment and incapacitation. There are larger issues at

77 Letter, dated 28 September 1994, from the Permanent Representative of Rwanda to the United Nations, addressed to the President of the Security Council.

78 Some commentators have noted this disconnection from the internal political process. See Meier Wang 1995:177,203.

79 The war crimes trials taking place in Ethiopia provide an example of a process that may bring about such internal recognition. See Deming 1995:421,424, and *New York Times* 1994:A8.

play, notably the issue of standards and norms. Despite the public nature of the genocidal violence, there is very little generally accepted truth in Rwanda as to what exactly happened from April to July 1994.⁸⁰ In this regard, a truth commission could help establish a historical narrative of what happened as well as why it happened.⁸¹ After this record is established, Rwandan society could then be better positioned to render a moral evaluation of the genocide.⁸²

In a deeply divided society, arguably the only type of society likely to produce the types of crimes for which the ICTR was established, criminal prosecutions do not necessarily have a conciliatory effect. Rather, they manifest and exacerbate division if they are seen as some sort of panacea. This follows in part because those who would occupy the dock are inevitably and widely seen as symbolic representatives of their group.⁸³ The association is even greater in cases involving 'big fish'. As the prosecution declared at the

80 But see Neier (1999:43), suggesting that because of the public nature of the violence, the truth process in Rwanda would fail to make an important contribution. Neier is correct in pointing out that the fact that the genocide was committed so publicly means many people knew about it. But reports from Rwanda reveal that there is little, if any, shared understanding as to the wrongfulness of the violence. There is an important difference between the genocide generally being known and the wrong of the genocide meaningfully being acknowledged.

81 See Jose Zalaquett's Comments at Harvard Law School Human Rights Program, concluding that truth commissions 'are most useful where broad sectors of society do not...acknowledge critical facts' (Zalaquett 1992:1425,1431).

82 So far, there has never been a truth commission in Rwanda with powers to compel testimony, order reparations, or promote offender reintegration. There have been investigations and inquiries, but these have not directly involved Rwandans in an organised, institutional process. This is not surprising since the purpose of these investigations was not to forge reconciliation or allocate reparations. In 1994, a commission of experts, established pursuant to Security Council Resolution 935, prepared a preliminary report on violations of international humanitarian law in Rwanda. See Letter from Boutros Boutros-Ghali, Secretary-General, United Nations, to the President of the Security Council, *Annex: Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935* (1994), UN Doc S/1994/1405 (Dec 9, 1994). The report of this commission of experts was a first step in the formation of the ICTR. The United Nations High Commissioner for Human Rights established a 'special investigations unit... to gather evidence that might otherwise have been lost or destroyed'. *Report of the High Commissioner for Human Rights on the Activities of the Human Rights Field Operation in Rwanda Submitted Pursuant to General Assembly Resolution 50/200*, p 15, at 5, UN Doc E/CN.4/1996/111 (1996).

83 See Simic 1997:12, stating that Radovan Karadzic and Ratko Mladic 'are taken as embodiments of the soul of their people'.

opening of the Adolf Eichmann trial, 'It is not an individual that is in the dock[,...]but anti-Semitism throughout history' (Arendt 1963:16). Given its metaphorical significance, one can hardly expect the ICTR to ameliorate collective guilt. On the contrary, it may actually revive and inflame antagonistic sentiment.⁸⁴

The overall purpose of restorative justice is the reintegration of victims and offenders who have resolved their conflicts into safe communities (see Van Ness & Strong 1997). This purpose can only be achieved when multiple parties (victims, offenders, communities, governments) pursue multiple goals (redress, fairness, healing, and rehabilitation). There have been killings of a number of unarmed civilians, some by members of the Rwandese security forces, others by armed opposition groups (the *Interahamwe* militia), and others by unidentified assailants. Members of local defence forces have been responsible for killings and other abuses, especially in the northwest of Rwanda, sometimes in conjunction with RPA soldiers (Amnesty International 2000).⁸⁵ This certainly reinforces the need to pursue multiple goals within the framework of objectives of the international justice system, otherwise the international community will have to find an alternative way to address human rights abuses by an overzealous Tutsi-dominated army, clearly having personal and official business weaved into a single tapestry. The more holistic perspective of restorative justice may actually help a society manage multiple goals because it identifies restoration – not deterrence, incapacitation, rehabilitation, or retribution – as the overarching goal of criminal justice. A restorative approach seems needed in all societies that have suffered massive and collective victimisation, and must be kept in mind in Rwanda by the ICTR as it maps out and implements its strategy (Howland & Calathes 1998:156).

There is scant evidence of analysis devoted to identifying the intended beneficiary and target audience of international prosecutions. The omission bolsters suspicions voiced by a Rwandan delegate to the United Nations that

84 See Rosenberg (1998:46,56) remarking on the 'near-universal belief among Serbs that the tribunal is an anti-Serb instrument'.

85 For a positive development, see Wanyonyi's (2001) commentary, noting the UN Prosecutor's announcement that the members of the RPA (formerly the rebel RPF) will be investigated for alleged killings during the genocide period when the RPF launched a major military offensive that brought the Tutsis to power.

the ICTR exists to appease the conscience of the international community, not to provide enduring value to the ravaged community.⁸⁶ The subject and object of humanitarian efforts in the wake of human rights disasters must be the community directly affected by and implicated in the events. If the intended beneficiary of international prosecutions is the amorphous 'international community', the ICTR has to identify and examine the implications that follow from this premise. The mere occurrence of serious human rights violations is itself indicative of the inadequacy of international recourse and remedies to ameliorate the security dilemma so prevalent in post-modern civil war.

The ugliness of the genocidal conflagration and the political reality of the ethnic hatred cannot be isolated into an international courtroom for resolution. The ICTR will make more sense if it was part of a comprehensive domestic and international process of punishment, reconstruction, and reconciliation. The Rwandese have a greater understanding of what is necessary to ensure that prosecutions meet the nation's most important objectives. They are the people who are at the same time in struggle and co-operation, in association and disassociation. A complementary twin approach by the national and international penal process through some synchronic formula may hit at the structure by challenging it through judicial activity. This may contribute to the Rwandese seeing their divided socio-political structure as one of the primary sources of their tragedy and trying to withdraw from or change it.

A presupposition of the ICTR is that formal mechanisms are integral to uphold group life and to stem deviant behaviour.⁸⁷ Reminiscent of pre-sociological thought, this view overlooks the 'complex network of social ties which spontaneously creates a normative order that exists independently of (legal institutions)' (Wrong 1994:170).⁸⁸ Co-operation and understanding by the Rwandese society is a *sine qua non* of long term ethno-centric hate control

86 See 'UN Establishes Rwanda Genocide Tribunal', Reuters North American Wire, 8 November 1994, available in LEXIS, Nexis Library, World News File.

87 Kofi Annan (1997:363), Secretary General of the United Nations, stated that all peoples of the world should have basic human rights and that the basis of law ensures those rights. He thus advocates a formal court to administer that law (see Annan 1997:365).

88 See also Wrong 1994:49: 'It is the social process in group life that creates and upholds the rules, not the rules that create and uphold group life.' See generally Sampson et al (1997:918-919,923) finding that 'collective efficacy,' meaning informal social control, cohesion, and trust, remains a significant predictor of violent crime.

and societal restructuring. Although the Tutsis are now in control, they cannot hold it without the goodwill of the Hutu segment.⁸⁹ For lasting peace, Nelson Mandela proclaimed, 'we do not rely on laws, we rely purely on persuasion' (Waldmeir 1997:261). Where society depends instead on law, Gandhi concluded that 'law ceases to be law, and society ceases to be society' (Hegde 1989:424).

The inter-ethnic hatred in Rwanda is a 'deep-culture', a socio-cultural code embedded in the collective subconscious of the group entities, defining for that collective that it is normal/natural to adopt a 'no-holds-barred' approach to gaining ethnical supremacy and preserving the resulting ethnic hegemony. With this subconscious result of almost a century of brainwashing, there is not much individual awareness of deeply rooted international legal standards steering the rest of the world. With a deep structure of hatred and animosity rooted in a culture, the ICTR is running against something very solid indeed. A signal challenge to the ICTR is the core precept of Satyagraha – that the ends pre-exist in the means. In Gandhi's words, 'the belief that there is no connection between the means and the end is a great mistake.... The means may be likened to a seed, the end to a tree; and there is just the same inviolable connection between the means and the end as there is between the seed and the tree (Dalton 1993:9).

5. Conclusion

If the ideal is to facilitate positive social change in Rwanda that brings about reconciliation and the respect for human rights, a system based on ill-thought-out symbolic justice or attainable mass retribution must be

89 Starting in 1999, the Rwandese government implemented a national policy, which required many people to abandon their homes in order to be housed in new 'villages' or settlements known locally as *imidugudu*. In the northwestern préfectures of Gisenyi and Ruhengeri, in particular, families were forced to move, sometimes under threat and intimidation. Some were made to destroy their old homes but were not provided with assistance to construct new ones. The policy was officially designed to improve security and ensure greater facilities and infrastructure, but by the end of 1999 living conditions for hundreds of thousands – especially in the northwest – remained very poor (Amnesty International 2000). Such structural strategies are definitely wrong, at least the aggressive and abrasive stance by the government. In the implementation of this policy arbitrary arrests and detentions were reported. Unsubstantiated

re-oriented with a more thought-out and creative strategy regarding the structure and operation of the ICTR. An actor-oriented perspective alone cannot prevent future human rights violations in Rwanda. It is unable to react adequately to social evils built into the social structure of the Rwandese society. The experience of the past six years shows that the vicious cycle of violence, though somewhat muted, is very much alive.⁹⁰

It can be argued that by increasing awareness the ICTR has contributed to the global respect of human rights through its 53 indictments and a few trials. Unfortunately, the process of reconciliation and the creation of human rights culture in Rwanda cannot be achieved simply by trying those who are responsible for shocking crimes. The ICTR must pay greater attention to the effects and limitations of justice symbolism and to political developments in order to effectively influence the troubled pacification process in Rwanda. This may be beyond the capacity of the current ICTR, but it should not be (Howland & Calathes 1998:166).

A particularly misguided claim of the ICTR is that criminal prosecutions are productive of 'the truth'. As Madeleine Albright declared during the UN Security Council meeting to establish the Yugoslav Tribunal, '[t]he only victor that will prevail in this endeavour will be the truth' (Stewart 1997:12). Nothing so belies this as the paucity of information about the 1994 genocide in Rwanda, generated by hundreds of criminal prosecutions, relative to the wealth of information about apartheid South Africa, compiled through non-prosecutorial means.⁹¹ The trials' reductionist, bipolar logic and inherent barriers to the truth conceal and distort history. As noted by Hannah

accusations of participation in the genocide were frequently used as a way of settling scores or to prevent property owners from reclaiming illegally occupied property. Now this falls in the structure-oriented perspective which focuses on types of evil, repression (political) and exploitation (economic). The evils here are clear, but without presupposing evil actors. See Jesudasan (1987:287) referring to Gandhi's insight into the need for any long-term government to have the consent of the governed.

90 A leader of one of the opposition groups, composed mainly of Hutu extremists, stated in an interview that the struggle will never end, that is, the laying down of arms will never take place before their demands are met, which *inter alia* include the return to the 1992 Constitution, as amounting to an acceptance of guilt to some crime. See, 'Rebel Leader Says He Is Not In Arusha to Negotiate', Internews, 24 July 2000. It can be accessed online at the following URL <<http://www.africanews.org/rwanda/stories>>.

91 See Zarembo (1997:70-71), noting that imprisoned Tutsi rebels in Rwanda 'dispute their crimes' and 'deny that the genocide ever happened'.

Arendt (1963:3): Justice demands that the accused be prosecuted, ...and that all the other questions of seemingly greater import – of ‘How could it happen?’ and ‘Why did it happen?’, of ‘Why the Jews?’ and ‘Why the Germans?’, of ‘What was the role of other nations?’... – be left in abeyance.

Both the Rwandan court process and the ICTR’s efforts are flawed, but incremental positive change can be obtained. It is time to improve the efforts of the ICTR and the Rwandan government before they reinforce, as opposed to combat, impunity. Joint projects are needed.⁹² Policy changes based on co-operation and discussions about how to achieve restorative justice are needed to enhance the efforts of the ICTR and the Rwandan government. For their part, the Hutu must be disabused of their racist notions about the Tutsi, which have been instilled into their minds by extremist leaders through indoctrination and misinformation.⁹³ Most importantly, they must become aware of the whole truth of what transpired in 1994 so that they will not fall victim to the deception and historical revisionism of Hutu extremists.

The UN and the international community should not be lulled into thinking that justice will come to Rwanda with an ‘effective’ ICTR, which has succeeded in securing custody of 45 indictees out of the total number of 53. The genocide in Rwanda was in fact the product of years of human rights violations.⁹⁴ An intense, creative, and sustained intervention involving the Rwandan government, civil society actors, UN entities, international financial institutions, and bilateral funding agencies will, therefore, be needed to address the full spectrum of human rights. While the ICTR can make a contribution to this process, it can do so only if a process exists and the ICTR has a rational plan for contributing to it.

92 Possible projects might include: one that addresses the fact that neither the ICTR nor the Rwandan government has a complete information collection and management system – a system needed to understand the big picture and to develop a coherent prosecutorial strategy; one that examines ways that the ICTR might allow for civil damage awards. Both projects could be good starting points for a discussion regarding a new collaborative arrangement.

93 The Hutu commonly refer to the Tutsi as the ‘*inyenzi*’ or cockroaches, which must be crushed. See note 45 above.

94 For example, the lack of sufficient access to quality public education created some of the conditions whereby leaders could manipulate large portions of the population; these leaders promoted the lack of tolerance and institutionalised difference between societal groups.

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Sources

- Akhavan, Payam 1996. The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment. *American Journal of International Law* 90.
- Alper, Benedict S. & Nichols, Lawrence T. 1981. *Beyond the Courtroom*. Lexington, Mass.: Lexington Books.
- Amnesty International 2000, *Amnesty International Report: 2000*.
<<http://www.web.amnesty.org/web/ar 2000.nsf/>>
- Annan, Kofi 1997. Advocating for an International Criminal Court. *Fordham International Law Journal* 21.
- Arendt, Hannah 1963. *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Penguin Books.
- Asmal, Kader 1992. Democracy and Human Rights: Developing a South African Human Rights Culture. *New England Law Review* 27.
- Baird, Robert M. & Rosenbaum, Stuart E (eds), *Philosophy of Punishment*. Buffalo, N.Y.: Prometheus Books.
- Becker, Howard S. 1963. *Outsiders: Studies in the Sociology of Deviance*. New York: Free Press; London: Collier Macmillan.
- Benekos, Peter J. 1992. Public Policy and Sentencing Reform: The Politics of Corrections, in *Federal Probation*, March 1992.
- Beres, Louis Rene 1993. Iraqi Crimes During and After the Gulf War: The Imperative Response of International Law. *Loyola of Los Angeles International and Comparative Law Journal* 15.
- Berns, Walter 1988. The Morality of Anger, in Baird & Rosenbaum 1988.
- Bhattacharyya, Rupa 1996. Establishing a Rule-of-Law International Criminal Justice System. *Texas International Law Journal* 31.
- Braithwaite, John & Pettit, Philip 1990. *Not Just Deserts: A Republican Theory of Criminal Justice*. Aldershot, Hants., Burlington, Vt.: Ashgate, Dartmouth.
- Burns, J.H. & Hart, H.L.A. (eds) 1970. *Jeremy Bentham, An Introduction to the Principles of Morals and Legislation*. London: Athlone.
- Cederblom, J.B. 1977. Introduction, in Cederblom, J.B. & Blizek, William L. (eds), *Justice and Punishment*. Cambridge, Mass.: Ballinger Publishing Co.
- Chabal, Patrick & Daloz, Jean-Pascal 1999. *Africa Works: Disorder as Political Instrument*. International African Institute, in association with James Currey, Oxford, and Indiana University Press, Bloomington.
- Dalton, Dennis 1993. *Mahatma Gandhi: Non-violent Power in Action*. New York: Columbia University Press.
- De Haan, Willem 1990. *The Politics of Redress: Crime, Punishment and Penal Abolition*. London, Boston: Unwin Hyman

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- Deming, Stuart H. 1995. War Crimes and International Criminal Law. *Akron Law Review* 28.
- Des Forges, Alison 1999. "Leave None to Tell the Story": Genocide in Rwanda'. *Human Rights Watch* 1999, 16.
- Destehexhe, Alain 1995. *Rwanda and Genocide in the Twentieth Century*, tr by Alison Marschner. New York: New York University Press.
- Drumbl, Mark A. 2000. Punishment, Postgenocide: From Guilt To Shame To Civis In Rwanda. *New York University Law Review*.
- Galtung, Johan 1994. *Human Rights in Another Key*. Cambridge, UK: Polity Press; Oxford, UK, Cambridge, Mass.: Blackwell.
- Gerhart, Gail M. 1996. Recent Books on International Relations: Africa, *Foreign Affairs*, May-June 1996.
- Gilligan, James 1996. *Violence: Our Deadly Epidemic and Its Causes*. New York: G.P. Putnam.
- Goldstone, Justice Richard 1997. Conference Luncheon Address: Prosecuting International Crimes: An Inside View'. *Transnational Law and Contemporary Problems* 7.
- Gordon, Melissa 1995. Justice on Trial: The Efficacy of the International Criminal Tribunal for Rwanda. *ILSA Journal of International and Comparative Law* 1.
- Gourevitch, Philip 1998. *We Wish to Inform You That Tomorrow We Will Be Killed with Our Families: Stories from Rwanda*. New York: Farrar, Strauss & Giroux.
- Gramsci, Antonio 1971. *Selections from the Prison Notebooks*. London: Lawrence & Wishart.
- Gusfield, Joseph R. 1963. *Symbolic Crusade: Status Politics and the American Temperance Movement*. Urbana, IL: University of Illinois Press.
- Gustafson, Carrie 1998. International Criminal Courts: Some Dissident Views On The Continuation Of War By Penal Means. *Houston Journal of International Law* 21.
- Hart, H.L.A. 1963. *Law, Liberty, And Morality*. Stanford, CA: Stanford University Press.
- Hart, H.L.A. 1988. Prolegomenon to the Principles of Punishment, in Baird & Rosenbaum 1988.
- Hegde, V.S. 1989. The Practice of Law and Gandhi, in Patil, V.T. (ed), *Gandhism* (Part on New Dimensions and Perspectives). Delhi: Renaissance Publishing House.
- Hochkammer, Karl Arthur 1995. The Yugoslav War Crimes Tribunal: The Compatibility of Peace, Politics, and International Law. *Vanderbilt Journal of Transnational Law* 28.
- Holmes, Oliver Wendell 1997. The Path of the Law After One Hundred Years. *Harvard Law Review* 110.
- Howland, Todd & Calathes, William 1998. The UN's International Tribunal, Is It Justice or Jingoism for Rwanda? *Virginia Journal of International Law* 39.

The International Criminal Tribunal for Rwanda

- Hudson, Joe & Galaway, Burt 1999. An Introduction to Restorative Justice, in Larsen, Nick & Burtch, Brian (eds), *Law in Society*. Toronto: Thompson Educational Publishers.
- Iyer, Raghavan (ed) 1986. *The Moral and Political Writings of Mahatma Gandhi* Vol 2. Oxford, New York: Oxford University Press.
- Jefremovas, Villia 1995. Acts of Human Kindness: Tutsi, Hutu, and the Genocide. *Issue* 23.
- Jesudasan, Ignatius SJ 1987. *A Gandhian Theology of Liberation*. Anand, India: Gujarat Sahitya Prakash.
- Johnson, Larry D. 1996. The International Tribunal for Rwanda. *Revue Internationale de Droit Penal* 67.
- Kahan, Dan M. 1996. What Do Alternative Sanctions Mean? in *University of Chicago Law Review* 63.
- Kelly, Andrew 1993. Yugoslavia War Crimes Tribunal Starts Work. *Chicago Sun-Times*, 18 November 1993.
- Lowell, Abbe David 1995. Nuremberg in Rwanda: Not Enough. *Legal Times*, 3 April 1995.
- MacPherson, C.B. (ed) 1985. *Thomas Hobbes, Leviathan*. Harmondsworth: Penguin.
- Marquardt, Paul D. 1995. Law Without Borders: The Constitutionality of an International Criminal Court. *Columbia Journal of Transnational Law* 33.
- Mazrui, Ali A. 1986. Human Rights and the Moving Frontier of World Culture, in *Philosophical Foundations of Human Rights*. Paris: UNESCO.
- McCaghy, Charles H. & Cenkovich, Stephen A. 1987. *Crime in American Society*. New York: Macmillan.
- McCormack, Timothy L.H. 1997. Selective Reaction to Atrocity War Crimes and the Development of International Criminal Law. *Alberta Law Review* 60.
- McKinley, James C. Jr, 1997. Massacre Trials in Rwanda Have Courts on Overload, *New York Times*, 2 November, 1997.
- Meier Wang, Mariann 1995. The International Tribunal for Rwanda: Opportunities for Clarification, Opportunities for Impact. *Columbia Human Rights Law Review* 27.
- Minow, Martha 1998. *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence*. Boston: Beacon Press.
- Misser, Francois 1995. *Vers un Nouveau Rwanda?* Paris: Desclée de Brouwer.
- Morris, Madeline H. 1997. The Trials of Concurrent Jurisdiction: The Case of Rwanda. *Duke Journal of Comparative and International Law* 7.
- Neier, Aryeh 1999. Rethinking Truth, Justice, and Guilt After Bosnia and Rwanda, in Hesse, Carla & Post, Robert (eds), *Human Rights in Political Transitions: Gettysburg to Bosnia*. New York: Zone Books.
- Newman, Graeme R 1978. *The Punishment Response*. Philadelphia: Lippincott.
- Newman, Graeme R. 1983. *Just and Painful*. New York: Macmillan; London: Collier Macmillan.

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- New York Times*, 14 December 1994. Ethiopia Ex-Rulers Go on Trial. A8.
- Nino, Carlos Santiago 1996. *Radical Evil on Trial*. New Haven: Yale University Press.
- Primoratz, Igor 1989. *Justifying Legal Punishment*. Atlantic Highlands, NJ: Humanities Press International.
- Prunier, Gerard 1995. *The Rwanda Crisis 1959-1994: History of a Genocide*. London: Hurst & Co.
- Prunier, Gerard 1997a. The Great Lakes Crisis. *Current History* 96.
- Prunier, Gerard 1997b. *The Rwanda Crisis 1959-1994: History of a Genocide* (revised edition).
- Rawls, John 1988. Two Concepts of Rules, in Baird & Rosenbaum 1988.
- Reisman, W. Michael 1995. Institutions and Practices for Restoring and Maintaining Public Order. *Duke Journal of Comparative and International Law* 6.
- Roach, Kent 1995. Canadian Public Inquiries and Accountability, in Stenning, Philip C. (ed), *Accountability for Criminal Justice: Selected Essays*. Toronto, Buffalo: University of Toronto Press.
- Robinson, Paul H. & Darley, John M. 1995. Justice, Liability, and Blame: *Community Views and the Criminal Law*. Boulder, CO: Westview Press.
- Rosenberg, Tina 1998. Defending the Indefensible. *New York Times Magazine*, 19 April 1998.
- Rutherford, Andrew 1993. *Criminal Justice and the Pursuit of Decency*. Oxford, New York: Oxford University Press.
- Sampson, Robert J. et al 1997. Neighbourhoods and Violent Crime: A Multilevel Study of Collective Efficacy. *Science*, 15 August 1997.
- Schabas, William A. 1996. Justice, Democracy, and Impunity in Post-Genocide Rwanda: Searching for Solutions to Impossible Problem. *Criminal Law Forum* 7.
- Schabas, William A. 1997. Sentencing by International Tribunals: A Human Rights Approach. *Duke Journal of Comparative and International Law* 7.
- Simic, Charles 1997. Unfashionable Victims. *London Review of Books*, 31 July 1997.
- Solomon, Robert C. 1990. *A Passion for Justice: Emotions and the Origins of the Social Contract*. Reading, MA: Addison-Wesley Publishing Co.
- Stewart, Michael 1997. *Atone and Move Forward*, London Review of Books, 11 December 1997.
- Sunga, Lyal S. 1995. The Commission of Experts on Rwanda and the Creation of the International Criminal Tribunal for Rwanda. *Human Rights Law Journal* 16.
- Taylor, Telford 1992. *The Anatomy of the Nuremberg Trials: A Personal Memoir*. Boston: Little, Brown & Co.
- Thompson-Noel, Michael 1996. Home Truths About Genocide - Murderous Disputes in Faraway Places Bring Out the Honest Pessimist. *Financial Times* (London), 13 January 1996.

The International Criminal Tribunal for Rwanda

- Tocker, Barbara M. 1994. Intervention in the Yugoslav Civil War: The United Nations' Right to Create an International Criminal Tribunal. *Dickinson Journal of International Law* 12.
- Tyler, Christian 1996. Bloodhound in Pursuit of the Dogs of War: Christian Tyler Meets Richard Goldstone, Chief Prosecutor of the UN War Crimes Tribunal, *Financial Times*, 2 March, 1996.
- Tyler, Tom R. 1990. *Why People Obey the Law*. New Haven: Yale University Press.
- Van Ness, Daniel & Strong, Karen Heetderks 1997. *Restoring Justice*. Cincinnati: Anderson.
- Waldmeir, Patti 1997. *Anatomy of a Miracle: The End of Apartheid and the Birth of the New South Africa*. New York: W.W. Norton.
- Wanyonyi, Tim 2001. Peace May Be Crucial But So Is Justice to All. *Daily Nation* (Kenya), 4 January 2001.
- Wrong, Dennis H. 1994. *The Problem of Order: What Unites and Divides Society*. New York: The Free Press; Toronto: Maxwell Macmillan Canada; New York: Maxwell Macmillan International.
- Zalaquett, Jose 1992. Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations. *Hastings Law Journal* 43.
- Zarembo, Alan 1997. Judgment Day: In Rwanda 92,392 Genocide Suspects Await Trial. *Harper's Magazine* Vol. 294, No. 1, 763, April 1997, pp. 68-80.