

HUMAN RIGHTS AND JUSTICE IN THE CONTEXT OF AFRICAN CONFLICT MANAGEMENT SYSTEMS¹

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INTRODUCTION

Whereas the 20th century has seen a myriad of successes in terms of technology, medicine, information, communication and commerce, it has also been the most violent in human history. Hundreds of millions of people have been killed in violent conflicts within this era, particularly in Africa. Genocide goes as far back as after the Berlin Conference in 1884 when King Leopold, the then ruler of the Congo was responsible for the death of over 10 million Congolese -half the entire population- when it was handed to him by his fellow European leaders².

The German annihilation of the Hereros of Namibia in 1904 open the series of the 20th century genocide which, on the African continent only, claimed the lives of over 21 million people and ends with the Rwandan Genocide, 9 decades later in 1994. Strange enough, the international community seems to have given more attention to other genocides happening outside the continent. As a result, the victims, survivors and descendants of most cases of genocides in Africa have still not found justice.

As a matter of fact, peace and harmonious coexistence has remained beyond reach despite the adoption of the Universal Declaration on Human Rights and various international human rights instruments in the past five decades. Today, the

¹ The term conflict management as used here refers to any means by which conflict is prevented, reduced or resolved

² Adam Hoschild, King Leopold's ghost: A Story of Greed, Terror and Heroism in Colonial Africa (Boston: Houghton Mifflin, 1998).

commemoration of the Herero genocide painfully reminds us that unresolved conflict and unpunished crimes continue to haunt both victims and perpetrators, undermining chances of peaceful coexistence among communities who are bound to live together in what is called the global village...

The culture of violence and impunity that most of the planners and perpetrators of such acts seem to act under is relevant to an informed observation of gross violations of human rights, humanitarian law and crimes against humanity that still characterizes our world today and it looks like far from over, as today in the 21st century, the world watches the unfolding saga in Darfur, Sudan.

I- CHALLENGES ON INDIGENOUS POLITICAL AND LEGAL SYSTEM AND CONFLICT MANAGEMENT

One of the main drawback in conflict management in Africa is that there exists a disconnect between the conflict management systems of the so-called modern states and those of their constituents. The current methods of resolving these conflicts seem not to work and often fail to bring lasting justice, peace and reconciliation. When dealing with seeking justice in order to move forward, the international community has experienced mixed results in applying conflict management techniques largely inspired from westerns models and values systems. Doing justice in Africa and protecting the victims of gross human rights abuses, both at individual and collective level in Africa, take us to the core and essence of relations among communities, states and nations. It goes beyond retribution or sanction and encompasses a holistic vision of what peoples aspire to and which relate to harmony, peace and restoration of social order that has suffered from conflict and wrongdoing. Thus, an understanding of the

indigenous conflict management systems in the Africa in general may go a long way towards improving our knowledge and strategies in addressing past atrocities as well as the current or unsolved conflicts in Africa

Our understanding of innovations and quest for human rights and justice, should extend to the rediscovery of traditional or indigenous resources for conflict resolution, peace-building and human security.

In fact, according to many analysts, the primary causes non observance of human rights and lack of justice within the official frameworks are of a structural nature and should, therefore, be sought after at the very core of the same legal and judicial systems, i.e., in their own make up, most of whom are exclusive of principles, values and mechanisms enshrined in the pre-colonial African institutional and political legacy and best practices. As a matter of fact, after centuries of mental and intellectual domination, access to knowledge about African indigenous system have been hampered by certain schools of thoughts that aimed at making Africans believe that they were retrograde, opposed human rights and development, oppressive to women, etc... Yet the historical and scientific legacy show that as ancestors of human kind and human civilization, African peoples have established and managed institutions and produced in their own languages, discourses about their practices.

An illustration of this legacy, which continues to inspire African systems of values, is the concept of Maat, from Ancient Egypt, which translate the notion of truth, order, balance, righteousness and justice in the universe. This was found in the law of Ancient Egypt most ancient codes that were partially written during the Ancient Empire, that is 2700 to 2100 BC and anterior to the Sumerian code, which is commonly presented as the first written code dating from 1700 BC. The same not only acknowledges some basic principles such as the principles of separation and balance of powers, those of representation and decentralization; it also recognizes and

protect constitutional rights for minorities, foreigners and of course women, as testified by many, including Arab chronicle writer Ibn Batuta, who visited the Mali Empire in the 13th century.

History also show how external systems of values have been imposed and juxtaposed on the existing indigenous systems, leading to change of patterns and approaches as regards the very understanding of justice services delivery and access to Justice. The adoption of common law or Napoleonic law has been packaged as a positive evolution, which required the progressive adaptation of native institutions to modern conditions, despite the oppressive and anti social nature of most of values codified into these systems. Another problem with this process is that it was never a result of consultation with citizens and never sought to first and foremost protect their interests but rather an outcome of so called institutions modernization imposed on Africa at independence. This was implying a devaluation of traditional political and legal systems which was initiated during the process of colonial government sponsored chiefs and institutions presented as representative of indigenous values, principles and structures.

In most African societies, a historical review of legal sets up and forms of disputes resolutions from precolonial times to the present shows how indigenous justice systems and values established mechanism at all level to ensure accessible and affordable justice, structured around the interests of both individuals and communities.

TECHNIQUES OF CONFLICT MANAGEMENT AND HOLISTIC APPROACH TO JUSTICE

Indigenous African conflict managements principle emphasise a way of life that acknowledges obligations, and seeks harmony, balance and equilibrium. As such, all aspects of life are based on relationships embracing courtesies and dignities of daily life. It is upon such principles that the spirit of Ubuntu, an attitude of togetherness in spirit and humanhood, is founded. Ubuntu (or Botho) bears the central meaning that nobody can survive and realise their full human potentials in isolation from others - whether the isolation is by choice or imposed. It is generally acknowledged that separateness and individualism, which set people against each other, are not part of

African culture. Peace building in African communities does not acknowledge others as enemies, victors, or even victims. Demonising others is diametrically opposed to the idea of Ubuntu. The traditional African approach views conflicts as non-isolated events in life. Moreover, experts say that distinctive African way views conflicts and their resolutions as events in a comprehensive continuum of social life.

The core values, which are expressed, reveal the profound unity of African culture from the African Africa to today, despite various external influences. This is why the techniques and principles analysed here do not belong to any specific group and are observed among groups with different social constructs and geographical environments.

Given the paramount concern of the community, which is to sustain harmony within the social system while ensuring that both individuals (the living and the dead) are protected and enjoy fundamentals rights.

The philosophical foundation of “ingredients of social harmony.” A broad ideological orientation, which provides the moral and legitimate basis for all manner of social control and is translated into practice through the imposition of “intrinsic sanctions.” Intrinsic sanctions are both positive and negative. They are the subtle, though pervasive, means by which the members of the community are moulded to uphold the normative order.

Whereas the positive sanctions consist of the psyche rewards that the people receive when they conform to the approved mode of behaviour, negative sanctions are the feeling of moral discomfort that they experience when they default. Even though social harmony is the overriding ideology in their relationship with each other, needless to state, the people do not follow the dictates of the rules of conformity with undeviating passion. Conflicts are part and parcel of social life. Conflicts occur within

kinship units and between members of different kin groups. They also occur between communities and between neighbours. In defining conflict situations, a distinction is made between anger, quarrel, duelling, and war. Disputes usually involve breach of contract, slander, and witchcraft accusations. Conflicts can also result from the problems of political succession, marital misunderstanding, injuries against persons, and damage to property. Land boundaries and rights of access to land are also often contested.

However, in conformity with the principles of social harmony, disputants are essentially expected to settle their disputes by the most amicable means available. Thus, recidivism in particular is severely sanctioned by the community as a whole whose duty it is to provide the public officials with support in enforcing the community's normative order.

One means by which the ideology of peaceful resolution of conflict is sustained is through active emphasis on mediation, which provides adversarial parties a forum to underplay conflicts and convince each other that irrespective of the nature and cause of the conflict between them, the prospects of non-adversarial relationship is greater than that of disputes. Generally flexible and amicable method of resolving disputes is appropriate for a community whose members live on a face-to-face basis and are bound by webs of social, ritual and economic relationships. The conflict managers are usually lineage elders, priests, and influential individuals who are known for their wisdom and skills in their official and professional capacities, as well as in their private dealings. These individuals are normally known widely within their communities and have the capability to persuade disputants who have been summoned to attend hearings. It often happens that such individuals are often invited to mediate conflicts outside of their own kin group or community.

One other pillar in the African conflict management system is the people's concept of fairness and justice.

The primary objective of the disputing forums is to achieve mutual acceptance, not only of the dispute handling process, but also of the verdict. It is a basic principle that until parties to a dispute have accepted the verdict that is reached at any dispute-handling forum, the conflict cannot be deemed resolved and, as a result, settlement and/or penalty cannot be suggested. Once the disputing factions have accepted both the process and the verdict, managers of the disputing process will then begin to suggest courses of action to repair the damaged relations between the former disputants in order to return them to the previous state of their social relationships. It is believed that a good dispute-handling forum does not force a decision on the parties but gets them to concur. Reconciliation rituals are organised to bring together communities or individuals in conflict. During these rituals, the persons or communities involved appear before a council of elders, where the root cause of the conflict is identified after scrutiny. When the guilt is admitted and justice administered, the two parties are blessed and a covenant of peace is made. It should be noted that before a conflict is settled, investigation would have been carried out to determine responsibilities. Justice is fully administered when the culprit will have apologized, admit responsibility, compensated for any loss where applicable, and restituted what was unduly taken away.

Another pillar of the indigenous conflict management system is the emphasis on institutional and personnel trustworthiness. Although there is no explicit separation of powers among most indigenous organs of the political systems in Africa, the same public officials—the chiefs, religious priests, and lineage heads—who exercise the powers of state administration are also the lawmakers as well as the law enforcers.

However, contrary to the modern expectation that such concentration of powers can be a recipe for autocracy, despotism, and even dictatorship, power concentration has rather made imperative political openness, trust, and transparency at both personnel and institutional levels. By resolving disputes, these politico-judicial officials meet not only the expectation of the disputants that their conflict has been resolved, they also strengthen the trust that the people have in them. In other words, successful resolution of conflicts does not only restore marred social harmony, it also enhances the legitimacy and political standing of the public institutions and officials. It was often said that any community leader who cannot be relied upon to settle community disputes is a worthless elder.

UNRESOLVED CHALLENGES AND WAY FORWARD?

One key question regarding the sustenance of the indigenous principles of conflict management in Africa is whether the conditions that made them effective in the past are still intact to cope with the dramatic social, economic and political changes that the continent has been experiencing since colonial times.

This is because the apparent effectiveness of the indigenous principles in the past was possible because they evolved with, and were tailored to, the scale of society and exigencies of the time. As in all Africa, indigenous principles and values have been significantly altered with the advent of the modern state, the introduction of Western-style education, world religions, increased monetization of local economies, and now globalisation. The changes have posed a challenge to the effective mobilization and utilization of the indigenous principles in the management of yet unresolved past and current conflicts.

One area in which indigenous principles are in conflict with those of the modern state in many African countries is the determination of land rights, which has become the major source of conflict. This clash of principles is most obvious in the conflicting notions of statute of limitation, as applied to the occupancy and use of land. Most post colonial laws provide that a person who has been in continuous possession of land for a certain amount of years cannot be evicted from the land. The central tenets of these laws are fundamentally incompatible with most indigenous land laws which do not restrict the length of time within which an action to recover land from an occupant can be effected. Thus, the contention that the mere occupation of the land particularly by foreigners, irrespective of length of stay on the land, is not a sufficient condition to make it a property that they can perpetually hold.

The central issue therefore is: Is it not appropriate for African governments in general and their development partners to seek means by which the relevant aspects of the conflict management systems of the indigenous communities can be synthesized with those of modern states in order to harness the potential benefits of both systems?

There should be increased collaboration and networking between the government and customary institutions of governance. In particular, the government should recognize customary courts, help in enforcing their rulings and, above all, revisit the whole legal dispensation in order to ensure a recognition of some valuable principles which could facilitate access to Justice in a more speedy, affordable and effective manner. The elders should be trained on understanding legal systems inherited from colonisation and on how traditional mechanisms of conflict management could be more sensitive to the universally accepted principles of human rights.

Gender and age mainstreaming in conflict resolution could be prioritised in all traditional courts and in decision-making processes, given misperceptions on marginalisation of

women and youth in these and the role women have always played in Africa as peace makers and guardians of values. Women and children voices should be more heard after having been covered by negative interpretation of indigenous principles. More information, research and dissemination need to be done in order to have traditional conflict management systems to be reintroduced in our current legal dispensation and achieve total healing and reconciliation.

IN CONCLUSION

Linking the above to the debate of today on which way forward to heal the past as far the Herero genocide is concerned, I would like to make the following comments, which are personal:

Claims for reparations from victims and those who have survived slavery, genocide and other atrocities are based on a quest for truth and justice. They can't be dismissed as they happened to by some commentators as ways to perpetuate a group's underprivileged status instead of getting on with it, availing a community of the opportunities now existing for anyone. It would seem that the present cry for acknowledgement, apology and reparations and or compensation is the product of a developing social movement among past and present victims, whether in the West for those who were taken away or in the African continent itself. Social movements do not come from nowhere: they include interpreters who name injustices and define the sought-for solutions. If politics is an art, then in the twenty-first century it is in part the art of grievance. The Western world takes the grievances of some people within its own boundaries seriously. It ought to take equally seriously the grievances of those outside its boundaries whom it has conquered and exploited. Global political and economic relations in the twenty-first century will be more peaceful if all actors accept the idea of global justice. The historical hypotheses on which claims for

reparations are based may still be debate as well as the form and solution acceptable:
the moral weight of the claims remains irrefutable and healing from both sides does
not comes without creating condition for justice and possibly reconciliation